FILED ELECTRONICALLY

December 13, 2024

IRS TEGE Classification
Mail Code 4910DAL
1100 Commerce Street
Dallas, TX 75242

Subject: Information Referral (Form 13909) re: Planned Parenthood Great Rivers & Planned Parenthood Great Rivers – IL; Non-compliance with 501(c)(3) – Prohibited Political Activity

TO WHOM IT MAY CONCERN:

We write to report Information about potentially prohibited political activities by and that may impact the tax-exempt status of Planned Parenthood Great Rivers and Planned Parenthood Great Rivers – IL (collectively referred to as "Planned Parenthood"), pursuant I.R.C. Section 501(c)(3). Form 13909 have been electronically submitted with this Information.

Specifically, Planned Parenthood has announced that it is, and in fact now has, deployed one or more mobile clinics within close proximity to and in order to service participants in the Democratic National Convention ("DNC") run by the Democratic National Committee in Chicago, IL on August 19-20, 2024. See attached PRESS RELEASE and PLANNED PARENTHOOD WEBSITE ANNOUNCEMENT:

> Planned Parenthood is offering more than a free T-shirt or sticker at the Democratic National Convention (DNC) this coming week — the organization will offer free vasectomies, medication abortion, and emergency contraception.
>
> Planned Parenthood Great Rivers of St. Louis announced in a X post that a bus is headed to the DNC in Chicago on Aug. 19-20 to offer free services.
>
> "Here we come, Chicago! Our mobile health clinic will be in the West Loop with @ChiAbortionFund & @TheWienerCircle Aug 19-20, providing FREE vasectomies & medication abortion," the post said. "EC will also be available for free without an appointment."

This deployment by federally tax exempt organizations organized under I.R.C. Section 501(c)(3) in relation to a massive, nationwide political event gives rise to serious concerns about the potential infringement of the tax-exempt requirements.

These actions by Planned Parenthood openly advertise and provide free services from not-for-profit entities to participants of and in direct relation to a nationwide political rally for one party and certain political candidates. These actions clearly are and/or suggest direct or implicit endorsements of a certain party, platform and candidates, in direct violation of prohibited political activities under I.R.C. Section 501(c)(3) and otherwise under Law and Rule.

In short, it is partisan political activity and also may be in-kind donating.

I.R.C. Section 527 categorizes entities such as campaign committees and political action committees involved in state, federal, or local office candidacies as political organizations. The Democratic National Committee is one such body falling under this classification.

Planned Parenthood, acknowledged for its tax-exemption under I.R.C. Section 501(c)(3), must adhere to strict boundaries prohibiting direct or indirect involvement in any political campaign that endorses or opposes any candidate(s) or platform(s) for elected office – especially the President and Vice President of the United States of America.

Planned Parenthood's stated activities, providing vasectomies, medical abortion and contraception free of charge to the DNC and its participants fall squarely outside acceptable operations of a 501(c)(3) organization. It is impermissible to carry out any acts implying preferences for political candidates or parties. The underpinning of this restriction is a legislative intent to maintain the nonprofit sector's neutrality in political campaigns, upholding principles set in the case of *Regan v. Taxation with Representation*, 461 U.S. 540 (1983), (attached) which reinforced limits on the lobbying by tax-exempt entities.

There is a significant distinction between permissible lobbying activities and prohibited political campaign involvement. The Hatch Act Advisory Opinion dated July 14, 2020, (attached) posits that the mere employment of terminology like 'Black Lives Matter' by federal employees does not necessarily equate to a political activity under the Hatch Act and therefore is admissible, signifying that terminology alone in specific contexts may not transcend the boundaries set for political actions.

Planned Parenthood's activities are starkly different from permissible lobbying.

Planned Parenthood's mobile clinic(s)' presence and provision of free services juxtapose its/their tax-exempt privilege against a politically charged environment. They are clear indicators of political endorsement or opposition of particular candidates and parties. These stated goals to serve the DNC lead to a presumption of violation of the compliance requirements for 501(c)(3) organizations, considering the explicit legal framework reinforced by the Supreme Court in *United States v. American College of Physicians*, 475 U.S. 834 (1986). (Attached).

In conclusion, the IRS should assess whether Planned Parenthood's activities violate the prohibitions against political activities and otherwise under Law and Rule. Political

campaigning substantially diverges from the permissible activities and could result in revocation of tax-exempt status and possible imposition of related excise taxes.

Thank you for considering this report. We are prepared to provide any further necessary information consistent with your review process.

Sincerely,

Shawn Carney
Shawn Carney (Aug 20, 2024 13:53 CDT)

Shawn Carney
President & CEO
40 Days for Life

Matt Britton (Aug 20, 2024 12:27 MDT)

Matt Britton
General Counsel
40 Days for Life
Institute of Law & Justice

Donato Borrillo (Aug 20, 2024 14:29 EDT)

Donato Borrillo, JD, MD
(Licensed to Practice Medicine in IL 036142413)
Assistant General Counsel
Director of Medicolegal Affairs
Institute of Law & Justice

ATTACHMENTS: Form 13909; Press Release of Planned Parenthood Great Rivers; Announcement of Services & Location of Planned Parenthood Great Rivers; and supplementary Case Law and Opinions

Planned Parenthood Great Rivers to Feature Mobile Clinic to Demonstrate Commitment to “Care, No Matter Where” August 19 and 20

Contact: Nick Dunne, Communications Director: media@ppgr.org (mailto:media@ppgr.org)
Mary Jane (MJ) Maharry, Director of Communications and Marketing: mj@ppil.org (mailto:mj@ppil.org)
Alicia Hurtado, Chicago Abortion Fund Movement Building Director: alicia@chicagoabortionfund.org (mailto:alicia@chicagoabortionfund.org)
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For Immediate Release: Aug. 19, 2024 (Updated: Aug. 19, 2024, 11 a.m.)

Share This

CHICAGO — Continuing Planned Parenthood’s mission to provide “care, no matter where,” Planned Parenthood Great Rivers (PPGR) is providing free vasectomies, medication abortion, and emergency contraception from a mobile clinic that will be located in the West Loop neighborhood, August 19 and 20.

The mobile clinic is a demonstration of the possibilities when states like Illinois work to support, rather than restrict, access to affordable health care. Meeting patients where they are by offering the mobile clinic’s services in busy areas is yet another continuation of Planned Parenthood’s unending efforts to improve accessibility and expand services for Illinois residents. It is also another way to address the influx of patients coming to Illinois for care as surrounding states continue to enact severe restrictions on reproductive care, including extreme abortion bans.

Statement from Dr. Colleen McNicholas, Chief Medical Officer, Planned Parenthood Great Rivers

“Accessibility is a core value at Planned Parenthood Great Rivers, and our mobile health clinic helps us bring care to more people who need it. We are excited to provide essential health care at no cost in partnership with Chicago Abortion Fund and the Wieners Circle. As people from across the country travel to Illinois this week, we are proud to demonstrate what is possible when policies truly support accessible reproductive health care.”

Statement from Jennifer Welch, President and CEO, Planned Parenthood of Illinois

“Illinois has welcomed more abortion care patients than any other state, and Planned Parenthood of Illinois continues to meet the rising flood of patients forced to travel from their home to get essential services like abortion and gender-affirming care. We are proud to take an active role in providing care at our health centers and through our partnership with the mobile unit.”

Statement from Megan Jeyifo, Executive Director, Chicago Abortion Fund (CAF)

“Since the *Dobbs* decision, the Chicago Abortion Fund has fielded over 25,000 support requests from people based in 44 states, and distributed over $7.5 million in direct support for appointment costs and travel support. It is undeniable that Illinois has shifted from a regional access point for abortion care to a national one, and we work hard every day at CAF to ensure that the protections that we have built here in Illinois are accessible for all — no matter who they are, where they are traveling from, or how much money they make. Whether on our helpline, or through events like this, we remain committed to resourcing our communities near and far with the support, affirmation, information, and resources they need to access the abortion care they want, need, and deserve.

“All people deserve to have access to abortion care free of financial hurdles, and without interference and that is what we are doing here with our partners today.”

Statement from the Wieners Circle

“We joke a lot at the Wieners Circle, but there’s nothing funny about the state of reproductive health care in this country. We believe deciding whether to start a family is a fundamental human right. Part of that is being able to make decisions about how you go about either having children or preventing having children. Reproductive health decisions should be up to the patient, not the government. We are proud to join Planned Parenthood and the Chicago Abortion Fund and support their important work.”

The mobile clinic is operating **Monday, August 19** and **Tuesday, August 20,** between **noon and 7 p.m. CDT** both days. All appointments have been booked. Patients can make an appointment at a Planned Parenthood of Illinois health center in Chicago by visiting www.ppil.org (http://www.ppil.org/). Providers, as well as representatives from Chicago Abortion Fund and the Wieners Circle, can be made available for interviews in advance.

Planned Parenthood health centers in Illinois provide the full spectrum of sexual and reproductive health care including procedural abortion, medication abortion, emergency contraception, gender-affirming care, family planning services including birth control, STI testing and treatment, and vasectomies. Planned Parenthood appointments can be made at plannedparenthood.org/book (http://plannedparenthood.org/book) or by calling 1-800-230-PLAN.



Planned Parenthood Great Rivers' Mobile Unit

Planned Parenthood Great Rivers is the leading provider, educator, and protector of sexual and reproductive health care in the St. Louis region, Missouri Ozarks, and beyond, as it has been for more than 90 years. Patients can make appointments online (http://ppgr.org/book) or by phone at 1-800-230-PLAN(7526).

Planned Parenthood of Illinois (PPIL) provides affordable, high-quality reproductive health care services and medically accurate sexual health education. Through medical services, educational programs and advocacy efforts, PPIL works to ensure and protect the reproductive rights of each individual. For more information, visit (http://www.ppil.org/)www.ppil.org (http://www.ppil.org/).

The Chicago Abortion Fund (https://www.chicagoabortionfund.org/) (CAF) isn't just an organization; we're a movement. For 38 years, we've been tearing down barriers to abortion care in Chicago, the Midwest, and beyond. We're not just providing funding; we're supporting our callers in accessing freedom, dignity, and autonomy. CAF offers support for clients seeking abortions including, procedure funding, travel and related needs like childcare, emotional support and logistical expertise. The organization has relationships with 75+ abortion clinics across 12 states, and supports people nationwide. Since the Dobbs decision, CAF has fielded over 25,000 support requests and distributed close to $7.5 million in direct assistance.

How to access abortion

Abortion is now banned in Missouri, except in cases of medical emergency.

You can access abortion at several locations in southern Illinois: at our Fairview Heights health center; in Granite City at Hope Clinic; and in Carbondale at Planned Parenthood of Illinois, CHOICES Center for Reproductive Health, or Alamo Women's Clinic.

Need transportation, lodging, or financial assistance in order to access abortion at Planned Parenthood or Hope Clinic? The Regional Logistics Center (RLC) can help. Call the RLC at 618-607-5080.

GET ABORTION CARE | LEARN ABOUT THE RLC



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July 14, 2020

Black Lives Matter and the Hatch Act

I. INTRODUCTION

Beginning in late May 2020, protesters began organizing large demonstrations across the United States. The immediate precipitating event was the videotaped police killing of George Floyd, a black man. However, the demonstrations are largely focused on the issue of racism in America more broadly and not limited to Mr. Floyd's death alone. The phrase "Black Lives Matter" (BLM) is frequently used by protesters and associated with the demonstrations. Additionally, BLM-related organizations have supported and/or organized demonstrations.

In response, numerous federal employees have asked OSC whether BLM or related materials raise any Hatch Act concerns when used or displayed while on duty or in the federal workplace. The questions raise two distinct but related issues. The first is whether using BLM terminology is inherently political activity. And the second is whether the Black Lives Matter Global Network (BLMGN)—the owner of www.blacklivesmatter.com and arguably the most prominent BLM-related organization—is a partisan political group. As further described below, using BLM terminology is not inherently political activity and BLMGN is not currently a partisan political group.[1] Accordingly, the Hatch Act generally allows employees to engage in BLM-related activity while on duty or in the workplace. But, as described below, employees are still prohibited from combining BLM-related activity with "political activity" while on duty or in the workplace and from engaging in partisan political fundraising in connection with BLM-related organizations. "Political activity" is an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.[2]

II. BACKGROUND OF BLM

As a social movement, BLM gained prominence following a series of high-profile killings of black Americans in 2013 and 2014 and, in particular, the acquittal of George Zimmerman for the killing of Trayvon Martin. The movement appears to have begun organically on social media. The phrase "Black Lives Matter" then became a rallying cry for

[1] This memorandum analyzes BLMGN based upon its activities at the time of writing. If BLMGN's activities change in the future, then OSC would need to reevaluate the group based upon those changed circumstances.
[2] 5 C.F.R. § 734.101.

protesters and organizations seeking to raise awareness of, and respond to, issues associated with racism in the United States.[3]

BLM is thus an umbrella term for a constellation of ideas, objectives, and groups. There is no "leader" of the BLM movement. Rather, there are numerous organizations that use BLM terminology to varying degrees, including some whose names include the phrase "Black Lives Matter." Of these, the most prominent is the BLMGN.

BLMGN is a chapter-based organization made up of more than 40 chapters worldwide. BLMGN's stated goals are to "eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes."[4] In furtherance of these goals it organizes programs around black arts and culture, protests to achieve policy change, and provides toolkits and other resources for discussing and responding to racism.

BLMGN has not previously been involved in partisan political activity. During the 2016 presidential election cycle, BLMGN representatives considered endorsing a presidential candidate and reportedly met with candidates from both the Democratic and Republican parties.[5] But ultimately BLMGN opted not to endorse any candidate or political party, and in fact expressly disavowed a Democratic Party statement of support.[6] In the current election cycle, BLMGN has begun a campaign titled #WhatMatters2020 that aims to increase turnout among BLMGN supporters in the 2020 election. The #WhatMatters2020 campaign does not identify any particular politicians or political parties. Rather, it aims to register potential voters and educate voters about issues such as racial injustice, police brutality, education, healthcare, and environmental conditions.

BLMGN's website is almost entirely focused on issue advocacy.[7] The website has online petitions related to police reform[8] and COVID-19;[9] descriptions of its immigration reform-related campaigns;[10] and videos about BLMGN chapter initiatives.[11] The only express reference

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[3] *See generally* Monica Anderson, *The hashtag #BlackLivesMatter emerges: Social activism on Twitter*, Pew Research Center, Aug. 15, 2016, https://www.pewresearch.org/internet/2016/08/15/the-hashtag-blacklivesmatter-emerges-social-activism-on-twitter/.

[4] Black Lives Matter, https://blacklivesmatter.com/about/ (last visited June 25, 2020).

[5] Taylor Lewis, *Black Lives Matter Activists Will Not Endorse a 2016 Presidential Candidate*, Essence, Sept. 22, 2015, https://www.essence.com/news/black-lives-matter-activists-will-not-endorse-2016-presidential-candidate/ (noting that BLMGN met with presidential candidates Hillary Clinton, Bernie Sanders, and Jeb Bush).

[6] Lauren Gambino, *Black Lives Matter network disavows political ties after DNC backs movement*, The Guardian, Aug. 31, 2015, https://www.theguardian.com/us-news/2015/aug/31/black-lives-matter-democratic-national-committee (After the Democratic National Committee adopted a resolution claiming solidarity with BLM, BLMGN issued a statement saying "We do not now, nor have we ever, endorsed or affiliated with the Democratic Party, or with any party . . . . The Democratic Party, like the Republican and all political parties, have historically attempted to control or contain black people's efforts to liberate ourselves. True change requires real struggle, and that struggle will be in the streets and led by the people, not by a political party.").

[7] The websites of the BLMGN chapters that OSC reviewed also contain no evidence of partisan political activity. *See, e.g.*, Black Lives Matter Chicago https://www.blacklivesmatterchicago.com/about-us/ (last visited June 24, 2020); Black Lives Matter DMV http://www.blacklivesmatterdmv.org/about/ (last visited June 24, 2020).

[8] https://blacklivesmatter.com/defundthepolice/.

[9] https://blacklivesmatter.com/petitions/.

[10] https://blacklivesmatter.com/global-actions/.

[11] https://blacklivesmatter.com/activist-shorts/blm-chicago/; https://blacklivesmatter.com/whatmatters/.

to political parties that we can find is the statement "We are [moving forward towards justice] through our continued fight against elected officials, be it Democrat or Republican, who don't share a vision that is radical and intersectional."[12] BLMGN's website does not contain any candidate endorsements, any descriptions of its partisan political activity, or requests that visitors engage in partisan political activity.

III. ANALYSIS

As relevant here, the Hatch Act prohibits employees from engaging in political activity while on duty or in the federal workplace.[13] "Political activity" is activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office.[14] A "partisan political group," in turn, is a group that (1) is affiliated with a political party or candidate for partisan political office, (2) is organized for a partisan purpose, or (3) engages in partisan political activity.[15] The Hatch Act does not prohibit employees from engaging in issue-based advocacy, such as activity in relation to an issue not specifically identified with a political party or partisan political group.[16] Because using BLM terminology is not inherently political activity, and because BLMGN is not a partisan political group, the Hatch Act has only limited application to BLM-related activity.

1. Using BLM terminology in the workplace is not inherently political activity.

The Hatch Act generally prohibits employees from using or displaying political party and partisan campaign slogans. For example, employees may not use President Trump's campaign slogan, "Make America Great Again," in their email signatures while President Trump is a candidate for reelection. Employees would have similarly violated the Hatch Act by referencing Hillary Clinton's campaign slogan, "Forward Together," in the workplace during the 2016 election campaign.

Unlike campaign slogans, phrases related to issues—even politically charged issues—generally do not meet the definition of political activity. For example, the Tea Party movement rose to prominence during the Obama Administration in large part as a response to federal taxing and spending policies. Because of this issue-focused origin, OSC could not conclude that the movement itself was inherently partisan as opposed to issue-based. Accordingly, OSC repeatedly found that mere use of the phrase "Tea Party" by federal employees while on duty or in the workplace was not prohibited by the Hatch Act.

Although OSC deemed the Tea Party movement as not inherently partisan, OSC was also asked to evaluate whether certain Tea Party-affiliated groups met the definition of a partisan political group. OSC examined those groups on a case-by-case basis and determined that at least one was a partisan political group.[17] Thus, a distinction arose between on-duty employees

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[12] https://blacklivesmatter.com/six-years-strong/.
[13] *See* 5 U.S.C. § 7324(a)(1)-(2).
[14] 5 C.F.R. § 734.101.
[15] *Id.*
[16] *See* 5 C.F.R. § 734.203.
[17] The Florida Tea Party, a registered state political party in Florida.

promoting or opposing the Tea Party movement writ large—which OSC deemed permissible under the Hatch Act—and promoting or opposing individual Tea Party-affiliated organizations, which OSC deemed problematic if the organization in question was a partisan political group.

The Tea Party provides a close analogy for BLM. Like the Tea Party, BLM is a blanket term for a leaderless movement that apparently arose in response to social concerns. Also like the Tea Party, the BLM movement comprises numerous individuals and groups, any one of which can claim affiliation with BLM without having to be formally accepted into the movement. And to the extent that either movement's motivating principles can be definitively established, it appears that they both were or are focused primarily on raising awareness of, and achieving policy changes for, their issues of concern. Thus, expressing support for or opposition to BLM as a movement is not "activity directed toward the success or failure of a political party, partisan political group, or candidate for partisan political office." Such expressions are therefore allowed by the Hatch Act.[18]

2. BLMGN is not a partisan political group.

An organization is a partisan political group if it (1) is affiliated with a political party or candidate for partisan political office, (2) is organized for a partisan purpose, or (3) that engages in partisan political activity. OSC has found no evidence to suggest that BLMGN is affiliated with a political party or candidate for partisan political office or that it is organized for a partisan purpose, *i.e.*, for the purpose of supporting or opposing a political party or a party's candidates for office. The relevant question then becomes whether BLMGN is a partisan political group because it engages in partisan political activity.

Not all organizations that engage in any political activity are partisan political groups.[19] Accordingly, OSC will consider several factors when determining whether an organization is a partisan political group because of its political activity. These factors include, but are not limited to, the following: the organization's stated purpose, as reflected in its bylaws or charter, on its website, and in its other public materials; whether the organization expends its resources on political activity; whether the organization prominently advertises its political activity; the relationship between the organization and its affiliates, if any, that engage in political activity, such as whether they share a website, staff, or office space; and whether the organization has indicated on any government filings that it engages in political activity.

Based upon the foregoing factors, BLMGN is not a partisan political group. Its stated purposes relate to effecting policy changes to benefit the black community. It does not appear that the group expends any of its resources on partisan political activity. To the extent that it is publicly involved in the 2020 elections, its goals appear to center on voter registration and

[18] OSC similarly advises that employees do not violate the Hatch Act by saying "Build the Wall" or talking about "conservative values" or "liberal values" while in the workplace. All three are considered issue-based statements. But such statements could easily cross the line to prohibited political activity if connected to a political party or candidate (*e.g.*, "if you share my conservative/liberal values, you should vote for Republican/Democratic candidates in 2020").

[19] *See generally* OSC's advisory dated July 10, 2020 (analyzing when groups are partisan political groups under each of the three regulatory criteria).

education. BLMGN has not endorsed any individual candidates or, more broadly, those of any particular party. And OSC is unaware of any BLMGN affiliates that engage in political activity or of any government filings in which BLMGN has indicated that it engages in political activity.

It has been said that some portion of contributions to BLMGN may be directed to partisan political groups via the ActBlue fundraising network. BLMGN does use ActBlue Charities to process donations. But there is no evidence to suggest that donations to BLMGN via the ActBlue Charities website are used to fund any organizations besides BLMGN.[20]

Like any number of prominent politically active organizations—such as the National Rifle Association and Planned Parenthood—BLMGN is popularly associated more frequently with one political party versus another. But that does not make it a "partisan political group" for purposes of the Hatch Act. Considering that BLMGN is overwhelmingly focused on policy issues, not on promoting or opposing political parties or candidates for partisan political office, it is not a partisan political group at this time.

3. The Hatch Act implications of these determinations.

The Hatch Act imposes limited restrictions on employee conduct related to issue-based advocacy and organizations. Specifically, employees who are on duty or in the workplace may not associate their issue-based advocacy with the success or failure of a political party, a partisan political group, or a candidate for partisan political office. Employees also may not knowingly solicit, accept, or receive political contributions, *i.e.*, contributions made for the purpose of promoting or opposing a political party, a partisan political group, or a candidate for partisan political office, even if such conduct is done on behalf of an issue-based organization. In other words, while purely issue-based conduct is not prohibited by the Hatch Act, if an employee's issue-based conduct includes some element of political activity or political fundraising then the relevant Hatch Act prohibitions will apply.

As applied to BLM, this means that an employee is not prohibited by the Hatch Act from expressing support for, or opposition to, the BLM movement while on duty or in the workplace. But the employee may not say, for example, "if you believe that Black Lives Matter, then you should vote for/against X in November." Similarly, if BLMGN were to host a fundraiser to support a candidate for partisan political office, then the Hatch Act would prohibit an employee from advertising, promoting, or inviting others to attend that fundraiser.[21] But because BLMGN is not itself a partisan political group, the Hatch Act would not prohibit the employee from inviting others to a fundraiser that benefited solely BLMGN.

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[20] *See generally* Eliana Block, *No, donations to Black Lives Matter do not go to the DNC*, WUSA9, June 22, 2020, https://www.wusa9.com/article/news/verify/verify-donations-to-black-lives-matter-do-not-go-to-the-dnc/65-ecd22d31-d5ed-44f7-adc2-b04a31fed591. If simply using ActBlue Charities to process donations made an organization a partisan political group, then OSC would have to conclude that myriad 501(c)(3) tax-exempt organizations, including food banks and United Way chapters, are partisan political groups. Because some 501(c)(3) organizations that use ActBlue Charities also participate in the Combined Federal Campaign (CFC), one of the many consequences of such a conclusion would be the possibility that certain CFC fundraising is prohibited by the Hatch Act.

[21] Note that if BLMGN hosted a single fundraiser for a candidate for partisan political office, that alone would likely not be sufficient to reclassify BLMGN as a partisan political group.

IV. CONCLUSION

BLM is a "hot-button" issue and both politically and culturally salient. But BLM terminology is issue-based, not a campaign slogan. Therefore, using BLM terminology, without more, is not political activity. BLMGN does not meet any of the criteria for classification as a partisan political group. Therefore, BLMGN is not a partisan political group, and employees are not prohibited from wearing or displaying BLMGN paraphernalia in the workplace.

Please note that this advisory only relates to the Hatch Act and does not address any other laws, rules, or regulations that may apply to expressions of support for, or opposition to, BLM while on duty or in the workplace. If you have questions about any other such laws, rules, or regulations, we recommend that you consult with an agency ethics official.

UNITED STATES *v.* AMERICAN COLLEGE OF PHYSICIANS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 84–1737. Argued January 21, 1986—Decided April 22, 1986

Section 511(a)(1) of the Internal Revenue Code imposes a tax on the "unrelated business taxable income" of tax-exempt organizations. Section 512(a)(1) defines "unrelated business taxable income" as the gross income derived by such an organization from any "unrelated trade or business . . . regularly carried on by it," and § 513(a) defines "unrelated trade or business" as "any trade or business the conduct of which is not substantially related" to the organization's tax-exempt purposes. Respondent tax-exempt organization, in furtherance of its exempt purposes of maintaining high standards in medical education and practice, encouraging research, and fostering measures for preventing disease and improving public health, publishes a monthly medical journal containing articles relevant to the practice of internal medicine. Each issue of the journal contains paid advertisements for pharmaceuticals, and medical supplies and equipment useful in the practice of internal medicine. After respondent had paid taxes on its net income from such advertisements in 1975, it filed a claim for a refund, and when the Government demurred, ultimately filed suit in the United States Claims Court, which held that the advertisements were not substantially related to respondent's tax-exempt purposes and that therefore the advertising proceeds were taxable. The Court of Appeals reversed. Taking the view that the Claims Court had focused too much on the commercial character of the advertising business and not enough on the advertisements' contribution to the education of the medical journal's readers, the Court of Appeals held that respondent had established the requisite substantial relation and its entitlement to exemption from taxation.

Held: Respondent must pay a tax on the profits it earns from the advertisements. Pp. 837–850.

(a) It is undisputed that respondent's publication of paid advertising is a "trade or business" and that the business is "regularly carried on." Pp. 839–841.

(b) There is no merit to the Government's argument that Congress and the Treasury intended to establish a blanket rule requiring the taxation of income from all commercial advertising by tax-exempt professional journals without a specific analysis of the circumstances.

There is no support for such a rule in the regulations or in the legislative history of the Internal Revenue Code. Pp. 841–847.

(c) In this case, however, based on the Claims Court's finding of facts that are adequately supported by the record, and considering those facts in light of the applicable legal standard, it must be concluded that the advertisements in question were not "substantially related," or in the words of the implementing regulation did not "contribute importantly," to the medical journal's educational purposes. The Claims Court properly directed its attention to respondent's conduct of its advertising business, whereas the Court of Appeals erroneously focused exclusively upon the information conveyed by commercial advertising and consequently failed to give effect to the governing statute and regulations. Pp. 847–850.

743 F. 2d 1570, reversed.

MARSHALL, J., delivered the opinion for a unanimous Court. BURGER, C. J., filed a concurring opinion, in which POWELL, J., joined, *post*, p. 850.

Albert G. Lauber, Jr., argued the cause for the United States. With him on the briefs were *Solicitor General Fried, Assistant Attorney General Archer, Robert A. Bernstein*, and *Robert S. Pomerance*.

John B. Huffaker argued the cause for respondent. With him on the brief were *Eleanor N. Ewing* and *Gerald P. Norton*.*

JUSTICE MARSHALL delivered the opinion of the Court.

A tax-exempt organization must pay tax on income that it earns by carrying on a business not "substantially related" to the purposes for which the organization has received its exemption from federal taxation. The question before this Court is whether respondent, a tax-exempt organization,

Robert A. Saltzstein and *Joseph J. Saunders* filed a brief for American Business Press as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Association for the Advancement of Science by *John D. Lane;* for the American Medical Association et al. by *George A. Platz, Frank V. Battle, Jr., J. Timothy Kleespies*, and *Kathleen R. Curtis;* and for the American Society of Association Executives by *George D. Webster* and *Frank M. Northam.*

must pay tax on the profits it earns by selling commercial advertising space in its professional journal, The Annals of Internal Medicine.

I

Respondent, the American College of Physicians, is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code.[1] The purposes of the College, as stated in its articles of incorporation, are to maintain high standards in medical education and medical practice; to encourage research, especially in clinical medicine; and to foster measures for the prevention of disease and for the improvement of public health. App. 16a. The principal facts were stipulated at trial. In furtherance of its exempt purposes, respondent publishes The Annals of Internal Medicine (Annals), a highly regarded monthly medical journal containing scholarly articles relevant to the practice of internal medicine. Each issue of Annals contains advertisements for pharmaceuticals, medical supplies, and equipment useful in the practice of internal medicine, as well as notices of positions available in that field. Respondent has a longstanding policy of accepting only advertisements containing information about the use of medical products, and screens proffered advertisements for accuracy and relevance to internal medicine. The advertisements are clustered in two groups, one at the front and one at the back of each issue.

In 1975, Annals produced gross advertising income of $1,376,322. After expenses and deductible losses were subtracted, there remained a net income of $153,388. Respondent reported this figure as taxable income and paid taxes on it in the amount of $55,965. Respondent then filed a timely claim with the Internal Revenue Service for refund of these

[1] Title 26 U. S. C. § 501(c)(3) exempts from taxation entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes," with certain restrictions on their activities, including prohibition of political activity.

taxes, and when the Government demurred, filed suit in the United States Claims Court.

The Claims Court held a trial and concluded that the advertisements in Annals were not substantially related to respondent's tax-exempt purposes. 3 Cl. Ct. 531 (1983). Rather, after finding various facts regarding the nature of the College's advertising business, it concluded that any correlation between the advertisements and respondent's educational purpose was incidental because "the comprehensiveness and content of the advertising package is entirely dependent on each manufacturer's willingness to pay for space and the imagination of its advertising agency." *Id.*, at 535. Accordingly, the court determined that the advertising proceeds were taxable.

The Court of Appeals for the Federal Circuit reversed. 743 F. 2d 1570 (1984). It held clearly erroneous the trial court's finding that the advertising was not substantially related to respondent's tax-exempt purpose. The Court of Appeals believed that the trial court had focused too much on the commercial character of the advertising business and not enough on the actual contribution of the advertisements to the education of the journal's readers. It held that respondent had established the requisite substantial relation and its entitlement to exemption from taxation. *Id.*, at 1578. We granted the Government's petition for certiorari, 473 U. S. 904 (1985), and now reverse.

II

The taxation of business income not "substantially related" to the objectives of exempt organizations dates from the Revenue Act of 1950, Ch. 994, 64 Stat. 906 (1950 Act). The statute was enacted in response to perceived abuses of the tax laws by tax-exempt organizations that engaged in profit-making activities. Prior law had required only that the profits garnered by exempt organizations be used in furtherance of tax-exempt purposes, without regard to the source of

those profits. See *Trinidad* v. *Sagrada Orden de Predicadores*, 263 U. S. 578, 581 (1924); *C. F. Mueller Co.* v. *Commissioner*, 190 F. 2d 120 (CA3 1951); *Roche's Beach, Inc.* v. *Commissioner*, 96 F. 2d 776 (CA2 1938). As a result, tax-exempt organizations were able to carry on full-fledged commercial enterprises in competition with corporations whose profits were fully taxable. See Revenue Revision of 1950: Hearings before the House Committee on Ways and Means, Vol. I, 81st Cong., 2d Sess., 18–19 (1950) (hereinafter cited as 1950 House Hearings) (describing universities' production of "automobile parts, chinaware, and food products, and the operation of theatres, oil wells, and cotton gins"). Congress perceived a need to restrain the unfair competition fostered by the tax laws. See H. R. Rep. No. 2319, 81st Cong., 2d Sess., 36–37 (1950).

Nevertheless, Congress did not force exempt organizations to abandon all commercial ventures, nor did it levy a tax only upon businesses that bore no relation at all to the tax-exempt purposes of an organization, as some of the 1950 Act's proponents had suggested. See, *e. g.*, 1950 House Hearings, at 4, 19, 165. Rather, in the 1950 Act it struck a balance between its two objectives of encouraging benevolent enterprise and restraining unfair competition by imposing a tax on the "unrelated business taxable income" of tax-exempt organizations. 26 U. S. C. § 511(a)(1).

"Unrelated business taxable income" was defined as "the gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it . . . ." § 512(a)(1). Congress defined an "unrelated trade or business" as "any trade or business the conduct of which is not substantially related . . . to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption . . . ." § 513(a). Whether respondent's advertising income is taxable, therefore, depends upon (1) whether the publication of paid advertising is a "trade or business," (2) whether it

is regularly carried on, and (3) whether it is substantially related to respondent's tax-exempt purposes.

III

A

Satisfaction of the first condition is conceded in this case, as it must be, because Congress has declared unambiguously that the publication of paid advertising is a trade or business activity distinct from the publication of accompanying educational articles and editorial comment.

In 1967, the Treasury promulgated a regulation interpreting the unrelated business income provision of the 1950 Act. The regulation defined "trade or business" to include not only a complete business enterprise, but also any component activity of a business. Treas. Reg. § 1.513–1(b), 26 CFR § 1.513–1(b) (1985) (first published at 32 Fed. Reg. 17657 (1967)).[2] This revolutionary approach to the identification of a "trade or business" had a significant effect on advertising, which theretofore had been considered simply a part of a unified publishing business. The new regulation segregated the "trade or business" of selling advertising space from the "trade or business" of publishing a journal, an approach commonly referred to as "fragmenting" the enterprise of publishing into its component parts:

> "[A]ctivities of soliciting, selling, and publishing commercial advertising do not lose identity as a trade or business even though the advertising is published in an exempt organization periodical which contains editorial matter related to the exempt purposes of the organization." 26 CFR § 1.513–1(b) (1985).

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[2] The 1967 Treasury regulations at issue in this case, published in final form at 32 Fed. Reg. 17657 (1967), have not been amended in pertinent part since their promulgation, and references to those regulations herein are to the current version.

In 1969, Congress responded to widespread criticism of those Treasury regulations[3] by passing the Tax Reform Act of 1969, Pub. L. 91–172, 83 Stat. 487 (1969 Act). That legislation specifically endorsed the Treasury's concept of "fragmenting" the publishing enterprise into its component activities, and adopted, in a new § 513(c), much of the language of the regulation that defined advertising as a separate trade or business:

> "Advertising, etc., activities . . . an activity does not lose identity as a trade or business merely because it is carried on . . . within a larger complex of other endeavors which may, or may not, be related to the exempt purposes of the organization." 26 U. S. C. § 513(c).

The statute clearly established advertising as a trade or business, the first prong of the inquiry into the taxation of unrelated business income.

The presence of the second condition, that the business be regularly carried on, is also undisputed here. The satisfaction of the third condition, however, that of "substantial rela-

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[3] See, *e. g.*, Moore, Current Problems of Exempt Organizations, 24 Tax L. Rev. 469, 476 (1969); Middleditch & Webster, The new unrelated business income Regs: what they mean; how to cope with them, 28 J. Tax. 174, 178 (1968); Webster, New proposals change definition of unrelated business income, 27 J. Tax. 42, 43 (1967); Weithorn & Liles, Unrelated Business Income Tax: Changes Affecting Journal Advertising Revenues, 45 Taxes 791, 798 (1967). See also Tax Reform, 1969: Hearings before the House Committee on Ways and Means, 91st Cong., 1st Sess., 1129, 1184, 1223 (1969). Numerous bills were introduced in the 90th Congress, 1st Session, in an unsuccessful attempt to overturn the regulations, even before they became final. See, *e. g.*, H. R. 8765; H. R. 8766; H. R. 9103; H. R. 9468; H. R. 9661; H. R. 9763; H. R. 10150; H. R. 10997; H. R. 10998; H. R. 11491; H. R. 11492. And several years later, two federal courts struck down the 1967 regulations as exceeding pre-1969 statutory authority, insofar as they required the "fragmentation" of publishing activities. See *American College of Physicians* v. *United States*, 209 Ct. Cl. 23, 29, 530 F. 2d 930, 933 (1976); *Massachusetts Medical Society* v. *United States*, 514 F. 2d 153, 154 (CA1 1975).

tion," is vigorously contested, and that issue forms the crux of the controversy before us.

B

According to the Government, Congress and the Treasury established a blanket rule that advertising published by tax-exempt professional journals can never be substantially related to the purposes of those journals and is, therefore, always a taxable business. Respondent, however, contends that each case must be determined on the basis of the characteristics of the advertisements and journal in question. Each party finds support for its position in the governing statute and regulations issued by the Department of the Treasury.

In its 1967 regulations, the Treasury not only addressed the "fragmentation" issue discussed above, but also attempted to clarify the statutory "substantially related" standard found in § 513(a). It provided that the conduct of a tax-exempt business must have a causal relation to the organization's exempt purpose (other than through the generation of income), and that "the production or distribution of the goods or the performance of the services from which the gross income is derived must *contribute importantly* to the accomplishment of [the exempt] purposes." Treas. Reg. § 1.513–1(d)(2), 26 CFR § 1.513–1(d)(2) (1985) (emphasis added). In illustration of its new test for substantial relation, the Treasury provided an example whose interpretation is central to the resolution of the issue before us. Example 7 of Treas. Reg. § 1.513–1(d)(4)(iv) involves "Z," an exempt association formed to advance the interests of a particular profession and drawing its membership from that profession. Z publishes a monthly journal containing articles and other editorial material that contribute importantly to the tax-exempt purpose. Z derives income from advertising products within the field of professional interest of the members:

"Following a practice common among taxable magazines which publish advertising, Z requires its advertising to comply with certain general standards of taste, fairness, and accuracy; but within those limits the form, content, and manner of presentation of the advertising messages are governed by the basic objective of the advertisers to promote the sale of the advertised products. While the advertisements contain certain information, the informational function of the advertising is incidental to the controlling aim of stimulating demand for the advertised products and differs in no essential respect from the informational function of any commercial advertising. Like taxable publishers of advertising, Z accepts advertising only from those who are willing to pay its published rates. Although continuing education of its members in matters pertaining to their profession is one of the purposes for which Z is granted exemption, the publication of advertising designed and selected in the manner of ordinary commercial advertising is not an educational activity of the kind contemplated by the exemption statute; it differs fundamentally from such an activity both in its governing objective and in its method. Accordingly, Z's publication of advertising does not contribute importantly to the accomplishment of its exempt purposes; and the income which it derives from advertising constitutes gross income from unrelated trade or business." § 1.513–1(d)(4)(iv), Example 7.

The Government contends both that Example 7 creates a *per se* rule of taxation for journal advertising income and that Congress intended to adopt that rule, together with the remainder of the 1967 regulations, into law in the 1969 Act. We find both of these contentions unpersuasive.

Read as a whole, the regulations do not appear to create the type of blanket rule of taxability that the Government urges upon us. On the contrary, the regulations specifically condition tax exemption of business income upon the impor-

tance of the business activity's contribution to the particular exempt purpose at issue, and direct that "[w]hether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted an exemption depends *in each case* upon the facts and circumstances involved," § 1.513–1(d)(2) (emphasis added). Example 7 need not be interpreted as being inconsistent with that general rule. Attributing to the term "example" its ordinary meaning, we believe that Example 7 is best construed as an illustration of one possible application, under given circumstances, of the regulatory standard for determining substantial relation.

The interpretative difficulty of Example 7 arises primarily from its failure to distinguish clearly between the statements intended to provide hypothetical facts and those designed to posit the necessary legal consequences of those facts. Just at the point in the lengthy Example at which the facts would appear to end and the analysis to begin, a pivotal statement appears: "the informational function of the advertising is incidental to the controlling aim of stimulating demand for the advertised products." The Government's position depends upon reading this statement as a general proposition of law, while respondent would read it as a statement of fact that may be true by hypothesis of "Z" and its journal, but is not true of Annals.

We recognize that the language of the Example is amenable to either interpretation. Nevertheless, several considerations lead us to believe that the Treasury did not intend to set out a *per se* statement of law. First, when the regulations were proposed in early 1967, the Treasury expressed a clear intention to treat all commercial advertising as an unrelated business. See Technical Information Release No. 889, CCH 1967 Stand. Fed. Tax Rep. ¶6557. When the regulations were issued in final form, however, following much criticism and the addition of Example 7, they included no such statement of intention. 32 Fed. Reg. 17657 (1967). Second,

a blanket rule of taxation for advertising in professional journals would contradict the explicit case-by-case requirement articulated in Treas. Reg. § 1.513–1(d)(2), and we are reluctant to attribute to the Treasury an intention to depart from its own general principle in the absence of clear support for doing so. Finally, at the time the regulations were issued, the 1950 Act had been interpreted to mean that business activities customarily engaged in by tax-exempt organizations would continue to be considered "substantially related" and untaxed. See Note, The Macaroni Monopoly: The Developing Concept of Unrelated Business Income of Exempt Organizations, 81 Harv. L. Rev. 1280, 1291 (1968). A *per se* rule of taxation for the activity, traditional among tax-exempt journals, of carrying commercial advertising would have been a significant departure from that prevailing view. Thus, in 1967 the idea of a *per se* rule of taxation for all journal advertising revenue was sufficiently controversial, its effect so substantial, and its statutory authorization so tenuous, that we simply cannot attribute to the Treasury the intent to take that step in the form of an ambiguous example, appended to a subpart of a subsection of a subparagraph of a regulation.

It is still possible, of course, that, regardless of what the Treasury actually meant by its 1967 regulations, Congress read those regulations as creating a blanket rule of taxation, and intended to adopt that rule into law in the 1969 Act. The Government appears to embrace this view, which it supports with certain statements in the legislative history of the 1969 Act. For example, the Government cites to a statement in the House Report, discussing the taxation of advertising income of journals published by tax-exempt organizations:

> "Your committee believes that a business competing with taxpaying organizations should not be granted an unfair competitive advantage by operating tax free unless the business contributes importantly to the exempt function. It has concluded that by that standard, ad-

> vertising in a journal published by an exempt organization is not related to the organization's exempt functions, and therefore it believes that this income should be taxed." H. R. Rep. No. 91–413, pt. 1, p. 50 (1969).

Similar views appear in the Senate Report:

> "Present law.—In December 1967, the Treasury Department promulgated regulations under which the income from advertising and similar activities is treated as 'unrelated business income' even though such advertising for example may appear in a periodical related to the educational or other exempt purpose of the organization.
>
> "General reasons for change.—The committee agrees with the House that the regulations reached an appropriate result in specifying that when an exempt organization carries on an advertising business in competition with other taxpaying advertising businesses, it should pay a tax on the advertising income. The statutory language on which the regulations are based, however, is sufficiently unclear so that substantial litigation could result from these regulations. For this reason, the committee agrees with the House that the regulations, insofar as they apply to advertising and related activities, should be placed in the tax laws." S. Rep. No. 91–552, p. 75 (1969).

Based on this language, the Government argues that the 1969 Act created a *per se* rule of taxation for advertising income. The weakness of this otherwise persuasive argument, however, is that the quoted discussion appears in the Reports solely in support of the legislators' decision to enact § 513(c), the provision approving the fragmentation of "trade or business." Although § 513(c) was a significant change in the tax law that removed one barrier to the taxation of advertising proceeds, it cannot be construed as a comment upon the two other distinct conditions—"regularly carried on" and "not substantially related"—whose satisfaction is prereq-

uisite to taxation of business income under the 1950 Act. Congress did not incorporate into the 1969 Act the language of the regulation defining "substantial relation," nor did the statute refer in any other way to the issue of the relation between advertising and exempt functions, even though that issue had been hotly debated at the hearings. See, *e. g.*, Tax Reform, 1969: Hearings before the House Committee on Ways and Means, 91st Cong., 1st Sess., 1113, 1118, 1192, 1241 (1969). Thus, we have no reason to conclude from the Committee Reports that Congress resolved the dispute whether, in a specific case, a journal's carriage of advertising could so advance its educational objectives as to be "substantially related" to those objectives within the meaning of the 1950 Act.

It is possible that the Committees' discussion of advertising reflects merely an erroneous assumption that the "fragmentation" provision of § 513(c), without more, would establish the automatic taxation of journal advertising revenue. Alternatively, the quoted passages could be read to indicate the Committees' intention affirmatively to endorse what they believed to be existing practice, or even to change the law substantially. The truth is that, other than a general reluctance to consider commercial advertisements generally as substantially related to the purposes of tax-exempt journals, no congressional view of the issue emerges from the quoted excerpts of the Reports.[4] Thus, despite the Reports' seeming endorsement of a *per se* rule, we are hesitant to rely on that inconclusive legislative history either to supply a provision *not* enacted by Congress, see *Commissioner* v. *Acker*,

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[4] Indeed, different excerpts suggest that perhaps the House Committee did not construe the statute as creating a *per se* rule. In its explanation of § 513(c), the House Report states that "the advertising contained in a publication of an exempt organization *may* be subject to the tax under section 511 even though the editorial content of the publication may be related to the exempt purposes of the organization." H. R. Rep. No. 91–413, pt. 2, p. 26 (1969) (emphasis added).

361 U. S. 87, 93 (1959); 1 J. Mertens, Law of Federal Income Taxation § 3.29 (Weinstein rev. 1985), or to define a statutory term enacted by a prior Congress. See *SEC* v. *Sloan*, 436 U. S. 103, 121 (1978); *United States* v. *Price*, 361 U. S. 304, 313 (1960). Cf. *TVA* v. *Hill*, 437 U. S. 153, 193 (1978). We agree, therefore, with both the Claims Court and the Court of Appeals in their tacit rejection of the Government's argument that the Treasury and Congress intended to establish a *per se* rule requiring the taxation of income from all commercial advertisements of all tax-exempt journals without a specific analysis of the circumstances.[5]

IV

It remains to be determined whether, in this case, the business of selling advertising space is "substantially related"—or, in the words of the regulation, "contributes importantly"—to the purposes for which respondent enjoys an exemption from federal taxation. Respondent has maintained throughout this litigation that the advertising in Annals performs an educational function supplemental to that of the journal's editorial content. App. 7a. Testimony of respondent's witnesses at trial tended to show that drug advertising performs a valuable function for doctors by disseminating information on recent developments in drug manufacture and use. *Id.*, at 27a, 38a, 43a. In addition, respondent has contended that the role played by the Food and Drug Administration, in regulating much of the form and content of prescription-drug advertisements, enhances the contribution that such advertisements make to the readers' education. All of these

[5] This conclusion is consistent with the Treasury's own approach to analogous problems. See, *e. g.*, Rev. Rul. 82–139, 1982–2 Cum. Bull. 108 (advertisements in county bar journal; no *per se* rule); Rev. Rul. 72–431, 1972–2 Cum. Bull. 281 (exempt organization's sale of mailing lists to commercial advertisers; no *per se* rule). Our rejection of the *per se* rule renders it unnecessary for us to address respondent's alternative argument that any such rule should apply only to associations organized under § 501(c)(6) of the Internal Revenue Code.

factors, respondent argues, distinguish the advertising in Annals from standard commercial advertising. Respondent approaches the question of substantial relation from the perspective of the journal's subscribers; it points to the benefit that they may glean from reading the advertisements and concludes that that benefit is substantial enough to satisfy the statutory test for tax exemption. The Court of Appeals took the same approach. It concluded that the advertisements performed various "essential" functions for physicians, 743 F. 2d, at 1576, and found a substantial relation based entirely upon the medically related content of the advertisements as a group.

The Government, on the other hand, looks to the conduct of the tax-exempt organization itself, inquiring whether the publishers of Annals have performed the advertising services in a manner that evinces an intention to use the advertisements for the purpose of contributing to the educational value of the journal. Also approaching the question from the vantage point of the College, the Claims Court emphasized the lack of a comprehensive presentation of the material contained in the advertisements. It commented upon the "hit-or-miss nature of the advertising," 3 Cl. Ct., at 543, n. 3, and observed that the "differences between ads plainly reflected the advertiser's marketing strategy rather than their probable importance to the reader." *Id.*, at 534. "[A]ny educational function [the advertising] may have served was incidental to its purpose of raising revenue." *Id.*, at 535.

We believe that the Claims Court was correct to concentrate its scrutiny upon the conduct of the College rather than upon the educational quality of the advertisements. For all advertisements contain some information, and if a modicum of informative content were enough to supply the important contribution necessary to achieve tax exemption for commercial advertising, it would be the rare advertisement indeed that would fail to meet the test. Yet the statutory and regulatory scheme, even if not creating a *per se* rule *against* tax

exemption, is clearly antagonistic to the concept of a *per se* rule *for* exemption for advertising revenue. Moreover, the statute provides that a tax will be imposed on "any trade or business the *conduct* of which is not substantially related," 26 U. S. C. § 513(a) (emphasis added), directing our focus to the manner in which the tax-exempt organization operates its business. The implication of the statute is confirmed by the regulations, which emphasize the "manner" of designing and selecting the advertisements. See Treas. Reg. § 1.513–1(d)(4)(iv), Example 7, 26 CFR § 1.513–1(d)(4)(iv), Example 7 (1985). Thus, the Claims Court properly directed its attention to the College's conduct of its advertising business, and it found the following pertinent facts:

> "The evidence is clear that plaintiff did not use the advertising to provide its readers a comprehensive or systematic presentation of any aspect of the goods or services publicized. Those companies willing to pay for advertising space got it; others did not. Moreover, some of the advertising was for established drugs or devices and was repeated from one month to another, undermining the suggestion that the advertising was principally designed to alert readers of recent developments [citing, as examples, ads for Valium, Insulin and Maalox]. Some ads even concerned matters that had no conceivable relationship to the College's tax-exempt purposes." 3 Cl. Ct., at 534 (footnotes omitted).

These facts find adequate support in the record. See, *e. g.*, App. 29a–30a, 59a. Considering them in light of the applicable legal standard, we are bound to conclude that the advertising in Annals does not contribute importantly to the journal's educational purposes. This is not to say that the College could not control its publication of advertisements in such a way as to reflect an intention to contribute importantly to its educational functions. By coordinating the content of the advertisements with the editorial content of the issue, or by publishing only advertisements reflecting

new developments in the pharmaceutical market, for example, perhaps the College could satisfy the stringent standards erected by Congress and the Treasury. In this case, however, we have concluded that the Court of Appeals erroneously focused exclusively upon the information that is invariably conveyed by commercial advertising, and consequently failed to give effect to the governing statute and regulations. Its judgment, accordingly, is

Reversed.

CHIEF JUSTICE BURGER, with whom JUSTICE POWELL joins, concurring.

Most medical journals are not comparable to magazines and newspapers published for profit. Their purpose is to assemble and disseminate to the profession relevant information bearing on patient care. The enormous expansion of medical knowledge makes it difficult for a general practitioner—or even a specialist—to keep fully current with the latest developments without such aids. In a sense these journals provide continuing education for physicians—a "correspondence course" not sponsored for profit but public health.

There is a public value in the widest possible circulation of such data, and advertising surely tends to reduce the cost of publication and hence the cost to each subscriber, thereby enhancing the prospect of wider circulation. Plainly a regulation recognizing these realities would be appropriate. Such regulations, of course, are for the Executive Branch and the Congress, not the courts. I join the opinion because it reflects a permissible reading of the present Treasury regulations.

461 U.S. 540 (1983)

REGAN, SECRETARY OF THE TREASURY, ET AL.
v.
TAXATION WITH REPRESENTATION OF WASHINGTON

No. 81-2338.

Supreme Court of United States.

Argued March 22, 1983.
Decided May 23, 1983.[*]

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

541 *541 *Solicitor General Lee* argued the cause for appellants in No. 81-2338. With him on the briefs were *Assistant Attorney General Archer, Deputy Solicitor General Wallace, Stuart A. Smith, Richard Farber,* and *Robert S. Pomerance.*

John Cary Sims argued the cause for appellee in No. 81-2338. With him on the brief were *Alan B. Morrison* and *Thomas F. Field.*[†]

Thomas A. Troyer, H. David Rosenbloom, Albert G. Lauber, Jr., and *John G. Milliken* filed a brief for the American Association of Museums et al. as *amici curiae* urging affirmance.

JUSTICE REHNQUIST delivered the opinion of the Court.

Appellee Taxation With Representation of Washington (TWR) is a nonprofit corporation organized to promote what it
542 conceives to be the "public interest" in the area of federal *542 taxation. It proposes to advocate its point of view before Congress, the Executive Branch, and the Judiciary. This case began when TWR applied for tax-exempt status under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3). The Internal Revenue Service denied the application because it appeared that a substantial part of TWR's activities would consist of attempting to influence legislation, which is not permitted by § 501(c)(3).[1]

TWR then brought this suit in District Court against the appellants, the Commissioner of Internal Revenue, the Secretary of the Treasury, and the United States, seeking a declaratory judgment that it qualifies for the exemption granted by § 501(c)(3). It claimed the prohibition against substantial lobbying is unconstitutional under the First Amendment and the equal protection component of the Fifth Amendment's Due Process Clause.[2] The District Court granted summary judgment for appellants. On appeal, the en banc Court of Appeals for the District of Columbia Circuit reversed, holding that § 501(c)(3) does not violate the First Amendment but does violate the Fifth Amendment. 219 U. S. App. D. C. 117, 676 F. 2d 715 (1982).
543 Appellants appealed pursuant to 28 U. S. C. § 1252, and TWR cross-appealed. *543 We noted probable jurisdiction of the appeal, 459 U. S. 819 (1982).[3]

TWR was formed to take over the operations of two other nonprofit corporations. One, Taxation With Representation Fund, was organized to promote TWR's goals by publishing a journal and engaging in litigation; it had tax-exempt status under § 501(c)(3). The other, Taxation With Representation, attempted to promote the same goals by influencing legislation; it had tax-exempt status under § 501(c)(4).[4] Neither predecessor organization was required to pay federal income taxes. For purposes of our analysis, there are two principal differences between § 501(c)(3) organizations and § 501(c)(4) organizations. Taxpayers who contribute to § 501(c)(3) organizations are permitted by § 170(c)(2) to deduct the amount of their contributions on their federal income tax returns, while contributions to § 501(c)(4) organizations are not deductible. Section 501(c)(4) organizations, but not § 501(c)(3) organizations, are permitted to engage in substantial lobbying to advance their exempt purposes.

In these cases, TWR is attacking the prohibition against substantial lobbying in § 501(c)(3) because it wants to use tax-
544 deductible *544 contributions to support substantial lobbying activities. To evaluate TWR's claims, it is necessary to understand the effect of the tax-exemption system enacted by Congress.

Both tax exemptions and tax deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant to the organization of the amount of tax it would have to pay on its income. Deductible contributions are similar to cash grants of the amount of a portion of the individual's contributions.[5] The system Congress has enacted provides this kind of subsidy to nonprofit civic welfare organizations generally, and an additional subsidy to those charitable organizations that do not engage in substantial lobbying. In short, Congress chose not to subsidize lobbying as extensively as it chose to subsidize other activities that nonprofit organizations undertake to promote the public welfare.

It appears that TWR could still qualify for a tax exemption under § 501(c)(4). It also appears that TWR can obtain tax-deductible contributions for its nonlobbying activity by returning to the dual structure it used in the past, with a § 501(c)(3) organization for nonlobbying activities and a § 501(c)(4) organization for lobbying. TWR would, of course, have to ensure that the § 501(c)(3) organization did not subsidize the § 501(c)(4) organization; otherwise, public funds might be spent on an activity Congress chose not to subsidize.[6]

545 *545 TWR contends that Congress' decision not to subsidize its lobbying violates the First Amendment. It claims, relying on *Speiser* v. *Randall*, 357 U. S. 513 (1958), that the prohibition against substantial lobbying by § 501(c)(3) organizations imposes an "unconstitutional condition" on the receipt of tax-deductible contributions. In *Speiser,* California established a rule requiring anyone who sought to take advantage of a property tax exemption to sign a declaration stating that he did not advocate the forcible overthrow of the Government of the United States. This Court stated that "[t]o deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." *Id.,* at 518.

TWR is certainly correct when it states that we have held that the government may not deny a benefit to a person because he exercises a constitutional right. See *Perry* v. *Sindermann,* 408 U. S. 593, 597 (1972). But TWR is just as certainly incorrect when it claims that this case fits the *Speiser-Perry* model. The Code does not deny TWR the right to receive deductible contributions to support its nonlobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby. Congress has merely refused to pay for the lobbying out of public moneys. This Court has never held that Congress must grant a benefit such as TWR claims here to a person who wishes to exercise a constitutional right.

546 *546 This aspect of these cases is controlled by *Cammarano* v. *United States,* 358 U. S. 498 (1959), in which we upheld a Treasury Regulation that denied business expense deductions for lobbying activities. We held that Congress is not required by the First Amendment to subsidize lobbying. *Id.,* at 513. In these cases, as in *Cammarano,* Congress has not infringed any First Amendment rights or regulated any First Amendment activity. Congress has simply chosen not to pay for TWR's lobbying. We again reject the "notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State." *Id.,* at 515 (Douglas, J., concurring).[7]

TWR also contends that the equal protection component of the Fifth Amendment renders the prohibition against substantial lobbying invalid. TWR points out that § 170(c)(3) permits taxpayers to deduct contributions to veterans' organizations that qualify for tax exemption under § 501(c)(19). Qualifying veterans' organizations are permitted to lobby as much as they want
547 in furtherance of their exempt purposes.[8] *547 TWR argues that because Congress has chosen to subsidize the substantial lobbying activities of veterans' organizations, it must also subsidize the lobbying of § 501(c)(3) organizations.

Generally, statutory classifications are valid if they bear a rational relation to a legitimate governmental purpose. Statutes are subjected to a higher level of scrutiny if they interfere with the exercise of a fundamental right, such as freedom of speech, or employ a suspect classification, such as race. *E. g., Harris* v. *McRae,* 448 U. S. 297, 322 (1980). Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. More than 40 years ago we addressed these comments to an equal protection challenge to tax legislation:

> "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile
548 and oppressive discrimination against particular persons and classes. The burden is *548 on the one

attacking the legislative arrangement to negative every conceivable basis which might support it." *Madden* v. *Kentucky,* 309 U. S. 83, 87-88 (1940) (footnotes omitted).

See also *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1, 40-41 (1973); *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 U. S. 356, 359-360 (1973).

We have already explained why we conclude that Congress has not violated TWR's First Amendment rights by declining to subsidize its First Amendment activities. The case would be different if Congress were to discriminate invidiously in its subsidies in such a way as to " `ai[m] at the suppression of dangerous ideas.' " *Cammarano, supra,* at 513, quoting *Speiser,* 357 U. S., at 519. But the veterans' organizations that qualify under § 501(c)(19) are entitled to receive tax-deductible contributions regardless of the content of any speech they may use, including lobbying. We find no indication that the statute was intended to suppress any ideas or any demonstration that it has had that effect. The sections of the Internal Revenue Code here at issue do not employ any suspect classification. The distinction between veterans' organizations and other charitable organizations is not at all like distinctions based on race or national origin.

The Court of Appeals nonetheless held that "strict scrutiny" is required because the statute "*affect[s]* First Amendment rights on a discriminatory basis." 219 U. S. App. D. C., at 130, 676 F. 2d, at 728 (emphasis supplied). Its opinion suggests that strict scrutiny applies whenever Congress subsidizes some speech, but not all speech. This is not the law. Congress could, for example, grant funds to an organization dedicated to combating teenage drug abuse, but condition the grant by providing that none of the money received from Congress should be used to lobby state legislatures. Under *Cammarano,*
549 such a statute would be valid. Congress might also enact a statute providing public money *549 for an organization dedicated to combating teenage alcohol abuse, and impose no condition against using funds obtained from Congress for lobbying. The existence of the second statute would not make the first statute subject to strict scrutiny.

Congressional selection of particular entities or persons for entitlement to this sort of largesse "is obviously a matter of policy and discretion not open to judicial review unless in circumstances which here we are not able to find. *United States* v. *Realty Co.*, [163 U. S. 427,] 444 [(1896)]." *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 317 (1937). See also, *id.,* at 313; *Alabama* v. *Texas,* 347 U. S. 272 (1954). For the purposes of these cases appropriations are comparable to tax exemptions and deductions, which are also "a matter of grace [that] Congress can, of course, disallow . . . as it chooses." *Commissioner* v. *Sullivan*, 356 U. S. 27, 28 (1958).

These are scarcely novel principles. We have held in several contexts that a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right, and thus is not subject to strict scrutiny. *Buckley* v. *Valeo,* 424 U. S. 1 (1976), upheld a statute that provides federal funds for candidates for public office who enter primary campaigns, but does not provide funds for candidates who do not run in party primaries. We rejected First Amendment and equal protection challenges to this provision without applying strict scrutiny. *Id.,* at 93-108. *Harris* v. *McRae, supra,* and *Maher* v. *Roe,* 432 U. S. 464 (1977), considered legislative decisions not to subsidize abortions, even though other medical procedures were subsidized. We declined to apply strict scrutiny and rejected equal protection challenges to the statutes.

The reasoning of these decisions is simple: "although government may not place obstacles in the path of a [person's]
550 exercise of . . . freedom of [speech], it need not remove those *550 not of its own creation." *Harris,* 448 U. S., at 316. Although TWR does not have as much money as it wants, and thus cannot exercise its freedom of speech as much as it would like, the Constitution "does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." *Id.,* at 318. As we said in *Maher,* "[c]onstitutional concerns are greatest when the State attempts to impose its will by force of law . . . ." 432 U. S., at 476. Where governmental provision of subsidies is not " `aimed at the suppression of dangerous ideas,' " *Cammarano,* 358 U. S., at 513, its "power to encourage actions deemed to be in the public interest is necessarily far broader." *Maher, supra,* at 476.

We have no doubt but that this statute is within Congress' broad power in this area. TWR contends that § 501(c)(3) organizations could better advance their charitable purposes if they were permitted to engage in substantial lobbying. This may well be true. But Congress — not TWR or this Court — has the authority to determine whether the advantage the public would receive from additional lobbying by charities is worth the money the public would pay to subsidize that lobbying, and other disadvantages that might accompany that lobbying. It appears that Congress was concerned that exempt organizations might use tax-deductible contributions to lobby to promote the private interests of their members. See 78 Cong. Rec. 5861 (1934) (remarks of Sen. Reed); *id.,* at 5959 (remarks of Sen. La Follette). It is not irrational for Congress to

decide that tax-exempt charities such as TWR should not further benefit at the expense of taxpayers at large by obtaining a further subsidy for lobbying.

It is also not irrational for Congress to decide that, even though it will not subsidize substantial lobbying by charities generally, it will subsidize lobbying by veterans' organizations. Veterans have "been obliged to drop their own affairs to take
551 up the burdens of the nation," *Boone* v. *Lightner,* 319 *551 U. S. 561, 575 (1943), " `subjecting themselves to the mental and physical hazards as well as the economic and family detriments which are peculiar to military service and which do not exist in normal civil life.' " *Johnson* v. *Robinson,* 415 U. S. 361, 380 (1974) (emphasis deleted). Our country has a longstanding policy of compensating veterans for their past contributions by providing them with numerous advantages.[9] This policy has "always been deemed to be legitimate." *Personnel Administrator of Mass.* v. *Feeney,* 442 U. S. 256, 279, n. 25 (1979).

The issue in these cases is not whether TWR must be permitted to lobby, but whether Congress is required to provide it with public money with which to lobby. For the reasons stated above, we hold that it is not. Accordingly, the judgment of the Court of Appeals is

Reversed.

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring.

I join the Court's opinion. Because 26 U. S. C. § 501's discrimination between veterans' organizations and charitable organizations is not based on the content of their speech, *ante,* at 548, I agree with the Court that § 501 does not deny charitable organizations equal protection of the law. The benefit provided to veterans' organizations is rationally based on the Nation's time-honored policy of "compensating veterans for their past contributions." *Ante,* this page. As the Court says, *ante,* at 548 and 550, a statute designed to discourage the expression of particular views would present a very different question.

552 I also agree that the First Amendment does not require the Government to subsidize protected activity, *ante,* at 546, *552 and that this principle controls disposition of TWR's First Amendment claim. I write separately to make clear that in my view the result under the First Amendment depends entirely upon the Court's necessary assumption — which I share — about the manner in which the Internal Revenue Service administers § 501.

If viewed in isolation, the lobbying restriction contained in § 501(c)(3) violates the principle, reaffirmed today, *ante,* at 545, "that the government may not deny a benefit to a person because he exercises a constitutional right." Section 501(c)(3) does not merely deny a subsidy for lobbying activities, see *Cammarano* v. *United States,* 358 U. S. 498 (1959); it deprives an otherwise eligible organization of its tax-exempt status and its eligibility to receive tax-deductible contributions for all its activities, whenever one of those activities is "substantial lobbying." Because lobbying is protected by the First Amendment, *Eastern Railroad Presidents Conf.* v. *Noerr Motor Freight, Inc.,* 365 U. S. 127, 137-138 (1961), § 501(c)(3) therefore denies a significant benefit to organizations choosing to exercise their constitutional rights.[*]

The constitutional defect that would inhere in § 501(c)(3) alone is avoided by § 501(c)(4). As the Court notes, *ante,* at 544, TWR may use its present § 501(c)(3) organization for its nonlobbying activities and may create a § 501(c)(4) affiliate to
553 pursue its charitable goals through lobbying. *553 The § 501(c)(4) affiliate would not be eligible to receive tax-deductible contributions.

Given this relationship between § 501(c)(3) and § 501(c)(4), the Court finds that Congress' purpose in imposing the lobbying restriction was merely to ensure that "no tax-deductible contributions are used to pay for substantial lobbying." *Ante,* at 544, n. 6; see *ante,* at 545. Consistent with that purpose, "[t]he IRS apparently requires only that the two groups be separately incorporated and keep records adequate to show that tax-deductible contributions are not used to pay for lobbying." *Ante,* at 545, n. 6. As long as the IRS goes no further than this, we perhaps can safely say that "[t]he Code does not deny TWR the right to receive deductible contributions to support its nonlobbying activity, nor does it deny TWR any independent benefit on account of its intention to lobby." *Ante,* at 545. A § 501(c)(3) organization's right to speak is not infringed, because it is free to make known its views on legislation through its § 501(c)(4) affiliate without losing tax benefits for its nonlobbying activities.

Any significant restriction on this channel of communication, however, would negate the saving effect of § 501(c)(4). It must be remembered that § 501(c)(3) organizations retain their constitutional right to speak and to petition the Government. Should the IRS attempt to limit the control these organizations exercise over the lobbying of their § 501(c)(4) affiliates, the

First Amendment problems would be insurmountable. It hardly answers one person's objection to a restriction on his speech that another person, outside his control, may speak for him. Similarly, an attempt to prevent § 501(c)(4) organizations from lobbying explicitly on behalf of their § 501(c)(3) affiliates would perpetuate § 501(c)(3) organizations' inability to make known their views on legislation without incurring the unconstitutional penalty. Such restrictions would extend far beyond Congress' mere refusal to subsidize lobbying. See *ante,* at 544-545, n. 6. In my view, *554 any such restriction would render the statutory scheme unconstitutional.

554

I must assume that the IRS will continue to administer §§ 501(c)(3) and 501(c)(4) in keeping with Congress' limited purpose and with the IRS's duty to respect and uphold the Constitution. I therefore agree with the Court that the First Amendment questions in these cases are controlled by *Cammarano* v. *United States,* 358 U. S. 498, 513 (1959), rather than by *Speiser* v. *Randall,* 357 U. S. 513, 518-519 (1958), and *Perry* v. *Sindermann,* 408 U. S. 593, 597 (1972).

[*] Together with No. 82-134, *Taxation With Representation of Washington* v. *Regan, Secretary of the Treasury, et al.,* also on appeal from the same court.

[†] Briefs of *amici curiae* urging reversal were filed by *Sheldon S. Cohen, Julie Noel Gilbert, Dennis B. Drapkin, George H. Gangwere,* and *Wilmer S. Schantz, Jr.,* for the Veterans of Foreign Wars of the United States; by *Joseph C. Zengerle* and *Zachary R. Karol* for the Disabled American Veterans et al.; and by *Mitchell Rogovin* and *George T. Frampton, Jr.,* for the American Legion.

[1] Section § 501(c)(3) grants exemption to:

"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 . . . , or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, *no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation* (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office" (emphasis supplied).

[2] The Due Process Clause imposes on the Federal Government requirements comparable to those that the Equal Protection Clause of the Fourteenth Amendment imposes on the States. *E. g., Schweiker* v. *Wilson,* 450 U. S. 221, 226, n. 6 (1981).

[3] Appellants contend that we lack jurisdiction of the cross-appeal because 28 U. S. C. § 1252 refers only to appeals, and this Court's Rule 12.4 only establishes a procedure for taking a cross-appeal. Section 1252 provides:

"*Any party* may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States . . . holding an Act of Congress unconstitutional in any civil action . . . to which the United States or any of its agencies . . . is a party" (emphasis supplied).

This language is broad enough to encompass appellee's cross-appeal. We hold that it does. Therefore, we deny the appellants' motion to dismiss, and decide the cross-appeal together with the appeal.

[4] Unless otherwise indicated, all citations to statutes in this opinion refer to the Internal Revenue Code, 26 U. S. C.

Section 501(c)(4) grants exemption to:

"Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

[5] In stating that exemptions and deductions, on the one hand, are like cash subsidies, on the other, we of course do not mean to assert that they are in all respects identical. See, *e. g., Walz* v. *Tax Comm'n,* 397 U. S. 664, 674-676 (1970); *id.,* at 690-691 (BRENNAN, J., concurring); *id.,* at 699 (opinion of Harlan, J.).

[6] TWR and some *amici* are concerned that the IRS may impose stringent requirements that are unrelated to the congressional purpose of ensuring that no tax-deductible contributions are used to pay for substantial lobbying, and effectively make it impossible for a § 501(c)(3) organization to establish a § 501(c)(4) lobbying affiliate. No such requirement in the Code or regulations has been called to our attention, nor have we been able to discover one. The IRS apparently requires only that the two groups be separately incorporated and keep records adequate to show that tax-deductible contributions are not used to pay for lobbying. This is not unduly burdensome.

We also note that TWR did not bring this suit because it was unable to operate with the dual structure and seeks a less stringent set of bookkeeping requirements. Rather, TWR seeks to force Congress to subsidize its lobbying activity. See Tr. of Oral Arg. 37-39.

[7] *Citizens Against Rent Control Coalition for Fair Housing* v. *City of Berkeley,* 454 U. S. 290 (1981), upon which TWR relies, is not to the contrary. In that case the challenged ordinance regulated First Amendment activity by limiting individuals' expenditures of their own money on political speech.

TWR contends that Congress has overruled *Cammarano* by enacting § 162(e), which permits businesses to deduct certain lobbying expenses that are "ordinary and necessary [business] expenses." See Brief for Appellee 13. It is elementary that Congress' decision to permit deductions does not affect this Court's holding that refusing to permit them does not violate the Constitution.

[8] The rules governing deductibility of contributions to veterans' organizations are not the same as the analogous rules for § 501(c)(3) organizations. For example, an individual may generally deduct up to 50% of his adjusted gross income in contributions to § 501(c)(3) organizations, but only 20% in contributions to veterans' organizations. Compare § 170(b)(1)(A) with § 170(b)(1)(B). Taxpayers are permitted to carry over excess contributions to § 501(c)(3) organizations, but not veterans' organizations, to the next year. § 170(d). There are other differences. If it were entitled to equal treatment with veterans' organizations, TWR would, of course, be entitled only to the benefits they receive, not to more.

[9] See, *e. g., Personnel Administrator of Mass.* v. *Feeney,* 442 U. S. 256 (1979) (veterans' preference in civil service employment); *Johnson* v. *Robison,* 415 U. S. 361 (1974) (educational benefits).

[*] See *Speiser* v. *Randall,* 357 U. S. 513, 518-519 (1958); *Commarano* v. *United States,* 358 U. S. 498, 515 (1959) (Douglas, J., concurring) (denial of business-expense deduction for lobbying is constitutional, but an attempt to deny all deductions for business expenses to a taxpayer who lobbies would penalize unconstitutionally the exercise of First Amendment rights); cf. *Harris* v. *McRae,* 448 U. S. 297, 317, n. 19 (1980) (denial of welfare benefits for abortion is constitutional, but an attempt to withhold all welfare benefits from one who exercises right to an abortion probably would be impermissible); *Maher* v. *Roe*, 432 U. S. 464, 474-475, n. 8 (1977) (same).

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