

## Non-Profits in the News: 501(c)(6) Abuse in Political Fundraising

The last election cycle saw the heavy use of 501(c)(4) nonprofit organizations to fund political activity. 501(c)(4) social welfare groups are able to engage in political activity as long as it is not their primary focus—or as long as they use less than half of their spending on political activity.<sup>1</sup> Further, they don't have to disclose their donors, making 501(c)(4)s an attractive mechanism for funding political activity.<sup>2</sup>

Recently, however, we've seen the use of 501(c)(6) organizations as a vehicle for political spending, and one that might be more attractive for corporations that want to influence elections. IRC § 501(c)(6) provides a tax exemption for business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues.<sup>3</sup> To qualify for tax exemption, the organization must be an association of persons who have a common business interest and its purpose must be to promote the common business interest.<sup>4</sup> Business Interest is defined broadly and embraces everything about which a person can be employed.<sup>5</sup>

Freedom Partners (FP), a 501(c)(6) organization, raised over \$250 million in the 2012 election and contributed all of it in grants to conservative groups.<sup>6</sup> Citizens for Responsibility and Ethics in Washington (CREW), a nonprofit group advocating stricter campaign finance and tax law, filed a complaint with the IRS alleging that FP used its tax

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<sup>1</sup> <http://www.washingtonpost.com/blogs/the-fix/wp/2013/05/13/what-is-a-501c4-anyway/>

<sup>2</sup> *Id.*

<sup>3</sup> <http://www.irs.gov/pub/irs-tege/eotopick03.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* citing *Associated Industries of Cleveland v. Commissioner*, 7 T.C. 1449, 1465 (1946), acq. 1947-1 C.B. 1.

<sup>6</sup> [http://news.bna.com/dtln/DTLNWB/split\\_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0](http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0)

exempt status to funnel anonymous contributions to organizations seeking to influence elections.<sup>7</sup> CREW points out that FP doesn't really have a discernable business interest.<sup>8</sup> The FP website identifies itself as a "501(c)(6) chamber of commerce that promotes the benefits of free markets and a free society." Spokesperson James Davis has said that the organization's purpose is "broad based coalitions to support nonpartisan policy analysis, public education and polling."<sup>9</sup> Because the IRS provides almost no guidelines as to what counts as "business interest," organizations like FP have been able to raise money from corporations and wealthy individuals and use it to influence campaigns.

FP applied for exempt status in late 2011 as American Association for Innovation. On its Form 1024, it stated that it planned to raise only \$2 million and didn't plan to influence any election. Since then, it gave nearly \$236 million to a range of groups, many of which spent significant money on campaign ads opposing Obama's re-election. For example, Americans for Prosperity, who received \$33 million from FP, spent \$35 million on political ads opposing Democratic candidates.<sup>10</sup> Further, FP contributed \$115 million to the Center to Protect Patient Rights, which has no activities other than giving grants to other politically active tax-exempt organizations.<sup>11</sup>

FP claims that it has over 200 member businesses, but doesn't identify them.<sup>12</sup>

However, there is an apparent strong link to billionaire brothers David and Charles Koch

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> <http://nonprofitquarterly.org/policysocial-context/23201-crew-challenges-koch-brothers-chamber-of-commerce-and-irs-oversight.html>

<sup>10</sup> [http://news.bna.com/dtln/DTLNWB/split\\_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0](http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0)

<sup>11</sup> *Id.*

<sup>12</sup> <http://nonprofitquarterly.org/policysocial-context/23201-crew-challenges-koch-brothers-chamber-of-commerce-and-irs-oversight.html>

according to a Politico report released in September.<sup>13</sup> The five-member board consists of two officers of Koch companies and a former Koch employee.<sup>14</sup>

Davis stated that the young company was unlikely from its onset to achieve its stated purpose with only its internal employees and volunteers, and was likely to need to work with outside organizations.<sup>15</sup> According to its Form 990, FP has nearly 50 employees, but its unclear what they do or where they work.<sup>16</sup> The only address for the company is a mailbox in a UPS Store.<sup>17</sup> Davis says that the company is continuing to develop its internal operations and relied heavily on providing grants to other organizations in its first year.<sup>18</sup>

CREW is pushing for not only a review of FP, but also for the IRS to refine its guidelines for 501(c)(4) before abuse of these organizations gets out of hand.<sup>19</sup>

*Mike Blankinship*

*University of Oregon*

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Note: On November 26 the IRS released proposed guidance to clarify what types of conduct by 501(c)(4) entities qualifies as political campaign activity.

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<sup>13</sup>[http://news.bna.com/dtln/DTLNWB/split\\_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0](http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0)

<sup>14</sup> <http://nonprofitquarterly.org/policysocial-context/23201-crew-challenges-koch-brothers-chamber-of-commerce-and-irs-oversight.html>

<sup>15</sup>[http://news.bna.com/dtln/DTLNWB/split\\_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0](http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37949733&vname=dtrnot&jd=a0e3a0v7u8&split=0)

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> <http://nonprofitquarterly.org/policysocial-context/23201-crew-challenges-koch-brothers-chamber-of-commerce-and-irs-oversight.html>