



AMERICANS FOR LIMITED GOVERNMENT

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October 23, 2015

The Honorable Orin G. Hatch
Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Re: Tax Exempt Classification of "Worker Centers"

Dear Chairman Hatch:

I write today regarding the activities of several so-called "worker centers," which are organizations that claim to advocate on behalf of employees. Many of these organizations are registered as tax exempt under § 501(c)(3) of the Internal Revenue Code (IRC). Many of them provide services to their community, and do, in fact, act as charitable organizations.

A subset of these worker centers, however, apparently operates for a different purpose. Their activities, which can include demonstrations and dealing with employers over terms and conditions of employment, are inconsistent with IRC § 501(c)(3) status. I am concerned that these worker centers, which include the Restaurant Opportunities Center (ROC), the Coalition of Immokalee Workers (CIW), and the Centro de Trabajadores Unidos en la Lucha (Center for Workers United in Struggle or "CTUL"), are not only improperly operating as tax exempt organizations, but doing so without any oversight by the Internal Revenue Service.

Section § 501(c)(3) organizations must be organized and operated exclusively for religious, charitable, scientific, literary or educational purposes. An organization is not organized or operated exclusively for one or more of these recognized purposes unless it also serves a public rather than a private interest. Providing benefits to members or a group of employees, such as some worker centers seem to do, is not a charitable activity. Benefits must accrue to the general public and not to individual members of an organization. Further, IRC § 501(c)(3) organizations may not engage in substantial illegal activity.

Private Interest vs. Public Interest

Traditional labor organization activities generally do not qualify as charitable activities because they provide a private benefit to the bargaining unit or the employees who are members of the organization. Private benefit has been defined to include “nonincidental benefits conferred on disinterested persons [that] serve private interests.”¹ A private benefit can involve benefits to anyone other than the intended recipients of the benefits conferred by the organization’s exempt activities. Intended recipients include the poor, sick, elderly, students, the general public, or other group constituting a charitable class, but do not include members or employees. If a private benefit is conferred directly and intentionally, rather than as a side effect of charitable activities, it violates the private benefit doctrine, regardless of the relative insignificance of the benefit.

There is a growing number of worker centers which intentionally and directly provide private benefits, and/or worker centers whose benefits appear to be substantially private. Generally, dealing with employers on behalf of employees is a private benefit; the relief most often sought is private – reinstatement of discharged employees, change of an employer’s policies, increase in the minimum wage of particular employees, or the improvement of hours or other terms and conditions of employment. Both types of violations of the private benefit doctrine merit scrutiny.²

Some worker centers are upfront about the intended private benefit of their approach. For example, Saru Jayaraman, head of ROC, called showing up at an employer’s workplace with a few vocal, dissatisfied workers to protest a minor labor violation as “minority unionism.”³ Among the numerous examples, ROC, notorious for its use of giant cockroaches, held a small protest last year in front of the hedge fund owner of Darden (Olive Garden) on behalf of about 500 members who are employed at Darden. One of ROC’s claimed victories include a deal with Del Posto (a New York City

¹ *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 69 (1989).

² The recently disclosed emails of Lois Lerner, the former IRS official, reveal that she was concerned with private benefit, asking a colleague for “Thoughts on the Bristol Palin issue?” Apparently, Ms. Lerner was concerned about the payment of compensation to Ms. Palin from a charity whose mission is to prevent teen pregnancy. Senate Committee on Finance, Bipartisan Investigative Report, Part 1 of 4 (August 5, 2015), at 156.

³ Dan La Botz, *Immigrant Restaurant Workers Hope to Rock New York*, DOLLARS & SENSE, January/February 2004. Available online at: www.dollarsandsense.org/archives/2004/0104labotz.html (accessed October 22, 2015).

restaurant) which required a \$1.15 million payout to 31 current and former employees, and implementation of a plan for paid sick and vacation days.⁴

Another worker center, the CTUL also publicly promotes its organizing efforts. CTUL started a campaign in 2011 centered on organizing the Twin Cities retail cleaners.⁵ In June 2014, CTUL claimed victory on behalf of Target's sub-contracted janitors in the Twin Cities metro area when Target agreed to discuss some of the issues raised by the organization.⁶

CTUL continues to focus on organizing and has even formed a partnership with SEIU Local 26 to try to make the work of the union and the worker center greater than the sum of their parts.⁷ However, the worker center's partnership is more than a vision. Both CTUL and SEIU Local 26 were in talks with Target's janitorial contractors over unionization agreements.⁸ Further, CTUL's co-director in effect admits a private benefit purpose when he was quoted as saying, "As we're winning in the retail cleaning industry and successfully bringing a lot of workers into the union, we're thinking about our long-term relationship with those workers and with the union. . . ."⁹ If a worker center serves a union's private interest, rather than the public's interest, such activity is not IRC § 501(c)(3) activity.

CTUL is not the only worker center to have the organization of workers as part of its mission. ROC states on its Form 990, filed with the Internal Revenue Service, that it

⁴ Sumathi Reddy, *Batali Settles Case with Restaurant Workers Group*, THE WALL STREET JOURNAL, September 24, 2012. Available online at: <http://blogs.wsj.com/metropolis/2012/09/24/batali-settles-case-with-restaurant-workers-group/> (accessed October 22, 2015).

⁵ Justin Miller, *Workers Centers: Organizing the 'Unorganizable'*, THE AMERICAN PROSPECT, February 26, 2015. Available online at: <http://prospect.org/article/workers-centers-organizing-unorganizable> (accessed October 22, 2015).

⁶ CTUL Press Release, June 10, 2014. Available online at: <http://ctul.net/overview-of-march-for-justice-in-retail-cleaning/victory/victory-press-release/> (accessed October 22, 2015).

⁷ Steve Payne, *The Workers Center-Union Partnership That's Transforming Big-Box Janitorial Work*, IN THESE TIMES, January 2, 2015. Available online at: http://inthesetimes.com/working/entry/17497/a_workers_center_union_partnership_in_minnesota_is_transforming_big_box_jan (accessed October 22, 2015). See also, Justin Miller, *Workers Centers: Organizing the "Unorganizable"*, *supra*, (Brian Merle Payne, co-director of CTUL stating that he envisions a future relationship that allow the worker center to continue organizing workers while the union handles contract negotiation).

⁸ *Id.* Target acknowledged that both CTUL and SEIU Local 26 were at the table, see, *KBS Becomes First Retail Janitorial Company in the Twin Cities to Sign Agreement*, Centro de Trabajadores Unidos en Lucha, undated. Available online at: <http://ctul.net/overview-of-march-for-justice-in-retail-cleaning/kbs-signs-agreement/> (accessed October 22, 2015). Two major retail janitorial contractors were reported as refusing to engage in dialogue with CTUL. Steve Payne, *The Workers Center-Union Partnership That's Transforming Big-Box Janitorial Work*, *supra*.

⁹ Justin Miller, *Workers Centers: Organizing the 'Unorganizable'*, *supra*.

fulfills its mission in part by “organizing workers in exploitative restaurant corporations” and “organizing restaurant workers for better working conditions.”¹⁰ ROC boasts that it has “led and won 13 major campaigns against exploitation in high-profile restaurant companies, organizing more than 400 workers and winning more than \$7 million in financial settlements.”¹¹

Such interactions with employers, which are prevalent among worker centers, do not benefit the public or intended recipients. Rather, these activities are designed to benefit a few employees or even employees of a few employers. In fact, this activity fits within the definition of a different subsection of IRC § 501(c), IRC § 501(c)(5) which provides for the exemption of labor organizations. As stated by the IRS General Counsel,

We have determined that in general “labor organizations” include those which have as their principal purpose the representation of employees in such matters we wages, hours of labor, working conditions and economic benefits, and the general fostering of matters affecting the working conditions of their members.¹²

The activities of the CIW also continues to raise private benefit issues. CIW created a partnership among farm workers, tomato growers, and participating buyers called the Fair Food Program. As a result of CIW’s efforts, more than \$20 million has been paid into the program by buyers, which is passed along to workers as a bonus in their paychecks.¹³ Several elements of the program, such as a worker-triggered complaint resolution mechanism and complaint investigation, do not appear to constitute charitable activities because they serve the private interests of individual farm workers.

Illegal Activities

Assuming that a worker center’s purposes are legal, its charitable status is jeopardized if it engages in substantial illegal activities. Substantiality is determined by looking at the activities both quantitatively and qualitatively.¹⁴ The qualitative test looks at the

¹⁰ Note 1 to Financial Statements filed with IRS Form 990 by Restaurant Opportunities Center of New York for 2001.

¹¹ *Workplace Justice*, undated, ROC United. Available online at: <http://rocunited.org/our-work/workplace-justice/> (accessed October 22, 2015).

¹² IRS Gen. Couns. Mem. 37,942 (April 27, 1979), Citing IRS Gen. Couns. Mem. 31,206, Select Committee on Improper Activities in the Labor or Management Field (Senate) A-629401. *See also*, Rev. Rul. 67-7, 1967-1 C.B. 137.

¹³ *Worker Testimony*, Fair Food Program, September 2015. Available online at: <http://www.fairfoodprogram.org/results/> (accessed October 22, 2015).

¹⁴ Jean Wright and Jay H. Rotz, *Illegality and Public Policy Considerations*, 1994 EO CPE Text at 3.

seriousness of the illegality involved and the extent to which the activity can be attributed to the organization through involvement of directors or officers or through clear ratification of the organization.¹⁵ In determining illegality of activity, the IRS must consider the violations of any constitutionally valid federal, state and local law.¹⁶ If an organization urges its members to commit illegal acts, an organization may jeopardize its tax exempt status.¹⁷

Reports of illegal tactics used by worker centers are increasing.¹⁸ A New York City chef obtained a temporary restraining order against ROC-NY prohibiting it from engaging in a variety of demonstration tactics outside his restaurant.¹⁹ ROC-NY had physically blocked passage to the restaurant, aggressively shoved flyers in patrons' faces, threatened patrons not to cross the picket line, verbally assaulted and harassed those who did, physically surrounded the entrances to the restaurant, yelled and screamed so loudly that patrons inside the restaurant were disturbed, and jumped and slammed into each other in front the of entrance and in close proximity to patrons.²⁰ In May 2015, protestors associated with the ROC United wore fake badges to gain free, unauthorized access into a trade association show at the McCormick Place.²¹

In April 2015, CIW described plans to trespass at more than 30 Publix stores in teams to talk to store managers about the Fair Food Program and then converge on private property for a major delegation and final picket. As a result of CIW's planned activities on private property, it received a no trespass notice.

It is troubling that worker centers continue to qualify under IRC § 501(c)(3) despite engaging in activities which appear to substantially benefit private interests. Moreover,

¹⁵ *Id.* It is clear that violating the law cannot further exempt purposes because violations of law are "the antithesis of public good." *Id.* (citing IRS Gen. Couns. Memo. 34,631 at 6).

¹⁶ *Id.* at 7; see also Rev. Rul. 75-384, 1975-2 C.B. 204 (anti-war protest organization's violations of local law warranted revocation of IRC § 501(c)(3) status).

¹⁷ *Id.* at 9; see also Rev. Rul. 75-384, 1975-2 C.B. 204 (IRS finding organization which urged members to commit acts of civil disobedience did not qualify for IRC § 501(c)(3) status).

¹⁸ OUR Walmart, a non-IRC § 501(c)(3) worker center, has had numerous restraining orders issued against it for activities ranging from bullying, trespass, harassment of employees and customers, and blocking of access to parking lots.

¹⁹ *Batali Gets Temporary Restraining Order Against Restaurant Opportunities Center of New York To Stop Protests at Del Posto Restaurant*, WaiterPay, December 3, 2010. Available online at: <http://waiterpay.com/2010/12/batali-gets-temporary-restraining-order-against-restaurant-opportunities-center-of-new-york-to-stop-protests-at-del-posto-restaurant/> (accessed October 22, 2015).

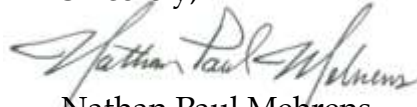
²⁰ *Id.*

²¹ Jessica Wohl, *Protesters use fake badges to breach Chicago restaurant show*, CHICAGO TRIBUNE, May 18, 2015. Available online at: <http://www.chicagotribune.com/business/ct-restaurant-show-protest-0519-biz-20150518-story.html> (accessed October 22, 2015).

the increasing adoption of aggressive and sometimes, illegal, activities warrant closer scrutiny of these organizations. We urge you to request that the IRS to do so promptly.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nathan Paul Mehrens", written in a cursive style.

Nathan Paul Mehrens
General Counsel