

# Insights

## Tax-Exempt Status and Political Activity – Is Harvard Challenge a Concern for Your Organization?

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Tax-exempt organizations of nearly every ilk must monitor recent activities targeting Harvard University to determine if those actions call for a reassessment and possibly redesign of operations and advocacy activities. While direct political involvement by exempt organizations have always had a constrained scope, the current actions against Harvard indicate that the guardrails of the past may not be reliable for the activities of today.

On March 31, 2025, the Departments of Education, Health and Human Services, and the U.S. General Services Administration announced a comprehensive review of federal contracts and grants at Harvard University and its affiliates in connection with ongoing efforts of the Joint Task Force to Combat Anti-Semitism. In related letters dated April 3, 2025, and April 11, 2025, the Trump administration notified Harvard that it would be the subject of a federal funding review and demanded a series of institutional reforms. These demands included changes to Harvard's governance structure, the reorganization or elimination of programs associated with allegations of antisemitism or bias, discontinuation of diversity, equity, and inclusion (DEI) initiatives, and revisions to disciplinary policies to reduce classroom disruptions. Harvard rejected these demands. Soon after, President Trump suggested on social media that Harvard should lose its tax-exempt status if it continues to promote what he characterizes as political or ideological agendas.

The financial ramifications for Harvard, should it lose its federal income tax exemption and the funding provided by the government, would be substantial and potentially even existential. More broadly, this situation raises a critical question for nonprofit executives: ***To what extent can mission-driven advocacy or institutional culture put a 501(c)(3)'s tax-exempt status at risk?***

### Understanding Section 501(c)(3) Advocacy Limitations

Under Section 501(c)(3) of the Internal Revenue Code, organizations must be operated exclusively for exempt purposes such as education, religion, or charity. They are prohibited from:

1. Engaging in substantial lobbying or legislative advocacy, and
2. Participating in any political campaign on behalf of or against a candidate for public office.

Importantly, these rules allow for:

- Policy advocacy on issues related to the organization's mission, so long as no candidate endorsement or opposition is involved.
- Personal political expression by leadership, provided they speak as individuals and not on behalf of the organization.

### **The Legal Framework: Civil Rights and Public Policy**

While challenges to tax-exempt status are rare, IRS guidance and court precedent establish clear boundaries. In Revenue Ruling 80-278, the IRS stated that a charitable organization that systematically violates civil rights laws is not eligible for tax-exempt status, regardless of its mission.

This principle was affirmed by the U.S. Supreme Court in *Bob Jones University v. United States (1983)*, where the Court held that the IRS may revoke tax exemption if an organization's policies 1) violate fundamental public policy—in that case, racial discrimination in admissions—or 2) are illegal.

The Trump administration has argued that Harvard's handling of antisemitism concerns constitutes a civil rights violation, potentially justifying IRS intervention under this precedent. Additionally, the administration claims that Harvard's admissions process constitutes a violation of Title VI of the Civil Rights Act, which prohibits discrimination based on race, color, or national origin in federally funded programs.

### **Strategic Takeaways for Nonprofit Leaders**

Harvard has rejected the administration's demands, asserting that they exceed the federal government's legal authority. However, if a credible claim is raised, the burden shifts to the organization to demonstrate alignment with public policy — a potentially complex and costly process.

As a nonprofit executive, consider taking the following actions to safeguard these risks to your organization:

- **Review your governance policies** to ensure they align with your mission and applicable laws.
- **Audit communications and programs** to confirm that policy advocacy avoids crossing into prohibited political activity.
- **Train leadership and staff** on how to distinguish between personal views and official organizational statements.
- **Engage legal counsel** when in doubt, especially when addressing politically sensitive issues.



## Be Proactive, Not Reactive

The Harvard case reminds us that **compliance is not just a legal issue — it's a strategic one**. Reputational, operational, and financial risks can arise if your organization's practices are perceived to conflict with IRS rules or federal policy expectations.

For comprehensive guidance on navigating these challenges and protecting your organization's tax-exempt status, contact Kendall A. Schnurpel, Robert A. Greising, or your Krieg DeVault attorney today.

*\*Krieg DeVault thanks Caitlin M. Tudor, a 2025 summer associate at the Firm, for her assistance in drafting this Alert.*

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