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## Free Therapy for Wallabies - Transcript

[Speaker 1]

Welcome to Charity Therapy, the podcast where we explore the ups and downs of the nonprofit sector and answer your burning questions. I'm your host, Jess Birken, owner of Birken Law Office, and I'm excited you're here. Imagine hanging out with me and my super smart, funny nonprofit expert pals.

You get to ask them anything about your nitty gritty nonprofit life and get their wisdom for free. Whether you're a seasoned pro or just strapping on your nonprofit boots, we're here to share stories and remind you, you're not alone on this journey. So get ready to join the conversation and bring me the tough questions.

I ain't scared. Ready to rock? Let's dive in.

Hey, yo, welcome to this episode of Charity Therapy. It's Thera-bee? Thera-bee.

Charity Thera-bee? Did you hear that?

[Speaker 2]

I sure did. Thera-bee. It immediately made me think of wallaby.

[Speaker 1]

Wallaby? Is that the licorice? What is even happening?

[Speaker 2]

It's a licorice and it's a kind of kangaroo thing.

[Speaker 1]

Okay, well, we're gonna bounce right back to our regularly scheduled programming.

[Speaker 2]

Hop right in.

[Speaker 1]

On Charity Therapy today. I'm here with Meghan.

[Speaker 2]

I didn't like that either. Hi.

[Speaker 2]

I think we need some charity therapy today.

[Speaker 1]

We need free therapy. That's for sure.

[Speaker 2]

Yeah, and I think we're gonna need it even more after the topic of this episode.

[Speaker 1]

Yup.

[Speaker 2]

Today, we're getting a little political, not actually, but we're talking about politics and 501c3 charities and what they can do.

So this is a slightly unique episode because we don't, well, we do have a listener question technically, I guess, is my question. I have a question.

[Speaker 1]

Love it.

[Speaker 2]

I listen, even though I also talk, but before we do it, I just wanted to give the like or ask the basic question. Like, I know there's some prohibition on politics with nonprofits, but I don't really know what it is. So what's the like overview of that?

[Speaker 1]

Well, the overview is it's kind of complicated. The sort of like TLDR is 501c3 organizations that are public charities cannot engage in political activity. There's a lot of things that go into defining what political activity is, and it can also depend on if you're like close to an election or in a legislative session, things like that.

But definitely you cannot endorse a candidate ever. So 501c3s can do things like voter engagement, education, get out the vote, vote, you know, like just general civic engagement activities, but they're not supposed to say, go vote for this candidate. They're not supposed to create situations that seem to favor one candidate, like having a candidate forum and only like your favorite candidate is there, you're supposed to invite all the candidates.

So 501c3s are supposed to stay out of political activity. This can get pretty granular, like you may have to ask your lawyer depending on the facts and circumstances and what time of the political season it is and that sort of thing. But generally, you just can't like endorse a candidate.

You can do some lobbying, some small amount of lobbying. So then if you have all these...

[Speaker 2]

You can see Jess; she's pinching her fingers together.

[Speaker 1]

I'm pinching and making a very small gesture with my fingers, indicate it is not a substantial amount of your activity. So sometimes you'll see 501c3s who start a 501c4, like sister organization, and those are your like super PACs and those are, they have income tax exemption, but nothing's deductible. They can endorse candidates; they can do all sorts of things.

And so it can get kind of confusing because there's so many damn 501c somethings on the road.

[Speaker 2]

So the basic answer is that 501c3s are not your like political, like endorse a candidate. Like when you see like, you know, so-and-so for Senate organization, that's not a C3, that's something else.

[Speaker 1]

Correct.

[Speaker 2]

That's usually a C4. Yeah. So there are nonprofits that can do it, but not your C3 public charities, which is what we normally think of when we think nonprofit.

[Speaker 1]

So if you go to church on Sunday and the pastor is saying, vote for so-and-so, that's a no-no. They're not supposed to do that. They're not supposed to do that.

[Speaker 2]

Okay. So this all came up from scrolling on the internet, as one does, and there's all these videos going crazy, instructing people to go lodge a complaint with the IRS about the Heritage Foundation.

[Speaker 1]

Yes.

[Speaker 2]

If this is the first you're hearing of this, the Heritage Foundation is like a conservative think tank, essentially. And they are, there's a bunch of buzz right now about them being the authors of the Project 2025. So the video that I was seeing is prompting everybody to, if you have concerns about this, like go file a complaint with the IRS, use this form.

It's the 13-909 or something like that. And you can just like, basically lodge a complaint with the IRS and get this organization in trouble because they are advocating for Donald Trump to be elected president. And based on my limited knowledge of working here and working with the IRS, things are not always that simple.

So I'm like, what's the deal? Is this a real thing? Can people do this?

[Speaker 1]

Okay. So I too have seen the calls for action to fill out your form 13-909 and complain about this organization. So just like briefly, in case you've been living under a rock for the last six weeks, Project 2025 is this like conservative agenda to like remake government.

As soon as there's a Republican president administration, they have this plan and it's like this detailed plan and here's how we're going to fix America to be the conservative land we've always dreamed of or whatever. And then people are saying like, you're campaigning for Trump. But the thing is, like, they're not actually campaigning for anybody.

So I'm a little unclear about how this works. So I just, before we started recording, was like researching this because I was like, oh my God, they actually found out what form to file with the IRS to complain about a charity. And I'm just picturing like the fax machines at the IRS just like on fire with like hundreds of thousands of pissed off social media watchers filling out these PDFs and sending them over.

And just, I don't know if you know anything about the IRS, you know, they can't handle their own lives, let alone a deluge of additional filings that they aren't expecting. So I was like, let me just look at this, this complaint form. And I watched a couple of the videos and they basically make it seem like you just fill out this form.

You say the Heritage Foundation is bad, they're bad and they're doing politics. And then you send in the form and that'll be the end of the Heritage Foundation. So it's like, I'm quite sure it is not that simple.

So I did look at the form and read the instructions for the form. And unfortunately, I feel a little bit bad for the IRS because I'm sure they're just getting like tons of these forms that all have like two sentences that say Heritage Foundation bad, Project 2025, make it go away. But the IRS is not the FBI.

They're not necessarily a crime busting unit. They don't get like a hot tip from a CI and then go do like a stakeout at the Heritage Foundation. Like you need to give them enough material that they have some sort of violation to go investigate.

So like if you're going to complain about a nonprofit, which I think is really like the piece of this that matters, like if you ever wanted to complain about a nonprofit to the IRS.

[Speaker 2]

The Heritage Foundation or others. Yeah. Or others.

[Speaker 1]

If you got some terrible situation going on because we know they're out there, you have to get all of your stuff together. You can't just watch a TikTok, fill out a form and fax it to the IRS and be like, done, problem solved. Let me just tell you what they want.

So they want to know specific details of the violation and you got to know what the violation is. You need to tell them like what rule, what IRS rules are they breaking? And then they want names, actions, places, amounts, dates and the nature of any evidence or documentation, including who, what, when, where, how.

Include the names of other organization entities or persons that may be involved with the organization, provide their tax ID numbers or Social Security numbers if you have them. That's a lot of things. And I think what's interesting to me about IRS forms is sometimes they make it seem so easy.

Like this is just a one page fill out the top and like they give you a little space to type up a paragraph and then you could submit it. But buried in the instructions is the embedded message that you are going to need to submit 15 to 50 pages of supporting documentation because the IRS is not getting out of bed just because you sent them a form like you have to



actually have some documentation that shows there's been a violation. I think that's like the thing that makes me sad about this is like they're just wasting this government agency's time.

And it may be that the Heritage Foundation is doing something wrong. I mean, you and I kind of like looked at things and it's hard to say, but it looks like their mission is to set conservative policies and their Project 2025 is a big old policy statement that they would like people to implement. I don't like it.

It's not my personal politics, but like I think they're probably OK. Like you've got to have more than that. You've got to have like you've got to take the clip of the guy who was on TV.

And if he said vote for Trump, like that's the thing you need. Right. Because just being a think tank that has conservative policy statements, and a plan is not enough.

It's frustrating.

[Speaker 2]

Right. I mean, it's the thing of like, I think that the movement right now, like on these TikTok videos and everything else is making it seem like a tip line where you can just be like, go check this out, go look this way. But really, they want you to make the entire case.

It's like you have to be making the case that there's something very wrong. And here's all of the evidence that I have personally compiled. And I have very specific details.

And we just don't have that level of specificity about this. Like none of us do. If you do, great.

Go file your form. But like a form that just says, go look over there is probably not going to have as much of an impact as you want it to.

[Speaker 1]

Yeah. Now, if somewhere Eve Borenstein is listening to this and she actually knows that it does function like a tip line and there's some like really cool criminal type investigators who are going to go do a stakeout at the Heritage Foundation, please let me know because I need to know that that is a thing in the world. But in my experience, the IRS is just going to deal with what you gave them and then they'll go from there and then they'll like be like, hi, we're auditing you.

Give us all of the things. And then they lawyer up and you have an exchange through a system. It's OK.

This is like a total aside, but I just like I looked at the instructions and you can email this form, which is why I think it's so easy for people on TikTok to be like, this is all you have to do. And then you just email it here. Right.

[Speaker 2]

As soon as you said fax, I was like, no one's faxing that form. No one has a fax machine.

[Speaker 1]

But that is like one of the ways that you often can submit forms to the IRS.

But the fact that you can email this, I like have to laugh like I'm like, how much does the IRS regret modernizing? Because this this inbox has to be like it's like a denial. It's like a DDoS attack on this inbox every day.

I'm sure. Like, how do they how do they cope?

[Speaker 2]

And they must have an intern that's just like moving it into like, oh, what a nightmare. What a nightmare, and considering how behind they got on like actual tax returns and...

[Speaker 1]

They can't even handle what they're supposed to handle, like people's actual tax filings, they handle it. What are they doing with 10 million of these complaint forms?

[Speaker 2]

So I have a question for you that you may or may not be able to answer. But like zooming out of this a little bit, not specifically about the Heritage Foundation, but say there is a lot of like media attention, PR, like these like social media calls about a particular organization. Like, is that something that would prompt the IRS to look a little bit closer?

Like what would call the IRS into like, let's see if this organization is doing any wrongdoing or is it somebody else that would maybe do that? And that would signal the IRS to get involved. But like, what does that actually look like when an organization gets in trouble?

[Speaker 1]

I don't know. You know, we should have somebody who does tax defense as a guest because I help people stay on the right side of the rules. I don't deal with this end of things.

Yeah. So I really don't know. My gut says the IRS doesn't move just because social media says so.

That's what my gut says that they would not even want to be perceived as being swayed by like popular opinion. It's very like if you've ever attended an IRS continuing education seminar is the worst educational environment ever because they like as a rule will not joke around, go off topic, like make a joke like they're so like we are doing a very regulated thing and we are talking about regulations. So the idea that they're going to like get a bunch of people from TikTok sending them something and then they're going to go make the news with an invest.

I just I don't know. I think it's much more likely that a state attorney general or the attorney general in D.C. where the Heritage Foundation or wherever a nonprofit that is getting a lot of bad press in social media, they're more likely to look for a violation of charitable law because they want the press. They're usually appointed or elected or like need to like retain their seats.

They need to retain the goodwill of the people and prove that they are like protecting the consumer. I think that's a lot more likely than the IRS being swayed by some campaign like this.

[Speaker 2]

That makes sense. That makes sense, especially because, you know, the AGs, they're the ones that are in charge of, you know, actually policing nonprofits in the state. Right.

Like policing is maybe not the right word, but like actually investigating and doing those kinds of things. The IRS gives out their tax exempt status and revokes it as needed. But it's not like a like you said, it's not an investigation focused body.

It is.

[Speaker 1]

And it's not an entity that wants the press. Like they don't care if you like what they did, obviously, or they would do a lot of things differently.

[Speaker 2]

Let me just. Can you imagine?

[Speaker 1]

Yeah.

[Speaker 2]

Can you imagine this is them trying to have good public opinion?

[Speaker 1]

Right. So I just I think, yeah, they might take a look at if somebody submits like a credible, well-documented form and has the materials, they will, I'm sure, like give it fair treatment. But all the little one-liner emails, there's some intern just hitting delete. Actually, that's probably not true.

They probably can't hit delete. They're just going into a backlog of like low priority follow up. And six years from now, you're going to get a letter.

[Speaker 2]

Oh, good. What a what a time to be alive. So let's just kind of wrap this up with little takeaways here.

Yeah, because we've got a situation where people are fired up about this nonprofit and they want to be able to submit these 13909 form to the IRS to say this entity is, you know, violating the rules and should lose its C3 status is basically what they're asking for. So let's zoom out here. Nonprofits are not allowed to be political.

That is like a squishy definition about what that actually means. But things like supporting or endorsing certain candidates for a C3 public charity is not OK. Anything more specific than that, talk to a lawyer, but the general public charities can't endorse candidates.

It's true. The 13909 that TikTokers are pulling up and saying file this with the IRS is maybe not the tip line that everyone thinks that it is and may not lead to what you want it to lead, which is getting this nonprofit in trouble. The form is actually designed to be more like we're submitting an entire caseload worth of evidence about why this nonprofit has violated very specific rule within the IRS.

So just saying they're doing political activity is not enough for that form.

[Speaker 1]

You've got to have the proof. Look at this form as a cover sheet. This form is the cover sheet to all of the materials you are submitting.

[Speaker 2]

And the other thing is that, you know, we don't know whether the Heritage Foundation is violating any 501C3 rules for that nonprofit. There are several organizations in the mix, one of which is a C4. And regardless of whether these individual 13909s are doing anything, we also just don't know truly whether there is a problem.

The public doesn't, at least. Maybe someone in the midst knows some stuff.

[Speaker 1]

But I think it's just like there are a lot of nonprofits that you might not like. Yeah, there's just there. That's just the reality.

There are a lot of charitable missions that you might not agree with. And they might be staying in their lane, being something you don't approve of. But just because you don't like them doesn't necessarily, I'm not endorsing Project 2025.

Let's make that crystal clear, editors. I'm just saying there are a lot of nonprofits that are valid that you will not agree with. And that's just part of life, just like there are a lot of people that you don't agree with.

[Speaker 2]

And I will just say for the last thing, if there is a nonprofit that you have evidence and a real reason to believe that they are doing something against the law, maybe not the IRS. Your better

bet is to go through your state attorney general or the state of the nonprofit, wherever they're headquartered, their attorney general.

[Speaker 1]

Yeah, or both. Do both. If you can document it, this form is your cover sheet.

[Speaker 2]

Yep. Go for it. But we need the who, what, when, where, why, how details on there.

[Speaker 1]

Yep. Ok, well, now that we've ruined everyone's day. Sorry, guys. You know, we've we've made we made you a roadmap for how to do it right, though.

I'm just saying if you got the goods, go for it. Read the instructions. That's the first takeaway. Always read the instructions when it comes to the IRS. OK, this was a crazy episode. Thanks for hanging in there.

I hope you found this interesting. If you like this episode, share it with your friend. Save them the two seconds of time emailing the IRS a bogus tip. Do me a huge favor. Rate us on your podcast app. It really helps us out.

And if you have a question, maybe you saw something on TikTok and you want me to know about it. You should send it to us. We're online at [CharityTherapy.Show](https://www.charitytherapy.show). Thanks for listening. See you next time.



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## About the Author



**Hi, I'm Jess Birken.**

I'm the owner of Birken Law Office, I help nonprofits solve problems so they can quit worrying and get back to what matters most – The Mission. I'm not like most attorneys, I actually have an outgoing personality, and – like you – I like to think outside the box. Most of my clients are passionate and have an entrepreneurial spirit. I'm like that too. My goal is to help you crush it. Getting bogged down in the minutia sucks the joy out of the important stuff. My clients want to do the work – not the paperwork.

**Let's connect!**

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