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## Bigger and Better - 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.

Hello, and welcome to this episode of Charity Therapy. I'm here again with Meghan. Hello, here we are.

We're back living under the potential fascist authoritarian regime we call Trump administration part two.

[Speaker 2]

Here we are, you know, bigger and better question mark for someone, I suppose.

[Speaker 1]

Oh, Lord, this reminds me of my criminal defense days where you just have to have the gallows humor.

[Speaker 2]

All right, if we're going if we don't have dark humor, how are we even surviving this in the first place?

[Speaker 1]

Literally, I don't know. I identify as Gen X and like pretty much I feel like all of my humor is dark humor. So there you go.

Yeah, I'm with you.

[Speaker 2]

Okay, what's happening? What's right? You know, there's a ton of fear out there.

Just a smidge, just a smidge. And particularly in the nonprofit sector, there's fears that the Trump administration is going to target, you know, organizations with specific mission areas

that they don't like. So we're talking like immigration, LGBTQ plus rights, reproductive rights, like all of that kind of stuff.

And I think right now that fear is just sort of like, free floating to everything of just like, we have no idea what that could look like. So just in general, like, what would it look like for the administration to target these folks?

[Speaker 1]

Well, I mean, we just did an episode about funding, right? So, you know, sort of taking away funding from missions that they don't agree with is a big one. And, you know, I think we're gonna see things like just, well, okay, the real answer is, I don't freaking know.

Yeah, truly. You sound like one of my clients being like, what's gonna happen? And I'm like, I don't freaking know.

But the reality is, it seems like this is going to play out in these little administrative ways. So that if we have clients that are maybe running a religious ministry, that's like Christian faith-based organization, those clients are going to be fine. But then if you're running a mosque or something that this administration doesn't like, now you're going to face extra scrutiny.

Or now there's going to be some weird administrative rule. Or one of the things I've been concerned about is that there'll be like a squelching, a tampering effect on the work of organizations because you can't get federal funding if you have DEI provisions or something. That in the back of the grant agreement where they just bulk up all of the, like, you will comply with X, Y, and Z hundreds of regulations, there'll be stuff in there that sort of inhibits certain organizations from receiving funding.

And some of our clients that are more palatable missions to this administration will do just fine, right? So that's kind of where I see the administration targeting non-profits because they can't like necessarily, you can't like deport a non-profit, right?

[Speaker 2]

Exactly.

[Speaker 1]

It's different. Yeah. Right.

Yeah. And then of course there's this, this bill that's currently being considered that you could become, label the terrorist organization. And so that'll be fun because who knows how that's going to work.

Right.

[Speaker 2]

So the bill, we'll link some stuff below, but it's HR 9495, the Stop Terror Financing and Tax Penalties on American Hostages Act, which sounds like it has nothing to do with non-profits, but we'll get into it. But the other thing I just wanted to bring up too, about like what these sort of hot button missions should expect is even if the administration can't shut them down directly, deport them, whatever, the amount of public scrutiny on them may greatly increase.

[Speaker 1]

Yes. Yeah. That could be, I mean, that's just it is we don't know, you know, who's going to be running the IRS and what's their prerogative going to be and how are they going to use their resources?

I mean, right now the IRS barely has enough resources to like deal with the amount of scrutiny they're supposed to be giving. So we'll see. We'll see what happens.

Definitely a good time to have all your things in ship shape order though.

[Speaker 2]

Yes. Yes. So let's dive into this question because I think we'll talk about all of these things in a little bit more detail.

So listener says, I am the founder of a non-profit that supports trans youth and their families. I'm really trying to stay practical about the threats to our organization with the current administration, but it's honestly hard to stay level-headed with so much panic around. I've seen a few things online about how the president is supposedly going to be able to take away our non-profit status.

Is that true? Okay. So that's a great question.

[Speaker 1]

This is one I've been getting a lot with clients who are in these hot button mission areas. And obviously the current administration is very like anti-trans anything. So that's this HR, whatever, 9495.

Yep. It's got some acronym or some number. Yeah.

It's 9495. There you go. And that's the, what Meghan mentioned, that stop terror financing and tax.

It's just a bunch of word salad. Basically the bill's name is a bunch of word salad and buried in there is a line that says the department of treasury, which includes the internal revenue service, is allowed to declare organizations to be terrorist groups.

[Speaker 2]

Supporting terrorist groups.

[Speaker 1]

They're like terrorist supporting organization.

[Speaker 2]

The bill itself is really like most of the bill and the way that it's titled sounds like it's about protecting individual Americans who are hostages, detainees. You're going to protect us. And that is what the like main idea of the bill is.

But then underneath that main idea is also, oh yeah. And if you're a nonprofit that supports a terrorist organization, we can remove your IRS tax status.

[Speaker 1]

Yeah. And to be clear, this is not new as far as the IRS has always been looking for payments going to terrorist groups. When you apply for income tax exemption, if you're sending money overseas to international countries, they have a whole series of questions that they want you to answer.

You have to certify that you will check this OFAC list to make sure you're not sending money to any terrorist groups. Like this is not a new concept, but the idea that they could just yank your C3 status and it's immediate without any due process or hearing or right to be heard or to present evidence or anything like that, they can just pull it. That is upsetting.

And that's what caught the eye of some of these watchdog groups that look at these sorts of things. Because if you can afford an attorney to fight about it and do advocacy for you with the Department of Treasury to appeal, you can try and fight the revocation, but it's already gone. Once you don't have it, you are no longer considered a public charity in good standing that can affect your fundraising, yada, yada, yada, yada.

[Speaker 2]

And the way this is structured in this bill. So again, this is not the law right now. Like this has not been passed.

This is something that is currently up for vote in the Senate. But the way that this is structured is the Treasury can make this designation that a nonprofit is supporting a terrorist organization and revoke their tax exempt status because of that. The nonprofit then has 90 days to basically appeal that decision.

So the Treasury does not need to prove that the nonprofit is supporting terrorism. There's no real explanation of what their process needs to be. But the onus is on the nonprofit to really prove that they are not supporting terrorism.

Yeah. So it's really putting all of the pressure on these organizations. And of course, the fear is that since there is no process, what are we calling terrorism?

Could any organization get this label slapped on them, even if they're not working abroad or in these other areas that historically have needed more in their IRS application and things like that? Or even just as a way to waste these groups' time and money.

[Speaker 1]

Again, as an administrative weapon, essentially, to just deprive you of your C3 status long enough to burn up a bunch of your money on legal fees and whatever. I think that's a valid concern. I also think there are bigger things happening right now that I'm simultaneously not very worried about this and totally thinking, yeah, this will probably happen.

Regardless, like I said, sending money to terrorist thing is not new. So if your organization is sending money overseas, you need to go take a look at and maybe we can link to this somehow in the show notes. Take a look at what the IRS requires a new nonprofit that's applying for status.

What do they want you to certify to that you do to promise them that you're not supporting terrorism? And you need to develop some financial controls and some processes to demonstrate, create an audit trail, paper the file that you're doing these things when you're sending money overseas. That's just like base level.



That's always been required. You should totally be doing that. Having a good general ledger, just generally being in good standing, making sure your corporate registration, you're doing businesses, all of your state stuff is in order, making sure that you're filing your annual 990 tax return, making sure you have a conflicts of interest policy, doing the things that the IRS wants you to do to prove that you are a good citizen as a nonprofit entity is the main thing that you can do. If some administrative agency is going to be like, hey, your nonprofit abortion clinic, we're yanking your C3 status. I'm sorry, there's no amount of audit trail that's like going to protect you.

So what you can do is make sure that your compliance is in good order. If you really are concerned about this for your organization, you can start to bank up some money for a legal defense fund. Probably a good idea regardless right now.

And just making sure that like everything from the outside looks good. That like if I'm a disinterested third party and I'm looking up your organization, I'm not finding something and going, aha, I knew they were rotten. Make sure that it looks like neat and tidy and compliant.

And then ideally the back office is also papered well and your audit proof. What else?

[Speaker 2]

I would just say that like specifically for these smaller organizations, you know, if you're still doing all of your own books and all of that kind of stuff, even if the answer is like, yeah, we can clean up our own act. Like now is the time to get someone to help and make sure you're doing all of that right. Because if it does come down to having to prove how you're spending every single dollar, you don't want to be waiting through your Excel spreadsheet.

You know, like now is the time to professionalize your bookkeeping, especially if, you know, up to this point, you've kind of been flying by the seat of your pants with that. You know, it's like,

even if this bill never comes to pass, even if this is all what is a good idea. This is the kind of thing that will help protect the organization down the line, no matter what comes to pass.

[Speaker 1]

So frankly, it's something you can do that you have control over. That's very concrete. And Meghan and I both can confirm it can feel really good to just do a thing that is concrete.

And you can look and say, I did that and now it's right. And it's good. Yep.

That can be very mentally consoling at stressful times.

[Speaker 2]

And I think ultimately, too, it's like, this is a very reasonable approach to a lot of uncertainty right now where it's like, you know what, if something comes to pass, your life is going to be a lot easier if you know where all your stuff is. If you know something becomes more difficult for you down the line, it's going to be a lot easier to hire a bookkeeper or a CPA now when you're not in panic mode trying to address something. So it's like these are the very measured preventative approaches you can take that really are going to make a difference if something were to happen and would also just strengthen your organization as a whole, even if something never happens.

[Speaker 1]

Yeah. And finding someone that you align with that, surrounding yourself with professionals who are not just competent professionals, but also have some level of support for your mission so that if the going gets tough, they've got your back. Right.

And they're not like, oh, actually, I never liked your mission anyway. Like, might as well find people who are picking up what you're putting down. Absolutely.

[Speaker 2]

And we talk about this particular bill, but all the other like big major questions in that survival guide that just put out. So that is linked in the show notes as well. So if you want more details about the big questions, but also the tangible things that you can do right now that will really help your organization like go download the thing, because that is one thing where, you know, it's not going to panic you further.

It's not something that is going to send you down the deep end the way that some of the speculation online can. Yeah.

[Speaker 1]

And if you're not in a hot button mission area, this is still good advice because I got a lot of, especially faith based clients that are sending money overseas to places like Africa and Latin America and elsewhere. And I don't know. You guys know that you're supposed to be checking the OFAC list, right?

So if you're hearing this and we don't work together, you should look that up because you are supposed to be doing that. Yeah.

[Speaker 2]

OK. Well, that's good. Yeah.

We do our takeaways. Yeah. Let's do some quick takeaways.

So first is I mean, we said this on our previous episode as well, but applaud this listener. Don't panic. Like, let's talk about what's actually happening in the real world.

Second, there is a bill on the Senate floor currently in early twenty twenty five that has the potential to give the Treasury Department power over revoking tax exempt status. And we don't know what's going to happen with it. Third, is that the biggest thing you can do right now is get your financials in order, improve your internal processes and your general public face of the organization, do what you can within your power to strengthen the nonprofit.

And that is your best preventative help right now that you can do. Did I miss any? Absolutely.

[Speaker 1]

Heck no. I think you nailed it.

[Speaker 2]

Heck no.

[Speaker 1]

Heck no. That was the most Minnesota thing I've said today. All right.

Listen, folks, if you enjoy a good Minnesota accent mixed with a little bit of nonprofit advice, you should subscribe to this podcast because we got that coming at you every two weeks. So let's go share it with a friend. Leave us a question.

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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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