



An Attack on Nonprofit Advocacy through National Service Legislation

Summary

On March 18, the House approved an amendment to legislation to reauthorize the National and Community Service Act that would severely restrict advocacy by nonprofit recipients, even when those organizations use their non-federal funds for such activity. There will likely be an attempt to attach the same or similar language to the Senate bill that is being considered the week of March 23.

The House amendment, offered by Rep. Virginia Foxx (R-NC), contains language that restricts Corporation for National and Community Service recipients from using an organization's private funds for lobbying; endorsing or supporting events that endorse legislation; engaging in selected nonpartisan voter activities; organizing or engaging in petitions, protests, boycotts, or strikes; providing or promoting abortions or referrals; or influencing union organizing.

For most of these activities (but not all), the organization cannot receive assistance if they "co-locate on the same premises" with an organization that does any of these activities. Finally, if an organization (or co-located organization) is indicted for voter fraud, they are ineligible for training and service funds from the Corporation for National and Community Service.

Background

On March 18, the House voted on the Generations Invigorating Volunteerism and Education Act (the GIVE Act) (H.R. 1388), which revises programs under the National and Community Service Act and the Domestic Volunteer Service Act and reauthorizes appropriations through FY 2014. This includes programs such as AmeriCorps and grants given by the Corporation for National and Community Service. Under House rules, the minority has the right to try to amend or kill a bill through what is called the "motion to recommit." Foxx used the motion to recommit to add the anti-advocacy amendment.

In offering the amendment, Foxx said that it "codifies current regulations," which is not accurate. Currently, National Service recipients are restricted from using their federal funds for certain activities. They are not restricted from using private funds for the activities. Moreover, the list of prohibitions has been greatly expanded by Foxx.

As Foxx said, "[T]he overriding principle here is that money is fungible. Funds must be used for the purpose of service and encouraging others to serve within their communities. They must not be allowed to be used for prohibited activities."

This was a key argument for the Istook amendment (named after lead the sponsor, former Rep. Ernest Istook (R-OK)) offered during the Contract with America era. The Istook amendment applied to all federal grantees and restricted advocacy with non-federal funds; it did not apply to

federal contractors. The Congressional Research Service noted that the Istook amendment raised constitutional concerns. Ultimately, after a bruising battle that involved a number of nonprofits across the country, the Istook amendment was killed. Since that time, there have been Istook-like amendments offered to specific legislation, such as this one, that would limit nonprofit advocacy. Enactment of any of these program-specific bills would have profound implications for the nonprofit sector as a whole.

Foxx said she wants to ensure “that taxpayer dollars are not directed toward programs that are politically divisive and morally objectionable.” She singled out two organizations, ACORN and Oregon Planned Parenthood, that she believes should not be receiving support under the training and technical assistance provisions of the GIVE Act.

Prospects for the Senate

During the week of March 23, the Senate is taking up its version of the GIVE Act (S. 277). At this point, it appears that there will not be a conference between the House and Senate. Instead, the version that passes the Senate will be sent to the House for floor action. That means that the debate on the Senate bill could be intense, since it could be final language sent to the president.

In all likelihood, those supporting the Foxx amendment will do what they can to add language similar, if not identical, to the House bill that already passed.

Details on the Foxx Amendment

No organization that participates in any of the following activities is permitted to receive training or technical assistance grants from the Corporation for National or Community Service. Additionally, any organization that is “co-located on the same premises” with an organization that participates in any of the following activities would also be ineligible for support from the Corporation for National or Community Service.

- “Political or legislative advocacy” – The definition of this term is not provided. However, the amendment adds that National Service participants are prohibited from attempting to influence legislation, or participate in or endorse events that either support or oppose legislation.

The amendment also includes restrictions on volunteers conducting voter registration drives. If this applies to the organization under the definition of “political and legislative advocacy,” this raises concerns about undermining federal laws intended to increase voter registration (e.g., Help America Vote Act and the National Voter Registration Act, commonly called the “Motor Voter Act”), creates problems for states wishing to work with nonprofits to increase voter participation, and punishes nonprofits for obeying federal and state laws that are aimed at increasing voter participation.

These restrictions on volunteers seem to also apply to a volunteer's personal time, which, of course, raises significant constitutional issues. Presumably, the Foxx amendment would use these types of activities as definitions to determine if an organization engaged in "political or legislative advocacy."

- Indicted for voter fraud – An indictment is a formal accusation that a person has committed a criminal offense. It is not proof of guilt. Upon introducing the amendment, Foxx noted that "ACORN employees and supervisors have been indicted for voter fraud..." and suggests that such an organization should not be getting support from the Corporation for National and Community Service.
- Provide or promote abortion services or referrals.

The amendment provides no definition of "co-located on the same premises." Presumably if Organization A rents space in the same office building as Organization B, and Organization B engages in any of the above activities, then Organization A would be prohibited from receiving Corporation for National and Community Service funds.

Among other things, volunteers under AmeriCorps would also be restricted – apparently even on their personal time – from engaging in:

- Lobbying
- Petitions (e.g., an online petition), protests, boycotts, or strikes
- Union organizing
- Engaging in partisan political activities
- Voter registration drives

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