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The Latest IRS Power Grab

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Six months after the Internal Revenue Service's inspector general revealed that the tax-collection agency had been targeting conservative organizations for added scrutiny and delaying their applications for tax-exempt status, the IRS has proposed new rules for handling political activity by nonprofits. The proposed rules would plunge the agency deeper into political regulation.

The rules would upset more than 50 years of settled law and practice by limiting the ability of certain tax-exempt nonprofits, organized under Section 501(c)(4) of the Internal Revenue Code, to conduct nonpartisan voter registration and voter education. Such organizations would be forbidden to leave records of officeholder votes and public statements on their websites in the two months before an election.

It is tempting to pick the proposed rules apart—and there is much to pick, such as restrictions on a nonprofit discussing any aspect of a president's judicial nominees in a public communication any time between Feb. 2 and a national election day nine months later. But it is more important to ask how we got here. Why is the IRS regulating political activity at all?

The answer is that many Democratic politicians and progressive activists think new rules limiting political speech by nonprofits will benefit Democrats politically. Stymied by judicial decisions restricting direct government regulation of political speech, and by a Federal Election Commission whose bipartisan makeup prevents Democratic commissioners from forcing through partisan rules on a party-line vote, these politicians and activists have decided to dragoon the IRS into doing their work.

Nobody will admit that the goal is to hamper the political opposition. To make the case for IRS regulation of politics, these progressives, such as Sen. Sheldon Whitehouse (D., R.I.) and the Campaign Legal Center, have promulgated three myths.

Myth No. 1: 501(c)(4)s are "charities," and doing political work abuses their charitable status. The tax code contains at least 30 different categories of nonprofits. What we think of as "charities" are typically organized under Section 501(c)(3). That section exists for "charitable" and "religious" organizations, and it is where one finds organizations such as

churches, the Red Cross, the American Cancer Society and so on. Section 501(c)(4) is traditionally reserved for advocacy organizations. The National Rifle Association, the Sierra Club, Planned Parenthood Action Fund, and the Brady Campaign to Prevent Gun Violence are 501(c)(4)s.

Myth No. 2: 501(c)(4)s must be operated "exclusively for the promotion of social welfare," not politics. While Section 501(c)(3) of the tax code specifically bars those organizations from engaging in political activity, no such statutory prohibition exists in Section 501(c)(4). Furthermore, while Section 501(c)(4) states that it applies to organizations operating exclusively for the promotion of "social welfare," the statute does not define "social welfare." Since when, in a democratic society, are nonpartisan get-out-the-vote drives, voter registration, voter education, and meet-the-candidates nights—all of which will be limited by the IRS's proposed rules—not activities in support of social welfare?

The statute leaves it to the IRS to define "social welfare" in that context, and for half a century the agency has defined it to include political-campaign activity. The 501(c)(4) category has always been the home of political-advocacy groups.

Myth No. 3: Political activities shouldn't get tax breaks. There are no tax breaks for 501(c)(4) groups. Contributions to these organizations are not tax deductible, and the tax liability of the 501(c)(4)s wouldn't change if they were reclassified as political committees.

This is not about taxes, so what is it really about?

What the left wants is the disclosure of private information about conservative donors. In cases involving unions, the NAACP and other civil-rights organizations in the 1940s, '50s and '60s, the Supreme Court made clear that people have a right to engage in anonymous political activity.

In the 1976 *Buckley v. Valeo* case, however, the court carved out a narrow exception, allowing the government to compel the disclosure of information about donors to groups controlled by political candidates and parties, or that have the primary purpose of engaging in political campaigns. But the court also defined political activity narrowly, to include only the express advocacy for the election or defeat of a candidate. The ruling specifically did not include the discussion of candidates and issues as a political-campaign activity.

None of this was perceived as a major problem so long as the 501(c)(4) category was dominated by the political left. Beginning in the 1990s, however, and especially since 2010, organizations that were more conservative began using the 501(c)(4) category to engage in public education as well as political activity, thus challenging liberal dominance in nonprofit advocacy.

In response, the left has attempted to silence conservative 501(c)(4)s by unveiling and harassing their donors. This has included boycotts of businesses—such as Coca-Cola and Wendy's—that contribute to free-market causes and candidates, and of businesses whose employees gave to such candidates and causes. It has included harassment, threats and vandalism aimed at conservative donors and churches, particularly in California during the campaign over the Proposition 8 initiative to bar same-sex marriage.

President Obama's exhortation to his supporters in September 2008 to "get in the face" of his political opposition has been taken literally. Media Matters, the left-wing outfit that specializes in ad hominem attacks on conservatives, has bragged in fundraising appeals that it will use compulsory donor disclosure to harass donors who contribute to conservative candidates and causes.

To anyone concerned about public confidence in nonpartisan tax collection and preventing future IRS scandals, the solution is not more tax rules. It is for the IRS to get out of the business of regulating politics.

In a June report to Congress, IRS taxpayer advocate Nina Olson wrote: "It may be advisable to separate political determinations from the function of revenue collection." She suggested legislation requiring the IRS to follow Federal Election Commission rules that define what groups are "political committees" under campaign-finance law, effectively ending the agency's political activity. But legislation is not required. The IRS could with its own rules follow the bipartisan FEC on the question of a group's political status.

On Tuesday the Senate Finance Committee will hold a confirmation hearing for John Koskinen, President Obama's nominee to lead the IRS. Senators concerned about the agency's behavior during the past presidential election should ask Mr. Koskinen if he believes the IRS should regulate political activity, and whether he supports the proposed rules. The credibility of the IRS may depend on his answers.

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