



Blame campaign finance crusaders for IRS mess

By: John Samples – May 15, 2013

In early 2010, the U.S. Supreme Court decided *Citizens United*, which prevents the federal government from suppressing speech by businesses and other groups. The decision freed up so-called “super PACs,” which are widely regarded as having had a pernicious influence on the last several political cycles.

Since *Citizens United*, “reformers” have demanded that the IRS “crack down” on “money in politics” by questioning the non-profit tax status of many political groups. The reformers got their wish.

The result: the huge and growing scandal in which the tax-collecting agency finds itself embroiled, with politicians on both sides of the aisle calling for investigations to be conducted and heads to roll.

In 2010, and more so in 2012, a quantity of political spending came through social welfare groups organized under Section 501(c)(4) of the tax code. These groups are not required to reveal their donors, but they are subject to the law in other ways. For example, the tax authorities say a (c)(4) group cannot have political engagement as its primary purpose. How much politics is too much, legally speaking, for such groups? Congress has not said, and the IRS has been reluctant to act on its own. Many election lawyers assume a group can spend almost half of its revenues on politics without risking its tax status.

Some people, known loosely as “the reform community,” have little time for such legal nuances. They are outraged that (c)(4)’s refuse to disclose their donors. Since *Citizens United*, these putative reformers have been demanding that the IRS target (c)(4) groups and remove their tax status. This whole IRS mess, in other words, came about when a powerful pressure group was demanding the agency go after groups engaged in political speech. Many of the groups reiterated their demand for IRS action *after* the agency’s actions became public.

The phrase “crack down” comes from reformist rhetoric. Consider the words. My dictionary defines “crack down” as “to suppress, prevent, put an end to, restrain, keep in control.” What is being suppressed and ended? Initially, only the use of a tax status. But there is more at stake. Much of the money raised by some (c)(4)’s goes toward political speech and related efforts like getting out the vote. In the first instance, the reformers are calling for a crack-down on First Amendment rights.

But the matter is more complicated. No one has a right to (c)(4) status. The IRS decides who gets the designation. In 2010, the agency’s decision-making was much delayed,

thereby slowing down the grassroots engagement that marked the run-up to the midterm elections. Did the IRS intentionally delay this process? Many might recall that the tea party was critical of taxation and in some measure, the IRS. Even if the agency had no political motive, the process itself complicated political engagement, thus biasing the federal government toward the political status quo.

Groups do not need a (c)(4) status to raise and spend money on political speech. Many seek the status to avoid disclosing their political activities. Some (c)(4) donors may fear retaliation from the government. The current IRS mess will not reduce their concerns. But many of these donors, I suspect, simply wish to avoid the abuse heaped on important supporters to disfavored causes. Such “shaming” of disclosed individuals seeks to discourage their political efforts. Recently, that abuse was directed at critics of Obamacare. Earlier, the critics of the Iraq war were vilified. I myself would seek legal shelter from such storms of abuse. What about you? Would you willingly endure the hatred and condemnation directed toward the Koch brothers or George Soros?

We should be concerned about potential IRS abuse of political groups in 2010. Past presidents did use the agency to harm their opponents. But if the IRS turns out to be innocent, all is not well. Our 50-year quest to regulate campaign finance and thereby political speech runs counter to our more enduring commitments to political freedom. The everyday suppression of speech should not be forgotten as we properly examine whether the IRS has gotten back into the business of helping a party keep its grip on power.