



Prohibiting politics as public service

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Last month, just as financial institutions finished sending out the alphanumeric soup of IRS forms to Americans to file their tax returns, a group known as Citizens for Responsibility and Ethics in Washington (CREW) sued the taxman. Ordinarily, this type of action would be a cause to rejoice. But in this case, CREW was not acting on behalf of the taxpayers, but rather to grind a failed politician's axe with the IRS' regulation of 501(c)(4) organizations. On this issue, the IRS is like the broken clock that's right twice a day. CREW, on the other hand, seems always to be futilely occupying the other 86,398 seconds.

CREW's action on behalf of David Gill, a Democrat who lost a congressional election in Illinois last November, claims that Gill's campaign was harmed by TV ads sponsored by the American Action Network (AAN) that urged Gill's defeat. AAN was formed under Section 501(c)(4) of the tax code, which permits "social welfare organizations" to operate as non-profit entities whose donations are not taxed as business income. As has been noted frequently of late, donors to 501(c)(4)s also need not be reported.

The tax code requires 501(c)(4) organizations to "operate exclusively for the promotion of social welfare." The IRS's regulations for the past 60 years always have considered "the promotion of social welfare" to mean being "primarily engaged in promoting in some way the common good and general welfare of the people of the community." With the government's acquiescence, 501(c)(4) organizations have interpreted this to mean that they may engage in some amount of political activity, so long as it is not their primary purpose.

The CREW lawsuit claims that, by permitting 501(c)(4)s to engage in any amount of political activity, the IRS is violating the statute, which requires such organizations to promote social welfare "exclusively." To accept CREW's argument is to accede to the lowest form of cynicism – one fundamentally at odds with the basic notions of democratic government. It requires us to believe that political advocacy – in fact, politics itself – cannot promote better government and, therefore, advance social welfare.

This notion that politics can have nothing to do with societal change that promotes social welfare would certainly come as news to groups like the NAACP. During the 2000

election, the group ran a famously hard-hitting ad through its 501(c)(4) National Voter Fund, slamming George W. Bush for not supporting hate-crimes legislation as governor of Texas. CREW's position would mean not only that the NAACP could not believe that opposing Bush was consistent with the group's civil rights agenda, but also that the NAACP would have to report all of the donors to its 501(c)(4). This would be the same NAACP that fought so hard more than 50 years ago for the right not to report to the state of Alabama its members and donors – a fight the NAACP won before the Supreme Court.

Not only would organizations engaging in any political activity have to report their donors, they also would lose their non-profit status altogether under CREW's theory. That would be just fine for a group like ProPublica, which, through its name, presumptuously promotes itself as the arbiter of public interest. The pro-speech regulation media foundation, itself a 501(c)(3) that receives tax-deductible contributions, has castigated many 501(c)(4)s as “do[ing] little or nothing to justify the subsidies they receive from taxpayers.”

As a preliminary matter, 501(c)(4)s actually do not receive any “subsidies” because their donations, unlike funds given to 501(c)(3)s, are not tax-deductible. Moreover, if political activity is so undeserving of alleged taxpayer “subsidies,” we have yet to hear any complaint from ProPublica against public financing schemes for campaigns. While the major-party presidential candidates recently have abandoned public funding for their campaigns (and rightfully so), those who advocate more speech regulation continue to push for public financing of congressional races. If “subsidizing” political activity is so horrible, where is the outrage at these proposals to transfer outright hundreds of millions of taxpayer dollars directly to politicians' campaigns?

There was a time not so long ago when legions of starry-eyed Americans still believed the political process offered a path to betterment of society. Under the mantras of “Hope” and “Change,” they were rallied by a leader who proclaimed messianically that “we are the ones we've been waiting for.” Have the past four years so hopelessly shattered our dreams that politics no longer can be regarded as a form of public service, and political advocacy no longer can be considered an activity promoting social welfare? Judging from its lawsuit against the IRS, CREW certainly thinks so. Let's hope the taxman wins this one.

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