

Obama Uses IRS to Eliminate His Enemies

“The power to tax involves the power to destroy,” the Supreme Court wrote in 1819, shortly after America began.

Now in 2013, **President Barack Obama** is launching a frightening attack on **free speech**, using one of the most-feared agencies in all the federal government: the Internal Revenue Service.

One of the most roundly condemned aspects of Richard Nixon’s malfeasance in office was his use of the IRS to target his political enemies with audits. If people shudder at Nixon’s abuses with the IRS, what Obama is doing should drive them to convulsions.

Obama seeks to silence dissenting voices with unprecedented new regulations to curtail political speech by nonprofit organizations. These new rules would help silence conservative organizations and Obama’s critics and raise serious **First Amendment** concerns, as these rules look like the federal provisions struck down as unconstitutional by the Supreme Court in its famous *Citizens United* case.

Congress allows for various types of organizations to organize as nonprofit, revenue from which is not subject to corporate federal income tax. For example, fundamentally charitable or educational nonprofits—such as churches—are 501(c)(3) organizations, contributions to which are also tax-deductible by the donors.

Some groups are 501(c)(5) organizations. These are political action committees (PACs), which endorse candidates for office and devote their resources to advancing or defeating certain candidates.

Then there are 501(c)(4) organizations. These are social

welfare organizations, dedicated to advancing certain issues or viewpoints they believe promote “the common good and general welfare.” These nonprofits can devote much of their resources to political activity, so long as politics is not the group’s “primary purpose.”

It’s always been assumed that less than 50 percent would be devoted to pure politicking, but no one knows because the law does not specify. Also—conveniently—the tax code fails to define the term “political activity.”

On Nov. 26, the Treasury Department and IRS announced new regulations “regarding qualification requirements for tax-exemption as a social welfare organization,” that is, 501(c)(4) organizations. The **IRS** then goes on to specify what sorts of activities will henceforth be regarded as political activity, including but not limited to:

- Any message expressing approval/support or disapproval/opposition to any candidate for public office. For example, an ad saying, “Thank Senator Smith for supporting our troops.”
- Within 60 days of a general election or 30 days of a primary election, any mention by name of any candidate or showing his picture, even without expressing approval or disapproval.
- Any money given by a 501(c)(4) to a 527 organization, which citizens may give, however much of their personal money they want to promote public issues they personally support.
- Voter registration drives.
- Voter guides that inform citizens of where politicians stand on various issues.
- Any event within 60 days of an election at which a candidate makes an appearance.

The impact of such regulations would be far-reaching. Groups such as the National Rifle Association and its political

affiliate, NRA-ILA, are 501(c)(4) organizations. Imagine if NRA-ILA could not spend much of its resources discussing issues and legislation or informing voters of where candidates stand on gun rights issues. Now imagine those restrictions imposed on the major organizations of every public issue in America.

Less than four years ago, in *Citizens United v. FEC*, the Supreme Court struck down as unconstitutional provisions of the McCain-Feingold campaign-finance law that made it a crime for organizations to speak about candidates within 60 days of a general election or 30 days of a primary. The Obama administration claimed the authority to ban even books, if a 600-page book mentioned a candidate even once on its pages.

The Court held that these restrictions violated the **First Amendment**. Yet these new IRS rules closely track those invalidated provisions.

In some respects, these restrictions go even further than the ones struck down by the court. Previous restrictions only applied to candidates for federal office. The new IRS rules would also apply to every candidate for state and local elections. Thus, criticizing your county dog catcher could land your organization in hot water with the IRS, even if the dog catcher election is vitally relevant to the social welfare interests of your nonprofit group, such as a group called Citizens for Safe Dog Catching.

In our 2010 book, *The Blueprint*, we discussed how free speech is the essential lifeblood of public debate, empowering voters to make a thoughtful and well-considered choice at the ballot box. We also warned that Obama might create laws to silence his political opponents, using the same Chicago-style political tactics he knew from his days as an Illinois politician, like a couple rough-looking thugs built like brick walls who muscle their way around your storefront to send you a message that you'd better quiet down if you know what's good

for you and your business.

The Supreme Court restored **free speech** for average citizens in *Citizens United*. Shortly thereafter, President Obama demeaned his high office by denouncing the Supreme Court to the justices' faces during the 2010 State of the Union address on national television before a joint session of Congress. Obama later promised to find ways to get around the *Citizens United* decision.

That is what the IRS is doing here—limiting how much groups can speak about Obama's policies or promote alternative policies about health care, free markets, traditional values or national defense. Obama and his supporters can use the enormous platform of their public offices to promote whatever they want without limit. If the president gives a speech, the media will cover it.

But if a group of citizens wants to pool their resources to express an opposing viewpoint before an election, that group can lose its tax-exempt status. Unlike the law struck down in 2010, it will not be a federal felony.

But while its bite isn't as deep, the reach is much broader. It serves to choke off funding and impair the ability of those groups to participate in the democratic process.

The solution to political speech you don't like is to offer opposing speech; the cure for bad speech or wrong speech is more speech, not less. That free exchange of ideas is the blood flowing through the veins of a free society, so that voters can fully hear both sides. When you stop that flow, you stop the beating heart of democracy.

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