

INTERNAL REVENUE SERVICE (IRS) REGULATION AS A SOLUTION TO CONTROL MONEY IN ELECTIONS

There are four Federal regulatory agencies that have legal authority to curb campaign spending: 1) the Federal Election Commission (FEC), 2) the Internal Revenue Service (IRS), 3) the Federal Communications Commission (FCC) and, 4) Security and Exchange Commission (SEC).

This article discusses how the Internal Revenue Service (IRS) could control the excess of money in politics through regulations and the slow dismantling of the IRS's ability to enforce its regulations over the past half century. Other reports cover the other agencies.

The Mission Statement of the IRS is: “Provide America’s taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all”.¹ Though the IRS has a lofty mission, it’s ability to perform this mission completely is challenged with regard to reporting of election campaign financing.

For a brief description of the various designations in the IRS code, please refer to the chart in the League of Women Voters report Money in Politics: Developing a Common Understanding of the Issues, A Primer for Engagement of League Members and Fellow Citizens – 2014, Appendix E: Regulations pertaining to tax-exempt organizations.² The chart compares seven federal tax law attributes of five common types of tax-exempt organizations, those designated 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), and 527.

Dark Money, 501(c)(4) Organizations, and the IRS

The 501(c)(4) designation for organizations is one avenue that appears to be manipulated at times, resulting in the expenditure of “dark money” and is the focus of this section of the report. The 501(c) (4) designation allows organizations to keep the identities of their donors secret. “Dark money” refers to the political spending by innocuously named groups whose donors are not disclosed because of loopholes in current disclosure laws. To understand how we got to where we are today, a summary of the original intent of the IRS law and its current standing with regard to 501(c)(4) tax exempt organizations is in order.

The History of the IRS and Tax-Exempt Organizations, specifically 501(c)(4)s

The following excerpts from “A History of the Tax-Exempt Sector: An SOI Perspective” address the history of the Internal Revenue Service’s regulatory powers with regard to tax-exempt organizations.³

“Tax-exempt Organizations and Early Legislation, 1894-1936: The privileged tax treatment that the Government grants to charitable and member-serving organizations

¹ “Publication 1075 - Tax Information Security Guidelines for Federal, State and Local Agencies”, IRS, October 2014, p.1, <https://www.irs.gov/pub/irs-pdf/p1075.pdf>, viewed 02/10/16

² “Money in Politics: Developing a Common Understanding of the Issues: A Primer for Engagement of League Members and Fellow Citizens – 2014”, Appendix E: Regulations pertaining to tax-exempt organizations, pp.33-34, League of Women Voters, <http://lwv.org/files/cfr%20Primer%20Final%20May%202027.pdf>

³ Arnsberger, Paul, Ludlum, Melissa, Riley, Margaret and Stanton, Mark, “A History of the Tax-Exempt Sector: An SOI Perspective”, IRS - Statistics of Income Bulletin, Winter 2008, <https://www.irs.gov/pub/irs-soi/tehistory.pdf>, viewed 02/10/16

can be traced to the earliest versions of United States tax law. Early tax-exemption regulations developed around three major principles. First, organizations that operated for charitable purposes were granted exemption from the Federal income tax. Second, charitable organizations were required to be free of private inurement—that is, a charitable organization’s income could not be used to benefit an individual related to the organization. Finally, an income tax deduction for contributions, designed to encourage charitable giving, was developed.”⁴

“Ratification of the Sixteenth Amendment (February, 1913) granted Congress the power to levy income tax. The subsequent Revenue Act of 1913 established the modern Federal income tax system. ...In order to qualify for tax-exempt status, an organization must show that its purpose serves the public good, as opposed to a private interest. The activities of public charities are limited in that they must further one or more of the purposes for which they were granted tax-exempt status.”⁵

“The Revenue Act of 1934 set forth limits on lobbying by charitable organizations, stating that ‘no substantial part’ of the organizations’ activities can involve ‘propaganda’ or attempts ‘to influence legislation’.”⁶

“The Revenue Code of 1954 introduced a number of changes to the tax-exempt organization tax law. Most notably, the current structure of the Internal Revenue Code was developed, with section 501(c) describing tax-exempt organizations. Charitable organizations were described under section 501(c)(3) and now included organizations operated for the purpose of “testing for public safety.” Following passage of the Revenue Code of 1954, charities were not allowed to “participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of any candidate for public office.”⁷

History of IRS Code that Allows 501(c)(4) Organizations to Hide the Identity of Donors (Dark Money)

Social welfare nonprofits have a legal right to keep their donors secret. That stems from the landmark 1958 Supreme Court case, *NAACP v. Alabama*, which held that the NAACP didn’t have to identify its members because disclosure could lead to harassment. As part of its strategy to enjoin the NAACP from operating, Alabama required it to reveal to the State’s Attorney General the names and addresses of all the NAACP’s members and agents in the state. The unanimous Court held that a compelled disclosure of the NAACP’s membership lists would have the effect of suppressing legal association among the group’s members.⁸

⁴ Arnsberger, et al., p.2

⁵ Ibid, p.6

⁶ Ibid, p.20

⁷ Ibid, p.20

⁸ "National Association for the Advancement of Colored People v. Patterson." Oyez. *Chicago-Kent College of Law at Illinois Tech*, <https://www.oyez.org/cases/1957/91>, viewed 02/10/16

The 501(c)(4) civic leagues or organizations are not organized for profit but operate exclusively for the promotion of social welfare.⁹ To obtain a 501(c)(4) designation, according to IRS code (codified law), an organization is to operate exclusively for the promotion of social welfare in order to shield donor identities. The organization can lobby for its positions on social welfare; however, it precludes supporting or opposing political candidates. The loophole that allows 501(c)(4)s to hide the identity of their contributors is a modification of the interpretation of some 501(c)(4) regulations. The change in interpretation of the regulations concerns what exactly defines an organization as established for the promotion of social welfare, specifically how much time the organization spends on the common good and general welfare of the people of the community for the purpose of bringing about civic betterments and social improvements.

In 1959, even though the law did not change, the IRS changed its interpretation of the 501(c)(4) regulation to by substituting “operated exclusively” for the promotion of social welfare to “primarily engaged” for the promotion of social welfare. This created the loophole that allows partisan corporations to use (or mis-use) the system by asserting their primary activities (approximately half of their spending) promote in some way the common good and general welfare of the people of the community, thus promoting the social welfare. This change in interpretation allows an organization that (supposedly) spends merely 50.1% of its time promoting social welfare to be eligible for the 501(c)(4) privilege of hiding donors. As stated above, the 501(c)(4) status allows organizations to keep the identity of their donors under wraps.¹⁰

Citizens for Ethics explains the current misinterpretation of the 501(c)(4) code in the following excerpt from the case they filed against the Department of Treasury/IRS in U.S. District Court for the District of Columbia in February 2013. They sued the IRS for their failure to follow the clear guidelines their tax code requires. They highlighted that the current re-codified IRS statute still operates under the clear guidelines of “operating exclusively” and not “primarily engaged” as it relates to the phrase “promotion of social welfare.”¹¹

“Statutory and Regulatory Framework

15. In 1913, Congress for the first time provided a tax exemption for “any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare. Revenue Act of 1913, ch. 16, § 11(G)(a), 38 Stat. 172. »

The Revolving Door of Influence

Dana Latham was Commissioner of the IRS in 1959 and facilitated the modification. The company Latham founded in 1934 (Latham & Watkins) is now one of the world’s largest law firms, global in its scope of international tax practice and more. “Firm Alumni” of Latham & Watkins law firm include former Secretary of Interior, Security and Exchange Commission chair, White House Counsel, Director of DOJ Enron Task Force, Secretary of Homeland Security, etc.

Latham & Watkins law firm contributed \$3.2 million in free legal and consulting services to the defense of Jay Bybee, the Department of Justice’s Office of Legal Counsel, who approved the use of torture in the Bush administration.

Their clients include Koch Industries, Bank of America, Goldman Sachs, ExxonMobil, and Phillip Morris. This is an example of what has been called the “revolving door”, movement of people employed as government regulators to industries affected by regulation. The move goes either way.

Sources: See End Notes

⁹ “Types of Organizations Exempt under Section 501(c)(4)”, IRS, December 16, 2015, <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Types-of-Organizations-Exempt-under-Section-501%28c%29%284%29>

¹⁰ Martens, Pam, “Today’s IRS Scandal Dates Back to 1959”, *Wall Street on Parade*, May 17, 2013, <http://wallstreetonparade.com/2013/05/today%E2%80%99s-irs-scandal-dates-back-to-1959/>, viewed 02/10/16

¹¹ Dr. David Gill et al v. US Department of the Treasury Internal Revenue Service, February 19, 2013, http://www.citizensforethics.org/page/-/PDFs/Legal/CREW%20vs.%20IRS/021913_IRS_Lawsuit_Complaint.pdf?nocdn=1

16. Congress repeatedly recodified the statute in the ensuing years. All versions of the recodified statute have limited the tax exemption to organizations "operated exclusively" for the promotion of social welfare.

17. The current version of the Code provides a tax exemption for: Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes."

The Center for Responsive Politics described the impact of the Citizens United case in this way:¹²

"Essentially, Citizens United allowed 501(c)(4) groups to participate in political activities just like other groups already had been doing. But, unlike most of the other groups, which are under the oversight of the Federal Election Commission and must disclose their contributors and expenditures, 501(c)(4)s are overseen by the IRS. They must make filings with the FEC when they spend money explicitly advocating for or against a candidate, as well as when they buy issue ads that run in the weeks close to an election, but they aren't required to provide detail about where they're getting their money or how they're spending much of it."

To Effectively Fulfill Its Role, the IRS Needs to Investigate Each Organization Claiming to be 501(c)(4) Status

Internal Revenue Service regulations state that *"The donations to 501(c)(4)s may be deductible as trade or business expenses, if ordinary and necessary in the conduct of the taxpayer's business."*¹³

Additional scrutiny by the IRS of 501(c)(4) organizations is imperative in order to avoid abuse of IRS codes, but, the IRS is short-staffed and unable to do this. Thus, knowing that the IRS does not investigate these situations, it is easy for an 501(c)(4) organization to claim certain trade or business expenses are necessary when, in fact, the expenses are generated by political activity and are non-deductible. The IRS needs to determine whether organizations applying for tax deductions are:

1. *"Influencing legislation;*
2. *Participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for public office;*
3. *Attempting to influence the general public with respect to elections, legislative matters, or referendums; and*
4. *Having any direct communication with a covered executive branch official in an attempt to influence the public servant's official actions or positions."*¹⁴

¹² "What is the significance of the Citizens United Supreme Court decision for nonprofits?", *Center for Responsive Politics*, <http://www.opensecrets.org/outsidespending/faq.php>, viewed 12/19/15

¹³ "Donations to Section 501(c)(4) Organizations", *Internal Revenue Service*, <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Donations-to-Section-501%28c%29%284%29-Organizations>, viewed 12/20/15

¹⁴ "Nondeductible Lobbying and Political Expenditures, IRS", <http://www.irs.gov/Charities-&-Non-Profits/Other-Non-Profits/Nondeductible-Lobbying-and-Political-Expenditures-1>, viewed 02/10/16

Citizens for Responsibility and Ethics in Washington (CREW) challenged clarification of “promotion of social welfare” definition in the regulation

*Citizens for Responsibility and Ethics in Washington (CREW) believes the IRS’s current interpretation of the regulations for 501(c)(4) are in direct conflict with tax codes that limit tax exemptions for organizations that operate exclusively for the promotion of social welfare.*¹⁵

The tax code reads:

*“The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.”*¹⁶

As a result, CREW filed a suit against the U.S. Department of Treasury, Internal Revenue Service. CREWS’ legal position was explained in following excerpts from a New York Times article by Mike McIntire and Nicholas Confessore.¹⁷ McIntire and Confessore wrote,

“Some of the biggest recipients of corporate money are organized under Section 501(c)(4) of the tax code, the federal designation for “social welfare” groups dedicated to advancing broad community interests. Because they are not technically political organizations, they do not have to register with or disclose their donors to the Federal Election Commission, potentially shielding corporate contributors from shareholders or others unhappy with their political positions. ...The Internal Revenue Service has no clear test for determining what constitutes excessive political activity by a social welfare group. ...groups operating as sham charities whose primary purpose is not the promotion of social welfare, but winning elections. ‘These groups are being used as a conduit to hide from voters the identity of people and corporations who are bankrolling television ads, which are designed to influence the outcome of elections,’ said Representative Chris Van Hollen, Democrat of Maryland.”

The IRS filed a motion to dismiss for “lack of jurisdiction,” which was countered by CREW; however, the motion to dismiss was granted by U.S. District Judge for the District of Columbia, John Bates on February 27, 2014. As a result, the challenge by CREW went nowhere.¹⁸

Other Confusing Phrases in IRS Regulations

In order to determine if an organization is primarily engaged in promoting social welfare, currently the IRS uses the uncertain guideline of what are the “facts and circumstances” to make

¹⁵ Dr. David Gill et al v. US Department of the Treasury Internal Revenue Service, February 19, 2013, http://www.citizensforethics.org/page/-/PDFs/Legal/CREW%20vs.%20IRS/021913_IRS_Lawsuit_Complaint.pdf?nocdn=1, viewed 02/10/16

¹⁶ 26 CFR 1.501(c)(4)-1 – Civic Organizations and local associations of employees, [https://www.law.cornell.edu/cfr/text/26/1.501\(c\)\(4\)-1](https://www.law.cornell.edu/cfr/text/26/1.501(c)(4)-1), viewed 02/10/16

¹⁷ McIntire, Mike Confessore, Nicholas, “Tax-Exempt Groups Shield Political Gifts of Businesses”, New York Times, July 7, 2012, http://www.nytimes.com/2012/07/08/us/politics/groups-shield-political-gifts-of-businesses.html?_r=0, viewed 02/10/16

¹⁸ Citizens for Responsibility and Ethics in Washington v US Department of the Treasury, Internal Revenue Service, et al, Opinion Granting Dismissal, February 27, 2014, http://crew.3cdn.net/79ba2ed8a38027571b_iam6bxbkai.pdf, viewed 02/10/16

the determination. The phrase “facts and circumstances” is neither clear nor objective. According to writers Raymond Chick and Amy Henchey, in an IRS publication,¹⁹

“Whether an organization is ‘primarily engaged’ in promoting social welfare is a ‘facts and circumstances’ determination. Relevant factors include the amount of funds received from and devoted to particular activities; other resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the manner in which the organization’s activities are conducted; and the purposes furthered by various activities.”

Another phrase that creates confusion is “civic betterments and social improvements.” The section of IRS code containing the phrase “civic betterments and social improvements” is vague as written, leaving the interpretations to be manipulated by people who may have a conflict of interest or ulterior motives.

According to IRS publication, “Social Welfare What Does It Mean?”²⁰

“Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations states that an organization will be considered to be operated exclusively for social welfare purposes if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community, i.e. primarily for the purpose of bringing about civic betterments and social improvements.”

IRS is working on common definitions for political activity

The IRS is working to determine a common definition for what exactly constitutes “political activity” as it applies to all tax exempt organizations. As reported by Rachel Bade and Hillary Flynn in Politico,²¹

“IRS Commissioner John Koskinen said the agency may expand a yet-to-be-released rule governing 501(c)(4), ‘social welfare’ groups, to include political groups known as 527s, which focus on elections. It could require them both — as well as other types of tax-exempt groups — to operate under the same definition of ‘political activity.’ ‘If it’s going to be a fair system, it needs to apply across the board,’ Koskinen said; ‘...it makes sense to have this common definition.’

The rule, originally set for release early this year but now seemingly delayed, is supposed to define what exactly constitutes ‘political activity’ and also tell 501(c)(4) organizations more precisely how much they can participate in campaigns without crossing the line. The IRS has said that even if it does issue the rule before 2016, it likely will not apply it to anyone until after the election to avoid the appearance of partisan motivation. ‘We’re looking at, to be fair, applications across the entire spectrum,’ he [Koskinen] told them. ‘So it shouldn’t just be [501]c4s. We need to make sure that as Congress has legislated in

¹⁹ Chick, Raymond and Henchey, Amy, “M. Political Organizations and IRC 501(c)(4)”, *IRS*, <https://www.irs.gov/pub/irs-tege/eotopicm95.pdf>, viewed 02/10/16

²⁰ “G. Social Welfare: What Does it Mean? How much Private Benefit is Permissible? What is a Community?”, *IRS*, <http://www.irs.gov/pub/irs-tege/eotopicg81.pdf>, viewed 12/23/15

²¹ Bade, Rachel and Flynn, Hillary, “IRS may broaden rule to police political nonprofits”, *Politico*, March 18, 2015, <http://www.politico.com/story/2015/03/irs-may-broaden-rule-to-police-political-nonprofits-116206#ixzz3vBMPuAo6>, viewed 02/10/16

all of these areas, there's a consistent and appropriate framework for [501]c3, [501]c4, [501]c5, [501]c6, 527s."

Strict scrutiny of 501(c)(4) applications by the IRS would help determine who is abusing the "social welfare" group designation as well as other vague phrases. This solution is dependent entirely on who heads the agency and if it's funded enough to allow the employees to carry out its directives. For regulation by the IRS to be successful, reform measures must be implemented and adopted by Congress.

League of Women Voters as an example of IRS designations used as intended

LWVUS reports on its web site²²,

"For tax reasons, the League of Women Voters of the US maintains two legal entities to carry out its mission. The LWVUS and nearly all state and local Leagues are 501(c)(4) organizations, which means that contributions to them are not tax deductible and that donors do not need to be disclosed. There is no League direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. The League lobbies only on issues that are supported by the consensus of members after in-depth study. This part of the League is operated exclusively for this purpose.

The League also maintains an education fund. It is a 501(c)(3) organization, which means that contributions to it are tax-deductible for the donor. It is through this side of the League that voter information and citizen education activities occur. Voters' guides and candidate debate activities are examples of providing voter information and education. The key criteria for ensuring that such a project is "educational" are:

- No lobbying will be associated with the event/publication, although advocacy is acceptable
- The event/publication will be offered to the general public.
- Questions for candidates will be neutral/nonpartisan.
- All candidates will be treated equally.

Additionally, candidate forum questions are to be unbiased, even on issues where the League has a position, so as to not reflect or suggest a bias or preference for or against any candidate's views. Events exhibiting even an unintentional bias may jeopardize the League's tax-exempt status.

Note that it is possible for certain advocacy—but not lobbying—activities to be carried out using tax-deductible monies. Advocacy is a broader concept than lobbying. The League advocates for change through the education of policymakers and the public, and education is a legitimate use of such funds as long as care is taken to be sure that lobbying does not take place. Advocacy activities fall under 501(c)(3) designation. Lobbying is defined as an attempt to influence specific legislation, transmits a point of view on a specific piece of legislation to elected officials or their staffs, as well as a call

²² "Money Matters", *League of Women Voters*, <http://lww.org/content/money-matters>, viewed 12/23/15

to action urging the public to contact their legislators about a specific piece of legislation. Lobbying activities must be funded through general operating funds (501(c)(4)). “

League of Women Voters of the US positions on Internal Revenue Service regulations

The League submitted comments urging the IRS to close the loopholes that allow unlimited secret spending in elections by 501(c)(4) groups and continues to work for effective IRS regulation while protecting truly nonpartisan voter service activity.²³

In December 2013, the IRS issued a notice of proposed rulemaking geared at curbing the abuse of tax-exempt political campaign activity. However, some changes in the proposed regulations would have deemed “political” some nonpartisan activities such as voter registration drives, “get out the vote” drives, hosting candidate forums, and publishing voter guides.²⁴

In December 2013, LWVUS President Elizabeth MacNamara spoke out in favor of the proposed rulemaking (regulations) for non-profit, 501(c)(4) organizations.²⁵ She said,

“Some have suggested that the new proposal goes too far by including voter registration and voter guides under the definition of candidate-related political activity which would be controlled under the proposal governing 501(c)(4) organizations. ‘This IRS action is about dark, secret money in America’s elections plain and simple,’ MacNamara said. ‘Unlike some opponents of such reforms, the League thinks the concern about truly nonpartisan activity is overblown,’ she continued. “

Legislation That Affects the IRS

The following section discusses the most recent attempts to change IRS regulations through legislation. How the Washington Congressional delegation voted on these bills is noted.

H.R. 3865: The LWVUS opposed H.R. 3865, “*Stop Targeting Political Beliefs by the IRS Act of 2014*”, which prohibits the Internal Revenue Service from adopting necessary revisions in the rules used to determine whether an organization is operating exclusively for the promotion of social welfare for purposes of tax code Section 501(c)(4). (The League wants clarifications of the rules.) The League joined nine other organizations a letter sent to U.S. House members opposing H.R. 3865. The organizations are: Brennan Center for Justice, Campaign Legal Center, Citizens for Responsibility and Ethics in Washington (CREW), Common Cause, Democracy 21, Demos, Public Citizen, The Sunlight Foundation, and U.S. PIRG.²⁶

²³ Drahan, Stephanie, “League Calls on IRS to Stop ‘Dark Money’”, *League of Women Voters of US*, February 19, 2014, <http://lwv.org/press-releases/league-calls-irs-stop-dark-money>, viewed 12/23/15

²⁴ “Notice of Proposed Rulemaking: Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”, *IRS*, December 23, 2013, https://www.irs.gov/irb/2013-52_IRB/ar18.html, viewed 12/23/15

²⁵ Drahan, Stephanie, “New IRS Proposal for Tax Exempt Groups ‘Important First Step Against Abuse’ Says League”, *League of Women Voters of the United States*, December 3, 2013, <http://lwv.org/press-releases/new-irs-proposal-tax-exempt-groups-important-first-step-against-abuse-says-league>, viewed 02/10/16

²⁶ “League Opposes H.R. 3865”, *League of Women Voters*, February 24, 2014, <http://www.lwv.org/content/league-opposes-hr-3865>, viewed 12/23/15

The League sent comments to the IRS regarding the proposed regulation.²⁷ The bill passed the House on February 26, 2014. Washington Congress members voting yes: Reichert (co-sponsored the bill), Hastings, McMorris Rodgers, Herrera-Butler, Larsen. Voting no: Kilmer, McDermott, DelBene, Heck, Smith. [S.2011](#), the companion bill, was introduced February 11, 2014 and referred to Senate Finance Committee where it died. WA Senator Maria Cantwell is on this committee.

[H.R. 599 and S. 283](#): These bills are the same bills as H.R. 3865 and S. 2011 described above. H.R. 599/S.283 were reintroduced in the House and Senate on January 28, 2015 and have been referred to the House Ways and Means Committee and the Senate Finance Committee. WA Reps. Reichert and McDermott are on the House Ways and Means Committee.²⁸

[H.R. 2019](#):²⁹ The “Gabriella Miller Kids First Research Act” passed March 11, 2014 by voice vote in the Senate after passing the House in December. This legislation authorized the funds for the research initiative, but it did not appropriate the funds for use. The LWVUS sent a letter to President Obama urging veto; however, he signed it into law. The following are excerpts from the LWVUS’s letter³⁰:

“H.R. 2019 takes away \$126 million over a ten-year period from presidential convention funding and authorizes the money to be used for pediatric cancer research. But it does not appropriate any additional funds for pediatric cancer research. Signing H.R. 2019 into law, furthermore, will substantially increase the power of corporations, wealthy individuals, and special interest groups to obtain influence with federal officeholders and over government decisions. The repeal of public funding for conventions will ensure that more huge contributions from corporations and other special interest donors are used to finance the presidential conventions. H.R. 2019 would not do anything to actually increase spending for pediatric cancer research.”

Rep. Larsen was the only WA congressman to vote against this bill; Reps. Herrera-Beutler, McMorris Rodgers, and McDermott did not vote.³¹

U.S. Representative from WA introduced bill to limit funding for IRS

[H.R. 434](#): Washington State Rep. Cathy McMorris Rodgers, Vice Chair of the House Republican Caucus, introduced H.R. 434 on February 3, 2011, an amendment to the Continuing Resolution that would prohibit the IRS from using any of its funds to implement the health care reform law which passed in 2010. The bill prevented the use of any funds - then or in the future - to hire new employees to enforce

²⁷ “League Encourages Treasury Department, IRS to Move Forward with Proposed Regulations”, *League of Women Voters*, March 5, 2014, <http://www.lwv.org/content/league-encourages-treasury-department-irs-move-forward-proposed-regulations>, viewed 12/23/15

²⁸ “S.2011 - Stop Targeting of Political Beliefs by the IRS Act of 2014”, *Congress.Gov*, <http://beta.congress.gov/bill/113th-congress/senate-bill/2011>, viewed 02/10/16

²⁹ H.R. 2019 – Gabriella Miller Kids First Research Act, <https://www.govtrack.us/congress/bills/113/hr2019>, viewed 02/10/16

³⁰ “League Urges Presidential Veto on H.R. 2019”, *League of Women Voters*, March 14, 2014, <http://www.lwv.org/content/league-urges-presidential-veto-hr-2019>, viewed 12/23/15

³¹ “H.R. 2019 (113th): Gabriella Miller Kids First Research Act”, <https://www.govtrack.us/congress/votes/113-2013/h632>, viewed 12/23/15

the individual mandate. This bill did not pass.³² This bill is one of several similar bills passed in the House since 2011 which proposed cutting funding for the IRS, mostly in an attempt to prohibit the implementation of the Affordable Care Act.³³

Center on Budget and Policy Priorities' Study on the Impact of IRS Funding Cuts

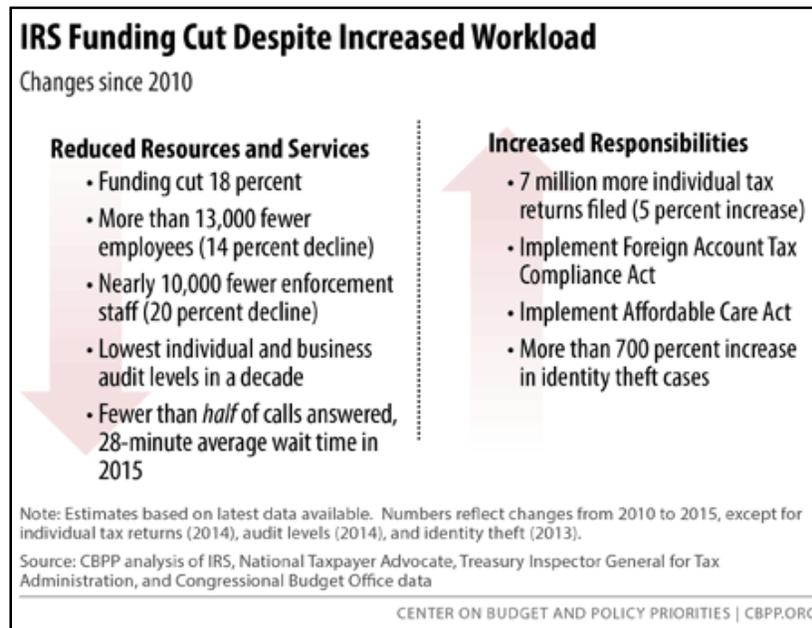
The Center on Budget and Policy Priorities' study, *"IRS Funding Cuts Continue to Compromise Taxpayer Service and Weaken Enforcement"*, gives a complete look at the impact of cuts to IRS and their ability to meet their mission. The following excerpts, including graphs, are from this study.³⁴ The study documents budget cuts since 2010 and the consequences with regard to enforcement of IRS laws and taxpayer services. The study implies that the IRS is being dismantled.

"IRS Funding Has Fallen Sharply Since 2010: Like many discretionary programs (those funded through annual appropriations), the IRS has faced significant budget cuts since 2010. The 2011 Budget Control Act (BCA) capped annual discretionary funding for 2012-2021, and sequestration imposed additional reductions starting in 2013. The Bipartisan Budget Act of 2013, negotiated by then-Senate Budget Committee Chair Patty Murray and then-House Budget Committee Chair Paul Ryan, restored some but not all of the sequestration cuts for 2014 and 2015. The full sequestration cuts remain in place in 2016 and subsequent years."

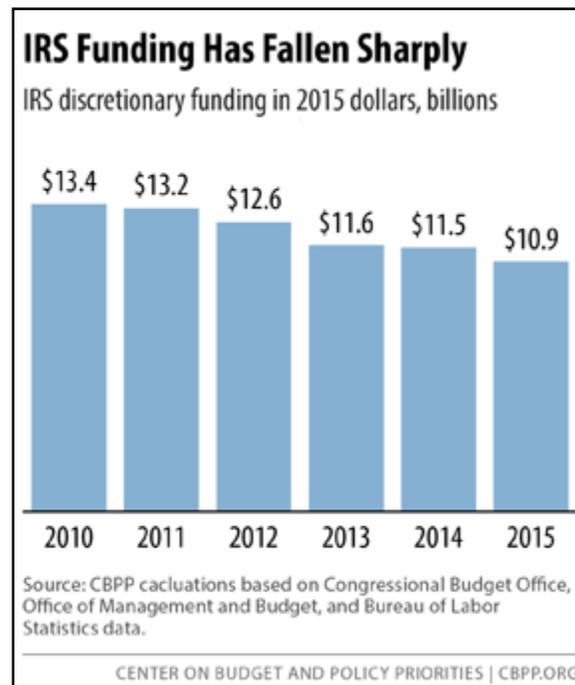
³² "McMorris Rodgers Introduces Amendment Prohibiting IRS From Using Funds to Implement Health Care Law", *Congresswoman Cathy McMorris Rodgers*, http://mcmorris.house.gov/mcmorris_rodgers_introduces_amendment_prohibiting_irs_from_using_funds_to_implement_health_care_law/, viewed 02/02/16

³³ York, Byron, "No, House Republicans Haven't Voted 50 Times to Repeal Obamacare", *Washington Examiner*, March 15, 2014, <http://washingtonexaminer.com/no-house-republicans-havent-voted-50-times-to-repeal-obamacare/article/2545733>

³⁴ Marr, Chuck and Murray, Cecile, "IRS Funding Cuts Continue to Compromise Taxpayer Service and Weaken Enforcement", *Center on Budget and Policy Priorities*, September 30, 2015, <http://www.cbpp.org/research/federal-tax/irs-funding-cuts-continue-to-compromise-taxpayer-service-and-weaken-enforcement>, viewed 12/23/15



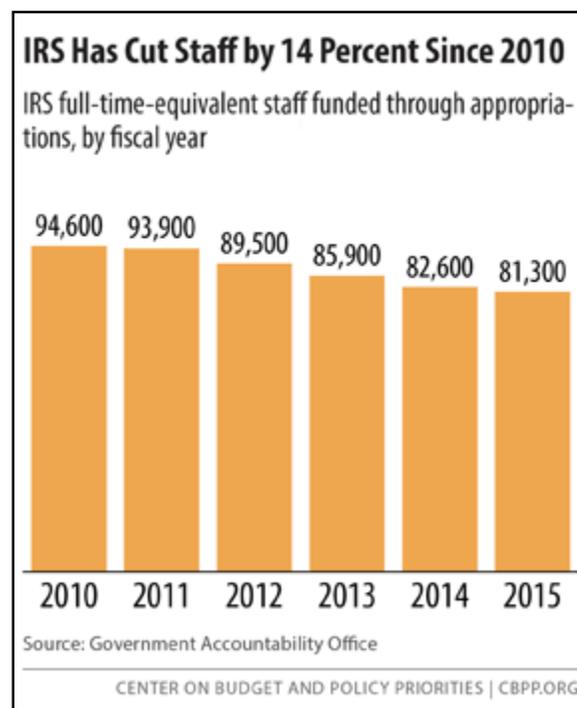
“The IRS’s \$10.9 billion budget for 2015 is \$1.2 billion, or 10 percent, below the level appropriated in 2010 -- the last year before Congress began cutting discretionary programs. Accounting for inflation, 2015 funding is 18 percent below the 2010 level. ”



“Cuts in Workforce and Training: Three-quarters of the IRS budget goes to personnel, 85 percent of whom are directly involved in enforcing tax laws or providing taxpayer services. Accordingly, in the face of low funding, the IRS has reduced its workforce substantially; the IRS has about 13,300 (14 percent) fewer employees than in 2010. (See Figure 3.) Commissioner John Koskinen predicts the

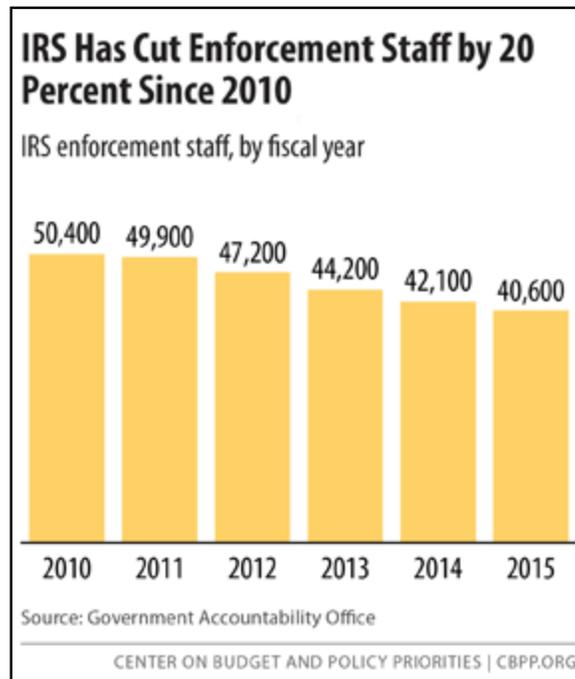
number of employees will shrink by another several thousand by the end of 2015. Yet at the same time, the IRS's workload has increased substantially. For instance, the number of individual income tax returns has grown by nearly 7 million since 2010.

...millions of taxpayers still communicate with the IRS by telephone and mail. But through mid-February 2015, a typical caller waited about 28 minutes for an IRS representative to get on the line, and nearly 60 percent of calls were never answered. These figures will likely continue to worsen over the filing season. This represents a sharp decline from 2010, when the IRS answered three-quarters of calls and had an average wait time of just under 11 minutes. The IRS will also answer only "basic" tax questions this filing season, and no longer helps taxpayers prepare returns. "



“Enforcement Is Weaker: *The number of IRS staff devoted to enforcing tax laws has dropped by 20 percent since 2010. As a result, the IRS is conducting fewer audits overall and fewer audits of high-income taxpayers and businesses. The annual audit rate for individual taxpayers is now below 1 percent and at its lowest level in a decade.*

Overall business audits declined by 6 percent last year, dropping to the lowest level in eight years.” The audit rate for filers with incomes over \$10 million fell to 16 percent in 2014, down from 24 percent in 2013. “



“Delays in Upgrading Information Technology

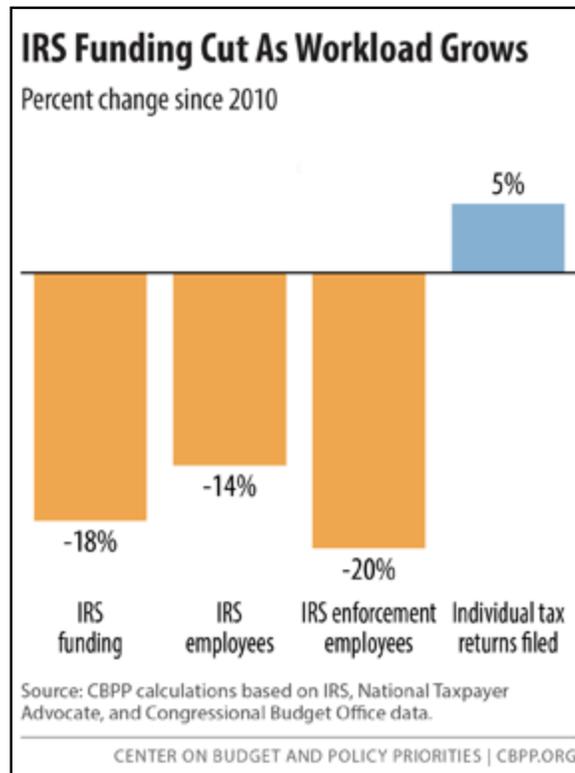
....some IRS computers still run on an operating system that is so outdated Microsoft no longer services it; the IRS had to spend scarce funds to set up custom support. Commissioner Koskinen notes that the IRS uses "applications that were running when John F. Kennedy was President."

“IRS Responsibilities Growing

Restoring IRS funding to a more adequate level is important to enable the agency both to reverse the decline in taxpayer service and to handle its new and expanding responsibilities, which range from combating identity theft to its responsibilities under the Affordable Care Act (ACA).

Another major new set of responsibilities for the IRS concerns the Foreign Account Tax Compliance Act (FATCA). Enacted in 2010, FATCA seeks to reduce illegal tax evasion by requiring filers and financial institutions to report more information to the IRS about assets held in offshore accounts.

Finally, the number of individual income tax returns has grown by nearly 7 million, or 5 percent, since 2010.”



“More Adequate Funding Needed

The President's budget would begin to address the sharp decline in IRS funding. Its proposed \$12.9 billion funding level for 2016 is an 18 percent increase over the current level. This would restore the funding lost since 2010 in nominal -- though not inflation-adjusted -- dollars. The increase includes \$480 million for enforcement that would be provided through a "program integrity" adjustment (and thus would not count against the BCA caps). It directs most of the proposed increase to operations support, which includes IT improvements crucial to improving both taxpayer service and tax enforcement. The additional funds would also bolster depleted personnel levels, including increasing enforcement employees by 10 percent. Treasury estimated a similar initiative in the President's 2015 budget would "yield a net deficit reduction of \$35 billion" over ten years. Commissioner Koskinen projects the increase in funding for taxpayer services would boost the share of taxpayer phone calls answered to 80 percent and reduce wait times to no more than 5 minutes. "

“By contrast, the House- and Senate-passed budgets would likely cut IRS funding even further. Although the budgets do not specify funding levels for the IRS, they contain significant cuts to the non-defense discretionary (NDD) part of the budget, which includes the IRS. The House and Senate budgets cut NDD funding by \$970 billion and \$400 billion, respectively, over the next decade. These cuts are in addition to the harsh cuts already imposed by the BCA caps and sequestration. As a result, IRS funding would likely fall even further under the House and Senate budgets.”

Internal Revenue Service (IRS) budget challenges in 2016

Senate FY2016 Financial Services and General Government Appropriations Bill

This bill provides \$10.475 billion funding, a cut of \$470 million below the FY2015 enacted level for the IRS. This funding level will require the IRS to streamline its activities and prioritize available resources, including user fees, to perform core agency duties. The bill requires \$2.247 billion be spent on Taxpayer Services, an increase of \$90 million, to significantly improve the handling of identity theft cases and IRS response rates to telephone calls and correspondence from taxpayers.

In addition, to ensure accountability and transparency, the bill includes:

- A prohibition on funds for bonuses or to rehire former employees unless employee conduct and tax compliance is given consideration;
- A prohibition on funds for the IRS to target groups for regulatory scrutiny based on their ideological beliefs;
- A prohibition on funds for the IRS to target individuals for exercising their First Amendment rights;
- A prohibition on funds for the production of inappropriate videos and conferences.³⁵

The Executive Branch responds

Shaun Donovan, Director of the Office of Management and Budget, compares IRS funding in the 2016 proposed Congressional budget bill with President Obama's 2016 proposed budget plan in a letter dated June 16, 2015, to Representative Hal Rogers, Chairman of the Committee on Appropriations in the U.S. House of Representatives. Mr. Donovan stated,³⁶

"The (House Appropriations) bill cuts the IRS by more than \$2.8 billion, or 22 percent, compared to the President's Budget, and by \$838 million, or nearly 8 percent, compared to the FY 2015 enacted level. Additional funding cuts would come on top of the drastic cuts already enacted since 2010. As a result, in real terms, the Subcommittee funding level is less than the IRS's FY 1991 budget-25 years ago, when there were 38 million fewer individual taxpayers and a far less complicated tax code. The consequences of these funding cuts include: diminished enforcement capabilities, locking in unacceptable levels of taxpayer services, and jeopardizing the protection of taxpayer information."

End Notes for Inset on page 3: "The Revolving Door of Influence"

- 1) "Latham & Watkins LLP", *Company Profiles*, VAULT, <http://www.vault.com/company-profiles/law/latham-watkins-llp.aspx>; viewed 02/10/16

³⁵ "Senate Committee Agrees to FY Financial Services, General Government Appropriations Bill", *U.S. Senate Committee on Appropriations*, <http://www.appropriations.senate.gov/imo/media/doc/072315-FY16-FSGG-Appropriations-Full-Committee-Markup-Web2.pdf>, viewed 02/10/16

³⁶ Letter from Shaun Donovan, Office of Management and Budget Director, to US Rep. Hal Rogers, June 16, 2015, <https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/fy-16-house-fsgg-letter-rogers.pdf>, viewed 12/23/15

- 2) Millhiser, Jan, "Corporate Law Firms Give Torture Judge Jay Bybee Over \$3 Million in Free Legal Services", *ThinkProgress.org*, <http://thinkprogress.org/justice/2011/10/24/351671/corporate-law-firms-give-torture-judge-jay-bybee-over-3-million-in-free-legal-services/>, viewed 02/10/16