

## **Gill v. Dep't of the Treasury Fact Sheet**

On February 19, 2013, on behalf of former congressional candidate Dr. David Gill and his campaign committee, CREW sued the IRS, challenging an IRS regulation granting tax-exempt status to organizations “primarily engaged” in promoting social welfare, even though the Tax Code requires such groups to be “operated exclusively” for social welfare purposes.

During the 2012 election cycle, § 501(c)(4) groups relied on the loophole the IRS regulation creates to pour nearly \$255 million of anonymous money into the elections. Dr. Gill in particular was targeted by the American Action Network (AAN), which spent nearly \$1.5 million to defeat his candidacy, primarily by producing advertisements that falsely accused Dr. Gill, a respected physician, of opposing Medicare. He subsequently learned the ads were funded in part by Aetna and PhRMA, most likely because Dr. Gill supports a single-payer national health care plan, which they both oppose.

On April 22, 2013, the IRS filed a motion to dismiss the lawsuit, claiming neither Dr. Gill nor CREW have standing to maintain the lawsuit. The IRS argued any harm plaintiffs suffered was caused by AAN, not the IRS, and that the lawsuit is an attempted end-run around the IRS' enforcement scheme.

Today, CREW filed a response, arguing the harm is caused by the IRS regulation, which conflicts with the Tax Code by permitting § 501(c)(4) groups to engage in political activities and still qualify for tax-exempt status, meaning they do not have to disclose their donors. As a result, Dr. Gill and other candidates have been subjected to an illegally structured campaign environment that was fundamentally altered by the IRS regulation, in a way prohibited by the Tax Code. This constitutes sufficient harm to support their standing to sue.

The problems created by the unlawful IRS regulation have been highlighted by the recent scandal involving the IRS' investigation of § 501(c)(4) organizations. While selective enforcement is inexcusable, the Inspector General found agency employees were not provided with clear criteria to determine whether applicants are involved in an acceptable level of political activity. The IRS has been aware of the problems with its regulation for over 50 years, but has failed to act.

If CREW's lawsuit is successful, the court may invalidate the regulation, once again requiring 501(c)(4) organizations to act exclusively to promote the social welfare, prohibiting them from engaging in political activities.

The IRS will have the opportunity to file a reply brief, due on May 28th.

Argument in the case is set for 3:00 pm on June 25<sup>th</sup> before the Honorable Judge Robert Wilkins in the United States District Court for the District of Columbia.