



PREPARED WRITTEN STATEMENT

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**United States House of Representatives Committee on Ways and Means**

May 17, 2013

**The Internal Revenue Service Targets Conservative Groups**

Chairman Camp and Ranking Member Levin, on behalf of the American Center for Law & Justice (“ACLJ”) and the twenty-seven conservative organizations in seventeen states we have represented, I want to thank you for allowing me to provide the Committee with testimony regarding the Internal Revenue Service (“IRS”) and their admitted practice of targeting applicants for tax-exempt status based on their political leanings.

Please allow me to thank you and your staff for all your efforts to advance the cause of liberty and the constitutional rights of all Americans to free speech, the freedom of assembly, and the freedom of association – three freedoms the IRS disregarded as it systematically targeted conservative groups for inappropriate and unconstitutionally intrusive scrutiny.

My prepared remarks today will focus on three major issues concerning the IRS’s complex and elaborate nationwide scheme to target hundreds of Tea Party and conservative organizations, including the twenty-seven clients whom we represent.

First, the admitted IRS abuse was widespread. Contrary to early IRS statements, the abuse was not limited to low-level employees in one field office in Cincinnati, Ohio. For example, at the ACLJ we dealt with IRS officials in Laguna Niguel, California, El Monte, California, Cincinnati, Ohio, and Washington, D.C.

Second, the constitutional violations implicated in these cases are serious. Our clients were not merely targeted because of their viewpoint; the IRS’s actual questions to our clients were overbroad and unconstitutionally intrusive.

Finally – and critically – the abuse is ongoing. Despite a bipartisan outcry and despite the growing calls for congressional hearings and investigations, the admitted abuse of our clients continues. Ten of our clients still have not been granted the exemptions they are due, and one even received a follow-up questionnaire as recently as this week.

### **Conservative Groups Applied for Tax Exemptions**

Prior to the 2010 mid-term election, the so-called Tea Party movement arose in the United States. The “Tea Party” is a conservative grassroots movement of American citizens who, among other activities, organized local groups to educate the public about their rights and responsibilities as citizens of the United States and about various issues of public concern.

The phrase “Tea Party” is susceptible to many definitions. It is often used in shorthand manner to describe the grassroots movement itself, but – in the case of many of our clients – it was also the name of specific organizations formed to advance the social welfare of their communities, often through local community education programs – with emphasis on constitutional education.

As the Tea Party movement grew, an increasing number of related and sympathetic organizations sought to obtain either 501(c)(3) or 501(c)(4) tax-exempt status from the IRS. Many of these organizations waited more than a year for a response from the IRS after their initial request for tax-exemption. When the IRS finally did respond, all of the organizations received lengthy requests for additional information. All of these requests were overbroad and unconstitutionally intrusive. After receiving these inquiries, our clients retained the American Center for Law and Justice as their legal counsel.

### **The IRS Admitted Wrongdoing**

In March 2012, immediately after commencing this representation, we sent a letter to Congressman Darrell Issa, Chairman of the House Oversight and Government Reform Committee, regarding these IRS Information Requests to Tea Party and Related Conservative Organizations. In addition, we also sent a letter directly to each of the IRS agents that contacted our clients, putting them on notice that a number of their questions went well beyond constitutional bounds.

In response to early congressional inquiries, the IRS adamantly denied any wrongdoing. As we now know, the IRS maintained its denials even as agents across the country worked diligently to target conservative groups and meeting after meeting was held internally at the IRS to refine and perfect that targeting.

Finally, on May 10, 2013, the IRS – through Lois Lerner – admitted that it had in fact targeted groups with the words “Tea Party” and “Patriot” in their applications. On May 14, 2013, the Treasury Inspector General for Tax Administration released a comprehensive report detailing the staggering extent of IRS wrongdoing.

The ACLJ has long supported congressional oversight of IRS treatment of conservative organizations, and our clients’ concerns were thoroughly vindicated by the IRS’s admissions of wrongdoing. Thorough investigations are needed to discover all the relevant facts and to hold responsible officials accountable. We also welcome the Department of Justice’s newly opened criminal investigation into this matter. However, we continue to believe that an independent investigator is necessary to fully resolve the matter.

The IRS's admission and the Inspector General's report are merely a start to a process, a process that must fully grapple with the reality of our clients' ongoing ordeal.

### **The IRS Understated its Wrongdoing**

Prior to its most recent admissions, the IRS denied that its agents were targeting Tea Party groups, and many on the Left have ridiculed Tea Party groups' claims, passing off the IRS inquiries as "standard" and "much ado about nothing." For example, in an influential editorial, the *New York Times* claimed that the IRS was merely doing its job.

An apology is not enough to atone for the IRS's misconduct. Where is the compensation for thousands of hours spent by Tea Party groups compiling tens of thousands of pages of documents? Why are numerous Tea Party groups still embroiled in an admittedly inappropriate, targeted inquiry process, with their tax-exempt status remaining in limbo?

Yet the unconstitutional targeting is compounded and magnified by unconstitutionally intrusive demands for additional information, demands that violate our clients' First Amendment rights. These information demands followed these organization's requests for 501(c)(3) or 501(c)(4) status and included questions like the following:

Do you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and contents of other forms of communications.

Please describe the associate group members and their role with your organization in further detail. (a) How does your organization solicit members? (b) What are the questions asked of potential members? (c) What are the selection criteria for approval? (d) Do you limit membership to other organizations exempt under 501(c)(4) of the Code? (e) Provide the name, employer identification number, and address of the organizations.

Do you have a close relationship with any candidate for public office or political party? If so describe fully the nature of that relationship.

List each past or present board member, officer, key employee and members of their families who:

- a) Has served on the board of another organization.
- b) Was, is or plans to be a candidate for public office. Indicate the nature of each candidacy.
- c) Has previously conducted similar activities for another entity.
- d) Has previously submitted an application for tax exempt status.

In addition to the problematic substance of many questions, they were often extraordinarily broad, presenting small organizations with document production demands that would challenge even much larger corporations – for no other reason than their ideological affiliation.

Each of these questions -- in their content, breadth, and vagueness -- implicated the free speech and associational rights of the affected Tea Party and conservative groups.

Critically, these onerous demands were not in response to complaints of wrongdoing but instead in response to applications for exemption. In other words, the IRS conditioned the grant of exemptions on the extensive violation of the Tea Party's fundamental First Amendment freedoms.

As was apparent to us after our initial review of case files, the IRS was using the routine process of seeking and granting tax exemptions to undertake a sweeping, top-down review of the internal workings of the Tea Party movement in the United States – and they did so in the midst of one of the most significant Presidential elections in our history.

**1. IRS abuse that was directed at Tea Party and conservative groups was not limited to one field office.**

In issuing its so-called apology for intentionally targeting conservative groups for onerous and unconstitutional inquiries, the IRS claimed the targeting was limited to “low-level” IRS agents in a single office in Cincinnati.

This is patently false. The ACLJ represented twenty-seven of these targeted conservative groups. Our targeted clients have received inquiry demand letters from numerous IRS offices from coast to coast. However, even if the targeted misconduct was limited to Cincinnati, that would not mitigate IRS responsibility. The Cincinnati office is in fact responsible for much of the processing for tax exempt status, and the agents involved are tax exemption specialists.

We have released to the public, members of the media, and this Committee multiple letters from not only the Cincinnati IRS office, but also two IRS offices in California, and the main IRS headquarters in Washington, DC. These letters include targeted inquiries received in 2012, well after senior IRS officials were aware of the inappropriate targeting.

For example, the Albuquerque Tea Party, which applied for tax-exempt status in 2010, received an intrusive questionnaire from an IRS agent in Washington, D.C. Just last month, this same group received a communication from an IRS attorney in Washington, D.C., declining to inform the group about her recommendation on the group's pending status and declining to give a time estimate for a decision.

I served as a trial lawyer with the Office of the Chief Counsel for the IRS earlier in my career, and it is clear to me – based on my experience – that this targeting occurred on a very broad scale. This intimidation strategy required the approval of IRS superiors, and it was not just confined to a small office in Ohio. Furthermore, we have the documentation proving this assertion is completely false.

This is an abhorrent breach of the public trust, and there are now reports that the IRS targeted pro-Israel Jewish organizations as well. IRS officials at all levels must be held accountable for

their dishonest and disgraceful conduct. The targeting scheme employed by the IRS not only violates the IRS's own rules and regulations, but it is also certain to result in a growing and justifiable mistrust of the IRS by the American people. The resignation of the IRS's acting commissioner is the beginning, not the end, of accountability and provides no real answers to the questions the American people are asking.

## **2. The constitutional violations implicated in these cases were severe.**

The constitutional violations implicated in these cases are serious - not just the targeting of the groups themselves - but (as stated above) the IRS's document demands and other questions are unconstitutionally intrusive.

In our initial communications with the IRS last spring, we noted that some of IRS's requests for more information from our clients appeared to fall well outside the scope of legitimate IRS inquiry and thus, violated the First Amendment rights of our clients. We referred IRS agents to *NAACP v. Alabama*, 357 U.S. 449 (1958).

At issue in *NAACP v. Alabama* was whether Alabama, consistent with the Due Process Clause of the Fourteenth Amendment, could have compelled the NAACP of Alabama to reveal to the State's Attorney General the "names and addresses of all its Alabama members and agents, without regard to their positions or functions in the Association." 357 U.S. at 451.

Their attempt to obtain membership information was rejected by a unanimous Supreme Court. The Court held that it was "apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." *Id.* at 462-463.

Similarly, the IRS is making the same unconstitutional attempt here. Many of the questions presented in the letters sent to our clients from the IRS were requests for the same type of information that was requested by the state of Alabama in *NAACP v. Alabama*.

Furthermore, these requests went well beyond anything ever at issue in *NAACP v. Alabama*. The IRS, in one letter, actually demanded from one of our clients the personal resumes of each and every member of their board of directors.

The Court in *NAACP v. Alabama* understood that "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." 357 U.S. at 460. The Court further recognized this "close nexus between the freedoms of speech and assembly" and stated that "it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.* at 460-461. Therefore, the Court held the following:

[I]mmunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment. And we conclude that Alabama has fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have.

*Id.* at 466 (citations omitted).

### **3. The admitted abuse of our clients is ongoing.**

Finally, despite the public outcry from both sides of the aisle last week and despite the growing calls for congressional hearings and investigations, the admitted abuse of our clients is still ongoing.

Ten of the groups we represent have still not been approved, and the majority of those groups have been waiting for more than two years for approval determinations.

The IRS recently claimed that it abandoned the probes, but this claim is false. This week, we released a letter that arrived just last month, from a “tax law specialist” in the IRS’s D.C. headquarters. This week we also received another request for additional information from a client called Linchpins for Liberty in Nashville, TN.

Aside from the continued targeting contained in these letters, the letter sent to the Albuquerque Tea Party is noteworthy for a number of other reasons. First, the secrecy of the deliberations is troubling. The tax law specialist indicated in the letter that she had a recommendation, but would not say what it was – stating that it’s not “policy” to do so. Second, the IRS stated in the letter that it would not give any timetable for a decision, leaving the group in limbo – in this case since December of 2009. In fact, the group submitted another one of its responses to the IRS’s voluminous document requests more than a year ago, in January 2012, and this was the first IRS response in over fourteen months since the group’s last communication.

The recently released Inspector General report further confirms the IRS’s admittedly inappropriate targeting of conservative groups is ongoing. The report confirmed that during the entire period investigated, “May 2010 through May 2012,” “all cases with Tea Party, Patriots, or 9/12 in their names were” targeted by the IRS for “unnecessary, burdensome” inquiry. Even more disturbing, the IG report concludes that despite the IRS’s claims that it has stopped inappropriately targeting conservative groups, “we do not consider the concerns in this report to be resolved.”

### **The IRS Violated its Mission**

“The mission of the Internal Revenue Service is to apply the tax law *with integrity and fairness.*”<sup>1</sup> Federal employees (including IRS employees) “*shall act impartially* and not give preferential treatment to any private organization or individual.”<sup>2</sup> Further, IRS “[e]mployees shall not engage in . . . dishonest, or notoriously disgraceful conduct . . . prejudicial to the Government.”<sup>3</sup> IRS agents violated each of the foregoing requirements. First, by singling out Tea Party and related groups for special scrutiny based on their political views, IRS agents violated the IRS mission to operate with integrity and fairness. Second, by singling out Tea Party and related groups for special scrutiny based on their political views, IRS agents violated the requirement to act impartially. And third, by singling out Tea Party and related groups for special scrutiny based on their political views, IRS agents engaged in dishonest, notoriously disgraceful conduct. The same can be said of IRS leaders who knew of, but failed to rein in, such biased, politically-motivated conduct, thereby allowing the politicization of the IRS.

Each of these actions was prejudicial to the Government and impacted negatively on the reputation of the IRS. It is no wonder that, in light of this open and notorious politicization of the IRS, many Americans view with outright alarm the called-for expansion of the IRS to implement the Affordable Care Act (“ObamaCare”). The IRS must be scrupulously neutral and apolitical to retain the confidence and trust of the American people. It has failed miserably.

### **Conclusion – The IRS Must Answer Key Questions**

In the last week alone, the ACLJ has heard from more than 50,000 Americans who rightfully demand accountability. House Oversight and Government Reform Committee Chairman Darrell Issa called the IRS actions “unconscionable.” And in the Senate, Minority Leader Mitch McConnell wants to investigate what he called the “thuggish” practices used by the IRS.

The IRS’s recent admission was a significant victory for free speech and free association of all Americans. The truth of this ongoing scandal has finally been revealed after years of cover-ups, lies, and attempts to distract Americans and our congressional representatives from the truth of what we now know was happening behind closed doors. This hearing is a vital first step as we learn what happened, hold responsible officials accountable, and take steps to ensure this abuse will never be repeated.

As the congressional and criminal investigations move forward, the IRS must answer the following questions:

- Who authorized the admittedly inappropriate targeting of conservative groups as well as the overly burdensome and unconstitutional information requests demanded of them?

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<sup>1</sup>IRS *Internal Revenue Manual 39.1.1.1*, IRS (last visited May 13, 2013), [http://www.irs.gov/irm/part39/irm\\_39-001-001.html](http://www.irs.gov/irm/part39/irm_39-001-001.html) (emphasis added).

<sup>2</sup>5 C.F.R. § 2635.101(8) (emphasis added).

<sup>3</sup>31 C.F.R § 0.213.

- Were any meetings held with IRS agents responsible for overseeing the tax-exempt applications of Tea Party and similar groups to discuss how to deal with such groups? If so, how many such meetings were held, who chaired such meetings, what guidance was given, and what are the names of the IRS agents who were required to attend?
- Who chose the terms “Tea Party,” “Patriots,” “9/12,” and similar terms as a trigger to identify groups for special scrutiny? Who approved the use of these terms to trigger that scrutiny?
- Why did the IRS take no action for more than two years on many of these applications? Is there any evidence that the election cycle was a motivating factor?
- Why did the IRS ask for names of members? Was the IRS aware that the Supreme Court case *NAACP v. Alabama* protected organizations from these types of disclosures? Did anyone in the IRS even raise constitutional concerns?
- Why did the IRS ask for the complete list of donors for these organizations?
- Why did the IRS on occasion request the resumes for each organization’s board members? Was there a plan to target not only these groups, but also their individual members?
- To what extent were White House officials, Obama for America officials, or other Administration officials directly or indirectly involved in initiating, advising, or suggesting the targeting of these groups?
- After senior IRS officials learned about the inappropriate targeting in mid-2011 (at the latest), why were intrusive inquiry letters still sent by the IRS to these targeted groups, according to the Inspector General’s report, for the first time in January 2012?
- Why has the IRS still failed to grant appropriate exemptions even after its public apology?
- Were any “liberal” or “progressive” groups targeted using similar means? If not, why not?
- Did Obama for America, when transitioning from a political campaign to a 501(c)(4) this past year ever receive questions similar to those received by the targeted conservative organizations? Did it have to submit its donor lists, copies of its social media accounts, resumes of its board members, copies of all direct and indirect communications with elected officials, or state its relationships to those holding public office? If not, why not?



The IRS, as well as this Administration, needs to understand that all Americans are now aware of this unconstitutional targeting of American's First Amendment rights and demand that it cease immediately.

Once again, we thank this Committee for putting a spotlight on the IRS and its unlawful actions. Only transparency and accountability to the Congress and the American public will root out corruption in the IRS.

The American Center for Law and Justice has represented the following clients in this matter:

- Colorado 9/12 Project
- 4 Corners Liberty Restoration Group
- San Antonio Tea Party, Inc.
- Wetumpka Tea Party, Inc.
- OKC PIA Association
- Richmond Tea Party
- Protecting American Values, Inc.
- Hawaii Tea Party
- Shelby County Liberty Group
- Manassas Tea Party
- First Coast Tea Party, Inc.
- Ohio Liberty Coalition
- The Honolulu Tea Party
- Waco Tea Party
- Kentucky 9/12 Project, Inc.
- Albuquerque Tea Party, Inc.
- Allen Area Patriots
- Greater Phoenix Tea Party Patriots
- Greenwich Tea Party Patriots of South Jersey, LLC
- Laurens Co. Tea Party
- Linchpins of Liberty
- Myrtle Beach Tea Party, Inc.
- North East Tarrant Tea Party, Inc.
- Patriots Educating Concerned Americans Now (PECAN)
- Unite In Action, Inc.
- San Fernando Valley Patriots, Inc.
- Tri-Cities Tea Party