



May 13, 2013

**VIA FACSIMILE (202.622.5756) &
OVERNIGHT DELIVERY SERVICE**

The Honorable Steven T. Miller
Acting Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Demand for Expeditious Approval of Outstanding Tea Party and Similar Groups' 501(c)(3) and 501(c)(4) Applications and for Disciplining IRS Employees Who Politicized the IRS Approval Process

Dear Commissioner Miller:

By way of introduction, the American Center for Law and Justice (ACLJ) is a non-profit organization dedicated to defending constitutional liberties secured by law. ACLJ attorneys have successfully argued numerous free speech and religious freedom cases before the Supreme Court of the United States. *See, e.g., Pleasant Grove City v. Summum*, 129 S. Ct. 1125 (2009) (unanimously holding that the Free Speech Clause does not require the government to accept other monuments merely because it has a Ten Commandments monument on its property); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church access to public school premises to show a film series on parenting violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding by an 8-1 vote that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause). Further, ACLJ Chief Counsel, Dr. Jay Alan Sekulow, formerly served as an attorney in the Office of the Chief Counsel of the Internal Revenue Service.

FACTS

Prior to the 2010 mid-term election, the so-called Tea Party movement arose in the United States. The Tea Party movement was a grass-roots movement of American citizens who 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.

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As the Tea Party movement grew, more and more Tea Party and related groups sought to obtain either 501(c)(3) or 501(c)(4) tax exempt status from the IRS. Many of these organizations spent months or years waiting 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.

The initial impression of these groups was that they were being treated differently than other groups solely because of their conservative beliefs. In the past few days, that belief has been resoundingly confirmed by the IRS itself. On May 10, 2013, Lois Lerner, Director of the division that oversees tax-exempt groups, stated that, contrary to IRS rules and regulations, IRS agents had indeed singled out Tea Party groups for detrimental treatment, and she publicly apologized for such actions.¹ She also stated that senior IRS leaders had been unaware of such scrutiny until recently.² The truth of the latter statement was placed into question only one day later when it was reported in the news that the pending IRS Inspector General report indicates that senior IRS leaders had known of the targeting of Tea Party applicants as early as June, 2011, yet they nonetheless continued to permit invasive questioning.³ Hence, senior IRS officials knew that Tea Party groups were being targeted before then-IRS Commissioner Douglas Shulman testified before Congress on January 26, 2012,⁴ that no such targeting of Tea Party groups was occurring.

Because of their belief (since confirmed by the IRS itself) that Tea Party and other conservative groups were being singled out by IRS agents for special detriment, 27 groups which had applied to the IRS to obtain either 501(c)(3) or 501(c)(4) status for their respective organizations retained the ACLJ to represent them. These groups contacted the ACLJ after their initial submissions were answered by IRS agents with requests for extensive and often unlawfully broad and burdensome additional information. Some of the requests for additional information sought information that no governmental agency has the right to request (such as a request to provide an organization's membership and donor lists). Others asked for information unbounded by page or time limits (such as a request to provide photocopies of all pages from an organization's website and social media accounts, a request that could run into hundreds, even thousands, of pages). Still others asked questions that were so poorly articulated that no reasonable responder could know with assurance how to respond (such as a request to report the number of times the organization "indirectly" contacted certain public figures). Most of these requests for additional information were sent by the IRS over 15 months after the initial data had been sent to the IRS. Two of our clients had to wait over two

¹*IRS Commissioner Told Congress in March 2012 Agency Was Not Targeting Groups Based on Political Views*, CBS D.C. (May 10, 2013), <http://washington.cbslocal.com/2013/05/10/irs-commissioner-told-congress-in-march-2012-agency-was-not-targeting-groups-based-on-political-views/>.

²*Id.*

³Jonathan Weismann & Matthew L. Wald, *I.R.S. Focus on Conservatives Gives G.O.P. an Issue to Seize On*, N.Y. TIMES (May 12, 2013), <http://wap.nytimes.com/2013/05/13/us/politics/republicans-call-for-irs-inquiry-after-disclosure.html?from=us.politics>.

⁴*The Findings: A Timeline*, WASH. POST (May 12, 2013), http://www.washingtonpost.com/politics/the-findings-a-timeline/2013/05/12/9d140ff2-bb6b-11e2-97d4-a479289a31f9_graphic.html.

years for an IRS response. As such, it appeared that the IRS had done little or nothing with the requests for an extensive period of time. Further, not only were the requests for additional information tardy, they were often unduly burdensome, and the IRS agents involved most often set the due dates for two weeks hence, which was wholly unrealistic given the amount of information the respective IRS agent was requesting (and in light of the extensive time it had taken the IRS to draft and send the additional questions). On at least one occasion, as the ACLJ was assisting our client in answering the IRS questions, we received another letter from the IRS informing us that the previous list of questions had been withdrawn and that another list would be forthcoming. As such, a great deal of time was wasted in answering questions that the IRS admitted were, in effect, unnecessary. Finally, at least two of our clients became so discouraged by the IRS treatment that they withdrew their applications completely.

APPLICABLE LAW & REGULATIONS

“The mission of the Internal Revenue Service is to apply the tax law *with integrity and fairness*.”⁵ Federal employees (including IRS employees) “*shall act impartially* and not give preferential treatment to any private organization or individual.”⁶ Further, IRS “[e]mployees shall not engage in . . . dishonest, or notoriously disgraceful conduct . . . prejudicial to the Government.”⁷ 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 such action was prejudicial to the Government and impacted negatively on the reputation of the IRS. It is no wonder that, in light of the open and notorious politicization of the IRS vis-à-vis Tea Party and other conservative groups, many Americans view with outright alarm the called-for expansion of the IRS to implement the Affordable Care Act (“Obamacare”). Agencies like the IRS must be scrupulously apolitical to retain the confidence and trust of the American people. With respect to its treatment of Tea Party and other conservative groups, the IRS failed miserably. The growing mistrust of the IRS is the inevitable (and totally understandable) result of its unwise actions.

DEMANDS

In light of the fact that the IRS has publicly admitted that IRS agents, in violation of the IRS’ own rules and regulations, targeted Tea Party and other conservative groups for detrimental treatment in their applications for 501(c)(3) and 501(c)(4) tax exempt status, the ACLJ demands the following:

⁵ *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 (emphasis added).

⁶ 5 C.F.R. § 2635.101(8) (emphasis added).

⁷ 31 C.F.R. § 0.213.

- (1) That the IRS approve immediately, and without further delay, the pending requests for either 501(c)(3) or 501(c)(4) tax exempt status of the following organizations: Albuquerque Tea Party, Allen Area Patriots, Greater Phoenix Tea Party Patriots, Greenwich Tea Party Patriots, Laurens County Tea Party, Linchpins of Liberty, Myrtle Beach Tea Party, North East Tarrant Tea Party, Patriots Educating Concerned Americans Now (PECAN), and Unite in Action; and
- (2) That the IRS identify and appropriately discipline all IRS employees who either concocted, knowingly carried out, knowingly failed to stop, or knowingly misinformed Congress or the public about, the scheme to target Tea Party and similar groups in violation of IRS rules and regulations, thereby unlawfully politicizing the IRS and its approval process.

Please contact Robert W. Ash by 12 o'clock noon on Friday, May 17, 2013, to inform him of your decision regarding the above demands. If we do not hear from you or your designated representative by that time or if you reject the demands, we will advise our clients of their legal rights vis-à-vis the IRS' improper targeting of their organizations, including their right to sue for the redress of their grievances.

Mr. Ash can be contacted at the following: 757-676-2005 (cell phone); rash@aclj.org (email); or American Center for Law and Justice, 1000 Regent University Drive, Virginia Beach, Virginia 23464.

We look forward to hearing from you in the near future in this regard.

Respectfully yours,



Jay Alan Sekulow
Chief Counsel



Robert W. Ash
Senior Counsel

cc: The Honorable Jacob J. Lew, Secretary of the Treasury
Mr. William J. Wilkins, IRS Chief Counsel
Mr. Joseph H. Grant, Acting Commissioner, IRS Tax Exempt &
Government Entities Division