

**Joseph R. Metzger – Leadership Institute Vice President of Finance
Testimony to Committee on Ways and Means Subcommittee on Oversight
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The Leadership Institute is a 501c3 non-partisan, non-profit organization founded in 1979 by Morton Blackwell. The mission of the Institute is to increase the number and effectiveness of conservative activists and leaders in the public policy process.

This is accomplished primarily through three programs:

1. Political technology training, which provides schools and workshops teaching people how to become more effective in the public policy process. This includes things such as how to manage a grassroots-oriented campaign, succeed in broadcast media, run successfully for public office, or start independent conservative student publications.
2. A Campus Leadership Program, which helps conservative students learn how to organize independent student groups and succeed in student government.
3. CampusReform.org, a news site exposing bias and abuse on the nation's college campuses.

In June 2011, the Institute received notice from the IRS that it was being audited for tax year 2008.

According to the IRS agent in charge, the audit was triggered by a referral. That is to say, a complaint by someone outside of the IRS that the Leadership Institute was engaged in improper partisan or electioneering activity. Among other things, she wished to investigate whether the Institute's use of the word "conservative," which is philosophy free of partisanship, really meant "Republican," which is partisanship free of philosophy.

The distinction is significant.

While a 501c3 non-profit organization is welcome to have a specific philosophy it prefers, it may not engage in activities for the benefit of any party, nor may it engage in any kind of electioneering activity.

An adverse ruling from the IRS on this topic generally results in loss of tax status. For a non-profit organization, this destroys any possibility of future funding from foundations, and it significantly discourages donations from individuals who would no longer enjoy tax deductibility of their contributions.

Loss of tax status would shrink and fundamentally alter an organization; in many ways, that is equivalent to a death sentence.

The Leadership Institute was not concerned about the possibility of an adverse audit ruling by the IRS.

Institute president Morton Blackwell set a policy many years ago that there should never be a hint of impropriety where non-profit rules are concerned. Staff are forbidden to engage in any kind of partisan activities, except on their own time, and may not use any Institute resources for such activities, including even e-mail, telephones, or a postage stamp.

All schools and training programs are conducted with an open-admissions policy; anyone who wishes to sign up for training may do so, and there are no admission boards or other barriers standing in the way of this policy.

But even knowing that everything was done properly, an investigation under penalty of death is terrifying. The agent in charge of the audit asked many questions and requested many documents. For each question or document request, the Institute had to spend time writing answers and producing documents.

On such a serious matter with such dire consequences, one wouldn't wish for imprecise language or an incomplete answer to mislead the IRS into drawing an erroneous conclusion. Thus, every answer and every document had to go through research and review by the Institute's attorneys.

No amount of staff time and no amount of legal expense is unjustified in trying to get through the audit process unscathed. So, of course, the cost of complying with the audit grows with each request.

In the end, the numerous requests from the IRS resulted in the production of over 23,000 pages of documents. The direct expense involved in this was nearly \$50,000, primarily for legal fees.

That's 1,000 donors, who gave \$50 each who had their money thrown down a rat hole with nothing to show for it. That's \$50,000 taken away from actual, programmatic activities, and it could easily have been much worse.

The IRS agent running the audit was very professional and communicated intelligently. She made it clear numerous times that every document she saw was consistent with the Institute's IRS-approved charitable mission and the law.

Her supervisor and the IRS counsel involved in the audit, on the other hand, put pressure on her to issue additional document requests and questions even after she determined there was nothing amiss. As I mentioned, every question and every document request required very time consuming and expensive answers, and the longer the audit continued, the higher the cost would run.

Fortunately for the Institute, the agent stood her ground on the position that more questions would not alter the outcome of the audit, and she closed the case despite the pressure she was under from above.

I know this both from the conversations the agent had with the Institute's attorneys, and also from the case chronology the IRS produced in response to a Freedom of Information Act request filed by Judicial Watch on behalf of the Institute.

Were it not for the agent's efforts standing up to pressure, the direct cost of this audit could have been dramatically higher. I have no doubt other groups have suffered far more on this front than did the Leadership Institute.

Then there's the indirect cost. Hundreds of staff hours were dedicated to responding to the IRS' inquiries. Perhaps more. Those are staff hours that required salaries to be paid without generating a single one of the programmatic benefits the Institute's donors expected to see.

Certainly I can't point to anything as dramatic as food pulled from the mouths of starving children to feed a ravenous legal beast; the Leadership Institute isn't that kind of charity. But we'll never know what other programs or productive activities could have been undertaken with the time that was forever squandered.

Finally, there's the most insidious cost: The cost of sheer terror.

Unlike an IRS audit of a regular taxpayer, where the lines are fairly clear about what constitutes taxable income and what the mathematical rules are that result in a given tax liability, the audit of a non-profit organization is an audit of free speech restrictions. And whereas the potential penalty in a taxable audit is additional taxes or fines, the potential penalty in a non-profit audit is total destruction of the organization.

I understand that, in exchange for favorable tax status, a non-profit organization agrees to waive certain rights related to electioneering and partisan activity. I understand also that the only way to measure compliance with those requirements is to look at what was said and written.

But that doesn't change the fact that the audit looked at what people said and wrote during that period. A free-speech audit, even if justified, runs counter to the instincts of anyone who values American liberty.

Wondering whether or not you said something you weren't supposed to is pretty scary, especially when the consequence of an error of speech is the potential death of the organization.

And much the same way that you'll drive more slowly when a police car is behind you, the employees of an organization under an IRS audit are going to be *very* cautious about what they say and do in the future.

There could be many legally permissible activities conducted by a non-profit organization that it won't do for fear that the IRS will start asking more questions about why those activities

are legally permissible. The very act of asking questions and requesting research and documentation exerts an enormous financial burden on an organization, even if the eventual outcome is favorable. If the outcome is unfavorable, the consequences can be disastrous.

Often, an organization will find it preferable just to play it safe and scale back the scope of its operations rather than risk additional and costly IRS inquiries.

After enduring this audit for 13 months and living under a cloud of expense and uncertainty, the Leadership Institute received a “no change” letter closing out the audit. Essentially, that letter said, “thanks, everything’s fine.”

But everything wasn’t fine. We lost time, money, and potential programs as a result of the audit. If this kind of dramatic loss were from a penalty related to a parking ticket, the Institute would have had the right to challenge the parking ticket in court and potentially avoid the penalty.

In the case of an audit, though, once you’re audited, you’ve already lost. There is no opportunity to challenge the loss foisted upon you. When the audit is triggered by a referral from some outside person or organization, there’s not even an opportunity to challenge your accuser. You lose.

Certainly there are times when audits are appropriate. But an audit is so damaging even with a favorable outcome that the IRS must be absolutely beyond reproach when it comes to selecting audit targets. The process it uses must be judicious and impartial. Any hint of abuse with that destructive tool undermines the credibility necessary for the IRS to administer successfully a tax system involving voluntary compliance.

In the Leadership Institute’s case, there were certainly many hints that this audit was not instigated through a judicious and impartial process free of political taint.

- The timeline of the Institute’s audit coincided very closely with the timeline related to IRS abuse of the tax-approval process for new non-profit organizations. It’s certainly plausible that political abuse at the IRS wasn’t confined to just that one division.
- In January 2012, the Hawaii Tea Party, as part of its application for non-profit tax status, was directly asked about its relationship with the Leadership Institute. That certainly makes it plausible that the people reviewing the tax-status applications were communicating with the audit people.
- The agent running the audit investigated, as one of her main areas, whether the Institute’s use of the word “conservative” really meant “Republican.” That certainly makes it plausible that political targeting was involved.
- The agent in charge was pressured from her superiors to send additional questions and document requests, which would have driven up compliance costs without altering the eventual outcome of the audit. It’s certainly plausible audit tactics were dictated from

somewhere higher up at the IRS.

- At least five other conservative organizations, including the Billy Graham Evangelistic Association, the Clare Boothe Luce Policy Institute, the Family Research Council, Samaritan's Purse, and David Horowitz's Freedom Center were audited around the same time. Institute president Morton Blackwell tells me he knows of other organizations also audited in the same period, but who wished to suffer in silence lest they risk alienating their donors. It's certainly plausible this was part of a pattern of abuse in the audit-selection process.

It's impossible for me to know for sure whether or not anyone at the IRS launched politically-motivated audits for the purpose of damaging and cowing out-of-favor organizations. My government-oversight powers are very limited.

But I do know this is a possibility that must be investigated if the IRS is to have any credibility in the future. I know that the damage done by an audit is so severe that adequate controls must be put in place to prevent even the potential for this kind of abuse in the future. And if the audit-selection process was abused for political purposes, someone must be fined, fired, or jailed. Anything short of that would be a miscarriage of justice.