

SENATE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON OVERSIGHT, AGENCY ACTION, FEDERAL RIGHTS
AND FEDERAL COURTS**

*“REVISITING IRS TARGETING:
PROGRESS OF AGENCY REFORMS & CONGRESSIONAL OPTIONS”*

TESTIMONY OF CLETA MITCHELL, ESQ.
JULY 29, 2015

Mr. Chairman, Ranking Member and Members of the Subcommittee:

Thank you for conducting this hearing and thank you for inviting me to testify about the unconstitutional and illegal viewpoint discrimination and harassment by the IRS to which hundreds of grassroots citizens organizations, as well as individuals who lead or donate to conservative organizations or who speak out publicly to criticize the IRS or the Obama administration were and continue to be subjected.

You are asking the right questions, Mr. Chairman:

1. Has the IRS broken any laws?
2. What should Congress do about it?

The answer to the first question is: *yes. Laws have been and continue to be broken by the IRS, its leaders and employees.*

Let me give some examples:

- **IRS officials lie to Congress.** There is no doubt that high-ranking IRS officials have lied to Congress, starting at least as early as 2011 and continuing to this very day. Former Commissioner Douglas Shulman, Acting Commissioner Steven Miller, Exempt Organizations Director Lois Lerner and now IRS Commissioner Koskinen -- each have made false statements to Congress during meetings with Members and staff, in communications before and after such meetings and in testimony before congressional committees. Lying to Congress is perjury and a felony under the federal criminal code: 18 U.S.C. §1001 and 18 U.S.C. §1621.
- **IRS officials have violated the provisions of federal law that prohibit disclosure of confidential taxpayer information, 26 U.S.C. §6103 of the Internal Revenue Code ("IRC").** Despite the fact that federal law prohibits the disclosure of confidential taxpayer information to any person not specifically authorized by law to receive it, we know of multiple instances in which the IRS and its officials and employees did that very thing:

- The IRS released the confidential donor information of several conservative organizations, including the National Organization for Marriage, the Texas Public Policy Institute, and others.
 - The IRS released the confidential taxpayer information of Koch Industries - which was discussed publicly with reporters by White House Economic Advisor, Austen Goolsbee in September 2010 . . . yet the IRS has refused to provide to Koch Industries information as to how and who and why that confidential taxpayer information was shared with the White House.
 - Lois Lerner and other IRS officials transmitted the confidential taxpayer information of more than 12,000 grassroots organizations to the Department of Justice and the FBI in order to try to develop criminal prosecutions of citizens groups for exercising their First Amendment rights. The 1.1 million page database was transmitted in October 2010 . . . one month before the mid-term elections of 2010.
- **The IRS has subjected organizations and individuals who criticize the agency, the Obama Administration, or donate to Obama opponents to IRS audits, a violation of the First Amendment to the United States Constitution and the IRS's own 'mission statement' which promises that it will "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." See IRS Mission Statement <http://www.irs.gov/uac/The-Agency,-its-Mission-and-Statutory-Authority>.**

Since I became publicly identified as a champion of the tea party groups whose applications for exempt status were quarantined and subjected to extraordinary scrutiny because of their political beliefs, I have received from individuals across the country countless stories of how they were personally audited by the IRS after donating to conservative groups, to the 2012 Romney campaign, or appeared at tea party rallies opposing Obamacare, or appeared in news reports challenging the IRS Commissioner's statements regarding the 'missing' Lois Lerner emails, and on and on. There are too many instances of this type for these to be 'random' or 'coincidental'. I believe that the IRS uses confidential Schedule B donor information required to be filed by exempt organizations, listing their donors of \$5,000 or more -- to select audit targets. I believe that the IRS pulls publicly required information of donors to political candidates, and selects donors to GOP candidates and conservative SuperPACs to IRS audits. I believe that the IRS monitors news reports and targets individuals and their businesses to IRS audits when/if they see news of American citizens criticizing the IRS or the Obama administration. And the report issued last week by the GAO as to HOW audit targets are selected, only confirms my belief that this has happened, is happening and will continue to happen until and unless Congress stops it.

- **The IRS routinely disregards federal law: the Freedom of Information Act (FOIA) and federal laws enacted by Congress to protect Americans from abusive federal agency rulemaking and regulatory overreach. The IRS takes the position that such laws simply do not apply to the IRS.**

The IRS has been allowed by Congress to operate above or outside the law for decades, something I have learned firsthand over the past five years. What have I witnessed?

- The IRS targeted tea party and conservative, pro-Israel and pro-life organizations and denied their statutory and constitutional rights to obtain tax exempt status on a timely basis, in accordance with duly enacted procedures and published forms and formats – a violation of the federal Administrative Procedures Act;
- The IRS essentially doesn't respond to FOIA requests until/unless it is sued in federal court; and
- The IRS rulemaking process disregards and ignores statutes such as the Regulatory Flexibility Act, the Paperwork Reduction Act, the Administrative Procedures Act and other federal laws and Executive Orders in the development and promulgation of IRS regulations.

I could go on. And on. The abuses of the IRS - and the violations of federal law by the IRS and its officials and employees - are too numerous to detail here.

So the next question you have posed, Mr. Chairman, is what should Congress do about it?

Please understand that I believe the IRS should be abolished and the 16th Amendment repealed in its entirety. I do not think this arrogant, out-of-control agency can be saved. It is rotten to the core, and should be completely eliminated and the Internal Revenue Code repealed - allowing for a new tax code and new tax collecting agency to be established without the baggage that this agency has taken on over the past century.

Since that will likely take some doing and some time, there are some other, immediate steps that Congress can and should undertake NOW.

The first, most important thing the Congress can and must do is to impeach and remove IRS Commissioner John Koskinen.

The IRS has become a weapon of political destruction of the Obama administration's enemies, led by Commissioner John Koskinen, who is an active, partisan Democrat, having donated more than \$80,000 over several years to the Obama campaigns, the Democratic National Committee, the Clinton campaigns and the campaigns of other Democrats. Commissioner Koskinen is a partisan Democrat who has no business leading the IRS and has not the slightest bit of objectivity in terms of his political viewpoint. He has repeatedly made false statements to Congress in his testimony before various congressional committees. Any person of his obvious political bias should NEVER have been nominated or confirmed to the position of IRS Commissioner. Based on his false testimony to Congress since his assuming the position of Commissioner, and his actions as Commissioner, he should be impeached by the House, convicted by the Senate and removed from office.

Clearly, the Obama Department of Justice is so politicized that no prosecutions for perjury are in the offing for the IRS Commissioner, Lois Lerner or any other IRS official. That leaves only one

avenue to punish IRS Commissioner Koskinen for his false testimony to Congress, for his failure to faithfully execute his obligations, and for allowing the IRS to destroy backup tapes of Lois Lerner (and other IRS employees') emails, all the while he was testifying under oath that his agency was taking every step to preserve all of the records the IRS is required under federal law to preserve.

There is nothing that Congress can do that would be more important in sending the signal to the IRS and, indeed, to every federal agency saying, "Do not lie to Congress. Do not abuse the American people. Do not trample on the Constitution." . . . than the removal of IRS Commissioner Koskinen.

There are then seven (7) statutory changes that Congress should enact immediately to protect the American people from this out-of-control agency. Those 7 are as follows:

1. Repeal the law that requires citizens organizations to turn over their donor lists to the IRS.

Federal law requires every citizens group to file a Schedule B of its donors of \$5,000 or more, as part of its annual Form 990 tax information return. That schedule is supposed to be confidential - available *only* to the IRS. There is no compelling governmental interest in requiring citizens groups to tell the government who their donors are . . . and the listing of those donors is the source of much mischief, and abuse. The Supreme Court has held for decades that the right to make a contribution to a candidate or a cause of one's choosing is a protected First Amendment right. That right should be exercised without the recipient organization being required to disclose that information to the government. Congress should repeal the law that requires the disclosure of donor information to the IRS. The politically motivated attorneys general of California and New York are now pursuing organizations, demanding that they turn over the unredacted donor information that groups are required to file with the IRS – but which federal law specifically protects from public disclosure. Now, we see two attorneys general, without any statutory authorization by the legislatures of their states, demanding the donor information that only the IRS is supposed to receive. Congress can – and should – fix this. Repeal the federal law requiring donor information to be filed with the IRS.

2. The IRS should be prohibited by federal law from surveillance or use of publicly filed campaign contribution reports and information as a basis for selecting taxpayers for audit.

Again, contributing to the candidates or causes of one's choice is a protected First Amendment right according to the United States Supreme Court. The IRS should be prohibited by law from accessing and using that information as the basis for subjecting individuals or other entities for audits.

3. The IRS should be required by law to advise any taxpayer selected for audit as to the REASON that taxpayer is being audited and to document that information to the taxpayer.

The IRS should not be allowed to select a taxpayer for audit and to withhold the reasons for that selection. The IRS should be required to document to a taxpayer why that taxpayer is being audited and the authority for that audit. With regard to organizations, the IRS should annually and randomly select exempt organizations to be audited, publish the list of those randomly selected audits in order to provide public transparency and to remove any stigma associated with

an audit, as well as removing the ability of lone IRS agents to target taxpayers based on personal bias or vendettas. The GAO report last week about the manner in which IRS audits are selected should be of great concern to all of us -- and the IRS response to that report is no comfort whatsoever. Congress must act to protect the American people from abuse by the IRS through the auditing process and selection - and require transparency and openness in the “star chamber” type of process that currently exists.

4. Prohibit the IRS from developing its own definitions of political activities prohibit the IRS from regulating the free speech rights of the American people and groups to which they belong.

The IRS issued far-reaching and draconian proposed regulations severely restricting political activities of 501(c)(4) organizations in November 2013 and withdrew them in May 2014 after more than 160,000 comments - largely in opposition - were filed. IRS Commissioner Koskinen keeps saying publicly that the IRS is continuing to rewrite the proposed regulations. STOP THE IRS from doing anything further on this topic. Congress can and must prohibit the IRS from policing the First Amendment rights of the American people. Simply put, the IRS is supposed to be a tax collector . . . Period. It has no expertise and no authority to issue ANY regulations that would infringe upon the free speech and association rights of the citizens. Congress should act NOW to stop the IRS from going forward with any such regulations, regardless of when they are to take effect.

5. Eliminate the process whereby 501(c)(4), (5) and (6) groups seek or obtain tax exempt status from the IRS.

Just eliminate the procedure, allow all 501(c)(4), (5) and (6) organizations to simply check the box as to what type of entity it is, and to begin operations as that type of entity. The IRS through RANDOM audits of 990's filed by the organizations can make certain that the organizations are operating within the proper parameters for that type of entity.

6. Codify present IRS policy that contributions to 501(c) groups are not subject to the gift tax.

The first targeting of conservative groups began during and following the 2008 election cycle, when donors to a conservative organization suddenly received notices that their contributions to one conservative organization were subject to the gift tax. The IRS knew who the donors were because that was disclosed to the IRS on the organization's Schedule B. After a hue and cry, including from Congress, the IRS withdrew the notices, and publicly stated that there would be no efforts to impose the gift tax on such contributions 'for the time being'. That suspension continues to this day -- Congress should remove all doubt and enact legislation stating that contributions to 501(c) groups are not subject to federal gift tax.

7. Codify *clearly and with particularity* that Section 6103 of the IRC is intended to protect taxpayers, not IRS employees and agents.

The IRS relies on the federal law enacted to protect taxpayers from the release of their confidential tax information and turned it into a shield, to avoid disclosing information about improper and unlawful actions by IRS employees involving the taxpayer. It is Orwellian twisting of language at its very worst – and the IRS routinely refuses to disclose information regarding its own failures to protect taxpayer privacy, stating that Section 6103 precludes the

IRS from telling a taxpayer WHO at the IRS may have been responsible for unlawful disclosure of a taxpayer's information.

In conclusion, it is high time for Congress to act, to punish the IRS for its wrongdoing and to hold the IRS accountable for its violations of federal law and the US Constitution.

Congress should remove IRS Commissioner Koskinen and make statutory changes in federal law to protect the American people going forward.

Thank you for conducting this hearing and asking these questions. I look forward to working with the Committee to make meaningful changes that will ensure the IRS is not allowed to continue to abuse the American people in their rightful exercise of their privileges as American citizens.

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