



# COUNCIL FOR NATIONAL POLICY

## IRS Scandal: A Case in Obliterating the Rule of Law Cleta Mitchell, Esq.

This administration is a target-rich environment; no sooner do we hear about one scandal than before we have a chance to fully investigate that one, another scandal erupts and we have so many things happening right now we don't want to lose track of them because they deserve to be investigated because we need to learn the truth. Right now we are blessed to hear from Cleta Mitchell. She is coming to speak to us about the IRS scandal. Cleta is a partner with Foley & Lardner, LLP and a former legal counsel with The National Republican Senatorial Committee and The National Republican Congressional Committee, and she is the author of *Donor Disclosure: Undermining the First Amendment*, and a member of Board of Directors of The National Rifle Association. She is a mother, married to Dale, and they live in Washington DC. Please join me in welcoming Cleta Mitchell.

Well good morning. I am just so thrilled to get to talk about my favorite topic, Lois Lerner. I could actually spend the rest of the day telling you stories about this whole IRS thing. I am going to try to do this in a very truncated period of time and open it for your questions.

You have heard a lot about it, read about it but let me tell you what really happened. What does it really mean? My day job is that people come and see me, I practice political law; campaign finance, election law, political law, the business and regulation of policy and politics. I mainly represent candidates and campaigns; mainly I represent conservative issue organizations. I always tell people, my elevator speech is that I am the consigliere to the right wing conspiracy and very proud of that. People come to see me and they say we want to do X, we want to be involved in this issue, we want to be involved and do X, Y and Z and I listen to what they say

and I say, “In order for you to do what you want to do, this is the little place within the internal revenue code where you and your group or activities fit.” Because in America, in the legal context, what is the first thing you have to do when you want to start something? You have to have a bank account. And you can’t open a bank account unless you have an employer identification number. Where do you get that? From the IRS. How do you get it? You fill out a form. You fill out a form and you say on the form this is what this entity is going to be. And you have to say where in the tax code it fits.

So a lot of the people who come to see me want to do public policy work, 501C4, grassroots lobbying activity or maybe they want to do charitable and educational activities, CNP is both a C3 and a C4. Many of you are associated with C3’s or C4’s. There are rules about what you can do and what you can’t do but the first thing you have to do is you have to fill out that form to open up your bank account. So I went back and looked at some of this, let just put this in context. Before I call this, you know the IRS, what we now know is they literally had a program, which was not terminated until June 22 of this year, called Be on the Lookout For, BOLO. So pre-BOLO, the time it would take to get a 501C4 application through the IRS, I went back and looked over the past ten years and maybe three weeks or four weeks or five weeks. I mean maybe they might ask you a couple of questions about your application but these applications are not the back of a postcard. To become a 501C3 organization you fill out a form 1023. It has thirty-one pages, it has eight schedules and it has eleven parts and sub-parts. To become any other type of 501C organization, there are twenty-nine separate types, you fill out a form 1024, it is nineteen pages, it has eleven parts and it has fourteen schedules. So this is not the back of a

postcard. You fill out this application and it would take a few weeks to get a 501C3 pre-BOLO might take two months maximum.

Beginning in the fall of 2009 I submitted an application for an organization whose only activity was to lobby against Obama care, 501C4 it can spend one hundred percent its own money and time and expenses doing that, grassroots lobbying. Fall of 2009, spring of 2010 think about what was going on then, Obama care. We did not hear from the IRS other than get a letter saying that they had received our application and they did cash the seven hundred and fifty dollar check, the filing fee. We didn't hear from them again until June of 2010 and then they asked for copies of all the ads that this organization had run lobbying against Obama care. And other organizations began to realize this is really strange. This is taking an awful long time. An organization that filed its initial application in the summer of 2010 came to see me in February of 2011 saying we have applied eight months ago and we haven't heard anything. We sent supplemented. Fast forward to the spring of 2012, and I knew, everything had just stopped. We would submit these applications and nothing would happen. So in 2012 we received hundreds of organization across the country including my clients received these extensive questionnaires. I've been doing this awhile; I've never seen anything like it and the kinds of questions being asked.

One of my clients is True to Vote; I think you all have had Catherine Engelbrecht here before to hear from here. It is an organization dedicated to the integrity of the election process. Gee, that is a really revolutionary thought isn't it? Her organization received a questionnaire that had one hundred and twenty-six questions. Every kind of intrusive question you can imagine. I'm surprised it didn't say boxers or briefs. That is about the only thing they didn't put in the

questionnaire. And I had half a dozen clients who received these. Knew of many others so I redacted all the identifying information went over to see The House Ways and Means Committee staff and The Senate Finance Committee Republican staff had said, "Something is going on at the IRS." I went to see Jim Jordan who, was at the time, Chairman of the Republican Study Committee. The Republican members of Congress wrote letters and they had the commissioner of the IRS come testify March of 2012 saying are you targeting conservative organizations. He testified under oath in March of 2012 no we are not targeting conservative organizations. Now I have always thought that if you lied to Congress that you actually should be prosecuted for perjury. I mean remember Roger Clemmons? But nothing has happened. But that was a lie and what we know, I go to this meeting once a month with attorneys both republican and democrat, liberal and conservative and I took these letters and I said to my democratic colleagues, counterparts, "Are any of your clients getting any of this?" And they are looking at these and going wow this is really interesting, we have never seen anything like this.

Fast forward to May of this year, Lois Lerner plants a question in a meeting of attorneys, a group she speaks to every year, The American Bar Association Tax Exempt Section and plants a question of which she acknowledges that indeed the IRS had targeted conservative organizations and gee it wasn't right and some rogue employees in Cincinnati and she is really sorry and they apologize. Right? So it is over right? Except for at the time she said that all these clients of mine that I was worried about, some of them almost four years or three and a half years still hadn't received their tax exempt status. I have two clients who have gotten letters in August of this year requesting even more information. What we now know are the following: we know

that the IRS employees were responding to letters from democratic members of Congress to demands from the White House, from President Obama himself publically demanding that something be done about these secret organizations and secret money. The tea party, we know what Nancy Pelosi and other democratic members of Congress were saying about the tea parties is dangerous. In fact she wrote that. Now we see emails internally that she was writing and saying the tea party is dangerous and probably shouldn't be being handled in Cincinnati.

On behalf of True the Vote we have sued through the Act Right Legal Foundation which is a conservative public interest law firm. We have sued the IRS and multiple of the management, Lois Lerner, Stephen Miller and Doug Shulman and the people who were responsible for this entire episode. We have sued on behalf of The National Organization for Marriage. I represent NOM and in March of 2012, all of you who are involved in 501C organizations know that you file your 990 and you have to tell the IRS by law all your donors of five thousand dollars and more but that is not a public document. That is a confidential document and somehow the NOM schedule unredacted B donor information ends up posted on the website of the Human Rights Campaign and The Huffington Post. We immediately demanded an investigation by the Inspector General. We have had multiple exchanges with the IRS since 2012 over the NOM violation of federal law. It is a felony for an IRS employee to inspect or release confidential tax payer information and that statute was put in place after Watergate. But guess what the IRS now tells us? They now tell us that they cannot tell us who were responsible inside the IRS for this criminal violation of NOM's rights to confidentiality because they are hiding behind the statue

that is supposed to protect the tax payer and say that protects the individual IRS employee so they can't tell us who is responsible.

We have at least a couple more cases that probably ought to be brought up against the IRS. One, for violation of just the whole process and procedural protocols that are in place within the IRS for normally reviewing an application and the fact that the IRS took all of this information and demanded intrusive information from all of these organizations and then of course, had no objective legal standard by which to judge the information that they received.

Let me just wrap up and then open for your questions. Here is the real question. And I think this is really important. We've received yesterday, I was just reading it this morning because I was traveling here last night, in the True to Vote case which is probably the furthest along in terms of the litigation but we sued the IRS, the agency, and we have also sued these individuals. The IRS, after we filed the True to Vote law suit, decided that the best way to deal with us was to grant True to Vote's tax exempt status and say, okay everything is fine, mute, gone away, done. So they have said well you can't sue the IRS and it is mute. And then yesterday we got the responses from Lois Lerner and the individual IRS employees who are named defendants in the case. By the way, we did learn in a status conference a couple of weeks ago you will be happy to know that we are paying their legal fees. Not them personally, we've sued them personally but the government is paying, that would be you and me, we are paying for them to defend themselves. Which doesn't go over real well with me because we are having to raise the money to be able to pay even though my firm is doing it pro bono still it costs money to file a law suit even when it is pro bono. But now they have said you can't sue us, we are IRS employees and

the law doesn't allow, the courts have said you can't sue IRS employees if they violate your constitutional rights.

So here is a really interesting question that I think we are going to learn through this litigation.

We are going to argue this to the court. If indeed it is the law in this country, in which I have a hard time imagining, that the IRS as an agency and its employees can knowingly and willfully violate the constitutional first amendment rights of the citizens and there is nothing we can do about that because they are the IRS? If that is what the courts conclude, Congress has some work to do. And I'm by golly going to be there to make sure that they do it. But I will stop now because I know we are running a little behind time. In any event, I would be more than happy to answer questions because I really just hit the highlights and could actually talk about this until you guys would really want to throw things at me. By the way, our responses to all these motions to dismiss will be due and filed on November 15. So we will keep you posted.

Question-I'm one of your clients. Can you talk about CREW a little bit which is near and dear to my heart as well although we are defending ourselves on one side? CREW is an organization that is sponsored by liberals and is doing some other things as well. You can feel free to talk about our case.

Cleta-The Citizens for Responsibility of Ethics in Washington, I look around this room and I see a number of people that I actually represent. And we have defended CREW complaints. They are a left wing, George Soros funded liberal group that go after conservative organizations and they have expanded to include CC advertising vendors who do work for conservative organizations and pro-life groups. I have been involved with defending a number of cases they

have filed. IRS complaints, FCP complaints, they file ethics complaints that I have defended over the past ten years; I would say at least a dozen, successfully defended. They file all these things and get all these headlines because they are in tight with the media and they get all these headlines and actually I represented Christine O'Donnell. I am going to say this one thing. I am going to diverge and say this one thing about Christine O'Donnell. As far as I am concerned she doesn't have to do another darn thing in her life because she kept Mike Castle out of the US Senate and I am so glad. And when I hear that some people say that somehow we would have preferred to have that squish republican in the Senate, no thank you. I am grateful to her for that. That was an unpaid political announcement.

Melanie Sloan and CREW went after Christine O'Donnell the moment she got the nomination for the US Senate in 2010, filed an FEC complaint and alleged all these awful things. We actually now know the IRS has released Christine's personal tax information, filed a false lien on her property, released it to the Attorney General of Delaware who happened to be the son of Joe Biden. The complainant in the CREW complaint was Melanie Sloan's father. Turns out she is from Delaware. And they went after her in a big way so that she really didn't even have a chance in the general election by the time the NRSC and the state Republican Party had filed an FEC complaint against her, truthfully, and then you have Melanie Sloan and CREW going after them. And what we did after the election was we went through, Christine is not the only republican candidate that CREW has gone after and they are a 501C3. So we prepared a ninety page IRS complaint documenting all the ways that CREW violates the prohibitions on political intervention for 501C3's, and said look it's just a political committee. A 527, it should have to



disclose its donors, it shouldn't get tax exempt ability for its donors. Nothing has ever happened to them. We filed that more than two years ago, nothing has happened to them. So that tells you about the IRS and how even handed they are.

The one thing that we have learned, The House Ways and Means Committee learned and released this about three weeks ago that they learned that those conservative organizations whose tax exempt applications were granted that the IRS created a new surveillance program so that those organizations were immediately referred for continuing surveillance and then if the IRS thought it was warranted then after the surveillance then they would be referred for audit.

Ninety-three percent of those organizations were referred for continuing surveillance were conservative, one hundred percent of those subsequently referred for audit, one hundred percent were conservative. So this whole situation goes very deep. The Congressman is exactly right, we have federal employees who are protected from disciplinary action who we pay their very substantial salary and benefits and they have an agenda and it ain't ours. And I think that one of the fundamental things we as conservatives can come up with is we need to completely remake the civil service system of this country.

Question-These are some of the scariest horror stories I have ever heard I'm just glad we are not around a campfire. Ms. Mitchell, my C3 has had its application pending since February. It is called Freedom X and it is a non-profit public interest law firm intended to protect the freedom of expression of Christians and conservatives. My attorney says that I should expect to hear an answer from the IRS sometime by March. Is there any evidence at all or any way to detect whether there is an objective processing protocol in place?

Cleta-Well, let me say this, do understand that part of this targeting was not just tea party but it was pro-Israel groups, it was Christian groups, pro-life groups sort of the CNP leadership. But the House Committee on Ways and Means Oversight, the House Committee on Oversight and Government Reform are both doing their dead level best to gather information. The IRS is resisting mightily, I can't even begin to describe all the hideous things they have been doing. And of course, where is the Senate? Where is the Senate? I met with Senator Hatch's, Minority Finance Committee Staff in May. I have never heard another word from them. They had a hearing in May in which our Republican Senators were embarrassing as usual. They had no clue what was going on and we have never heard another word from them. The President announced in his I'm mad too press conference on May 15 that he was by golly going to have Eric Holder get right to it. That was in May. I am kind of tuned in on this and to my knowledge there hasn't been a single inquiry from the FBI which is the people who are supposed to be doing the investigating when the Justice Department is trying to build a criminal case. We have heard nothing. I know of no one on our side who has had a single inquiry from the FBI and internally at the IRS what we know is they didn't suspend the BOLO protocol until June of this year. They just suspended, about a month and a half ago, the surveillance program. And I know that I got clients still getting letters seeking more information and they have had applications pending for two or three years. So do I think things are fixed? I don't think things are fixed. That is why I keep saying don't talk about this in the past tense people this is still ongoing. We just have to keep the pressure on. We have to keep asking about it. People say the national media has lost interest. You know, is anyone shocked by that? Let me tell you what is shocking. Here is what

is shocking. On Friday afternoon Lois Lerner and the management of the IRS decided, they knew that this investigation was coming out the following week on Tuesday so they came up with this ham handed scheme that she would plant this question at a luncheon on a Friday in May. Pretty weather, you know, people go away Friday afternoon in Washington. When is a good time to bury a story? Friday afternoon. What is shocking is that they absolutely believe that the media, the national media, would do with this exactly the same thing they have done on Bengasi and every other scandal of this administration. The shocking part to me and to all conservatives should be that the media actually for at least a brief shining moment paid attention to it. Until they remembered, oh it is the tea party and conservatives and Christians and we don't like them anyways so maybe it probably isn't a bad thing. So do I think things have been fixed internally at the IRS? Absolutely not. What do I think should happen? I think the whole process of mother may I asking the federal government and a bunch of liberal democrats posing as civil servants whether my clients can engage in a protected first amendment activity, mother may I. Get rid of it.

Morton-Cleta, I am so glad that this organization has gotten a chance to know you better. You have a lot of clients here but there are a lot of people who didn't know you before now. Ladies and Gentlemen, she has been a hero for liberty and freedom and conservative principles. My own belief is that unless people are fired, fined or jailed for what they have done this is going to be a horrible precedent leading not only IRS bureaucrats but other bureaucrats to conclude that they can persecute conservatives with impunity. It is an awful situation.

Cleta-It is an absolutely awful situation and I didn't even get into the audits, I made reference to them but certainly Morton and The Leadership Institute, other conservative organizations have been audited we know that conservative donors, people who are big fundraisers for the Romney campaign were audited. We know the IRS tried to institute a program of saying that conservative donors were their fore group donors to conservative groups about two years ago who the IRS suddenly sends them letters trying to assess a gift tax if their contributions to the 501C4's. So not only would they be non-deductible but then they would be subject to a gift tax if they gave to a 501C4 above the annual thirteen thousand dollar limit. So fortunately the Republican Study Committee and Paul Teller and some others really weighed in and Chairman of the House Ways and Means Committee Dave Camp and the IRS backed off of that. But I am telling you this is a full scale assault. It is part of the assault on the free speech rights of American citizens and I cannot tell you how serious I think it is if we have a government of Commissars who believe they are beyond the reach of the citizens and beyond the reach of our laws that simply cannot be the state of the law in America. We cannot let that stand.

Morton-I do have a question. You mentioned that The Leadership Institute period was subjected to audit. And I knew of a number of other conservative organizations which were simultaneously audited and it is the same time frame of this IRS stonewalling of new applications for tax status. And I worked with those groups that were willing to allow their names to be used because many groups when you are audited there are good reasons why you don't want to share with the world that you are being audited. It might hurt your fundraiser. And I knew that the investigation from the Inspector General was about to be released and that is why

Lois Lerner opened the story herself a little bit. But it seems to me that there was also a real need for an investigation of the systematic targeting of existing conservative non-profit organizations and I worked with them and I knew that the Inspector General of the Treasury had done his investigation of the stonewalling because of the letter signed by Darrell Issa and Congressman Jordan and I know you had a great deal to do with that. so I worked and met with those men Dave Camp and others and there was a couple of months ago a letter from Darrell Issa and Jim Jordan to the Inspector General asking for an investigation of the IRS procedures which have every appearance of targeting existing conservative groups. You know that entire story but I wanted to share it with them. But my question to you is it took over a year from the original Issa and Jordan letter before the Inspector General was ready to issue the report which opened the first can of worms. How long do you think it will be before, and it is the same Inspector General, is able to prepare a report having to do with the second can of worms which is targeting existing conservative organizations for persecution? How long?

Cleta-Well, I think it will take at least that long because they are so slow. But you know one of the things that happened in the investigation that erupted in May is that Holly Paz, I just have to tell you this one story about Holly Paz and then I promise I will stop. Holly Paz is kind of the where's Waldo of this whole scandal because she keeps popping up in every episode, every chapter. I can't remember all her titles but she is very high up pretty close to Lois Lerner and so I was looking at the org. chart with the House Oversight and Government Reform Committee staff and trying to you know look through our defendants and I'm getting some input from them about this org. chart of the IRS because it is a little byzantine which you might imagine. And I

see that somebody was acting technical manager for her and then someone was asking something or other and I thought what does that mean? That is when Holly Paz is out on maternity leave. Yeah, but what about Holly Paz, by the way, who is a maxed out Obama donor, don't let me forget to mention that. She is over here. Well that was her second maternity leave. I stopped and I said, 'So let me get this straight, this targeting went on long enough for Holly Paz to go on maternity leave not once by twice?' It is a two baby scandal if that gives you any idea of the time. Holly Paz sat in at Lois Lerner's direction. Now mind you this is in the tickta investigation, she sat in on every interview with each of these people. When tickta was conducting its investigation, so the boss had someone sitting there listening. And when they were doing their internal investigation Holly Paz was the one who was sent. She was one of the one directing it but it was Stephen Miller the acting IRS Commissioner who said, well we got to find out about this. Guess who he dispatched to do it? Holly Paz, maxed out Obama donor. So look, I think the Inspector General has done some good work but there is so much more and it takes way too long and then getting the information. I mean like I say the NOM, our request for the investigation of how our schedule B donor information ended up on the HRC website. They wouldn't even give us the results because they said they had to protect whoever was responsible in terms of internal at the IRS. It is convoluted. I am glad they are looking at it but how long it will take and what will result in and remember this is not the first time this has happened remember when the Republicans took over in 1994 after the election. Remember Bill Archer was the Chairman of House Ways and Means and there was a lot of concern in the early 90's that the IRS was targeting conservative organizations for audits and major conservative organizations

were audited by the IRS had very expensive extensive audits that found nothing wrong but it costs the organizations many, many hundreds of thousands of dollars and of course they did this investigation and came back and said no there is no targeting. So we have been down this road before that is why I think we just really need to clean house structurally.