

Justice Department Settles With Tea Party Groups After I.R.S. Scrutiny

[nytimes.com /2017/10/26/us/politics/irs-tea-party-lawsuit-settlement.html](https://www.nytimes.com/2017/10/26/us/politics/irs-tea-party-lawsuit-settlement.html)

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A Tea Party protest of the Internal Revenue Service's scrutiny of conservative groups outside the United States Capitol in 2013. Saul Loeb/Agence France-Presse — Getty Images

WASHINGTON — The Justice Department settled two lawsuits with conservative groups that claimed the Internal Revenue Service had unfairly scrutinized them during applications for tax-exempt status, Attorney General Jeff Sessions announced on Thursday.

The government agreed to a multimillion-dollar settlement to resolve one lawsuit, which was brought on behalf of 428 groups, said Edward Greim, the lead lawyer for the plaintiffs. The government will not pay damages to the 41 groups in the second lawsuit, but the I.R.S. acknowledged its conduct was wrong.

The settlements were the conclusion of two legal battles that have dogged the I.R.S. since the initial lawsuits were filed after a 2013 treasury inspector general's audit that found groups with "Tea Party" or "Patriot" in their names received more scrutiny over their applications for tax-exempt status. The revelations plunged the I.R.S. into a firestorm that ultimately led to the ouster of its acting commissioner and prompted [accusations that the agency was being used as a political weapon](#) by the Obama administration.

"There is no excuse for this conduct," Mr. Sessions said in a statement. "Hundreds of organizations were affected by these actions, and they deserve an apology from the I.R.S. We hope that today's settlement makes clear that this abuse of power will not be tolerated."

IRS Scandal Ends As It Began With An Apology

F forbes.com/sites/peterjreilly/2017/10/27/irs-scandal-ends-as-it-began-with-an-apology/

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I focus on the tax issues of individuals, businesses & more Opinions expressed by Forbes Contributors are their own.



Maybe it's a matter of the [Linchpins of Liberty](#) declaring victory and going home or maybe its a matter of elections having consequences, but it may be that the interminable IRS scandal is at an end. Was it a matter of President Obama ordering his [minions in the IRS to harass conservatives](#) ? Or was it like [Seinfeld - a scandal about nothing?](#)

Attorney General Jeff Sessions has announced an end to two major cases that have been keeping the scandal fires burning. [Linchpins of Liberty, et al. v United States of America](#) , which had 41 plaintiffs and [Norcal Tea Party Patriots et a. v IRS](#), which was a class action involving hundreds of organizations.

Sessions Statement

Here is the [Sessions statement](#)

Chief Justice John Marshall wrote 'that the power to tax involves the power to destroy ... [is] not to be denied.' And it should also be without question that our First Amendment prohibits the federal government from treating groups differently based solely on their viewpoint or ideology."

"But it is now clear that during the last Administration, the IRS began using inappropriate criteria to screen applications for 501(c) status. These criteria included names such as "Tea Party," "Patriots," or "9/12" or policy positions concerning government spending or taxes, education of the public to "make America a better place to live," or statements criticizing how the country was being run. It is also clear these criteria disproportionately impacted conservative groups."

"As a result of these criteria, the IRS transferred hundreds of applications to a specifically designated group of IRS agents for additional levels of review, questioning and delay. In many instances, the IRS then requested highly sensitive information from applicants, such as donor information, that was not needed to make a determination of tax-exempt status."

"The IRS's use of these criteria as a basis for heightened scrutiny was wrong and should never have occurred. It is improper for the IRS to single out groups for different treatment based on their names or ideological positions. Any entitlement to tax exemption should be based on the activities of the organization and whether they fulfill requirements of the law, not the policy positions adopted by members or the name chosen to reflect those views."

"There is no excuse for this conduct. Hundreds of organizations were affected by these actions, and they deserve an apology from the IRS. We hope that today's settlement makes clear that this abuse of power will not be tolerated."

Seems Like Old Times

I have not been able to find any details on the Norcal settlement. There was a [motion filed yesterday that indicated](#)

a detailed motion would be filed as soon as practicable. There are reports that those groups might get some monetary compensation for their [tsoris](#) from the IRS. In the Linchpin case there is a [detailed proposed judgement. Executive summary - The Linchpin plaintiffs got bupkis](#). According to [Jay Sekulow of ACLJ](#)

In a proposed Consent Order filed with the Court yesterday, the IRS has apologized for its treatment of our clients (36 Tea Party and other conservative organizations from 20 states that applied for 501(c)(3) and (c)(4) tax-exempt status with the IRS between 2009 and 2012) during the tax-exempt determinations process. Crucially, following years of denial by the IRS and blame-shifting by IRS officials, the agency now expressly admits that its treatment of our clients was wrong.

It is true that the statement of facts in the Linchpin judgment includes as paragraph 40:

*The IRS admits that its treatment of Plaintiffs during the tax-exempt determinations process, including screening their applications based on their names or policy positions, subjecting those applications to heightened scrutiny and inordinate delays, and demanding of some Plaintiffs information TIGTA determined was unnecessary to the agency;s determination of their tax-exempt status was wrong. **For such treatment, the IRS expresses its sincere apology.** (Emphasis added)*

Oddly enough back in paragraph 5 we find:

*On May 10, 2013, then-Director of the IRS's Exempt Organizations ("EO") Division, Lois Lerner, publicly admitted that the IRS used a method of centralization for certain organizations based on their names, such as "Tea Party" or "Patriots." As Lerner stated, "That was wrong, that was absolutely incorrect, it was insensitive, and it was inappropriate." Lerner **also apologized** for the delay in processing many of those applications. Finally, Lerner acknowledged that the IRS requested information from those applicants that was too broad, unnecessary, and inappropriate, including requests for the names of contributors to those organizations, which, even if relevant in some circumstances, were not here. (Emphasis added)*

Although the matter of course has a prehistory a report of Lerner's apology is what Paul Caron, the indefatigable scandal chronicler, counts as [Day 1 of the IRS Scandal](#). [It really does seem that it is ending where it began with essentially the same apology](#). The Wall Street Journal reports that Edward Greim one of the lawyers in the Norcal case said that they would be getting a "seven figure" amount, although he declined to name a more exact number. Split 428 ways, that might not amount to very much per group particularly if some of it gets applied to attorneys fees.

That Would Be Wrong

Here is the declaratory judgement of the court:

*49. The Court hereby declares that it is wrong to apply the United States tax laws, including any and all tax rules, regulations, policies, procedures, and standards of review, to any tax-exempt applicant or entity based solely on such entity's name, any lawful positions it espouses on any issues, or its associations or perceived associations with a particular political movement, position, or viewpoint.
50. The Court hereby declares that any action or inaction taken by the IRS must be applied*

evenhandedly and not based solely on a tax-exempt applicant or entity's name, political viewpoint, or associations or perceived associations with a particular political movement, position, or viewpoint.

51. The Court hereby declares that discrimination on the basis of political viewpoint in administering the United States tax code violates fundamental First Amendment rights. Disparate treatment of taxpayers based solely on the taxpayers' names, any lawful positions the taxpayers espouse on any issues, or the taxpayers' associations or perceived associations with a particular political movement, position, or viewpoint is unlawful.

Note that the judgement does not include any finding that anybody did any of those wrong things.

Good For The Lawyers

[Paul Streckfus of EO Tax Journal](#) wrote me:

I think your Vietnam analogy is correct. My comment on the Linchpins of Liberty case (the one you have source material) is that the plaintiffs got nothing but platitudes. In the other case, NorCal Tea Party Patriots v. IRS, the Cincinnati Enquirer is reporting a multi-million dollar settlement, which will net out to a few thousand dollars for each of 428 plaintiffs, but no apology. I'll take the money over an apology, thank you.

The big winners in this litigation will be the attorneys. While the IRS does not have to pay plaintiffs' attorneys' fees in Linchpins, and probably not in NorCal, the conservative foundations and organizations presumably backing this litigation against the IRS have reputations for paying promptly attorneys who bring these cases, so no starving attorneys, thank God.

Elections Have Consequences

The Trump Justice Department throwing in the towel on these cases and declaring defeat does show that elections have consequences. The comparable act by the Obama administration might be when it determined that the constitutionality of the [Defense of Marriage Act was indefensible](#). Or in a more obscure matter when the [IRS issued an acquiescence in the case of Rhiannon G. O'Donnabhain](#), where the IRS, pressured by the religious right, had argued that transgender surgery was cosmetic. A Democratic administration might have fought the Linchpin and Norcal cases harder and maybe started looking at whether some of the groups actually were engaging in excessive political action and were, you know, fibbing about it. The big concern about dark money seems to be not such a concern anymore.

Why Now?

Repealing and replacing Obamacare was something of a bust. So having the [IRS finally grovelling to the Tea Party might be giving some satisfaction to the Trump base](#), which might well be disappointed by the upcoming tax bill. You really have not been hearing much about the deficit which was a big concern back in the day. As Mark Walker put it in this New York Times story:

"It's a great talking point when you have an administration that's Democrat-led," said Representative Mark Walker, Republican of North Carolina and the chairman of the Republican Study Committee, a group of about 150 conservative House members. "It's a little different now that Republicans have both houses and the administration."

Still I would think that must be simmering in the background. And the sketched out tax cut is not so good for the deficit. Then there is the possibility that they won't actually pass anything. More likely something will pass which opens up two other possibilities. The rate reductions will not be as robust as promised is one possibility. The other is that the revenue gainers will be very painful to key parts of the constituency. The fact that the base has a big win from finally getting justice for the Tea Party might ease the pain just a little bit.

Of course as a political analyst, I make a pretty good tax return preparer, but sometimes I can't resist.

Other Coverage

There is way too much coverage to go through, much of it repetitive. I think the Reuters report in the [New York Times was pretty balanced](#). You can get a pretty thorough run down on Paul Caron's site - [The IRS Scandal, Day 1632](#). I'm surprised that the comment section there has not started filling up. Paul Streckfus annotates some of the other coverage in [EO Tax Journal 2017-210](#), which is behind a paywall. His annotations are in caps which makes them seem like shouting and frankly I can almost hear him. Here is a bit from his annotation of Matt Zapotosky of the Washington Post:

Those suing and the Justice Department in federal court agreed they would dismiss the case with a judge's declaration that it was illegal to unevenly apply tax laws based on an organization's name or particular political viewpoint. WE'VE KNOWN THAT FOREVER – SO THE PLAINTIFFS ARE GETTING NOTHING OUT OF THEIR SUITS?

The targeting of tea party organizations that applied for tax-exempt status was a major controversy of the Obama administration, as hundreds of conservative-leaning groups received scrutiny. In some cases, it delayed the processing of applications for years. MOST COULD HAVE SELF-DECLARED UNDER SECTION 501(c)(4). WHY DIDN'T THEIR LAWYERS TELL THEM THIS?

Many felt the conduct was an example of the president punishing his political enemies. SINCE WHEN DO FEELINGS MATTER? HOW ABOUT A STATEMENT THAT THIS "FEELING" HAS NEVER BEEN PROVEN TO BE TRUE, WITH NO EVIDENCE PRESENTED, UNLESS YOU WANT TO COUNT PEGGY NOONAN'S IMAGINED "AURA" COMING OUT OF THE WHITE HOUSE.

In a statement, Attorney General Jeff Sessions took aim at his predecessors — noting it was "during the last administration" that officials began using "inappropriate criteria," such as groups' names or policy positions, to screen applications. He said the criteria "disproportionately impacted conservative groups." THE IRS HAS BEEN USING GROUPS' NAMES OR POLICY POSITIONS AS FAR BACK AS THE SEVENTIES, WHEN I WAS REVIEWING EXEMPTION APPLICATIONS, AND SURELY EARLIER. IN THE SEVENTIES, FOR EXAMPLE, ALL PRIVATE SCHOOLS WERE SUBJECT TO EXTENSIVE SCRUTINY.

Really, when it comes to the scandal, don't get him started.

The Justice Department statement did not cite a specific monetary figure, but Mr. Greim said his group was pleased with the seven-figure settlement and the decision. He declined to give a specific number, citing court paperwork that had not been filed.

“What we wish the I.R.S. would do is apologize, but the court can’t make the I.R.S. apologize,” Mr. Greim said.

Jenny Beth Martin, a co-founder of the Tea Party Patriots who met with Mr. Sessions this week, said in a statement that the decision on Thursday was “a win for the Tea Party movement and for the First Amendment.”

The second lawsuit, in which the American Center for Law and Justice represented 41 groups in district court, was settled by apology and without monetary settlement because of the statute under which the groups brought their lawsuit. In a [consent order filed on Wednesday](#), the I.R.S. “expresses its sincere apology” for the “heightened scrutiny and inordinate delays” the groups experienced when filing tax forms from 2009 to 2012.

In the agreement, the I.R.S. also admits to being wrong in demanding unnecessary information from the plaintiffs and screening groups based on name or policy affiliation.

“This consent order represents a historic victory for our clients and sends the unequivocal message that a government agency’s targeting of conservative organizations, or any organization, on the basis of political viewpoints, will never be tolerated,” Jay Sekulow, a lawyer with the center, said in a statement.

While the I.R.S. acknowledged wrongly targeting groups based on political leanings, a report this month [found that behavior crossed party lines](#). The Treasury Department’s inspector general reported [that](#) the I.R.S. had also targeted groups with liberal and progressive leanings, flagging organization names with terms that included “Progressive” and “Occupy.” Democrats celebrated the findings as confirmation that claims of partisan bias in the I.R.S. were unfounded.

The I.R.S. initially [apologized](#) to the groups in 2013, and President Barack Obama later demanded the resignation of Steven T. Miller, [the acting I.R.S. commissioner at the time](#).

Republican legislators have continued to criticize [his successor, John A. Koskinen](#), for his handling of the scandal’s aftermath. Mr. Koskinen’s term expires on Nov. 12. On Thursday, President Trump announced his intention to designate David Kautter, the assistant Treasury secretary for tax policy, as acting I.R.S. commissioner.

“David will provide important leadership while we wait to confirm a permanent commissioner,” Treasury Secretary Steven Mnuchin said in a statement.