

# Liberty Update

---

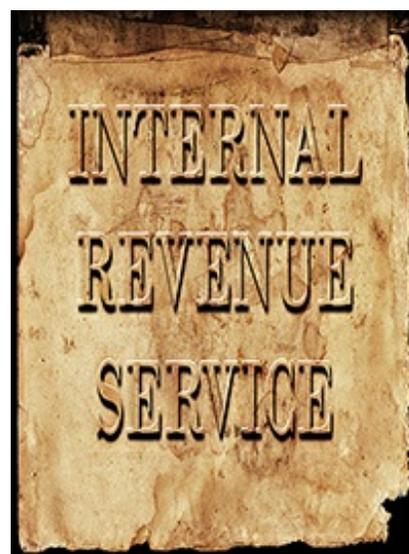
 [cfif.org/v/index.php/commentary/42-constitution-and-legal/3223-another-judicial-setback-for-obama-irs](http://cfif.org/v/index.php/commentary/42-constitution-and-legal/3223-another-judicial-setback-for-obama-irs)

---

By [Timothy H. Lee](#)

Wednesday, August 10 2016

---



---

Our governmental system relies upon separation of powers and checks and balances to protect individual freedom against infringement by malfeasant officials such as these, and the Court deserves credit for so explicitly and harshly exposing the Obama Administration's Orwellian shenanigans.

---

Leveraging federal authorities like the Internal Revenue Service (IRS) to persecute political opponents stands among the most grave abuses that officials can commit, as Richard Nixon learned the hard way four decades ago.

This month, an Obama Administration and IRS attempt to evade legal reckoning for their own admitted abuses suffered a stinging judicial setback.

Not only did the nation's second-highest court reject the administration's argument that dozens of lawsuits filed by conservative and libertarian groups against the IRS should be dismissed, the unanimous three-judge panel was caustic in its repudiation of the administration's arguments. The Court's opinion is worth reading for the way in which it itemizes that agency's abuses and dismantles its ongoing legal efforts toward escaping the consequences of its behavior.

The lawsuits themselves derive from numerous instances in which the IRS targeted select organizations seeking nonprofit status on the basis of their names, which in each instance indicated a conservative or anti-Administration orientation, and which the IRS itself admitted following a 2013 Inspector General's investigation. As recognized by the Court, "this enhanced examination involved, 'among other things, a multitier review process, ... harassing and unconstitutional questions and requests for information that often required applicants to disclose donor lists, communications with members, and internet passwords and usernames.'" Accordingly, some of the groups sued the IRS and individual officials for monetary damages, injunctive relief and declaratory judgment.

Unable to deny any longer that it illegally "delayed, denied, and generally mishandled the applications of disfavored applicants," the IRS instead asked that the cases be dismissed because the claims became moot. "It being plain to the Inspector General, the district court, and this court that the IRS cannot defend its discriminatory conduct on the merits," the Court summarized, "the governing issue is now whether the controversy is moot."

In order to succeed on that claim, however, the Court pointed out that the IRS must show not only that the illegal conduct had ceased, but also that there is no reasonable expectation of recurrence and that the effects of the violation have disappeared.

In addressing that first element, cessation of illegal conduct, the Court became particularly harsh toward the IRS:

*The IRS offers a rather puzzling explanation for why the continued failure to afford proper processing to at least some of the victim applicants should not prevent a finding of cessation. That explanation is that the organizations whose applications were still pending 'were involved in litigation with the Justice Department...' It is not at all clear why the IRS proposes that not ceasing becomes cessation if the victim of the conduct is litigating against it. The IRS position is reminiscent of Catch-22 from the novel of the same name. Under that 'catch,' World War II airmen were not required to fly if they were mentally ill. However, anyone who applied to stop flying was evidencing rationality and therefore was not mentally ill. 'You are entitled to an exemption from flying,' the government said, 'but you can't get it as long as you are asking for it.' Parallel to Joseph Heller's catch, the IRS is telling applicants in these cases that 'we have been violating your rights and not properly processing your applications. You are entitled to have your applications processed. But if you ask for that processing by way of lawsuit, then you can't have it.' We would advise the IRS: if you haven't*

*ceased to violate the rights of the taxpayers, then there is no cessation.*

The Court was equally harsh in rejecting the Obama Administration's claim that the remaining legal elements of the above test had been met:

*As to element 2, it is absurd to suggest that the effect of the IRS's unlawful conduct, which delayed the processing of appellant-plaintiffs' applications, has been eradicated when two of the appellant-plaintiffs' applications remain pending... [M]ost tellingly, the IRS announced that '[e]ffective immediately, the use of watch lists to identify cases or issues requiring heightened awareness is suspended until further notice...' A violation of right that is 'suspended until further notice' has not become the subject of voluntary cessation, with no reasonable expectation of resumption, so as to moot litigation against the violation of rights. Rather, it has at most advised the victim of the violation - 'you're alright for now, but there may be another shoe falling.'*

Our governmental system relies upon separation of powers and checks and balances to protect individual freedom against infringement by malevolent officials such as these, and the Court deserves credit for so explicitly and harshly exposing the Obama Administration's Orwellian shenanigans. The judicial branch for the past seven years has often provided a reassuring check upon Obama Administrative abuses, although its record is obviously imperfect.

The next administration's ability to shape that branch over the next four or eight years should therefore remain at the forefront of the American electorate's consciousness as November draws ever nearer.

---

Related Articles :

---