

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 14, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Commissioner Koskinen:

Although the Internal Revenue Service has vowed that it no longer considers inappropriate criteria, such as organization's political beliefs, when reviewing applications for tax-exempt status,¹ the Committee on Ways and Means remains concerned that IRS practices and policies may illegally target Americans and organizations based on their beliefs—in particular, their support for the State of Israel. We write to request information regarding IRS policies and practices. Based on internal IRS documents, facts exposed during litigation, and recent news reports, the Committee seeks documents from the IRS to understand how the IRS has treated tax-exempt organizations connected to Israel with viewpoints different than the Administration's in the past and how the IRS plans to treat such organizations in the future.

During the course of this Committee's investigation into the IRS's targeting of conservative organizations based on their political views, the Committee uncovered IRS documents that referred to a "Special Israel Policy" concerning applicants for tax-exempt status. In particular, a November 2010 "Be on the Lookout" list alerted IRS officials to refer applications containing the term "disputed territories" to the so-called "Touch and Go" (TAG) group in the agency's Cincinnati office for special scrutiny. Other documents raised questions about coordination between the IRS, the U.S. Department of the Treasury, and the U.S. Department of State regarding the treatment of tax-exempt organizations with an interest in the State of Israel.

One such pro-Israel organization, Z Street, applied for tax-exempt status in 2009. After much delay in the application process, an IRS agent confirmed to Z Street that its application had been sent for special screening reserved for groups associated with Israel.² In 2010, Z Street sued the IRS for viewpoint discrimination. The case slowly wound its way up to the U.S. Court of Appeals for the D.C. Circuit, where the Administration argued that it should be allowed "to process exemption applications pursuant to different standards and at different rates depending

¹ Letter from John Koskinen, Commissioner, Internal Revenue Serv., to Kevin Brady, Chairman, H. Committee on Ways & Means, and Sander Levin, Ranking Member, H. Committee on Ways & Means, Aug. 18, 2016.

² Complaint, *Z Street v. Shulman*, Civ. Act. No. 10-4307 (E.D. Pa. 2010, Feb. 13, 2012).

upon the viewpoint of the applicants” for up to 270 days. The D.C. Circuit recognized the Administration’s position to be a “blatant violation of the First Amendment.”³ So even though the IRS told Congress this past summer that since 2013, “the IRS and its leadership team have been, and remain, absolutely committed to avoiding any selection and further review of potential political cases based on names and public policy positions,”⁴ the Administration argued as recently as 2015 that it should be allowed to discriminate on such grounds for up to 270 days. To say the least, these two positions lack consistency.

After the D.C. Circuit unanimously ruled against the IRS’s argument that Z Street did not have standing to challenge whether the IRS treated it unconstitutionally, the case went back to the district court for consideration. Meanwhile, in another case challenging the IRS’s discriminatory treatment of organizations based on their views, the D.C. Circuit unanimously concluded that “voluntary cessation [of the IRS’s targeting practices] has never occurred. The IRS has admitted to the Inspector General, to the district court, and to us that applications for exemption by some of appellant-plaintiffs have never to this day been processed. The IRS proudly boasts that ‘no more than two applications for exemption remain pending with the IRS’”⁵ The Court continued: “We would advise the IRS: if you haven’t ceased to violate the rights of taxpayers, then there is no cessation.”⁶ On remand, the district court ordered the IRS to process those outstanding applications, including Z Street’s. Finally, on October 22, 2016—seven years after it applied for tax-exempt status—Z Street was granted its tax exemption.

It is distressing that the United States government subjected Americans to discriminatory treatment because of their political and religious beliefs. It is more distressing that it took seven years for one such group to get fair treatment by the IRS, even as the IRS told Congress that it no longer discriminated against such groups. And perhaps most alarmingly, recent press accounts suggest that even after all of this history, the IRS might even be pursuing new discriminatory policies. Reports state that the Administration is considering the possibility of pressuring Israel to make unilateral concessions to the Palestinians, such as through a United Nations Security Council Resolution, and, in that context, also may consider new IRS actions that would affect the tax-exempt status of people or entities based on their viewpoints regarding Israel.⁷ Despite the IRS’s claim to Congress that it stopped political targeting in 2013, the IRS and Administration’s actions over the past seven years lend credibility to these reports.

³ *Z Street v. Koskinen*, 791 F.3d 24, 32 (D.C. Cir. 2015).

⁴ Letter from John Koskinen, Commissioner, Internal Revenue Serv., to Kevin Brady, Chairman, H. Committee on Ways & Means, and Sander Levin, Ranking Member, H. Committee on Ways & Means, Aug. 18, 2016.

⁵ *True the Vote, Inc. v. IRS*, 831 F.3d 551, 561 (D.C. Cir. 2015).

⁶ *Id.* at 562.

⁷ See, e.g., *Obama’s Israel Surprise?*, WALL ST. J., Oct. 31, 2016, available at <http://www.wsj.com/articles/obamas-israel-surprise-1477956091>.

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To help the Committee better understand the IRS's historical and current position in these matters, please provide no later than 5:00 p.m., January 11, 2017, all documents dating from January 1, 2009, to the present to, from, or within the IRS containing the words "Israel*"; "Zion*"; "West Bank"; "Judea"; "Special Israel Policy" and/or "Samaria."

When producing documents, please deliver one production set to Room 2018 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format. Please see the attached Definitions and Instructions for further information about responding to this request. If you have any questions, please contact the Ways and Means Oversight Subcommittee Staff Director at 202-225-9263.

Sincerely,



Kevin Brady
Chairman
Committee on Ways and Means



Peter Roskam
Chairman
Committee on Ways and Means
Subcommittee on Oversight