

Why is the Trump Administration denying Justice in the Z Street v IRS case?

by Jerry Gordon



The *Wall Street Journal* published an opinion article on July 27, 2017 by Philadelphia lawyer Jerome Marcus, "[Obama IRS Abuse Should Unite Trump and Sessions.](#)" . Note the tag line, "Career Justice Department lawyers are still defending the old administration's indefensible positions." See Marcus' *WSJ* opinion article, republished in *Real Clear Politics* and *FoxNews* below.

Jerome Marcus, Esq., is the husband of long term friend and founder of embattled Z Street, Lori Lowenthal Marcus, and he has represented the organization in its long legal struggle against the viewpoint bias of the Obama administration's IRS against Israel. For full disclosure I am a member of the founding board of Z Street.

We have posted in the *New English Review* and its blog *The Iconoclast* the chronicle of litigation since 2010 against the

IRS in the Federal Courts, first in the Philadelphia District court then, following referral, to the DC district and appeals courts.

This important pro bono case was brought because of the blatantly discriminatory treatment of Z Street's tax exemption application by Obama's IRS, because of the organization's differing viewpoint from Obama Administration policy regarding Israel. One defense by the IRS for its special treatment of Z Street was that Israel was where terrorism occurred (!). This case is vitally important because of viewpoint bias by the government in violation of the First Amendment. Counsel Jerome Marcus has won decisions in the matter at both the DC District and Appellate Court levels, most recently in a 3 to 0 decision in 2015.

Yet, even under the present Administration, Justice Department lawyers for the IRS continue to engage in legal tactics delaying justice reflective of the Obama Administration attempt to deprive Z Street of not only its not for profit designation – which was withheld for more than six years- but more importantly its exercise of free speech on behalf of the Jewish nation of Israel.

The Wall Street Journal (WSJ) has written more than a half dozen opinion pieces critical of the IRS and the Obama Department of Justice regarding Z Street's plight. Now, WSJ editorial page editor James Taranto, has provided an assist by running Jerome Marcus' op ed. Taranto has been an important ally in this legal battle for justice for free speech under our First Amendment.

The Z street case, and the others like it, affords a mechanism by which the administration can advance its own policy agenda while simultaneously striking a blow for civil rights and revealing Obama administration corruption. The District court opinion in the Z Street case – upholding the legal merit of its claims, and rejecting the Obama administration defenses –

was written by an African American woman who had been appointed to the bench by President Obama. The panel of the DC Circuit that affirmed her (and that excoriated the Justice Department at oral argument) was presided over by Judge Merrick Garland. Thus the President could obtain an important victory on civil rights (against viewpoint discrimination), exposing the anti-Israeli policies of the former President and helping non-profits whose views were deemed wrong by the Obama administration.

What follows in Jerome Marcus, Esq.'s *Wall Street Journal* op ed.

Obama IRS Abuse Should Unite Trump and Sessions

Career Justice Department lawyers are still defending the old administration's indefensible positions.

By Jerome Marcus

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President Trump has been feuding this week with Attorney General Jeff Sessions over matters related to last year's campaign. But here's an issue on which Messrs. Trump and Sessions should be able to find common ground: The Justice Department should stop defending Obama administration corruption.

I'm referring to the cases, still on file today, challenging or seeking to expose Internal Revenue Service policies that delayed applications for tax-exempt status from conservative groups. That's viewpoint discrimination, a clear First Amendment violation.

The Obama Justice Department fought these cases intensely. It

tried to get them thrown out of court before the plaintiffs had the chance to gather evidence. When that failed, Justice lawyers resisted discovery, to prevent disclosure of documents showing what the Obama administration was really doing.

That's normal behavior for a defendant in a lawsuit. But since Jan. 20, the Justice Department has reported to Mr. Trump, who denounced each of the corrupt policies at issue in these cases.

So why is the department handling the cases as if it were still run by Eric Holder or Loretta Lynch ? Because many of the career lawyers who were put on these cases by Obama Justice Department officials continue working on them, with no supervision from this administration. Those lawyers are still doing now what they have always done: fighting as hard as they can to prevent disclosure of what the Obama IRS, and the rest of the Obama administration, was doing to the country.

In one of these cases I represent the plaintiff. Z Street is a pro-Israel nonprofit that educates on Zionism and how to oppose terror. It applied in 2009 for tax-exempt status under section 501(c)(3) of the tax code. For months, Z Street's lawyers fielded duplicative IRS requests for information about its board of directors, but after long delays the IRS hadn't made a decision on the application. In July 2010 Z Street asked why, and an IRS agent revealed that the applications of many organizations connected to Israel "are being sent to a special unit in the D.C. office to determine whether the organization's activities contradict the [Obama] administration's public policies."

We sued to stop and expose this clear violation of Z Street's First Amendment rights.

Justice Department lawyers representing the IRS argued that the case should be thrown out even if Z Street was right about its constitutional claim, because a statute allowed the

organization to sue in court for tax-exempt status nine months after its application date. In 2015 the U.S. Circuit Court of Appeals for the District of Columbia rejected that position by a 3-0 vote. During oral argument Chief Judge Merrick Garland observed that the department's position would mean "the government is free to constitutionally discriminate against its citizens for 270 days."

Since then we've been in discovery, and Justice has been fighting to prevent Z Street from learning how the IRS policy was formed, by whom, and at whose direction. The IRS finally granted Z Street its tax-exempt status last year, after the D.C. Circuit made clear that was a necessary condition for throwing out the case.

Other important cases are in the same posture. A class action is pending in Ohio brought by many other nonprofits victimized by policies similar to the one that delayed Z Street's application by over six years. Judicial Watch is suing to force the IRS to release information on its Obama-era policies of viewpoint discrimination. And the problem isn't limited to the IRS. Judicial Watch has also sued the State Department seeking release of Hillary Clinton's emails and document-retention policies.

The government lawyers in all these cases are working hard to prevent anyone from finding out what the Obama administration was doing. Cleta Mitchell, who has represented tea-party organizations in the IRS viewpoint-targeting scandal, says Justice Department lawyers "have been stalling, obfuscating and doing all they can in these cases to avoid holding the IRS accountable."

That's true even though all these lawyers now work for President Trump. And it's true even though Mr. Trump knows full well that the Obama IRS violated the Constitution by discriminating against opposing viewpoints, and that the Obama State Department wrongfully shielded Mrs. Clinton's emails

from public view.

Messrs. Trump and Sessions, as well as Deputy Attorney General Rod Rosenstein and Associate Attorney General Rachel Brand, should all be able to agree on this. The executive branch, through the Justice Department, can on its own agree to release the desired information and end these cases, without any permission from Congress or CNN. That would lighten the workload at Justice and shine sunlight on clearly improper Obama policies.

A famous Justice Department lawyer said long ago that “the government wins when justice is done.” Now’s the time for the Department of Justice to do justice.

Mr. Marcus is a Philadelphia lawyer.

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