



Episode 579: Amazing: ACLU and Tenth Amendment Center Unite Against Surveillance

Guest: Michael Boldin

WOODS: Well, this is possibly the most exciting Tenth Tuesday of all time. This is unbelievable. I didn't know anything about this until it broke, and all of a sudden, last week you just had one triumph after another. I'll talk about the triumph separately. What's the occasion of the triumph?

BOLDIN: Well, we launched a campaign, a joint campaign with the ACLU to — for all of those people who have been working those last couple of years to advance privacy on the federal level, lawsuits, federal legislation, ACLU just reached out to us through Mike Maharrey and basically said, hey, we're not really getting anywhere on a federal level; let's see what we can do on a state level. So simultaneously, we announced last week Wednesday, 16 states launching privacy legislation to advance measures to protect the Fourth Amendment in the face of a federal government that just refuses to do so.

WOODS: Now let's go right back to the key thing you just kind of left hanging there. The ACLU just called up the Tenth Amendment Center? What kind of world is this?

BOLDIN: (laughing) We've actually been kind of fostering this relationship with the ACLU for quite some time now. Actually Mike and I went out to New York in the summer of 2014, because we were supporting a ballot measure in Missouri to make electronic data be on the same level as persons, houses, papers, and effects in the state of Missouri. I think that ended up passing like 88 to 12%, something like that, on the ballot in 2014, and they were very interested. I think they saw that, hey look, people get really excited about doing positive things on a state or a local level. And so then last year, they pushed really hard here in California to pass what's called the Electronic Communications Privacy Act to raise the level of privacy requirements in the state of California, and again, they got a lot of positive feedback from the grassroots.

So Mike and ACLU National have been back and forth off and on for the past year and a half, and it was really positive to see the fact that they're putting out this messaging basically that, look, we cannot count on Washington, D.C., and in fact, we held a joint press conference via the phone with reporters from like *Buzzfeed*, *Washington Post*, and a bunch of others, and Anthony Romero talked about this. He's like, look, they

haven't done anything in Congress since the mid '80s on privacy. We can't wait any longer. We've got to do something, and we believe we can create a tidal wave kind of from the ground up by getting positive things passed on a state level. That sounds a lot like us, doesn't it?

WOODS: Yeah, that is tremendous. That's just incredible. Now, have you broken the news to our friend Ian Millhiser?

BOLDIN: (laughing) He probably will say that the ACLU is filled with a bunch of radical racists at this point.

WOODS: Yeah, they're probably neoconfederate now. They've gone neoconfederate.

BOLDIN: You and I talked about this last year, Tom. He wrote an article over at *Think Progress* talking about the groundswell of support for our Fourth Amendment Protection Act, which we're still pushing and there's still legislation out there to turn off resources to NSA facilities, for example. We're still working on that right now, and he basically noted that there were a lot of people on the Left saying this is a great idea, because we can't get anything done. Now, the ACLU isn't backing that particular bill, but Millhiser was saying, look, don't get caught up in this state-level stuff, left wingers, because it's bad, and they might use it for other things, so let's not try something that might work.

WOODS: Yeah.

BOLDIN: Well, the ACLU, even though they aren't backing that particular bill, they're recognizing that if you do want to do anything to advance the cause of privacy, the Fourth Amendment, you're not going to really get it done on the federal level. At least, that's my impression of what they're doing. They really believe that they can actually have some positive effect on a state level.

WOODS: All right, well let's talk about the context of the legislation. First I note that the bills in the different states do vary. It's not one model that all 16 are using —

BOLDIN: Right.

WOODS: — and so we'll talk about some of the provisions of that in a minute. But you and — who? — had a joint op-ed in *Time* magazine last week?

BOLDIN: Yeah, Anthony Romero. He's the Executive Director of ACLU since about 2001 or so, and it's a great, great op-ed actually.

WOODS: Of course. Needless to say, as my listeners tire of hearing the quotation, "I'm going to link to it on the show notes page, which is TomWoods.com," and in this case, /579. All right, go ahead.

BOLDIN: It's an incredible op-ed, not just because I coauthored it, but of course that helps. But the messaging, and they were fully onboard with the messaging, like, look, if they're going to have access to our data, it's not going to happen without permission or without a warrant. And that's exactly the type of standard that needs to be set everywhere, even if Washington, D.C. isn't going to do it, and we believe for sure they're never going to do it in Washington, D.C. Now, that doesn't mean it's going to be easy to get it done on a state level either, but there certainly is a much better chance. And that was published by *Time* magazine. I think it's to actually go on their print level too. I'm not 100% sure. But Edward Snowden retweeted it. There are people from George Washington University tweeting things out saying, hey, we've got to take it to the states; Snowden again retweeting those saying this is the way forward on privacy. And that's I think a huge potential change moving forward.

WOODS: Well I, for what it's worth, I thanked him on Twitter —

BOLDIN: I saw that; I saw that.

WOODS: I thanked Edward Snowden for — who, by the way, on Twitter is just @Snowden. So I thanked him for retweeting that, because that is — I mean, you've been retweeted by Anonymous before, right?

BOLDIN: Yeah, and that was really cool at the time, but then to see a Snowden retweet —

WOODS: Yeah, I mean, now it's kind of like Anonymous is yeah, yeah, yeah, but, come on.

BOLDIN: I got a video of — I use TweetDeck for my notifications. I got a video of what happens after a Snowden retweet, and the amount of notifications just flying by is incredible. And then within the next hour or so, I from my personal Twitter account tweeted out a link to the *Time* magazine article and tagged ACLU and *Time* in it, and then *Time* retweeted that to almost 10 million people. So it was really an incredible day last week, and I think we've got some real headway and we can do something with it. I think that's what's more important. Rather than just the media coverage, this is actually educating people that there's a different path forward than waiting on federal politicians to fix the federal government.

WOODS: All right, let's talk about these bills and these states. Now, I don't know which 16 states we're talking about, but warm my heart by telling me that the states involved kind of run the gamut from red to blue.

BOLDIN: (laughing) Well, New York, for example — well first of all, the genres of bills that we're talking about, at least in our work with the ACLU. Now, the press release of 16 states is an understatement, because we actually track bills on other things. For example, like Michigan House Bill 5162, which is backed by 20 co-sponsors from Democrat to Republican, to turn off all resources to federal spying. Now, ACLU isn't counting that as one of the bills that they're talking about, because it's not something

that they're working on. But if we're talking about stopping license plate tracking devices, these cameras on the highways that take pictures of license plates and the people inside of them and then pass that information along to the Drug Enforcement — the DEA — and then they use that to track where everybody is all around the country at all times, those were introduced in places like New York, Nebraska, Missouri, for example.

We've got bills to stop StingRay spying. These are these little devices that trick your local cellphone tower or your cellphone into connecting with the StingRay, this little handheld device, instead of the cell tower and then dumping all of the data into that. Well, the FBI funds that, gives them to local police, and then they use this for all kinds of surveillance information, pass it along to Washington, D.C. There's bills to stop that already introduced in South Carolina, Illinois, again, New York, and a number of other states. So it's totally across the spectrum.

And what I said in the press conference was, you know, we've focused entirely on state-level action now for nine and a half years. It'll be out ten-year anniversary this summer. And I've never seen the Left and Right, at least on the legislative level, work together on a single issue so much as this. Maybe the Right to Try Bill, which we have talked about a little bit as well, Tom, but it's really impressive to see so many people from Left and Right working together.

WOODS: I hope you'll forgive this question, but I really am curious. Romero must know that you guys are considered, you know, naughty boys, that you are not respectable. You don't get invited to the annual Heritage Foundation dinner or whatever. And yet, he still works with you.

BOLDIN: Well, I actually respect that. I know they don't agree with us on certain issues. In fact —

WOODS: No, they don't have to.

BOLDIN: No. And when we met with them — we didn't meet with Anthony, but we met with a number of top level people of their New York office, and they're like, well, yeah, you're kind of big on that gun thing or stopping Obamacare, and they see it as like, well, we're not on the same side on that. And we all know it. But the way you get things done is by setting aside differences and working toward a common goal, and you know what? We can oppose each other on those other things, and we're going to work with other people towards a common goal on those other issues as well. I think of it like Thanksgiving dinner. I mean, you hang out with your family, and if you had everyone thinking the same — maybe not in your family, Tom, but at least in mine, I know for a fact that if we picked a political topic, we wouldn't find consensus on almost anything. But that doesn't mean we don't spend time together and we don't find the positive ways to connect with each other on things we do agree with.

WOODS: All right, let's look at all these different provisions. There are so many different provisions. What are the ones that would be most interesting to this audience?

BOLDIN: (laughing)

WOODS: So the license plate reader thing, that's one thing. What else are we talking about?

BOLDIN: That's huge. Well, the StingRay device, that's one. This is basically kind of sweeping up the location and communication of all cellphones within a certain area. Washington State and California both passed bills to require a warrant before these types of things are used last year. The bill in South Carolina, for example, just straight outward ban local governments from even obtaining these things, and I think that's probably the way to go.

There's an organization here in Southern California called Stop LAPD Spying, and the guy who runs it, I mean, I think he's more of a Marxist than anything, but on surveillance we're definitely on the same kind of eye-to-eye level. And in fact, he thinks I'm too soft-core on it, and he tells me, look, we can't say you can use this with a warrant, because eventually they're going to come up with an excuse to not use it with a warrant. We don't want them having these devices in their hands at all, because they can't be trusted.

And I love that as kind of the end goal, but I don't know in the current climate if any states are willing to go that far, so we're very excited about the idea of at least saying, hey, you've got to have a warrant with probably cause before using a drone to conduct surveillance or a StingRay to collect data or a license plate reader to monitor someone's location.

WOODS: You were mentioning before a bill that kind of reminds me of the stuff that you've been doing with the NSA that would involve – or maybe it is the bill involving the NSA.

BOLDIN: It is.

WOODS: Yeah, okay, where you cut off resources to them. Now, what would be the reason do you think – I don't want to put you in a tough spot here, but that's a very bold proposition that you have in that bill that maybe you could take a minute and explain. Wouldn't that be right up the ACLU's alley, or is it just a little bit too edgy maybe for them?

BOLDIN: That's what I think, and in fact, we've talked with other organizations, other, we'll just say, very prominent privacy technology-based organizations, and in general the response is – and I'm not saying this specifically about ACLU – but in general the response on this type of bill is, man, we love it. This is from the grassroots organizers. And then they'll say something like, well, our lawyers are a little nervous about it, so

they don't want us getting behind it. So they get a little freaked out about it, even though we can provide plenty of Supreme Court cases that say, hey look, the states cannot be forced to do this. I think people are a little scared of getting that confrontational with the federal government.

I think in some ways these types of bills might be sending a message. In a way, we have to teach people what they can do somewhere down the line. I don't know if people are ready to do things like this now, but I feel like if we don't push for them today, they're not going to go anywhere in the future when it needs to happen too, so we're basically laying the groundwork. I believe sooner or later a lot of measures, at least on a federal level, are going to totally fail and people are going to recognize that like, look, unless we just stop giving them aid and comfort everywhere possible, they're never going to stop, and this is all part and parcel of that whole project.

WOODS: All right, I've got some more juicy things I want to ask you, but let's just pause for this quick message.

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All right, when I was looking at the ACLU's press release on this, I was — let's see, where was — yeah, I saw some data on polling — yeah, a 2015 Pew Research poll found that 93% of adults believe being in control of who can get information about them is important. 90% believe controlling what information is collected about them is important. Okay. The poll also found that Americans do not want their personal information collected without consent and that they have a right to know when this information is being collected, and so on and so — oh, and 88% of respondents said it is important that they not have someone watch or listen to them without their permission.

But yet, after these various terrorist attacks like the one in Paris, for example, it seemed to me like the cry for privacy started to become kind of old fashioned in the U.S., that people were more interested in saying, look, the authorities are going to need more and more tools at their disposal to help keep us safe from the bad guys. So these polling numbers, I don't know if they came before those attacks or what, but that does seem surprisingly high to me, those numbers.

BOLDIN: I think it's just kind of an inherent human value to be left alone, and that's the whole idea of get the government out of our lives. And the Snowden revelations I think shocked a lot of people. Even with all the work that I've been doing for so many years, when I heard about that that summer, it just kind of blew my mind. Like I thought, well, somewhere down the line, they might take things this far, but when I was really hit with how far they were taking it, the reality of it, it really upset me, and I think a lot of just average, everyday people who aren't on the pulse of the day-to-day and the political sphere are upset about that. They think to themselves like, look, I'm just living my life; I don't like the idea of being watched at every turn.

And then the more things that get revealed – like okay, we know where the federal government, for example, could through these license plate tracking programs know everyone who went to a gun show, for example, just by monitoring license plates. It could be a law enforcement officer sitting outside of a show, for example, and we'll just have the camera on, and all of a sudden Washington, D.C. knows everyone who's been there, and I think that's a serious problem and people are really upset about that.

WOODS: All right, you mentioned the gun show, so that actually reminded me that we haven't done a Tenth Tuesday in quite some time, so I certainly myself would like to be brought up to date on what else the Tenth Amendment Center has been up to in the interim. And when you said "gun show," it made me think, I'm sure there is some gun legislation out there, and of course we're at the beginning of the year where it really is nullification season, because you have a lot of state legislative sessions getting started. My friend Connor Boyack is getting ready for the session in Utah, for example. So what can you tell us about other things that the Tenth Amendment Center has been looking into and working on?

BOLDIN: Well, I think the right to keep and bear arms is obviously a big one with Obama and his backers wanting to push gun control measures on the federal level, even without Congress. And we know they're going to do this type of thing now or in the future eventually. A lot of people on a state level are recognizing, just like on the privacy level, is hey, it doesn't matter how many court cases are supposedly won in Washington, D.C.; the gun control people are still going to push for what they want.

And so that's why we've been aggressively getting legislation introduced in somewhere between five and eight states already, with more coming very soon, to block the enforcement of federal gun control measures. In some states, for example, it would just be any new one, so any new executive orders, for example. In Arizona under House Bill 2300, the state would just not participate in that. And because the federal government relies so heavily on the states to help the federal government enforce these gun control measures, Judge Napolitano said about a year or so ago on a show that any state saying, hey, we're just not going to enforce federal gun control would – and this is Judge Nap's quote – "make them nearly impossible to enforce." So a number of states have bills like that. This is Arizona, Missouri, South Carolina, Kentucky, Indiana, and a few others are considering bills to block federal gun control measures.

WOODS: All right, so that's gun control. You have other issues. You've got, a number of states I know have had bills pertaining to the legalization of hemp production.

BOLDIN: Yeah, and that's actually one of my favorites, being someone who eats, for example, hemp granola, and I recognize that hemp is more expensive in the market because the federal government has banned hemp farming and production for so many decades and it becomes an import. So the U.S. is the number one importer of hemp in the world, and two largest exporters are China and Canada. So here in a time where the economy is in such difficulty and probably getting worse, I think it's extremely

important to give the agricultural in the country another place to make some money, and hemp is a huge cash crop.

So a number of states have already started moving forward. People are farming hemp without federal permission in places like Colorado or, again, Tennessee, South Carolina, Vermont, soon probably in North Dakota. We also saw legislation just introduced in the last week or so in West Virginia and Indiana to say — and they expressly just are removing the requirement to get federal permission on the bills in West Virginia and Indiana, and I think that's really exciting. You look at a bill that just passed 22 to 0 out of committee in Virginia this last week, and there's just a big line through the current line that says no one can start farming without federal law saying this can be done. I mean, the fact that they would pass something like that I think is huge.

WOODS: I want to ask you a thing that I probably shouldn't be asking on the air. I should just ask you this privately, but this is what makes it fun. It makes the show fun for me to just — and then people are going to be totally let down by how lame the question is. But you used to put on these events called Nullify Now, and you'd bring together all these different groups, and people would give talks, and there'd be an exhibit hall and everything, and people got to know each other and whatever. And then just all of a sudden, you stopped doing them. And I think I have a sense of why you stopped doing them. I can think of two reasons you stopped doing them, but I don't want to give mine. I'm going to put mine in an envelope here, and I'm going to seal it, and that way you'll know that when you give your answer, it's not just that I'm copying what you said. I already had it sealed in this envelope. So go ahead and tell me what are the reasons that you don't do that anymore.

BOLDIN: Oh, this ought to be fun. One, I like sleep and I wasn't allowed to have any while running an event plus trying to manage this entire organization. And then two, I'm not really a big fan of losing money, so I'm very conservative with how I manage finances here, because I just have to be. When I first started the Tenth Amendment Center, I was working a part-time job for \$11/hour three days a week and living off that to run the TAC, and so I've always been kind of efficient with how I can make a dollar go. And running events, I'll tell you, it's unbelievably expensive, and it's very hard to even — we generally came in about even, which is very unusual. But those are the two big ones that come to mind right off the bat. What is yours?

WOODS: Okay, well, now hold on, let's get it out of the envelope here.

BOLDIN: What's in the envelope?

WOODS: All right. [Paper tearing.] Okay, here we go. First one is too much work.

BOLDIN: (laughing) No sleep.

WOODS: It's exhausting. All right, so I'm going to count that as being — but my second one you didn't say. My second was that it turned out after you tried it out that you

discovered that you can be much more effective working one issue at a time with different groups than you can be saying, let's all go out and nullify as a general principle. Not as many people with that as a general principle, but they do agree on it in particular cases. So I thought that was a reason that you had abandoned it. So I'm going to give myself partial credit.

BOLDIN: I'll give you one and a half, because really, that actually is part of our strategy, and as you can see from the work that we're doing, for example, with the ACLU, there are so many things that the ACLU may oppose us on, but on this issue, hey, let's reach across the aisle or whatever you want to call it, across the table, shake hands, be friends, be partners, and when we disagree we'll work with somebody else as their friend and their partner. And I think that's an extremely effective way of going forward, because if we're expecting people to be with us on everything, it's almost never going to happen.

So for example, when we talk about nullifying the federal ban on marijuana or on hemp, a lot of times people on the religious right will absolutely despise us, even though we do find some who would say we're with you even though we oppose using, for example, those substances or growing hemp for granola, for whatever reason they have. But then they'll be with us on things like stopping Obamacare, protecting the right to keep and bear arms. And I think more and more we're seeing that people across the aisle, as we talked about a few minutes ago, are with us on privacy issues. So to find the ones where we can bring people together, I think is a big deal.

WOODS: All right, I think certainly people who listen to the show really regularly – regularly enough that they know that Tenth Tuesday is, you know, a thing – will also know that I donate to the Tenth Amendment Center every month an amount that I consider to be substantial.

BOLDIN: I do as well.

WOODS: I'm glad. It's the most I actually give to any organization, and it's mainly because you guys are so small. You deserve to be gigantic, but you're doing this so effectively, and as you say, you are very, very good with managing money. Like, you're not driving around in a limousine like these think-tank presidents and so on. You are extremely careful with the use of the money that's entrusted to you, and I very much appreciate that. But really, there's nobody else out there promoting this particular line of thought. And I happen to know a little something about nullification, you know, having written that book on it, and you guys are the only ones out there doing it, and you have changed the conversation on so many issues.

Here you are getting this extremely high profile coverage, and you're still a very small organization, where you know everybody who's involved in it, and you have a bunch of volunteers and people who help out. It's great. It's exactly what I would like to see more of, and I'm thrilled that you're doing it, so I hope other people will join me in doing that. Tell us the contact information for people who want to know more about

the Tenth Amendment Center. Of course I'm going to link to it at TomWoods.com/579, but maybe they want to bypass the middle man.

BOLDIN: I think the best place for people to start who want to get something new is to go to TenthAmendmentCenter.com/Report. TenthAmendmentCenter.com/Report, it's a 50-plus page, free download, a PDF, the State of the Nullification Movement Report. It talks about all the work we're doing on various issues, whether it's ObamaCare, privacy, the right to keep and bear arms, Common Core, so many different issues. And then it talks about the general principles that guide where we're going, some of our strategy as well, and I think that is where people are going to get the best idea of what we do and what we're all about.

WOODS: All right, great. Well, a pleasure talking to you, Michael, as always. Great, great work on this. We're all behind you. I hope people will check out the links. I'm going to put your *Time* magazine op-ed there, and then any other items that you think are juicy, just send them along to me and we'll link to them at TomWoods.com/579. Thanks again.

BOLDIN: Awesome. Thanks, Tom.