



Episode 621: The IRS Is About to Terrify Organizations into Shutting Up

Guest: Dan Johnson & Adam de Angeli

WOODS: I had somebody who I guess was at the Students for Liberty Conference, must have been last month in D.C., who saw your booth or something; I guess you must have had a table there. And I wasn't familiar with what you were doing. This person wrote in to me and said, I think this is pretty interesting and you should think about having them on your show. So we looked into it and we did some reading, and I said yes, this is a definite; I want to talk about this. So over at TomWoods.com/621, you'll be able to read the whole, having it all laid out for you, the basic bird's eye view of what the IRS is basically – let's face it; it's what they're threatening to do. And it has to do with different types of organizations and what they are allowed to say, The types of things they are allowed to do, the types of words they are allowed to say, particularly near election times. And I thought I – I have to admit, when I first heard this, I thought, ah look, I'm against the whole IRS anyway; this just seems like a nit-picky thing to be worried about. But look, as long as the IRS is around, it could do a tremendous amount of damage in so many different ways, and this is a way that I hardly even thought of. So why doesn't one of you just give us the – if you were on TV and you had just a one-minute opportunity to explain the perils of what the IRS is proposing, what would you say?

DE ANGELI: What the IRS is proposing to do is to redefine what political activity means, so as to restrict or prohibit entirely nonprofit organizations from even speaking the names of politicians during the critical election time when people are thinking about their record. So it would essentially crowd out political activist groups, nonprofit organizations. It would also create terrible legal exposure, even for charities and educational institutions. At the same time, leave that vacuum to be filled by candidates in PACs with their own message. So we're concerned the IRS is really depriving the American people, or intends to deprive the American people of the very important voice in political discussion, and that's the voice of issue advocacy groups and educational institutions.

WOODS: All right, that was very, very well done. That's exactly what I wanted. When people hear the scope of this and the extent of it, they're going to be as shocked as I was, and it takes a lot to shock me these days. It in some way boils down to how we define the word "electioneering." And this particularly has to do with so-called 501(c)(4)s. Tell me about the significance of this word "electioneering" – how it's traditionally been understood and how the IRS is threatening to interpret it in the future.

DE ANGELI: Well, what electioneering has been understood to mean, since the 1976 Supreme Court Buckley case is that "electioneering" means what's called express advocacy. And that's where, in no uncertain terms, you are advocating for a certain result in an election. So you are either saying vote for so and so, or defeat so and so, or cast your ballot for, etc. What is not considered electioneering is simply talking about how a politician vote, and perhaps even expressing your opinion about that vote. So if I say, for example, so and so voted against auditing the Federal Reserve, that would not be considered electioneering. That would be considered issue discussion. And it's electioneering that is what the Federal Election Commission regulates.

So as it concerns the nonprofits, you have these educational advocacy organizations; they're called 501(c)(4)s, and they advocate to pass and defeat legislation. And that's been understood to be their constitutionally protected right to do. And part of that mission involves actually informing the voters how their elected officials have been voting. What the IRS wants to do is say that that no longer counts as issue discussion. That is electioneering. By virtue of even mentioning, even by reference, a particular politician, during a one-month window before a primary, a two-month window before a general election, that would be considered electioneering, which for (c)(4) organizations, advocacy groups as they're called, that would be heavily restricted, and for educational institutions and charities, that would be prohibited entirely.

JOHNSON: Well, and if you look at how broad the proposed rule is, it's not just federal elections, it's not just presidential candidates; it's any election in the entire country. That's special; that's runoff; that's local; that's state; that's federal. And you don't even have to mention a candidate. According to the rule, if you mention something where it could be inferred that you are somehow supporting a candidate, or the issue that you are talking about is also discussed by that candidate and it could be inferred from that that you're somehow supporting them, then that would fall under the definition of electioneering as well.

WOODS: And what really shocked me was that even if you have the name of a person who's seeking office, you have the name of that person on your site – and maybe the guy wrote an article for you five years ago or something. If there's anything, you would have to scrub your site in order to make absolutely sure that you're fully in compliance with this regulation.

DE ANGELI: Right, it would be a terrible legal exposure, especially for charities, if they extend the rule as the IRS has said they intend to, because charities are not permitted to do any electioneering whatsoever. So according to the proposed rule, and you have to even see it to believe it, they actually say, we intend for this to mean any reference to a candidate on a website that was posted earlier and remains there. So for a charity organization, if they were to give someone a Philanthropist of the Year Award five years ago, and then he's running for city council in a special election and they don't know about it, they now face legal exposure of losing their nonprofit status, which is a terrible thing for a nonprofit. That's what their whole business model is based upon. So yeah, it's absolutely outrageous what the IRS is proposing, and it would chill not just political speech for activist groups, but it would really create a very chilling effect on all nonprofits if they apply it across the board.

WOODS: All right, let's talk about what could be behind this, because it obviously sounds crazy. Now of course, you can imagine a proponent of this saying they're just trying to protect the purity of the American system of elections. But this is so ridiculously over the top, and it's something that, as you say, would obviously have a chilling effect across a wide array of organizations. What do you think is the real reason that they are doing this?

DE ANGELI: Well, the IRS doesn't directly care about what goes on with American elections. The concern that they have here is what happened a few years ago, where you'll recall there was a terrible scandal at the IRS where they were arbitrarily denying certain organizations their nonprofit status. You'll recall there were executives from the IRS fired; there were congressional hearings. And the outcome of all this was the IRS said what can we do to prevent this from happening again? And someone said, ah ha, if we just make all the things these groups do illegal, then we'll face a lot less exposure ourselves.

So in the notice of the rule, they announce all these noble concerns about, well, we need to make things clear for everybody, but the fact is what is considered electioneering and not electioneering was clear to begin with. What this is about is preventing the IRS from facing any exposure of their own to these organizations, supposedly. And more broadly, the IRS has certainly been alleged to have some role in politics and there may be some motivation there as well. But certainly the IRS won't say that, but there is certainly the clear case that the IRS themselves benefits directly from simply making what these groups do no longer permissible in the first place.

WOODS: Yeah, let me jump back in there. Okay, so I hadn't thought of it that way, that – it's incredible that that scandal involving the conservative groups and the IRS, that the result of that would be that things would actually get worse, that the IRS would admit, okay, things were done that shouldn't have been done, so instead of punishing themselves, they want to expand their ability to punish people, in effect. But then, what I also want to ask you is – I'm not thinking just of people who are in the IRS who support this. Let's think about somebody, a person who does not work for the IRS. What would be a reason that somebody might think that this was a good thing? I don't mean a normal person who lives outside of D.C.; I mean a D.C. person. What do they see in this that's good?

JOHNSON: Well you think about a few things. Number one, I mean, one of the justifications the IRS is also making is – or at least through groups that are supporting it – are making is, oh, well, this is going to solve our money and politics problem. So the IRS is trying to latch on to money and politics, but the facts are, I mean, super PACs spent \$345 million in the 2014 election cycle. And the 2016 election cycle is expected to cost up to \$5 billion. Most of that is campaigns; most of that is PACs. Most regular citizens get engaged through elections – or not even elections, get engaged in issues, get engaged in the political process through a nonprofit. They don't get engaged through a PAC. They don't get engaged through a candidate's campaign.

And so all these candidates the incumbent politicians who now, their votes can't be reported on within 60 days of a general election or 30 days of a primary election, they're really liking this rule. And they're really interested in making sure it passes. And as Adam was saying, filling the gap, once these nonprofits – you know, the IRS is

not going after PACs here; they're going after nonprofits, and to a certain extent they want to extend it to charities. So they're going after the citizens, and who will fill the gaps? Well, the big moneyed interests that have been controlling our political system already. And yet the IRS is daring to cast this as, oh, well, we're just trying to keep money out of politics, when they're actually going after the only groups that have any way of countering that.

WOODS: Now, the IRS has been contemplating something like this for quite some time, but Congress actually stepped in – I can hardly believe I'm saying this. Congress stepped in and did a somewhat sensible thing that shielded us from this for a year. Explain that.

DE ANGELI: So in the last Omnibus Budget Bill, Congress defunded the IRS from implementing the rule through the fiscal year, which expires at the end of September 2016. And that's all well and good, except that it's also taken the issue off of some groups' radar, when it's just going to come crashing back in, first during election time, then followed by lame duck when anything can happen. So it's certainly nice that we got a temporary reprieve, and we can hope that it's a signal that Congress is willing to do something permanent, but of course the question is why didn't they do something permanent in the first place? Supposedly you can't do that in budget bills but Congress legislates in budget bills all the time. So we're concerned that they may have placated some of these groups for the time being, but we should be looking forward for what's going to come up in October and be preparing now.

WOODS: Now, this effort by you guys, is it basically that you want – you'd like this to get off the radar entirely, but are you looking to try to have Congress repeat what it did the last time? Or at least as a bare minimum? Are you demanding that they just chuck this whole thing? What is your maximalist demand?

DE ANGELI: Well, what Congress should do is codify the Supreme Court ruling in Buckley where they define what "electioneering" means. And that way the IRS can't overrule that anymore. The rule-making process exists to clarify where there is ambiguity in the Federal Code, and of course Supreme Court cases are not automatically codified. So what we need to have happen is Congress makes this permanent by simply defining what "electioneering" means and then holding the IRS to that, so the IRS can't introduce a rule that would change the meaning from what it is currently understood by the courts to mean.

WOODS: Is this bipartisan? I mean, surely there are advocate groups on both sides, so you would think both sides of the aisle, so to speak, would be on board.

DE ANGELI: Well, there certainly should be, because this issue will affect all of them, especially if the IRS applies it across the board to all categories of nonprofits. Originally this was intended only to apply to the activist nonprofits, the 501(c)(4)s as they are called, but now the IRS says, you know, we might want to apply this across the board entirely. And from the perspective of people on either side of the aisle, that's exposure they could face in an administration of different parties, that's something that they could implement to apply to different activist categories. There's (c)(4)s which are educational social welfare groups, but then there's also labor unions, there's chambers of commerce.

So all these groups should be concerned right now, especially if you include the charities. If they apply this to educational groups and charities, then you're talking a much, much larger body of nonpartisan entities that might not be politically active and just simply not aware of this. But it's definitely coming down the pike in real time, and anything can happen either in this administration or the next. So yeah, we think all groups concerned about their ability to organize and to inform the public should be concerned about this right now and talking to Congress as well.

JOHNSON: And to kind of follow up on that point, I mean, while it's nice that Congress defunded this until the end of the fiscal year, so coming up in October is when it comes back, nonprofit groups should not have to worry about their free speech being essentially eliminated every time a fiscal bill comes up. So we really are looking to Congress to make permanent the definition of "electioneering." Just vote for, vote against, as Supreme Court put in Buckley, instead of, oh, well, any time you ever mention a candidate, any time you hold a voter registration drive, any time you mention an issue that a candidate also happens to mention. And really make it clear what we would think has always been well understood.

WOODS: I have a sizeable number of listeners, and if they're listening to this and they think this is a really, really bad thing, and I hope there's some way to head it off, what would you have them do? What would you like the average person to do to try to help you?

DE ANGELI: Well, they can go to our website and get more information on the issue, and then, by all means, inform any groups that they know of, whether they're activist groups or nonprofit institutions. They can go to our website; they can learn the facts. We're an educational institution, so we're not lobbying Congress directly on this issue. But it's clear what legislation needs to be passed and we are talking with other groups about this, so keep an eye on this moving forward. Go to our website. You can sign up for email alerts, so we can let people know as the issue develops. And hopefully we can work with others and build a coalition that can really address this issue in a major way this year.

WOODS: Tell me what the website is.

DE ANGELI: TaxRevolution.us, that's our website, TaxRevolution.us.

WOODS: Okay.

JOHNSON: Yeah, I was just going to say, and if you are the head of a nonprofit or you know someone who is the head of an advocacy group and they're concerned about the rule and you take the chance to look over the information, then we're building a coalition, putting together a coalition letter to Congress, building a coalition to have Congress officially codify the definition of "electioneering" as it's always been known into law. And having done a fair bit of legislative activism on various issues, one of the things that Congress does respond to is pressure. They respond to when you threaten their job. And so the more groups that we have on board with that coalition, that are officially involved in that coalition, the more we can go to Congress and say, look, we have 10 groups, 20 groups, 100 groups, 1,000 groups, 10,000 groups, and then they

start thinking about their reelection chances, and that's when they start doing any work to protect our liberty.

WOODS: Adam, you are, or have been with, in one form or another, Campaign for Liberty?

DE ANGELI: Yes, I worked for them for the duration between my times with the Ron Paul campaign in 2008 and 2012.

WOODS: Okay, a lot of my listeners are going to be familiar with Campaign for Liberty, so that might be a good example to help people get a sense of exactly what this could mean. Give me an example of something Campaign for Liberty does now that it would simply not any longer be able to do or wouldn't want to risk trying.

DE ANGELI: Well for example, informing their members how a legislator might vote on Audit the Fed. Typically that's the way we build pressure for an effective legislative project, is by leading our members to understand how – or I should say *their* members, since I'm no longer working with them. But with any issue with any group, we inform our members how their politicians vote and then that in turn generates, indirectly generates outcomes. And then politicians want to actually vote with their constituents on these issues.

So if you say that that's electioneering now, and therefore they are limited to that being a minority of their activity, well, if you're a nonprofit institution, most of your money is actually spent in direct mail doing these information programs. So if they are no longer information, if they're now electioneering, you lose your nonprofit status, that jeopardizes your whole ability to advocate for these issues. And it's the same on any issue. It doesn't matter whether it's a gun rights group or a pro-life group or anything else. All these groups have their speech threatened when what they are doing on a day-to-day basis to change public policy is now considered electioneering.

WOODS: Gentlemen, if there's anything that I've left out or failed to ask you about, I'd like you to speak up now. What else do we need to cover that I haven't gotten to?

DE ANGELI: Well, just to go back to the issue when we were talking about how the IRS is trying to parlay their own disaster into a clamp down on our free speech. You know, one of the most amazing things I came across doing the research on this is that when the IRS after the whole scandal happened, after the heads rolled, after the dust settled, when they announced this rule, they actually said in their news release announcing the rule, this will allow us to conduct fewer fact-intensive inquiries into whether these groups' communications are neutral and unbiased.

Now, think about those terms, neutral and unbiased. Those terms have no legal meaning. And activist groups have no obligation anywhere to be neutral and unbiased. So think about this, the IRS actually went through this whole fiasco, and yet even as they're trying to try to push this through, they are admitting that even now they are still exceeding their lawful limits of inquiry into what these groups do. So it just touches on how amazingly, just how audacious the IRS is in trying to push this forward and hoping there's no pushback for it.

WOODS: Dan, do you have any final words for us?

JOHNSON: Really, the only thing I would say is that, though we talk about the IRS a lot, remember the IRS is the unruly child and Congress is the parent. I can't walk into Koskinen's office and fire him right now. But in order to protect our free speech on this issue, we need to go to Congress, and we need to pressure Congress in order to pass legislation to specifically codify that electioneering is just voting for and voting against. So the focus, though the IRS is the group that introduced this rule, the focus really should be on Congress to prevent it from happening.

WOODS: Okay, so the place for people to go to get more information – first of all, of course I will be linking to your material and to your website at TomWoods.com/621 in case people forget your website. But your website is not really hard to remember, TaxRevolution.us. I recommend people check this out, again, especially if you belong to or know of any of these groups that would fall under these categories that could be subject to this. You're going to want to hop on to this right now and do what you can to prevent this from coming to pass.

Well, Dan and Adam, I'm glad that I had a chance to talk to you. I'm glad somebody wrote to me to tell me about this. I like to think of myself as reasonably informed but things do fall between the cracks and I'm sorry to say this was one of them in my case, but we have rectified that, and you know, I hope there are a lot of people listening who will jump on board and help you guys out. Thanks so much.

DE ANGELI: Thank you, Tom.