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# IRS & White House Defiant On Lost Emails As Supreme Court Upholds Challenge To IRS Summons

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The U.S. Supreme Court has ruled—unanimously, no less—that taxpayers have a right to challenge IRS summons enforcement proceedings when they can show the IRS *might* have issued the summons in bad faith. In [United States v. Clarke](#), the Court vacated & remanded the case, so Mr. Clarke's tax nightmare isn't yet over. But every taxpayer should take note, and here's why.

This case has nothing to do with the lost email scandal or Tea Party targeting, or does it? Most people don't go to the mat with the IRS. You pay your taxes and hope you're not audited. If you are, you pay if the IRS says you must. If you disagree, the dispute process (including IRS Appeals) works pretty well.

Sometimes you have to go to court. Since the IRS is made up of humans, sometimes the IRS is unreasonable or downright wrong. Does the IRS target people for improper reasons? Opinions vary.

Richard Nixon supposedly asked the IRS to audit his political enemies. There has been no proof yet that President Obama tried to influence the IRS in the Tea Party targeting scandal. Yet lost emails from Lois Lerner and 6 other key IRS employees—from already recycled hard drives—may come back to haunt the President.



*United States Supreme Court (Photo credit: Wikipedia)*

There's evidence of IRS, White House, and DOJ meetings about targeting conservative groups. And the more it is all pooh-poohed, including by new White House Press Secretary Josh Earnest, the more incredible it becomes. "Nobody believes you," snapped Rep. Paul Ryan, R-WI to IRS Commissioner John Koskinen. The IRS Chief's tepid testimony under oath about the emails included a new defense: IRS emails really aren't official records anyhow.

In 2010, Michael Clarke of Florida accused the IRS of issuing a summons as payback for resisting an audit. Clarke wanted to question the IRS Agent in court about the targeting, but the IRS refused. Now, the Supreme Court has given Mr. Clarke the right to seek an evidentiary hearing about the motives of IRS officials. The IRS says evidentiary hearings are fishing expeditions.

But rogue IRS agents or not, the power of the IRS is legendary. Under the law, the IRS can issue a summons for information when a taxpayer refuses to provide it voluntarily. If the taxpayer ignores an IRS summons, the IRS gets a court order. Judges routinely rubber-stamp such requests, enforcing summonses without evidentiary hearings.

Mr. Clarke claimed the IRS improperly issued summonses as payback. He wanted to question an IRS agent why the summonses were issued and how they related to a \$17 million tax bill. Now the Supreme Court says he can. For a unanimous Court, Justice Kagan, said that:

"[T]he taxpayer is entitled to examine an IRS agent when he can point to specific facts and circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose

are not enough: The taxpayer must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to meet that burden; after all, direct evidence of another person's bad faith, at this threshold stage, will rarely if ever be available. And although bare assertion or conjecture is not enough, neither is a fleshed out case demanded: The taxpayer need only make a showing of facts that give rise to a plausible inference of improper motive. That standard will ensure inquiry where the facts and circumstances make inquiry appropriate, without turning every summons dispute into a fishing expedition for official wrongdoing."

What does this portend for Mr. Clarke and other taxpayers? The IRS wanted a blanket rule it couldn't be questioned, but didn't get one. Still, the Supreme Court says that IRS agents cannot be forced to undergo evidentiary hearings based on bare allegations of improper purpose. The next chapter will be how the lower courts interpret the facts for Mr. Clarke and other taxpayers.

To be sure, the IRS has a hard job to do, and in general, does it well and fairly. But that is precisely why this is so important. The power of the IRS is imposing. In general, the IRS can get the courts to order taxpayers to produce information. But sometimes it is wrong.

Does it behoove *anyone* to fight with the IRS? Sometimes it does, and sometimes even at an early stage involving the production of documents. After all, sometimes documents can be the whole battle. Oh, all of *those* emails? About my hard drive...

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