

Z Street v IRS – Victory for Israel and US in Landmark First Amendment Case



As a board member of Z Street, I am pleased about the IRS settlement after seven long, arduous and frankly perplexing years of litigation on the grounds of viewpoint discrimination against Israel under the First Amendment. Now we know the reasons why Z Street tax-exempt status was delayed. We have chronicled in various articles and blog posts on the New English Review, the twists and turns of the case that went through two Federal District Courts in Philadelphia and the District of Columbia finally resulting in the defeat of the IRS at the Washington, DC Federal Court of Appeals. *The Wall Street Journal* editorial board was unstinting in supporting the Z street v IRS litigation frequently publishing editorials and op eds. by lead counsel, Jerome Marcus, Esq. This long overdue settlement is a legacy gift for all Americans and supporters of Israel wrought through the financial backing, determination and litigation by Street founder, chavera, [Lori Lowenthal Marcus](#) and husband Jerome Marcus, Esq. They deserve the accolades for this victory for Emet- truth, that will set a standard for similar First Amendment viewpoint discrimination litigation. Kol Hakavod to Lori and Jerome for

ending the seven nightmare years.

Below is Lori Lowenthal Marcus' op ed article to appear in the February 2, 2018 *Wall Street Journal*.



The IRS Campaign Against Israel—and Us

By

Lori Lowenthal Marcus

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The first IRS viewpoint discrimination case to be filed, *Z Street v. IRS*, has been settled, with disturbing revelations about how the Internal Revenue Service treated pro-Israel organizations applying for tax-exempt status.

I founded Z Street in 2009 to educate Americans about the Middle East and Israel's defense against terror. We applied for tax-exempt status under Section 501(c)(3) of the tax code in December 2009—a process that usually takes three to six months.

Instead, the application languished. In late July 2010, an IRS

agent truthfully responded to our lawyer's query about why processing was taking so long: Z Street's application was getting special scrutiny, the agent said, because it was related to Israel. Some applications for tax-exempt status were being sent to a special office in Washington for review of whether the applicants' policy positions conflicted with those of the Obama administration.

So in August 2010 we sued the IRS for violating Z Street's constitutional rights, including the First Amendment right to be free from viewpoint discrimination—government treatment that differs depending on one's political position.

Now we know the truth, and it's exactly as bad as we thought. IRS documents—those they didn't "lose" or otherwise fail to produce—reveal the following:

- Our application was flagged because Z Street's mission related to Israel, a country with terrorism. Therefore, an IRS manager in our case said in sworn testimony, the IRS needed to investigate whether Z Street was funding terror.
- Some applications for tax-exempt status were indeed being sent to IRS headquarters in Washington for more intense scrutiny. They were selected because of the applicants' viewpoint.
- In August 2010, three other Jewish organizations applying for tax-exempt status were asked by the IRS to "explain their religious beliefs about the Land of Israel."

Our own investigation disclosed that between 2009 and 2016, while Z Street's application was stalled, the IRS needed no special scrutiny to grant numerous applications for tax-exempt status that explicitly proclaimed donations would be spent in Gaza—a territory formally under the jurisdiction of Hamas, which the U.S. State Department designates as a terror organization.

While claiming to be investigating Z Street's funding of terror, the IRS never asked how or where Z Street spent its money. The IRS ultimately granted Z Street's application, in October 2016, without asking anything about terror, or money, or anything else it hadn't known in 2010.

As the IRS knew within six weeks of our case being filed, Z Street was sent for special scrutiny by an IRS employee using an outdated list of countries affected by terror. The new list didn't include Israel. The IRS didn't resume processing our application after it discovered this error, and it didn't disclose the error for six years. Because we sued, the IRS froze Z Street's application. It stayed on ice until August 2016, when a court held the IRS couldn't get our case thrown out until it processed our application. Two months later we got our exemption.

The "terror" error turns out to have been a pretext. Within weeks of President Obama's inauguration, IRS and State Department officials began considering whether they could deny or revoke tax-exempt status for organizations that provided material support to Jews living across the Green Line—the nonborder that delineates pre-1967 Israel from the territories Israel acquired in the Six Day War. The theory was that a Jewish presence in those areas is inconsistent with U.S. policy. The IRS drew up lists of such organizations based on information from anti-Israel websites such as Electronic Intifada and MondoWeiss.

The New York Times and the Washington Post ran articles that advanced the policy espoused by the Obama administration and its nonprofit ally, J Street. Unnamed "senior State Department officials" were quoted as saying that Jewish activity over the Green Line isn't "helpful" to peace efforts.

While no formal policy was released barring U.S. tax-exempt entities from supporting Jewish activity over the Green Line, Obama IRS officials tried three times between 2009 and 2012 to

create such a policy, and IRS employees made sure the effort wasn't documented. One emailed her supervisor saying that she would answer his questions about IRS policy relating to Israeli settlements only orally. "Not doing email on this," she explained.

Even if the IRS could legitimately institute such a policy, it should not have applied to Z Street. We believe Jews should be allowed to live beyond the Green Line, but we have never spent a penny outside the U.S.

To learn the truth, we fought in the courts for seven lonely years—defeating IRS arguments that it didn't have to obey the First Amendment, that it was immune from the suit, and that it wasn't obliged to produce in discovery any documents revealing why its employees did what they did. During the seven years Z Street's application was frozen, it couldn't raise funds. If my husband and I weren't lawyers, able to pursue justice without getting paid, there's no way we could have succeeded.

When Z Street's creation was announced, thousands sought to join. Then the IRS attempted to kill us. No lawsuit can remedy that assault, as the IRS knew. The settlement gives us the truth, but we can't get back our seven years.

Ms. Marcus is the founder of Z Street.