

That is the question on the form, and it has to be answered under oath.

A considerable number of groups appear to have lied on their applications for nonprofit status as well as on their returns, and they have lied with absolutely no consequences.

There is a Pulitzer Prize-winning, nonpartisan investigative group called ProPublica. ProPublica has investigated these 501(c)(4) filings. As part of their investigation, they looked at 104 different organizations that had reported to the Federal Election Commission or to the State equivalent Federal elective bodies—104 organizations that reported electioneering activity, that they were involved in trying to elect candidates. In those filings to the Federal and State election boards, they said: Here is what we spent on influencing those elections.

ProPublica cross-checked those 104 that had filed statements saying how much they had spent to influence elections and 32 of them—32 of them—told the IRS they spent no money to influence elections, either directly or indirectly. Both statements cannot be true. An organization cannot tell one Federal agency how much they spent to influence elections and tell another Federal agency they spent no money to influence elections and have both statements be true.

Then we look at these organizations' behavior and the false statements look even worse. One organization said it would spend 50 percent of its effort on a Web site and 30 percent on conferences. The investigation showed its Web site consisted of one photograph and one paragraph; no sign of any conference. The same group declared it would take contributions "from individuals only" and then took \$2 million from PhRMA, the pharmaceutical lobby.

Another declared to the IRS it had spent \$5 million on political activities, but it told the Federal Election Commission it had spent \$19 million on political advertisements.

Another pledged its political spending would be "limited in amount and will not constitute the organization's primary purpose." Then that organization went out and spent \$70 million on ads and robocalls in one election season. It is almost funny it is so bad.

But there is nothing funny about making a material false statement to a Federal agency. That is not just bad behavior, it is a crime. It is a statutory offense under 18 U.S. Code section 1001. The Department of Justice indicts and prosecutes violations of this statute all the time, but they never do for this. Never. Why? It appears there is a bad agreement between the Department of Justice and the Internal Revenue Service that the Department of Justice will not prosecute false statements if they are made on this form unless the case has been referred to them by the IRS.

So that is really scandal two right there. No matter how flagrant the false statement, no matter how great the

discrepancy between the statements filed with the IRS under oath and the statements also filed with the Federal and State election agencies, no matter how baldly the organization in practice contradicts how it answered IRS questions about political activity, the IRS never makes a referral to the Department of Justice. Thirty-two flagrantly false statements and, as far as anyone knows, not one referral to the Department of Justice as a false statement. It is a mockery of the law and it is a mockery of the truth.

There is an easy solution. The Department of Justice prosecutes these false statements in lots of other instances. Prosecute these. Juries are good at sorting out what is a lie and what is not.

Investigations, interviews, statements, and subpoenas can look behind what appears to be a false statement, and prosecutors can get a full sense of the case, in a grand jury, before any charges are finalized. But they can't if they don't even look.

Right now, multiple organizations lie with impunity and in large numbers. It is indeed a scandal that the IRS will not even make a referral. Frankly, it is no great credit to the Department of Justice that the Department will not act on its own with all of this so public and so plain. Hiding behind their agreement with the IRS, on these facts, is not that great Department's finest hour.

So it is very wrong. It is very wrong that the IRS required additional information from a number of organizations—mostly small organizations—based on a screen that incorporates those organizations' tea party orientation. But it is also very wrong that the IRS goes AWOL when wealthy and powerful forces want to break the law in order to hide their wrongful efforts at secret political influence. Picking on the little guy is a pretty lousy thing to do; rolling over for the powerful and letting them file false statements is pretty lousy too. Two scandals. Let's not let one drown out the other.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. RUBIO. Are we in morning business?

The PRESIDING OFFICER. Yes, we are.

Mr. RUBIO. I don't anticipate using it all, but I ask unanimous consent to be recognized for up to 15 minutes.

The PRESIDING OFFICER. Without objection.

#### THE ROLE OF GOVERNMENT

Mr. RUBIO. Thank you. Madam President, I wanted to come to the floor to address the news of the last 4 days which I think has shocked the American people in the wake of a series of revelations made across news agencies about the role our Federal Government has played and the way it has used its power to intimidate those who

they believe are not doing what they want them to do.

For example, we learned last week from testimony in the House of Representatives that there were employees of the State Department who disagreed with the direction and the way the government was handling the Benghazi situation and the word that was being put out by the State Department. They disagreed with it. They didn't like it. They testified last week they were made to feel threatened, and the message was sent to them very clearly from the highest levels of the State Department that they should not be talking or saying the things they were saying. That concerned a lot of people.

Unfortunately, on Friday of last week, in what I think was an attempt to bury a story—and there was no way they were going to bury this one—they put it out on Friday, which is notoriously known as the slowest news day of the week because it goes into the weekend and people forget it and move on, but this one was not easy to forget. On Friday, we learned the Internal Revenue Service had specifically targeted organizations in this country because of their political leanings and affiliation.

I understand this is not something new. People have been complaining about this for a couple of years; anecdotally, from organizations across the country, people coming to us and saying: We got this weird request from the IRS asking us for all sorts of things. We started to hear that everywhere. We still, I think to some level, have confidence and hope, have the best hopes of the Federal Government and the people who work within it. As we started to hear that more and more, people became concerned.

So Members of this body wrote letters inquiring of the IRS: Is this going on? Are groups being targeted because they are a tea party member or because they are a 9/12 group? Of course, the answer they gave was: No, that is just not true; that is absolutely false.

We know it wasn't false.

Then the IRS said: But it was just this group of employees in Cincinnati. As it turns out, that is not true either. It was widespread. It was an effort throughout the IRS to specifically target groups because they were called tea party or liberty groups or groups organized to defend the scope of government, groups that are critical of decisions being made by the government. This is chilling. This was discovered last Friday and it has only gotten worse. Every day that goes on we get more and more information in that regard.

Then the revelation on Monday that the Justice Department of the United States—think about that, the chief law enforcement agency of the country—had issued this blanket search of the phone records of I think the Nation's largest reporting group, the Associated Press. I understand if they were going after a leak that endangered America

and security; that is one thing. We can have a debate about that. But they went much further than that. It was a blanket request of all of these phone calls, including the switchboard. Pretty outrageous.

So in the span of 4 days, there were three major revelations about the use of government power to intimidate those who are doing things the government doesn't like.

These are the tactics of the Third World. These are the tactics of places that don't have the freedoms and the independence we have in this country, and it is shocking to Americans that this would come to light in the way it has.

I submit to my colleagues, however, that none of this is new; that what we see emerging is a pattern: a culture of intimidation, of hardball politics that we saw both on the campaign trail and now through the apparatus of government. I don't have enough time in 10 or 15 minutes in morning business to cite them all, but I will cite a few that have already been discussed.

Let me tell my colleagues about the case of a gentleman named Frank VanderSloot. He was a couple of things. Mr. VanderSloot was the national cochair of Mitt Romney's Presidential campaign. He was also a major donor to a super-PAC that was supportive of Governor Romney's campaign.

In April of 2012, President Obama's reelection campaign posted on the Web a list of eight "wealthy individuals" with less than reputable records who were contributing to Mitt Romney. It was a series called "Behind the curtain: A brief history of Romney donors." It described Mr. VanderSloot as litigious, combative, and a bitter foe for the gay rights movement. Curiously enough, within a few weeks, Mr. VanderSloot was the subject of not just one but two IRS audits, one for his personal life and one for his business. Coincidence? Maybe we should find out through an investigation.

Then we get word of something else. This is even more—well, equally—outrageous. That is the case of this organization called ProPublica, which was mentioned a moment ago in relation to another discussion. I wish to get the facts exactly right about this. Basically, as it turns out, the IRS—someone in the IRS—released nine pending confidential applications of conservative groups to the so-called investigative reporting agency, this so-called not-for-profit, impartial—we can have that debate later, but I don't want to be guilty of doing to the donors of that group what the Obama campaign did to the donors of Mr. Romney. So let me just say in response, they sent out information that was confidential, that was not public, illegally. They leaked from the IRS information on nine of these groups that was then reported on by this organization, which admitted that it came from the IRS. Coincidence?

It doesn't end there, by the way. This is not just limited to the IRS. This is a culture of intimidation, a willingness to play hardball politics against political opponents.

Let's not forget about the case of Boeing in South Carolina. Boeing decided to relocate, as any business has a right to do. In the United States of America, a business should have the right to locate its operations in any State it wants. When Boeing decided to relocate from Washington State to South Carolina, the NLRB came after them in a complaint which they claim was on the merits, but it was very straightforward. They were going after them because the union in Washington State was upset about the move. In fact, the case was dropped, partially because of political pressure but, interestingly enough, the effort was only abandoned after they negotiated a contract deal with the union.

I can be up here all day, and I intend to keep coming back to the floor and citing examples. But the point is, we have going on now a culture of hardball politics and intimidation, which is unacceptable and should be chilling to every Member of this body, Republican and Democrat.

This is unacceptable behavior. But this is what we get when an administration is all about politics. This administration is a 365-day-a-year, year-round political campaign. Every issue is a political campaign. Leading up to the election, and even now, every issue is a wedge. Few times in the history of this country has anyone used this office to drive more wedges among the American people than this President and this administration. So, yes, this is the culture that has been created: They are bad and we are good. Our enemies are bad people. The people who disagree with us on policy are bad people. If you don't support us on gun, you don't care about children and families. If you don't support some measure against religious liberty, you are waging a war on women. On issue after issue—a deliberate attempt to divide the American people against each other for the purposes of winning an election.

That is the culture that has been created, and that culture leads to this kind of behavior. Whether it was directed or not, we do not know that. I am not saying someone picked up the phone in the White House and said: Do these audits. Leak this information. I am saying when you create a culture where what is rewarded is political advantage, when you create a culture in your administration where everything is politics 24 hours, 7 days a week, when you create a culture where every issue that comes before the Congress is used to divide people against each other to see who can get the 51 percent of the next election, when you create a culture like that, it leads to this kind of behavior throughout your administration.

In the days to come, we will hear more about this. We have a nominee

right now to the Labor Department, who has an admirable personal story which I admire and applaud, but who has a history of using the government and his position in government to intimidate people to do what he wants them to do. I would submit to you that Mr. Perez's nomination is bad for the country in any time, but in this administration, in this political culture, after what we have learned in the last few days, even more so. I hate to single him out, but that is one of the pending nominations that is before us. The point is, my friends, this is what we are dealing with and a cautionary tale about expanding the scope and power of government. Because this same IRS that was willing to do this—this same IRS that was willing to target groups because of their political leanings, this same IRS that audited Mr. VanderSloot after he happened to appear on the Obama enemy list—this same IRS will now have unfettered power to come after every American and ensure that either you are buying insurance or you are paying them a tax—every American business.

The front lines of enforcing ObamaCare fall to the IRS. That is what happens when you expand the scope and power of government. It is always sold as a noble concept. It is always offered as we are going to give government more power so they can do good things for us. But the history of mankind proves that every time government gets too much power, it almost always ends up using it in destructive ways against the personal liberties of individuals.

That is why the Framers of our Constitution were so wise to impose real constitutional limits on the power of our government, because they knew from history that this was the case. That is why our Constitution says that unless government at the Federal level is specifically given a power, it does not have it. That is why it says that. That is why you see people stand up here on the floor and fight to protect the Constitution. That is why these groups were formed around the country—everyday Americans from all walks of life; people, some of whom had never been involved in politics before, who joined the tea party movement or a 9/12 movement—because they feared the direction our country was going, and so they stood up and said: This is wrong.

This is why this adherence to the Constitution. Because the Constitution was based on the simple truth that if government has too much power, it almost always ends up destructive.

Our Framers knew better than to rely on "good people" being in government to take care of us. They understood that government's power, in order for us to have freedom and prosperity, necessarily had to be limited—not because we are antigovernment. Of course we need a government. Who provides for our national defense? Who is supposed to secure our borders? We are

having this immigration debate. These are important things our government needs to do. But if you give it too much power, it leads to these abuses.

This is why the Constitution was so wise to limit the power of the Federal Government to its enumerated powers and leave to the government closest to the people most of the powers.

I think we should re-examine all these decisions that have been made that have expanded the scope and power of our government.

I do not know how many people are aware of this, but early next year every single one of you is going to have to buy insurance, health insurance that the government says is good enough—maybe not the insurance you are getting today that you are happy with—and if you do not buy that insurance, you are going to owe the IRS some money. That is a tax to me. The same IRS that has shown a propensity to target people based on their political leanings—this is who we have empowered through ObamaCare.

This is what is going on here. It is not just one scandal at the IRS. It is about a culture of hardball politics. I think in the days to come we are going to learn a lot more about it, and we are not going to like what we learn.

For example, you think about some of our most precious freedoms—the First Amendment right to free speech. Think about if you are a reporter at the Associated Press. Think about if you are a source—unrelated to national security—to the Associated Press. Think about if you are a whistleblower, someone who is blowing the whistle on government activity because you work in the government and you think what the government is doing is wrong. Think about that for a second.

Now, all of a sudden, what are you afraid of? I am not calling that reporter back because their phone might be tapped, my number might show up on their records, because the Justice Department has just shown they are willing to do that. Think about the chilling effect that sends up and down the government.

If there is wrongdoing somewhere in the government right now, people are probably afraid to blow the whistle because they are afraid they are being surveilled by the Justice Department or that the person they are talking to is being surveilled. That is how outrageous this is.

Think about people who are thinking about getting involved in the political process, contributing to a group or speaking out, donating to a campaign or a candidate, as they are allowed to do under the Constitution. They do not want to be the next VanderSloot. They do not want to be the next guy being targeted. They do not want to be the next person being smeared on a Web site.

This is unacceptable. This is outrage. And every single Member of this body should be outraged by this behavior. This culture of intimidation, these

hardball politics tactics we cannot stand for. I hope we will be united in condemning this and ensuring we get to the bottom of this with significant investigations and hearings from the committees in the Senate that have jurisdiction on the matter.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HEINRICH). The clerk will call the roll. The bill clerk proceeded to call the roll.

Mrs. BOXER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### EXECUTIVE SESSION

NOMINATION OF WILLIAM H. ORRICK, III, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOMINATION OF MARILYN B. TAVENNER TO BE ADMINISTRATOR OF THE CENTERS FOR MEDICARE AND MEDICAID SERVICES

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session and consider the following nominations, which the clerk will report.

The legislative clerk read the nominations of William H. Orrick, III, of the District of Columbia, to be United States District Judge for the Northern District of California; and Department of Health and Human Services, Marilyn B. Tavenner, of Virginia, to be Administrator of the Centers for Medicare and Medicaid Services.

Mrs. BOXER. Mr. President, what is the order in terms of the time for the votes?

The PRESIDING OFFICER. Time is held until 4:30 and is equally divided.

Mrs. BOXER. Will there be a vote at 4:30?

The PRESIDING OFFICER. There will.

Mrs. BOXER. Thank you very much. There will be two votes, I understand.

Mr. LEAHY. Mr. President, I noted last week that Senate Republicans who have taken such pride in the number of judicial nominees being confirmed this year ignore how many were needlessly delayed from confirmation last year. There were 11 nominees left pending on the Senate floor, and another four nominees who had had hearings and could have been expedited, as we had done for many of President Bush's nominees, and all could and should have been confirmed before the end of last year. Instead, all had to be renominated, and we are still working through the resulting backlog. We are halfway through May, and the Senate has still not completed action on 4 of

the 15 nominees who could and should have been confirmed last year.

William Orrick, who the Senate will finally consider today, is one of those nominees. He has now been reported twice with bipartisan support, and he has spent over 225 days waiting for his final, Senate confirmation vote. He was first reported last August. There was no reason he could not have been confirmed last year, especially considering that he is nominated to fill a judicial emergency vacancy.

William Orrick is currently Special Counsel at the law firm Coblentz, Patch, Duffy & Bass, LLP, where he previously served as a partner for over two decades. From 2009 to 2012, he served in the Department of Justice's Civil Division, first as Counselor, and subsequently, as Deputy Assistant Attorney General. The ABA Standing Committee on the Federal Judiciary unanimously rated William Orrick "well qualified," its highest rating. He has the strong support of his home State Senators, Senator FEINSTEIN and Senator BOXER.

Regretably, Senate Republicans have broken from our traditions and have taken to opposing judicial nominees based on those nominees' efforts on behalf of clients. They did this when opposing nominees like Jeffrey Helmick, Paul Watford, and, most recently, Caitlin Halligan, and they are doing it, again, with William Orrick. They are opposing William Orrick because he worked on behalf of his client—the United States Government—on cases dealing with Federal preemption in immigration.

The criticisms of his supervision and advocacy on these immigration cases on behalf of the United States are unwarranted and, again, reflect a fundamental misunderstanding of our legal system. I have repeatedly noted that from John Adams to Chief Justice Roberts, that has never before been the standard by which we consider judicial nominees. Senate Republicans have adopted another double standard when it comes to President Obama's nominees.

Further, having reviewed his responses, I believe that the nominee has more than adequately responded to the questions presented to him. It is time to vote on his nomination and allow him to work on behalf of the American people in a judicial emergency district where the judges have been overwhelmed with cases.

Because Senate Republicans have delayed the confirmations of well-qualified nominees like William Orrick, we remain 20 confirmations behind the pace we set for President Bush's circuit and district nominees, and vacancies remain nearly twice as high as they were at this point during President Bush's second term. For all their self-congratulatory statements, they cannot refute the following: We are not even keeping up with attrition. Vacancies have increased, not decreased, since the start of this year.