



**For Immediate Release – April 1, 2013**  
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## **ATI, CEI Sue EPA for Instant Messaging Records**

### ***Potential Landmark Case Seeks Discussions on Agency's War on Coal, Role of Pressure Groups from Little-Known Accounts that Have Escaped Scrutiny***

WASHINGTON - In what could be a landmark case, two free-market groups - the American Tradition Institute's Environmental Law Center and the Competitive Enterprise Institute - have filed suit under the Freedom of Information Act (FOIA) against the Environmental Protection Agency seeking communications among senior EPA officials using instant messaging or IM technology. (Click [here](#) for the ATI-CEI EPA suit.)

In the joint lawsuit filed in Federal District Court in Washington, DC, CEI asked the court to compel EPA to produce IM discussions to or from former administrator Lisa Jackson, including her alias "Richard Windsor" account, discussing the Obama administration's war on coal. CEI is already in court for the "Windsor" emails on the same topics.

ATI sought Jackson's IM correspondence to, from or discussing the Sierra Club and two other environmentalist pressure groups, as well as similar messages of two other senior officials, Gina McCarthy who has been nominated to succeed Jackson as Administrator, and former senior counselor Lisa Heinzerling who has rejoined one of these groups.

In the course of CEI's "Windsor" litigation, it learned that EPA staff first used IBM "Sametime" to discuss creating the "Windsor" account. EPA provides Sametime and Oracle Messenger to EPA staff as an alternative to email. Although IMs are "agency records" under the law, they do not seem to have been searched by EPA in response to FOIA requests or requests from Congress seeking "records", or "electronic records", both of which would cover IMs.

"In addition to important conversations both inside the Agency and with outside parties, we expect this suit to provide important information about EPA's compliance with the law, and Congress's legitimate oversight activities," said Christopher Horner, attorney, director of Litigation at ATI's Environmental Law Center, senior fellow at CEI, and author of "The Liberal War On Transparency," the research for which led to the investigation. "Based on the information we have obtained, it seems we have uncovered yet another major transparency scandal in that either EPA is destroying instant messages against the law, or it is withholding them in defiance of its legal obligations to produce."

EPA's only response to the groups' IM requests was to deny fee waivers for both, as provided for under FOIA for non-profits that broadly disseminate information on government activities.

But, in what Horner calls "an apparent retaliatory tantrum," the EPA has responded to his involvement in exposing the Richard Windsor account by denying all of his outstanding and subsequent requests for these routine fee waivers, for either ATI or CEI. While these denials are overturned on appeal, Horner claims that "this seems to be yet one more way 'the most transparent administration, ever,' is throwing obstacles in the way of transparency for those it deems inconvenient."

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*[American Tradition Institute](http://www.atinstitute.org) (ATI) is a public policy research and public interest litigation foundation advocating restoration of science and free-market principles on environmental issues, including air and water quality and regulation, responsible land use, natural resource management, energy development, property rights, and principles of stewardship. All supporting documents and images regarding the above-referenced litigation and findings may be accessed at [www.atinstitute.org](http://www.atinstitute.org).*