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REPORT
114–119

THE INTERNAL REVENUE SERVICE'S PROCESSING OF 501(c)(3) AND 501(c)(4) APPLICATIONS FOR TAX-EXEMPT STATUS SUBMITTED BY "POLITICAL ADVOCACY" ORGANIZATIONS FROM 2010–2013

COMMITTEE ON FINANCE
UNITED STATES SENATE

BIPARTISAN INVESTIGATIVE REPORT AS SUBMITTED BY CHAIRMAN HATCH AND RANKING MEMBER WYDEN

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FOREWORD

Since the inception of our Nation, the United States Committee on Finance (Committee) has conducted vigilant oversight of the Executive Branch agencies and departments under its jurisdiction. Given the significance of tax policy and its administration, the Committee has historically focused a large portion of its time and resources overseeing the activities of the Internal Revenue Service (IRS), the Executive Branch agency charged with tax matters. Two years and two months ago, the Committee became aware of allegations regarding the potential targeting by the IRS of certain tax-exempt organizations, based on the names and political views of those organizations. Serious allegations such as these strike at the very heart of the principal that the Nation's tax laws are to be administered fairly and without regard to politics of any kind. Accordingly, these allegations warranted swift Committee response in the form of an investigation—an activity the Committee is uniquely positioned to carry out as a result of its oversight authorities and responsibilities with respect to the IRS.

Despite the partisan political nature of these allegations, the Committee proceeded in true bipartisan spirit and initiated a joint investigation on May 21, 2013, under the direction of former Chairman Baucus and then-Ranking Member Hatch. When Senator Wyden assumed the Chairmanship of the Committee in February 2014, he agreed to continue the bipartisan work begun by Chairman Baucus. This bipartisan cooperation has continued unabated since I became Chairman in January 2015. Accordingly, despite several changes in the chairmanship, the Committee has continued its tradition of a bipartisan investigative effort.

While much has been reported about the alleged political targeting over the last two years, it is important to stress that this Committee has conducted the only bipartisan investigation into the matter. Consequently, this report will perhaps serve as the definitive account of events transpiring at the IRS and the management failures and other causes that were at the root of the IRS's actions. Hopefully, this report will provide a roadmap for how Congress and the public can act to make sure this type of conduct does not happen again.

We want to acknowledge the hard work and countless hours of time spent by Committee staff who conducted over 30 exhaustive interviews, reviewed more than 1.5 million pages of documentation, drafted numerous versions of this report, and performed countless other tasks necessary to bring this investigation to closure. The Committee staff whose diligence and devotion to duty made this investigation and report possible include the following: John Angell,

Kimberly Brandt, John Carlo, Justin Coon, Michael Evans, Daniel Goshorn, Christopher Law, Jim Lyons, Todd Metcalf, Harrison Moore, Mark Prater and Tiffany Smith.

ORRIN G. HATCH.
RON WYDEN.

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Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

This bipartisan investigation of the Senate Finance Committee examined the Internal Revenue Service's (IRS) handling of applications for tax-exempt status submitted by political advocacy organizations, following allegations that the IRS discriminated against some of these organizations based on their political views.

Our investigation found that from 2010 to 2013, IRS management was delinquent in its responsibility to provide effective control, guidance, and direction over the processing of applications for tax-exempt status filed by Tea Party and other political advocacy organizations. IRS managers either failed in their responsibility to keep informed about the very existence of the applications, or failed to recognize the sensitivity of these applications. In the case of the former, IRS managers forfeited the opportunity to shape the IRS's response to the influx of political advocacy applications by simply failing to read reports informing them of the existence of those applications. In the case of the latter, IRS managers did not take appropriate steps to ensure that the applications were processed expeditiously and accurately.

Our investigation focused particularly on the Exempt Organizations (EO) Division of the IRS, which is responsible for administering the tax code provisions related to tax-exempt organizations, including processing and deciding applications submitted by organizations seeking tax-exempt status. Lois Lerner served as the Director of the EO Division from January 2006 to May 2013.

Lerner first became aware that the IRS received applications from Tea Party groups in April or May 2010. For the next two years, Lerner failed to adequately manage the EO employees who processed these applications. Moreover, Lerner failed to inform upper-level IRS management of the serious delays in processing applications for tax-exempt status from Tea Party and other politically sensitive groups. Consequently, it was a year before the IRS Office of Chief Counsel became involved, and nearly two years before Lerner's superiors in the IRS management chain were aware of the gross mismanagement of Tea Party and other sensitive advocacy applications.

While under the leadership of Lois Lerner, the EO Division undertook a number of initiatives aimed at finding a way to process the Tea Party and other political advocacy applications. Each of these initiatives was flawed in design and/or mismanaged. In one example, EO management sanctioned the use of the Be On the Lookout (BOLO) list, which improperly identified the Tea Party and other organizations by name and policy position. The IRS used the BOLO list to subject applications received from Tea Party groups to heightened scrutiny, even when that scrutiny was unwarranted because the applications gave no indication that the organizations would engage in political campaign intervention. Other initiatives to process political advocacy applications sanctioned by EO management were under-planned, under-staffed and under-executed. In each case, these poorly formed initiatives ended in predictable failure and each failure resulted in applicant organizations enduring inexcusably long delays in receiving decisions on their applications. Those delays often proved to be harmful or fatal to the organizations by undermining the very purposes for which they were formed.

The workplace "culture" prevalent in the EO Division was one in which little emphasis was placed on providing good customer service, a fact inconsistent with the IRS's promise to provide "top quality service." Indeed, the EO Division operated without sufficient regard for the consequences of its actions for the applicant organizations. Not only did those organizations have to withstand delays measured in years, but many also were forced to bear a withering barrage of burdensome and inappropriate "development letters" aimed at extracting information the IRS wrongly concluded was necessary to properly process the applications.

Factors further contributing to the dysfunctional "culture" of the EO Division included the office structure of the Determinations Unit that placed managers in offices located in geographic locales far from the employees they supervised, and employees and managers who frequently teleworked, in some cases up to four days a week. The confluence of remote management and a dispersed workforce undoubtedly impaired coordination and communication within the Determinations Unit. Moreover, acrimony typified the relationship between various organizations within the EO Division and served to further embitter the workplace "culture."

In the wake of the *Citizens United* decision in 2010, the IRS received an increasing number of allegations that tax-exempt organizations were engaged in political campaign intervention inconsistent with their exempt status. Recognizing the importance of having a process to evaluate these allegations, IRS management,

including the Commissioner and Acting Commissioner, focused their efforts on devising a workable process that would allow the IRS to evaluate and investigate these allegations. Management's efforts proved fruitless, and as a consequence, the IRS performed no examinations of 501(c)(4) organizations related to political campaign intervention from 2010 until 2014.

The Committee's investigation included a review of more than 1,500,000 pages of documents and interviews of 32 current and former IRS and Treasury employees. Issuance of this report was delayed for more than a year when the IRS belatedly informed the Committee that it had not been able to recover a large number of potentially responsive documents that were lost when Lois Lerner's hard drive crashed in 2011.

At the Committee's request, the Treasury Inspector General for Tax Administration (TIGTA) investigated the circumstances behind the loss of data and other related issues, and was ultimately able to recover 1,330 emails that had not been produced to Congress. TIGTA's findings are described below in Section II(C). Overall, the IRS's less than complete response to these circumstances cast doubt about the thoroughness of their efforts to recover all relevant records related to the investigation, as well as their candor to this and other Congressional committees.

Although it was not possible to completely produce the records that were lost, the Committee exhausted all available measures to mitigate the amount of missing information by collecting additional information from the IRS, other executive agencies, and outside sources. This report accurately summarizes the facts known to the Committee, and we believe that our conclusions are supported by the record.

Committee staff have agreed on numerous bipartisan investigative findings. Some of these findings are highlighted below, along with corresponding recommendations to address the underlying problem. Greater discussion of these and other findings related to the determination process are contained in Section III, and ancillary findings are in Section IX.[1]

Finding #1: The IRS's handling of applications from advocacy organizations may affect public confidence in the IRS. To avoid any concerns that may exist that IRS decisions about particular taxpayers are influenced by politics, the following recommendations are made.

> **Related Recommendation #1:** Publish in the instructions to all relevant application forms objective criteria that may trigger additional review of applications for tax-exempt status and the procedures IRS specialists use to process applications involving political campaign activity. Prohibit the IRS from requesting individual donor identities at the application stage, although generalized donor questions should continue to be allowed, as well as requests for representations that, e.g., there will be no private inurement.

[1] In addition to the recommendations enumerated below, Committee staff also considered whether the IRS should improve its employee training program and whether it should modify the expedited review process. We have omitted these recommendations because they were included in TIGTA's recent report, Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention, TIGTA Audit Report 2015–10–025 (Mar. 27, 2015) at 2. We encourage the IRS to follow the recommendations outlined in TIGTA's report.

Related Recommendation #2: Revise the Hatch Act to designate all IRS, Treasury and Chief Counsel employees who handle exempt organization matters as "further restricted." "Further restricted" employees are held to stricter rules than most government employees and are precluded from active participation in political management or partisan campaigns, even while off-duty. By designating those employees as "further restricted," the public can be assured that any impermissible political activity by an IRS employee that is detected will result in serious penalties, including removal from federal employment.

Related Recommendation #3: Create a position within the Taxpayer Advocate Service dedicated solely to assisting organizations applying for non-profit tax-exempt status.

Finding #2: The IRS systematically screened incoming applications for tax-exempt status from more than 500 organizations and implemented procedures that resulted in lengthy delays. Until early 2012, certain top-level management was unaware that these applications were being processed in this manner. (See Section III(A).)

Related Recommendation #1: The Exempt Organizations division should track the age and cycle time of all of its cases, including those referred to EO Technical, so that it can detect backlogs early in the process and conduct periodic reviews of over-aged cases to identify the cause of the delays. A list of over-aged cases should be sent to the Commissioner of the Internal Revenue Service quarterly.

Related Recommendation #2: The Exempt Organizations division should track requests for guidance or assistance from the EO Technical Unit so that management can assess the timeliness and quality of the guidance and assistance it provides to both Determinations Unit employees and the public.

Related Recommendation #3: The Exempt Organizations division should track requests for guidance or assistance from the Office of Chief Counsel so that management can assess the timeliness and quality of the guidance and assistance it provides to both the Determinations Unit employees and the public. Any requests for guidance or assistance from the Office of Chief Counsel that have not been responded to on a timely basis should be promptly reported to the Commissioner of the Internal Revenue Service.

Finding #3: The IRS took as long as five years to come to a decision on applications for tax-exempts status submitted by Tea Party and other applicants potentially involved in political advocacy. The IRS lacked an adequate sense of customer service and displayed very little concern for resolving these cases. (See Section III(E)(1).)

Related Recommendation #1: The Internal Revenue Manual contains standards for timely processing of cases. Enforce these existing standards and discipline employees who fail to follow them. Managers should also be held accountable if their subordinates fail to follow these standards.

Related Recommendation #2: For all types of tax-exempt applicants, IRS guidelines should direct employees to come to a decision on whether or not it will approve an application for

tax-exempt status within 270 days of when an application is filed.

Finding #4: Important issues were not elevated within the IRS. Some Sensitive Case Reports containing information about Tea Party applications were sent to top IRS managers in 2010, but the managers did not read them. (See Section III(A).)

Related Recommendation: Revise the Sensitive Case Report process or develop a more effective way to elevate important issues within the organization other than the Sensitive Case Reports system. Require the senior recipient of each Sensitive Case Report within the Division (a member of the Senior Executive Service) to memorialize specific actions taken in relation to each issue raised in the report, and require such report to be forwarded to the IRS Commissioner for review.

Finding #5: A contributing factor to the IRS's management problems was the decentralization of its employees, including some who worked from home as often as 4 days per week, and managers who remotely supervised employees 2,000 miles away. (See Section III(E)(2).)

Related Recommendation: Evaluate whether current organizational structures and workplace locations are inhibiting performance. Make appropriate adjustments to improve communication between employees and their managers.

Finding #6: Some managers within the EO Division were not trained in the substantive tax areas that they managed, including one who did not complete any technical training during the 10 years that she served in a managerial EO position. (See Section III(E)(4).)

Related Recommendation: Set minimum training standards for all managers within the EO Division to ensure that they have adequate technical ability to perform their jobs.

Finding #7: The IRS did not perform any audits of groups alleged to have engaged in improper political activity from 2010 through April 2014. During that time, the IRS tried to implement new processes to select cases for examination, but a memo from Judy Kindell, Sharon Light and Tom Miller stated that this approach "arguably [gave] the impression that somehow the political leanings of [the organizations] mentioned were considered in making the ultimate decision." The IRS recently discontinued use of the Dual Track process and now uses generalized procedures when deciding whether to open an examination of an exempt organization's political activities. (See Section IX(A).)

Related Recommendation #1: Review the recently-enacted procedures to determine if: (1) the process enables the IRS to impartially evaluate allegations of impermissible political activity; (2) any of the referrals have resulted in the IRS opening an examination related to political activity, and if so, whether such an examination was warranted; and (3) if necessary, the IRS should make further modifications to ensure that it carries out the enforcement function in a fair and impartial manner.

Related Recommendation #2: The IRS should fully implement all recommendations of the Government Accountability Office in their July 2015 report titled "IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened," GAO–15–514.

Related Recommendation #3: No later than July 1, 2017, we request that TIGTA conduct a review of the three points noted above in Recommendation #1 related to the revised EO Exam procedures.

Finding #8: On multiple occasions, the IRS improperly disclosed sensitive taxpayer information when responding to Freedom of Information Act (FOIA) requests. Employees who were responsible for these disclosures received minimal or no discipline. (See Section IX(C).)

Related Recommendation: Require all outgoing FOIA responses to be reviewed by a second employee to ensure that taxpayer information is not improperly disclosed.

Finding #9: In 2010, the IRS received a FOIA request from a freelance journalist seeking information about how the agency was processing requests for tax-exempt status submitted by Tea Party groups. After 7 months, the IRS erroneously informed the journalist that they did not possess any documents that were responsive to her request. (See Section IX(B).)

Related Recommendation #1: Ensure that IRS procedures specify which organizational units within the agency should be searched when the IRS receives an incoming FOIA request on a particular topic. For example, when the IRS receives a FOIA request for records related to tax-exempt applications, the agency should search the records of all components within the Exempt Organizations division.

Related Recommendation #2: To be consistent with the intent of FOIA, employees handling FOIA requests should construe the requests broadly and contact the requestor to clarify the scope of the request whenever necessary. However, the IRS should also take appropriate measures to safeguard taxpayer information and avoid improper disclosure.

Finding #10: The IRS has made Office Communicator Server (OCS) instant messaging software available to its employees. Under the collective bargaining agreement with the National Treasury Employees' Union, the IRS agreed that it would not automatically save messages sent to and from employees. As a result, messages can only be recovered if an employee elected to save them. TIGTA opined that this policy does not necessarily violate federal recordkeeping laws, but noted that "[w]hether OCS is being used according to NARA's guidance depends on how OCS end-users are utilizing the system." (See Section II(C)(2)).

Related Recommendation: The IRS should review how employees use OCS. If the program is not used for IRS business, the agency should evaluate whether it is appropriate and necessary. If OCS is used for official IRS purposes, the IRS should take measures to ensure such use complies with federal recordkeeping laws.

While the above findings and others detailed more fully on the succeeding pages have been jointly agreed to by the Majority and Minority, those Staffs were unable to reach agreement on three areas as set forth below:

- The extent, if any, to which political bias of IRS employees, including Lois Lerner, affected the IRS's processing of applications for tax-exempt status.

- Whether the IRS used improper methods to screen and process applications for tax-exempt status submitted by progressive and left-leaning organizations.
- The involvement, if any, of Treasury Department and White House employees, including President Obama, in directing or approving the actions of the IRS.

The Majority and Minority have rendered their own conclusions on these and other topics which are set forth more fully in the sections of this report entitled Additional Views of Senator Hatch Prepared by Republican Staff and Additional Views of Senator Wyden Prepared by Democratic Staff.

II. BACKGROUND ON BIPARTISAN INVESTIGATION BY THE SENATE FINANCE COMMITTEE

This section describes the scope of the Senate Committee on Finance investigation; the Committee's access to taxpayer information and its use in this report; the Committee's access to information relevant to this investigation;the IRS's loss of records potentially relevent to this investigation; the legal background of tax-exempt organizations involved in the investigation; and, the way that the IRS processed applications for tax-exempt status.

A. Scope of the Investigation and This Report

The United States Senate Committee on Finance (the Committee) has exclusive legislative jurisdiction and primary oversight authority over the IRS.

On May 10, 2013, Lois Lerner, IRS Director of EO, disclosed at a panel for the Exempt Organizations Committee of the Tax Section of the American Bar Association that IRS employees had selected certain 501(c)(4) tax-exempt applications that contained the words "Tea Party" and "Patriots" for further review simply because the applications had those terms in the title.[2]

On May 14, 2013, TIGTA released a report finding that the IRS "used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention."[3]

At the time of the IRS and TIGTA disclosures that groups with the words "Tea Party," "9/12" or "Patriot" in the name were selected for additional scrutiny, there was speculation and concern expressed that the singling out of conservative organizations by name may have been a consequence of political bias or motivation on the part of IRS employees. There was further speculation concerning the role of political appointees at the IRS, Treasury Department or the White House in the selection of these conservative organizations for heightened scrutiny.

On May 20, 2013, the Committee sent a detailed letter to the IRS requesting that the IRS answer questions and turn over internal

[2] American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126–127.

[3] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) TIGTA Audit Report #2013–10–053.

documents relating to the targeting controversy.[4] Simultaneously, the Committee began an in-depth bipartisan investigation to determine the facts surrounding the controversy. This investigation was prompted by the serious nature of allegations that political considerations may have driven the IRS's heightened scrutiny of conservative-leaning organizations applying for tax-exempt status.

The Committee held a hearing to publicly explore these issues on May 21, 2013, with Steven Miller, then Acting Commissioner, Internal Revenue Service; Douglas Shulman, Former Commissioner, Internal Revenue Service; and J. Russell George, Treasury Inspector General for Tax Administration, United States Department of the Treasury. The primary purpose of this report is to examine the IRS's handling of applications for tax-exempt status from 2010 through 2013, but it also covers other topics related to the IRS's oversight of tax-exempt organizations. Committee staff did not investigate the IRS's administration and enforcement of other parts of the Internal Revenue Code, including individual taxpayers and corporate for-profit entities; nor did it investigate the potential imposition of the gift tax for contributions made to tax-exempt organizations. Accordingly, these and other divergent topics are not covered by this report.

B. The Committee's Access to Taxpayer Information Protected by Section 6103 of the Internal Revenue Code, and Use of Taxpayer Information in This Report

When taxpayers submit information to the IRS, they expect it to be treated confidentially. Accordingly, section 6103 of the Internal Revenue Code prohibits the IRS from disclosing any "returns" or "return information," and these terms are defined broadly.[5] Violating section 6103 is a felony, punishable by imprisonment and fines and also subject to civil lawsuits for damages.[6] Section 6103, which was substantially tightened in 1976 in the wake of the controversy surrounding the Nixon Administration's attempt to review the tax returns of political enemies, is an essential safeguard.[7] It protects taxpayer privacy and prevents the IRS or anyone else from using taxpayer information for political or otherwise inappropriate purposes.

Section 6103 contains a set of narrow exceptions, which allow the IRS to disclose taxpayer information in certain limited circumstances and with appropriate safeguards. For example, there are exceptions for disclosure to federal or state law enforcement officials in certain circumstances and for disclosure to various federal agencies for the purpose of compiling government statistics.

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[4] Letter from Chairman Baucus and Ranking Member Hatch to the Acting Commissioner Steven Miller (May 20, 2013).

[5] 26 U.S.C. 6103 (2013).

[6] Section 7213 states that criminal violations of section 6103 must be knowing, while under section 7431, civil violations must be knowing or negligent. Under section 7431(b), someone who discloses section 6103 information through a good-faith, non-negligent mistake is not liable.

[7] This practice did not begin with the Nixon Administration. At a 1976 hearing by a subcommittee of the Senate Finance Committee, a witness included in the record a report by the Center for National Security Studies, which said, "[t]he IRS has from time to time used its power to conduct audits of groups and individuals whose political views and activities were of concern to others. Special groups were established to conduct such audits under the Kennedy, Johnson, and Nixon Administrations. On at least one occasion an audit was conducted at the request of a congressional committee." Hearing. Subcommittee of the Senate Finance Committee on Administration of the Internal Revenue Code, Federal Tax Return Privacy (Jan. 23, 1976) p. 10.

One of the exceptions, in section 6103(f), requires the IRS to provide taxpayer-specific information requested by the Congressional tax committees (Senate Committee on Finance, House Committee on Ways and Means, and the Joint Committee on Taxation),[8] and it authorizes the chairmen of the tax committees to designate staff members to "inspect returns and return information at such time and in such manner as may be determined by [the] chairman." This allows the committees to have access to taxpayer-specific information for the purposes of undertaking policy analyses or investigations.

As a general matter, staff who are designated by the chairman to review taxpayer-specific information are themselves subject to the confidentiality requirements of section 6103. In other words, they are required to keep the information confidential, subject to criminal and civil penalties. However, section 6103(f)(4)(A) goes on to provide that "[a]ny return or return information obtained by or on behalf of such committee . . . may be submitted by the committee to the Senate or the House of Representatives, or to both." Thus, taxpayer-specific information reviewed by the Finance Committee under section 6103(f) may be disclosed to the full Senate in open session, and, hence, to the public,[9] but only through the formal and careful process of a Committee vote to make a submission to the Senate.

In the course of this investigation, the Finance Committee has received extensive information under section 6103(f). For example, Committee staff examined, in detail, how specific applications for 501(c)(4) status were reviewed, to understand the decision-making process that the IRS applied. It also was important to consider whether particular applications were from "conservative" or "progressive" organizations, in order to determine whether the IRS was taking an even-handed approach.

In preparing this report of the investigation, the Finance Committee has decided, after careful consideration and after consultation with the Senate Legal Counsel's office, to include limited taxpayer information available to the Senate and the public, by making a formal submission to the Senate under section 6103(f)(4)(A). We have decided to do so for several reasons.

First, this approach is clearly permissible under section 6103. Although the principal purpose of section 6103 is to protect taxpayer-specific information, section 6103 also clearly contemplates the need for the public disclosure in compelling circumstances, and it establishes a formal and carefully considered process for a release: a submission by one of the tax committees to the House or Senate.

Second, the disclosure of limited taxpayer information facilitates a fully informative report. There has been a great deal of speculation about exactly what happened during the IRS review of

[8] Section 6103(f) also allows other (i.e., non-tax) congressional committees to receive taxpayer-specific information, but only pursuant to a Senate or House resolution. Further, section 6103 contains a series of other exceptions, including allowing release of taxpayer-specific information to certain tax administrators, release of taxpayer-specific information of Presidential appointees, and release of taxpayer-specific information to criminal investigators pursuant to a court order.

[9] Contrast section 6103(f)(4)(A) with section 6103(f)(4)(B), which provides that information obtained by a committee *other* than the Finance, Ways and Means, or Joint Committee on Taxation may be submitted to the Senate or the House "only when sitting in closed executive session" (unless the taxpayer consents). In the case of a submission to the House or Senate by one of the tax committees, in contrast, there is no equivalent requirement that the submission occur in closed session.

501(c)(4) organizations, and this has important implications for our governmental and political institutions. Under Supreme Court and IRS interpretations of section 6103, it would be difficult to provide a comprehensive review of the facts without making a formal submission to the Senate and thereby allowing disclosure notwithstanding section 6103.[10] In light of this, we have included some of the names of specific organizations, both conservative and progressive, who submitted section 501(c)(4) applications during this period, along with details about the handling of the applications which are essential to understanding the underlying facts.

Third, we have limited the disclosure to the minimum necessary to provide an informative report. We have omitted material, redacted material, and summarized wherever appropriate, and we have disclosed no personal names, financial information, or other details that are not necessary to understanding the essential facts. We have also, wherever possible, relied on information that already is in the public record.

Accordingly, the Committee has decided, on a bipartisan basis, to submit this report, including limited material covered by section 6103, to the full Senate in open session. We expect that, in the future, the Committee will only disclose section 6103 material in similarly compelling circumstances and with similar safeguards.

C. Limitation on the Committee's Access to Relevant Information

To fully investigate this matter, the Committee sought all information that could have some bearing on how the IRS processed applications for tax-exempt status from 2010 through 2013. The Committee considered a vast amount of information—receiving approximately 1,500,000 pages of documents and conducting interviews of 32 individuals—that enabled investigators to conduct a thorough review and reach the conclusions set forth in this report. Unfortunately, the IRS failed to retain information that may have been relevant to this investigation, which was lost when Lois Lerner's computer crashed and the IRS errantly disposed of backup data. This loss of information was compounded by the IRS's lack of candor in notifying this and other Congressional committees about the missing documents. The Committee attempted to fill in the information gap with records of other employees at the IRS and outside agencies; however, as described below, a large number of Lerner's records were never recovered. As a result, the full extent of the IRS's failings in this matter may never be known.

In spite of these limitations, the large volume of information we have reviewed gives us a high degree of confidence in the accuracy of the conclusions reached during our investigation, as described in this report.

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[10] Section 6103 broadly prohibits public disclosure of "return information" in order to protect taxpayer privacy. Section 6103(2)(b) defines "return information" as information that can be identified with a particular taxpayer, but allows for disclosure of aggregate data for statistical analysis as long as that data doesn't directly or indirectly identify a taxpayer. Therefore, a report that does not contain return information protected under 6103 would necessarily be based on aggregated data, making a comprehensive review of the entity specific facts at issue difficult.

1. Summary of Information That Forms a Basis for This Report

To complete this investigation, Committee staff interviewed 32 current and former IRS and Treasury Department employees. The interviewees included: (1) employees charged with reviewing and deciding tax-exempt applications; (2) managers who oversaw those employees, including former Acting Commissioner Steven Miller; (3) legal experts who were consulted on tax-exempt issues; (4) IRS executives and political appointees, including former Commissioner Douglas Shulman and Chief Counsel William Wilkins; and (5) two former senior Treasury officials, Deputy Secretary Neal Wolin and former Chief of Staff Mark Patterson, and current Treasury attorney Hannah Stott-Bumsted. Committee investigators also interviewed numerous individuals who submitted applications on behalf of nonprofit organizations or were otherwise involved in the application process for 501(c)(3) and 501(c)(4) entities. The Committee sought to interview Lois Lerner, but she declined the Committee's request.

In the course of this investigation, Committee staff reviewed approximately 1,500,000 pages of documents, the majority of which were produced by the IRS and TIGTA:

- In response to the Committee's May 20, 2013, document request letter and subsequent requests, the IRS provided the Committee with approximately 1,300,000 pages of documents.
- TIGTA provided the Committee with work papers and related documentation that were used in the compilation of the audit report they released on May 14, 2013. TIGTA also produced other materials requested by the Committee.

In response to requests of the Committee Chairman and/or Ranking Member, the Federal Election Commission (FEC), the Department of the Treasury, and the Department of Justice (DOJ) provided records to the Committee. The White House also provided a production of the limited number of documents that were sent to or from Lerner. Additionally, a number of nonprofit organizations provided information to the Committee about their interactions with the IRS.

The Committee has asked the IRS and TIGTA to notify the Committee if they locate additional documents that are relevant to this investigation. We will supplement the findings of this report if necessary.

2. The IRS Loss of Data, Failure to Notify Congress in a Timely Manner, and Results of TIGTA Investigation

At 2:00 PM on Friday, June 13, 2014, the IRS first informed the Committee that, due to a hard drive crash of Lerner's computer in 2011, the IRS had not produced all documents relevant to this investigation.[11] As described below, this disclosure came as a surprise to the Chairman and Ranking Member, who were prepared to start the formal process of issuing this report on Monday, June 16, 2014. Many of the 41 document requests in the Committee's May 20, 2013 letter to the IRS initiating this investigation involved records maintained by Lerner. Moreover, this Committee, as well as House committees, requested that the IRS produce all emails

[11] Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014).

sent and received by Lerner from 2010 through May 2013. Thus, the IRS's unexpected announcement about Lerner's hard drive crash cast doubt on the completeness of the record upon which the Committee's draft report was based.

In its June 13 letter, the IRS stated that "Ms. Lerner's computer crashed in mid–2011" and despite "multiple processes to recover information . . . the data stored on her computer's hard drive was determined at the time to be 'unrecoverable' by the IT professionals."[12] As a result, the IRS concluded that "[a]ny of Ms. Lerner's email that was only stored on that computer's hard drive would have been lost when the hard drive crashed and could not be recovered."[13] The IRS further explained that IRS employees, including Lerner, had limited storage space on the network drive and therefore had to save messages on their personal computers. Thus, the IRS's revelation about Lerner's hard drive meant that an unknown quantity of emails sent and received by Lerner had not been retained by the IRS or produced to the Committee. These emails were particularly significant since they included messages transmitted during 2010 and the first half of 2011—the period when many of the most critical events in this matter occurred.

Based on the IRS's June 13 letter and subsequent meetings with Commissioner Koskinen, Senators Hatch and Wyden quickly determined that the full extent of data loss was not known. Accordingly, by letter dated June 23, 2014, then-Chairman Wyden and then-Ranking Member Hatch asked Inspector General George to investigate six issues, enumerated in the letter and reproduced below.[14] The Committee suspended release of this report until TIGTA completed its work.

In response to the Committee's request, TIGTA commenced a thorough investigation that included interviews of 118 witnesses and processing and reviewing more than 20 terabytes of data. On June 30, 2015, TIGTA issued its final report of investigation. TIGTA's principal findings are as follows, and its full report of investigation is attached as an exhibit to this report.[15]

> *Committee Request #1 to TIGTA:* Whether Lerner, and six other employees identified by the IRS as possibly suffering a loss of data,[16] did, in fact, lose data.

TIGTA concluded that four of the seven employees identified in the Committee's letter experienced hard drive crashes but did not lose any data. TIGTA found that the other three employees experienced computer problems that resulted in a data loss: Lerner, Julie Chen, and Nancy Heagney. The circumstances of each loss are discussed below in turn.

a. Lois Lerner

TIGTA confirmed that Lerner's hard drive crash resulted in a loss of data. TIGTA determined that Lerner's hard drive likely

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[12] *Id.*, Enclosure 3 p. 5.
[13] *Id.*
[14] Letter from Chairman Wyden and Ranking Member Hatch to J. Russell George (June 23, 2014).
[15] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014).
[16] The other six employees are Nikole Flax, former Chief of Staff to former Acting Commissioner Steven Miller; Michelle Eldridge, Supervisory Public Affairs Specialist; Kimberly Kitchens, Revenue Agent; Julie Chen, Revenue Agent; Tyler Chumney, Supervisory Revenue Agent; and Nancy Heagney, Revenue Agent.

crashed between 5 and 7 P.M. on Saturday, June 11, 2011, based on the computer's failure to respond to a network query at 7 P.M.[17] TIGTA attempted to determine if anyone entered Lerner's office on the day of the crash; however, the building security vendor no longer maintained logs for this period, so TIGTA was unable to reach a conclusion on that issue.[18] Lerner "described coming into office in the morning [of Monday, June 13, 2011] and seeing 'the blue screen.'"[19] Later that morning, a work ticket "was entered indicating Lerner's computer screen is black and won't allow [the] employee to log in."[20]

At that point, an IRS IT Specialist was assigned to respond to Lerner's work ticket. He told TIGTA that "he was unable to recover any data from the hard drive, and following normal protocol, he replaced the hard drive in Lerner's computer with a new hard drive."[21] The IT Specialist "did not observe any indications of tampering or physical damage to Lerner's laptop."[22] After replacing the hard drive, the IT Specialist noted that Lerner's computer also "needed a new fan system and possibly a heatsink due to overheating."[23]

The IRS requested technical support from Hewlett-Packard. A Hewlett-Packard employee then "worked on Lerner's laptop to replace the keyboard, trackpad, heat sink, and fan due to an overheating issue[.]"[24] When interviewed by TIGTA, the Hewlett-Packard employee did not specifically recall working on Lerner's computer and "did not recall, or note in his records, any damage to the laptop."[25] When asked for his opinion about the failure, he stated many different things, including the environment, can cause damage to a computer, and opined that "it was unusual for so many components to fail at the same time."[26] He also stated that "there are many causes for hard drive failures, although overheating causing a hard drive failure" is uncommon.[27] The Hewlett-Packard employee further told TIGTA that "[i]f there was severe impact to a computer or hard drive, it could internally damage the mechanical components of the hard drive making it unusable."[28]

An IRS Criminal Investigation Division technician later examined the hard drive in an attempt to recover data. He "noted concentric scoring of the hard drive platters, opining that the drive had failed because the drive heads had impacted the platters while

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[17] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 8. TIGTA noted that Lerner's computer received a software update on the afternoon of June 11, 2011; however, TIGTA concluded that "[t]here is no indication software [update] would have caused Lerner's hard drive to crash." Id. p. 9.

[18] *Id.* p. 9.

[19] *Id.* p. 10.

[20] *Id.* pp. 5–6.

[21] *Id.* p. 5.

[22] *Id.* p. 6.

[23] *Id.* pp. 5–6.

[24] *Id.* p. 6.

[25] TIGTA Memorandum of Interview or Activity, Personal Interview of Mauricio Terrazas (Aug. 28, 2014) p. 2; TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

[26] TIGTA Memorandum of Interview or Activity, Personal Interview of Mauricio Terrazas (Aug. 28, 2014) p. 3; TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

[27] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 6.

[28] *Id.*

in operation[.]"[29] When TIGTA asked Hewlett-Packard employee "what scenario could have caused hard drive heads to impact the platter of the disk, [he] opined an impact to the laptop or hard drive was the most likely cause."[30]

During her interview with TIGTA, Lerner "denied hitting or damaging the hard drive intentionally" and "did not recall any incidents that could have damaged her laptop." Moreover, Lerner "was not aware of anyone who might want to destroy the data on her computer."[31]

Ultimately, TIGTA did not reach a conclusion about the cause of Lerner's hard drive crash.

Regardless of the cause, Lerner's hard drive crash erased data relevant to Lerner's job. Lerner told TIGTA that she regularly received a large volume of email that exceeded the amount of network storage. To keep her email functioning, Lerner and her assistants, Dawn Marx and Diane Letourneau, regularly moved messages to folders on her hard drive that were organized by subject.[32] Lerner said that her June 2011 computer crash "resulted in a significant amount of data being lost" and told TIGTA that it "cost her 'a lot of time' because so much of her current work was lost."[33]

Neither TIGTA nor the IRS could determine the exact number of records that were lost, and not subsequently recovered, when Lerner's hard drive crashed. Using an email transaction log maintained by the Treasury Department, TIGTA calculated that "as many as 23,000 to 24,000 email messages may not have been provided to Congress," although TIGTA noted that this estimate "could be high" because TIGTA was unable to compare these logs to documents that the IRS was able to recover from other custodians and produced to Congress.[34] The IRS's efforts to recover Lerner's emails through alternate means as described below likely yielded some, but not all, of these emails.

b. Julie Chen

Chen is a revenue agent in the Cincinnati EO Determinations office. The hard drive on Chen's computer crashed on June 12, 2012. IRS IT was unable to recover data from her failed hard drive. Chen told TIGTA that she saved case documents to her hard drive but did not save emails—when her inbox was full, she would delete old emails instead of archiving them on her hard drive.[35] As a result, Chen's hard drive crash did not result in the loss of any emails potentially responsive to the Committee's investigation. The IRS technician who worked on Chen's crashed computer stated that she did not recall any damage to the computer and did not determine a cause of the crash; nor was there any indication of intentional data loss.[36]

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[29] *Id.* p. 7.
[30] *Id.* p. 6.
[31] TIGTA Memorandum of Interview or Activity, Personal Interview of Lois Lerner (July 9, 2014).
[32] *Id.*
[33] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 10.
[34] *Id.* pp.2–3.
[35] TIGTA Memorandum of Interview of Activity, Personal Interview of Julie Chen (Aug. 28, 2014).
[36] TIGTA Memorandum of Interview or Activity, Personal Interview of Pamela Merritt (Sep. 15, 2014).

c. Nancy Heagney

Like Chen, Heagney is a revenue agent in the Cincinnati EO Determinations office. The hard drive on Heagney's computer crashed on November 6, 2012. Heagney routinely saved letters to taxpayers and emails on her hard drive. After the crash, Heagney was able to recover some, but not all of the emails archived to her hard drive.[37] The IRS technician who worked on Heagney's crashed computer did not know if the computer was damaged and did not determine a cause for the hard drive failure.[38] The technician did not see any indication of intentional data loss.

> *Committee Request #2 to TIGTA:* Whether, in addition to those seven employees, any of the 112 other IRS employees identified as custodians of potentially relevant records suffered a data loss.

Based on a review of IT helpdesk tickets, TIGTA determined that 31 of the 119 employees (including the 7 employees identified above in request #1) experienced "apparent hard drive failures since 2009."[39] Based on interviews of these employees and a review of records, TIGTA determined that seven of them lost data: Judith Kindell, Tax Law Specialist; Justin Palmer, Revenue Agent; Ronald Shoemaker, Supervisory Tax Law Specialist; Sonya Adigun, Supervisory Tax Examining Technician; Kenneth Drexler, Attorney Advisor; Chen; and Heagney. The IRS asserted that the failure rate of these employees' equipment "is consistent with the industry standard new equipment failure rate of 5 to 6% over a three-year period."[40]

TIGTA correctly noted that for three of these employees (Adigun, Drexler and Palmer), the IRS did not produce responsive emails or documents to Congress.[41] Based on the Committee's review of IRS records, it appears that their involvement with this matter was minimal, at most.

Kindell's hard drive crashed on August 11, 2010, which resulted in a loss of "all of her archived email and work documents."[42] Kindell recovered some of the lost emails by asking coworkers to resend them to her; she was unable to recover other electronic documents.[43] The IT Specialist who worked on Kindell's computer told TIGTA that he could not remember the circumstances of Kindell's crash, the cause, or if there were any indications that it may have been intentional.[44]

On March 4, 2011, Shoemaker's hard drive crashed, resulting in the loss of "all of his archived emails and saved files for the years

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[37] TIGTA Memorandum of Interview or Activity, Personal Interview of Nancy Heagney (Aug. 28, 2014).
[38] TIGTA Memorandum of Interview or Activity, Personal Interview of Marilyn Florence (Sep. 15, 2014).
[39] TIGTA Memorandum of Interview or Activity, Records Review of IRS Custodians and Hard Drive Failures (Sep. 4, 2014).
[40] Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).
[41] TIGTA Memorandum of Interview or Activity, Records Review of IRS Custodians and Hard Drive Failures (Sep. 4, 2014).
[42] TIGTA Memorandum of Interview or Activity, Personal Interview of Judith Kindell (Aug. 6, 2014).
[43] *Id.*
[44] TIGTA Memorandum of Interview or Activity, Personal Interview of Frank Dematteis (Oct. 3, 2014).

1994 through 2010," including Shoemaker's "managerial files[.]"[45] IRS IT was unable to recover the lost documents. When interviewed by TIGTA, the IT Specialist who worked on Shoemaker's computer stated that he was not sure if he had "ever determined what caused Shoemaker's hard drive to fail."[46]

> *Committee Request #3 to TIGTA*: What steps, if any, the IRS took to attempt to recover data for each employee who lost data.

The measures taken by the IRS to attempt to recover data immediately following the hard drive crashes of Chen, Heagney, Kindell, and Shoemaker are described above.

Efforts to recover data from Lerner's computer were more substantial than for the other employees identified above. After the IT Specialist who initially responded was unable to recover data, Lerner contacted former IRS Associate Chief Information Officer Carl Froehlich to say that "some documents in the files that [were lost] are irreplaceable" and asked him to take further efforts to recover the files.[47] Additional efforts to recover data by the IRS IT support and several Hewlett-Packard technicians were unsuccessful, so the hard drive was then sent to IRS Criminal Investigation Division's forensic lab. The IRS Criminal Investigation Division was unable to recover any data from the hard drive.[48]

The IRS Criminal Investigation Division returned the hard drive to the IRS's IT depot in Washington, D.C. The IRS CI technician believed that "data could still potentially be recovered using a third party donor hard drive or [by] hiring an outside vendor."[49] The IRS IT manager "confirmed data may have been recoverable by an outside vendor, but . . . decided the expense was not justified due to financial constraints[.]"[50] At this point, the IRS ceased attempts to recover data from Lerner's hard drive. Lerner told TIGTA that she "was 'surprised' that IRS IT could not do more to recover her email[.]"[51]

After the IRS Office of Chief Counsel became aware of Lerner's hard drive failure in February 2014, the IRS took additional measures to recover and produce Lerner documents to this Committee, other Congressional committees and the Department of Justice. The IRS summarized these steps in its June 13, 2013 letter to the Committee:

- "Retraced the collection process for Ms. Lerner's computer to determine that all materials available in May 2013 were collected;"
- "Located, processed, and included in [the IRS] production email from an earlier 2011 data collection of Ms. Lerner's email;"

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[45] TIGTA Memorandum of Interview or Activity, Personal Interview of Ronald Shoemaker (Aug. 4, 2014).

[46] TIGTA Memorandum of Interview or Activity, Personal Interview of Aaron Signor (Sep. 5, 2014) (attachment omitted).

[47] Email chain between Lois Lerner, Carl Froehlich, Lillie Wilburn and others (July 19—Aug. 6, 2011) IRS0000651488–50.

[48] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 7.

[49] *Id.*

[50] *Id.* TIGTA noted that the IRS IT manager believed that "Lerner had categorized the data present on the hard drive as being personal in nature." This point is contradicted by Lerner's own testimony about the contents of her hard drive, as discussed above.

[51] TIGTA Memorandum of Interview or Activity, Personal Interview of Lois Lerner (July 9, 2104).

- "Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which not uncommon [sic] for large organizations in both the private and public sectors);"
- "Searched email from other custodians for material on which Ms. Lerner appears as an author or recipient, then produced such email."[52]

The IRS calculated that these efforts yielded "approximately 24,000 Lerner-related emails between January 1, 2009 and April 2011," which were produced to this and other Committees.[53] On September 5, 2014, the IRS informed the Committee of similar efforts that it took to recover and produce emails sent and received by Chen, Heagney, Kindell, and Shoemaker.[54] After TIGTA opened its investigation of the lost documents in June 2014, the IRS largely ceased efforts to recover additional Lerner emails to avoid interfering with TIGTA's investigation, although it continued to produce documents to the Committee through January 2015.

Committee Request #4 to TIGTA: Whether any additional measures could reasonably be taken to attempt to recover lost data; and if so, TIGTA should perform its own analysis of whether any data can be salvaged and produced to the Committee.

An initial question was whether TIGTA could recover data from Lerner's crashed hard drive, as well as hard drives of other custodians who lost data (Chen, Heagney, Kindell, and Shoemaker). TIGTA did not recover data from any of the hard drives:

- After the IRS ended its 2011 efforts to recover data from Lerner's hard drive, the IRS grouped it with other failed hard drives and gave the failed hard drives to the IRS's vendor in charge of disposing of electronic media. TIGTA determined that Lerner's hard drive was "more than likely destroyed" at a shredding facility in Marianna, Florida on April 16, 2012.[55]
- "TIGTA was able to locate and take possession of Heagney's failed hard drive, but was unable to recover any information from the drive using standard forensic tools."[56] TIGTA will see if an outside vendor can recover any information.[57]
- Chen's failed hard drive was sent to an IRS facility in Covington, Kentucky in 2012.[58]
- It is unclear if TIGTA determined the ultimate disposition of Kindell and Shoemaker's failed hard drives. It does not appear that TIGTA located either of them.

Next, TIGTA turned to other sources to attempt to recover lost data:

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[52] Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.
[53] *Id.*
[54] Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).
[55] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) pp. 7–8. TIGTA noted that under IRS procedures and terms of the vendor's contract with the IRS, the serial numbers of electronic media were not tracked throughout the disposal process, so TIGTA could not confirm with certainty that Lerner's hard drive was, in fact, destroyed. Nonetheless, after interviewing the vendor employees who processed IRS media and visiting the Marianna shredding facility, TIGTA found no evidence that Lerner's hard drive had not been destroyed. We have no reason to doubt TIGTA's conclusion that Lerner's hard drive was "more than likely destroyed."
[56] *Id.* p. 12.
[57] *Id.*
[58] TIGTA Memorandum of Interview or Activity, Personal Interview of Pamela Merritt (Sep. 15, 2014).

- Backup (disaster recovery) tapes from the IRS's email server;
- Decommissioned exchange server hard drives and associated backup tapes;
- Lerner's Blackberrys and the Blackberry network server;
- Loaner laptops used by employees while waiting for resolution of IT problems; and
- Network transaction logs.

TIGTA's efforts, which constituted an enormous amount of work over the course of a year, are described in more detail on pages 12–20 of its report. In particular, TIGTA activated 744 disaster recovery backup tapes containing a backup of IRS email traffic from approximately November 2012. From the sources identified above, TIGTA produced approximately 6,400 documents to the Committee in April, May and June 2015. TIGTA subsequently determined that the IRS had not produced approximately 1,330 of these document to this Committee, other Congressional committees, DOJ, or TIGTA.[59]

Finally, TIGTA examined the IRS's instant messaging system (called the Office Communicator Server (OCS)) to see if they could recover records related to the Committee's investigation. These messages were of particular interest to the Committee, as Lerner had asked an IT employee in April 2013 if OCS conversations were searchable and could be produced to Congress:

> I had a question today about OCS. I was cautioning folks about email and how we have had several occasions where Congress has asked for emails and there has been an electronic search for responsive emails—so we need to be cautious for what we say in emails. Someone asked if OCS conversations were also searchable—I don't know, but told them I would get back to them. Do you know?[60]

TIGTA determined that under the terms of the IRS's collective bargaining agreement, the IRS agreed that it would not automatically save OCS messages. The only way that messages would be saved is if an individual employee copied the text into an email or other electronic document. TIGTA found that this retention policy was not necessarily a violation of National Archives and Records Administration (NARA) guidance, noting that "[w]hether OCS is being used according to NARA's guidance depends on how OCS end-users are utilizing the program."[61] TIGTA was not able to recover the substance of any OCS sessions between Lerner and other employees.[62]

> *Committee Request #5 to TIGTA:* For each employee who lost data, the date when the IRS first became aware that it had lost information potentially relevant to the Committee's investigation.

The Committee asked this question because it did not learn of any loss of potentially relevant data until June 2014. TIGTA's re-

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[59] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 3.
[60] Email chain between Lois Lerner, Maria Hooke, and others (Apr. 9, 2013) IRS0000726247–48.
[61] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 22.
[62] *Id.* p. 21.

port contains the following information about when the IRS first learned that it may have been missing data from Chen, Heagney, Kindell, and Shoemaker:

- In her interview with TIGTA, Chen noted that she disclosed the hard drive crash at the time when she received an IRS litigation hold in May or June 2013. It is unclear what, if anything, the IRS did in response.[63]
- In his interview with TIGTA, Shoemaker said that during at least one interview with a Congressional committee, DOJ, or TIGTA, he mentioned that his hard drive had crashed. (He did not disclose this issue during his interview with the Finance Committee.) It is unclear if the IRS was aware of this disclosure and what, if anything, the IRS did in response.[64]
- TIGTA's report did not include information about when the IRS first learned that Kindell and Heagney lost data potentially relevant to this investigation.

TIGTA's report and interviews establish the following timeline of the IRS's knowledge of Lerner's hard drive crash, and whether it resulted in data loss:

- February 2 or 3, 2014—While the IRS was preparing a production of Lerner emails, former Counselor to the IRS Commissioner Catherine Duval "noted a gap" in the number of Lerner emails sent before July 2011. Duval brought the gap to the attention of Thomas Kane, Deputy Associate Chief Counsel for Procedure & Administration.[65]
- February 3, 2014—Duval and Kane mentioned the gap in Lerner emails at an internal meeting with Christopher Sterner, Deputy Chief Counsel for Operations, and Stephen Manning, Deputy Chief Information Officer. The group decided to further investigate.[66]
- February 4, 2014—After investigation by attorneys under Kane's supervision, "it was determined that Lerner experienced a hard drive failure in June 2011."[67]
- February 5 or 6, 2014—Kane, Sterner, Duval and Manning met again to discuss the issue. Kane noted that IRS Chief Counsel William Wilkins "was included in the discussion at some point." According to Kane, the discussion "included whether to notify Congress or whether more information was needed. The discussion also included how much of Lerner's emails could be located elsewhere." In his interview with TIGTA, Kane noted that "one or two Congressional committees" were planning to release reports around that time, including the Senate Committee on Finance. Kane told TIGTA that it was decided to "not to report half or part of the story as Lerner emails were expected to be produced for some time in the future."[68]

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[63] TIGTA Memorandum of Interview or Activity, Personal Interview of Julie Chen (Aug. 28, 2014).
[64] TIGTA Memorandum of Interview or Activity, Personal Interview of Ronald Shoemaker (Aug. 4, 2014).
[65] TIGTA Memorandum of Interview or Activity, Personal Interview of Thomas Kane (Oct. 22, 2014).
[66] *Id.*
[67] *Id.*
[68] *Id.*

- March and April 2014—The IRS searched electronic records of other IRS employees for emails to and from Lerner. The IRS located a total of 24,000 emails.[69]
- April 2014—Koskinen told TIGTA that he was "first told about Lerner's hard drive failure in April 2014 by Duval, but was advised that a hard drive failure did not necessarily mean a loss of data." Koskinen explained to TIGTA that at this point, "Duval was leading an effort to validate that email were actually missing; and, not that the gap in email was attributable to something like an error in the backup system" or some other error. Koskinen noted that this error checking "was completed in April 2014."[70]
- Mid-April 2014—Duval informed Treasury attorney Hannah Stott-Bumsted that "there was an issue they (the IRS Office of Chief Counsel) were looking into regarding Lerner's emails."[71]
- April, May, and June 2014—Led by Duval, the IRS prepared a "white paper" that would be used to "notify Congress of the problem identified regarding the Lerner emails, how it was discovered and what steps were taken to fill in the apparent gap in her emails."[72] Koskinen told TIGTA that he "wanted to secure as many emails that the IRS could locate . . . in order to provide a more complete reporting to Congress. . . ."[73]

In summary, in early February 2014, the IRS first became aware that it may have lost Lerner documents potentially relevant to this investigation. By the end of April 2014 at the latest, the IRS had confirmed that relevant emails had been lost.

Committee Request #6 to TIGTA: Whether there is any evidence of a deliberate effort to withhold information from the Committee.

As described above, TIGTA could not come to a conclusion about the cause of Lerner's hard drive crash. TIGTA did not suggest that the hard drive failures of the other four employees was deliberate or intended to withhold information from Congress, DOJ, or TIGTA. Overall, TIGTA stated that "[n]o evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA."[74] The National Archives and Records Administration told the Committee that they do not believe the IRS violated federal recordkeeping laws[75] and Paul Wester, Chief Records Officer at NARA told TIGTA that IRS "did nothing wrong as far as safeguarding records."[76]

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[69] *Id.*
[70] TIGTA Memorandum of Interview or Activity, Personal Interview of John Koskinen (June 19, 2015).
[71] TIGTA Memorandum of Interview or Activity, Personal Interview of Catherine Duval (July 1, 2014).
[72] TIGTA Memorandum of Interview or Activity, Personal Interview of Thomas Kane (Oct. 22, 2014).
[73] TIGTA Memorandum of Interview or Activity, Personal Interview of John Koskinen (June 19, 2015).
[74] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54–1406–008–I (June 30, 2014) p. 18.
[75] Letter from David Ferriero to Senator Wyden and Senator Hatch (July 10, 2014) (some enclosures omitted).
[76] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54–1406–008–I (June 30, 2014) pp. 21–22.

However, several of TIGTA's other findings cast doubt on the thoroughness of the IRS's efforts to recover all relevant records related to this investigation, as well as its candor to this and other Congressional committees.

First, less than two weeks into its investigation, TIGTA identified 744 backup server tapes that were likely to contain Lerner documents.[77] The IRS did not attempt to recover data from these tapes, errantly determining that they had already been recycled, or believed that they did not contain relevant data. Indeed, until May 22, 2013, the IRS practice was to reuse and recycle old backup tapes every six months as a cost-saving measure.[78] Thus, with this practice in place, prior to the beginning of Congressional investigations the IRS should have already recycled any backup tapes containing Lerner emails lost when her hard drive crashed in June 2011. This would prove to be incorrect, and TIGTA was able to recover approximately 1,007 emails that had not been previously provided by the IRS to the Committee, although most of those messages were sent after Lerner's June 2011 hard drive crash.[79]

A second troubling finding is that in 2014, the IRS may have unwittingly destroyed a separate batch of relevant backup tapes. TIGTA discovered that in March of 2014—after top IRS officials learned that Lerner's hard drive had crashed—IRS employees at a storage facility in West Virginia "magnetically erased 422 backup tapes that are believed to have contained Lerner's emails that were responsive to Congressional demands and subpoenas."[80]

The email server housing these backup tapes was located in New Carrollton, Maryland, and around May 2011, the IRS migrated to a new location in order to consolidate data centers.[81] The New Carrollton server was then decommissioned and disassembled, and in April 2012, the majority, but not all, of the equipment was destroyed.[82] Several hard drives and backup tapes from the decommissioned server continued to be stored in New Carrollton until December 2013, when the IRS had them removed in order to renovate the space.[83] These components, server hard drives and backup tapes, were shipped to a storage facility in West Virginia.[84] According to TIGTA, the employees "did not degauss the server hard drives that were shipped with the backup tapes because their interpretation of the CTO's May 22, 2013, e-mail directive was that it was meant to preserve hard drives only."[85] However, the IRS employees did degauss the server backup tapes. Ultimately, TIGTA identified an additional 422 backup tapes which were used to back up Lerner's email between January 1, 2008 and December 31, 2011, but were errantly erased on March 4, 2014.[86]

Although it took TIGTA extensive time and resources to locate, identify, and process these tapes and produce relevant records, this type of effort was justified given the extent of data lost and the in-

[77] *Id.* p. 13.
[78] *Id.* On May 22, 2013, the IRS CTO changed the backup tape policy to an indefinite retention in order to respond to ongoing investigations.
[79] *Id.* p. 15.
[80] *Id.* p. 3.
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *Id.* pp. 3–4.

terest in this matter by Congress, the DOJ and the public. The IRS should have exhausted this possibility before it informed the Committee that "back-up tapes from 2011 no longer exist," which proved to be wholly incorrect.[87]

TIGTA noted that it "did not uncover evidence that the IRS and its employees purposely erased the tapes in order to conceal responsive e-mails from the Congress, the DOJ and TIGTA."[88] Instead, the decision to erase these tapes appeared to be the result of employees being unaware of, or misinterpreting, several IRS directives to preserve documents:

- The IRS issued litigation holds in May and June 2013 for records related to this matter.
- In May 2013, IRS Chief Technology Officer Terence Milholland "sent an e-mail to his senior managers responsible for destroying media and asked them to preserve media that might contain e-mail or data related to 'investigations' that were occurring."[89]
- On February 3, 2014, Duval sent a message to Deputy CIO Manning confirming a previous conversation with him about an "apparent lack of Lois Lerner email from before May 9, 2011." Per their earlier discussion, Duval asked Manning to take several steps, including to "ensure that the earliest possible network back-up tapes are available for review" and "[c]onfirm that no back-up tapes have been recycled since the hold on recycling was instituted last spring[.]"[90]

Milholland told TIGTA that he was "blown away" to learn that the 422 backup tapes had been destroyed and opined that it "was more significant than the loss of Lerner's hard drive."[91] We agree that these tapes should not have been destroyed and are disappointed that IRS senior management did not adequately secure them.

Finally, TIGTA's report shines light on the IRS's failure to notify Congress of the missing documents in a timely fashion. It is understandable that the IRS would take some amount of time to assess the information gap and possible solutions before contacting Congress. But the IRS's decision to wait more than four months is inexcusable, particularly in view of the following:

- Duval and other senior employees believed the information gap to be significant enough to raise with Chief Counsel Wilkins in early February 2014, and with Commissioner Koskinen no later than April 2014.
- Based on testimony from Kane, it appears that the IRS was unconcerned with the possibility that this Committee or any other Congressional committee may have issued a report before the IRS disclosed the problem.

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[87] Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.

[88] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54-1406-008-I (June 30, 2014) p. 3.

[89] TIGTA Memorandum of Interview or Activity, Personal Interview of Terence Milholland (June 11, 2015).

[90] Email from Catherine Duval to Stephen Manning, and others (Feb. 3, 2014).

[91] TIGTA Memorandum of Interview or Activity, Personal Interview of Terence Milholland (June 11, 2015).

- Duval informed the Treasury Department about this issue in April 2014, which in turn informed the White House shortly thereafter.[92]
- During the period when the IRS knew about the data loss but did not tell the Committee, Committee staff were routinely in contact with the IRS—including Duval and other employees who had direct knowledge of the data loss—about issues related to production of documents. During these conversations, Committee staff informed Duval that the Committee would require Commissioner Koskinen to sign a statement attesting to the completeness of the IRS's productions. Committee staff first raised this issue to Duval on March 27, 2014, and raised it repeatedly in April, May and early June. Neither Duval nor any other IRS employee gave any indication that the IRS had lost documents, a fact that would materially affect the IRS's ability to provide the required statement.
- The IRS disclosed the data loss only when Committee staff informed Duval that release of the report was imminent, and placed a deadline on receipt of Commissioner Koskinen's signed statement of Friday, June 13, 2014—the date when the IRS finally informed the Committee of the data loss.
- Even after the IRS disclosed Lerner's hard drive crash, it failed to provide a full account of what it knew to the Committee. When IRS senior staff briefed Committee staff on June 16, they informed the Committee only of Lerner's hard drive crash. Just hours later, the IRS told staff of a House committee that the IRS may have lost records of several other IRS employees who were relevant to this investigation. As a result, the Chairman and Ranking Member did not get a complete account of what the IRS knew until later that week.

Instead of proactively informing the Committee about the information gap, the IRS took the opposite approach. In a March 19, 2014 letter to Senator Wyden, Commissioner Koskinen said:

> **We are transmitting today additional information that we believe completes our production to your committee** and the House Ways and Means committee of documents we have identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. . . .
>
> **In light of these productions, I hope that the investigations can be concluded in the very near future.**[93]

Even if Commissioner Koskinen was not personally aware of the information gap at the time of this letter, the statements contained in this letter—which were surely made with the knowledge of senior IRS employees aware of the efforts underway to recover missing Lerner emails—were deeply misleading. These statements stood uncorrected for nearly three months, even after the Commissioner learned that his staff was still attempting to recover Lerner documents. Indeed, if the Committee had released its report as hoped for in the letter from Commissioner Koskinen, it would have been based on an incomplete record.

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[92] Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).
[93] Letter from John Koskinen to Senator Wyden (Mar. 19, 2014) (emphasis added).

By failing to locate and preserve records, making inaccurate assertions about the existence of backup data, and failing to disclose to Congress the fact that records were missing, the IRS impeded the Committee's investigation. These actions had the effect of denying the Committee access to records that may have been relevant and, ultimately, delayed the investigation's conclusion by more than one year. Without the IRS's candor, this Committee cannot fulfill its charge of overseeing the administration of the tax code.

3. Actions Taken by Committee Investigators To Mitigate the Information Gap

After the IRS notified the Committee of the loss of data, the Committee took several actions to mitigate the information gap:

- As described above, the Committee asked TIGTA to search for and recover documents, which resulted in the discovery and production of 1,330 records that had not been previously produced to the Committee.
- The IRS took remedial steps to recover and produce emails for Lerner, Chen, Heagney, Kindell, and Shoemaker, as described in the letter of September 5, 2014.[94] On July 1, 2015, Commissioner Koskinen signed a declaration attesting to the completeness of the IRS's productions, and promising that the IRS will promptly produce any additional relevant records if they are discovered.[95]
- After a review of Lerner's communications, Committee staff determined that Lerner had sent and/or received emails from employees of the Treasury Department, the DOJ, and the FEC during the relevant period. Senator Hatch requested that these agencies search for communications between their employees and Lerner. In response, each agency produced documents to the Committee.
- On June 18, 2014, the White House produced emails between its employees and Lerner.[96]
- Based on a review of Lerner's communications, Committee staff determined that Lerner frequently sent and received messages from a friend who used his corporate email address. Some of these messages were relevant to the Committee's investigation. Senator Hatch requested that the employer produce all messages between this employee and Lerner, and the company complied.

Even with the benefit of information from these sources, an information gap remains. The full number of records that were lost and not recovered will never be known. Nor is it possible to know if these records would alter any of the findings in this report.

Although it was not possible to completely reproduce the records lost by the IRS, the Committee exhausted every possibility for obtaining copies of relevant records. We are satisfied that these efforts have enabled the Committee to issue as comprehensive of a report as possible under the circumstances, and we believe that our conclusions are supported by the record.

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[94] Letter from Leonard Oursler to Chairman Camp (Sep. 5, 2014).
[95] Declaration of John Andrew Koskinen (July 1, 2015).
[96] Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).

D. Legal Background of 501(c)(3) and 501(c)(4) Organizations

The Committee's investigation chiefly concerns organizations applying for tax-exempt status under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code.

An organization may qualify for exemption under section 501(c)(3) of the Internal Revenue Code if it is organized and operated for religious, charitable, educational and certain other specified purposes.[97] These organizations may not directly or indirectly "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[98] This prohibition is absolute.[99] Thus, if a 501(c)(3) organization engages in any amount of prohibited campaign intervention, the IRS may revoke its tax-exempt status and impose an excise tax.[100]

Section 501(c)(4) provides tax-exempt status for organizations operated "exclusively for the promotion of social welfare."[101] In 1959, the Treasury promulgated regulations that interpreted "operated exclusively" to mean "primarily engaged" in social welfare activities.[102] As a result, the IRS considers an organization to qualify for tax-exemption under section 501(c)(4) if its primary activity is "promoting in some way the common good and general welfare of the people of the community."[103] The regulations provide that political campaign intervention is not a social welfare activity,[104] but a group recognized as tax-exempt under section 501(c)(4) may engage in unlimited issue advocacy related to its exempt purpose and some political campaign intervention, as long as the group is primarily engaged in social welfare.[105]

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[97] 26 U.S.C. § 501(c)(3) (2014).

[98] *Id.*

[99] IRS, The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations.

[100] *Id.*

[101] 26 U.S.C. § 501(c)(4) (2014).

[102] 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (1990). The IRS did not create this definition out of whole cloth. The term "exclusively" appears in section 501(c)(3) as well as 501(c)(4), and in 1945 the U.S. Supreme Court ruled that a "substantial" nonexempt purpose will destroy exemption under section 501(c)(3). *Better Business Bureau* v. *United States*, 326 U.S. 279 (1945). But the Court did not interpret "exclusively" literally and forbid all non-exempt purposes. *See* Comment Letter on 501(c)(4) Exempt Organizations from the American Bar Association to Commissioner Koskinen dated May 7, 2014, at text accompanying footnotes 22–24. The 1959 regulations incorporated this interpretation, clarifying that "exclusively" means "primarily" for both section 501(c)(3) and section 501(c)(4) organizations. Congress also has demonstrated that the term "exclusively" cannot be interpreted literally. Organizations that operate exclusively to promote social welfare have had tax-exempt status since 1913. But in 1950, following revelations that some tax-exempt organizations also were operating businesses tax-free, Congress amended the law to add the unrelated business income tax (UBIT) regime. Under UBIT rules, nonprofits are allowed to engage in unrelated nonexempt activity as long as they pay taxes on the "unrelated business taxable income" generated as a result. *See* 26 U.S.C. §§ 511–513. According to one tax-exempt organizations expert, "exclusively" could not mean "exclusively" because "later law acknowledged these organizations could engage in other activities" if you tax them. *See* Alan Fram, Inside Washington: Conflicting Laws, IRS Confusion, Associated Press, June 5, 2013, *quoting* Tax Professor Ellen Aprill, an expert on tax-exempt organizations at Loyola Law School in Los Angeles, CA. Because of the statutory conflict in provisions allowing nonprofits to operate unrelated businesses, and the provision requiring section 501(c)(4) organizations to be operated exclusively for the promotion of social welfare, some suggest that the 1959 Treasury regulation interpreting "exclusively" to mean "primarily" was necessary to resolve this statutory conflict. *Id.* Thus, both the *Better Business Bureau* case and the UBIT regime support the argument that "exclusively" is not to be read literally.

[103] 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (1990); IRS, Social Welfare Organizations.

[104] 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (1990).

[105] IRS, Social Welfare Organizations.

Section 501(c)(3) organizations must apply to the IRS to be recognized for tax-exempt status.[106] Although the tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, most organizations apply for an IRS determination.[107] Another important distinction is that donors to 501(c)(3) organizations may generally take a tax deduction for the amount of their donation, while donations to 501(c)(4) organizations are not tax-deductible.[108]

Generally, the tax laws do not require 501(c)(3) public charities or 501(c)(4) organizations to publicly disclose the identity of their donors.[109] By contrast, the identity of donors to section 527 political organizations are made public, as well as periodic reports of contributions and expenditures filed by such organizations.[110]

E. Structure of the IRS Exempt Organizations Division and General IRS Procedures for Reviewing Applications for Tax-Exempt Status

The IRS used the general processes described in this section during all times relevant to the Committee's investigation from 2009 through May 2013.[111]

The EO Division within the IRS reviewed all applications for tax-exempt status. As described below, revenue agents in the Cincinnati EO Determinations office resolved approximately 85% of incoming applications after reviewing the initial application with little or no additional follow-up. On some occasions, EO Technical or the Office of Chief Counsel, which are both located in Washington, D.C., reviewed applications. The IRS routinely elevated "sensitive" issues within the EO Division and to higher-level IRS management, sometimes up to the Office of the Commissioner.

At all times relevant to the Committee's investigation, the EO Division had the following basic structure and management:

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[106] 26 U.S.C. § 508(a) (2006).

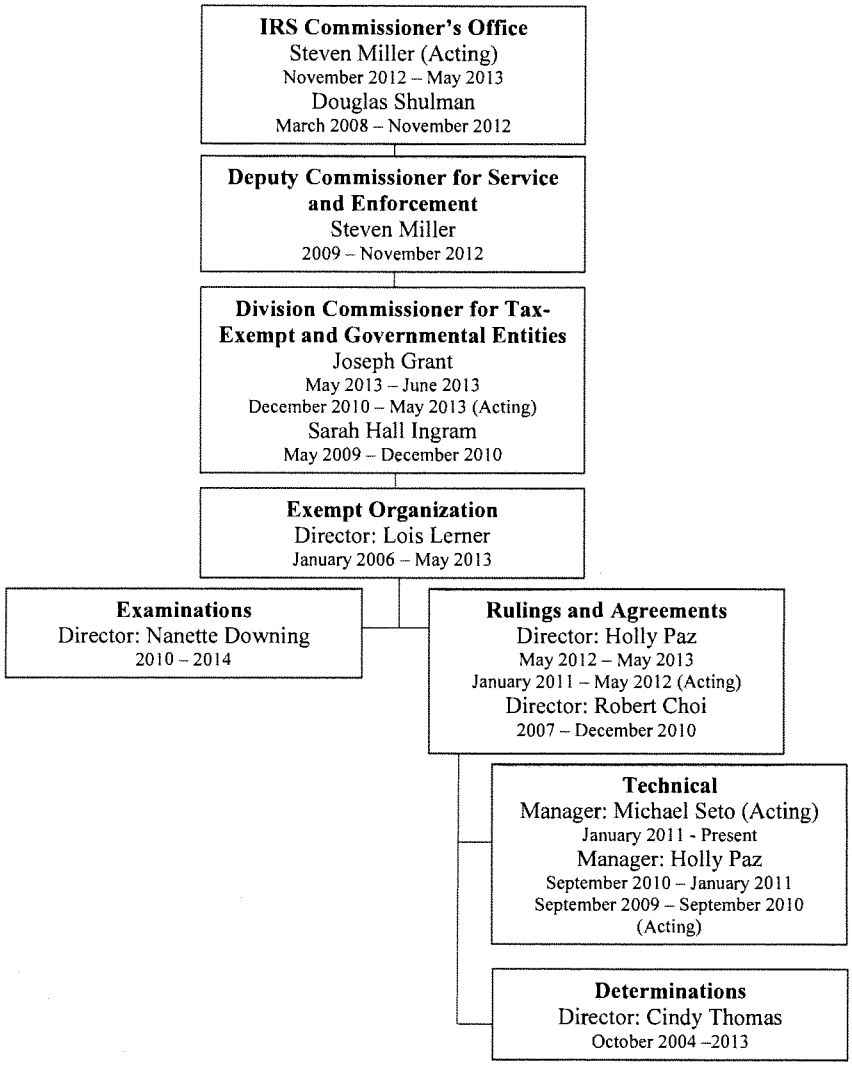
[107] Notes of Steven Miller (undated) IRS0000505538–42.

[108] 26 U.S.C. § 170 (2014).

[109] 26 U.S.C. § 6104(b), (d)(3)(A) (2014). 501(c) entities are required to submit to the IRS a list of persons who have donated $5,000 or more on an annual basis. This information generally is not made public, except that the information is made public for private foundations only.

[110] 26 U.S.C. § 527(k) (2014).

[111] Information in this section relies on Notes of Steven Miller (undated) IRS0000505538–42; IRM §§ 1.54.1 (Jan. 1, 2006) and 7.29.3 (July 14, 2008).


IRS Commissioner's Office
Steven Miller (Acting)
November 2012 – May 2013
Douglas Shulman
March 2008 – November 2012
Deputy Commissioner for Service and Enforcement
Steven Miller
2009 – November 2012
Division Commissioner for Tax-Exempt and Governmental Entities
Joseph Grant
May 2013 – June 2013
December 2010 – May 2013 (Acting)
Sarah Hall Ingram
May 2009 – December 2010
Exempt Organization
Director: Lois Lerner
January 2006 – May 2013
Examinations
Director: Nanette Downing
2010 – 2014
Rulings and Agreements
Director: Holly Paz
May 2012 – May 2013
January 2011 – May 2012 (Acting)
Director: Robert Choi
2007 – December 2010
Technical
Manager: Michael Seto (Acting)
January 2011 - Present
Manager: Holly Paz
September 2010 – January 2011
September 2009 – September 2010 (Acting)
Determinations
Director: Cindy Thomas
October 2004 –2013

All applications for tax-exempt status were initially routed to the IRS's EO Determinations office in Cincinnati, Ohio. The EO Determinations office was comprised of 13 "Groups" that processed applications for tax exemption. One group was responsible for performing an initial screening of applications. Employees in this group, referred to as "screeners," typically spent about 15–30 minutes reviewing an incoming application and completed 20–30 applications per day. Screeners had four options available for each application:

1. Recommend approval of applications that raised no issues (approximately 35% of applications). The screening group manager would then conduct a final review of the draft approval letter to the applicant.

2. Refer the case to other EO determinations agents for minor development (approximately 50% of applications). These applicants appeared to meet the requirements for tax-exempt status but lacked some required information, such as the articles of incorporation.

3. Refer the case to other EO determinations agents for full development (approximately 13% of applications). Applications in this category left open questions as to the adequacy and scope of their exempt purposes, the inurement of a private benefit, or the presence of activities inconsistent with exempt status.

4. Return a grossly incomplete application to the organization (approximately 2% of applications). If an application was missing pages or submitted on the wrong form, the screener could return the application and require re-submission.[112]

Applications in the second and third categories were sent from the screener to revenue agents in the EO Determinations office, who would then follow up with the applicant to develop the case. While many of these revenue agents worked in Cincinnati, some were located in other IRS offices around the country. The development process varied from case to case but typically included telephone calls and written correspondence (development letters) between the IRS and the applicant's point of contact. Revenue agents had a fair amount of discretion about which issues needed to be developed and how much information was necessary.

Most applications for tax-exempt status that were received by EO Determinations were processed to completion by EO Determinations employees without outside assistance. Certain applications, such as those that raised complex or novel questions or that contained sensitive or high-profile issues, were sent to EO Technical. Typically, applications that were received in EO Technical were assigned to a highly-graded Tax Law Specialist in one of the four EO Technical Groups. The Tax Law Specialist could either assume full control of the application or continue to work on the application in conjunction with an EO Determinations revenue agent. The Tax Law Specialist was responsible for developing the facts of the application, applying the law to those facts, reaching a conclusion, and preparing a proposed determination on the application for tax exemption. The Tax Law Specialist then submitted the proposed determination to a "reviewer" within the Tax Law Specialist's Group.

[112] SFC Interview of John Shafer (Sep. 17, 2013) pp. 7–9.

The Group Manager could also decide to review the proposed determination at this time, or could allow the Tax Law Specialist and the reviewer to make the final determination. A final determination was made on a majority of applications at the Group level.

The Internal Revenue Manual (IRM) also specified certain issues that should be elevated within the IRS organization, including "sensitive" issues, issues that impact a large number of individuals, issues involving significant dollar amounts, issues that were or could become newsworthy, and issues requiring coordination with the Office of Chief Counsel or Treasury. The primary way of elevating these issues was through a Sensitive Case Report (SCR), which was usually prepared by the manager in charge of the issue. The SCR contained a summary of the facts, why the issue was important, and the proposed resolution.[113] SCRs about tax-exempt issues were periodically distributed to EO management, including Lerner and her advisors, and certain reports were also sent to top-level IRS management, including the Office of the IRS Commissioner. As discussed in greater detail below, the Committee determined that SCRs had little practical value as a tool for guiding difficult issues to resolution, as they were routinely ignored—and sometimes not even read—by top management.

Once EO Technical placed an application on an SCR, additional procedures were followed before a final determination could be made. A proposed determination made at the Group level could not be effectuated without first providing the Manager of EO Technical with an opportunity to review the proposal. After the Manager of EO Technical completed his/her review, then the proposed determination was sent to the Director of Rulings and Agreements for additional review. Accordingly, including an application or other matter on an SCR meant that at a minimum, the proposed determination would undergo two additional levels of review (EO Technical Manager, Director, Rulings and Agreements). These additional levels of review invariably required more time to complete, thereby delaying the ultimate disposition of the application.

In limited circumstances, pending applications were referred to the Office of Chief Counsel in Washington, D.C. The only cases that required mandatory review by the Office of Chief Counsel were proposed denials of tax-exempt status under section 501(c)(3).[114] All other applications could be sent to the Office of Chief Counsel for discretionary reasons specified in the IRM, including applications that presented novel issues of law or the possibility of litigation.[115]

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[113] Section 7.29.3.2(C) of the IRM (July 14, 2008) provides that the Group Manager will determine whether an SCR should be prepared to alert "upper management" that a case: (i) is likely to attract media or Congressional attention; (ii) presents unique or novel issues; (iii) affects large numbers of taxpayers; (iv) potentially involves large dollar amounts; or (v) has another issue that warrants attention.

[114] IRM § 7.29.3.7(5) (July 14, 2008).

[115] IRM § 1.54.7.2 (Jan. 1, 2006).

III. FINDINGS OF THE SENATE FINANCE COMMITTEE AND SUMMARY OF SUPPORTING FACTS

This section sets forth the bipartisan findings of the investigation and summarizes the supporting facts, some of which are described in greater detail later in this report.

The bipartisan investigation conducted by Committee Staff identified a pattern of mismanagement commencing in 2010 by IRS management officials in their direction, or lack thereof, of the processing of applications for tax exemption submitted by Tea Party and other political advocacy organizations. This pattern of mismanagement consisted of both an underestimation of the political sensitivity of these applications and an overestimation of the effectiveness of a number of management initiatives aimed at processing these legally and factually complex applications. Most of these initiatives ended in failure. As a result, Tea Party and other political advocacy groups experienced long delays in the resolution of their applications, extending in many instances for two, three or even four years.

A. IRS Management Lacked an Appreciation for the Sensitivity and Volatility of Political Advocacy Applications

One of the first Tea Party applications received by the IRS was flagged as a possible "high profile" case by Jack Koester, a screener in EO Determinations. (See Section VI(A).) Koester believed that the application was "high profile" because it had been submitted by an organization identifying itself as part of the Tea Party movement, a movement that was receiving substantial media coverage at the time. In addition to the potential for media interest in the application, Koester took note that the Tea Party organization indicated in its application that it was seeking to engage in political discourse, an issue that could affect its status as a tax-exempt entity.

Koester's immediate managers, up to and including Cindy Thomas, EO Determinations Program Manager, agreed with Koester's assessment that the application was "high profile." Thomas elevated the application to EO Technical in Washington D.C. Shortly thereafter, Steve Grodnitzky, Acting Manager for EO Technical, concluded that the application, as well as all other applications received from Tea Party groups, met the criteria for the preparation of a SCR. The purpose of an SCR is to apprise upper management of applications that warrant their attention because they present a significant issue or raise a notable concern.[116] In the case of the Tea Party applications, the issue was that the applications could attract significant media and Congressional attention. Carter Hull, a Tax Law Specialist in EO Technical, was assigned the Tea Party cases and prepared the first SCR on them in April 2010. Thereafter, either Hull or Hilary Goehausen, another Tax Law Specialist in EO Technical, prepared an SCR on these applications every month until 2013.

[116] IRM 7.29.3.2 (July 14, 2008).

During the summer of 2010, Tax Exempt and Government Entities (TE/GE) Division Executive Assistant Richard Daly sent monthly emails to senior IRS management that contained SCRs about important pending issues within the TE/GE divisions. The SCRs transmitted by Daly were a subset of all SCRs that had been prepared by divisions within TE/GE, and included only the issues that were deemed most necessary for elevation to upper management.[117] Included in Daly's messages were the SCRs about the Tea Party applications prepared by Hull on May 24, 2010, June 22, 2010, and July 26, 2010.[118] These SCRs identified three Tea Party organizations by name; discussed the legal issue as "whether these organizations are involved in campaign intervention"; enumerated how many similar applications had been received; and explained how employees in Cincinnati and Washington were processing the applications.[119]

Although the Tea Party SCR was sent multiple times directly to IRS upper management in 2010, the SCR went unnoticed:

- Division Commissioner of TE/GE, Sarah Hall Ingram, received all three of Daly's messages containing the Tea Party SCR in 2010. Ingram had no memory of reviewing any of the Tea Party SCRs sent to her, asserting that "I did not read these [Tea Party SCRs]."[120] She explained that this was not out of the ordinary; Ingram routinely disregarded SCRs as she did "not personally [find] them particularly useful documents."[121] Instead of reading the SCRs herself, Ingram "relied on [the TE/GE] directors to bring me the ones they thought they were worried about."[122]
- Deputy Commissioner of TE/GE, Joseph Grant, also received all three of Daly's messages containing the Tea Party SCR in 2010. Grant viewed SCRs as "a heads up or an awareness of something that was going on," but, like Ingram, Grant did not routinely read them.[123] Although he received three Tea Party SCRs in 2010, Grant claimed that he was not aware of the Tea Party applications in 2010.[124]
- Assistant Deputy Commissioner for Services & Enforcement (S&E), Nikole Flax, received two of Daly's messages containing the Tea Party SCR. One of Flax's duties was to review incoming SCRs and inform the Deputy Commissioner for S&E, Steven Miller, of the most significant issues.[125] Flax had no recollection of reviewing either of the Tea Party SCRs sent to her in summer 2010 or discussing them with Miller.[126] Miller also had no memory of reviewing these SCRs in 2010 or dis-

[117] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) pp. 44–45.
[118] Email from Richard Daly to Jennifer Vozne and others (June 6, 2010) IRS0000163997–4013 (email attachments containing taxpayer information omitted by Committee staff); Email from Richard Daly to Jennifer Vozne, Nikole Flax and others (July 1, 2010) IRS0000164020–43; Email from Richard Daly to Sarah Ingram and others (Aug. 5–6, 2010) IRS0000164044–72 (email attachments containing taxpayer information omitted by Committee staff).
[119] *Id.*
[120] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 42.
[121] *Id.* p. 44.
[122] *Id.* p. 42.
[123] SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 13–14.
[124] *Id.* p. 11.
[125] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 37–39.
[126] SFC Interview of Nikole Flax (Nov. 1, 2013) p. 30.

cussing them with Flax.[127] Flax noted that she never met with Miller to discuss SCRs.[128]

These IRS upper-level managers, by virtue of the positions they held, had the authority and the responsibility to ensure that the applications for exemption filed by Tea Party and other political advocacy groups did not languish in a bureaucratic morass. They were uniquely positioned to shape and direct the IRS's response to the influx of applications for exemption by Tea Party and other political advocacy groups first seen in 2010. Since they either did not bother to read the SCRs sent to them in 2010 or had no recollection of having read them, they forfeited the opportunity to exert their management influence to ensure that the applications were being properly processed. Each of these managers also told Committee Staff that they did not learn about the delays and other processing issues that Tea Party and other political advocacy groups had encountered until 2012, when media reports and Congressional inquiries regarding those processing issues began to appear. By that time, they were essentially managing a crisis.

Other managers like Lois Lerner, Rob Choi, Director of Rulings and Agreements, and Holly Paz, EO Technical Manager and later Director of Rulings and Agreements, all were aware of the Tea Party SCRs early in 2010.[129] Yet they simply failed to recognize the sensitivity of the applications and the potential for adverse media and Congressional reaction if those applications were not resolved in a reasonable period of time. Perhaps this failure to appreciate the sensitivity of the political advocacy applications was best summarized by Nikole Flax, who was asked by Committee Staff if the IRS was looking at the issue of political campaign intervention by 501(c)(4) organizations in 2010. Flax responded that "I wasn't aware that this was, like, a big issue at the time; that that was a bigger issue than all of the other sensitive issues that EO was dealing with."[130]

The volatility of these applications appears to have been better understood by staff-level employees than by their managers. For example, Elizabeth Hofacre, an EO Determinations agent, stated to Committee Staff that "because of the nature of these cases, the high profile characteristics, that it could really have, you know, imploded."[131] Hofacre likened working with the Tea Party cases during the period in 2010 when no determinations were being made on the applications to "[w]alking through a mine field."[132]

In the context of the Tea Party and other political advocacy applications, the identification of applications as "sensitive" or "high profile" and the preparation of SCRs proved to be no more than a paper exercise. The managers who had the responsibility and the authority to oversee the processing of the applications and who were the intended recipients of the information in the SCRs, either

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[127] SFC Interview of Steven Miller (Dec. 12, 2013) p. 39.
[128] SFC Interview of Nikole Flax (Nov. 1, 2013) p. 34.
[129] Holly Paz experienced a rapid climb through the management ranks in EO. She was hired by the IRS in 2007 and thereafter promoted or assigned to the following management positions within EO: Manager of EO Guidance Group 2 in July 2008; Acting Manager of EO Technical in September 2009; Manager of EO Technical in September 2010; Acting Director of Rulings and Agreements in January 2011; and Director of Rulings and Agreements in May 2012.
[130] SFC Interview of Nikole Flax (Nov. 21, 2013) p. 33.
[131] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 69.
[132] *Id.*

elected to ignore the SCRs and thus missed the opportunity to ensure that the IRS properly managed this workload, or failed to recognize the sensitivity of the applications and take steps early in the process to develop a plan to address their resolution.

Moreover, placing the Tea Party and other political advocacy applications on the SCR subjected those applications to further delays by requiring that they undergo additional levels of review. (See Section VI(A)(5).) The managers—who either did not recognize the sensitivity of the applications or who did not make the effort to keep informed of issues that could adversely impact taxpayers or the IRS—effectively nullified the salutary effects of the SCR process, while leaving in place those parts of the SCR process that could delay resolution of the applications.

B. IRS Management Allowed Employees To Use Inappropriate Screening Criteria That Focused on Applicants' Names and Policy Positions

Since the early 2000s, the IRS used various methods to alert EO employees of important issues that could arise when reviewing incoming applications for tax-exempt status. (See Section V.) In 2010, EO Determinations managers consolidated several lists of current and past issues into a single document, called the BOLO list or spreadsheet, an acronym for Be On the Lookout. From August 2010 until May 2013, the BOLO spreadsheet was distributed to all EO Determinations employees, who used it as a reference tool when screening and reviewing applications for tax-exempt status. The BOLO spreadsheet was comprised of five "tabs": [133]

Tab name	Tab characteristics / purpose
Emerging Issues	• Groups of applications for which there is no established case law or precedent. • Issues arising from significant current events (excluding disaster relief organizations). • Issues arising from changes to tax law or other significant world events.
Watch List	• Applications have not yet been received. • Issues were the result of significant changes in tax law or world events and would require "special handling" by the IRS when received.
TAG (also referred to as Potential Abusive).	• Abusive tax avoidance transactions including abusive promoters and fake determination letters. • Activities that were fraudulent in nature including: applications that materially misrepresented operations or finances, activities conducted contrary to tax law (e.g. Foreign Conduits). • Applicants with potential terrorist connections.
TAG Historical (also referred to as Potential Abusive Historical).	• TAG issues that were no longer encountered, but that were of historical significance.
Coordinated Processing	• Multiple applications grouped together to ensure uniform processing. • Existing precedent or guidance does not exist.

The BOLO spreadsheet itself was not problematic; on the contrary, if used properly, it could have been an effective way for management to communicate important directives to employees.

A managerial failure occurred when the initial BOLO spreadsheet was distributed in August 2010 containing a "Tea Party" entry that TIGTA found to be "inappropriate," because the mere use of the words "Tea Party" should not have been enough to trigger review. At that time, EO Determinations managers up to, and

[133] Heightened Awareness Issues (undated) IRS0000557291–308.

including, Cindy Thomas were aware of the "Tea Party" entry.[134] The problematic "Tea Party" entry under the Emerging Issues tab of the spreadsheet read as follows: "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."[135] The BOLO spreadsheet directed agents to send Tea Party applications to Group 7822 and specified that Elizabeth Hofacre was the coordinator. A similar "Tea Party" entry remained on every subsequent version of the BOLO spreadsheet until July 2011.

During that time, EO Determinations employees also screened incoming applications using words related to the Tea Party, such as "Patriots" and "9/12." As a result of these practices, every incoming application from a Tea Party or related conservative organization was sent to Group 7822 for further review—whether or not it reflected potential political campaign intervention—which ultimately resulted in heightened scrutiny and extended delays.

The versions of the BOLO spreadsheet that were circulated in 2010 and 2011 also contained entries describing "Progressive" applicants on the TAG Historical tab of the spreadsheet, as well as "ACORN Successors" on the Watch List tab of the spreadsheet. (See Section V(C).)

Paz and Lerner, who comprised upper-level EO management in Washington, D.C., claimed that they were unaware of the "Tea Party" BOLO spreadsheet entry until July 2011. As managers who were ultimately responsible for how the approximately 300 employees in EO Determinations reviewed incoming applications, this represents another significant management failing. Lerner, in particular, demonstrated a lack of understanding about how EO Determinations employees performed their day-to-day jobs, which hampered her ability to effectively manage EO.[136]

Following a meeting in July 2011, Lerner directed that the "Tea Party" BOLO criteria be changed to neutral language that identified activities of applicants, instead of policy positions or names of specific organizations. Although this successfully removed the inappropriate criteria that had been on the BOLO spreadsheet for almost a year, as discussed below, this ultimately resulted in a broader class of applicants across the political spectrum being flagged, delayed, and scrutinized.

The neutral criteria did not last for long. In January 2012, EO Determinations Group Manager Steve Bowling modified the BOLO spreadsheet to include policy terms intended to capture incoming applications from Tea Party organizations, and organizations affiliated with the Occupy Wall Street movement. Thomas approved these changes, as they did not identify any organizations by name.

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[134] SFC Interview of Cindy Thomas (July 25, 2013) p. 67.

[135] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84.

[136] IRS management above Lerner uniformly claimed that they were unaware of the BOLO or any criteria on the document until May 2012 at the earliest. It is less obvious whether these managers should have taken a more active role in supervising how EO handled incoming applications for tax-exempt status; arguably, upper-level managers in TE/GE should have also been involved in decisions affecting large numbers of taxpayers.

However, TIGTA determined—and we agree—that the January 2012 BOLO spreadsheet entry was also inappropriate.[137]

Lerner and Paz again claimed that they were not aware of the problematic change on the BOLO spreadsheet until several months later. At that point, Lerner and Paz corrected the criteria and implemented new procedures that required all BOLO spreadsheet changes to be approved by Thomas. These events illustrate yet another failing of management: neglecting to oversee a process that they knew was wrought with problems, and only implementing controls after more damage had been done.

C. IRS Management Failed To Develop an Effective Plan for Processing Applications for Political Advocacy Groups

Despite a number of attempts over a three-year period, EO management was never able to develop a cohesive, effective approach for the processing of the Tea Party and other political advocacy applications. Instead, the period from 2010 to 2013 was marked by a series of under-planned, under-supported and under-executed initiatives that individually and collectively proved inadequate to bring the applications to resolution.

1. IRS Management Placed Exclusive Reliance on Test Cases for Too Long

The initial plan developed by Cindy Thomas in conjunction with Holly Paz in February 2010 was for EO Technical to develop two Tea Party "test cases." (See Section VI(A)(3).) EO Technical staff would then use its experience working these cases to provide guidance to EO Determinations agents so that those agents could process the balance of the then-pending Tea Party applications. That plan proved to be inadequate.

Carter Hull developed the two test cases, but took eight months to draft memos containing his findings. Those findings were then subjected to a variety of reviews from Elizabeth Kastenberg, a Tax Law Specialist in EO Technical, in January 2011, Judith Kindell, a Senior Technical Advisor to the EO Director, in April 2011, and eventually staff of the Office of the Chief Counsel in August 2011. By the time Kindell reviewed Hull's recommendations in April 2011, the initiative to work the two test cases was already more than one year old. Kindell expressed neither agreement nor disagreement with Hull's views, but simply recommended an additional round of review by the Office of the Chief Counsel. The Office of the Chief Counsel, in turn, recommended further factual development of the organizations' activities. Consequently, the IRS was not much closer to reaching resolution on the two test cases in August 2011 than it had been in April 2010.

It appears that only Cindy Thomas recognized that reliance on development of the two "test cases" alone was misplaced and that a more comprehensive plan was needed to move the applications that were forming a backlog in EO Determinations. Thomas told Paz in October 2010 that "we are just 'sitting' on these appli-

[137] In January 2012, Bowling also added a separate BOLO entry for "'Occupy' Organizations" on the Watch List tab of the BOLO. TIGTA's report did not discuss whether this entry was inappropriate.

cations" and that "we need to coordinate these cases as a group . . ." [138] Thomas asked Paz to meet with her "to discuss the approach that is being used and come up with a process so we can get these cases moving. . . ." [139] Instead, Paz assured her that the test cases would be resolved soon, since Kindell would review Hull's recommendations.[140]

Thomas's concerns, coupled with a lack of results from Hull's efforts to resolve the test cases, and the mounting backlog of undecided applications, should have prompted Paz, at some point in the continuum between April 2010 and August 2011, to look for another solution for developing the guidance required by EO Determinations to resolve the political advocacy applications. Instead of heeding the call sounded by Thomas in October 2010, Paz simply elected to press on with development of the test cases. As an added measure, Paz enlisted the assistance of yet another reviewer, Kindell, who was generally regarded as a slow worker. Indeed Paz herself told the Committee that Kindell "had a reputation of having difficulty with deadlines and taking a lengthy period of time on cases." [141] Paz's decision to continue with the test cases and involve Kindell caused months of additional delays and never yielded any useful guidance that could be passed on to EO Determinations.

2. Lois Lerner's July 2011 Solution To Resolve the Political Advocacy Applications Was Flawed and Ineffective

In a July 2011 meeting, Lerner was apprised of the extent of the backlog of Tea Party applications—which had grown to nearly 100—and of the criteria being used by the screeners to identify Tea Party applications. (See Section VI(B)(2).) At that time she was also aware that many of these applications dated back to late 2009 and early 2010, since Steve Grodnitzky had informed her as early as April 2010 of the existence of the Tea Party applications. Grodnitzky also informed Lerner in April 2010 that there were 15 Tea Party applications then pending resolution.

At the time of the July 2011 meeting, many of the Tea Party applications were nearly a year-and-a-half old. Furthermore, the two test cases were nowhere near completion after 15 months of effort by Hull, Kastenberg and Kindell. Amid this backdrop, Lerner concluded, and Paz concurred, that the IRS should continue with the plan to develop the test cases. Lerner also concurred with Kindell that the recommendations on the test cases should be reviewed by the Office of the Chief Counsel, an organization known for taking substantial periods of time to respond to requests for assistance.[142]

Additionally, Lerner agreed with her staff's recommendation that EO Technical prepare a guidesheet containing information and directions that would help EO Determinations agents process the potential political advocacy applications. Lerner also directed that the name "Tea Party" be removed from the BOLO list, a move that did nothing to help get the political advocacy applications resolved. In fact, the Lerner-directed name change in the BOLO from "Tea

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[138] Email from Cindy Thomas to Holly Paz (Oct. 26, 2010) IRS0000435238–39.
[139] *Id.*
[140] *Id.*
[141] SFC Interview of Holly Paz (July 26, 2013) p. 166.
[142] SFC Interview of Steve Grodnitzky (Sep. 25, 2013) p. 145.

Party" to "Advocacy Orgs." only exacerbated the backlog by enlarging the universe of applications being systematically selected and placed on hold in the advocacy inventory from just Tea Party applications to organizations of every political (and in some cases non-political) stripe.

Lerner's decisions belie a lack of concern over the mounting numbers of political advocacy applications and their increasing age. Her decision to proceed with a guidesheet was, at best, a band-aid solution for the escalating number of unresolved political advocacy applications.

Committee staff found little evidence of further active involvement by Lerner in the matter of the political advocacy applications until February 2012. This may have reflected Lerner's belief that her July 2011 management directives were sufficient to resolve the mounting backlog and alleviate the long delays endured by many groups. In February 2012, the media started reporting on Tea Party and other political advocacy groups that received burdensome development letters. Spurred by these media reports and by complaints from constituents, Congressional interest in the IRS's handling of Tea Party and political advocacy applications also began to collect momentum. (See section IV(C).)

Both Lerner and Paz were caught unaware by these media reports and Congressional inquiries. Paz told Committee staff that "[e]veryone I think sort of became aware of it at the same time because of the press coverage. We all saw the letters through the press coverage."[143] The fact that Lerner and Paz were made aware by media reports that EO Determination employees were sending inappropriate and sometimes intrusive development letters to Tea Party and other political advocacy groups demonstrates their lack of management oversight regarding the processing of these applications, a serious abdication of their responsibilities as the senior managers within EO.

3. The 2011 Triage of Political Advocacy Applications Was Not Properly Supported by EO Management and Predictably Failed

In September 2011, Cindy Thomas proposed to Holly Paz the idea of having EO Technical perform a "triage" on the political advocacy applications then pending in EO Determinations. (See Section VII(E).) This initiative appears to have resulted from Thomas's concern with EO Technical's inability to provide the guidance necessary to resolve the Tea Party and other political advocacy applications, guidance that she had first requested from Paz in February 2010. Thomas asked that Paz assign someone knowledgeable to triage the nearly 160 backlogged political advocacy applications then awaiting development and decision in EO Determinations. While the idea to perform a triage of the applications was a precursor to the 2012 "bucketing" exercise that actually resulted in the resolution of a number of applications, unlike that later effort, this one was seriously under-supported by EO management.

Paz determined that Hillary Goehausen would perform the triage with assistance from Justin Lowe, a Tax Law Specialist in EO Guidance, and would review the applications in an electronic repos-

[143] SFC Interview of Holly Paz (July 26, 2013) p. 144.

itory referred to as "TEDS" (Tax Exempt Determination System). At the time of this determination, Hillary Goehausen was relatively new to the IRS, having been hired as a Tax Law Specialist in EO Technical in April of that year. Accordingly, Paz assigned a relatively junior employee to undertake this important review. Unfortunately, the entire application package with supporting documents was not in TEDS so, for many of the applications, Goehausen reviewed an incomplete record. While Goehausen appears to have done a credible job with the limited information that she had to work with, her recommendations on the applications did not carry the level of certainty that Thomas required to actually begin rendering decisions. Paz described Goehausen's recommendation to Committee Staff as follows: "[s]o I believe her advice was caveated that before Determinations . . . issued a letter they should look and see if there was anything that had come in subsequently that . . . could perhaps change that answer."[144] Accordingly, Thomas found the recommendations to be of little or no use.

Had this triage been properly supported with additional staff to assist Goehausen, and had she reviewed the entire record instead of just a part, the recommendations for each application would have been more useful to Thomas. The triage presented Paz with a prime opportunity to bring some of these applications to resolution months, and in some cases years, before they were ultimately decided. Instead, Paz allowed the opportunity to slip away by inadequately staffing the initiative and further limiting the review to an incomplete set of records. Failure of this initiative contributed to the growing backlog of political advocacy applications and the mounting delays experienced by applicants.

4. Lack of EO Management Oversight of the Political Advocacy Applications Allowed Development of the Guidesheet to Simply Stop in November 2011

Goehausen and Lowe were tasked by Michael Seto, Manager of EO Technical, with developing a "guidesheet" in July 2011. (See Section VII(D).) The guidesheet was intended to contain information and directions that would assist EO Determinations agents process political advocacy applications. Goehausen and Lowe completed a draft of the guidesheet in September 2011 and circulated it to certain staff and managers for comment. Having received comments from only Hull, Goehausen sent the guidesheet out for comment again in early November. Several days later, David Fish, then Acting Director of Rulings and Agreements, decried the guidesheet as unworkable in its current form and "too lawyerly."[145] At that point in time, it appears that further work by EO Technical to refine the guidesheet simply ceased.

It does not appear that management made any attempt to resume the process of completing the guidesheet again until February 2012. At that time, Lerner was called to Capitol Hill to explain to Congressional staff concerns about inappropriate and sometimes intrusive development letters received by constituents of a Congressman. During her meeting with Congressional staff,

[144] *Id.* p. 135.
[145] *Id.* pp. 132–33.

Lerner offered that EO had developed a guidesheet. Congressional staff requested a copy. Since development of the guidesheet had effectively ceased in November 2011, Lerner sought to expedite its completion so that she could comply with the request by Congressional staff. However, the guidesheet was never completed, as it was eventually superseded by a decision to instead train EO Determinations staff in May 2012 on processing political advocacy applications. Allowing development efforts on the guidesheet to simply stop in November 2011 represented yet another serious lapse in oversight by EO management.

Development of the guidesheet itself was an abject failure and again demonstrated the seeming indifference of EO management to finding a processing solution that would bring the political advocacy applications to resolution. As noted above, development of the guidesheet commenced in July 2011 and was terminated in May 2012. Over that period of time, and despite numerous attempts, staff of EO Technical with assistance from staff of the Office of Chief Counsel was unable to deliver a written guide on processing political advocacy applications that could be used by non-attorney EO Determination agents. EO management's inability to harness its resources to produce a solitary deliverable on a subject for which EO is a source of authority further demonstrated its lack of competence.

5. EO Management Allowed the Advocacy Team To Process Political Advocacy Applications Without Proper Training and Support, and Failed To Adequately Manage Its Activities

In December 2011, EO formed an "Advocacy Team" to develop and decide the political advocacy applications. This project resulted in yet another failed attempt to reduce the backlog of applications. (See Section VII(F).) Like the triage of 2011, the Advocacy Team appears to have been a Thomas-inspired initiative. Thomas appears to be the only manager within EO who expressed concern with the time that the applications were pending resolution and who translated that concern into palpable action.

While Thomas's idea to form the Advocacy Team was well-intentioned, unfortunately, she failed to properly manage its activities. Instead, she entrusted that responsibility to Steve Bowling, a first-line manager, and Stephen Seok, an EO Determinations employee, who both proved wholly inadequate for the task. Under the direction of Bowling and Seok, the Advocacy Team failed to bring a single case to resolution until the "bucketing" exercise of May 2012. However, the Advocacy Team will be most remembered for its attempts to extract extraneous information from applicants through incredibly burdensome and onerous development letters. A share of the blame for the failure of the Advocacy Team must also go to EO Technical, which was responsible for providing technical guidance to the Advocacy Team. It is unclear to what extent, if any, EO Technical actually provided guidance to the Advocacy Team. What is clear is that EO management exercised little or no coordination and oversight over the activities of the Advocacy Team, thereby allowing it to issue oppressive development letters until that practice was halted in February 2012 by Lois Lerner.

6. Although the "Bucketing" Exercise of 2012 Resolved Many Pending Political Advocacy Applications, the IRS Has Not Yet Issued Determinations for Some Applications

One positive development that can be attributed to the Advocacy Team's inappropriate and sometimes intrusive development letters was that they created intense media and Congressional interest in the complaints voiced by Tea Party and other political advocacy groups who were receiving these letters. This attention, in turn, sounded the "wake-up" call for upper IRS management, like Steve Miller. Once Miller became aware of the problem regarding the development letters, he ordered Nancy Marks, a Senior Technical Advisor, to conduct an internal investigation aimed at finding out what was going on in EO Determinations. (See Section VII(H).)

Upon getting a report back from Marks, Miller approved her suggestion to perform a "bucketing" exercise where a team of EO Technical Tax Law Specialists and EO Determinations agents scrutinized each application and its supporting documents to identify the applications that could be readily approved, those that required minor development before approval, and those that required further development. As a consequence of the bucketing exercise, a significant number of the Tea Party and other political advocacy applications were finally decided.

While the bucketing exercise was the first successful attempt to process some of the political advocacy applications, it came too late for many groups that had waited years and eventually ceased operating because they lacked approved tax-exempt status from the IRS. Moreover, the "bucketing" exercise did not resolve all backlogged political advocacy applications, as the IRS informed Committee Staff that 14 percent of the 298 political advocacy cases identified by TIGTA remained unresolved in March 2014. As of April 2015, 10 of these applications were still pending resolution. A number of those applications date back to 2010. Indeed, the Albuquerque Tea Party, one of the original test cases assigned to Carter Hull in April 2010, was still awaiting a determination as of April 2015. Accordingly, while substantial progress has been made since 2010 to reduce the backlog of political advocacy applications, IRS management has not yet been able to bring all of these applications to closure.

D. The IRS Placement of Left-Leaning Applicants on the BOLO List Resulted in Heightened Scrutiny, Delay and Inappropriate and Burdensome Information Requests

While most of the potentially political applications that the IRS set aside for heightened scrutiny were Tea Party and conservative groups, the IRS also flagged some left-leaning tax-exempt applicants for processing. In order to centralize these cases for review and processing, names and descriptions of several left-leaning groups were placed on the BOLO spreadsheet. Moreover, IRS employees were instructed in a training workshop to set aside applications received from several left-leaning organizations and to subject them to secondary screening. Some left-leaning applicants experienced lengthy processing delays and inappropriate and burdensome requests for information. (See Section VIII.)

1. The IRS Instructed Employees To Flag "Progressive," "Emerge," and ACORN Successor Applications at Training Workshops.

In the summer of 2010, the IRS EO Determinations office held training workshops where IRS employees were instructed to screen a wide range of potentially political applications. In addition to instructing screeners to flag applicants with names like "Tea Party," "Patriots," and "9/12 Project," the screeners were also instructed to look for the names "Progressive," and "Emerge," and to be on the lookout for successors to disbanded Association of Community Organizations for Reform Now (ACORN) organizations.

2. The IRS Placed the Terms "Progressive," "ACORN," and "Occupy" on the BOLO List

Numerous iterations of the BOLO spreadsheet included the terms "Progressive," "ACORN," and "Occupy," from August 2010 through July 2012. The term "Progressive" appeared on the BOLO spreadsheet tab titled TAG Historical or Potentially Abuse Historical, indicating that IRS employees no longer encountered applications with this term, but that the term still had historical significance. "ACORN Successors" appeared on the Watch List tab of the BOLO spreadsheet after an internal IRS research report concluded that ACORN may have engaged in activities inconsistent with its tax-exempt status. "Occupy" was placed on the BOLO spreadsheet under the Watch List tab after IRS Determinations employees noticed a news article that reported organizations affiliated with the Occupy movement were seeking tax-exempt status.

3. IRS Scrutiny of Left-Wing Applicants Resulted in Years-Long Delays and Burdensome Information Requests

The Committee found several examples of ACORN-affiliated and Emerge applicants that were delayed for over three years. The press also reported examples of delayed processing for left-leaning groups such as Alliance for a Better Utah and Progress Texas. Of the 27 organizations that the IRS inappropriately requested information concerning their donors, at least three of those groups were left-leaning.

E. The Culture in EO Contributed to a Lack of Efficiency in Its Operations

EO Management tolerated and even fostered a culture that was not conducive to efficient and effective operations. Lacking a sense of customer service, EO Management operated without regard to the effect of its actions on applicant organizations. Remote management and telework in EO Determinations may have impeded communications and coordination between its employees. Further, a pervasive atmosphere of antipathy existed between the Cincinnati and Washington D.C. offices of EO, fueled largely by the words and actions of Lois Lerner. Lastly, the culture within EO permitted a manager with no technical training in the subject matter area over which she exerted supervisory authority to remain in her job for nearly a decade.

1. EO Management Lacked a Sense of Customer Service

The IRS mission statement reads as follows:

> Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

While the mission statement pledges taxpayers much in regard to customer service, the IRS's recent record of processing political advocacy applications would suggest that many taxpayers received far less than promised.

Indeed, Committee Staff found little to suggest that EO management was concerned with the concept of customer service. Rather, EO management's focus was steadily centered on taking whatever actions it felt necessary to develop applications with the goal of obtaining sufficient information to support decisions (a goal that it has yet to achieve for some applications), even if that goal took years to achieve. While no one can fault EO management's desire to "get it right," the difficulty was that EO management struggled to find a method of doing so, even with multiple rounds of detailed development letters spanning over a number of years. Moreover, other than Cindy Thomas, EO management did not appear to be concerned with how its processing of applications might adversely affect the operations of the organizations awaiting the IRS's determination.

The IRS's treatment of the two test cases illustrates its customer service failings. The application for American Junto was closed in 2012 for failure to respond to a development letter. More accurately, the IRS sent American Junto three sets of development letters over a two-year period which caused its founders to give up on the notion of securing tax-exempt status and dissolve the organization. In an interview with a news agency, one of the founders of the group stated that "[w]e never got it off the ground . . . and the IRS is a large reason for that."[146] As of April 2015, the second test case, Albuquerque Tea Party, was still awaiting a decision from the IRS on its application which it first filed in December 2009.

EO Technical Group Manager Steven Grodnitzky told Committee Staff the following:

> Q. . . . [D]id you ever hear anybody at the IRS express any concern about the effect of this processing of these cases on these organizations? Did anybody say anything about it?
>
> A. Not—to my personal recollection.
>
> * * * * * * *
>
> Q. . . . Were you at all concerned about the fact that these cases, these organizations were—were either dissolving or not responding to the requests for development? Did that give you any sense for maybe there was not good customer service here to these organizations?
>
> A. If an organization decided not to respond for whatever reason, that's their prerogative. And our policy and rules are

[146] USA Today, Short-lived Ohio Group was early test case for IRS (Sep. 23, 2013).

> if they don't respond to a particular letter, we close it out FTE. . . .[147]

Recognizing the impact that an organization's "process" may have on its customers and then tailoring that process to minimize potential adverse effects would seem like a necessary and reasonable way to provide good customer service. It is abundantly clear from Grodnitzky's statements that EO management was not concerned at all with the adverse impact that organizations could experience if the IRS took years to process and decide their applications.

Cindy Thomas told Committee Staff that the work plan goal for closing applications for exemption under 501(c)(4) was 158 days, or approximately 5 months.[148] Holly Paz was asked if three or four years between receipt of an application and decision was normal. Paz stated to Committee Staff that "[i]t's not the norm."[149] However, Paz also told Committee Staff that she was aware of instances in which applicants waited four or five years for a decision on their applications for tax-exempt status.[150]

EO managers and employees routinely ignored the established IRM guidelines, which specify deadlines at various stages throughout the application process. For example, when an EO Determination employee decides that more information is needed about an application, the IRM allows five workdays to prepare and mail a development letter to the applicant.[151] Numerous Tea Party and political advocacy organizations heard nothing from the IRS for a year or more while their applications were pending, and then received a lengthy development letter seeking more information. This is but one example of EO employees failing to follow established deadlines and managers failing to enforce them.

When asked about the long delays experienced by Tea Party and other political advocacy groups seeking tax exemption, Nikole Flax stated her views as follows:

> "And I agree that was a problem. I mean, yes. And those are the problems that we were focused on, is all the organizations that ended up in the centralization, where they sat too long. I mean, I'm not defending any of that. That, in my mind, is the biggest offensive thing, is like, cases should not sit for 2 or 3 years or whatever they did. I mean, there is no excuse for that."[152]

While Flax's statements are an encouraging sign that someone at the IRS recognizes that EO owes taxpayers seeking exemption better customer service than they have recently received, the facts appear to suggest that her views are not universally shared within EO. Indeed, as of March 2014, nearly a year after TIGTA released its report on the IRS's use of inappropriate criteria to identify tax-exempt applications for review, more than 20 percent of the polit-

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[147] SFC Interview of Steven Grodnitzky (Sep. 25, 2013) pp. 135–37. "FTE" stands for "Failure to Establish," which refers to applicants that stop responding to IRS communications and are deemed to have constructively withdrawn from the application process.
[148] SFC Interview of Cindy Thomas (July 25, 2013) pp. 186–87.
[149] SFC interview of Holly Paz (July 26, 2013) p. 11.
[150] *Id.*
[151] IRM § 7.20.2.4.2 (Nov. 1, 2004).
[152] SFC Interview of Nikole Flax (Nov. 21, 2013) p. 135.

ical advocacy applications that were centralized between the years 2010 and 2013 were still awaiting a decision from the IRS. As indicated in the chart below, by April 2015, the IRS still had not rendered a decision on 10 of those political advocacy organizations.[153]

DISPOSITION OF CENTRALIZED POLITICAL ADVOCACY APPLICATIONS

Date	Total Apps Centralized	Open/Pending	Resolved
Dec. 31, 2010	89	88	1
Dec. 31, 2011	290	288	2
Dec. 31, 2012	487	319	168
Dec. 31, 2013	542	158	384
Dec. 31, 2014	547	17	530
Apr. 1, 2015	547	10	537

2. Remote Management and Workplace Flexibilities Affected the Efficiency of EO Determinations

From 2010 to 2013, EO Determinations in Cincinnati consisted of 13 Groups, each led by a Group Manager. Each Group consisted of approximately 12 EO Determinations agents. While many of EO Determinations' personnel were located in Cincinnati, there were a number of EO Determinations Groups situated in other locations across the United States, such as El Monte, California, Sacramento, California, Laguna Niguel, California, and Baltimore, Maryland. Agents in these Groups performed the same tasks as the agents located in Cincinnati, which included reviewing, developing and making recommendations on the disposition of applications for tax-exempt status.

While the EO Determinations offices were geographically dispersed, so was the management chain. For example, Sharon Camarillo, an EO Determinations Area Manager from 2002 to 2010, had responsibility in 2010 for eight Groups, five of which were located in Cincinnati, two of which were located in El Monte, California, and one of which was located in Sacramento, California. For a portion of the time Camarillo was an Area Manager, she was located in Los Angeles. In 2010, she was located in El Monte, California, together with two of the eight Groups that she supervised. Camarillo reported to Cindy Thomas, Program Manager of EO Determinations, who was located in Cincinnati. In 2010, Camarillo oversaw Group 7822 located in Cincinnati—the Emerging Issues Group managed by Steve Bowling, which was responsible for the processing of Tea Party and other political advocacy applications.

In addition to the dispersal of offices, staff and managers located throughout the country and time zone variances between offices, communications and coordination within EO Determinations may also have been affected by telework. For example, Gary Muthert, a screener in the Screening Group headed by John Shafer, told Committee Staff that he worked from home four days a week. Shafer, his manager, also worked from home two days a week. Steve Bowling, another Group Manager told Committee Staff that he worked from home 2 to 3 days a week. Shafer indicated that every one of the 13 screeners who worked in the screening Group

[153] Based on data provided to the SFC by the IRS (Apr. 8, 2015).

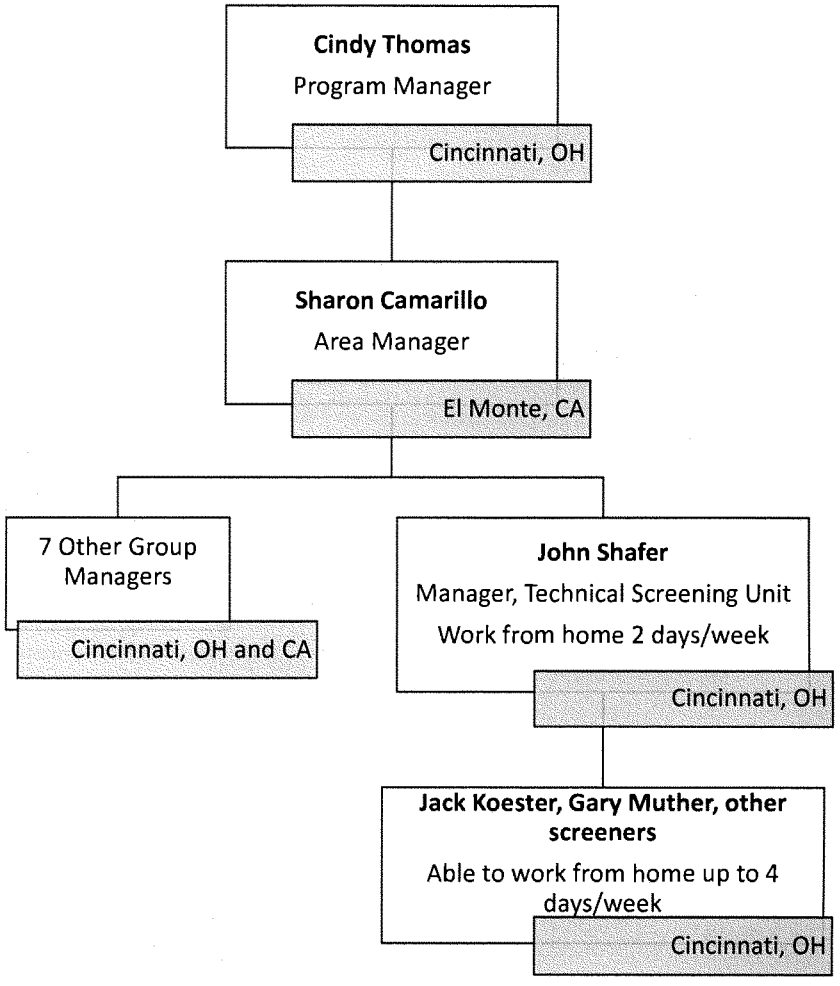
worked from home up to a maximum of four days per week, in accordance with the terms of a collective bargaining agreement. Regarding all other employees in EO Determinations, Shafer told Committee Staff the following:

> Q. And the other employees that were in the EO Determinations group in Cincinnati outside the screening group, the rest of them, were they also covered by that union agreement?
>
> A. Yes they were. Bargaining unit folks. Not, again, the managers.
>
> Q. So they could have worked at home up to 4 days a week?
>
> A. Yes.[154]

The following chart illustrates the difficulties that remote workplaces and telework placed on EO Determinations.

[154] SFC Interview of John Shafer (Sep. 17, 2013) p. 96.

Location of EO Determinations Employees Who Processed and Supervised Tea Party Applications in 2010



This dispersal of staff and management undoubtedly complicated communication and coordination within EO Determinations. For example, the first Tea Party application identified as a "high profile" case by Jack Koester, a screener in EO Determinations, was sent by Koester to his manager, John Shafer, who was located in Cincinnati. Shafer then alerted Camarillo in California that the application had been received. Camarillo, in turn, apprised Thomas in Cincinnati of the development and sought guidance on how to handle the application. Camarillo not only contended with the geographic challenges of managing employees spread across the country and communicating with her superior who was in another locale, but also had to surmount the differences in time zones between her office and that of many of her employees and her supervisor. The circuitous path that information between staff and the various levels of management travelled surely hindered communications in EO Determinations.

Telework unquestionably serves a legitimate purpose. However, the pervasiveness of it in an office as fractionated as EO Determinations could only impede communications and coordination among the staff and managers.

3. Antagonism Existed Between EO Senior Executive Level Management and EO Determinations Managers and EO Line Employees

Another symptom of the problematic culture within the EO Division is the clear divide that existed between EO senior executive level management in Washington, D.C. and the mid-level managers and line employees in EO Determinations. Cindy Thomas explained her views of Lois Lerner as follows:

> . . . I don't think that she valued what employees were doing . . . she didn't really listen to what others had to say. She would cut you off and didn't allow people to express what was going on . . . it was like it didn't matter if other people had questions, so to speak. So I don't think she was a very good leader.[155]

Regarding Lerner's opinion of the line employees in EO Determinations, Thomas related the following to Committee Staff:

> Q. . . . Going back, you had said that Ms. Lerner had referred to the Cincinnati office, which does the kind of day-to-day work, as backwater?
>
> A. Right.
>
> Q. As low-level. Did employees in Cincinnati know that?
>
> A. Oh, yes.
>
> Q. Was there, a reaction—but I mean, did Lois realize that her words actually went back to employees, or did she perhaps just not?
>
> A. I know that when she referred to employees as backwater at one point in time, that . . . employees were talking about

[155] SFC Interview of Cindy Thomas (July 25, 2013) pp. 116–17.

> it, you know, in Cincinnati . . . As far as "low-level," she did [say] that on May the 10th. . . .[156]

Thomas also felt that Lerner did not value EO Determinations because the employees were not attorneys. She expressed her views as follows:

> . . . Everybody has different levels of experience and different ideas and things, and we all have things to bring to the table. And just because a person is a lawyer doesn't make them any more important than anybody else . . . But I think that it was almost like a feeling like we're superior—I'm superior because I'm in the Washington Office, and you people in Determinations, you're all not lawyers and you're, like, backwater.[157]

Lois Lerner's polarizing words and actions had a demoralizing effect on both EO Determinations management and line employees. Those words and actions clearly exacerbated the atmosphere of antagonism that existed between the Cincinnati and Washington, D.C. EO offices.

4. The IRS Failed To Ensure That All EO Employees Received Technical Training

EO employees administer a complex and nuanced area of the Internal Revenue Code, which includes statutes, regulations, revenue rulings, and other guidance issued by the Treasury Department. Although the IRS offered technical training to EO employees, it did not ensure that all employees received proper—or in some cases, any—technical training.

Sharon Camarillo was an area manager in EO Determinations for 8 years before she retired in December 2010. In that role, Camarillo oversaw several Groups of EO employees who evaluated applications for tax-exempt status that were submitted to the IRS, including the Technical Screening Unit, which was responsible for making the initial assessment of incoming applications. Yet Camarillo told Committee Staff that she "had no technical training in the area of Exempt Organizations, so I was not able to address technical issues."[158]

As a result of her lack of technical training, Camarillo was unable to provide feedback on substantive issues and instead deferred to other managers within EO. An example of Camarillo's deference occurred in February 2010, when the manager of the Technical Screening Unit, John Shafer, brought the first Tea Party application to her attention. Camarillo explained that she "simply reiterated what John had said and forwarded it on" to her manager, Thomas, "[b]ecause I was so untechnical, I did not have the EO background."[159]

In the culture of the IRS organization, it was not only acceptable for an employee who had no technical knowledge to be elevated to

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[156] *Id.* p. 122.
[157] *Id.* pp. 117–18.
[158] SFC Interview of Sharon Camarillo (Sep. 26, 2013) p. 7. Camarillo explained that she was scheduled to attend a 6-week training session at one time during her tenure in EO, but she was removed from the session after one day by Thomas. *Id.* p. 25.
[159] Id. p. 16.

a managerial position, it was also acceptable for an employee to remain in that position for nearly a decade without completing any meaningful technical training.

F. Lois Lerner Oversaw the Handling of Tea Party Applications and Provided Limited Information to Upper-Level Management

As the Director of EO who was well-versed in the tax law of exempt organizations, Lerner was given a great amount of autonomy to manage the work of her division. The most senior official in EO, Lerner was responsible for keeping upper IRS management informed about significant issues within the organization that she oversaw. As she explained to one of her subordinates:

> [W]e ensure that all of our [senior] managers are aware of all highly visible hot button issues. Our job is to report up to our bosses on anything that might end up on the front page of the NY Times.[160]

Lerner first became aware that the IRS received applications from Tea Party groups in April or May 2010. Although Lerner became personally involved with the handling of these applications, upper-level IRS management remained largely unaware that the IRS had received applications from Tea Party groups. As a result, Lerner was left to oversee the processing of these applications with negligible oversight or accountability.

1. Lois Lerner Was Informed About the Tea Party Applications in April 2010 and Received Updates About Them

The Tea Party applications were first brought to Lerner's attention soon after Jack Koester in Cincinnati flagged them. On April 28, 2010, the Acting Manager of EO Technical, Steven Grodnitzky, sent Lerner a chart summarizing the SCRs. The first entry on the chart was the Tea Party applications. Grodnitzky drew Lerner's attention to this entry in his cover email, where he stated:

> Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to consistently develop those cases based on our development of the ones in DC.[161]

On May 13, 2010, Grodnitzky updated Lerner on the status of the Tea Party applications and other SCRs prepared by EO Technical.[162] Lerner responded by asking about the Tea Party applications, and specifically, the basis of their exemption requests. Lerner instructed Grodnitzky that "[a]ll cases on your list should not go out without a heads up to me please." Grodnitzky then provided more information about the status of the cases (emphasis added):

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[160] Email chain between Lois Lerner, Nanette Downing and others (May 10–11, 2011) IRS0000014917–20.

[161] Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (Apr. 28, 2010) IRS0000141809–11.

[162] Email chain between Steven Grodnitzky, Lois Lerner, Robert Choi and others (May 13–16, 2010) IRS0000167872–73.

> We have tea party cases here in EOT and in Cincy. In [EO Technical], there is a (c)(3) application and a (c)(4) application. In Cincy, there are 10 (c)(4)s and a couple of (c)(3)s. **The organizations are arguing education, but the big issue for us is whether they are engaged in political campaign activity.** We are in the development process at this point here in DC, and I have asked the [Tax Law Specialist] and front line manager to coordinate with Cincy as to how to develop their cases, but not resolve anything until we get clearance from you and Rob.
>
> The tea party cases, like the others on the list, are the subject of an SCR, and I customarily give Rob a heads up, b**ut of course can let you know as well before anything happens.**[163]

Lerner continued to receive updates about the status of the Tea Party applications throughout 2010, including revised SCRs that she received at the end of May 2010, in July 2010, in September 2010, and in November 2010.[164]

Lerner grew more concerned about the Tea Party applications in early 2011. On February 1, 2011, Michael Seto, the Acting Manager of EO Technical, sent an updated SCR table to Lerner. She responded, "Tea Party Matter very dangerous—This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules." Lerner indicated that Chief Counsel and Judy Kindell needed to be involved with these applications and that they should not be handled by Cincinnati.[165]

The following day, Paz advised Lerner that Carter Hull was supervising the applications handled by Cincinnati at every step and that no decision would be made until EO Technical completed the review of the 501(c)(3) and 501(c)(4) applications. Lerner noted that "even if we go with a 4 on the Tea Party cases, they may want to argue they should be 3s, so it would be great if we can get there without saying the only reason they don't get a 3 is political activity." [166]

A few months later, Lerner convened a meeting to further discuss the Tea Party and other advocacy applications. In preparation for the meeting, Justin Lowe developed a briefing paper for Lerner.[167] The paper indicated that EO Determinations Screening identified as an "emerging issue" a number of 501(c)(3) and (c)(4) applications by organizations "advocating on issues related to government spending, taxes and related matters." These applications were being sent to a specific group if they met any of the following criteria:

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[163] *Id.*

[164] Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (May 27, 2010) IRS0000141812–14; Email chain between Theodore Lieber, Lois Lerner and others (July 27–30, 2010) IRS0000807076–115 (email attachments containing taxpayer information omitted by Committee staff); Email from Steven Grodnitzky to Lois Lerner, Robert Choi and others (Sep. 30, 2010) IRS0000156433–36; Email from Holly Paz to Lois Lerner, Robert Choi and others (Nov. 3, 2010) IRS0000156478–81.

[165] Email chain between Holly Paz, Lois Lerner and Michael Seto (Feb. 1–2, 2011) IRS0000159431–33.

[166] *Id.*

[167] SFC Interview of Holly Paz (July 26, 2013) p. 86. The meeting was originally scheduled for June 29, 2011, but was rescheduled for July 5, 2011.

- "Tea Party," "Patriots," or "9/12 Project" is referenced in the case file.
- Issues include Government spending, Government debt, or taxes.
- Education of the public via advocacy/lobbying to "make America a better place to live."
- Statements in the case file criticize how the country is being run.

The briefing paper also noted that:

- More than 100 cases that meet these criteria have been identified so far, but only two 501(c)(4) organizations have been approved.
- EO Technical is assisting EO Determinations by reviewing files and editing development letters; and
- EO Determinations requests guidance on how to process the cases to ensure uniformity.[168]

On July 5, 2011, Lerner discussed the Tea Party applications, including the BOLO entry and screening criteria, with Thomas, Paz, Kindell and others.[169] Lerner directed changes, as described herein in Section VI(B)(2), although her management was largely passive until the media and Congress became involved in 2012.

2. Lois Lerner Failed To Inform IRS Upper Management About the Tea Party Applications

Lerner's first line of management was the TE/GE Division Commissioner, a position that was held at relevant times first by Ingram and then by Grant.[170] While Ingram was Division Commissioner of TE/GE, she had little face-to-face contact with Lerner—their chief interactions were at quarterly meetings and reviews—although they did regularly exchange emails.[171] Ingram did not learn that the IRS had received Tea Party applications until late 2011 or early 2012, when she read newspaper articles about problems the groups were encountering with the IRS.[172] The first time that she learned of allegations that the IRS was treating certain applications inappropriately was during a staff meeting in 2012, when Grant or Flax presented information about congressional inquiries related to these organizations.[173]

Although Grant directly supervised Lerner from December 2010 through May 2013, they had "relatively minimal interaction" with each other.[174] Grant first became aware of the allegations that the IRS was treating Tea Party applications differently than other applicants in February or March of 2012, when the IRS began receiv-

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[168] Email from Justin Lowe to Holly Paz and others (June, 27, 2011) IRS0000431165–66.
[169] SFC Interview of Holly Paz (July 26, 2013) pp. 86–89; SFC Interview of Cindy Thomas (July 25, 2013) pp. 53–55.
[170] Ingram served in that role from May 2009 to December 2010, when she became the Acting Director of the newly-created Services and Enforcement Affordable Care Act Office. Until the spring of 2013, Ingram also continued to serve as the Commissioner of TE/GE, providing high-level direction while Joseph Grant performed most of the duties as the Acting Director of TE/GE. Grant's position as Division Commissioner of TE/GE became permanent in May 2013, shortly before he retired from the IRS on June 3, 2013. SFC Interview of Sarah Hall Ingram (Dec 16, 2013) pp. 10, 19–20; SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 5–6.
[171] SFC Interview of Sarah Hall Ingram (Dec 16, 2013) p. 18.
[172] *Id*. pp. 42–43.
[173] *Id*. pp. 64–68.
[174] SFC Interview of Joseph Grant (Sep. 20, 2013) p. 63.

ing letters from Congress.[175] He also asserted that Lerner did not tell him about the July 5, 2011 meeting about Tea Party applications until April of the following year.[176]

Lerner's second level of management was the Deputy Commissioner for Services & Enforcement, a position held by Steven Miller from late 2009 through November 2012, when he became Acting Commissioner of the IRS. As Deputy Commissioner for Services & Enforcement, Miller oversaw the IRS's four primary operating divisions, including the TE/GE Division, and reported directly to the IRS Commissioner.[177] Lerner worked closely with Steven Miller on issues related to exempt organizations, sometimes bypassing Ingram and Grant, as Miller had previous experience in that area and had served as the Director of EO in the early 2000s.[178]

Miller generally found that Lerner was "pretty good about elevating" important issues to him.[179] But he claims that he did not become aware of how the IRS was handling Tea Party applications until early 2012, when he saw accounts in the press of the IRS asking overly burdensome questions of these applicants, including requests for donor information.[180] Miller discussed these issues with Commissioner Shulman while Shulman was preparing to testify before Congress in March 2012. Around that time was also the first point when Shulman became aware of the pending Tea Party applications.[181]

Miller became increasingly concerned with how the applications were being handled and, as Ingram explained, during a meeting with senior staff "express[ed] great frustration, and I'm putting that mildly, that . . . he wasn't . . . getting a complete description of what was going on[.]"[182] Based on the information he received from Lerner, Miller "was not comfortable responding to the congressional [requests] that he had at that point."[183] To alleviate these concerns, in April 2012 Miller ordered Nancy Marks to visit Cincinnati and find out what was going on, then report to him directly. Lerner was notably absent from the group of employees sent to Cincinnati. Around that time, Miller informed Shulman of Marks' planned visit and also told Shulman that TIGTA was starting a review.[184]

On May 3, 2012, Marks briefed Miller on the key findings from her trip to Cincinnati, which included:

- The use of inappropriate and sometimes intrusive development questions resulted from a lack of guidance and training by EO Technical to EO Determinations;
- There were 250–300 political advocacy cases in the queue;
- EO Determinations agents used a "BOLO" list with "Tea Party" and "9/12" on it as screening criteria but that the problem with using such criteria had been "fixed" earlier;

[175] *Id.* p. 9.
[176] *Id.* pp. 14–15.
[177] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 16–17.
[178] SFC Interview of Joseph Grant (Sep. 20, 2013) pp. 53–55; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 12.
[179] SFC Interview of Steven Miller (Dec. 12, 2013) p. 242.
[180] *Id.* pp. 123–128.
[181] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 32–35.
[182] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 77.
[183] *Id.* p. 79.
[184] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 35–37.

- Among the political advocacy cases in the queue were cases on both sides of the political spectrum;
- TIGTA was reviewing EO's treatment of the cases; and
- Marks found no evidence of political bias.[185]

Soon after being briefed by Marks, Miller conveyed to Shulman the salient points of Marks' findings, including the existence of the BOLO list and its criteria, one of which was "Tea Party." Shulman was concerned that "Tea Party" was on the BOLO, but he didn't follow up because Miller told him that the issue was resolved and TIGTA was investigating.[186] On May 30, 2012, Inspector General George briefed Miller and Shulman about TIGTA's audit, and specifically discussed his concern about screening criteria including the Tea Party, Patriots, 9/12 and other policy issues.[187]

After May 2012, Miller asked for periodic updates about the status of political advocacy applications and monitored their processing, keeping track of the number of applications that were still open. Miller "periodically" gave Shulman updates about the political advocacy applications, telling Shulman, "[W]e've got people on it, we're moving cases, we're putting determinations out; and [giving] the impression that, you know, the lag issue of approval was being worked on."[188]

Upon reflection, Miller believes that Lerner "under-managed" the political advocacy applications and should have made him aware of them sooner: "Certainly, before May [2012] I should've been aware that she found [problems with the handling of political advocacy applications]."[189]

3. Lerner Did Not Consult With IRS Chief Counsel William Wilkins About the Tea Party Applications

It does not appear that Lerner directly contacted IRS Chief Counsel William Wilkins to discuss the pending applications submitted by Tea Party and other political advocacy organizations. Like many senior officials within the IRS, Wilkins first learned that the IRS was reviewing applications from political advocacy groups in March of 2012.

The issue first rose to Wilkins when the Office of Chief Counsel was asked to review a guidesheet that was initially prepared by EO Technical.[190] Wilkins skimmed the guidesheet but never provided substantive comments or edits. He understood that EO Determinations employees would use the guidesheet to decide if applicants were engaging in political campaign intervention, but he did not know that the guidesheet was spurred by uncertainty over how to handle the Tea Party applications.[191] By that point, other attorneys in the Office of Chief Counsel had been assisting with political

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[185] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 133–141.
[186] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 37–44.
[187] TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.
[188] SFC Interview of Douglas Shulman (Dec. 3, 2013) p. 80.
[189] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 184, 240–41.
[190] SFC Interview of William Wilkins (Nov. 7, 2013) p. 24; Email from Michael Blumenfeld to William Wilkins and others (Mar. 13, 2012) IRS0000061498–505.
[191] SFC Interview of William Wilkins (Nov. 7, 2013) p. 24.

advocacy applications for nearly a year—but no one had informed Wilkins of their work.[192]

As the most senior attorney available to IRS management, Wilkins could have perhaps assisted with the legal questions posed by the political advocacy applicants if Lerner—or any other manager within the TE/GE chain—sought his help. Instead, Wilkins first learned that Tea Party organizations had applied for tax-exempt status, and that the IRS had screened organizations for full development based on their names, when he read the draft TIGTA report in April 2013.[193]

G. Even During the Committee's Investigation, Some IRS Employees Continued To Screen Tea Party Applications Based on the Organization's Names

On June 20, 2013, the IRS suspended use of the BOLO list and instructed EO employees to follow generally-applicable procedures when reviewing applications for tax-exempt status.[194] Committee staff interviewed a number of EO Employees in the months following this directive. From these interviews, it is clear that the suspension of the BOLO left a procedural void and that at least some EO Determinations employees continued to screen cases by looking for "Tea Party" and other inappropriate terms in the organization name.

Cindy Thomas, who oversaw EO Determinations, explained that some types of applications were still sent to particular groups of employees for processing, even in the absence of a formal BOLO:

> I have asked the question about what are we supposed to do with like health care cases? We have a group that coordinates the cases when they come in and we have the advocacy cases. Are we, what are we supposed to do? And what I was told is that we can still have cases go to a designated group for consistency purposes, that maybe the BOLO was really more of a routing document to instruct specialists or screeners where to route cases more than anything. And we are still having cases to be routed to the group that worked health care cases, they still get cases routed to them, and the group that was coordinating advocacy cases they still are going to that group that was coordinating those cases.

One employee who screened incoming applications, Gary Muthert, opined that the absence of the BOLO "will lead to more inconsistent processing of applications."[195] Muthert also expressed confusion about how he should handle incoming applications from Tea Party organizations:

> Q. Let me ask you if currently, if you get two applications, one is for the Tea Party of Arkansas or whatever, the other is

[192] *Id.* pp. 38–39.
[193] *Id.* pp. 24, 35.
[194] Memorandum from Karen Schiller, Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013). The memorandum instructed employees to immediately stop using the BOLO spreadsheet, including the Emerging Issues tab and the Watch List tab. However, employees were permitted to continue using other lists to identify and prevent waste, fraud and abuse.
[195] SFC Interview of Gary Muthert (July 30, 2013) (not transcribed).

> for Americans for Apple Pie, or something else, are the cases treated the same or is there still concern over how to consistently treat Tea Party cases?
>
> A. In my opinion there's still concern because no one's resolved the issue. I mean, for me, it's like what am I supposed to do with this thing? [196]

Another screener, Jack Koester, stated that screeners "really don't have any direction or we haven't had any" since the BOLO was suspended.[197] On August 1, 2013, Koester explained that if he was assigned to review an incoming application with the words "Tea Party" in its name, he would ask another IRS employee to also review the application, even if there was no evidence of political activity:

> Q. If you saw—I am asking this currently, if today if a Tea Party case, a group—a case from a Tea Party group came in to your desk, you reviewed the file and there was no evidence of political activity, would you potentially approve that case? Is that something you would do?
>
> A. At this point I would send it to secondary screening, political advocacy.
>
> Q. So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity on the application. Is that right?
>
> A. Based on my current manager's direction, uh huh.[198]

Based on this testimony, it appears that several months after TIGTA released their report, employees lacked appropriate instructions from management and possibly continued to pull out applications containing the words "Tea Party" for separate processing, despite the suspension of the BOLO and other assurances that the IRS had stopped these practices.[199]

H. For a Three-Year Period, The IRS Did Not Perform Any Audits of Tax-Exempt Organizations That Were Alleged to Have Engaged in Improper Political Campaign Intervention

After the Supreme Court's *Citizens United* decision in January 2010, the IRS became increasingly concerned with the amount of money spent to influence elections by tax-exempt organizations. (See Section IV.) . . . The IRS received an increasing number of allegations after *Citizens United* that tax-exempt organizations were engaging in an impermissible level of political campaign intervention. Under existing procedures, these allegations would be reviewed by EO Examinations employees who had discretion to open an audit. EO Examinations Director Nanette Downing, Lerner and

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[196] *Id.*

[197] SFC Interview of Jack Koester (Aug. 1, 2013) p. 29.

[198] *Id.* pp. 39–40. As Koester and other EO Determinations employees explained, the secondary screening process entailed a second review by an employee who was familiar with a particular type of applications. This same process was first used to screen incoming applicants from Tea Party organizations in 2010. *Id.* p. 35; SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 27–28, 44–45.

[199] Since the Committee conducted the interviews referenced in this section, the IRS has issued additional guidance to employees implementing new procedures for reviewing tax-exempt applications. *See, e.g.*, Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4) (Dec. 23, 2013); Memorandum from Stephen Martin, Streamlined Processing Guidelines for All Cases (Feb. 28, 2014). We have no knowledge of whether the IRS's recent guidance has affected the screening procedures applied to incoming applications for tax-exempt status.

other managers believed that the IRS needed new procedures and better employee training to effectively process these allegations. By the end of 2010, Downing suspended all examinations of 501(c)(4) organizations that were alleged to have engaged in improper political campaign intervention. (See Section IX(A).)

High-level IRS managers, including Miller, Lerner and Downing, spent the next three years attempting to devise a new approach that would enable the IRS to effectively evaluate allegations related to political campaign intervention of tax-exempt organizations. Although these managers understood the importance of the issue and devoted significant time and resources to the project, they failed to put a new approach in place. As a result, from the end of 2010 until April 2014, the IRS did not perform any examinations of 501(c)(4) organizations related to impermissible political campaign intervention.

Sections IV through VIII provide further detail about the facts that support the Committee's findings related to the Determinations process.

IV. FOLLOWING THE CITIZENS UNITED CASE, THE IRS FACED EXTERNAL PRESSURE TO MONITOR AND CURTAIL POLITICAL SPENDING OF TAX-EXEMPT ORGANIZATIONS

This section describes the environment within which the IRS EO Division operated from 2010–2013 in the wake of the Citizens United case.

The IRS has long been concerned with political spending by tax-exempt organizations. As Sarah Hall Ingram, former Commissioner of TE/GE and an employee of the IRS for more than 30 years, explained:

> For decades, the issue of what activities are on which side of the line and what's permitted, and the factual issues around who's crossed the lines and who hasn't, that is a very old question.[200]

Ingram further observed that the focus on political spending tended to intensify at the close of election cycles.[201] Although the issue was not a novel one for the IRS, the level of external scrutiny on the agency increased dramatically after the Supreme Court issued its decision in *Citizens United* v. *Federal Election Commission*, 130 S. Ct. 876 (2010).

A. Employees Throughout the IRS Exempt Organizations Division Were Aware of the Citizens United Decision

On January 21, 2010, the Supreme Court issued its decision in *Citizens United*, striking down parts of the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act). The chief holding was that "[p]olitical spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual

[200] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 33.
[201] *Id.* p. 32.

candidates in elections."[202] Although *Citizens United* directly addressed laws administered by the FEC, observers quickly predicted that the case might also have implications for the Internal Revenue Code and IRS regulations. On the day after the decision was announced, Lerner brought the case to the attention of upper-level TE/GE management and the Chief Counsel's office. Lerner believed that the case would probably not change IRS rules regarding tax exemption, but she recommended that the IRS prepare itself for inquiries regarding campaign spending by 501(c)(3) and 501(c)(4) organizations.[203] Ingram agreed that the agency should prepare Q&As as she thought that the case might result in a "test of the tax-exemption issue" in the courts.[204]

Lerner and others then prepared a few draft Q&As that could be posted to the IRS website to explain the effect of the holding on the IRS's enforcement of its regulations.[205] The Q&As restated established law regarding the activities of tax-exempt organizations and explained that Citizens United did not address the requirements that Congress imposed on organizations as a condition of being tax-exempt.[206] Ultimately, the IRS decided not to post any guidance about the case on its website though, as Ingram believed "it was sort of hard to explain why the IRS would be commenting on the FEC case in an affirmative way and also because all the other answers [in the Q&As] were already up on the Web in one format or another."[207] Lerner also observed that "[t]his is the danger zone no matter what we say."[208] The Q&As were provided to Commissioner Shulman and Steve Miller, so they could be prepared if the issue came up at a public event.[209]

Line employees in the EO Division were also aware of the *Citizens United* decision, independent of any notification by management. On the day after the decision was issued, an EO employee in Cincinnati forwarded Politico's analysis of the case to several of his colleagues, noting that it "[l]ooks like yesterday's Supreme Court ruling is going to result in more (c)(4)s engaging in political activities and the death of 527s."[210]

Two EO Determinations employees in Cincinnati assessed the potential impact of *Citizens United* on incoming applications for tax-exempt status. In August 2010, a screener in EO Determinations noted that an incoming application "appears to be using a recently decided Supreme Court case, '*Citizens United* v *Federal Election Commission*' which loosened some of the limits on for profit and nonprofit organizations with regard to political activities and expenditures."[211] The screener then recommended forwarding the case to upper management based on "the current political climate

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[202] *Citizens United* v. *Federal Election Commission*, SCOTUSblog.
[203] Email chain between Sarah Ingram, Lois Lerner, Steve Miller and others (Jan. 22–24, 2010) IRS0000444375–77.
[204] *Id*.
[205] Email chain between Nikole Flax, Sarah Hall Ingram, Cathy Livingston and others (Jan. 24–25, 2010) IRS0000442110–12.
[206] *Id.*
[207] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 40.
[208] Email chain between Nikole Flax, Sarah Hall Ingram, Cathy Livingston and others (Jan. 24–25, 2010) IRS0000575821–24.
[209] *Id.*
[210] Email from Michael Tierny to Faye Ng and others (Jan. 22, 2010) IRS0000639344–48.
[211] Email chain between Jack Koester, John Shafer and Gary Muthert (Aug. 3–4, 2010) IRS0000487033–35.

and possible sensitivity of the application".[212] The following month, an EO Determinations employee alerted a colleague about political contributions made by a potential applicant for tax-exempt status, which the employee believed were possible because of the *Citizens United* ruling.[213]

The impact of the *Citizens United* ruling on the IRS would remain a topic of discussion throughout the agency during the next several years, as noted below.

B. There Was Extensive Press Coverage of Political Spending by Tax-Exempt Organizations Following Citizens United

Political spending was a topic of continued interest in the press during the 2010 election year and beyond. The IRS had an active role in media coverage, and sometimes made senior employees available for interviews with reporters or offered comments on behalf of the agency. Some senior managers and employees in EO monitored the news and shared relevant articles about political spending by tax-exempt organizations with colleagues. These articles were often critical of the IRS and encouraged the agency to do more to rein in political spending.

At times, the IRS helped reporters understand the tax law and agency processes. The following examples occurred during the height of the 2010 election cycle:

- In August 2010, *The Washington Post* reporter Tim Farnam had contacted the IRS about campaign-related activity by 501(c)(4) and 527 organizations.[214] An employee in the media relations branch notified Ingram, Miller and Jonathan Davis, Commissioner Shulman's Chief of Staff, that employees in TE/GE provided existing data to Tim Farnam.[215] *The Washington Post* published Mr. Farnam's story a few days later, which discussed how Citizens United "has indirectly thrust the Internal Revenue Service into the more prominent role of overseeing [campaign] expenditures."[216] The published article was circulated among IRS managers, including Lerner and Ingram.[217]
- In September 2010, a reporter from the *New York Times* contacted the IRS about the operations of 501(c)(4) organizations after the *Citizens United* decision, and specifically, Crossroads GPS.[218] IRS press staff alerted Commissioner Shulman, Miller, Ingram, Lerner, and others about the expected story, noting, "One area raised as a concern are those groups that set up and function for a short period of time, and we are not aware of them until they file their return, well after their po-

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[212] *Id.*
[213] Email from Michael Condon to Gary Muthert (Sep. 28, 2010) IRS0000487036.
[214] Email from Michelle Eldridge to Steve Miller, Sarah Ingram, Lois Lerner and others (Aug. 6, 2010) IRS0000452184.
[215] *Id.*
[216] Email chain between Lois Lerner, Joe Urban and others (Aug. 22, 2010) IRS0000210591–93.
[217] *Id.*
[218] Email chain between Steve Pyrek, Terry Lemons, Sarah Ingram and others (Sep. 21, 2010) IRS0000508974–76.

tential lobbying efforts and other activities are complete."[219] Ingram, Lerner and senior EO employee Judy Kindell spoke with the reporter on background, and Ingram provided a statement on the record that was drafted by Miller, Lerner, Ingram, and others.[220] The reporter subsequently published an article focusing on political spending by 501(c)(4) organizations in the 2010 election, focusing on Crossroads GPS.[221] Ingram stated that the article "came out pretty well" and she opined that "the 'secret donor' theme will continue."[222]

The press continued to run articles on political advocacy spending by tax-exempt organizations throughout 2011 and 2012. These articles were routinely distributed among EO managers, TE/GE management, and the Commissioner's office.[223]

Employees outside of IRS management also followed the media's coverage of this topic. Indeed, some staff-level employees in EO Determinations monitored the news and shared among themselves many of the same articles noticed by upper managers—particularly the *EO Tax Journal*, which often compiled relevant stories from other media sources.[224] A number of the EO Determinations employees who shared articles were responsible for reviewing and deciding incoming applications for tax-exempt status. Thus, employees at every level of the IRS were aware of the media's coverage of spending by tax-exempt organizations in the wake of the *Citizens United* ruling.

C. Many Members of Congress Expressed Their Interest in Political Spending by Tax-Exempt Organizations

In recent years, Congress has become increasingly engaged in the issue of political spending by tax-exempt organizations. Members of both houses of Congress—and from both major political parties—frequently encouraged IRS action through speeches and direct requests to the IRS.

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[219] Email chain between Michelle Eldridge, Steve Miller and others (Sep. 20, 2010) IRS0000211382.

[220] *Id.*; Email chain between Nikole Flax, Steve Miller, Ron Shultz and others (Sep. 20, 2010) IRS0000219086–91.

[221] Email chain between Steve Pyrek, Terry Lemons, Sarah Hall Ingram and others (Sep. 21, 2010) IRS0000508974–76.

[222] *Id.*

[223] IRS Urged to Investigate Charity for Possible Political Activity, *Tax Analysts* (Apr. 1, 2010) IRS0000230462–77; As Campaign Money Pours In So Do Complaints, *The Washington Post* (Oct. 13, 2010) IRS0000071305–06; 3 Groups Denied Break by I.R.S. Are Named, *New York Times* (July 21, 2011) IRS0000012346–47; The I.R.S. Does Its Job, *New York Times* (Mar. 8, 2012) IRS0000212452–53; How Dark-Money Groups Sneak by the Taxman, *Mother Jones* (June 13, 2012) IRS0000177467–75; How Nonprofits Spend Millions on Elections and Call it Public Welfare, *ProPublica* (Aug 20, 2012) IRS0000180278–304; The IRS's Feeble Grip on Big Political Cash, Politico (Oct. 15, 2012) IRS0000180729–30.

[224] Is 501(c)(4) Status Being Abused?, *EO Tax Journal* (Sep. 14, 2010) IRS0000512236–40; *New York Times* Primer on EO Tax Law, *EO Tax Journal* (Oct. 18, 2010) IRS0000385201–06; If You Can't Beat Them, Join Them, *EO Tax Journal* (Apr. 14, 2011) IRS0000645590; 3 Groups Denied Break by I.R.S. Are Named, *New York Times* (July 21, 2011) IRS0000531334–39; Groups Challenge Legality of IRS Regs as Failing to Properly Limit Campaign Activity by 501(c)(4) Organizations, *EO Tax Journal* (July 28, 2011) IRS0000385238–50; Seven Democratic Senators Ask Whether IRS Investigating Political (c)(4)s, *EO Tax Journal* (Feb. 17, 2012) IRS0000529987–93.

From the end of 2008 through early 2013, the IRS received 35 formal Congressional requests about tax-exempt organizations.[225] These requests covered a wide range of issues, including political spending by tax-exempt organizations; imposition of the gift tax on donors to tax-exempt organizations; questions about the status of a particular organization; and suggested changes to IRS regulations.[226] Incoming Congressional requests were forwarded to senior IRS management and the typical clearance process for requests related to tax-exempt issues involved getting feedback from high-level management in TE/GE, the Legislative Affairs office, and often the Commissioner's office. Beginning in July 2012, all Congressional responses involving 501(c)(4) organizations were vetted by Steve Miller's Chief of Staff, Nikole Flax, before being finalized.[227]

In addition to these 35 formal requests, members of Congress also spoke about political spending in floor speeches[228] and made informal requests to the IRS, sometimes through staff.[229] The continued interest by Congress ensured that the IRS—and particularly its top managers—stayed focused on these issues.

D. Practitioners and Interest Groups Requested IRS Action on Political Spending by Tax-Exempt Organizations

As an agency charged with serving the public, IRS employees had frequent interaction with tax practitioners and other interested parties about political spending by tax-exempt organizations. Many supported specific reforms to the IRS regulations; but others focused on the actions of particular organizations applying for, or holding, tax-exempt status. A few examples that are generally representative of IRS interactions with the public are described below:

- In February 2011, Citizens for Responsibility and Ethics in Washington wrote to Commissioner Shulman asking the IRS to revoke the tax-exempt status of American Future Fund, Inc. The request was circulated among EO managers.[230]
- In March 2011 and September 2012, Lerner, Kindell and Treasury employee Ruth Madrigal corresponded directly with attorneys from the law firm of Adler & Colvin about proposed changes to the regulations for 501(c)(4) organizations. Lerner considered the possibility of meeting with the outside firm to discuss their proposals.[231]
- In September 2011, Democracy 21 and the Campaign Legal Center wrote to Lerner to request an IRS investigation of the tax-exempt status of four organizations, including Crossroads GPS, alleging that the groups conducted impermissible amounts of political campaign intervention. Lerner forwarded the request to EO Exam and instructed that it be treated as

[225] Email from Jorge Castro to Nikole Flax (Jan. 28, 2013) IRS0000292300–09. During that time, the IRS also received numerous informal requests from members of Congress and staff that are not captured in this exhibit.
[226] *Id.*
[227] Email from Lois Lerner to Holly Paz and others (July 24, 2012) IRS0000179669.
[228] *E.g.*, Email from Lois Lerner to Holly Paz and others (Apr. 17, 2012) IRS0000325929–30.
[229] *E.g.*, Email from Holly Paz to Lois Lerner (May 2, 2013) IRS0000409884.
[230] Email from Joseph Urban to Holly Paz and others (Feb. 2, 2011) IRS0000350193–97.
[231] Email chain between Lois Lerner, Ruth Madrigal, Holly Paz and others (Mar. 2, 2011) IRS0000634267–69; Email chain between Gregory Colvin, Lois Lerner and Judith Kindell (Aug. 24–27, 2012) IRS0000572618–19.

a referral for examination. Lerner also informed the TE/GE Acting Commissioner, Joseph Grant, and Nikole Flax about the request and noted that it "also went to the Commissioner."[232]

- In February 2012, a tax practitioner contacted a local IRS office about an article titled "Is the IRS Attempting to Intimidate Local Tea Parties?" The request was flagged as practitioner "noise" and forwarded to management for their awareness, and was ultimately sent to Miller.[233]
- In December 2012, Democracy 21 and the Campaign Legal Center requested to meet with the IRS about its petition for rulemaking on candidate election activities by 501(c)(4) organizations. On January 4, 2013, the groups met with Lerner, Victoria Judson from the Office of Chief Counsel and Treasury employee Ruth Madrigal to discuss the proposal.[234]

These continual discussions with outside groups ensured that the IRS stayed focused on the issue of political spending by tax-exempt organizations.

E. In Response to External Scrutiny and Increased Political Spending by Tax-Exempt Organizations, the IRS Tracked Political Spending and Proposed Regulatory Changes

Lois Lerner described what she may have believed was pressure on the IRS to address political advocacy activities, especially within the TE/GE office, in a speech at Duke University's Sanford School of Public Policy in October 2010:

> The Supreme Court dealt it a huge blow [*in Citizens United*], overturning a 100-year old precedent that said basically corporations could give directly in political campaigns, and everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem. . . . So everybody is screaming at us right now, "Fix it now before the election, can't you see how much these people are spending?" I won't know until I look at their 990s next year whether they have done more than their primary activity as a political or not. So I can't do anything right now.[235]

After the 2010 election, the IRS became increasingly concerned with the amount and frequency of money spent to influence elections by tax-exempt organizations. Writing in 2012, Steve Miller observed that after the decision, there was a "rise of super PACS."[236] Miller noted that the decision contributed to an increase in 501(c)(4) organizations that can engage in "unlimited issue advocacy" but "limited political campaign activity."[237] Miller also noted

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[232] Email from Lois Lerner to David Fish (Sep. 30, 2011) IRS0000511994–2018.
[233] Email chain between Steven Miller, Faris Fink and others (Feb. 29, 2012) IRS0000341677–80.
[234] Email chain between Lois Lerner, Ruth Madrigal and others (Dec. 14–19, 2012) IRS0000446771–75; SFC Interview of Victoria Judson (Sep. 11, 2013) pp. 40–43.
[235] SFC Transcription of Video Available on Youtube.com, Lois Lerner Discusses Political Pressure on IRS in 2010 (Oct. 19, 2010) <https://www.youtube.com/watch?v=EH1ZRyq-1iM>.
[236] Steve Miller notes (March 14, 2012) IRS0000506870–71.
[237] *Id.*

an increase in political spending by 501(c)(4) organizations at the Senate Finance Committee hearing on May 21, 2013:

> There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash that some of that cash headed towards (c)(4) organizations. This is proven out by FEC data and IRS data. That does put pressure on us to take a look.[238]

Near the end of 2012, employees in the EO division began considering whether it was possible to quantify the effect that *Citizens United* had on political campaign intervention by tax-exempt organizations. In December 2012, TE/GE employee Cristopher Giosa sent Lerner his preliminary analysis on sources of data that might be available.[239] Giosa suggested that EO consider enlisting the Office of Compliance Analytics to help with this project.[240]

By April 2013, EO and the Office of Compliance Analytics had prepared a detailed presentation on political spending in 501(c)(4) organizations.[241] As background information for the report, the authors noted:

> Since *Citizens United* (2010) removed the limits on political spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors.[242]

The authors then provided a "problem statement," which stated that "[t]he public purpose of 501(c)(4)s may be diluted by political campaign activities as an unintended consequence of *Citizens United.*"[243]

In May 2013, EO and the Office of Compliance Analytics revised the presentation in advance of a May 7 briefing for then-Acting Commissioner Miller.[244] The revised presentation, which was sent to Miller's office, made the following findings:

- The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through tax year 2010; and
- The amount of political campaign activities for large filers (defined as organizations with total revenue of more than $10 million) almost tripled from tax year 2008 through tax year 2010.[245]

The report identified two events that occurred contemporaneously with the drastic rise in the number of 501(c)(4) organiza-

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[238] Senate Finance Committee Hearing, A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny (May 21, 2013).

[239] Email from Christopher Giosa to Lois Lerner and others (Dec. 6, 2012) IRS0000185323–27.

[240] *Id.*

[241] Email from Justin Abold to Lois Lerner, Holly Paz and others (Apr. 12, 2013) IRS0000195666–90.

[242] *Id.*

[243] *Id.*

[244] Miller's calendar shows that he organized a meeting on May 7, 2013 to discuss "EO Data Matters" with Nikole Flax, Dean Silverman, Eric Schweikert and Joseph Grant (May 7, 2013) IRS0000456399.

[245] Email chain between Justin Lowe, Justin Abold and others (May 6, 2013) IRS0000494805–29.

tions that reported political campaign activities: the *Citizens United* decision and Congress's consideration of the Affordable Care Act.[246] Although the report did not conclude that those events caused a rise in political spending, by singling them out, it is clear that the IRS viewed them as significant, relevant factors.

The IRS took a step to address concerns about political campaign intervention by tax-exempt organizations on November 29, 2013, when it proposed regulations that would provide guidance to 501(c)(4) organizations on the types of political activities that would not be considered social welfare. After receiving more than 150,000 comments on the proposed regulations, on May 22, 2014, the IRS withdrew the regulations and stated that it planned to re-propose them after a thorough review of the submitted comments.[247]

As of the issuance of this report, the IRS has not proposed additional regulations or issued further guidance on this topic. However, the statements of Lerner and Miller, as well as the analytical work performed in 2013, make clear that the IRS has been working since 2010 to determine an appropriate response to external pressure following the *Citizens United* ruling.

V. THE IRS IMPLEMENTED A SPECIAL PROCESS FOR HANDLING CERTAIN TYPES OF APPLICATIONS

This section describes the special procedures that the IRS put in place to process applications that involved political advocacy, which were enabled by the creation of the BOLO spreadsheet.

The general process that the IRS followed for processing applications for tax-exempt status is described above in Section II(E). Over time, the IRS developed special procedures for handling certain types of applications, particularly those that posed difficult issues.

A. The Touch and Go (TAG) Spreadsheet Was Developed To Assist EO Determination Agents

Each of the Groups within EO Determinations had specialty areas and processed applications that fell within those areas.[248] Cindy Thomas believed that having one Group work applications with similar issues promoted consistency in results, fostered greater efficiency, and improved customer satisfaction, as well as employee and manager satisfaction, since no agent was required to be an expert in all issues.[249]

The "Touch and Go" or "TAG" Group (Group 7830) worked on applications that involved:

1. Abusive tax avoidance transactions:
    a. abusive promoters;
    b. fake determination letters;
2. Activities that were fraudulent in nature:

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[246] *Id.*
[247] IRS, Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).
[248] Email from Cindy Thomas to Holly Paz (Mar. 16, 2011) IRS0000008593–602.
[249] *Id.*

a. applications that materially misrepresented operations or finances;

b. activities conducted contrary to tax law (e.g. Foreign Conduits); and

3. Applicants with potential terrorist connections.[250]

If an agent in the screening group determined that an application met the TAG criteria, he/she sent the application to Group 7830, the group assigned to work TAG applications.[251] In Group 7830, another agent performed a "secondary screening" of the application to ensure that the application, in fact, met the TAG criteria. If it did, the application was retained in Group 7830 and worked to completion.[252]

Over the course of time, the IRS identified many applications that met the TAG criteria. In an effort to catalog those applications so that screening agents could properly identify them, around 2002 or 2003, EO Determinations developed a TAG spreadsheet.[253] The TAG spreadsheet identified the various TAG applications, explained the tax law issue presented in each application and provided further processing guidance to the EO Determinations agents.[254] The TAG spreadsheet eventually was expanded to include a second tab that referenced TAG issues that were no longer encountered, but were of historical significance.[255] When new entries were made to the spreadsheet, a "TAG alert" email was sent to EO Determinations agents. Starting in April 2007, copies of TAG alert emails were also sent to Thomas, EO Quality Assurance Manager Donna Abner and Washington D.C. EO attorney Ted Lieber, who was, "responsible for disseminating the information to others in D.C. should he deem it necessary."[256]

The TAG spreadsheet was used not only by the screeners but also by all EO Determinations agents.[257] On occasion, an application presenting a TAG issue might slip through screening and not be identified as a TAG application.[258] Ultimately, the application would be assigned to an EO Determinations agent who, in developing the facts surrounding the applicant's activities, would determine that those facts involved a potential fraudulent transaction, or a tax avoidance scheme, or that the applicant might have terrorist connections.[259] In identifying the application as a TAG application, the agent would be guided by the descriptive information contained in the TAG spreadsheet. The agent would then send such an application to the TAG Group for work-up. Accordingly, it was considered important for all agents, not just the screeners, to have access to the TAG spreadsheet.[260]

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[250] Heightened Awareness Issues (undated) IRS0000557291–308.
[251] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 31–32.
[252] *Id.*
[253] *Id.*; SFC Interview of Cindy Thomas (July 25, 2013) p. 66.
[254] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 31–32.
[255] *Id.* pp. 135–136.
[256] Email from Cindy Thomas to Jon Waddell (Apr. 18, 2007) IRS0000008413–14.
[257] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 30–33.
[258] *Id.*
[259] *Id.*
[260] *Id.*

B. The TAG Spreadsheet Evolved Into the Joint TAG/ Emerging Issues Spreadsheet

Applications often presented new issues that were not related to TAG matters, and for which there was little established precedent. These issues also needed to be identified and described for EO Determinations agents so that the applications could be sent to a specific Group where they could be processed and determinations could be made in a consistent fashion.[261] Screeners identified most of these issues through the initial screening process.[262] Applications containing these issues were initially referred to as "consistency cases."[263] EO Determinations agents and managers were apprised of these "consistency cases" by email and provided direction on how to treat them.[264] However, at some point, agents had difficulty keeping track of all the emails they were receiving on the "consistency cases."[265] Accordingly, a decision was made to consolidate the "consistency case" information sent by email into the existing TAG spreadsheet so that EO Determinations agents could easily access all of the information that they required in one convenient document.[266]

Accordingly, Jon Waddell and Joseph Herr, Group Managers in EO Determinations (Groups 7830 and 7825 respectively), began creating a "Joint TAG/Emerging Issues Spreadsheet."[267] The spreadsheet contained a tab for TAG applications encountered over the past 2–3 years, as well as tabs for Emerging Issues and a Watch List.[268] Emerging Issues were defined as follows:

- Groups of applications for which there is no established case law or precedent
- Issues arising from significant current events (not disaster relief); and
- Issues arising from changes to tax law or other significant world events.[269]

The Watch List contained a list of issues that the IRS had not yet received, but that it might receive in the future. These issues were the result of significant changes in tax law or world events and would require "special handling" by the IRS when received.[270] Issues on the Watch List tab were generally identified by EO Technical staff and brought to the attention of the EO Determinations Program Manager.[271]

In April 2010, Thomas determined that the joint issues spreadsheet then under development should also contain a tab for "consistency cases," which she described as applications "where we

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[261] Email from Cindy Thomas to Holly Paz (Mar. 16, 2011) IRS0000008593–602.
[262] *Id.*
[263] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 17–18.
[264] *Id.* pp. 94–95.
[265] *Id.*
[266] Email from Jon Waddell to Sharon Camarillo and Brenda Melahn (Apr. 6, 2010) IRS0000629335–48.
[267] *Id.*
[268] *Id.* Waddell noted that "the previous tabs for Archived and Removed TAG Issues have been taken out of the spreadsheet. Since the spreadsheet is now a joint one between TAG and Emerging Issues, we felt it would be too cumbersome to include additional tabs of 100's [of] former TAG issues."
[269] Heightened Awareness Issues IRS0000557291–308.
[270] *Id.*
[271] Email Chain between Holly Paz, Lois Lerner and Cindy Thomas (Feb. 18—Mar. 16, 2011) IRS0000008593–602.

want to ensure consistent treatment . . . (these cases are not TAG or Emerging Issues). For example, a group ruling disbands and subordinates decide to apply for individual exemption—we need to make sure they are worked/treated the same."[272] She also decided that EO Determinations agents and managers would be informed about the new spreadsheet during the June/July 2010 Continuing Professional Education (CPE) training sessions that they would be attending, and asked that the draft spreadsheet be completed and presented to her for review by the end of April 2010.[273] Thomas suggested that the name of the spreadsheet be changed since it no longer was limited to just TAG issues, but she offered no suggestions for a new name.[274]

In accordance with Thomas's direction, Jon Waddell revised the "Joint Spreadsheet" to include tabs for TAG cases, Emerging Issues, Coordinated Cases, and a Watch List.[275] Subsequently, on May 6, 2010, Elizabeth Hofacre, Emerging Issues Coordinator for Group 7825, sent a copy of the "joint issues" spreadsheet to her manager, Joseph Herr. The draft spreadsheet referred to "Tea Parties" as a sample entry under the Emerging Issues tab and directed agents to "[c]oordinate with group 7825."[276]

C. EO Determinations Agents Were Trained in the Use of the New Spreadsheet at a June/July 2010 CPE Training

In June and July of 2010, EO Determinations provided CPE training to its specialists.[277] During the course of the training, the specialists were advised that they would soon be provided with a "Combined Issues Workbook" that contained tabs for TAG, TAG Historical, Emerging Issues, Coordinated Processing Issues, and a Watch List.[278] The specialists were shown a PowerPoint presentation that advised them that a designated coordinator would maintain the workbook and disseminate alerts in one standard email.[279] During the course of the training, the specialists were instructed that "Tea Party Cases" were an Emerging Issue because they involved:

1. High Profile Applicants
2. Relevant Subject in Today's Media
3. Inconsistent Requests for 501(c)(3) and 501(c)(4)
4. Potential for Political/Legislative Activity
5. Rulings Could be Impactful[280]

EO Determinations also told its specialists that "Successors to Acorn" was an example of a Watch List issue. The PowerPoint presentation instructed employees that Watch List Issues had the following characteristics:

- Typically Applications Not Yet Received
- Issues are the Result of Significant Changes in Tax Law

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[272] Email chain between Cindy Thomas, Sharon Camarillo and Joseph Herr (Apr. 6–13, 2010) IRS0000629335–48.
[273] *Id.*
[274] *Id.*
[275] Email from Jon Waddell to Sharon Camarillo and Brenda Melahn (Apr. 27, 2010) IRS0000629455–57.
[276] Email from Elizabeth Hofacre to Joseph Herr (May 6, 2010) IRS0000542119–24.
[277] SFC Interview of Cindy Thomas (July 25, 2013) p. 43.
[278] Email chain between Cindy Thomas and Holly Paz (May 9–10, 2012) IRS0000004755–62.
[279] Heightened Awareness Issues (undated) IRS0000557291–308.
[280] *Id.*

- Issues are the Result of Significant World Events
- Special Handling is Required when Applications are Received.[281]

Following up on this training, on July 27, 2010, Elizabeth Hofacre prepared a "Combined Issue Spreadsheet" and distributed it to managers in EO Determinations.[282] The Emerging Issues tab of the spreadsheet informed the agents about Tea Party applications. The spreadsheet indicated that "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)." The entry in the spreadsheet further directed that "[a]ny cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT." Hofacre was provided the language for this spreadsheet entry by Jon Waddell.[283]

The spreadsheet distributed by Hofacre also contained an entry for "Progressive" on the Tag Historical tab with the issue listed as "political activities." Further, the entry stated that the "[c]ommon thread is the word 'progressive.' Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to 'blue.'"[284]

In addition, the spreadsheet included a reference to "Acorn Successors" on the Watch List tab. The description stated that "[f]ollowing the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications."[285] Screeners were instructed to send these cases "to the TAG Group."[286]

D. The New Spreadsheet Was Renamed the "BOLO" Spreadsheet

From the outset of the development of the Joint TAG/Emerging Issues spreadsheet in April 2010, there was some question about what to call the new consolidated spreadsheet. While in development, various iterations of the spreadsheet had been called "Joint Spreadsheet," "Combined Issues Workbook" and "Combined Issue Spreadsheet." Cindy Thomas stated that

> . . . no one really could think of a name for calling it so everyone would know what we are talking about, we decided to have—when we introduced this we said we will have a contest to see if anyone can name it and we will give—whoever came up with a name we would give them 59 minutes of administrative time. So Liz Hofacre was actually the one who came up with a name and we gave her 59 minutes of admin. And she came up with "Be on the Look Out," and that was in August 2010.[287]

Elizabeth Hofacre indicated that Joseph Herr had suggested the name "Be on the Look Out" or "BOLO" but gave credit for the sug-

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[281] *Id.*
[282] Email from Elizabeth Hofacre to Steve Bowling, John Shafer and others (July 27, 2010) IRS0000008609–24.
[283] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 109.
[284] Email from Liz Hofacre to IRS Staff (July 27, 2010) IRS0000008609–24.
[285] *Id.*
[286] *Id.*
[287] SFC Interview of Cindy Thomas (July 25, 2013) p. 43.

gestion to her, because he did not feel that it was appropriate to accept the award himself, since he had been a manager.[288]

On August 12, 2010, Hofacre distributed the first "BOLO" spreadsheet to EO Determinations agents in her capacity as Emerging Issues Coordinator. "Tea Party" applications were specifically identified under the Emerging Issues tab of the spreadsheet as follows: "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)." The BOLO directed agents to send Tea Party applications to Group 7822 and advised that Hofacre was the coordinator.[289] Jon Waddell provided Hofacre with the language for the Tea Party entry on the Emerging Issues tab.[290]

The BOLO spreadsheet distributed by Hofacre also contained an entry for "Progressive" on the Tag Historical tab with the issue listed as "political activities." Further, the entry stated that the "[c]ommon thread is the word 'progressive.' Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to 'blue.'"[291]

E. EO Determinations Developed a Process To Update the BOLO Spreadsheet

Along with the introduction of the BOLO spreadsheet, EO determinations developed a process for making changes, from time to time, to the spreadsheet. Prior to May 17, 2012, for TAG issues, Coordinated Processing applications, and Watch List applications, a group manager would send an email requesting a revision to the manager of Group 7822.[292] If the Manager of Group 7822 agreed with the suggested revision, then the change was made and the Emerging Issues Coordinator sent out a BOLO alert to all EO Determinations agents and managers. If there was disagreement, then the manager of Group 7822 elevated the issue to Cindy Thomas for resolution. In addition, if the EO Technical Manager contacted Thomas to advise her to "watch for" certain types of applications, she would direct the Manager of Group 7822 to add the issue to the Watch List.

For changes to the Emerging Issues tab, prior to May 17, 2012, suggestions were sent to the Emerging Issues Coordinator in Group 7822, who researched the matter and reported his/her conclusions to the Manager of Group 7822. The Manager of Group 7822 then consulted with the Area Manager and/or the EO Determinations Program Manager for a final decision. The Emerging Issues Coordinator then emailed changes to EO Determinations agents and managers.[293]

Subsequent to May 17, 2012, this process changed. On that date, Holly Paz, Director of Rulings and Agreements, issued a memorandum requiring that all changes to the BOLO spreadsheet tabs (Abusive Transaction and Fraud Applications (TAG), Emerging Issues, Coordinated Processing applications and Watch List appli-

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[288] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 127–128.
[289] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84.
[290] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 129–131.
[291] Combined Spreadsheet TAG 8 12 10 (Aug. 10, 2010).
[292] Email chain between Cindy Thomas and Holly Paz (May 9–10, 2012) IRS0000004755–62.
[293] *Id.*

cations) receive the approval of the Group Manager of the Emerging Issues Group, the EO Determinations Program Manager, and the Director of Rulings and Agreements.[294]

VI. APPLICATIONS SUBMITTED BY TEA PARTY ORGANIZATIONS WERE SYSTEMATICALLY IDENTIFIED, CENTRALIZED AND SUBJECTED TO HEIGHTENED SCRUTINY BY THE IRS

This section explains how the IRS used the BOLO spreadsheet to systemically identify incoming applications submitted by Tea Party organizations, and how being placed on the BOLO spreadsheet affected the processing of those applications.

A. After the IRS Received and Approved the First Few "Tea Party" Applications, it Prepared Sensitive Case Reports and Added an Entry to the BOLO Spreadsheet

The first applications for tax exemption filed by Tea Party organizations were received by EO Determinations prior to March 2010.[295] EO Determinations processed the initial applications it received and in doing so, it approved two Tea Party organizations that had applied for exemption under 501(c)(4), and one Tea Party organization that had submitted an application for exemption under 501(c)(3).[296] It would be more than 18 months before the IRS approved another application from a Tea Party organization.[297]

1. Tea Party Applications Began To Draw Attention in EO Determinations

In early 2010, an application filed by the Albuquerque Tea Party was assigned to Jack Koester, a screener in Group 7838, EO Determinations.[298] Koester had heard about the Tea Party in news reports.[299] Upon receiving the application from the Albuquerque Tea Party, Koester concluded that it was "high profile" because of the possibility that it would attract media attention, so he informed his Group Manager, John Shafer. It was standard practice for screeners to bring "high profile" applications to the attention of their manager.[300] Subsequently, Koester sent Shafer an email in which he noted that "recent media attention to this type of organization indicates to me that this is a high profile case."[301] Koester also indicated that the organization stated in its Form 1024 that it may engage in "possible future political activities."[302]

Shafer, in turn, forwarded Koester's email to Sharon Camarillo, his Area Manager, who sent it to Cindy Thomas, asking that

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[294] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 17, 2012) IRS0000437639–41.
[295] Email chain between Cindy Thomas, Steven Grodnitzky and others (Mar. 31–Apr. 12, 2010) IRS0000165413–14.
[296] *Id.*
[297] Based on data provided to the SFC by the IRS (Mar. 26, 2014).
[298] SFC Interview of Jack Koester (Aug. 1, 2013) p. 8.
[299] *Id.* p. 23.
[300] *Id.* pp.12–3.
[301] Email chain between Jack Koester, John Shafer, Sharon Camarillo, Cindy Thomas and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73.
[302] *Id.*

Thomas "let 'Washington' know about this potentially politically embarrassing case involving a 'Tea Party' organization."[303]

2. EO Technical Had Early Awareness of the Tea Party Applications

Upon receiving Camarillo's February 25, 2010 email, Thomas contacted Holly Paz, then the Acting Manager of EO Technical. Thomas told Paz that "[w]e have a Form 1024 for: Albuquerque Tea Party Inc. We're wondering if EO Technical wants the case because of recent media attention."[304] Paz, in reply, stated to Thomas, "I think sending it up here is a good idea given the potential for media interest."[305]

3. EO Technical Assumed Responsibility for Working Two Tea Party Applications as "Test Cases"

In early March 2010, Shafer asked Gary Muthert, a screener in his Group, to conduct a search of the case and inventory management systems used by TE/GE to determine if any other Tea Party organizations had filed applications for tax exemption.[306] Muthert found that there were seven applications pending from Tea Party organizations, and that three additional applications had already been approved for tax-exempt status.[307] When Thomas was made aware of the existence of these 10 applications, she apprised Paz, asking Paz whether she wanted "all of them or do you only want a few and then give us advice as to what to do with the remaining?"[308] Paz acknowledged receipt of the "one Tea Party case up here—that was sent up from [EO Determinations] just a few weeks ago . . . ." Paz then stated that she was unaware that there were more, and said "I think we should take a few more cases (I'd say 2) and would ask that you hold the rest until we get a sense of what the issues may be. Then we will work with [EO Determinations] in working the other cases."[309]

4. EO Technical Prepared the First SCR for the Tea Party Applications

On or around March 18, 2010, Steve Grodnitzky, Manager of EO Technical Group 1, became Acting Manager of EO Technical.[310] Several weeks later, Grodnitzky inquired of Donna Elliot-Moore, a Tax Law Specialist in EO Technical, about the specific activities of the two Tea Party organizations whose applications were then pending in EO Technical. One of those applications was for exemption under 501(c)(4) from the Albuquerque Tea Party, and the other was for exemption under 501(c)(3) from the Prescott Tea Party. Elliot-Moore advised Grodnitzky on April 1, 2010 that with regard to the activities of both organizations, "I looked briefly and it looks

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[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] SFC Interview of Gary Muthert (July 30, 2013) (not transcribed).
[307] *Id.*
[308] Email chain between Cindy Thomas, Holly Paz and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73.
[309] *Id.*
[310] SFC Interview of Holly Paz (July 26, 2013) p. 16.

more educational but with a republican slant obviously."[311] Grodnitzky responded "[t]hese are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them."[312] Elliot Moore noted in response that "[t]he Tea Party movement is covered in the Post almost daily. I expect to see more applications." Grodnitzky then contacted Cindy Thomas on April 2, 2010, and advised her that "I think there needs to be an SCR on the Tea Party cases, due to the high media attention. Actually, you can't turn on the television news without hearing about the movement."[313] Thomas concurred in Grodnitzky's assessment.

Grodnitzky assigned the two Tea Party applications to EO Technical Group 2, managed by Ronald Shoemaker.[314] Shoemaker, in turn, assigned the two applications to Carter (Chip) Hull, a Tax Law Specialist in Group 2. Hull, a veteran of the IRS since 1965, was considered to be a subject-matter expert on 501(c)(4) organizations.[315] Grodnitzky directed Shoemaker to prepare an SCR on the Tea Party applications.[316] The Tea Party cases met the criteria for preparation of an SCR because the applications were likely to attract media attention. Accordingly, Hull prepared the first SCR on the Tea Party applications which is dated April 19, 2010. In the SCR, Hull noted that the applications from the Albuquerque Tea Party and the Prescott Tea Party were "[l]ikely to attract media or Congressional attention." Hull further indicated that "[t]he various 'tea party' organizations are separately organized but appear to be part of a national politically conservative movement that may be involved in political activities. The 'tea party' organizations are being followed closely in national newspapers (such as the *Washington Post*) almost on a daily basis."[317]

5. Placing the Tea Party Applications on the SCRs Caused Delays in Their Processing

Grodnitzky's decision to place Tea Party applications on the SCR effectively meant that proposed determinations for those applications now required at least two additional levels of review before they could be released. Since the applications on the SCR were the "test cases," those needed to first be resolved before all other Tea Party applications pending in EO Determinations could also be brought to closure. Any delay in the disposition of the applications on the SCR would result in a corresponding delay in the disposition of all other Tea Party applications pending in EO Determinations. As explained in greater detail in Section VII(C), there were substantial delays in the processing of the "test cases" and those delays, in turn, contributed to delays in the processing of the Tea Party applications awaiting action in EO Determinations.

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[311] Email chain between Donna Elliot-Moore, Steve Grodnitzky and others (Mar. 31–Apr. 2, 2010) IRS0000165413–14.
[312] *Id.*
[313] *Id.*
[314] Email chain between Steve Grodnitzky, Ronald Shoemaker and others (Mar. 31–Apr. 5, 2010) IRS0000166266–67.
[315] SFC Interview of Ronald Shoemaker (July 31, 2013) (not transcribed); SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[316] Email chain between Steve Grodnitzky, Ronald Shoemaker and others (Mar. 31–Apr. 5, 2010) IRS0000166266–67.
[317] TE/GE Division Sensitive Case Report (Apr. 19, 2010) IRS0000164074–75.

6. Identification of the Tea Party Applications as an Emerging Issue on the BOLO Spreadsheet Resulted in Centralization and Full Development of those Applications

As described more fully above, EO Determinations developed the new "Joint Tag Emerging Issues Spreadsheet" (subsequently refined and renamed "BOLO Spreadsheet") in early 2010, coincidentally with the identification of the first Tea Party applications and their placement on the SCR.[318] Joseph Herr and Elizabeth Hofacre added applications received from Tea Party organizations to a draft version of the spreadsheet as early as May 6, 2010, because these applications met the criteria for an "emerging issue" (absence of established precedent, issues arising from significant events, etc.).[319] Ultimately, the spreadsheet was renamed the "BOLO" spreadsheet and distributed to EO Determinations agents on August 12, 2010.[320]

Inclusion of the Tea Party reference in the Emerging Issues tab of the BOLO spreadsheet shaped the manner in which the Tea Party applications were processed by EO Determinations over the next few years. Specifically, applications identified as originating from Tea Party groups were then "centralized" by sending them to the Emerging Issues Group (7822). There they were subjected to full development for possible political advocacy.[321]

In order to identify what was, in fact, a "Tea Party" application, the screening agents and secondary screeners in EO Determinations developed screening criteria. If an application met the screening criteria, it was sent to Group 7822 for centralized handling as a Tea Party application. John Shafer summarized the criteria as follows:

> The following are issues that could indicate a case to be considered a potential "tea party" case and sent to Group 7822 for secondary screening.
>
> 1. "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file.
>
> 2. Issues include government spending, government debt and taxes.
>
> 3. Educate the public through advocacy/legislative activities to make America a better place to live.
>
> 4. Statements in the case file that are critical of how the country is being run.[322]

Applications that merely contained the words "Tea Party," "9/12," "Patriots," and other like terms, but did not otherwise evidence political campaign intervention, were nevertheless centralized in Group 7822 as "Tea Party" applications and there received full development.[323] Similarly, applications that referenced activities such

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[318] Email chain between Jon Waddell, Sharon Camarillo, Brenda Melahn and others (Apr. 6–13, 2010) IRS0000629335–48.

[319] Email chain between Elizabeth Hofacre, Joseph Herr and others (May 6–7, 2010) IRS0000542119–24.

[320] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84.

[321] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 47.

[322] Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1–10, 2011) IRS0000066837–40.

[323] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 118.

as advocating for smaller government and balanced budgets, that criticized how the country was being run, or that suggested ways to make America a better place to live, but that did not contain words like "Tea Party" or "9/12" or "Patriots," were also considered to be "Tea Party" applications. Accordingly, they were centralized in Group 7822 where they were fully developed.[324]

During Elizabeth Hofacre's tenure as Emerging Issues Coordinator in Group 7822 (May 2010 to October 2010), screeners sometimes sent to Group 7822 applications received from organizations on the left of the political spectrum that involved possible political campaign intervention.[325] Hofacre returned these applications to the screeners or placed them in general inventory and they were subsequently assigned to any EO Determinations agent, since they did not meet the criteria for a Tea Party application.[326] Similarly, Hofacre returned to the screeners or to general inventory applications received from groups on the right of the political spectrum that did not meet the Tea Party criteria.[327] Applications so returned were assigned, processed and determinations were made on them.[328] In contrast, and as described more fully in succeeding sections, applications identified as "Tea Party" applications by EO Determinations and centralized in Group 7822 were subjected to long delays, multiple reviews, and unnecessarily burdensome development.

B. EO Determinations Periodically Updated the Emerging Issues Tab of the BOLO Spreadsheet

The Emerging Issues tab of the BOLO spreadsheet underwent several major revisions between 2010 and 2012. Until May 2012, most of these changes had little practical effect in the way that EO Determinations employees screened and processed incoming applications from Tea Party organizations.

1. Until July 2011, the Emerging Issues Tab of the BOLO Spreadsheet Specifically Referenced the Tea Party Movement

From its earliest iteration in May 2010 until the July 2011 revision, the BOLO specifically referenced the Tea Party movement.[329] For example, in October 2010, when Elizabeth Hofacre relinquished her position as the Emerging Issues Coordinator to Ronald Bell, the Emerging Issue tab read as follows:

> **Issue Name:** Tea Party
> **Issue Description:** These cases involve various local organizations in the Tea Party movement that are applying for exemption under 501(c)(3) or 501(c)(4).

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[324] *Id.* pp. 50–52; Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1–10, 2011) IRS0000066837–40.
[325] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 45–52.
[326] *Id.*
[327] *Id.*
[328] *Id.*
[329] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84.

> **Disposition of Emerging Issue:** Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.[330]

In February 2011, the language was revised slightly as follows:

> **Issue Name:** Tea Party
> **Issue Description:** Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).
> **Disposition of Emerging Issue:** Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech—Chip Hull.[331]

The references to the "Tea Party movement" in the Emerging Issues tab of the BOLO spreadsheet were meant to describe organizations that were part of the actual Tea Party movement.[332]

2. In July 2011, Lois Lerner Directed that the References to "Tea Party" be Removed From the Emerging Issues Tab of the BOLO Spreadsheet

On July 5, 2011, Lois Lerner convened a meeting with various members of her staff including Holly Paz, Cindy Thomas and others, to discuss the Tea Party applications and options for processing those applications.[333] In preparation for the meeting, Lerner's staff assembled a briefing paper that stated the criteria that the screeners in EO Determinations were using to identify applications as "Tea Party" applications.[334] The criteria were then discussed by the participants.[335] During the course of the meeting, Lerner directed that "Tea Party" organizations should no longer be referred to as such, but instead should be called "advocacy organizations."[336] Lerner was apparently concerned that referring to the organizations by their name would create the impression of bias.[337] On July 5, 2011, Cindy Thomas described to her staff Lerner's motivation for the name change as follows:

> Lois expressed concern with the "label" we assigned to these cases. Her concern was centered around the fact that these type things [sic] can get us in trouble down the road when outsiders request information and accuse us of "picking on" certain types of organizations even though we all know that isn't what is taking place.[338]

During the meeting, Lerner and those present worked out new language to replace the "Tea Party" reference in the Emerging

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[330] *Id.*
[331] *Id.*
[332] SFC Interview of Joseph Herr (June 18, 2013) (not transcribed); SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[333] Email chain between Cindy Thomas, Ronald Bell and others (July 5, 2011) IRS0000620735–40.
[334] Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165–66.
[335] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735–40.
[336] *Id.*
[337] SFC Interview of Holly Paz (July 26, 2013) p. 87.
[338] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735–40.

Issues tab of the BOLO spreadsheet with a more general reference to advocacy organizations.[339]

3. Cindy Thomas Removed References to the "Tea Party" From the Emerging Issues Tab of the BOLO Spreadsheet

Immediately after the meeting, Thomas made the agreed-to changes to the Emerging Issues tab.[340] The entry now read as follows:

> **Issue:** Advocacy Orgs
> **Issue Description:** Organizations involved with political, lobbying or advocacy for exemption under 501(c)(3) or 501(c)(4).
> **Disposition of Emerging Issue:** Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech—Chip Hull.[341]

Thomas informed Steve Bowling and John Shafer that she had made the above-described change to the Emerging Issues tab.[342] She also advised Bowling and Shafer that "Lois did want everyone to know that we are handling the cases as we should, i.e., the Screening Group starts seeing a pattern of cases and is elevating the issue."[343]

On July 11, 2011, Ronald Bell sent the revised BOLO spreadsheet to EO Determinations employees in accordance with his responsibilities as the Emerging Issues Coordinator.[344] While Bell informed recipients of the BOLO Alert email to be on the lookout for applications for exemption under 501(c)(3) for "green" energy, his cover email failed to apprise recipients of the changes made to the Emerging Issues tab.[345]

4. After July 11, 2011, Cindy Thomas and John Shafer Made No Changes to the Screening Criteria Used by Screeners To Identify Applications Received From Tea Party Groups

After Bell transmitted the revised July 11, 2011, BOLO spreadsheet to EO Determinations staff, John Shafer, the Screening Group Manager, made no changes to the use of the criteria by the screeners to identify Tea Party applications.[346] The following colloquy occurred during Shafer's interview by the Committee:

> Q. Okay. Okay. So Exhibit 8, whatever you want to call it, the numbers 1 through 4 that are in your Exhibit 8 [applicant's name included "Tea Party," "Patriots," or "9/12," or statements existed in the application about government spending/debt, making America a better place to live, or that were critical of the way the country was being run], that's how the cases were being screened at that time in June of 2011?

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[339] *Id.*
[340] *Id.*
[341] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84.
[342] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735–40.
[343] *Id.*
[344] Email from Ronald Bell to EO Determinations employees (July 11, 2011) IRS0000618365–70.
[345] *Id.*
[346] SFC Interview of John Shafer (Sep. 17, 2013) pp. 120–122.

A. Yes, it was.

Q. And then after this meeting with Lois Lerner in July of 2011, you did not direct your screeners to make any changes in how they were screening cases?

A. Not to my knowledge . . . .[347]

Shafer made no changes because he interpreted Thomas's email in which she advised that "Lois did want everyone to know that we are handling the cases as we should . . ." as confirmation that his screening Group was handling the Tea Party cases correctly.[348] Therefore, after July 11, 2011, the screeners received no direction to change the way that they had been processing Tea Party applications.

Similarly, Cindy Thomas understood the July 11, 2011 change directed by Lerner from "Tea Party" to "advocacy org." in the Emerging Issues tab to be no more than a name change.[349] She did not feel that the name change necessitated any revisions to the way EO Determinations was processing cases that involved political advocacy issues. Thomas told the Committee:

> Again, I believe that all along that we were including all cases with political activity. So why would I believe that something needed to be changed when I believed that we were treating all cases the same and putting them all in the bucket.[350]

The Committee found no evidence to suggest that Lois Lerner followed up with Thomas or any other manager to ensure that EO Determinations was properly screening applications in accordance with the revised "Advocacy orgs." entry of the July 2011 Emerging Issues tab of the BOLO spreadsheet.

a. How Screeners Processed Applications Received From Tea Party and Affiliated Groups After the July 2011 BOLO Change

The screeners appear to have continued to apply the Tea Party screening criteria to identify cases as "Advocacy orgs." after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet.[351] During the Committee's interview of Gary Muthert, a screener in John Shafer's Group, Muthert was shown a copy of the July 27, 2011 Emerging Issues tab of the BOLO spreadsheet and was asked the following:

Q. But if I'm understanding what you said just a couple of minutes ago, you continued to look for organizations that were affiliated with the Tea Party, you flagged them as advocacy organizations, and you sent them to the BOLO group, is that right?

A. Yes.

Q. Okay. And that continued when this was, this document, Exhibit 6 [July 27, 2011 Emerging Issues tab], was out?

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[347] *Id.* p. 121 and Interview Exhibit 8.
[348] SFC Interview of John Shafer (Sep. 17, 2013) p. 120.
[349] SFC Interview of Cindy Thomas (July 25, 2013) p. 91.
[350] *Id.*
[351] SFC interview of Gary Muthert (July 30, 2013) (not transcribed). Muthert stated that after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet, he continued to send applications that contained the words "Tea Party," to Group 7822 for full development.

A. Yes.[352]

It is probable that the screeners' continued use of the Tea Party criteria after the issuance of the July 11, 2011 Emerging Issues tab was a consequence of Thomas and Shafer's understanding that the screeners were "handling the cases as [they] should." Moreover, continued use of the Tea Party screening criteria was not necessarily inconsistent with the July 2011 revised description now found in the Emerging Issues tab, since cases that met the Tea Party criteria may also have met the description of "Advocacy orgs."[353]

Thomas herself believed that all Tea Party applications involved political activity and required full development. She stated to the Committee as follows:

> Q. Did you think that all Tea Party cases involved political activity?
>
> A. There was actually a case that had, from my understanding, there was a case that had Tea Party in the name and it was not a political case at all, that it was like Little Suzie's Tea Party, a little kid's group.
>
> Q. But other than those that involved children's tea parties, all of the ones that are associated with the Tea Party movement, did you think they were all involving political activity?
>
> A. Yes, those as well as all cases that involved any political activity.[354]

Accordingly, even after the July 2011 change to the Emerging Issues tab of the BOLO spreadsheet, EO Determinations management and EO Determinations screeners continued to treat applications received from Tea Party organizations much the same as they had before the July change.

b. How Screeners Processed Applications Received From Organizations That Did Not Engage in Political Campaign Intervention After the July 2011 BOLO Change

In September 2011, Paz grew concerned about the growing number of political advocacy cases pending in EO Determinations. She told David Fish that there were now over 100 political advocacy cases on hold in EO Determinations. She went on to state that "[i]n meeting with Cindy in Cincy last week and looking at some of the cases, it is clear to me that we cast the net too wide and have held up cases that have nothing to do with lobbying or campaign intervention (e.g., org distributing educational material on the national debt)."[355] Thomas shared Paz's concern. In her view, the description of "Advocacy orgs." in the Emerging Issues tab was "way too broad," and resulted in sending to Group 7822 for full development applications that did not contain political advocacy issues, but rather presented lobbying issues.[356] Thomas stated that the July 2011 description of "Advocacy orgs." "caused confusion among the groups

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[352] *Id.*

[353] This is consistent with TIGTA's finding that all applications received by EO from organizations with "Tea Party," "Patriots," or "9/12" in their names were forwarded to Group 7822 for full development. TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, TIGTA Audit Report 2013–10–053 (May 14, 2013) p. 6.

[354] SFC Interview of Cindy Thomas (July 25, 2013) p. 91.

[355] Email from Holly Paz to David Fish and Andy Megosh (Sep. 21, 2011) IRS0000010131.

[356] SFC Interview of Cindy Thomas (July 25, 2013) p. 80.

in Cincinnati and the employees because they then started believing it included many, many more types of cases than just political advocacy-type cases."[357]

5. Steve Bowling and Cindy Thomas Changed the BOLO Spreadsheet in January 2012

In January 2012, Steve Bowling discussed with several of the revenue agents in Group 7822, including Ronald Bell, the Emerging Issues Coordinator, ways to revise the Emerging Issue tab so as to narrow its focus to avoid selecting applications that did not include political advocacy issues.[358] At the same time, Cindy Thomas told Steve Bowling that an entry for Occupy organizations needed to be included on the Watch List or BOLO because of press reports that Occupy organizations may apply for tax-exempt status.[359] Initially, Bowling emailed Thomas two options for updating the BOLO criteria as follows:

> 1st scenario = 1 BOLO
>
> Current Political Issues: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $ocial economic reform / movement.
>
> Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.
>
> 2nd scenario = 2 BOLOs
>
> Tea Parties: Typically involved in the tea party movement, further the principles of the constitution and bill of rights, promote voter registration, may refer to governmental reform, and/or 912 projects.
>
> "Occupy" orgs: Involve organizations occupying public space protesting in various cities, call people to assemble (people's assemblies) claiming social injustices due to "big-money" influence, claim the democratic process is controlled by wall street/banks/multinational corporations, could be linked globally. Claim to represent the 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.[360]

Thomas vetoed the second suggestion based on her understanding of Lerner's concerns about how the reference to "Tea Party" would create the appearance of bias.[361] As a compromise, Thomas suggested that Bowling use the first scenario for the Emerging Issues tab while adding Occupy to the Watch List tab.[362]

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[357] *Id.* p. 82.
[358] *Id.* p. 93; SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[359] SFC Interview of Cindy Thomas (July 25, 2013) pp. 93–94; Email chain between Mary Sheer and Peggy Combs (Jan. 9–20, 2012) IRS0000013412.
[360] Email chain between Cindy Thomas and Steven Bowling (Jan. 20–24, 2012) IRS0000621814–17.
[361] *Id.;* SFC Interview of Cindy Thomas (July 25, 2013) pp. 93–95.
[362] *Id.*

Bowling accepted Thomas's suggestion and revised the Emerging Issue and Watch List tabs of the BOLO spreadsheet accordingly.[363]

The references to "political action type organizations involved in limiting" government and "educating on the constitution and bill of rights" were attempts to describe the agenda of the Tea Party without using the term "Tea Party."[364] The reference to "$ocial economic reform/movement" was "code" for the Occupy organizations.[365] Bell queried Bowling why it was necessary to include the "$ocial economic" reference in the Emerging Issues tab as well, but Bowling responded that organizations other than the Occupy groups were advocating a similar position.[366]

6. Holly Paz and Lois Lerner Were Informed That EO Determinations Revised the July 2011 Emerging Issues Tab

On February 22, 2012, Paz asked Thomas to provide some information regarding the number of political advocacy cases that were then pending, whether cases that met the BOLO description received full development, and "how do we currently have this described on the bolo?"[367] Thomas replied to Paz on that same day that there were 208 pending political advocacy cases, that "[a]ll cases meeting BOLO criteria are supposed to go to full development," and she attached a copy of the then-current BOLO spreadsheet.[368] The Emerging Issues tab of the attached spreadsheet reflected the changes that Bowling had made, and Thomas had approved, on January 25, 2012.

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[363] SFC Interview of Cindy Thomas (July 25, 2013) pp. 93–95; Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 21, 2012) IRS0000352978–84. When asked by Committee Staff who was responsible for the January 25, 2012 revisions to the BOLO spreadsheet, Bowling stated as follows:

> Q. Can you tell me who the change came from, the language here under "issue description" that's different?
>
> A. No, I don't know where the change came from.
>
> * * * * * * *
>
> Q. So you're not sure who instructed you to make this change but it was somebody above you in the command chain?
>
> A. Yes, that's the way it would be.
>
> * * * * * * *
>
> Q. Do you know if this change ... was directed by Ms. Esrig, Ms. Thomas or was it somebody in Washington who directed it?
>
> A. I don't know who directed it.

SFC Interview of Steve Bowling (June 13, 2013) (excerpt above transcribed by SFC staff). These statements by Bowling to Committee staff were not only inconsistent with the documentary evidence that the Committee received from the IRS subsequent to Bowling's interview on June 13, 2013, but also with Thomas's statements to Committee staff.

[364] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

[365] Email chain between Ronald Bell and Steve Bowling (Jan. 25, 2012) IRS0000013187.

[366] *Id.* In response to a written questionnaire from the Committee, Bowling alleged that he did "not understand the difference between liberal organizations, Tea Party groups, or any other political groups." *See* IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013). He also made similar assertions to the Committee staff during an interview on June 13, 2013. Bowling's statements to the Committee are at odds with his apparent understanding of the political viewpoints espoused by both Tea Party and Occupy organizations, as evidenced by the language he developed and proposed to Thomas for inclusion in the BOLO spreadsheet.

[367] Email chain between Holly Paz, Cindy Thomas, Roberta Zarin, Lois Lerner and others (Feb. 22, 2012) IRS0000013739–48.

[368] *Id.*

Subsequently, on May 15, 2012, Thomas sent Paz and Lerner another copy of the BOLO spreadsheet, including the Emerging Issues tab that reflected the changes made on January 25, 2012.[369]

7. After Steve Miller Became Aware of the BOLO Criteria, Holly Paz Revised the Process for Making Changes to the BOLO Spreadsheet and a New BOLO Spreadsheet Was Issued

On May 3, 2012, Steve Miller was briefed by Nancy Marks on the existence of the BOLO entry for "Tea Party" and the criteria used to identify applications as Tea Party applications.[370] Miller told the Committee that when he first heard of the criteria, he thought that it "was stupid and inappropriate."[371] When Lerner found out that the July 2011 description of "Advocacy orgs." in the Emerging Issues tab had been subsequently changed, she "put her head on the table and said, 'I thought I had fixed it.'"[372] Miller then directed Holly Paz to look into the process by which changes were made to the BOLO spreadsheet and to make adjustments to the process.[373] It is possible that Miller was concerned about how the Emerging Issue tab had been changed without Lerner or Paz's knowledge or consent.

On May 10, 2012, Paz asked Thomas to explain the process by which the Emerging Issues tab was amended.[374] Thomas informed Paz that suggestions for additions were sent to the Emerging Issues Coordinator who then consulted with the Area Manager and/or the Program Manager to determine if the matter would be added to the Emerging Issue tab.[375]

On May 17, 2012, Paz issued a Memorandum to Thomas advising that any changes to the Emerging Issue tab would now require the approval of the Emerging Issues Group Manager, the EO Determinations Program Manager, and the Director of Rulings and Agreements.[376]

In June 2012, the BOLO Spreadsheet was revised.[377] The Emerging Issues tab stated as follows:

> **Issue:** Current Political Issues
>
> **Issue Description:** 501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: advocacy action type issue (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria.
>
> **Disposition of Emerging Issue:** Forward case to Group 7822.

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[369] Email chain between Lois Lerner, Holly Paz and Cindy Thomas (May 15, 2012) IRS0000013776–82.
[370] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 133–141.
[371] *Id.* p. 139.
[372] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 107.
[373] Email chain between Holly Paz and Cindy Thomas (May 9–10, 2012) IRS0000004755–62.
[374] *Id.*
[375] *Id.*
[376] Email chain between Holly Paz, Lois Lerner and Nikole Flax (May 17, 2012) IRS0000437639–41.
[377] Email chain between Holly Paz, Nancy Marks and Sharon Light (May 14, 2013) IRS0000195830–31.

Paz also directed Thomas to remove references to ACORN and Occupy from the Watch List tab of the spreadsheet, since "the issues we are concerned about in those cases should be captured" by the revised language in the Emerging Issues tab.[378]

This description remained in the Emerging Issues tab until April 2013 when the "Disposition of Emerging Issue" entry was changed to reflect that the cases should be sent to Group 7823.[379] Shortly thereafter, on June 20, 2013, the IRS suspended the use of the BOLO spreadsheet.[380]

VII. THE PROCESSES USED BY THE IRS TO WORK THE TEA PARTY APPLICATIONS WERE INEFFICIENT, CUMBERSOME, INVOLVED MULTIPLE LEVELS OF REVIEW, AND WERE PLAGUED BY DELAY

This section identifies various measures taken by the IRS that harmed Tea Party applicants.

No solitary event can be said to have caused the lengthy delays experienced by the Tea Party and other political advocacy organizations in the processing of their applications from 2010 to 2013. Rather, a confluence of events, some inter-related and most involving poor management decisions or the absence of management oversight, effectively resulted in the IRS taking years to make decisions on these applications.

A. The Initial Process Used To Review the Tea Party Applications in 2010 Was Laborious and Time Consuming

In early April 2010, Carter (Chip) Hull, Tax Law Specialist, EO Technical Group 2, began working on two of the first applications received from Tea Party groups (i.e., Albuquerque Tea Party and Prescott Tea Party).[381] Hull had been assigned to process these two "test cases" so that his experiences could then be shared with EO Determinations, the entity with primary responsibility for processing the Tea Party applications.[382] Hull commenced his work by reviewing the case files and preparing development letters aimed at eliciting information from the organizations about their planned activities.[383] This information was necessary for Hull to determine whether the planned activities of these organizations were consistent with the tax-exempt status they were seeking.[384]

All other applications received from Tea Party organizations remained in EO Determinations and in late April 2010, were assigned to Elizabeth Hofacre, the Emerging Issues Coordinator in EO Determinations, Group 7822.[385] In mid-May 2010, Steve Grodnitzky, Acting Manager of EO Technical, directed Hull to

[378] Email from Holly Paz to Cindy Thomas (June 1, 2012) IRS0000013799.
[379] BOLO Spreadsheet (Apr. 19, 2013) IRS0000002718–30.
[380] Memorandum from Karen Schiller, Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013).
[381] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[382] SFC Interview of Ronald Shoemaker (July 31, 2013) (not transcribed).
[383] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[384] *Id.*
[385] Email chain between Cindy Thomas, Steve Grodnitzky, Ron Shoemaker and others (Apr. 23–26, 2010) IRS0000181051–52.

share with Hofacre the development letters Hull had prepared for the Albuquerque and Prescott Tea Party applications.[386] Grodnitzky told Hull to explain to Hofacre how the questions had been tailored to the facts of each application, lest Hofacre simply copy the development letters. In carrying out this directive, Hull advised Hofacre to send each of her draft development letters to him, together with copies of the applications and supporting documents.[387] Under the process imposed by Hull, Hofacre could not release the development letters to the applicants without Hull's concurrence.[388] When Hofacre began to receive responses to some of the development letters, Hull instructed Hofacre to send those responses to him, as well.[389]

Hofacre described this process as highly unusual.[390] In Hofacre's experience, EO Determinations agents would sometimes contact EO Technical specialists, with prior management approval, to pose a question or two.[391] Typically, EO Determinations agents had broad discretion in processing applications and could make recommendations regarding the ultimate disposition of an application, or whether additional information was required of the applicant.[392] This was not the case for the Tea Party applications.[393] With regard to those applications, Hofacre was not permitted by Hull to exercise any discretion regarding the applications.[394] Hofacre felt that for several of the Tea Party applications, she had sufficient information in her possession to make a recommendation to either approve or deny the application, or to request additional information.[395] However, she was unable to do so, as Hull effectively controlled all the decisions regarding how the Tea Party applications were handled.[396]

In October 2010, Cindy Thomas grew concerned with the efficacy of this process under which Hull reviewed each determination letter and informed Holly Paz, then Manager of EO Technical, as follows:

> I have a concern with the approach being used to develop the tea party cases we have here in Cincinnati. Apparently, an additional information letter is prepared for each case and the letter is faxed to Chip Hull for him to review. After he reviews, we send out the letter. In some instances, the organizations have responded and we are just "sitting" on these cases. **Personally, I don't know why Chip needs to look at each and every additional information letter . . . we need to coordinate these cases as a group and not try to work them one by one.**[397]

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[386] Email chain between Steve Grodnitzky and Carter Hull (May 17, 2010) IRS0000631583–84.
[387] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 52–70.
[388] *Id.*
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] *Id.*
[395] *Id.*
[396] *Id.*
[397] Email chain between Cindy Thomas, Holly Paz, Sharon Camarillo, Steve Bowling and others (Oct. 26, 2010–Jan. 28, 2011) IRS0000435238–39 (emphasis added).

Sometime in August 2010 and continuing unabated through to October 2010, Hull ceased communicating with Hofacre for reasons unknown to Hofacre.[398] She continued to draft development letters and to send them to Hull along with copies of the applications and supporting documents, but Hull never responded to her.[399] Without Hull's concurrence, Hofacre was unable to send any further development letters to applicant organizations.[400] When organizations called Hofacre to inquire about the status of their applications, Steve Bowling, her Group Manager instructed her to tell the callers that their applications were "under review."[401] Hofacre grew increasingly frustrated with this process.[402] She likened it to "working in lost luggage" and she "dreaded when the phone rang."[403] While she elevated the matter of Hull's non-responsiveness to Bowling, Bowling merely instructed Hofacre to continue to prepare development letters and to send them to the silent Hull.[404]

In October 2010, Hofacre left EO Determinations, in large part due to her frustration over a lack of "autonomy" in the processing of the Tea Party applications and because of her concern that these were "high-profile" applications that could have "imploded" at any time.[405] When Hofacre left EO Determinations, only a few development letters had been sent out on the 40 Tea Party applications then pending in EO Determinations.[406] A substantial number of the applications either remained unworked, or had been reviewed by Hofacre and draft development letters had been prepared, but not released.[407] This was due in large measure to the requirement that Hull review each application, development letter, and response, a process that was necessarily laborious and which was delayed, for unexplained reasons, in August 2010 when Hull ceased communicating with Hofacre.

B. Because of Miscommunications Between EO Determinations Management and Staff, No Tea Party Applications Were Processed by EO Determinations for More Than One Year (October 2010 to November 2011)

With Hofacre's departure from EO Determinations in October 2010, Ronald Bell assumed responsibility as the Emerging Issues Coordinator in Group 7822.[408] Before her departure, Hofacre briefed Bell on his new duties, told him that Chip Hull was the EO Technical contact for the Tea Party applications, and forwarded to Bell some draft development letters that she had prepared.[409]

Upon the assumption of his new duties, Bell was also apprised by Steve Bowling, his Manager, that EO Technical was preparing guidance for EO Determinations to use to process the Tea Party

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[398] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 58–70.
[399] *Id.*
[400] *Id.*
[401] *Id.*
[402] *Id.*
[403] *Id.*
[404] *Id.*
[405] *Id.*
[406] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[407] *Id.*
[408] *Id.*
[409] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 150–152.

applications.[410] Bell interpreted this to mean that he should perform no work on the Tea Party applications until receiving that guidance from EO Technical.[411] Thus, in lieu of reviewing Tea Party applications and preparing draft development letters as Hofacre had done, Bell worked on auto-revocation cases.[412]

In November 2010, Hull's three-month period of inaccessibility appears to have come to an end when he contacted Bell and requested that Bell send him draft development letters for his review.[413] Bell informed Bowling of Hull's request and Bowling, in turn, informed Sharon Camarillo, the Area Manager.[414] Bowling told Camarillo that "Ron is getting phone calls on these cases and his typical answer is 'the case is under review.'"[415] Camarillo sent Bowling's email to Thomas who advised that she would follow up with Holly Paz for a status report.[416]

Thomas called Paz and discussed with her EO Technical's plan for dealing with the Tea Party applications.[417] Paz told Thomas that EO Technical was writing a briefing paper on the two applications under its review and would soon raise the issues in these applications with Judith Kindell, Senior Technical Advisor to Lois Lerner.[418] After her conversation with Paz, Thomas advised Bowling and Camarillo as follows:

> If Judy does not believe they have a basis for denial for the egregious situations, then they will most likely recommend all cases be approved. **In the meantime, the specialist(s) need to continue working the applications as they have and will need to advise applicants that the cases are still under review.**[419]

Bowling apparently failed to communicate to Bell the clear directive of Thomas that the Tea Party applications needed to be worked, and/or failed to take any action to ensure that Bell was, in fact, working the applications. As a result, Bell sent no development letters to Hull and continued to work auto-revocation cases.[420]

In March 2011, Thomas requested of Michael Seto that EO Technical develop an "action plan" for processing the Tea Party applications.[421] In reply, Seto provided Thomas with an update on the two

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[410] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

[411] *Id.* Bell told the Committee that Bowling did not directly instruct him not to work the Tea Party applications. Rather, Bell stated that Bowling knew that Bell was working on the auto-revocation cases, and therefore must have known that he was *not* working on the Tea Party applications. Bell also told the Committee that Bowling prepared Bell's performance appraisal for this time period, an act that would have necessarily required Bowling to know what work Bell had performed during the performance assessment period.

[412] *Id.* Section 6033(j) of the Internal Revenue Code (2010) requires the automatic revocation of exempt status for any organization that fails to file a required return for three consecutive years.

[413] Email chain between Steve Bowling, Sharon Camarillo and Cindy Thomas (Nov. 16–17, 2010) IRS0000163029–30.

[414] *Id.*

[415] *Id.*

[416] *Id.*

[417] Email chain between Cindy Thomas, Sharon Camarillo, Steve Bowling, Holly Paz and others (Oct. 26, 2010–Jan. 28, 2011) IRS0000435238–39.

[418] *Id.*

[419] *Id.*

[420] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

[421] Email chain between Cindy Thomas, Michael Seto, Holly Paz and others (Mar. 29–Apr. 13, 2011) IRS0000576953–55 (Email attachments containing taxpayer information omitted by SFC staff).

"test cases" being worked by Hull.[422] Thomas passed this information to Bowling, stating:

> **We still need to continue to work cases to the extent we can and then wait to issue the approval or denial letter.** EOT needs to meet with Judy Kindell, senior technical advisor to EO Director, and then Lois Lerner before they can finalize the guidance for us. I would not expect to receive anything until sometime in May 2011.[423]

For reasons that are unclear to the Committee staff, Bowling once again failed to follow through with Thomas's directive and ensure that Bell understood that he should be working on the Tea Party applications, or was, in fact, actually working on the applications.

Steve Bowling's failure to communicate Thomas's directives of November 2010 and March 2011 to Bell regarding the processing of the Tea Party applications, and his neglect to take any measures to ensure that Bell was actually working those applications, resulted in Bell focusing almost exclusive attention on auto-revocation cases from October 2010 to November 2011.[424] A factor further contributing to Bell's disregard of the Tea Party applications was that he received no guidance from EO Technical on what to do with those applications during his tenure as Emerging Issues Coordinator. When the screening group sent Bell an application from a Tea Party group during this period of time, he performed secondary screening on the application to ensure that it was, in fact, a Tea Party application.[425] If it was, he placed the application in a file cabinet and returned to his work on auto-revocation cases.[426] Aside from performing the secondary screening function, Bell did not review the Tea Party applications and did not prepare any development letters from October 2010, when he assumed responsibility as Emerging Issues Coordinator, until November 2011, when Stephen Seok replaced Bell as Emerging Issues Coordinator.[427] Instead, the applications simply sat in a file cabinet during this period of time.[428]

Accordingly, miscommunications at the first level of management in EO Determinations between Bowling and Bell, coupled with a failure of EO Technical to provide guidance on how to develop the Tea Party applications, caused those applications to remain unworked in Cincinnati for over a year.

C. Preparation and Review of EO Technical's "Test Cases" from 2010 to 2012 Added Substantial Delay to the Processing of the Tea Party Applications

In February 2010, Holly Paz, the then-Acting Manager of EO Technical, advised Cindy Thomas that EO Technical would work two Tea Party applications to completion and then, based on the lessons learned in doing so, would provide EO Determinations with

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[422] *Id.*
[423] *Id.*
[424] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[425] *Id.*
[426] *Id.*
[427] *Id.*
[428] *Id.*

guidance on how to process the remaining Tea Party applications.[429] The IRS's inability to resolve the "test cases" over a several year period directly impeded its ability to develop the guidance required by EO Determinations to process the Tea Party and other political advocacy applications then pending.

Hull's case notes for one of the two "test cases" assigned to him, the Albuquerque Tea Party, show that he completed development of the application on July 8, 2010 when he received the Albuquerque Tea Party's articles of incorporation.[430] Hull's next entry in the case history is dated January 10, 2011, some six months later.[431] On that date, Hull noted that he had completed a memorandum for the file (memo).[432] In the two-page memo, Hull concluded that the Albuquerque Tea Party should be granted tax-exempt status.[433] It is unclear why it took Hull six months to prepare the two page memorandum.

On the following day, January 11, 2011, Hull submitted the memo to his reviewer, Elizabeth Kastenberg, a Tax Law Specialist in EO Technical, Group 2.[434] Kastenberg reviewed the memo and recommended that it be sent to Judith Kindell, Senior Technical Advisor to Lois Lerner, for her consideration.[435] Kindell regarded herself as the "go to" person for issues relating to political campaign intervention by tax-exempt entities.[436]

In accordance with Kastenberg's recommendation, on March 24, 2011, Hull forwarded the memo to Kindell.[437] Around this time, Hull completed a draft denial of the other "test case" assigned to him, an application for 501(c)(3) status from a conservative organization called American Junto.[438]

Hull and Kastenberg met with Kindell on April 6, 2011, nearly three months after Kastenberg initially recommended consulting with Kindell, to discuss both the memo and the draft denial letter.[439] During the meeting, Kindell raised a question whether American Junto was organized primarily for private benefit rather than for a tax-exempt purpose.[440] Consequently, Kindell recommended that the issue of private benefit be developed and that the memo and draft denial letter be sent to the Office of the Chief Counsel so as to secure its views.[441] Hull followed up on Kindell's recommendation and sent a development letter to American Junto

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[429] Email chain between Holly Paz, Cindy Thomas and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73.

[430] Technical Case History for Albuquerque Tea Party, IRS0000001323–24.

[431] *Id.*

[432] *Id.*

[433] Email chain between Michael Seto, Cindy Thomas, Holly Paz and others (Mar. 29–Apr. 13, 2011) IRS0000622735–53.

[434] Technical Case History for Albuquerque Tea Party, IRS0000001323–24.

[435] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).

[436] SFC Interview of Judith Kindell (July 18, 2013) p. 12.

[437] Technical Case History for Albuquerque Tea Party, IRS0000001323–24.

[438] Email chain between Michael Seto, Cindy Thomas, Holly Paz and others (Mar. 29–Apr. 13, 2011) IRS0000622735–53. Hull had been assigned an application for exemption under 501(c)(3) from the Prescott Tea Party but had closed the application in May 2010 for "failure to establish" when the Prescott Tea Party did not respond to a development letter. On June 30, 2010, Hull was assigned the application for exemption under 501(c)(3) submitted by American Junto as a replacement "test case."

[439] Technical Case History for Albuquerque Tea Party, IRS0000001323–24.

[440] Email chain between Judith Kindell, Lois Lerner, Holly Paz and others (Apr. 7, 2011) IRS0000634444.

[441] *Id.*

on April 27, 2011.[442] Subsequently, he sent his draft approval memo for the Albuquerque Tea Party to the Chief Counsel's Office on May 25, 2011,[443] followed on July 19, 2011 by his draft denial letter for American Junto.[444]

Hull and Kastenberg next met with Don Spellman, Senior Counsel, and several other representatives from the Office of the Chief Counsel on August 10, 2011, to discuss the two "test cases."[445] Four months had now lapsed since Kindell first recommended that the Office of Chief Counsel review the memo and draft letter. During the course of the meeting, Spellman recommended that EO Technical further develop the activities of both organizations during election year 2010.[446] Spellman offered to review the development letters aimed at eliciting this information, but EO Technical never sought further involvement of the Chief Counsel's Office in either of the applications.[447]

In November 2011, Michael Seto transferred the "test cases" to Hillary Goehausen, a Tax Law Specialist in EO Technical, Group 1.[448] In that same month, Goehausen prepared and sent out a development letter (the third) for American Junto and a development letter (the second) for the Albuquerque Tea Party.[449] In December 2011, a representative of American Junto informed Goehausen that it would not respond to the third IRS development letter and that the organization had been dissolved.[450] Goehausen closed the American Junto application for "failure to establish," thus leaving only one remaining "test case," the Albuquerque Tea Party.[451] Goehausen received the Albuquerque Tea Party's response to the development letter in January 2012, and commenced drafting a letter denying that group tax exemption.[452] Goehausen's draft letter reversed the conclusion that Hull had previously reached in his January 2011 memo in which he concluded that the application should be approved.

In April of 2012, Nancy Marks visited Cincinnati at the direction of Steve Miller, then Deputy Commissioner for Services and Enforcement, because of Miller's concerns over how EO Determinations was processing political advocacy applications.[453] Among other things, Marks found that there were between 250–300 political advocacy applications awaiting determination, so she recommended to Miller that EO Technical staff provide direct assistance to EO Determinations by reviewing each political advocacy application through a "bucketing" exercise.[454] The object of this endeavor would be to separate applications that could be quickly decided from those that either required varying degrees of develop-

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[442] Email chain between Hillary Goehausen, Michael Seto, Carter Hull and others (Feb. 28, 2012) IRS0000058356–61.
[443] Technical Case History for Albuquerque Tea Party, IRS0000001323–24.
[444] Sensitive Case Report (Oct. 19, 2011) IRS0000644656–57.
[445] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[446] SFC Interview of Donald Spellman (July 10, 2013) pp. 23–36.
[447] *Id.*
[448] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[449] Email chain between Hilary Goehausen, Michael Seto, Carter Hull and others (Feb. 28, 2012) IRS0000058356–61.
[450] *Id.*
[451] *Id.*
[452] *Id.*
[453] SFC Interview of Steve Miller (Dec. 12, 2013) pp. 128–145.
[454] *Id.*

ment or that were likely denials, and to place them in respective "buckets" where they could be worked to completion.[455] Miller concurred in the recommendation and the "bucketing" exercise began in mid-May 2012 and extended into early June 2012.[456]

The decision to assist EO Determinations by "bucketing" the applications in this fashion effectively superseded the plan to develop guidance for EO Determinations by working the "test cases." In May of 2012, when the IRS decided to pursue the "bucketing" exercise and to no longer rely on the "test cases" for the development of guidance, two out of three of the "test cases" had been closed for "failure to establish" and the third was still in the development/drafting stage. The two year period during which the "test cases" had been worked resulted in the development of little or no guidance that could be used by EO Determinations to reach decisions on the growing backlog of Tea Party and other political advocacy applications. Moreover, much of the two year period that EO Technical, Judith Kindell and the Office of the Chief Counsel spent focusing on the "test cases" was marked with protracted delays, unexplained intervals of inactivity, and a lack of any sense of urgency.

Inability to resolve the "test cases" and to develop the guidance that EO Determinations had first asked for in February 2010 contributed substantially to the delays experienced by the Tea Party and other advocacy organizations in securing decisions on their applications for tax exemption.

D. The Initiative To Develop a Guidesheet for EO Determinations Was a Failure That Further Contributed to Processing Delays in 2011 and 2012

On July 5, 2011, Lois Lerner convened a meeting with Holly Paz, Nancy Marks, Cindy Thomas, and staff from EO Guidance and EO Technical, including Justin Lowe and Hillary Goehausen.[457] The purpose of the meeting was to discuss the Tea Party applications then pending in EO Determinations, which at that time, numbered in excess of 100, and to decide how to best process those applications.[458] After being brought up to date on the Tea Party screening criteria and the efforts of EO Technical to assist EO Determinations, Lerner made three decisions regarding the processing of these applications. First, Lerner directed that the groups no longer be referred to as Tea Party organizations, but rather be called "advocacy organizations."[459] Second, Lerner determined that EO Technical should proceed to secure review of the two test cases by the Office of the Chief Counsel.[460] Third, Lerner approved the suggestion contained in the briefing paper prepared by staff for the meeting that a "guidesheet" be prepared by EO Technical for use by EO Determinations.[461] As Paz explained to the Committee,

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[455] *Id.*

[456] Email chain between Cindy Thomas, Bonnie Esrig, Peggy Combs and others (May 8–9, 2012) IRS0000596252; SFC Interview of Holly Paz (July 26, 2013) pp. 153–162.

[457] SFC Interview of Holly Paz (July 26, 2013) pp. 86–96.

[458] *Id.*; Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165–66.

[459] SFC Interview of Holly Paz (July 26, 2013) pp. 86–96.

[460] *Id.*

[461] *Id.* The suggestion contained in the briefing paper used for the meeting stated that "EOT composes a list of issues or political/lobbying indicators to look for when investigating potential

> [t]he idea is that the guide sheet would help the Determinations Unit in developing the cases and then also analyzing what they got in response to the development letter, in figuring out, for example, whether certain pieces of information indicated campaign intervention or did not indicate campaign intervention.[462]

Later in July 2011, Michael Seto directed Hillary Goehausen to draft the guidesheet and Justin Lowe, a Tax Law Specialist in EO Guidance, to review Goehausen's draft.[463] Goehausen had commenced her career at the IRS in April 2011.[464] She prepared a draft that was reviewed by Lowe and sent it out to Judith Kindell, Chip Hull, David Fish, Elizabeth Kastenberg and others for comment on September 21, 2011.[465] Only Hull provided comments to Goehausen, so Goehausen sent a slightly revised version to the same recipients on November 3, 2011, again requesting comments.[466] Regarding the four months that it required to move from Lerner's decision in early July 2011 to prepare a guidesheet to the circulation of a draft for comment in early November 2011, Paz told the Committee the following:

> Q. Did you feel that the 4 months to get to this stage was a suitable or an appropriate period of time to develop a document like this?
>
> A. I thought it could have been done faster.[467]

On November 6, 2011, David Fish, then-Acting Director of Rulings and Agreements,[468] opined with regard to the guidesheet that "the document won't work in its present form. I think we need to work with [EO Determinations] to make it a usable document."[469] Fish apparently felt that the guidesheet was "too lawyerly" to be of assistance to the agents in EO Determinations.[470] Paz stated to the Committee as follows:

> Q. Okay. So November 6th Mr. Fish, who is the Acting Director of Rulings and Agreements, concludes that the guidesheet . . . won't work in its present form. So now that means that all the effort that has been expended since what, July 5, or since whenever Ms. Goehausen began working on that, to November 6, which is a period of about four months, is pretty much gone. Right? That effort hasn't resulted in anything useful at this point.

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political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures." Email from Justin Lowe to Holly Paz (June 27, 2011) IRS0000431165–66.

[462] SFC Interview of Holly Paz (July 26, 2013) p. 96.

[463] Email chain between Michael Seto, Hillary Goehausen and others (July 23–24, 2011) IRS0000644018.

[464] SFC Interview of Hilary Goehausen (July 11, 2013) (not transcribed).

[465] Email from Hilary Goehausen to Judith Kindell and others (Sep. 21, 2011) IRS0000636285–97.

[466] Email chain between Hillary Goehausen, Judith Kindell and others (Sep. 21–Nov. 3, 2011) IRS0000057352–65.

[467] SFC Interview of Holly Paz (July 26, 2013) p. 125.

[468] *Id*. p. 18. Paz was on maternity leave from October 24, 2011 to February 6, 2012. During that time, David Fish, Manager of EO Guidance, served as Acting Director of Rulings and Agreements.

[469] Email chain between David Fish, Michael Seto, Cindy Thomas and others (Oct. 24–Nov. 6, 2011) IRS0000520827–41; SFC Interview of Holly Paz (July 26, 2013) pp. 133–134.

[470] SFC Interview of Holly Paz (July 26, 2013) p. 133.

A. That's correct.[471]

Subsequently, on February 24, 2012, Paz transmitted a copy of the November 2011 iteration of the guidesheet to Don Spellman, Senior Counsel in the Office of the Chief Counsel, for his review.[472] Because Paz sent Spellman a version of the guidesheet from November 2011, it appears that further work by EO Technical on the guidesheet was essentially suspended in November 2011, possibly because of the determination made by David Fish that the guidesheet would not be helpful to EO Determinations agents. Spellman reviewed the guidesheet shortly after receiving it from Paz and sent an email to Janine Cook letting her know that:

> [i]t's nowhere near ready for prime time. It's a good start, but needs corrections, additions, changes all over. The law in particular needs fixing. The development questions are good, but not complete.[473]

On that same day, Lerner emailed Spellman and his supervisor Janine Cook and asked that they let Lerner know their concerns with the guidesheet as soon as possible, as Lerner intended to provide the guidesheet to Congressional staff and to post it on the IRS website.[474]

Spellman provided comments to Lerner on the guidesheet during the week of March 5, 2012.[475] However, Lerner did not feel that the revisions made by Spellman would be helpful to EO Determinations agents working the applications and requested further changes in the format.[476] Spellman provided yet another version of the guidesheet to Lerner on April 25, 2012.[477] On April 27, 2012, Nikole Flax, the Assistant Deputy Commissioner for Services and Enforcement, sent the April 25, 2012 version of the guidesheet prepared by Counsel to Cathy Livingston, Health Care Counsel in the Office of Chief Counsel, and asked Livingston to provide a "gut reaction."[478] Livingston reviewed the guidesheet and concluded as follows:

> I am concerned about this document that Counsel has sent forward, both for its practical utility in Cincinnati and also for what it doesn't make clear and what it may be perceived as implying about existing guidance. The product reflects, to me, the best efforts of a team that has not had the requisite experience working with the cases and issues.[479]

Paz expressed the following to the Committee:

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[471] *Id*. p. 134.
[472] Email chain between Holly Paz, Don Spellman and others (Nov. 21, 2011–Feb. 24, 2012) IRS0000056937–50.
[473] *Id*.
[474] Email chain between Lois Lerner, Don Spellman, Janine Cook and others (Feb. 24–March 1, 2012) IRS0000594977–80.
[475] Email chain between Don Spellman, Lois Lerner and others (Mar. 5, 2012) IRS0000057789–90.
[476] Email chain between Janine Cook, Lois Lerner, Victoria Judson and others (Mar. 19–21, 2012) IRS0000056992–7043.
[477] Email from Don Spellman to Lois Lerner and others (Apr. 25, 2012) IRS0000512392–446.
[478] Email chain between Nikole Flax, Cathy Livingston and others (Apr. 26–May 1, 2012) IRS0000063118–21.
[479] *Id*.

Q. Okay. But I guess my point is, though, that this effort that had been undertaken to prepare a guidesheet had commenced sometime after July 5th, and here we are now April of the following year and we are still talking about a draft document where people are commenting on. Is that correct?

A. Yes.

Q. And in all that intervening period of time the guidesheet hasn't been able to be used by anyone in EOD in kind of the way it was intended to be used. Is that correct?

A. That's correct.[480]

In May 2012, Steve Miller approved a recommendation to send a team of employees from EO in Washington D.C. to Cincinnati to provide a training workshop to the EO Determinations agents on how to process applications involving potential political advocacy issues.[481] The training took place on May 14–15, 2012.[482] Paz told the Committee that

> . . . the workshop was an alternative to the guidesheet. We were never able to get Counsel to sign off on the guidesheet and give a final blessing to it. So we, at that point, had abandoned the guidesheet.[483]

Nearly 10 months after Lerner had first decided to develop a guidesheet, and after substantial investment of time and labor by staff from EO Technical, EO Guidance and the Office of the Chief Counsel, the IRS abandoned further efforts to complete the guidesheet. Together with the "test cases," the guidesheet was intended to serve as part of the guidance that EO Technical was responsible for providing to EO Determinations to assist it in processing the Tea Party and other political advocacy applications. As with the "test cases," EO Technical was never able to deliver to EO Determinations a useful product. EO Technical's inability to produce a set of written instructions in the form of a guidesheet for processing political advocacy applications after nearly 10 months of effort further delayed EO Determinations processing of Tea Party and other political advocacy applications. It cannot be disputed that the initiative to develop the guidesheet was an unmitigated failure. Miller best summed it up as follows:

Q. . . . Was [the guidesheet] the tool that EOD really needed to get the cases moving along?

A. Clearly it wasn't, because it didn't work.[484]

E. The Initial "Triage" of Tea Party and Other Political Advocacy Cases in 2011 Represented Yet Another Unsuccessful Attempt by EO Technical to Assist EO Determinations

In September 2011, Holly Paz and Sharon Light, Senior Technical Advisor to Lois Lerner, visited EO Determinations in Cincinnati.[485] During this visit, Paz and Light met with Cindy Thomas

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[480] SFC Interview of Holly Paz (July 26, 2013) p. 153.
[481] SFC Interview of Steve Miller (Dec.12, 2013) pp. 121–122.
[482] Email chain between Cindy Thomas, Bonnie Esrig and others (May 8–9, 2012) IRS0000596252.
[483] SFC Interview of Holly Paz (July 26, 2013) p. 163.
[484] SFC Interview of Steve Miller (Dec. 12, 2013) p. 122.
[485] SFC Interview of Cindy Thomas (July 25, 2013) pp. 143–148.

and during the course of a discussion on the advocacy applications, Thomas showed an advocacy application to Light.[486] In one sitting, Light reviewed the application and did internet research on the organization and concluded that the application should be approved.[487] Thomas then suggested to Paz and Light that perhaps other political advocacy applications could also be quickly approved, if EO Technical staff knowledgeable about political advocacy issues could review those applications.[488] Thomas suggested providing EO Technical with a list of all the political advocacy applications then pending in EO Determinations so that Tax Law Specialists in EO Technical could "triage" the applications.[489] The "triage" would consist of reviewing the applications in TEDS, the electronic data base that served as a repository for those records, and identifying applications that could be approved as well as those that could not.[490] Paz stated to the Committee as follows:

> Q. What was the overall goal of the triage?
>
> A. It was to find some cases that could be approved based on the information that we had so that we could close some of the cases, the taxpayers wouldn't have to wait any longer.[491]

Paz agreed with Thomas's suggestion to perform a "triage" on the pending applications and indicated that Hillary Goehausen and Justin Lowe would perform triage responsibilities.[492] Shortly thereafter, on September 15, 2011, Thomas sent to Paz a list of all advocacy applications then pending in EO Determinations together with their EINs and other information.[493] Goehausen and Lowe commenced reviewing PDF copies of the applications in TEDS and on October 24, 2011, a spreadsheet containing the results of their review of 162 Tea Party and other political advocacy applications was sent to Thomas.[494] Goehausen and Lowe made notations on the spreadsheet for each application, such as "general advocacy," "lobbying," "website has substantial inflammatory rhetoric," "political campaign activity," etc.[495] On October 25, 2011, Thomas wrote to Michael Seto regarding these notations and stated the following:

> [n]ot sure where this leaves us and I'm unclear as to what action is being suggested for some of these cases. Specifically, if the comment indicates "general advocacy," what does that mean—additional development or what?[496]

Goehausen attempted to explain the notations to Thomas on October 26, 2011.[497] Thomas wrote to Seto on October 30, 2011, again expressing confusion over the notations and stating her expectation that the "triage" would specifically identify applications that could be approved, or that required more development, or that should be

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[486] *Id.*
[487] *Id.*
[488] *Id.*
[489] *Id.*
[490] Email chain between Cindy Thomas, Holly Paz and others (Sep. 15–Nov. 15, 2011) IRS0000057399–426; IRM § 7.15.6 (June 12, 2013).
[491] SFC Interview of Holly Paz (July 26, 2013) p. 131.
[492] SFC Interview of Cindy Thomas (July 25, 2013) pp. 145–146.
[493] Email chain between Cindy Thomas, Holly Paz and others (Sep. 15–Nov. 15, 2011) IRS0000057399–426.
[494] *Id.*
[495] *Id.*
[496] *Id.*
[497] *Id.*

denied.[498] Seto followed up with Thomas on November 6, 2011, promising that Goehausen would revise the spreadsheet to comply with Thomas's expectation.[499] Thomas explained her concerns with Goehausen's notations as follows:

> . . . when I reviewed some of the comments, I didn't find it very helpful, because what I was looking to get is just tell us whether this case can be approved or not, similar to what Sharon Light did when she reviewed that one case. But there were comments on the spreadsheet and I didn't know whether that meant approve the case, don't approve the case, or what. So I sent it back to Mike and this process happened, I believe, three times that the spreadsheet was sent back and that the review took place like about three times.[500]

On November 22, 2011, Seto sent Thomas a revised spreadsheet and informed Thomas that of the 162 applications Goehausen reviewed, 12 might qualify for exemption, 15 were possible denials, and that the remainder (135) required further development.[501] Goehausen's recommendations were based only on a review of the organizations' applications, and not on any supporting documentation that the organizations may have submitted after filing their applications.[502] Since Goehausen's review was limited to examining applications, her recommendations were offered with the caveat that EO Determinations needed to perform further development before approving or denying any applications.[503]

In view of the tentative nature of Goehausen's recommendations, Thomas was unable to direct her staff to approve or deny any application.[504] She explained her actions to the Committee as follows:

> . . . I just wanted them to tell us this case is okay to approve or not approve . . . . I didn't give this [spreadsheet] to anybody that worked for me because I wanted it perfected in D.C. so that I could take this spreadsheet and give it out and say here, follow this direction. But I didn't do that because it was unclear to me. It was unclear to me what was being recommended by the Washington office.[505]

The effort expended in performing the "triage" of Tea Party and political advocacy applications from September 15, 2011 to November 22, 2011, failed to achieve its goal of providing EO Determinations with the information and direction necessary for it to approve or deny any of the pending applications.

Paz summarized the utility of the triage effort as a whole in the following terms:

> Q. . . . Was EOD able to take the results of that triage effort and actually implement them?
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> A. From what I understand, they did not . . . .

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[498] *Id.*
[499] *Id.*
[500] SFC Interview of Cindy Thomas (July 25, 2013) p. 146.
[501] Email chain between Michael Seto, Cindy Thomas and others (Nov. 22–Dec. 12, 2011) IRS0000439824–26.
[502] SFC Interview of Holly Paz (July 26, 2013) p. 135.
[503] *Id.*
[504] SFC Interview of Cindy Thomas (July 25, 2013) p. 147.
[505] *Id.*

Q. Okay. So would it be fair to say that the entire triage effort, the triage effort, at least this first triage effort in 2011 then resulted in nothing useful?

A. That's correct.[506]

F. The Advocacy Team Failed to Approve or Deny any Applications Received From Tea Party or Other Political Advocacy Organizations From its Formation in December 2011 to June 2012

Throughout 2010 and 2011, Cindy Thomas had repeatedly asked EO Technical for the guidance to process the Tea Party applications that she had first been promised by Holly Paz in February 2010.[507] Thomas did not receive the promised guidance in 2010 or 2011. In late 2011, Michael Seto provided Thomas with a copy of the draft guidesheet, but Thomas was told that EO Determinations agents may not find it useful.[508] Thomas, now armed with the draft guidesheet and the tentative results produced by the "triage" of applications performed by Hillary Goehausen and Justin Lowe, decided to try to move the political advocacy applications.[509] Accordingly, on Steve Bowling's recommendation, Thomas replaced Ronald Bell as coordinator for the political advocacy applications with Stephen Seok, an EO Determinations agent in Group 7822.[510] Concurrent with that change, Thomas formed the "Advocacy Team" to process the Tea Party and political advocacy applications.[511] The team consisted of 12 GS–13 agents, one from each of the Groups within EO Determinations.[512] These agents were among the highest graded agents in each Group.

To assist in processing the applications, Seok was provided a copy of the guidesheet and the results of the "triage."[513] He provided the team members with a copy of the draft guidesheet[514] and shortly thereafter convened the first meeting of the Advocacy Team on December 16, 2011.[515] At this point, the Office of the Chief Counsel had not reviewed the guidesheet nor had it been approved for use by management. During the December 16, 2011 meeting, the members discussed the history of the advocacy applications, the purpose of the team, and how they would process the political advocacy applications through the use of "template" development let-

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[506] SFC Interview of Holly Paz (July 26, 2013) p. 135.

[507] Email chain between Holly Paz, Cindy Thomas and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73; Email chain between Cindy Thomas, Holly Paz and others (Oct. 26, 2010–Jan. 28, 2011) IRS0000435238–39; Email chain between Cindy Thomas, Holly Paz and others (Oct. 26, 2010–Mar. 2, 2011) IRS0000620724–26; Email chain between Cindy Thomas, Michael Seto and others (Mar. 29–Apr. 13, 2011) IRS0000576953–55; Email chain between Cindy Thomas, Holly Paz and others (Sep. 15–Nov. 15, 2011) IRS0000057399–426; Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845–46 (Email attachment containing taxpayer information omitted by Committee staff); Email chain between Michael Seto, Cindy Thomas and others (Nov. 22–Dec. 12, 2011) IRS0000439824–26.

[508] SFC Interview of Cindy Thomas (July 25, 2013) p. 147.

[509] *Id.* pp. 147–48.

[510] *Id.*

[511] Email chain between Michael Seto, Cindy Thomas and others (Nov. 22–Dec. 12, 2011) IRS0000439824–26.

[512] *Id.*; Email chain between Cindy Thomas, Nancy Marks and others (Apr. 17–23, 2012) IRS0000013058–61.

[513] SFC Interview of Cindy Thomas (July 25, 2013) pp. 147–48.

[514] Email from Stephen Seok to Ronald Bell and others (Dec. 12, 2011) IRS0000059316–28.

[515] Email chain between Cindy Thomas, Nancy Marks and others (Apr. 17–23, 2012) IRS0000013058–61.

ters.[516] At the time of the meeting, Seok identified approximately 172 political advocacy applications awaiting decision.[517] While Seok served as Coordinator for the team, he reported to Steve Bowling and provided Bowling with periodic updates on the team's activities.[518]

Throughout the remainder of December 2011 and into the first half of January 2012, Seok assigned political advocacy applications to the team members and reviewed their draft development letters.[519] In his report to Bowling dated February 13, 2012, Seok indicated that development letters had been sent out for most of the applications that had been assigned and that except for a few applications, no responses had yet been received.[520] On February 15, 2012, Seok circulated to the Advocacy Team members as well as to Bowling copies of several draft documents, including a document that contained template development questions.[521] Among the template questions, which numbered in excess of 80, were questions seeking: the identity of donors and the amounts and dates of donations; the identity of volunteers; copies of every webpage including social networking sites and blog sites; detailed descriptions of all events sponsored by the organizations; and copies of all handouts distributed by the organizations.[522]

Seok used the draft guidesheet that had been provided to him to prepare the template questions.[523] In addition, Seok and other Advocacy Team members apparently used earlier iterations of the draft template questions to prepare some of the development letters sent to Tea Party organizations in January and early February 2012.

Beginning about the middle of February 2012, the IRS began to receive Congressional inquiries about the processing of applications for tax exemption filed by Tea Party organizations.[524] The inquiries were prompted by complaints from Tea Party groups seeking tax-exempt status that had recently received development letters from the IRS containing questions that appeared to be burdensome, inappropriate, and sometimes intrusive.[525] Many of the development letters requested information such as the names of all donors, donation amounts and dates of donations; the identities of all volunteers; and whether board members and officers would run for polit-

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[516] *Id*.

[517] *Id*. Text discussing the 172 pending cases notes "37 c3 125 c4;" "[m]ostly advocacy with strong or some political activities, at least implied;" "[a]bout 155 cases reviewed by EO Tech: Favorable 13, Denial 13, All others: Development Needed;" "30 Something TEA party, Several 912, Repeal PPACT (Patient Protection and Affordable Care Act), Enact Universal Single-Payer Health Case [sic] System, etc."

[518] Email chain between Stephen Seok, Steve Bowling, Holly Paz and others (Jan. 8–Aug. 7, 2012) IRS0000434203–08.

[519] *Id*.

[520] *Id*.

[521] Email from Stephen Seok to Steve Bowling and the Advocacy Team (Feb. 15, 2012) IRS0000594910–29.

[522] *Id*.

[523] SFC Interview of Steve Miller (Dec. 12, 2013) p. 113. The close relationship between the draft guidesheet and the template questions clearly suggests that the former was used to prepare the latter.

[524] SFC Interview of Holly Paz (July 26, 2013) pp. 141–142; Letter from Senator Orrin G. Hatch to IRS Commissioner Shulman (Mar. 14, 2012) IRS0000488582–85.

[525] Email chain between David Fish, Keith Frank, Andy Megosh and others (Feb. 17–21, 2012) IRS0000610957–60.

ical office.[526] The application for tax-exempt status (IRS Form 1023) does not require the provision of donor-identifying information. However, if an organization seeking tax-exempt status under section 501(c) provided information to the IRS regarding its donors during the application process pursuant to a follow-up request by an agent for donor-identifying information in connection with an application, then that information could be disclosed if the organization's application were subsequently approved. In contrast, 501(c) filers are required to disclose annually the names and addresses of anyone who contributed $5,000 or more as part of the Form 990 Schedule B, but Schedule B. is not required to be made public, except in the case of private foundations. Therefore, IRS agents requesting an organization's donor information during the application process subjected that donor information to a different standard of disclosure than otherwise applicable to 501(c) organizations.

In addition to Congressional inquiries, news articles began to appear in February 2012 reporting that Tea Party organizations that were awaiting determinations from the IRS on their requests for tax-exempt status had recently received burdensome development letters.[527] These development letters, which in some cases contained over 80 separate questions, also allowed only 14 days for reply. Moreover, many of the letters received by the applicant organizations contained duplicate requests.[528]

In response to both mounting Congressional inquiries and media stories about intrusive development questions that had been received by Tea Party organizations, Steve Miller, then Deputy Commissioner for Services and Enforcement, took several remedial actions.[529] Regarding donor information, Miller directed that the IRS inform recipients of the development letters that they need not provide the donor information.[530] For organizations that had already provided that information, Miller was apprised by the Office of the Chief Counsel that the donor information could be destroyed since it had not been used.[531] Accordingly, in most cases, the donor information was destroyed.[532] Organizations were also allowed more time to respond to the development letters and were permitted to submit sample web pages, in lieu of screen shots of every page.[533] Moreover, Cindy Thomas disciplined Seok as the majority of instances where donor information had been requested were applications that Seok had worked.[534] In addition, Seok was eventually replaced as Coordinator for political advocacy applications.[535] How-

[526] Email from Michele Eldridge to Steve Miller and others (Mar. 1, 2012) IRS0000341681–83.
[527] Email chain between Faris Fink, Steve Miller, Shane Ferguson and others (Feb. 29, 2012) IRS0000341677–80.
[528] Email chain between Lois Lerner, Holly Paz, Cindy Thomas and others (Feb. 24–Mar. 1, 2012) IRS0000594977–80.
[529] SFC Interview of Steve Miller (Dec. 12, 2013) pp. 123–129.
[530] *Id.*
[531] *Id.* Miller explained during his interview that if donor information had been retained by the IRS and the organization's application was subsequently approved, the donor information would then become public.
[532] *Id.* However, in at least one instance, donor information was not destroyed. See Email from Sharon Light to Lois Lerner (Apr. 19, 2013) IRS0000195724–25.
[533] SFC Interview of Steve Miller (Dec. 12, 2013) pp. 123–129.
[534] SFC Interview of Cindy Thomas (July 26, 2013) pp. 134–39.
[535] *Id.*

ever, in January 2013, Thomas promoted Seok to the Group Manager position.[536]

The most significant consequence for the processing of political advocacy applications resulting from the issuance of the inappropriate, burdensome and sometimes intrusive development letters occurred on February 29, 2012. On that date, Lois Lerner instructed Paz to ensure that EO Determinations sent no further development letters until the letters were adjusted.[537] Paz so advised Thomas, and Thomas in turn directed Bowling to cease assigning any more political advocacy applications "until we have the template questions from DC."[538] On February 29, 2012, the Advocacy Team effectively ceased processing Tea Party and political advocacy applications, an activity that it would not resume again until mid-May 2012, when the IRS next attempted to process the Tea Party and other political advocacy applications through the "bucketing" initiative described below.

While the idea to form the Advocacy Team to finally work the Tea Party and other political advocacy applications appears to have been well-intentioned, the team was ill-equipped to carry out that task. The guidesheet relied on by the team was a draft only, and as explained in greater detail within this report, the IRS was never able to resolve its shortcomings. Additionally, the results of the "triage" performed in 2011 which the Advocacy Team also used as guidance were of dubious value, since the conclusions reached in that exercise were premised on a review of only partial records. Lastly, and perhaps most significantly, the Advocacy Team appears to have suffered from a lack of effective leadership. While Seok's errors may be explained somewhat by his apparent lack of managerial experience, Bowling was aware of the template questions, but failed to recognize the predictable consequences of their use. In sum, Bowling failed to properly manage the activities of the Advocacy Team, allowing burdensome, often irrelevant and sometimes intrusive questions to be asked of a group of organizations whose sensitivities were already heightened by years of delay in the resolution of their applications.[539]

G. The Multi-Step Review Procedure Established by EO Technical in 2012 for Political Advocacy Applications Reflected a Lack of Concern by IRS Management for the Need To Process the Applications Expeditiously

In March 2012, Cindy Thomas informed Michael Seto, EO Technical Manager, that EO Determinations was ready to send to EO Technical the first application for exemption under 501(c)(4) that it

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[536] *Id.*

[537] Email chain between Lois Lerner, Holly Paz, Cindy Thomas and others (Feb. 29, 2012) IRS0000594977–80.

[538] *Id.*

[539] These egregious deficiencies in Bowling's management of the advocacy team do not appear to have adversely affected the IRS's assessment of his performance. In fact, the IRS performance review board gave him the highest recommendation for an award for the period which encompassed the events described above in late 2011 and early 2012. As a result, Bowling received a bonus that was among the highest for TEGE front-line managers, an amount that exceeded 2% of his annual salary. Email from Brent Brown to Lois Lerner and Dawn Marx (Nov. 29, 2012) (attachment containing sensitive personnel information omitted by Committee staff). Not only did the IRS give Bowling a stellar cash performance award in 2012, but upon Cindy Thomas's reassignment in August 2013, it also elevated him to the position of EO Determinations Manager along with Jon Waddell and Donna Abner. IRS Briefing for SFC Staff (July 7, 2015).

thought should be approved.[540] In apparent anticipation of reviewing the first application and recommendation, and presumably the others that would follow, Michael Seto announced a multi-step process for providing technical assistance to EO Determinations on advocacy applications.[541] The process involved the following steps:

1. Hilary Goehausen, EO Technical, analyzes the application and forms a recommendation;
2. Goehausen submits her analysis and recommendation to Justin Lowe, EO Guidance for his review;
3. When Goehausen and Lowe complete their review and recommendation, it is sent to Michael Seto for his review;
4. Seto then schedules a meeting with Cindy Thomas and Donna Abner, Director EO Quality Assurance, to update them on EO Technical's analysis and recommendation;
5. The analysis and recommendation are then sent to the Office of the Chief Counsel for its comment/concurrence;
6. When the Office of Chief Counsel completes its review, Seto schedules a meeting with Lois Lerner, Holly Paz and David Fish to discuss the recommendation;
7. The analysis/recommendation is released to EO Determinations.

It is unclear who the originator of this process was, and how many requests for technical assistance from EO Determinations were actually subjected to the multiple handoffs that characterize this "process."[542] What is clear, however, is that any request for technical assistance from EO Determinations that was processed in this fashion would take considerable time to move through all the steps. Steve Grodnitzky stated to the Committee as follows:

> Q. . . . and looking at this process and the seven steps, do you think it would have an effect on your—the processing speed or the time it would take to move cases through your—your Group 1?
>
> A. Well, the more individuals that look at a particular case, theoretically the longer it would take to resolve.
>
> Q. Okay. In looking at this process, do you think that this would expedite or perhaps slow down the movement of cases through your group?
>
> A. Having more people that are involved in the process would result in a case taking longer to resolve.
>
> Q. So this process would slow things down, right?
>
> A. Yes, it could.[543]

When asked about the length of time that it generally required for the Office of Chief Counsel to respond to a request for advice, Grodnitzky told the Committee the following:

> It could be 3 months, 6 months, a year. It—depends. I—it varies on what their—well, let me step back. I don't want to speak for counsel, but I can only speak for my experience in working with counsel, and it would—it's vary-

[540] Email chain between Cindy Thomas, Michael Seto, Steve Bowling and others (Mar. 6, 2012) IRS0000617020–21.

[541] Email chain between Justin Lowe, Michael Seto, Steve Grodnitzky and others (Jan. 31–Mar. 5, 2012) IRS0000594982–84; Email from Michael Seto to Steve Grodnitzky and others (Mar. 9, 2012) IRS0000066875.

[542] SFC Interview of Steve Grodnitzky (Sep. 25, 2013) pp. 137–146.

[543] *Id.*

> ing lengths of time, but in my experience, counsel has taken—can take a great deal of time.[544]

This process was instituted at a time when some of the applications received from the Tea Party groups were already two and a half years old. It was also instituted after better than two years of fruitless effort by EO Technical in working "test cases," developing guidesheets, and triaging applications. Implementation of the multi-step review process at this juncture clearly evidences that management within EO, whether at the EO Technical level or higher, was seemingly unconcerned about the already long delays endured by many Tea Party and other applicants seeking to engage in some level of political advocacy. Rather than looking for ways to expedite the processing of these long delayed applications, EO devised a process that virtually guaranteed that any application subject to the seven steps would languish without resolution for many more months.

H. The MAY 2012 "Bucketing" Initiative Resulted in EO Determinations Issuing the First Approvals of Tea Party and Other Political Advocacy Applications After Nearly Two and a Half Years

In March 2012, Steve Miller, then Deputy Commissioner for Services and Enforcement, grew increasingly concerned about the processing of Tea Party and other political advocacy applications.[545] His concern was prompted by stories in the media and Congressional inquiries regarding the apparent issuance of intrusive and burdensome development letters by EO Determinations to Tea Party groups.[546] Miller sent Nancy Marks, Special Assistant to the TE/GE Commissioner, to Cincinnati to determine how EO Determinations was processing the Tea Party and other political advocacy applications.[547] In late April, Marks and several others arrived in Cincinnati and interviewed employees involved in the processing of political advocacy applications.[548] Marks also examined applications for exemption filed by political advocacy organizations.[549] She reported back to Miller on May 3, 2012 and among other revelations, indicated that the use of unnecessary and sometimes intrusive development questions resulted from a failure by EO Technical to provide EO Determinations with adequate training and guidance.[550] Marks also told Miller that there were approximately 250–300 applications pending decision that involved possible political advocacy.[551] Marks recommended, and Miller agreed, that EO Technical and EO Determinations personnel would review all of the political advocacy applications through a

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[544] *Id.*
[545] SFC Interview of Steve Miller (Dec. 12, 2013) pp. 129–145.
[546] *Id.*
[547] *Id.*
[548] Email chain between Holly Paz, Cindy Thomas, Donna Abner and others (Apr. 20–23, 2012) IRS0000003152–55.
[549] *Id.*
[550] SFC Interview of Steve Miller (Dec. 12, 2013) pp. 129–145.
[551] *Id.*

"bucketing" exercise that would allow applications to be quickly approved if they met the requirements for exemption.[552]

In May 2012, Cindy Thomas advised members of her staff that certain EO Determinations personnel, as well as "a few additional folks from D.C.," would place the advocacy applications in one of the following four buckets:

1. Favorable (no further substantive development needed).
2. Favorable (limited development with approximately two or three questions to ask the applicant).
3. Significant development.
4. Probable denial.[553]

Thomas further informed her staff that, "[m]ost likely, we'll try to get those cases in Bucket 1 closed quickly and then move to Bucket 2."[554]

The bucketing was preceded by several days of classroom training for the EO Determinations specialists. Holly Paz described the approach used to train the specialists as follows:

> We did it in a workshop format where we used the real cases that we had and used those as a way to discuss issues that come up. We also talked a lot about, here's an issue you see on the application; how would you ask a development question about it? What would the question look like? And then worked through what would be a good question that would get at what you needed to know but not be too burdensome to the applicant.[555]

The bucketing of applications commenced on May 16, 2012[556] and extended for three weeks.[557] Two employees, one from EO Determinations and the other from EO Technical, reviewed each application.[558] Each employee reviewed the application independently and made a recommendation as to the bucket to which the application should be assigned.[559] If the two employees agreed on the bucket, the application was assigned to that bucket.[560] If there was disagreement, the employees would meet and attempt to reconcile their differences.[561] If they could not, then the disagreement was elevated to Sharon Light, Senior Technical Advisor to the EO Director, who would make the determination as to the appropriate bucket.[562]

On June 7, 2012, Paz reported to Cindy Thomas and Lois Lerner the results of the now completed bucketing exercise as follows:

> 83 c/3s bucketed:
> 16 approval
> 16 limited development
> 23 general development

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[552] *Id.*
[553] Email chain between Cindy Thomas, Bonnie Esrig and others (May 8–9, 2012) IRS0000596252.
[554] *Id.*
[555] SFC Interview of Holly Paz (July 26, 2013) p. 162.
[556] Email chain between Cindy Thomas, Bonnie Esrig and others (May 8–9, 2012) IRS0000596252.
[557] SFC Interview of Holly Paz (July 26, 2013) pp. 160–161.
[558] *Id.*
[559] *Id.*
[560] *Id.*
[561] *Id.*
[562] *Id.*

28 likely denial
199 c/4s bucketed:
65 approval
48 limited development
56 general development
30 likely denial[563]

While the bucketed applications were from groups on both the political right as well as the left, the majority of the applications were from right-leaning organizations. On July 18, 2012, Judith Kindell noted this fact to Lois Lerner as follows:

> Of the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.
>
> Of the 199 (c)(4) cases, approximately ¾ appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on name. The remainder do not obviously lean to either side of the political spectrum.[564]

Political advocacy applications received after June 8, 2012, were bucketed in EO Determinations.[565] Commencing in June 2012, 41 applicants for exemption, including Tea Party and other political advocacy groups, received approval letters from the IRS.[566] These approvals represented the first approvals of political advocacy applications since early 2010 when the IRS had granted tax exemption to one 501(c)(3) and two 501(c)(4) Tea Party organizations. In addition, 31 development letters were prepared and sent out in June 2012 by EO Determinations on other bucketed applications.[567] These were the first development letters issued by EO Determinations since February 29, 2012, when Lois Lerner suspended the further issuance of development letters. For applications that were likely denials and that had been placed in bucket 4, EO Technical prepared the majority of development letters and worked the applications.[568] From June 2012 to December 2012, the IRS approved a total of 133 political advocacy applications.[569]

While not entirely free from problems, the "bucketing" exercise represented the first IRS initiative in two and a half years that actually succeeded in bringing political advocacy applications to closure. Yet, as of March 2014, more than four years since the first political advocacy applications were filed, 22% of those applications were still unresolved. While the IRS succeeded in closing most of the applications in the ensuing year, 10 organizations were still waiting a determination as of April 2015.[570]

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[563] Email chain between Holly Paz, Lois Lerner, Donna Abner and others (June 8, 2012) IRS0000578664–66.
[564] Email from Judith Kindell to Lois Lerner (July 18, 2012) IRS0000585328.
[565] Email chain between Holly Paz, Lois Lerner, Donna Abner and others (June 8, 2012) IRS0000578664–66.
[566] Email chain between Cindy Thomas, Holly Paz, and Donna Abner (June 27–28, 2012) IRS0000005239.
[567] *Id*.
[568] SFC Interview of Cindy Thomas (July 26, 2013) p. 108.
[569] Calculation based on data provided to the SFC by the IRS (Mar. 26, 2014).
[570] Based on data provided to the SFC by the IRS (Apr. 8, 2015).

VIII. THE IRS SELECTED LEFT-LEANING APPLICANTS FOR REVIEW AND SUBJECTED THEM TO HEIGHTENED SCRUTINY AND DELAYS

This section discusses how the IRS handled applications for tax-exempt status submitted by various types of progressive and left-leaning organizations.

IRS Exempt Organizations employees also selected left-leaning and progressive organizations applying for tax-exempt status for special processing:

- Names associated with left-leaning applicants were placed on the Watch List and Tag Historical tabs of the BOLO list.
- IRS screeners were instructed during training sessions in 2010 to select left-leaning applications that were potentially political organizations.

In some cases, after selecting left-leaning applicants, EO Determinations transferred the cases to EO Technical or placed them on hold while awaiting technical assistance from the Washington D.C. office, a process that delayed their resolution for years.

A. EO Determinations Flagged Left-Leaning Applicants With the Names "Progressive," "ACORN," and "Occupy"

1. PowerPoint Presentation Directs Employees to Flag "Progressive" and "Emerge" Applicants

A PowerPoint presentation and notes from a July 28, 2010 screening workshop meeting in Cincinnati show that IRS employees were instructed to flag applications with the words "progressive" and applications associated with Emerge (an organization that sought to train female Democratic political candidates) and to send them to Group 7822 for secondary screening.[571] The notes from the meeting state that Gary Muthert indicated that the "following names and/or titles were of interest and should be flagged for review:"

- 9/12 Project
- Emerge
- Progressive
- We The People
- Rally Patriots, and
- Pink-Slip Program[572]

This PowerPoint presentation from this screening workshop also had a slide that read, "Politics" with a picture of an elephant and a donkey. One slide stated "Look for names like" preceding additional slides with the words "Tea Party . . . Patriots . . . 9/12 Project . . . Emerge . . . Progressive . . . We the People" under the heading "Current Activities."[573]

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[571] Screening Workshop Notes (July 28, 2010) IRS0000012315–17; Screening Workshop Presentation IRSR0000169695–720.
[572] Screening Workshop Notes (July 28, 2010) IRS0000012315–17.
[573] Screening Presentation (July 28, 2010) IRS0000169695–720.

2. BOLO Spreadsheets Include the Phrase "Progressive"

Numerous iterations of the BOLO spreadsheet included the term "Progressive" on the TAG Historical tab. For example, a BOLO list dated August 12, 2010, instructed screeners to send applications containing the word "Progressive" to the TAG Group. The BOLO list entry for "progressive" further instructed screeners that the:

> Common thread is the word "progressive." Activities appear to lean towards a new political party. Activities are partisan and appear as anti-Republican. You see references to "blue" as being "progressive."[574]

According to IRS agent Ron Bell, who was responsible for the BOLO list, screening terms were placed on the Tag Historical tab after IRS employees were not seeing applications as frequently.[575]

3. IRS Determinations Manager Instructed Employees to Be Alert for "Emerge" Groups

In October 2008, the IRS placed two applications from Emerge groups, an organization with state chapters that trained Democratic women to run for political office, on SCRs subjecting the applicants to multiple layers of review. The Emerge applications that screeners were instructed to flag at the screening workshop were not specifically listed on the BOLO, but an IRS Determinations manager alerted screeners via email on September 24, 2008, to look for applicants with "Emerge" in their name along with other "politically sensitive" cases.[576]

The EO Technical review of the applications was delayed because of pending litigation between the IRS and the Democratic Party Leadership Council.[577] Two additional Emerge cases were put on the SCR, one in June 22, 2009, and another on January 18, 2010.[578] As explained in greater detail in Section (B) below, the decision to review the Emerge cases pending the outcome of litigation contributed to delays in processing these cases.

4. Employees Were Instructed to Give "Special Handling" to Groups Related to ACORN

Another PowerPoint presentation presented at training events in June and July of 2010 titled "Heightened Awareness Issues," listed "Successor to Acorn" as a Watch List Issue specifying that "[s]pecial handling is [r]equired when [a]pplications are [r]eceived."[579] ACORN (Association of Community Organizations for Reform Now) was a national "community organization group" with local chapters that "fought for liberal causes like raising the minimum wage, registering the poor to vote, stopping predatory

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[574] BOLO Spreadsheet (Aug. 12, 2010).
[575] SFC Interview of Ron Bell (July 30, 2013) (not transcribed).
[576] Email from Joseph Herr to Elizabeth Hofacre and others (Sep. 24, 2008) IRS0000011492–4.
[577] TE/GE Division Sensitive Case Report (Oct. 21, 2008) IRS0000012307–08.
[578] TE/GE Division Sensitive Case Report (June 22, 2009) IRS0000633497–98; TE/GE Division Sensitive Case Report (Jan. 18, 2010) IRS0000147518–19.
[579] Heightened Awareness Issues (undated) IRS0000557291–308; Email from Chadwick Kowalczyk to Donna Abner and others (May 18, 2010) IRS0000195587.

lending and expanding affordable housing."[580] In addition, ACORN assisted lower income families with tax return preparation.[581] The national organization declared bankruptcy in the wake of accusations of fraud, embezzlement, and mismanagement, but several local organizations decided to regroup under new names.[582]

On March 22, 2010, Cindy Thomas notified EO Technical that descendants of ACORN were reorganizing, citing three specific organizations that were likely to submit applications.[583] In April 2010, Sharon Camarillo emailed Cindy Thomas and Robert Choi telling them that EO Determinations received two ACORN-successor cases.[584]

Also in April 2010, an IRS interoffice research team completed its research into allegations of illegal activity by ACORN, its affiliates and employees. The research team was formed to investigate allegations that ACORN was engaged in actions inconsistent with tax-exempt status, including systematic commingling of funds between taxable and tax-exempt entities and individuals associated with ACORN. The Research team found evidence of: the cover-up of an embezzlement committed by a board member; possible conflicts created by employees working for multiple affiliates and staffers and members serving on the Board of Directors; improper money transfers among the affiliates; lack of proper documentation of financial transactions; and possible improper use of donations as well as pension and health care benefit funds. The research team concluded that these findings, together with ACORN's apparent loose governance and a lack of respect for the corporate structure, warranted a closer examination by the IRS into the financial practices of ACORN and its affiliates to determine if its tax-exempt status was appropriate.[585] This report was shared with IRS management, including Sarah Hall Ingram, Joseph Grant and Lois Lerner, in June and July 2010.[586]

The August 12, 2010 BOLO listed "ACORN Successors" as an "Issue Name" on the "BOLO List" tab. The description states that "Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications." Screeners were instructed to send these cases "to the TAG Group."[587] An entry for "Acorn Successors" appeared on copies of the BOLO lists, first on the BOLO List tab and then on the Watch List tab, examined by Committee staff from 2010 until Holly Paz removed it in June 2012.[588]

An October 7, 2010 email from Jon Wadell alerted Steven Bowling and Sharon Camarillo to two ACORN-related cases. Waddell recommended "an alert be sent informing agents/screeners that to

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[580] Acorn on Brink of Bankruptcy, Officials Say, New York Times (May 19, 2014).
[581] *Id.*
[582] *Id.*
[583] Email chain between Cindy Thomas, Steven Grodnitzsky and others (Mar. 22, 2010) IRS0000458579448–51.
[584] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.
[585] IRS, ACORN Research Activities Summary Report (Apr. 28, 2010) IRS0000713482–87.
[586] IRS, Memorandum on Investigative Research Findings (June 21, 2010) IRS0000713488; Email from Nancy Todd to Sarah Hall Ingram, Joseph Grant, Lois Lerner, and others (July 8, 2010) IRS0000713482.
[587] Combined Spreadsheet TAG 8 12 10 (Aug. 12, 2010).
[588] *Id.*; Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434–35.

be on the lookout for the following name an application factors associated with Acorn related cases."[589] In addition, he suggested adding the following "factors to the Watch Issue Description section for this category":

> 1. The name(s) Neighborhoods for Social Justice or Communities Organizing for Change
> 2. Activities that mention Voter Mobilization of the Low-Income/Disenfranchised
> 3. Advocating for Legislation to Provide for Economic, Healthcare, and Housing Justice for the poor.
> 4. Educating Public Policy Makers (i.e. Politicians) on the above subjects.[590]

Sharon Camarillo forwarded the alert to John Shafer instructing that his screeners "be on the lookout for these cases."[591] John Shafer forwarded Camarillo's email to IRS screeners in his group.[592]

The Watch List tab of the February 2, 2011 BOLO instructed IRS screeners to look for the words "ACORN" or "Communities for Change in the name and/or throughout the application." It read:

> Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.[593]

ACORN cases were also being screened in 2012. Ron Bell wrote an email to Carter Hull on May 13, 2012 stating:

> I've got a case that I believe is an acorn successor org. I googled the name of the org and that is where several websites (such as the capital research center) indicate that it is an acorn successor. The BOLO list states to contact you . . . Please advise how you want to process this case.[594] [sic]

5. Groups Using "Occupy" in Their Name Were Flagged Using the BOLO Watch List Tab

In January 2012, the IRS Determinations office began screening organizations with the term Occupy in their name on the Watch List tab on the BOLO. After a news article was distributed within the IRS that suggested some organizations affiliated with the Occupy movement were seeking tax-exempt status, Cindy Thomas told Steven Bowling, the manager of the IRS Determinations group that handled political advocacy cases, that the Occupy cases should

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[589] Email chain between Jon Waddell, Steven Bowling, Sharon Camarillo and others (Oct. 7–8, 2010) IRS0000410433–34.
[590] *Id.*
[591] Email chain between Jon Waddell, Sharon Camarillo, John Shafer and others (Oct. 7–8, 2010) IRS0000389342.
[592] *Id.*
[593] BOLO Spreadsheet (Feb. 2, 2011) IRS0000389362.
[594] Email from Ronald Bell to Carter Hull (May 13, 2012) IRSR0000054963.

be referred to his Group so they could be worked "with the advocacy cases." [595]

Steven Bowling told Cindy Thomas that the BOLO list would need to be modified in order to properly flag the Occupy cases, but expressed frustration that the IRS did not want to use the words "Tea Party" or "Occupy" in screening.[596] Thomas replied:

> We can't refer to "tea party" cases because it would appear as though we're singling them out and not looking at other Republican groups or Democratic groups.
>
> How about a compromise—What do you think about changing the description for advocacy organizations on the Emerging Issues tab to that which you've included under scenario #1; then, you could include the Occupy description from your scenario #2 on the Watch For tab specifying that these cases should be referred to your group? We could still have the same grade 13 agents working the advocacy and Occupy cases.[597]

After receiving this instruction from Thomas, Bowling added "$ocial economic reform/movement" to the BOLO entry for "current political issues." In addition, Bowling added "Occupy orgs" to the BOLO Watch List tab. Ronald Bell wrote an email to Bowling questioning the need for a separate entry for "Occupy orgs" on the Watch List since he thought "$ocial economic reform . . . was our code word' for the occupy organizations." Bowling replied, "I think we can leave it in. Some of the orgs are pushing that other than occupy groups." [598]

Emails written in May 2012 show that at least two Occupy cases were flagged by IRS screeners after the term was added to the BOLO list.[599] The next month, Holly Paz had Cindy Thomas revised the BOLO list to "remove the references to Acorn and Occupy from the "Watch List" and replaced the "Emerging Issue" description of ideological positions of conservative and liberal groups with neutral language.[600]

B. Liberal and Progressive Organizations Experienced Delayed Processing

Some tax-exempt applicants affiliated with Emerge, ACORN successor groups, and other left-leaning applications waited years for a determination from the IRS after their applications were flagged by screeners and held up or forwarded to the EO Technical office in Washington, D.C.

In the case of three of the Emerge groups, it took three years from the time they applied until the applications were denied. Previously, the IRS erroneously approved five applications affiliated

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[595] Email chain between Cindy Thomas, Steven Bowling and Peggy Combs (Jan. 20, 2012) IRS0000013418–19; Email chain between Cindy Thomas, Steve Bowling, Peggy Combs and Mary Sheer (Jan. 20, 2012) IRSR0000013414–15.

[596] Email chain between Cindy Thomas, Steven Bowling and Peggy Combs (Jan. 20, 2012) IRS0000013418–19.

[597] Email from Cindy Thomas to Steven Bowling (Jan. 24, 2012) IRSR0000621814–17.

[598] Email between Steven Bowling and Ronald Bell (Jan. 25, 2012) IRS0000013187.

[599] Email chain between Tyler Chumney, Peggy Combs and others (May 24–27, 2012) IRSR0000013234–48.

[600] Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434–35.

with Emerge for 501(c)(4) status from 2004 through 2008, including the main umbrella organization Emerge America.[601] These five Emerge approvals were subsequently determined to have been in error because Emerge groups were found to benefit the Democratic Party. Their 501(c)(4) status was revoked.[602]

On September 2008, emails show that IRS employee Donna Abner recommended issuing an "alert" for other incoming Emerge cases because of the "partisan nature of the cases" as well as a reminder that "sensitive political issue' cases are subject to mandatory review" per IRS guidelines and subject to full development.[603]

EO Technical staff asked EO Determinations to transfer the Emerge Maine and Emerge Nevada applications on October 10, 2008, to be held "until the litigation on this issue has concluded and then we will work them."[604] EO Technical instructed EO Determinations to hold any additional Emerge cases "pending the outcome of a similar issue in the DLC litigation."[605] A January 2011 Sensitive Case Report indicates that Emerge Massachusetts applied for tax-exempt status on August 15, 2008, and was transferred to EO Technical on April 16, 2009. Emerge Oregon applied on February 9, 2010, and its application was transferred to EO Technical on April 14, 2010. The IRS did not inform the four Emerge groups, whose cases were selected for review and then developed at EO Technical until 2011, that their applications had been denied, creating delays of approximately three years for some of the organizations.[606]

C. Organizations Deemed To Be Acorn Successors Experienced Delays

Organizations the IRS determined to be related to the disbanded ACORN organizations also experienced significant delays. EO Determinations began receiving ACORN-successor organization applications in April 2010.[607] On June 8, 2010, the Acting Manager of EO Technical, Steven Grodnitzky, instructed Cindy Thomas not to develop or resolve ACORN-related cases until they received further instruction.[608]

On July 15, 2010, Cindy Thomas alerted Robert Choi that EO Determinations received another "potential successor to Acorn" applying for 501(c)(3) status related to a 501(c)(4) ACORN-successor application received in April 2010.[609] Thomas reported that "[w]e

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[601] Email chain between Donna Abner, Cindy Thomas and others (Sep. 8, 2008) IRS0000012292–93.

[602] Email from Nalee Park to Justin Lowe (Nov. 16, 2011) IRS0000636384 (Email attachments containing taxpayer information omitted by Committee staff).

[603] Email chain between Donna Abner, Cindy Thomas and others (Sep. 8, 2008) IRSR0000012292–93.

[604] Email chain between Justin Lowe to Jon Waddell (Oct. 10, 2008) IRS0000012299–300.

[605] Email chain between Deborah Kant, Cindy Wescott and others (Oct. 16, 2008) IRS0000012304.

[606] TE/GE Division Sensitive Case Report (Jan. 18, 2011) IRSR0000147518. Although this document is dated "January 18, 2010," it references events in January 2011. Therefore, we believe that it was mistakenly dated 2010 instead of 2011.

[607] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.

[608] Email chain between Steven Grodnitzky, Cindy Thomas, Donna Abner and others (June 8, 2010) IRS0000054956.

[609] Email chain between Cindy Thomas, Robert Choi and others (July 15–16, 2010) IRS0000054949–50.

placed the other case in suspense pending guidance from the Washington Office and are doing so with this case."[610]

Cindy Thomas emailed Holly Paz on October 24, 2010, with a request for technical assistance on ACORN-successor cases from EO Technical. Over a month later, on November 26, 2010, Holly Paz told Cindy Thomas to work with Carter Hull in EO Technical on the Acorn-successor cases, the same employee in charge of developing the Tea Party cases in 2010 and early 2011.[611]

An EO Determinations employee contacted Carter Hull on March 4, 2011, telling him that "we have four exemption applications for organizations that have previously operated as ACORN. Could we arrange to discuss these cases with you by phone sometime next week?"[612] It is unclear what guidance Carter Hull provided EO Determinations on the ACORN-successor applications but he informed another EO Determinations employee in July 2011, that "his manager informed him that he should not be doing research for our cases."[613] Hull asked EO Determinations to remove his name "from the BOLO list as a contact person."[614]

In April 2013, EO Technical was still developing two ACORN-successor applications, including one of the applications that spurred EO Determinations managers to alert screeners to flag ACORN-successor cases in October 2010.[615] The other case mentioned in the email was transferred from EO Determinations to EO Technical in April 2012.[616] ACORN-successor cases were still on hold as of May 2013, according to Cindy Thomas.[617]

Other left leaning and progressive groups told media outlets their applications were delayed as well. One left-leaning group, Alliance for a Better Utah, told NPR Morning Edition in a story that aired on June 13, 2013, that it had been waiting almost 600 days for a determination on its application for 501(c)(3) status to do "voter-education work."[618] The same group told Politico a month later that the delay was "causing problems because it can't apply for foundation and grant money while that application to become a charitable organization is in limbo."[619] Progress Texas reported that it took "18 months to get its 501(c)(4) approval."[620]

D. Inappropriate and Burdensome Information Requests

As described in Section VII(F) of this report, in January 2012 the IRS Determinations Unit made unnecessary and burdensome requests to some tax-exempt applicants that in some cases included requests for donor information. IRS officials decided the request of the donor information was inappropriate and ordered the donor in-

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[610] *Id.*
[611] Email chain between Holly Paz, Cindy Thomas and others (Oct. 14, 2010—Jan. 19, 2011) IRS0000054942–44.
[612] Email from John McGee to Carter Hull (Mar. 4, 2011) IRS0000631878.
[613] Email chain between Melissa Conley, William Agner and others (July 11, 2011) IRS0000054945–46.
[614] *Id.*
[615] Email chain between Holly Paz, Cindy Thomas and others (Apr. 3, 2013) IRS0000054976–78.
[616] *Id.*
[617] See response submitted by Cindy Thomas, IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).
[618] *NPR*, Liberal Groups say They Received IRS Scrutiny Too (June 19, 2013).
[619] *Politico*, IRS Scrutinized Some Liberal Groups (July 22, 2013).
[620] *Id.*

formation destroyed.[621] Some left-leaning/progressive groups received inappropriate development questions regarding donor information while experiencing lengthy delays in the application process. At least three of the twenty-seven groups that received donor information requests were left-leaning applicants for tax-exempt status.[622]

IX. ADDITIONAL FINDINGS NOT RELATED TO THE DETERMINATIONS PROCESS

This section includes findings that are not directly related to the processing of applications for tax-exempt status, but are nonetheless relevant to the IRS's treatment of tax-exempt organizations. We describe how the IRS failed to perform any audits of political advocacy performed by tax-exempt organizations for more than three years. We also describe how the IRS failed to produce documents that were responsive to a 2010 FOIA request seeking information about how the IRS was processing Tea Party applications. Finally, we discuss TIGTA's investigation of several improper disclosures of information related to conservative organizations.

A. The IRS Struggled To Decide How To Review Allegations of Improper Political Campaign Intervention by Tax-Exempt Organizations, Including Tea Party Groups

The first area of supplemental findings concerns the IRS's process for examining allegations of impermissible political campaign intervention by tax-exempt organizations. The Committee's investigation revealed numerous serious problems that rendered the IRS incapable of resolving allegations regarding the Tea Party and other political advocacy organizations.

1. General Processes for Audits of Tax-Exempt Organizations

The Examinations unit, within the Exempt Organizations Division, monitors whether organizations that have been approved for tax-exempt status are operating in accordance with federal tax law.[623] At all times relevant to the Committee's investigation, Nanette Downing was the Director of EO Examinations and reported directly to Lois Lerner.[624] Unlike most other IRS divisions, which are administered at the IRS headquarters in Washington, D.C., EO Examinations has its head office in Dallas, Texas. IRS officials explained that EO Examinations was placed outside of Washington to ensure that other divisions of the IRS in Washington did not improperly influence the tax enforcement decisions for exempt organizations.[625]

EO Examinations serves as the repository for allegations that tax-exempt organizations are engaged in improper conduct (or "referrals"). All referrals—including those that originate in other divisions within the IRS, as well as those made by individuals or enti-

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[621] SFC Interview of Holly Paz (July 26, 2013) pp. 146–147.
[622] Email chain between Judith Kindell, Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868 (email attachment containing taxpayer information omitted by Committee staff).
[623] IRS, Charity and Nonprofit Audits: Exempt Organizations Examinations.
[624] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 6, 9, 15.
[625] *Id.* p. 53; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 71.

ties outside of the IRS—are all given the same consideration.[626] EO Examinations employees evaluate the referral based on its content and decide if the IRS will investigate further.[627] Apart from the referral process, EO Examinations employees also use other criteria to determine if the IRS needs to open a review.

EO Examinations performs two kinds of reviews of tax-exempt organizations:

- **Examinations** (also known as **audits**) are reviews of a taxpayer's books and records to determine tax liability, and may involve the questioning of third parties. For exempt organizations, an examination also determines an organization's qualification for tax-exempt status. If the IRS determines that an organization is not complying with the tax law, the IRS may impose a tax liability and, in some instances, may also revoke the organization's tax-exempt status.[628]
- **Compliance checks** are less comprehensive reviews used to determine if an organization is following the required recordkeeping and reporting requirements, and whether its activities are consistent with its stated tax-exempt purpose. Compliance checks are usually conducted using information already in the possession of the IRS, although the IRS will sometimes request additional information from the taxpayer. If the IRS concludes that the organization might owe a tax liability, it may refer the organization for a full examination.[629]

The Review of Operations (ROO) is a division within EO Examinations that performs compliance checks on tax-exempt organizations, usually 3–5 years after an organization has been approved for tax-exempt status. Unlike other types of compliance checks, IRS employees are not permitted to contact the taxpayer during ROO compliance checks.[630] In addition, because the ROO does not conduct an examination, it is not authorized to review an organization's books and records or ask questions regarding tax liabilities or the organization's activities.[631]

When the ROO receives a referral, ROO employees review the referral, along with information in the possession of the IRS, to determine if the allegations can be supported. The ROO then recommends one of the following options:

- Start an examination;
- Start a compliance check; or
- Take no further action.[632]

Thus, a referral has the effect of bringing the referred group to the attention of the ROO and subjecting the group's information to review by ROO employees—thereby increasing the probability (but not guaranteeing) that the IRS will commence an examination or compliance check of the subject organization.[633]

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[626] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 35–37.
[627] *Id.* pp. 26–29.
[628] IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444–46; IRS, Charity and Nonprofit Audits: Closing/Conclusion.
[629] IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444–46; IRS Publication 4386, *Compliance Checks*, Rev. 4–2006.
[630] IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444–46.
[631] *Id.*
[632] Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121–28.
[633] Downing repeatedly disputed this conclusion during her interview conducted by Committee staff:

2. The Changing Process for Handling Allegations of Improper Political Campaign Intervention

In recent years, the IRS altered its process for reviewing the political activities of tax-exempt organizations. These changes were spurred by an increasing number of referrals to EO Examinations starting in 2010, after the *Citizens United* decision, particularly referrals related to political campaign intervention by 501(c)(4) organizations.[634] By the end of 2010, Downing had suspended all examinations of 501(c)(4) organizations that were alleged to have engaged in improper political activities.[635]

In 2011, under the direction of Miller, Lerner and Downing, the IRS developed a new approach for referrals of political campaign intervention called the "Dual Track" process. This process allowed the ROO to perform its own analysis of organizations, using information from the annual Form 990 that tax-exempt organizations are required to file. The ROO would consider its analysis of the data, as well as any referral, when deciding if it should recommend a review of an organization's political campaign intervention.[636]

The ROO's recommendation would then be reviewed by a panel of career Federal employees, known as the Political Action Review Committee (PARC).[637] The PARC could either concur with the ROO's recommendation or modify it. If the PARC selected an organization for examination or a compliance check, the PARC would also determine if the referral was high- or regular-level priority.[638]

The Dual Track process was modified in 2012, after an internal review found that the ROO's written explanations of its decisions "arguably [gave] the impression that somehow the political leanings of [the organizations] mentioned were considered in making the ultimate decision" of whether or not to recommend an examination or compliance check.[639] The internal review also noted other problems with the Dual Track process, including choices made for reasons unrelated to the tax issues presented (such as the effect that an examination might have on an organization's fundraising ability).[640]

Although examinations related to political campaign intervention were suspended, the IRS continued to receive allegations that Tea Party organizations and other advocacy groups had engaged in im-

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Q. But you had indicated earlier that if a group is referred to the ROO, one potential outcome is that there will be an exam. Is that right?

A. Correct.

Q. Okay. So that referral to the ROO would increase the chances that it will have an exam.

A. No.

Q. That follows, right?

A. No. No, I don't agree with that statement. I mean, pulling up project data analytics I mean, it doesn't give you a higher chance than anything else.

SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 65. The Committee did not find Downing's testimony on this point to be credible.

[634] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 30–31.

[635] *Id.* pp. 63–64. The IRS continued to examine other types of allegations against tax-exempt organizations.

[636] Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121–28.

[637] IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444–46.

[638] Email from Diane Letourneau to Sarah Ingram, Nikole Flax, Lois Lerner and others (Oct. 13, 2011) IRS0000468121–28.

[639] Email from Lois Lerner to Nikole Flax, Nanette Downing and others (July 9, 2012) IRS0000179069–71.

[640] *Id.*

proper political campaign intervention. The IRS treated those allegations as referrals and sent them to EO Examinations.[641] In all, the IRS received 53 referrals related to 24 applicants for tax-exempt status that the IRS identified as "political advocacy" organizations.[642] These referrals were eventually reviewed using the Dual Track criteria and some were selected for examination;[643] however, as of June 2015, the IRS had not conducted any examinations in response to these referrals and was not actively considering the referrals.[644]

Ultimately, the Dual Track process was suspended in June 2013 at the direction of TE/GE managers installed by then-Principal Deputy Commissioner Daniel Werfel,[645] and permanently discontinued in 2015.[646] As a result, from the end of 2010 until April 2014, the IRS did not perform any examinations of 501(c)(4) organizations related to impermissible political campaign intervention.[647] Since the Dual Track process was discontinued in 2015, the IRS has sent referrals of impermissible political campaign intervention to the PARC, where they are reviewed in the same manner as other referrals related to tax-exempt organizations.[648] The IRS also continues to evaluate data submitted on Form 990 tax returns to assess if organizations have engaged in improper political activity.[649]

3. EO Determinations Employees Recommended that the ROO Review the Activities of Some Tea Party Organizations, and a Smaller Number of Progressive Organizations, for Improper Political Campaign Intervention

In 2011, as the number of political advocacy applications in EO Determinations' inventory increased, the IRS considered whether all Tea Party cases should simply be approved and then referred to the ROO for follow-up compliance checks. As Paz explained in July 2011:

> EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes, and similar matters. . . . Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. . . .
>
> Lois would like to discuss our planned approach for dealing with these cases. We suspect that we will have to approve the majority of the c4 applications. Given the volume of applications and the fact that this is not a new issue (just an increase in frequency of the issue), we plan to

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[641] Email chain between Lois Lerner, Nicole Flax, David Fish and others (Sep. 28–Oct. 3, 2011) IRS0000263043–67.
[642] IRS Memorandum produced to SFC (Sep. 4, 2013) IRS0000378444–46.
[643] *Id.*
[644] IRS Briefing for SFC Staff (June 22, 2015).
[645] *Id.*
[646] IRS Briefing for SFC Staff (June 22, 2015).
[647] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 63–64; IRS Briefing for SFC Staff (Aug. 26, 2014). In April 2014, the IRS re-opened 26 examinations that had been selected under the Dual Track process related to allegations of impermissible political campaign intervention. These 26 examinations were all concluded by June 2015. None resulted in revocation of tax-exempt status, although some of the organizations received a written advisory. IRS Briefing for SFC Staff (June 22, 2015).
[648] *Id.*
[649] *Id.*

> [have] EO Determinations work the cases. . . . We will also refer these organizations to the Review of [O]perations for follow-up in a later year.[650]

This idea was discussed during the July 5, 2011 meeting that Lerner convened with Thomas and other EO employees. Lerner elected not to follow this approach, because she did not think that EO Examinations had enough employees to handle the increased workload.[651]

Although Lerner did not uniformly implement this approach, EO Determinations employees started to recommend that the ROO review the activities of certain political advocacy groups in the future. This happened with greater frequency during the "bucketing" process in 2012, when a large number of applications were recommended for approval subject to later review by the ROO.[652] EO managers, including Thomas and Paz, were aware of at least some of these recommendations.[653]

From the end of 2011 through May 2013, EO Determinations employees recommended that the ROO review 60 political advocacy organizations.[654] After the TIGTA report came out, Downing learned that these 60 "Tea Party case referrals" had been "sitting in a pile for quite a while" in the ROO.[655] Analysis performed by the Committee staff indicated that of these groups, 41 (68%) were conservative or Tea Party groups, 7 (12%) were progressive or liberal, and 12 (20%) had no obvious political affiliation. After consulting with managers installed by then-Principal Deputy Commissioner Werfel, Downing returned these referrals to EO Determinations for further processing.

Despite substantial time and effort expended by the IRS, the agency failed to perform any meaningful oversight of political advocacy performed by tax-exempt organizations for a three-year period. Although management has made recent changes to the examination process, concerns persist that the IRS could open examinations for an inappropriate reason. In July 2015, the Government Accountability Office (GAO) issued a report on the criteria and processes used by the IRS to select exempt organizations for examination.[656] GAO concluded that "EO has some controls in place that are consistent with internal control standards, and has implemented those controls successfully," but found "several areas where EO's controls were not well designed or implemented." Most significantly, GAO stated that:

> The control deficiencies GAO found increase the risk that EO could select organizations for examination in an

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[650] Email chain between Holly Paz and Janine Cook (July 18–19, 2011) IRS0000429489.

[651] SFC Interview of Holly Paz (July 26, 2013) p. 139; Email chain between Cindy Thomas, Ronald Bell, Steve Bowling and others (July 5, 2011) IRS0000620735–40.

[652] Email chain between Sharon Light, Cindy Thomas and others (Aug. 27–28, 2012) IRS0000573175–76; Email from Janine Estes to Hilary Goehausen (July 11, 2012) IRS0000582651 (Email attachment containing taxpayer information omitted by Committee staff).

[653] Email chain between Sharon Light, Cindy Thomas and others (Aug. 27–28, 2012) IRS0000573175–76.

[654] IRS Chart produced to SFC (Sep. 4, 2013) IRS0000378447–48.

[655] SFC Interview of Nanette Downing (Dec. 6, 2011) pp. 47–48.

[656] GAO, IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened (July 2015) GAO–15–514.

> unfair manner—for example, based on an organization's religious, educational, political, or other views.[657]

Although the GAO did not consider whether these deficiencies actually led to improper selection of organizations for examination, these findings confirm that the IRS must continue to implement changes to ensure that examinations are opened only when warranted, based on a fair and impartial decision.

B. The IRS Failed To Produce Responsive Documents to a FOIA Request in 2010 Seeking Information About its Handling of Tea Party Applications

The second area of supplemental findings concerns the IRS's handling of a 2010 Freedom of Information Act (FOIA) request.

In June 2010, a freelance reporter made a FOIA request to the IRS for records that explained how the IRS was processing applications for tax-exempt status submitted by Tea Party organizations.[658] As described below, by the time of the request, the IRS had generated numerous documents that satisfied the search criteria and explained how the agency was handling Tea Party applications. But the IRS performed a deficient search that revealed only a few of these numerous responsive documents in existence at the date of the request. Then, the IRS elected not to produce any of the documents it identified, incorrectly claiming that the agency had "no responsive documents." As a result, the reporter did not obtain any of the documents showing how Tea Party cases were handled in 2010.

On June 3, 2010, the IRS received a FOIA request from freelance reporter Lynn Walsh that sought:

> Documents relating to any training, memos, letters, policies, etc. that detail how the "Tax Exempt/Government Entities Division" reviews applications for non-profits, 501(c)(3)s, and other not-for-profit organizations specifically mentioning "Tea Party," "the Tea Party," "tea party," "tea parties."[659]

The IRS determined that Walsh's letter was a valid request under FOIA and assigned it to Sharon Baker, a Senior Disclosure Specialist in the Washington, D.C. Disclosure Office. Baker prepared an SCR for the FOIA request, noting that it was "likely to attract media or Congressional attention" and forwarded a search notice to Michael Guiliano in EO Guidance and Michael Seto in EO Technical.[660] A copy of the incoming request was also sent to the Office of Chief Counsel and to Media Relations.[661]

On July 6, 2010, EO Guidance manager David Fish sent two responsive documents to the disclosure division: the April 19, 2010 and May 24, 2010 SCRs prepared by Hull that explained how the Tea Party cases were being handled.[662] After that, there were sev-

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[657] *Id.*
[658] 5 U.S.C. § 552 (2009).
[659] FOIA Request Letter from Lynn Walsh (June 3, 2010) IRSC003801.
[660] Email chain between Sharon Baker, Valerie Barta and others (June 14, 2010) IRSC003861–63.
[661] *Id.*
[662] Memorandum from David Fish to Manager, Disclosure with Attachments (July 6, 2010) IRSC003845–49.

eral additional document searches that were done within the EO Division and the Office of Chief Counsel through early November 2010.[663]

Inexplicably, Baker and her managers in the Disclosure Office determined that these two documents were not responsive to Walsh's FOIA request. Baker excluded the SCRs because she deemed them to be outside of Walsh's request as they were not "guidance," despite Giuliano's assertion that these documents were indeed responsive. Baker notes in the Case Report that "I have been back and forth with Matthew and I am tried [sic]."[664] Tiffany Eder and others in the Office of Chief Counsel also questioned Baker's interpretation of the request and suggested that she follow up with Walsh to clarify the scope of the request.[665] It appears that the follow up never occurred.

In response to one of the searches, a third document was sent to Baker: a "Coordinating Tea Party Cases Update Memorandum" prepared by Hull on October 18, 2010.[666] This document explained how Hull was working with Hofacre in EO Determinations to review and develop incoming Tea Party applications. Baker excluded the October 2010 memorandum on grounds that the document was not responsive to the FOIA request "since it occurred after the FOIA request was received in our office."

Ultimately, the IRS did not produce any documents to Walsh. On January 6, 2011, Disclosure Manager Marie Twarog, formally responded to Walsh's June 3, 2010 FOIA request, advising the journalist that "I found no documents specifically responsive to your request."[667]

The IRS's handling of this FOIA request reveals several troubling issues.

First, the search for responsive documents was deficient.

The IRS failed to search for relevant records in EO Determinations' Cincinnati office, even though they learned from the SCRs and Hull's memorandum that the Tea Party applications were being processed by EO Determinations employees in Cincinnati. The IRS also failed to locate numerous responsive emails generated by Rulings & Agreement employees in Washington regarding the handling of Tea Party cases, including emails to and from Lerner and Paz.

Second, the IRS's narrow reading of Walsh's FOIA request caused the agency to exclude responsive documents.

Although some IRS employees disagreed with Baker's interpretation of the request, no one in Baker's management chain overruled Baker or required her to follow up with Walsh to clarify the scope of the request. By excluding these records, the IRS violated its policies as stated in the IRM:

> Disclosure personnel must be careful not to read a request so narrowly that the requester is denied information that the agency knows exists. Some requesters may have little or no knowledge of the types of records maintained

[663] Case Notes Report (Jan. 6, 2011) IRSC003756–61.
[664] *Id.*
[665] *Id.*
[666] Fax transmission from James Mackay to Sharon Baker (Oct. 26, 2010) IRSC003782–84.
[667] Letter to Lynn Walsh (Jan. 6, 2011) IRSC003765.

> by the Service while others have greater knowledge of IRS files.[668]

Walsh's request far exceeded this standard and, in fact, was precise enough that some IRS employees, including Guiliano and others, were able to locate responsive records. The IRS erred by ruling that these records were outside of the request.

Finally, the IRS also took a narrow view of the time limits of Walsh's request.

The IRS regulations implementing FOIA state that the agency's response "shall include only those records within the official's possession and control as of the date of the receipt of the request by the appropriate disclosure officer."[669] But the IRM allows staff to include such documents at their discretion, particularly when there are delays in processing:

> In rare circumstances, a lengthy delay (e.g., 90 days) may be unavoidable before search efforts are initiated. If this occurs, the case history must be documented to explain the delay and the search period must be extended to the date of search. **Also, when appropriate in terms of good customer service and/or in the spirit of openness in government, Disclosure personnel may make a determination to include records created after the receipt date of the request.** This determination is to be made on a case-by-case basis.[670]

In this case, the IRS asked Walsh for five extensions to respond to her letter and provided its ultimate response more than 7 months after the initial request—far outside of the 20 business-day period prescribed by law.[671] IRS also conducted multiple searches of its records after finding that the initial searches were deficient, circumstances that meet the criteria of "lengthy delay" set forth in the IRM. Despite these lengthy delays and multiple searches, Baker and other officials chose not to extend the search period and instead construed the IRS policies narrowly to exclude responsive records.

Although there is no reason to believe that the IRS's handling of this FOIA request was motivated by political bias, its treatment was not consistent with the purpose of FOIA, which states "that the public has a right to know what goes on in government without having to demonstrate a need or reason".[672] The IRS's deficient response to Walsh deprived her of the information that she was entitled to under the law, including SCRs; information about the purpose and use of the BOLO; and emails between Paz, Lerner and other managers containing instructions about how these cases should be handled. If the IRS had chosen to extend the responsive period until November 2010—when EO and Chief Counsel employees performed their final searches—they could have also produced information about training on screening procedures for Tea Party applications given to EO Determinations screeners; Hull's October

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[668] IRM § 11.3.13.6.2(2) (Oct. 1, 2007).
[669] 26 C.F.R. § 601.702(c)(8)(ii) (2002).
[670] IRM § 11.3.13.6.3(13) (Oct. 1, 2007) (emphasis added).
[671] 5 U.S.C. § 552(a)(6)(A) (2009).
[672] IRM § 11.3.13.1(3) (Oct. 1, 2007).

2010 update on the status of Tea Party cases; and the first circulated BOLO spreadsheet. If this information had been made public in 2010 pursuant to a lawful FOIA request, the IRS's treatment of applications received from Tea Party organizations may have been exposed to the public in 2010, far sooner than it was. Shining the light of transparency on how the IRS was processing Tea Party applications in 2010 may have forced the IRS to have resolved those applications sooner than it eventually did. Instead, the IRS elected to release nothing and consequently, these applications were left to fester for years.

C. TIGTA Reviewed Several Allegations of Improper Disclosures of Taxpayer Information by the White House and IRS

The final area of supplemental findings concerns allegations that the IRS and White House improperly disclosed taxpayer information.

The Committee requested that TIGTA provide information about its investigations into four high-profile incidents of alleged disclosure of confidential taxpayer information by the White House and the IRS. Three of the alleged disclosures involved information about conservative organizations that applied for, or received, tax-exempt status. While the results of the investigations are considered tax return information and are thus confidential under section 6103 of the Internal Revenue Code, Committee staff believes it is in the public interest to lawfully disclose the results and status of these TIGTA investigations because the high-profile nature of the alleged disclosures raised serious concerns about public officials' handling of confidential taxpayer information.

1. Koch Industries, Inc.

On August 27, 2010, White House advisor Austan Goolsbee, during a briefing to reporters about a newly released report from the President's Economic Recovery Board on corporate tax reform, made the statement that Koch Industries may be avoiding corporate income taxes by structuring itself as an S-corporation. Mark Holden, senior vice president and general counsel of Koch Industries provided *The Weekly Standard* with a transcript of these remarks:

> So in this country we have partnerships, we have S corps, **we have LLCs, we have a series of entities that do not pay corporate income tax. Some of which are really giant firms, you know Koch Industries is a multibillion dollar businesses.** So that creates a narrower base because we've literally got something like 50 percent of the business income in the U.S. is going to businesses that don't pay any corporate income tax. They point out [in the report] you could review the boundary between corporate and non-corporate taxation as a way to broaden the base.[673]

Holden told *The Weekly Standard* in the same article:

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[673] *The Weekly Standard,* Koch Industries Lawyer to White House: How Did You Get Our Tax Information? (Sep. 20, 2010).

> I'm not accusing any one of any illegal conduct. But it's my understanding that under federal law, tax information, is confidential and it's not to be disclosed or obtained by individuals except under limited circumstances. . . . I don't know what [the senior administration official] was referring to. I'm not sure what he's saying. I'm not sure what information he has. But if he got this information—confidential tax information—under the internal revenue code . . . if he obtained it in a way that was inappropriate, that would be unlawful. But I don't know that that's the case.[674]

On September 23, 2010, seven Republican members of the Senate Finance Committee wrote a letter to TIGTA Inspector General Russell George asking that he "investigate a very serious allegation that Administration employees may have improperly accessed and disclosed confidential taxpayer information."[675]

On September 25, 2010, Holden issued a statement supporting an investigation while also stating that the "senior Obama administration official's August 27th statement is wrong—Koch Industries does pay corporate income taxes and complies with all its tax obligations."[676]

Inspector General George informed the Senate Finance Committee Republicans on September 28, 2010 that he would initiate a review of the matter.[677] The TIGTA investigation concluded in August 2011, but TIGTA refused to release the results of its inquiry to Koch Industries or Senator Grassley, citing the same confidentiality provisions that were allegedly violated.[678]

In response to inquiries from Senate Finance Committee staff in connection with this investigation, Inspector General George stated in a letter to Chairman Wyden that there was no improper disclosure on the part of Austan Gooslbee. He wrote: "[t]he allegation was disproved. We developed no evidence that IRS information pertaining to Koch Industries was either accessed for or disclosed to the President's Economic Recovery Advisory Board."[679]

2. National Organization for Marriage

On March 30, 2012, *The Huffington Post* and *Human Rights Watch* published the National Organization for Marriage's (NOM) confidential Form 990 Schedule B that contains donor information.[680] *The Huffington Post* reported that the "pro-gay rights Human Rights Campaign was sent a private IRS filing from NOM via a whistleblower."[681]

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[674] *Id.*

[675] Letter from Senate Finance Committee Ranking Member Charles Grassley, et. al. to Inspector General J. Russell George (Sep. 23, 2010).

[676] Koch Industries Statement (Sep. 25, 2010).

[677] *Bloomberg News*, White House Advisor Goolsbee's Comment on Koch Taxes Reviewed by Treasury (Oct. 7, 2010).

[678] *The National Review,* The Missing Koch Report (Aug. 20, 2013).

[679] Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).

[680] *Human Rights Campaign Blog,* One of NOM's Top Secret Donors Revealed: Mitt Romney (Mar. 30, 2012); *The Huffington Post,* Mitt Romney's PAC Funded Anti-Gay Marriage Group Under the Radar (Mar. 30, 2012).

[681] *The Huffington Post,* Mitt Romney's PAC Funded Anti-Gay Marriage Group Under the Radar (Mar. 30, 2012).

After the confidential donor information was published, Ranking Member Hatch wrote a letter on May 8, 2012 to IRS Commissioner Shulman asking that the IRS investigate to determine the source of the leak.[682]

NOM filed a lawsuit against the IRS on October 3, 2013, alleging that the IRS willfully disclosed the Schedule B Form.

In response to inquiries from Committee staff in connection with this investigation, TIGTA stated in a letter to Chairman Wyden that there was an improper disclosure of confidential taxpayer information. TIGTA determined that an IRS employee working in the Return and Income Verification Services (RAIVS) unit "printed unredacted copies of the National Organization for Marriage's IRS Form 990 . . . and the associated Schedule B Form . . . and sent them outside the IRS."[683]

The RAIVS unit is responsible for processing Form 4506–A (Request for Public Inspection or Copy of Exempt or Political Organization IRS Form) requests for public versions of tax-exempt organizations' Form 990s. However, the Schedule B of the Form 990 is confidential and should not be provided in response to a Form 4506–A public record request.[684]

TIGTA found that the "disclosure was probably a work error by the IRS employee" and that its investigation "did not identify any link between [the IRS employee] and the organizations or individuals involved in posting or publishing the unredacted forms." In addition, TIGTA did not find any evidence that the disclosure was motivated by political animus. TIGTA was "also unable to determine whether the IRS received a valid Form 4506–A . . . for the information at issue because" TIGTA "became aware of the allegation after the IRS's 45-day retention period for the Form 4506–A had passed."[685]

On August 10, 2012, TIGTA first referred the matter to the Department of Justice Public Integrity Section but it declined prosecution on September 19, 2012. TIGTA then referred the matter to the IRS "for administrative action on October 17, 2012. On January 30, 2013, the IRS issued a 'Closed Without Action' letter with a cautionary statement" to the employee involved in the disclosure.[686]

Previous to TIGTA's investigation, "IRS RAIVS unit employees had access to both redacted and unredacted copies of the IRS Form 990 and associated Schedule B Forms on the IRS's Statistics of Income Exempt Organizations Return Image Network (SEIN)." As a result of the incident, "[t]he IRS has now restricted RAIVS unit employees' access to only redacted Forms 990 maintained on the SEIN. In addition, the IRS's retention period for IRS Forms 4506–A was extended from 45 days to three years from the last day of the calendar year in which they are received."[687]

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[682] Letter from Senator Orrin Hatch to IRS Commissioner Shulman (May 8, 2012).
[683] Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).
[684] Instructions for Form 4506–A (Rev. Aug. 2014).
[685] Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).
[686] *Id.*
[687] *Id.*

3. Disclosure of Tax-Exempt Applications to *ProPublica*

In November 2012, *ProPublica* submitted a Freedom of Information Act (FOIA) request to the IRS requesting tax-exempt applications from 67 non-profit organizations.[688] In response, the IRS sent *ProPublica* records relating to 31 of the groups. However, nine of these groups' tax-exempt applications were still pending with the IRS, and were therefore still confidential.[689] On December 14, 2012, *ProPublica* published the confidential application of Crossroads GPS on its website. *ProPublica* reported:

> The IRS sent Crossroads' application to *ProPublica* in response to a public-records request. The document sent to *ProPublica* didn't include an official IRS recognition letter, which is typically attached to applications of nonprofits that have been recognized. The IRS is only required to give out applications of groups recognized as tax-exempt.[690]

An IRS spokeswoman told *ProPublica*, "It has come to our attention that you are in receipt of application materials of organizations that have not been recognized by the IRS as tax-exempt." Further she told the news organization that "publishing unauthorized returns or return information was a felony punishable by a fine of up to $5,000 and imprisonment of up to five years, or both."[691]

ProPublica disagreed with the IRS interpretation of the statute penalizing publication of the application, citing the First Amendment. Nonetheless, prior to publishing the document, *ProPublica* "redacted parts of the application to omit Crossroads' financial information."[692] On the same day *ProPublica* published the confidential tax-exempt application, the IRS requested that TIGTA investigate the matter.[693]

On January 2, 2013, *ProPublica* published details about five other pending tax-exempt applications in an article citing confidential application materials it had received from the IRS.[694]

On May 16, 2013, the Republican members of the Senate Finance Committee asked TIGTA to investigate "the IRS's improper, and likely illegal, disclosure of nine organizations' applications for tax-exempt status" to *ProPublica*.[695]

In response to inquiries from Committee staff in connection with this investigation, TIGTA stated in a letter to Chairman Wyden that there was an improper disclosure of confidential taxpayer information. TIGTA determined that an IRS employee improperly disclosed the tax-exempt applications of nine organizations that were awaiting a determination from the IRS. The organizations af-

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[688] *ProPublica*, IRS Office That Targeted Tea Party Also Disclosed Confidential Docs From Conservative Groups (May 13, 2013).
[689] *Id.*
[690] *ProPublica*, Karl Rove's Dark Money Group Promised IRS It Would Spend "Limited" Money on Elections (Dec. 14, 2012).
[691] *Id.*
[692] *Id.*
[693] Email chain between Beth Tucker, Timothy Camus, Nikole Flax and others (Dec. 14, 2012–Jan. 4, 2013) IRS0000562277–78.
[694] *ProPublica*, Controversial Dark Money Group Among Five that Told IRS They Would Stay Out of Politics, Then Didn't (Jan. 2, 2013).
[695] Letter from Senate Finance Committee Republicans to Inspector General J. Russell George (May 16, 2013).

fected were Crossroads GPS, Rightchange.com, Freedompath, Citizen Awareness Project, Americans for Responsible Leadership, A Better America Now, America is Not Stupid, YG Network, and Secure America Now. The improper disclosure was made in response to a November 15, 2012 FOIA request from *ProPublica*, an online media organization.[696]

TIGTA did not find any evidence that the improper disclosure was motivated by political animus, and referred the matter to the IRS "for administrative action on January 30, 2013."[697] TIGTA reported that "[o]n March 7, 2013, the IRS issued a 'Letter of Admonishment' to the employee responsible for the disclosure."[698] Cindy Thomas explained that the letter from *ProPublica* had requested over 67 applications "and the clerical employee in the correspondence unit was trying to go through these very quickly." Thomas told the Committee that the IRS employee responsible was a "good employee, and it was the first time that she had made a mistake."[699]

As a result of this improper disclosure, the IRS now requires that the release of tax-exempt entity documents under FOIA be approved at the IRS headquarters level.[700]

4. Republican Governors Public Policy Committee

On April 4, 2013, the Center for Public Integrity reported that it "obtained a copy of the [Republican Governors Association Public Policy Committee's] Form 990 from a website that displays tax returns online. The return included one page of the 'Schedule B' list of donors which the IRS does not require to be made public."[701]

The RGA spokesman told the Center for Public Integrity that "donor information is confidential, and its partial disclosure by the IRS was erroneous and unauthorized. In fact it is a felony to disclose the information."[702]

TIGTA investigated the circumstances behind the disclosure. They found that the Schedule B information was sent to the website by an employee in the Ogden, Utah IRS office. TIGTA concluded that the disclosure was a workplace error and found no indication this this information was intentionally disclosed. The IRS employee was subsequently disciplined by the IRS.[703]

X. CONCLUSION

This bipartisan report of the Committee concludes that between 2010 and 2013, the IRS failed to fulfill its obligation to administer the tax law with "integrity and fairness to all."[704] The IRS functioned in a politicized atmosphere following the 2010 *Citizens United* Supreme Court decision, which put pressure on the IRS to monitor political spending. Employees in the TE/GE Division, in-

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[696] Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).
[697] *Id.*
[698] *Id.*
[699] SFC Interview of Cindy Thomas (July 25, 2013) p. 120.
[700] Letter from Inspector General J. Russell George to Chairman Ron Wyden (May 22, 2014).
[701] Center for Public Integrity, IRS "Outs" Handful of Donors to Republican Group (Apr. 4, 2013).
[702] *Id.*
[703] TIGTA Briefing for SFC Staff (July 10, 2015).
[704] IRS, The Agency, Its Mission and Statutory Authority.

cluding Lois Lerner, were aware that the IRS had received an increasing number of applications from organizations that planned to engage in some level of political advocacy. Yet senior IRS executives, including Lerner, failed to properly manage political advocacy cases with the sensitivity and promptness that the applicants deserved. Other employees in the IRS failed to handle the cases with a proper level of urgency, which was symptomatic of the overall culture within the IRS where customer service was not prioritized.

As a result of these failings, a number of Tea Party and other political advocacy groups waited as long as five years to receive a decision from the IRS. These delays negatively affected applicants in many ways, including:

- Inability to gain tax-exempt status within their state until the IRS issued a determination letter;[705]
- Significant time and financial cost to respond to lengthy and burdensome IRS questions;
- Ineligibility for grants and other financial support that require IRS documentation of tax-exempt status;
- Decreased donations; and
- Financial uncertainty about whether the organization will owe a tax liability if the IRS determines that it does not meet the criteria for tax-exemption.[706]

After experiencing these problems, numerous organizations withdrew their applications for tax-exempt status and some organizations ceased to exist altogether.

The consequences of the IRS's actions in singling out organizations based on their name and subjecting them to heightened scrutiny, substantial delays, and to burdensome and sometimes intrusive questions are far reaching and troubling. Undoubtedly, these events will erode public confidence and sow doubt about the impartiality of the IRS. The lack of candor by IRS management about the circumstances surrounding Lois Lerner's missing emails may only serve to reinforce those doubts.

The IRS exercises an important and powerful role in the lives of every citizen in the country, and it is charged with the responsibility to exercise that power in a fair and impartial way. Sadly, this investigation has uncovered serious shortcomings in how the IRS exercised that authority when it processed applications for tax-exemption from organizations that were engaged in political advocacy—shortcomings that raise public doubt about whether the IRS is a neutral administrator of the tax laws. Immediate and meaningful changes, including increased accountability to Congress and strengthened internal controls, are necessary if diminished public confidence in the IRS is to be restored.

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[705] Some states require applicants to submit an IRS Determination letter before the state will confer tax-exempt status. *See, e.g.,* Georgia Department of Revenue, Tax-Exempt Organizations Frequently Asked Questions.

[706] For a discussion of these and other adverse effects of the IRS' delayed rulings, *see Politico*, From IRS: "Death by Delay" (Feb. 26, 2015).

ADDITIONAL VIEWS OF SENATOR HATCH

PREPARED BY REPUBLICAN STAFF

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I. EXECUTIVE SUMMARY

The mission statement of the Internal Revenue Service (IRS) charges its employees to "[p]rovide America's taxpayers top quality

service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all."[1] The IRS believes that "[t]his mission statement describes our role and the public's expectation about how we should perform that role."[2] Indeed, the public has a right to expect that the IRS will administer the tax code with integrity and fairness in every context. Yet for many conservative organizations that applied for tax-exempt status during the last five years, the IRS fell woefully short of this standard.

The Majority staff of the Senate Committee on Finance has conducted a thorough review of the evidence presented during the course of this investigation. Our findings are set forth in these Additional Views of Senator Hatch Prepared by Republican Staff (Additional Republican Views), which include the following five primary conclusions.

First, we found that the IRS systemically selected Tea Party and other conservative organizations for heightened scrutiny, in a manner wholly different from how the IRS processed applications submitted by left-leaning and nonpartisan organizations.

Our investigation affirmed the conclusion of the Treasury Inspector General for Tax Administration (TIGTA) in its May 2013 report that "[t]he IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention."[3] The inappropriate criteria were initially developed and applied by revenue agents in the Cincinnati Exempt Organizations Determinations office. While these actions were arguably outside the scope of normal IRS operating procedure, the hallmarks of disparate treatment—and the resulting harm to conservative organizations—occurred after the applications were raised to IRS managers in the Washington, D.C. headquarters in March 2010. From that point forward, Lois Lerner and other senior managers directed the course of the applications and made decisions that directly resulted in increased scrutiny, long delays, and requests for inappropriate information.

A key finding is that at the time when the IRS developed and employed the inappropriate criteria to process Tea Party applications, it did not consider how each of the affected groups operated. The initial Sensitive Case Report for Tea Party applications, prepared in April 2010, indicates that "[t]he various 'tea party' organizations **are separately organized**, but appear to be part of a national political movement that **may be involved** in political activities."[4] Soon thereafter, the IRS considered developing a "template" questionnaire to send to Tea Party applicants—an approach that had been used successfully in the past when the IRS received numerous applications from groups that shared common characteris-

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[1] IRS, The Agency, Its Mission and Statutory Authority.

[2] *Id.*

[3] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, Audit Report 2013–10–053 (May 14, 2013), Highlights. We commend TIGTA for their thorough audit and report on this issue.

[4] Email from Richard Daly to Sarah Ingram, Joseph Grant and others (June 6, 2010) IRS0000163997–164013 (email attachments containing taxpayer information omitted by Committee staff).

tics. Holly Paz explained why the IRS rejected this approach for the Tea Party applications:

> Generally, you know, in situations where you are talking about using a template or—our goal is to group things for consistency. You wouldn't want similarly situated organizations that are engaged in similar activities to get different answers. Some to get approved and some to get denied. **But here, from what Carter Hull was saying, the organizations were very different. Some were represented by attorneys and appeared very sophisticated. Some were very small grassroots organizations. Some had talked about educational activities. Others talked more about candidate activity. So there was a lot of variety.** [5]

Although the IRS knew that the Tea Party applications were too dissimilar to be grouped under a common template, it continued to segregate them for screening and processing based on the presence of certain key words or phrases in the applicants' names or applications like "Tea Party," "9/12" and "Patriots," as well as indicators of political views that included being concerned with government debt, government spending or taxes, educating the public via advocacy or lobbying "to make America a better place to live," or being critical of how the country was being run.[6] At the time when the IRS segregated the Tea Party applications, they had little or no firsthand knowledge of the organizations' actual or planned activities. Thus, the unifying factor for how Tea Party applicants were handled was not specific activities, but rather an underlying political philosophy.

This factor sets apart the IRS's treatment of conservative organizations from left-leaning and nonpartisan organizations. With one exception that affected just two organizations, all left-leaning organizations that the Minority alleges were improperly treated participated in activities that legitimately called their tax-exempt status into question.[7] The IRS did not "target" these groups based on their names or ideologies, but instead evaluated their actual activities that were known to the IRS—activities that, in many cases, properly resulted in denial or revocation of tax-exempt status. Although some left-leaning organizations that applied for tax-exempt status also experienced delays, we found no evidence that the IRS scrutinized left-leaning organizations in the same manner, to the same extent, or for the same politically-motivated reasons as it targeted Tea Party and other conservative organizations. Instead, those delays were merely a symptom of a culture within the IRS that does not value customer service.

The IRS's inequitable treatment caused great harm to conservative organizations, the vast majority of which were small, local

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[5] SFC Interview of Holly Paz (July 26, 2013) p. 71 (emphasis added).

[6] Email chain between John Shafer, Cindy Thomas, Steve Bowling, and others (June 1–10, 2011) IRS0000066837–40.

[7] The two liberal organizations that were improperly handled were affiliated with the Occupy movement. As discussed below in Section V(B)(3), the IRS briefly delayed these applications based on a poor decision by EO managers in Cincinnati. The Minority does not allege that these groups were subject to a concerted effort by IRS senior management to delay processing, nor do they allege that these groups were actually harmed by the IRS's actions.

groups. These groups had limited funding and were ill-equipped to respond to the IRS's tactics of delaying their applications and then buffeting them with an almost innumerable number of requests for information. As a result, many of the Tea Party groups seeking tax-exemption gave up on the process; and some of these groups ceased to exist entirely, based at least in part on their failure to secure tax-exempt status.

Second, our investigation revealed an environment within the IRS where the political bias of individual employees like Lois Lerner can, and sometimes does, influence decisions.

Structurally, the IRS is a bureau within the Treasury Department, which precludes the IRS from being truly independent of the governing administration. We found that within the IRS, the union exerts extreme influence on employees in nearly every facet of their employment. The union itself favors the Democratic Party and contributes money almost exclusively to its candidates, which makes it difficult for the agency to remain apolitical. These influences are borne out in the number of IRS employees who have violated Federal laws designed to prevent government employees from exerting personal political bias while on the job.

Within this atmosphere, IRS upper management gave the Director of Exempt Organizations Lois Lerner free rein to manage applications for tax-exempt status. We found evidence that Lerner's personal political views directly resulted in disparate treatment for applicants affiliated with Tea Party and other conservative causes. Lerner orchestrated a process that subjected these applicants to multiple levels of review by numerous components within the IRS, thereby ensuring that they would suffer long delays and be required to answer burdensome and unnecessary questions. Lerner showed little concern for conservative applicants, even when members of Congress inquired on their behalf, allowing them to languish in the IRS bureaucracy for as long as two years with little or no action. The IRS began to resolve these applications only after some of the problems became public in 2012. By that time, the damage had been done.

Third, the IRS has shown a pattern of continually misleading Congress about its handling of applications submitted by Tea Party organizations.

Top IRS management including Doug Shulman, Steve Miller, and Lois Lerner made numerous misrepresentations to Congress in 2012 and 2013 regarding the IRS's mistreatment of Tea Party organizations. These three individuals made oral and/or written assertions to Congress justifying and defending the IRS's processing of applications for tax exemption from Tea Party groups during this time period. In reality, that IRS processing included subjecting the organizations to extraordinary delays and causing them to divulge unprecedented amounts of highly irrelevant and, in many cases, confidential information. Contrary to their oral and/or written statements to Congress, Shulman, Miller and Lerner knew, or had reason to know, that the IRS's processing of those applications was improper and that the IRS's demands for information from those groups was unwarranted. Moreover, Shulman, Miller and Lerner concealed information from Congress regarding the processing of those applications which included the fact that the IRS had singled

out Tea Party groups for additional scrutiny based on their political views.

The pattern of deception engaged in by Shulman, Miller, and Lerner from 2012 to 2013 was designed to throw Congress off the scent of IRS wrongdoing so as to allow the IRS to put into place remedial half-measures aimed at addressing the targeting, the long delays, and the collection of highly detailed but irrelevant information from Tea Party applicants. By actively misleading Congress about the IRS's mistreatment of Tea Party groups, Shulman, Miller and Lerner effectively obstructed Congress in the exercise of its authority to oversee the activities of the IRS.

Fourth, soon after the Obama Administration began a concerted effort to constrain spending on political speech, the IRS and other executive agencies began scrutinizing conservative organizations that had, or sought, tax-exempt status.

The White House's focus on this issue intensified after the Supreme Court issued its *Citizens United* decision in January 2010, starting with President Obama's castigation of the Court in his State of the Union address and continuing throughout 2010 until the mid-term elections.

We found clear evidence that the IRS and other agencies heeded the President's call. Just a few weeks after the President's State of the Union address, the IRS made the pivotal decision to set aside all incoming Tea Party applications for special processing—a decision that would subject those organizations to long delays, burdensome questions, and would ultimately prove fatal to some of them. Around that same time, the Department of Justice was considering whether it could bring criminal charges against 501(c)(4) organizations that engaged in political activity. The Federal Election Commission had also opened investigations into conservative organizations that aired political ads. The IRS met with both agencies, providing input on the Department of Justice's proposals and information to the Federal Election Commission on organizations that were under investigation. These actions leave little doubt that when Congress did not pass legislation to reduce spending on political speech, the administration sought alternative ways to accomplish the same goal.

Regrettably, the Majority staff was not able to determine the full extent of Treasury Department and White House involvement in this matter. The Treasury Department did not fully cooperate with the Committee's requests to make witnesses and documents available to the Committee. As a result, the Committee interviewed only three current and former employees of the Treasury Department and did not have access to the full scope of relevant documents. Similarly, the Committee did not have sufficient access to White House records or employees. Together, these gaps in knowledge prevent us from determining when the Obama Administration and the Treasury Department first became aware that the IRS was targeting Tea Party groups. They also prevent us from concluding that the Obama Administration and the Treasury Department did not direct, approve of, or allow any aspect of the targeting of Tea Party groups.

Regardless of whether an explicit directive was given, the President's use of his bully pulpit had the effect of increasing scrutiny on conservative organizations, rendering a direct order to individual employees unnecessary.

Finally, the IRS harmed the Committee's investigation by failing to properly preserve a significant portion of Lois Lerner's email, resulting in its loss, and then concealing that loss from the Committee for months.

As discussed more completely in Section II(C) of the Bipartisan Investigative Report, in early February 2014, the IRS determined that it could not locate many of Lois Lerner's emails dating from 2010 and 2011, a period crucial to the Committee's investigation. Upon conducting an inquiry into the matter, the IRS discovered that many of these emails had been stored on Lerner's laptop computer and that the computer suffered a hard drive failure in June 2011. While IRS officials were able to determine why many of Lerner's were missing, they incorrectly assumed that server backup tapes containing copies of those emails had been overwritten, and thus failed to attempt to recover records from those backup tapes. Based on that faulty assumption, the IRS ultimately concluded in April 2014 that Lerner's missing emails were permanently lost and so advised the Treasury Department, which in turn, notified the White House. However, the IRS failed to simultaneously inform the various Congressional committees conducting investigations into the IRS's treatment of Tea Party organizations, choosing instead to conceal this fact from Congress.

In March 2014, this Committee asked the IRS to provide it with a written statement attesting that all documents requested by the Committee and relevant to its investigation had been produced to the Committee. Rather than provide the attestation, the IRS submitted to the Committee on June 13, 2014 a rambling, nearly incomprehensible letter that, with attachments, was 27 pages in length. Buried nearly halfway through the letter was an admission that the IRS had lost an undetermined number of Lerner's emails from 2010 and 2011, and that backup tapes that once contained those emails no longer existed. The circumstances surrounding the IRS's dilatory admission regarding the lost emails is troubling, as it strongly suggests that had it not been for the Committee's request for an attestation, the IRS may never have revealed to it the existence of the missing emails.

Moreover, in a March 19, 2014 letter to the Committee, the IRS asserted that it had completed its production of documents as requested by the Committee and urged it to release its final report on the investigation. As explained above, in February 2014, IRS officials knew that a substantial number of Lerner's emails had been lost as a result of the hard drive failure, and might not be recoverable from any other source. Accordingly, it is difficult to reconcile the IRS officials' awareness of the missing emails in February 2014 with their subsequent assertion to the Committee in March 2014 that the document production was complete and that the Committee should release its report. Indeed, in light of this knowledge, it would appear that the assertion was false and intended to hasten the Committee to complete its investigation, thus foreclosing the

possibility that it would ever find out about the missing Lerner emails.

Furthermore, IRS staff had numerous interactions with Committee staff after the March 19, 2014 letter and before the IRS's reluctant admission on June 13, 2014 that it had lost many of Lerner's emails. At no time during any of those interactions did IRS staff attempt to correct the inaccurate impression created in the March 19, 2014 letter that the IRS had completed its production of requested documents.

In addition to concealing the loss of Lerner's emails, IRS officials also failed to take adequate steps to preserve backup tapes that contained copies of those emails. Upon concluding in February 2014 that many of Lerner's emails from 2010 and 2011 were missing, IRS officials failed to conduct a proper search for backup tapes that might contain copies of those emails. In what appears to be an exercise in pure expediency, those officials simply concluded that no such tapes existed because they should have been overwritten by then in accordance with the IRS's practice to recycle backup tapes every six months. In truth, in February 2014, the IRS had in its possession nearly 1,200 backup tapes that could have contained Lerner's emails from the period in question. Because the IRS failed to look for, identify and preserve the backup tapes, 422 of those backup tapes were erased by the IRS in March 2014, resulting in the loss of Lerner emails relevant to the Committee's investigation.

The actions taken by IRS officials, as well as those they failed to take after discovering the missing Lerner emails, harmed the Committee's investigation. IRS officials concealed from the Committee for as long as possible the fact that Lerner's emails were lost. Moreover, those officials misled the Committee into believing that the IRS had completed its document production, when in fact, they knew that many of Lerner's emails from a period of time of great interest to the Committee were missing. Further, those officials failed to discharge their responsibility to take adequate steps to preserve thousands of Lerner's emails, resulting in the irrevocable loss of as many as 24,000 of those emails. These actions not only deprived the Committee of information important to its investigation and caused substantial delay in its completion, but also further eroded the Committee's confidence that the IRS has been forthcoming in all of its other representations to Congress regarding this investigation.

The Committee undertook a number of measures aimed at mitigating the consequences of the harm caused by the IRS's failure to preserve copies of the backup tapes containing Lerner's email. For example, in an effort to bridge the gap in the missing emails, the Committee secured from alternate sources, including the Treasury Department, the Department of Justice, the Federal Election Commission, TIGTA, a private organization, and the White House, copies of emails between their employees and Lerner. In addition, TIGTA undertook extraordinary efforts to recover missing Lerner emails. Within two weeks of commencing its investigation into the lost emails, TIGTA located 744 backup tapes that the IRS erroneously determined contained no information relevant to the Committee's investigation. After recovery efforts, those 744 tapes yield-

ed over 1,000 Lerner emails not previously provided to the Committee by the IRS—some of which proved relevant to this investigation. Additional recovery efforts by TIGTA from other sources resulted in over 300 more Lerner emails. In total, TIGTA was able to provide the Committee with 1,330 Lerner emails that the IRS had been unable to produce and that the Committee had not seen before. Although it was not possible to reproduce a full record of Lerner's communications during 2010 and 2011, we believe that these efforts have provided the most comprehensive record that is possible.

In addition to the findings set forth herein, the Majority staff fully supports the joint findings contained in the Bipartisan Investigative Report. Those findings reveal several other serious problems at the IRS, including:

- Management lacked an appreciation for the sensitivity and volatility of the political advocacy applications and allowed employees to use inappropriate screening criteria. (See Sections III(A) and III(B) of the Bipartisan Investigative Report.)
- The IRS lacked any sense of customer service for organizations that applied for tax-exempt status. (See Section III(E)(1) of the Bipartisan Investigative Report.)
- The IRS improperly disclosed taxpayer information of numerous conservative organizations. (See Section IX(C) of the Bipartisan Investigative Report.)
- In 2010, a freelance reporter made a FOIA request for documents related to the IRS's handling of Tea Party applications. The IRS identified responsive documents, but elected not to produce them, thereby precluding early public scrutiny of its treatment of Tea Party applicants. (See Section IX(B) of the Bipartisan Investigative Report.)

In all, Committee staff reviewed more than 1,500,000 pages of documents and conducted 32 interviews in the course of this investigation. We believe that the findings described in the Bipartisan Investigative Report and in these Additional Republican Views are supported by the record.

As a result of the practices described in both the Bipartisan Investigative Report and in these Additional Republican Views, the public's confidence in the IRS has been justifiably shaken. There is much work that needs to be done to restore the public's trust in the IRS's ability to administer the tax system in a fair and impartial way.

II. LOIS LERNER'S PERSONAL POLITICAL VIEWS INFLUENCED THE IRS'S PROCESSING OF APPLICATIONS FOR TAX–EXEMPT STATUS FROM TEA PARTY AND CONSERVATIVE ORGANIZATIONS

Lois Lerner supported the Democratic Party and President Obama, and she held extreme views on campaign finance reform. Lerner's bias influenced the IRS's handling of Tea Party appications and these organizations were harmed by her actions.

A central aim of the Committee's investigation was to determine if any IRS actions toward conservative taxpayers were influenced

by political bias. Assuredly, employees working in the executive branch are entitled to hold personal political views—and indeed, many citizens who serve in federal agencies can and do play a valuable part in the democratic process using personal time and resources, and subject to limits the law imposes on such activity by government employees. However, the personal political views of a federal employee working in an apolitical position should never influence their official actions. If this were to happen, the public could question whether the government has acted in a fair and impartial manner. The danger of political bias is particularly acute at the IRS, which has been entrusted to "enforce the law with integrity and fairness to all."[8]

As the senior executive in charge of Exempt Organizations (EO), Lois Lerner was the person with ultimate responsibility for overseeing all of the employees involved who processed applications for tax-exempt status. By virtue of her position, Lerner had the potential to exert tremendous power over many taxpayers who sought to exercise their right to political speech.

Amidst allegations that Lerner's political views influenced IRS actions, our inquiry focused on three questions. First, what are Lois Lerner's political views? Second, did she hold any political views relevant to her specific responsibilities at the IRS? And finally, is there any evidence that her political views influenced official actions of the IRS? We address these questions in turn below.

In resolving these questions, the Committee sought to interview Lerner as part of its investigation. Indeed, because of her position in the IRS, Lerner would be uniquely able to explain how conservative applicants were treated by the IRS. Lerner declined the Committee's request for an interview, citing her Fifth Amendment right to remain silent. In the absence of her testimony, the Committee has been able to reach conclusions about her role after careful review of over 1,500,000 pages of documents and dozens of interviews with IRS and Treasury employees, many of whom worked directly with Lerner.

In response to our first question, the Senate Finance Committee's investigation revealed that Lerner was a Democrat who consistently supported Democratic politicians, particularly President Obama, during her tenure at the IRS. Her communications also suggest that she felt animus toward the views of the Republican Party.

In response to our second question, we found that Lerner favored campaign finance reform efforts and had deep disdain for the Supreme Court's loosening of these restrictions in the *Citizens United* decision, which she deemed "by far the worst thing that has ever happened to this country" and feared would lead to "the end of 'America.'"[9]

In response to our third question, we conclude that Lerner's partisan bias directly harmed conservative organizations applying for tax-exempt status from early 2010 until May 2013. Under Lerner's leadership, Tea Party organizations were systemically targeted and set aside for special processing. The impact of Lerner's bias was ex-

[8] IRS, The Agency, Its Mission and Statutory Authority.
[9] Email chain between Lois Lerner and Mark Tornwall (June 1, 2012) IRS0000800024.

acerbated by her superiors' failure to oversee her, and directly caused conservative organizations to suffer long delays and endure numerous rounds of burdensome questions. Her biases are particularly evident when comparing her inaction on Tea Party applications to her quick responses to inquiries from Democratic politicians. We also found evidence that Lerner's bias led to audits of some conservative organizations, which imposed even greater burdens and further stifled their political speech.

A. Lerner's Personal Political Views: Lerner Supported The Democratic Party, President Obama, and Other Democratic Politicians

A primary focus of our investigation was whether Lerner's personal political views favored one political party or the other. Lerner has acknowledged that she is a registered Democrat but she publicly stated that she is "not a political person." [10]

Our review of Lerner's communications casts doubt on her claim of being "apolitical." To the contrary, her conversations with family and friends show that Lerner followed politics closely and supported the Democratic Party and Democratic politicians, particularly President Obama. These conversations—all on Lerner's government email account—also show that Lerner's friends and family uniformly shared her views and sometimes made disparaging comments about Republicans and the Tea Party to Lerner:

- In an October 2004 email conversation with a former colleague from the Federal Election Commission (FEC), Lerner said, "[A]fter the election, we'll get together—hopefully to celebrate, but it sure looks iffy!" [11] The next month, Republican George W. Bush defeated Democrat John Kerry in the presidential election.
- In October 2012, a friend wrote to Lerner about the upcoming election: "The Romney/Ryan ticket is really scary. How did a creep like Romney ever get elected to be governor of Massachusetts, anyway?" [12]
- In November 2012, a friend invited Lerner to an election-night party that she decided to host "now that Nate Silver has raised Obama's chance of winning to 85.1%." The party invitation included a picture of the Democratic Party logo.[13] Lerner responded, "Would have loved to, but am in London." Lerner passed the invitation along to her husband and told the host, "[I]f he's smart he'll join you." Lerner noted that she was "[k]eeping my fingers crossed. And, I did vote!" [14]
- On Election Day in 2012, Lerner's husband told her that it was "hard to find the socialist-labor candidates on the ballot, so I wrote them in." Lerner described the election as "[o]nce in a lifetime stuff" and said that "[people in London] get that it's close but they don't seem to think Obama could really lose. They all want to know who the heck this Romney guy is." [15]

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[10] *Politico,* Exclusive: Lois Lerner Breaks Silence (Sep. 22, 2014).
[11] Email chain between Lois Lerner and FEC Employee (Oct. 12, 2004) FECSUBP5001079.
[12] Email chain between Lois Lerner and Mark Tornwall (Oct. 11–17, 2012) IRS0000793954.
[13] Email from friend to Lois Lerner and others (Nov. 4, 2012) IRS0000794177–78.
[14] Email chain between Lois Lerner and friend (Nov. 4, 2012) IRS0000794185.
[15] Email chain between Lois Lerner and Michael Miles (Nov. 6, 2012) IRS0000794247–48.

• On November 7, 2012, a family member wrote an email to Lerner with the subject "Hurray, Hurray—OBAMA for 4 more years." [16]

• On November 7, 2012, Lerner's husband described her as being "in that post-election state of bliss" after the election results were announced.[17]

• In a November 2012 email with a family member, Lerner was informed that Democrats retained control of the U.S. Senate. Lerner responded: "WooHoo! I[t] was important to keep the Senate. If it had switched, it would be the same as a Rep president." In the same conversation, Lerner celebrated Maryland's legalization of same-sex marriage. Lerner's family member commented, "I think there were 3 seats that switched from tea party republicans to democrats so that's exciting!" [18]

• In November 2012, Lerner had the following email exchange with her husband, Michael Miles:

> Miles: Well, you should hear the whacko wing of the GOP. The US is through; too many foreigners sucking the teat; time to hunker down, buy ammo and food, and prepare for the end. The right wing radio shows are scary to listen to.
>
> Lerner: Great. Maybe we are through if there are that many assholes.
>
> Miles: And I'm talking about the hosts of the shows. The callers are rabid.
>
> Lerner: So we don't need to worry about alien terrorists. It's our own crazies that will take us down.[19]

• In January 2013, Lerner remarked that she might look for a position at the Washington, D.C. office of Organizing for Action, the successor organization of President Obama's 2012 reelection campaign—a possibility that her subordinates appear to have taken seriously.[20]

• After the Tea Party scandal broke in May 2013, a friend wrote to Lerner to offer support. The friend said, "My brother was here when I read the paper, and frankly, he was hoping you would 'nail' the tea party, but I realize that you are just doing your job, ha ha." [21]

• In a March 2014 conversation, a friend informed Lerner that "[t]his Republican crap has become really bad in Texas." The friend then offered negative comments about several Texas Republicans, including former Governor Rick Perry, Ted Nugent, and Greg Abbott, whom the friend believed was "still likely to be the next Governor of Texas simply because he claims to be in favor of gun rights and against same-sex marriage." The friend concluded, "As you can see, the Lone Star State is just pathetic as far as political attitudes are concerned." This prompted Lerner to state the following:

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[16] Email chain between Lois Lerner and family member (Nov. 7, 2012) IRS0000794253.
[17] Email chain between Lois Lerner and Michael Miles (Nov. 7, 2012) IRS0000794265.
[18] Email chain between Lois Lerner and family member (Nov. 6–7, 2012) IRS0000317155–56.
[19] Email chain between Lois Lerner and Michael Miles (Nov. 8–9, 2012) IRS0000890492.
[20] Email chain between Lois Lerner, Sharon Light, Holly Paz, and others (Jan. 24, 2013) IRSC007157.
[21] Email chain between Lois Lerner and friend (May 12, 2013) IRS0000662634,

> Look my view is that Lincoln was our worst president not our best. He should'[v]e let the south go. We really do seem to have 2 totally different mindsets.[22]

This was not the first time that Lerner expressed this sentiment about the United States. In a December 2012 email to a different friend, Lerner said:

> We're in Ohio for the holiday and waiting to go over the fiscal cliff! I truly believe this country is out of its head with ridiculousness! We really need to split in two—we are so polarized that we can't do anything constructive.[23]

The Majority staff's review of approximately 1,500,000 pages produced by the IRS and other entities did not reveal find any instances when Lerner expressed positive sentiments about the Republican Party, a specific Republican candidate, or the Tea Party. Similarly, we found no instances when any friend of family member of Lerner's expressed such sentiments in a message to Lerner. Indeed, it is highly probable that the individuals who sent Lerner these politically charged messages, which were supportive of Democratic politicians and often critical of their Republican counterparts, did so because they were aware of her political beliefs and knew that she shared in their convictions.

As a whole, these communications establish that Lerner staunchly supported President Obama and the Democratic Party and, contrary to her assertions, followed politics closely. They also suggest that Lerner held disdain for those who supported conservative values and Republican ideals.

B. Lerner's Political Views Relevant to Her IRS Position: Lerner Held Extreme Views on Limiting Campaign Finance Expenditures and Political Speech

Next, we consider whether Lerner held any political views that were relevant to her position at the IRS. As described below, we conclude that Lerner supported campaign finance reform efforts and was generally in favor of restraining political speech by tax-exempt organizations. These views were directly relevant to her oversight of the EO Division at the IRS.

Before joining the IRS in 2001, Lerner spent most of her career in election law. Lerner joined the FEC in 1981 and served in several senior positions during her 20-year tenure, including head of the Enforcement Division and Acting General Counsel.[24] A colleague from the FEC who has known Lerner since 1985, attorney Craig Engle, described Lerner's views of campaign finance law as follows:

> Engle describes Lerner as pro-regulation and as somebody seeking to limit the influence of money in politics. The natural companion to those views, he says, is her belief that "Republicans take the other side" and that conservative groups should be subjected to more rigorous investigations. According to Engle, Lerner harbors a "sus-

[22] Email chain between Lois Lerner and Mark Tornwall (Mar. 6, 2014) 00064–66.
[23] Email chain between Lois Lerner and Lisa Klein (Dec. 23–24, 2014).
[24] Resume of Lois Lerner (undated) IRS0000798764–65.

> picion" that conservative groups are intentionally flouting the law.[25]
>
> While Lerner was head of the FEC's Enforcement Division, she was reported to have improperly threatened a Republican candidate for the U.S. Senate, allegedly saying, "Promise me you will never run for office again, and we'll drop [the pending charges against you]."[26]

Lerner's expertise in election law certainly shaped her view of the role of tax-exempt organizations in the political process when she joined the IRS in 2001 as the Director of Rulings and Agreements. While she was at the IRS, Lerner continued to support spending restrictions on political speech. In a February 2002 message to a former colleague at the FEC, Lerner stated that it was "pretty exciting that the campaign finance [reform bill] may actually go through."[27] Lerner was referring to the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act), which became law on March 27, 2002. More recently, Lerner supported the DISCLOSE Act, a proposed law that would require donor disclosure by tax-exempt organizations that engage in political campaign activities, although she apparently realized it was not likely to pass. When informed that Democrat Chris Van Hollen introduced the DISCLOSE Act in the House, Lerner said, "Wouldn't that be great? And I won't hold my breath."[28]

Given Lerner's support for the McCain-Feingold Act, it should come as no surprise that she was disappointed when the Supreme Court struck down parts of the Act in *Citizens United* v. *Federal Election Commission*, 130 S. Ct. 876 (2010). The depth of Lerner's emotion, however, is surprising. Lerner bluntly told a friend:

> *Citizens United* is by far the worst thing that has ever happened to this country.[29]

After her friend agreed that it was a "total disgrace that the Supreme Court has endorsed this concept," Lerner expanded on her view of the case to explain why the decision had repercussions far beyond campaign finance rules:

> We are witnessing the end of "America." There has always been the struggle between the capitalistic ideals and the humanistic ideals. Religion has usually tempered the selfishness of capitalism, but the rabid, hellfire piece of religion has hijacked the game and in the end, we will all lose out. [I]t's all tied together—money can buy the Congress and the Presidency, so in turn, money packs the SCt. And the court usually backs the money—the "old boys" still win.[30]

These extreme views would be troubling if held by any government official; but they are particularly troubling when held by a

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[25] *National Review*, Lois Lerner at the FEC (May 23, 2013).
[26] *The Washington Post*, Lois Lerner: The Scowling Face of the State (June 12, 2013).
[27] Email chain between Lois Lerner and FEC Employee (Feb. 22, 2002) FECSUBP5001236.
[28] Email chain between Lois Lerner, Joseph Urban and others (Feb. 13, 2012) IRS0000694708–10.
[29] Email chain between Lois Lerner and Mark Tornwall (June 1, 2012) IRS0000800024.
[30] *Id.*

senior IRS official charged with oversight of tax-exempt organizations, including those that engage in political speech.

While employed at the IRS, Lerner maintained close ties to numerous outside advocacy groups that shared her goal of limiting spending by tax-exempt organizations on political speech. These groups took advantage of their direct access to Lerner and other senior IRS officials, frequently asking the IRS to tighten its control over political spending by tax-exempt organizations as described in Section IV(D) of the Bipartisan Investigative Report. Lerner even met with some of them in person to discuss their proposals.

One group that had particularly close ties to Lerner is the Americans for Campaign Reform (ACR). ACR describes itself as "a community of citizens who believe passionately that public funding [of elections] is the single most critical long-term public policy issue our nation faces."[31] Lerner's ties to ACR were strong enough that when ACR was searching for a new CEO in 2012, they sought Lerner's opinion on Larry Noble, who had been the General Counsel at the FEC during Lerner's tenure, and thanked Lerner "for [her] contribution to this search."[32] Lerner recommended that ACR hire Noble and told him that she was "[g]lad I could be a part of their decision."[33] Lerner and Noble made plans to have lunch, and Lerner asked Noble, "So, when should I expect your first letter yelling at me about the c4s?"[34] Noble replied, "That's Fred's job," apparently referring to Fred Wertheimer, President of Democracy 21—another group that was regularly in touch with Lerner.

Lerner also maintained close ties with Kevin Kennedy, the Director and General Counsel of the Wisconsin Government Accountability Board, which administers and enforces Wisconsin campaign finance and election laws.[35] Kennedy shared many of Lerner's views on campaign finance and the need for increased regulation of political speech.[36] In 2008, Kennedy organized a panel discussion for the Council on Government Ethics Laws on "regulating political speech."[37] Lerner spoke at this panel along with Larry Noble (who was then practicing at a private law firm), FEC Commissioner Ellen Weintraub, and Campaign Legal Center attorney Paul Ryan.[38] Kennedy and Lerner regularly discussed election law, and in 2011 Kennedy bemoaned Wisconsin's loosening campaign finance regulations, saying, "[T]he legislature has killed our cor-

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[31] Americans for Campaign Reform, About Us.

[32] Email chain between Lois Lerner and Larry Noble (Aug. 17, 2012) IRS0000683618–20.

[33] Email chain between Lois Lerner and Larry Noble (Aug. 10, 2012) IRS0000801074–77.

[34] Email chain between Lois Lerner and Larry Noble (Aug. 10, 2012) IRS0000801105–08.

[35] The Wisconsin Government Accountability Board is reported to have provided assistance to prosecutors in a secret John Doe investigation of conservative organizations' political activities during the 2011 and 2012 Wisconsin recall elections. On July 16, 2015 the Wisconsin Supreme Court ended the John Doe investigation, ruling that Scott Walker's campaign did not violate campaign finance laws. *See Milwaukee Journal Sentinel*, Q&A: Untangling Wisconsin's recent John Doe Investigations (Sep. 10, 2014); *Wall Street Journal*, Wisconsin Targets the Media (Dec. 21, 2014); *Wall Street Journal*, Wisconsin's Friend at the IRS (July 9, 2015); *Milwaukee Journal Sentinel*, Wisconsin Supreme Court ends John Doe probe into Scott Walker's campaign (July 16, 2015).

[36] Email chain between Lois Lerner and Kevin Kennedy (July 22, 2011) IRS0000796497–98; Email chain between Lois Lerner and Kevin Kennedy (Nov. 1, 2012) IRS0000726736; Isthmus, Wisconsin elections director Kevin Kennedy is at the center of state's political storm (Nov. 1, 2012). Kennedy characterized this piece as a positive piece from the progressive media about himself.

[37] Email from Kevin Kennedy to Lois Lerner and others (Dec. 10, 2008) FECSUBP5001025–44; Email from Kevin Kennedy to Ellen Weintraub, Lois Lerner and Paul Ryan (Dec. 3, 2008) FECSUBP5001131.

[38] *Id.*

porate disclosure rules."[39] Kennedy described Lerner as his "favorite IRS person" and, "a professional friend [he has known] for more than 20 years.[40]

Lerner's views on campaign finance laws and her close ties to organizations and government officials that sought to limit political speech must be taken into consideration when evaluating how Lerner administered the tax law as Director of EO.

C. Lerner's Bias Harmed Conservative Organizations

Finally, we consider whether Lerner's personal political views influenced her work at the IRS. We found evidence of five ways that Lerner's bias affected IRS actions, all of which resulted in harm to conservative organizations that came into contact with the IRS during Lerner's tenure.[41]

1. Lerner and Senior IRS Management Devised Ways To Systemically Constrain Tax-Exempt Organizations That Engaged in Political Speech

As described in Section IV of the Bipartisan Investigative Report, various external forces—including several of the left-leaning groups noted above—pressured the IRS to monitor and curtail political spending of 501(c)(4) organizations in the wake of the Supreme Court's *Citizens United* decision. Perhaps no one was more aware of this pressure than Lerner, particularly given her personal disdain for the ruling. As described below, Lerner encouraged senior IRS management to use the agency's tools to dampen the effect of the Supreme Court's decision.

On the day after the *Citizens United* decision was announced, Lerner brought the decision to the attention of upper-level management in the Tax Exempt and Government Entities (TE/GE) Division and the Chief Counsel's office.[42] Lerner recognized the sensi-

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[39] Email chain between Lois Lerner and Kevin Kennedy (July 22, 2011) IRS0000796497–98; Email chain between Lois Lerner and Kevin Kennedy (Feb. 6–7, 2013) IRS0000667365; Email chain between Lois Lerner and Kevin Kennedy (Jan. 28, 2013) IRS0001163477; Email from Lois Lerner to Kevin Kennedy (Feb. 20, 2013) IRS0000052989–90.

[40] Email chain between Lois Lerner and Kevin Kennedy (Mar. 7, 2013) IRS0000811079; *Wall Street Journal*, Wisconsin's Friend at the IRS (July 9, 2015).

[41] In addition to our findings, Lerner's political bias is further reinforced by findings of the House Ways and Means Committee in their April 9, 2014 referral of Lerner to Attorney General Eric Holder at the Department of Justice for willful misconduct by an IRS official and potential violation of criminal statutes. In that letter, the House Ways and Means Committee pointed to three potential violations of law:

- Lerner used her position to improperly influence agency action against only conservative organizations, denying those groups due process and equal protection rights under the law. She showed extreme bias and prejudice toward conservative groups. The letter lays out evidence on how Lerner targeted conservative organization Crossroads GPS, as well as other right-leaning groups, while turning a blind eye to liberal groups that were similarly organized, such as Priorities USA.
- Lerner impeded official investigations by providing misleading statements in response to questions from TIGTA.
- Lerner used her personal email for official business, including confidential return information. Further investigation could show that Lerner committed an unauthorized disclosure in violation of section 6103 of the Internal Revenue Code.

[42] Lerner's angst over the Supreme Court overturning the corporate ban on political contributions commenced long before the actual decision was rendered by the Court on January 21, 2010. Indeed, on November 17, 2009, Lerner wrote to Sarah Hall Ingram in anticipation of such an eventuality, stating that the Court's overturning the ban "will open up numerous pandora's boxes" for the IRS. She requested that Ingram "get a discussion going with [Steve] Miller so we at least know the perameters [sic] of the box we're in . . . ." Lerner also indicated that "[t]he

Continued

tivity of the case, stating, "[t]his is the danger zone no matter what we say."[43] In October 2010, Lerner described the pressure on the IRS when she spoke at Duke University's Sanford School of Public Policy:

> The Supreme Court dealt a huge blow [in *Citizens United*], overturning a 100-year old precedent that said basically corporations could give directly in political campaigns, and everyone is up in arms because they don't like it. The Federal Election Commission can't do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem. . . . So everyone is screaming at us right now, "Fix it now before the election, can't you see how much these people are spending?" I won't know until I look at their 990s next year whether they have done more than their primary activity as a political or not. So I can't do anything right now.[44]

Near the end of 2012, Lerner and other employees in the EO division began considering whether it was possible to quantify the effect that *Citizens United* had on political campaign intervention by tax-exempt organizations. In December 2012, TE/GE Division employee Cristopher Giosa sent Lerner his preliminary analysis on sources of data that might be available.[45] Giosa suggested that EO consider enlisting the IRS's Office of Compliance Analytics to help with this project.[46]

By April 2013, EO and the Office of Compliance Analytics had prepared a detailed presentation on political spending by 501(c)(4) organizations.[47] As background information for the report, the authors noted:

> Since Citizens United (2010) removed the limits on political spending by corporations and unions, concern has arisen in the public sphere and on Capitol Hill about the potential misuse of 501(c)(4)s for political campaign activity due to their tax exempt status and the anonymity they can provide to donors.[48]

The authors then provided a "problem statement," which stated that "[t]he public purpose of 501(c)(4)s may be diluted by political campaign activities as an unintended consequence of Citizens United."[49]

In May 2013, EO and the Office of Compliance Analytics revised the presentation in advance of a May 7 briefing for then-Acting

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Commissioner also needs to be aware that this is going to get noisey [sic] real fast." Email between Lois Lerner and Sarah Hall Ingram (Nov. 17–23, 2009) IRS0000853501–02.

[43] Email chain between Lois Lerner, Nicole Flax, Sarah Hall Ingram, and others (Jan. 24–25, 2010) IRS0000442122–24.

[44] SFC Transcription of Video Available on Youtube.com, Lois Lerner Discusses Political Pressure on IRS in 2010 (Oct. 19, 2010) <https://www.youtube.com/watch?v=EH1ZRyq-1iM>.

[45] Email from Christopher Giosa to Lois Lerner, Joseph Grant and others (Dec. 6, 2012) IRS0000185323–27.

[46] *Id.*

[47] Email from Justin Abold to Lois Lerner, Holly Paz and others (Apr. 12, 2013) IRS0000195666–90.

[48] *Id.*

[49] *Id.*

Commissioner Miller.[50] The revised presentation, which was sent to Miller's office, made the following findings:

- The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through tax year 2010; and
- The amount of political campaign activities for large filers (defined as organizations with total revenue of more than $10 million) almost tripled from tax year 2008 through tax year 2010.[51]

The report identified two events that occurred contemporaneously with the drastic rise in the number of 501(c)(4) organizations that reported political campaign activities: the *Citizens United* decision and Congress's consideration of the Affordable Care Act.[52] Although the report did not conclude that these events caused a rise in political spending, by singling them out, it is clear that the IRS viewed them as significant, relevant factors.

It is unclear if IRS management considered OCA's report when it proposed regulations that would provide guidance on political activities to 501(c)(4) organizations on November 29, 2013. Regardless, the regulations would have had the effect of restraining political speech by 501(c)(4) organizations, but not by other types of tax-exempt organizations. The IRS received more than 150,000 comments on the proposed regulations from people and organizations across all parts of the political spectrum, which were overwhelmingly opposed to the regulations. In the face of this opposition, on May 22, 2014, the IRS stated it planned to re-propose the regulations after a thorough review of the submitted comments.[53]

Although the IRS was unsuccessful in implementing these regulations, the IRS's aim was clearly aligned with Lerner's belief that the IRS should take measures within its power as the executive branch to restrain spending on political speech, thereby circumventing the effect of the judicial branch's *Citizens United* decision.

2. Lerner Exerted a "Surprising" Level of Autonomy Over the Tea Party Applications

The unusual manner in which incoming Tea Party applications were handled suggests that Lerner did not want other IRS officials to influence the review process. In spite of Lerner's concern about political spending, she did not inform her managers that the IRS had received a large number of applications from Tea Party organizations, some of which engaged in political discourse, or that EO was struggling to process these applications. Lerner's failure to elevate these issues is discussed in greater detail in Section III(F)(2) of the Bipartisan Investigative Report.

Lerner recognized that one of her key duties as EO Director was to keep upper-level management informed. As she explained to one of her subordinates:

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[50] Miller's calendar shows that he organized a meeting to discuss "EO Data Matters" with Nikole Flax, Dean Silverman, Eric Schweikert, and Joseph Grant (May 7, 2013) IRS0000456399.

[51] Email chain between Justin Lowe, Justin Abold and others (May 6, 2013) IRS0000494805–29.

[52] *Id.*

[53] IRS, Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).

> [W]e ensure that all of our [senior] managers are aware of all highly visible hot button issues. Our job is to report up to our bosses on anything that might end up on the front page of the NY Times.[54]

Yet, there was little accountability for executives like Lerner within the TE/GE Division management chain. From late 2010 through May 2013, Lerner reported to Joseph Grant, who was Acting Division Commissioner of TE/GE. Grant told Committee staff that he had "relatively minimal interaction" with Lerner.[55] Grant believed that Lerner "was enjoying being in charge of EO . . . that was something that she ran with," but Lerner's managerial style required Grant to "make more effort" to stay aware of what was happening in EO.[56] Lerner's previous immediate supervisor, Sarah Hall Ingram, described a similar relationship with Lerner and noted that their main face-to-face interaction was at quarterly meetings.[57] Thus, the onus was on Lerner to keep her immediate managers informed of information that Lerner deemed important.

Lerner appeared to have had more frequent contact with Steve Miller than Grant or Ingram, despite the fact that Miller was two or three levels above Lerner. Like Lerner, Miller's background at the IRS was in the EO Division, where he served as Director while Lerner served below as Director of Rulings and Agreements in the early 2000s. Miller continued to be in Lerner's management chain when he was promoted to Division Commissioner for TE/GE, then to Deputy Commissioner for Services & Enforcement, and ultimately, to Acting Commissioner of the IRS. Throughout their time together at the IRS, Lerner used Miller as a sounding board on tax-exempt issues and Miller appears to have given Lerner broad authority and autonomy within EO. In his interview with Committee staff, Miller stated, "Lois and I have a good relationship."[58]

On the whole, Miller felt that Lerner "was pretty good about elevating things" that required his attention.[59] This made Lerner's decision not to tell him about the Tea Party applications particularly vexing for Miller, who stated, "you know, she was pretty good about [elevating issues], so this was a bit of a surprise."[60] In fact, the first time that Miller had any indication that something was amiss was in early 2012, when the IRS started receiving questions from the media and Congress about burdensome requests made of Tea Party and other political advocacy applicants. By that point, Lerner had been overseeing the processing of applications from Tea Party organizations for almost two years.

Miller was not the only senior executive who Lerner kept in the dark. As described more fully in Section III(F)(2) of the Bipartisan Investigative Report, Lerner also failed to inform Division Commissioner for TE/GE Sarah Hall Ingram, Acting Division Commissioner for TE/GE Joseph Grant, Assistant Deputy Commissioner for Services & Enforcement Nikole Flax, and IRS Commissioner

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[54] Email chain between Lois Lerner, Nanette Downing and others (May 10–11, 2011) IRS0000014917–20.
[55] SFC Interview of Joseph Grant (Sep. 20, 2013) p. 63.
[56] *Id.* p. 64.
[57] SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 18.
[58] SFC Interview of Steve Miller (Dec. 12, 2012) p. 242.
[59] *Id.*
[60] *Id.*

Douglas Shulman about the Tea Party applications. Several of those managers also seemed surprised that Lerner failed to brief them before the problems became public. Grant, her direct supervisor from the end of 2010 through 2013, was particularly frustrated:

> In retrospect, of course I wish that [I had become aware of Tea Party backlogs before April or May of 2012]. I would have liked to have known about that and have been informed about the challenges and backlogs that [EO] faced.[61]

Lerner's decision not to brief upper-level management about the Tea Party applications was a break from the norm. Her omission suggests that there were reasons she did not want them to be aware of her handling of these applications and did not want others to become involved—such as those discussed in the sections immediately below.

3. Lerner Created Roadblocks for Tea Party Applications That Applied for Tax-Exempt Status

In the absence of input from upper IRS management, Lerner exerted control over the Tea Party applications starting at the time when she first became aware that Tea Party organizations had applied for tax-exempt status in 2010. On May 13, 2010, EO Technical Acting Manager Steven Grodnitzky alerted Lerner to a number of open Sensitive Case Reports, including a new one that had been prepared for the Tea Party applications. Lerner responded by asking about the Tea Party applications, and specifically, the basis of their exemption requests. Lerner instructed Grodnitzky that "[a]ll cases on your list should not go out without a heads up to me please."[62] Through the remainder of 2010, Lerner received at least four updates about the status of Tea Party applications, which noted the growing number of applications and the IRS's failure to resolve any of them.[63]

Lerner grew more concerned about the Tea Party applications in early 2011. On February 1, 2011, Michael Seto, the Acting Manager of EO Technical, sent an updated summary of SCRs to Lerner. She responded, "Tea Party Matter very dangerous—This could be the vehicle to go to court on the issue of whether *Citizen's United* overturning the ban on corporate spending applies to tax exempt rules."[64] Based on these concerns, Lerner decided that the Office of Chief Counsel and Judy Kindell needed to be involved with these applications and that they should not be handled by Cincinnati but

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[61] SFC Interview of Joseph Grant (Sep. 20, 2013) p. 50.

[62] Email chain between Lois Lerner, Rob Choi, Steve Grodnitzky, and others (May 13–16, 2010) IRS0000167872–73.

[63] Email from Steven Grodnitzky to Lois Lerner and Robert Choi (May 27, 2010) IRS0000141812–14; Email from Theodore Lieber to Lois Lerner and others (July 30, 2010) IRS0000807076–807115 (email attachments containing taxpayer information omitted by Committee staff); Email from Steven Grodnitzky to Lois Lerner and Robert Choi (Sep. 30, 2010) IRS0000156433–36; Email from Holly Paz to Lois Lerner and Robert Choi (Nov. 3, 2010) IRS0000156478–81.

[64] Email chain between Holly Paz, Lois Lerner, and Michael Seto (Feb. 1–2, 2011) IRS0000159431–33.

instead by employees in Washington, D.C.[65] Lerner must have anticipated that these directives would inevitably delay the processing of Tea Party applications:

- Kindell had "a general reputation of being slow in all work." Further, "[s]he had a reputation of having difficulty with deadlines and taking a lengthy period of time on cases."[66] In an email to her manager Ingram, Lerner described Kindell as follows: "[s]he's not real useable (sic) in terms of making things happen."[67]
- Similarly, the Office of Chief Counsel could take "3 months, 6 months, a year" to provide feedback to EO and generally "can take a great deal of time" to respond to EO requests for help.[68]
- Finally, as noted by Paz and others, the EO office in Washington, D.C. had far fewer employees than Cincinnati who could evaluate and develop applications for tax-exempt status. Reviewing all of the Tea Party applications, which by that point exceeded 100, in Washington, D.C. would certainly result in delays.

Lerner convened a meeting in July 2011 with Paz, Thomas, and others specifically to discuss the growing backlog of Tea Party applications. Thomas summarized the outcome of the meeting in a message to her employees in Cincinnati:

> Lois expressed concern with the "label" we assigned to these cases [on the BOLO]. Her concern was centered around the fact that these type things can get us in trouble down the road when outsiders request information and accuse us of "picking on" certain types of organizations. . . . Lois did want everyone to know that we are handling the cases as we should, i.e., the Screening Group starts seeing a pattern of cases and is elevating the issue.[69]

In other words, Lerner was concerned about the perception that the IRS might be "picking on" Tea Party and conservative organizations, but she was not concerned about how the applications were actually being handled. Rather than expediting the applications—some of which had now been pending for nearly a year and a half—Lerner added more layers of review and raised hurdles for applicants to clear during the July 2011 meeting:

- EO Technical would develop and draft a guide sheet for EO Determinations to use when reviewing 501(c)(3) and 501(c)(4) "advocacy organization" applications to assist in spotting issues associated with these types of cases.
- EO Determinations would send 15–20 developed cases to EO Technical for review.
- The IRS would require 501(c)(3) and 501(c)(4) "advocacy organizations" to make certain representations regarding compliance with the guide sheet and certain issues (i.e. they won't

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[65] *Id.*
[66] SFC Interview of Holly Paz (July 26, 2013) pp. 128, 166.
[67] Email chain between Lois Lerner and Sarah Hall Ingram (April 29, 2010) IRS0000858652–53.
[68] SFC Interview of Steven Grodnitzky (Sep. 25, 2013) p. 145.
[69] Email chain between Cindy Thomas, Steven Bowling, John Shafer, and others (July 5, 2011) IRS0000620735–40.

politically intervene) in order to pin them down in the future if they engage in prohibited activities.

- EO Determinations would also look to see if these organizations have registered with the Federal Election Commission and if so, they would ask additional questions.[70]

These and other measures implemented under Lerner's watch ensured that the Tea Party and other conservative organizations were subjected to multiple levels of review, as explained more fully in Section VI of the Bipartisan Investigative Report. Lerner continued to receive updates, including a November 2011 message from Thomas advising that the backlog of political advocacy applications had grown to more than 161 and that some of them had been in process since 2009.[71] In spite of these warning signs, Lerner did nothing to expedite these applications until the problems started becoming public in early 2012.

Due to the circuitous process implemented by Lerner, only one conservative political advocacy organization was granted tax-exempt status between February 2009 and May 2012. Lerner's bias against these applicants unquestionably led to these delays, and is particularly evident when compared to the IRS's treatment of other applications, discussed immediately below.

4. The IRS Sometimes Responded to Political Inquiries by Quickly Deciding Certain Applications, But Not When the Inquiries Were About Tea Party Organizations

Although applications from the Tea Party and conservative organizations languished at the IRS, this was not the case for all groups that applied. In cases where the IRS wanted to act quickly, it did—particularly for other high-profile applications that attracted political attention.

One example is an application for 501(c)(3) tax-exempt status filed by Applicant X.[72] On February 21, 2012, a Democratic U.S. Senator's office sent a letter to Commissioner Shulman requesting that the IRS perform an expedited review of the application.[73] The letter noted that "[Applicant X] fits the profile of a 'new markets' district, with its low income and high unemployment profile . . . [and] will acquire, finance, construct, rehabilitate and lease . . . a . . . building for use as a municipal office facility with street level retail."[74] Applicant X had applied for tax-exempt status in October 2011 and had twice requested expedited review, and twice the IRS denied the request.

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[70] Memorandum from Hilary Goehausen to Michael Seto, Notes from Meeting on c3/c4 "advocacy organization" applications with Lois on July 5 (July 6, 2011) IRS0000487709.

[71] Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845–46 (email attachment containing taxpayer information omitted by Committee staff).

[72] The Majority staff has assigned a pseudonym to this taxpayer to protect its identity. Documents referring to this taxpayer have also been redacted by the Majority staff to remove identifying information about the taxpayer and the U.S. Senator who was involved with this application.

[73] Email chain between Senator's staff, Floyd Williams, Doug Shulman and others (Feb. 21—Mar. 2, 2012) IRS0000411951–52 (email attachments containing taxpayer information omitted by Committee staff).

[74] *Id.*

Commissioner Shulman was scheduled to talk with the Senator on March 5, 2012.[75] Shulman was advised to tell the Senator that he doesn't get involved in individual cases but that he will convey to EO why the Senator thought the case should be expedited.[76] The next day, Flax asked Lerner for an update on the status of Applicant X. Lerner responded:

> The latest is that they will get approved today. Cindy [Thomas] took another look and they are comfortable with this one. I've asked Holly [Paz] to tell Cindy [Thomas] to let us know once it has actually been approved and closed. There is no "but" here. [I]t will be approved today.[77]

Thomas further noted that the case had been approved based on information already in the IRS's possession. The case had been "sitting in [EO's] full development unassigned inventory" until the IRS received the Senator's inquiry.[78] Applicant X's application was approved on March 6, 2012.

A second example occurred in late April 2013 when Lerner instructed Thomas to keep an eye out for an incoming application from Applicant Y and to send it to Washington, D.C. so that it could be expedited for review by Lerner's senior advisors.[79]

Thomas noted that under normal IRS procedures, Applicant Y did not fall into a category that would receive expedited processing; nonetheless, at Lerner's direction, Thomas forwarded the case to Washington, D.C. for expedited processing when it arrived in late April.[80] Within a few days, the IRS had reviewed the application, sent a development letter with questions, and reviewed the organization's responses. The IRS reviewers noted a problem that "would prevent us from being able to recognize them as a charitable (c)(3) organization."[81] In the meantime, Acting Commissioner Miller and Treasury Department Chief of Staff Mark Patterson had spoken with the staff of the Democratic mayor of the city where Applicant Y was based, and the IRS received a separate inquiry from a Democratic U.S. Senator.[82]

Thereafter, Lerner, Nancy Marks, and other senior EO staff spoke with the organization about how they could remedy the problems that would preclude the IRS from granting tax-exempt status.[83] For example, On May 3, 2013, Lerner notified Nikole Flax

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[75] Shulman told Committee staff that he had no recollection of whether the conversation actually occurred. SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 116–117.

[76] Email chain between Floyd Williams, Doug Shulman and others (Feb. 21—Mar. 2, 2012) IRS0000411951–52 (email attachments containing taxpayer information omitted by Committee staff).

[77] Email chain between Lois Lerner, Nikole Flax and others (Mar. 6, 2013) IRS0000429946–47.

[78] *Id.*

[79] Email chain between Lois Lerner, Holly Paz and others (Apr. 10–19, 2013) IRS0000012957–60. The Majority staff has assigned a pseudonym to this taxpayer to protect its identity. Documents referring to this taxpayer have also been redacted by the Majority staff to remove identifying information about the taxpayer and the U.S. Senator who was involved with this application.

[80] *Id.*; SFC Interview of Cindy Thomas (July 25, 2013) p. 39. Thomas and other IRS employees noted that the IRS had also expedited past applications received from applicants under similar circumstances.

[81] Email from Lois Lerner to Nancy Marks (May 6, 2013) IRS0000013050–51.

[82] Email chain between Mark Patterson and Steven Miller (May 4, 2013) IRSC032185; Email chain between Andy Megosh, Lois Lerner and others (Apr. 23, 2013—May 7, 2013) IRS0000207919–20; and SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 59–61.

[83] SFC Interview of Steven Miller (Dec. 12, 2013) p. 229.

that she had personally informed a representative of the applicant that "our goal was to assist them in understanding what troubles us about the application" and "to suggest ways they might modify it. . . ."[84] Miller also personally met with the organization's leader.[85] On May 14, 2013, the IRS granted Applicant Y tax-exempt 501(c)(3) status.[86]

In a third case, a Democratic U.S. Senator's office inquired about the status of an applicant for tax-exempt status. Lerner stated, "Our guys took a real close look at this and we now think it is an approval and will be able to get the letter out tomorrow."[87]

Finally, in January 2013, the IRS received an inquiry from a Democratic member of Congress about the status of an application for tax-exempt status. Thomas told Paz that "I don't know why [the application] hasn't been assigned yet" for review since it had been received by the IRS six months prior.[88] Thereafter, the case was reviewed within the next few days and Paz informed Lerner that it would be approved on merit. Lerner expressed her frustration to Paz:

> I'm guessing you know this only makes me a little bit happy. I have to talk to the Congressman about why it takes so long for case[s] to be assigned and worked. . . . As I told you—almost every time I ask them to go back and look at a case that has been sitting—it miraculously gets closed on merit—after it has been sitting for months and months awaiting full development.[89]

Yet Lerner's observation—that the IRS usually resolved applications within days of receiving a Congressional inquiry—didn't always prove true. Republican members of Congress who inquired about Tea Party groups were met with a very different response from Lerner and her subordinates.

In November 2011, Thomas told Lerner that she had spoken with representatives from political advocacy organizations who were "threatening to contact their Congressional offices."[90] To "buy time" so one of the groups "didn't contact his Congressional office," Thomas informed Lerner that she ordered one of her subordinate managers to send a superfluous request for information to the group.[91] Lerner did not object to this plan.

In March 2012, Republican Representative Daniel Lungren wrote a letter to the Treasury Department about an application for tax-exempt status submitted by the Mother Lode Tea Party, which Representative Lungren noted had already "waited 12 months[.]"[92]

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[84] Email from Lois Lerner to Nikole Flax and Joseph Grant (May 3, 2013) IRS0000662208.
[85] SFC Interview of Steven Miller (Dec. 12, 2013) p. 229.
[86] Letter from IRS to Applicant Y (May 14, 2013).
[87] Email chain between Lois Lerner, Andy Megosh and others (Dec. 20–21, 2012) IRS0000185655–56.
[88] Email chain between Lois Lerner, Holly Paz, Cindy Thomas, and others (Jan. 30–Feb. 8, 2013) IRS0000194742–45.
[89] *Id.*
[90] Email chain between Cindy Thomas, Lois Lerner and others (Nov. 3, 2011) IRS0000162845–46 (email attachment containing taxpayer information omitted by Committee staff).
[91] *Id.*
[92] Email chain between Linda McCarty, Jennifer Vozne and others (Feb. 13–14, 2013) IRS0000542433–38.

The request was routed to Lerner, who reviewed a draft response to Mr. Lungren in April 2012. In August 2012, Lerner told Paz:

> At this point, we aren't sending a response [to Mr. Lungren] because we know he will ask for an end date—which is why I was asking [for the] status. I think we need to get the development letter out and that may be what we say to him—application has raised questions about whether the org meets requirements and have sent them a letter trying to flesh out.[93]

Ten months after Representative Lungren's inquiry, the IRS had still not submitted a response. At that point, the employee coordinating the IRS process said, "I have had absolutely no luck in getting a response . . . [t]he last thing I heard was this was with Nikole Flax in Commissioner's office [sic]." [94]

In March 2011, the IRS received two Congressional inquiries about the status of Tea Party applicants, one of which was submitted by Republican Representative Wally Herger about Patriots Educating Concerned Americans Now (PECAN).[95] These Tea Party inquiries were not even elevated to Lerner's level; the IRS apparently did not respond to Representative Herger and instead, Thomas and Seto subjected the applications to additional levels of review.[96]

More than a year later, Representative Herger's request about PECAN was still outstanding when it eventually worked its way to Lerner in July 2012. By that point, the Taxpayer Advocate Service made the universal decision that the IRS would respond to all outstanding inquiries regarding political advocacy organizations by telling the taxpayer "that they had to wait for the decisions to be made." [97] Lerner was enthusiastic about this development, telling Paz:

> Well, that's a wonderful piece of news! [98]

Lerner's comment encapsulates her view on the Tea Party applications: it was fine for them to languish in the bottomless abyss of IRS administrative review, and any questions from the outside were a mere annoyance. Indeed, even after Lerner's handling of Tea Party applications became public in May 2013, she failed to show any remorse for the harm she had caused, or even to grasp the significance of her role. In June 2014, she told a friend:

> How I got involved in this is simply because I was the person who announced that the IRS had used organization names (both conservative and liberal) to select applications for additional review. The conservative Republicans were sure they had a Watergate on their hands and went into

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[93] Email chain between Lois Lerner, Holly Paz and others (Aug. 10–17, 2012) IRS0000210056–58.

[94] Email chain between Linda McCarty, Jennifer Vozne and others (Feb. 13–14, 2013) IRS0000542433–38.

[95] Email chain between Cindy Thomas, Steven Bowling and others (Mar. 29–Apr. 13, 2011) IRS0000576953–55 (Email attachments containing taxpayer information omitted by Committee staff).

[96] *Id.*

[97] Email chain between Lois Lerner, Holly Paz and others (July 27—Aug. 13, 2012) IRS0000221356–0959.

[98] *Id.*

> overdrive to prove it. $50 Million later and hundreds of documents and interviews and they still don't have any evidence of their theory. . . .[99]

She also told that same friend:

> The Tea Party has decided this is a wonderful fundraising event for them so they keep trying to keep it alive. . . . [N]othing corroborating their version of the story has come out. . . .[100]

Lerner's comments do not accurately reflect the reality facing hundreds of conservative organizations that applied for tax-exempt status. Indeed, as of April 15, 2015, the IRS still had not rendered a determination on the application filed by PECAN, despite direct intervention by Representative Herger years before.[101] The difficulty that groups like PECAN faced is particularly stark when compared to the IRS's treatment of certain groups that received attention from Democratic politicians, and should not be trivialized.

5. Lois Lerner's Management of the EO Examinations Unit Reveals Her Political Bias Against Conservative Organizations

The influence of Lerner's personal political views on her official duties is particularly evident in her management of the IRS division that reviewed allegations of improper political campaign intervention by tax-exempt organizations. Indeed, Lerner showed great zeal for using examinations as a weapon to intimidate tax-exempt organizations:

> Just as they got Al Capone on tax evasion instead of drugs, prostitution and murder, we need to do the same! [. . .]
>
> By the way, even if we couldn't "get" any of them because of hazards with valuation or comp, that wouldn't stop me from putting something out that says we looked at these and it appears . . . .[102]

As a result of Lerner's heavy-handed management of the EO Examinations unit, numerous conservative organizations were subject to unwarranted IRS scrutiny. The effect of Lerner's bias was compounded by her distrust in the employees who were supposed to make audit decisions and the failure of those employees to report her interference to TIGTA.

a. Lois Lerner Closely Managed the Committee That Was Created to Evaluate Referrals of Alleged Improper Political Campaign Intervention

The Examinations unit, within the EO Division, monitors whether organizations that have been approved for tax-exempt status are operating in accordance with federal tax law.[103] At all times relevant to the Committee's investigation, Nanette Downing was the

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[99] Email chain between Lois Lerner and Mark Tornwall (June 26, 2014) 00011–14.
[100] Email chain between Lois Lerner and Mark Tornwall (July 3–Sep. 4, 2013) 00025–30.
[101] Based on information provided by IRS to Senate Finance Committee (April 15, 2015).
[102] Email chain between Lois Lerner, Nanette Downing, and Jason Kall (Nov. 14–15, 2012).
[103] IRS, Charity and Nonprofit Audits: Exempt Organizations Examinations.

Director of EO Examinations and reported directly to Lois Lerner.[104]

Unlike most IRS divisions, which are administered at the IRS headquarters in Washington, D.C., EO Examinations has its head office in Dallas, Texas. IRS officials explained that EO Examinations was placed outside of Washington to ensure that the tax enforcement decisions for exempt organizations were not improperly influenced by other divisions of the IRS in Washington.[105]

Those measures did not stop Lerner from closely managing EO Examinations or, in some cases, directing EO Examinations to commence examinations of particular entities. Lerner repeatedly expressed her concern about Downing's management and questioned the competence of EO Examinations staff.[106] Lerner's distrust of EO Examinations employees and management resulted in her keeping tight reins on the operation,[107] thereby circumventing measures designed to handle allegations of improper political campaign intervention.

As described more fully in Section IX(A) of the Bipartisan Investigative Report, one attempt to insulate the IRS from political influence was to create the Political Action Review Committee (PARC). The PARC was a panel of career Federal employees who reviewed allegations of improper political campaign intervention and made the final decision on whether to open an examination of the subject organization.

The decisions of the PARC were supposed to be final. Downing explained that attempting to override the PARC would have serious consequences:

> Q. And can any one person override a PARC decision?
>
> A. No. No.
>
> Q. So once the PARC makes a decision one way or the other, no one can come in and say
>
> A. No. And I would expect—I don't think you were in here when I talked about this. **I would expect if anybody tried to do that, they would turn that in to TIGTA [for investigation]. We are not allowed to do that.**[108]

Even with these supposed safeguards, Lerner kept close tabs on the PARC. Shortly after it was created in 2012, Lerner cast doubt on the PARC's first set of decisions in a message to Downing:

> Do you have any sense why of the 88 referrals reviewed by the PARC they only recommended 33 for Exam? Considering the allegations, that surprises me. Were any others selected for compliance checks or anything?[109]

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[104] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 6, 9, 15.

[105] *Id.* p. 53; SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) p. 71.

[106] *See, e.g.,* Email chain between Lois Lerner, Nanette Downing, and others (Dec. 12–18, 2012) IRS0000185603–13. In that exchange, Lerner stated that EO Examinations personnel "have very little ability to apply any judgment" and asked Downing, "Who, in Exam, is responsible for oversight of the projects? More and more I'm feeling like it's me, and that doesn't work."

[107] The assertion that Lerner maintained tight control of EO operations is further borne out by Lerner's own admission that she is the "queen of control." Email from Lois Lerner to Sarah Hall Ingram (Oct. 25, 2010) IRS0000770062.

[108] SFC Interview of Nanette Downing (Dec. 6, 2013) p. 36 (emphasis added).

[109] Email chain between Lois Lerner and Nanette Downing (Oct. 31–Nov. 1, 2012) IRS0000184801.

Downing assured Lerner that a "post review" of the PARC's decisions "will be done."[110] Lerner indicated that she wanted to further review the PARC's work:

> I looked at the names of the orgs selected [for examination] and only one is one that had been in the news. I would like to see the list of the ones not selected [for examination].[111]

Concluding the conversation, Lerner noted that she does not "plan to talk about this with Steve [Miller]," because Miller "needs to be outside case selection" since he had been elevated to Acting IRS Commissioner.[112] Lerner apparently saw no problem with her own involvement in the process. Neither did Downing, as she did not refer Lerner to TIGTA following this email exchange. Downing's permissive management enabled Lerner to inject her personal political bias into the review process of allegations related to political campaign intervention.

b. Lois Lerner Intervened in Audit Decisions Involving Political Organizations

Apart from the PARC, Lerner was active in the process of referring taxpayers for audits. As Downing explained:

> Q. Would Ms. Lerner ever contact you about specific taxpayers?
>
> A. Yes. Often, she would have requests for—I mean, we get that kind of stuff all the time: congressional requests, media requests. And she would need to know the status of something and whether or not we got it. But then, also, if she got referrals, she would send referrals to us.[113]

Indeed, documents reviewed by the Majority Staff of the Committee show that Lerner often relayed referrals to EO Examinations—particularly when the allegations related to conservative organizations—and in one case, she may have acted to prevent an audit of a Democratic organization.

i. Conservative Organizations Profiled by ProPublica

A prime example of Lerner's influence within the IRS to open audits occurred in January 2013. *ProPublica* published an article about "dark money" groups that named five conservative organizations: Americans for Responsible Leadership; Freedom Path; Rightchange.com; America is Not Stupid; and A Better America.[114] Lerner sent this article to Paz, David Fish and Light and requested to meet to discuss the "status of these applications."[115] While we do not know what Lerner told Paz, Fish and Light at that meeting, analysis performed by the House Ways and Means Committee found:

> [F]our of the five groups were subject to extra-scrutiny; two of the groups were placed in the IRS' surveillance pro-

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[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] SFC Interview of Nanette Downing (Dec. 6, 2013) pp. 17–18.
[114] *ProPublica*, Controversial Dark Money Group Among Five That Told IRS They Would Stay Out of Politics, Then Didn't (Jan. 2, 2013).
[115] Email chain between Lois Lerner, Nikole Flax and others (Jan. 2, 2013) IRS0000122510.

> gram, called a "Review of Operations," and two were selected to be put before the [PARC], which determines whether a group will be audited. Ultimately three of the groups were selected for audit.[116]

Lerner's interest in these conservative organizations and their resulting treatment by the IRS suggests that her left-leaning political views may have influenced official IRS actions.

ii. Teen Pregnancy Organization Affiliated With Bristol Palin

Another example of Lerner's interest in conservative organizations occurred in 2011, when Lerner considered opening an audit of a group with ties to Bristol Palin. There were reports that Palin received $332,500 in compensation from the Candie's Foundation, a nonprofit organization that seeks to prevent teen pregnancy. Upon receiving an article containing this information, Lerner took the initiative to ask her senior advisors if the IRS should open an audit of the organization:

> Thoughts on the Bristol Palin issue? I'm curious that a [private foundation] can pay any amount to someone who is not a [disqualified person]? It is a [private foundation] right? Even if it were a [public charity]—would that be private benefit—what are the consequences? I'm asking because I don't know whether to send to Exam as a referral.[117]

Lerner's willingness to act on this particular news article—among many that reached her inbox each day—shows that she was paying close attention to conservative politicians and organizations. In its review of nearly 1,500,000 pages of documents provided by the IRS, Majority staff did not find any instances where Lerner referred a progressive organization for audit based on a news article.

iii. Crossroads GPS

One conservative group that particularly interested Lerner was Crossroads GPS, which was founded by Karl Rove and applied for 501(c)(4) tax-exempt status in 2010. Lerner's handling of this application, in particular, shows her bias against conservative organizations that sought tax-exempt status—and her close connections to outside liberal advocacy groups. Of particular note, the Majority staff's review of IRS documents did not reveal any interactions between Lerner and representatives from outside conservative groups similar to her interactions with liberal groups described below.

In October 2010, Lerner received complaints about Crossroads GPS's alleged political activities from the Ways and Means Oversight Subcommittee Minority staff, as well as two outside liberal advocacy groups, Democracy 21 and the Campaign Legal Center.[118] After learning that Crossroads GPS had filed an application for

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[116] House Ways and Means Committee, Letter from Chairman Camp to Attorney General Eric Holder (Apr. 9, 2014) p.7 (internal citations omitted).

[117] Email chain between Lois Lerner, David Fish, Judith Kindell, and others (April 8, 2011) IRS0000847941–46.

[118] Email chain between Lois Lerner, David Fish, Sarah Hall Ingram, Joseph Grant, and others (Oct. 6, 2010) IRS0000453771–72; Email chain between Lois Lerner, Nan Downing and others (Oct. 5–Nov. 4, 2010) IRS0000459877–95.

tax-exempt status, Lerner suggested that the application should be reviewed in Washington, D.C. instead of Cincinnati, where the application would normally be reviewed.[119] A month later, on her own initiative, Lerner followed up to ensure that the October letter from Democracy 21 and the Campaign Legal Center had been sent to EO Examinations as a referral, so that they could decide whether to open an audit based on the allegations in the letter.[120]

The following May, Downing updated Lerner about two referrals that EO Examinations had received about Crossroads GPS.[121] Paz noted that the Crossroads GPS application for tax-exempt status had "just arrived [in Washington, D.C.] from Cincy."[122] Lerner then set up a meeting with her senior EO managers, Holly Paz, Michael Seto, Judy Kindell, and David Fish, to discuss "several moving pieces" involving Crossroads GPS, which included "[r]eferrals in Dallas [and] applications in Cincy."[123] Lerner also told Downing that she wanted to talk with her about Crossroads GPS.[124] A few days after that meeting, the application for Crossroads GPS was delivered to Paz.[125]

Democracy 21 and the Campaign Legal Center subsequently submitted two additional complaints about Crossroads GPS to the IRS in July and September 2011.[126] Lerner directed David Fish to send the second letter to EO Examinations as a referral.[127]

In May 2012, Democracy 21 and the Campaign Legal Center wrote again to the IRS, this time requesting that it deny Crossroads GPS's request for tax-exempt status.[128] After receiving this letter, Lerner requested a status update on Crossroads GPS's application. Sharon Light told Lerner that the case has been reviewed by two reviewers and that one has recommended general development while the other has recommended limited development. Lerner responded by telling Light that "full development may be the best course. . . ."[129] Lerner further stated to Light that "I will leave it in your capable hands. Having said that—as they say they have been filing 990s, you should be looking at those as well."[130] This message illustrates Lerner's management style: on the surface, she left matters in her employees' "capable hands," but she nudged them in whatever direction she desired—even senior employees like Light.

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[119] Email chain between Lois Lerner, David Fish, Sarah Hall Ingram, Joseph Grant, and others (Oct. 6, 2010) IRS0000453771–72.
[120] Email chain between Lois Lerner, Joseph Urban and others (Oct. 5–Nov. 4, 2010) IRS0000459877–95.
[121] Email chain between Lois Lerner, Nan Downing, Holly Paz and others (May 26–27, 2011) IRS0000196483–84.
[122] *Id.*
[123] Email chain between Lois Lerner, Nan Downing and others (May 26–27, 2011) IRS0000196485.
[124] *Id.*
[125] Email chain between Cindy Thomas, Holly Paz and others (June 1–0910, 2011) IRS0000066837–40.
[126] Petition for Rulemaking on Campaign Activities by Section 501(c)(4) Organizations (July 27, 2011) IRS0000436241–0960; Email chain between Lois Lerner, Nikole Flax and others (Sep. 28, 2011) IRS0000511970–93.
[127] Email chain between Lois Lerner, David Fish and others (Sep. 28–30, 2011) IRS0000511994–2018.
[128] Email chain between Lois Lerner, Sharon Light and others (May 25, 2012) IRS0000199184–86.
[129] *Id.*
[130] *Id.*

A few weeks later, on June 20, 2012, Lerner forwarded an article critical about Crossroads GPS to Downing and asked for an update about "referrals on this and what happened[.]"[131] In response, Downing explained that out of the 16 referrals, 10 were closed after the Political Activities Compliance Initiative committee decided not to pursue them, three others were closed by EO Classification, and the remaining three would be sent to the Review of Operations as part of the dual track program.[132]

On January 4, 2013 at 11:00 AM, Lerner met with Democracy 21 and the Campaign Legal Center to discuss the groups' proposed regulatory changes that would curtail political activities of 501(c)(4) organizations.[133] Victoria Judson, Associate Chief Counsel for TE/GE, and Ruth Madrigal, from the Treasury Department's Office of Tax Policy, were also at the meeting.[134] Shortly after the meeting, Lerner asked her technical advisor Thomas Miller if EO Examinations had opened an audit of Crossroads GPS.[135] Miller informed Lerner that EO Examinations had twice considered allegations against Crossroads GPS, and had decided both times not to start an audit.[136] After learning this information, Lerner questioned EO Examinations' handling of the allegations in an email to Downing:

> To get ready for the [January 4, 2013] meeting [with Democracy 21 and the Campaign Legal Center], I asked for every document they had sent in over the last several years because I knew they had sent in several referrals. **I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn't done something with the org.** The first complaint came in 2010 and there were additional ones in 2011 and 2012.
>
> * * * * * * *
>
> I don't know where we go with this—as I've told you before—I don't think your guys get it and the way they look at these cases is going to bite us some day. The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity—taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races. **Yet—twice we rejected the referrals for somewhat dubious reasons and never followed up once the 990s were filed.**[137]

Lerner further told Downing that while the organization had recently been referred to EO Examinations again, "this is an org that was a prime candidate for exam when the referrals and 990s first

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[131] Email chain between Lois Lerner, Nan Downing, and others (June 4–20, 2012).

[132] *Id.* See Section IX(A) of the Bipartisan Investigative Report for additional discussion of the Review of Operations, as well as other EO Examinations procedures.

[133] Email chain between Lois Lerner, Ruth Madrigal, Victoria Judson, and others (Dec. 14–19, 2012) IRS0000446771–75.

[134] Email chain between Lois Lerner, Victoria Judson, Ruth Madrigal, and others (Dec. 14, 2012) IRS0000446755–56.

[135] Email chain between Thomas Miller, Lois Lerner and Nanette Downing (Jan. 4–7, 2013) IRS0000122549–51.

[136] *Id.*

[137] *Id.* (emphasis added).

came in."[138] Lerner also stated, "I'm not confident [EO Examinations employees] will be able to handle the exam without constant hand holding—the issues here are going to be whether the expenditures they call general advocacy are political intervention."[139] Lerner closed by instructing Downing:

> Please keep me apprised of the org's status in the [Review of Operations] and the outcome of the referral committee. You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn't exempt. **Please make sure all moves regarding the org are coordinated up here before we do anything**.[140]

At 3:30 that afternoon, Lerner called a meeting with Paz and others to discuss the Crossroads GPS application for tax-exempt status. Paz noted that she "suspect[ed] this will be the first of many discussions" about Crossroads.[141] EO Determinations agent Joseph Herr, who has been working on the Crossroads GPS application for exemption since January 30, 2012, was also invited to the 3:30 meeting. Herr noted in the case log for the Crossroads GPS application that he participated on a conference call with EO Technical on January 4, 2013, "[o]n how best to proceed with case."[142] On January 7, 2013, Herr noted, "Based on conference begin reviewing case information, tax law and draft/template advocacy denial letter, all to think about how to compose the denial letter."[143] These entries reflect the first time in the log that Herr noted the possibility of denying Crossroads GPS's application since he was assigned the case in January 2012, which suggests that he received the direction to deny the case from Lerner during the conference call that afternoon.[144]

On January 7, 2013, Downing provided a summary to Lerner of the referrals made about Crossroads GPS and the decisions of the PARC not to open audits.[145] Lerner told Downing that the reasons given by the PARC are "most disturbing." Lerner further told Downing:

> As I said, we are working on the denial for the 1024, **so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it**.[146]

If anything is "disturbing" about the IRS's handling of Crossroads GPS, it is Lerner's excessive involvement in all stages of the application and examination process. Lerner's actions went beyond mere concern that the IRS would reach the correct decisions on the

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[138] *Id*.
[139] *Id*.
[140] *Id*. (emphasis added).
[141] Email from Holly Paz to Nancy Marks (Jan. 4, 2013) IRS0000475846.
[142] EP/EO Case Chronology Record for Crossroads Grassroots Policy Strategies (undated) IRS0000071224–26.
[143] *Id*.
[144] In fact, the IRS prepared a draft denial in April 2013. *See* Email chain between Sharon Light, Holly Paz, Joseph Herr and others (April 8–May 30, 2013) IRS0000529074–75 (attachment containing taxpayer information omitted by Committee staff). As of April 2015–54 months after Crossroads GPS submitted its application for tax-exempt status—the IRS had still not rendered a final decision.
[145] Email chain between Thomas Miller, Lois Lerner and Nanette Downing (Jan. 4–7, 2013) IRS0000122549–51.
[146] *Id*. (emphasis added).

application and referrals. Through her heavy-handed management, she ensured that the application received particular attention in Washington, D.C. and that the allegations of improper activity were considered time and time again—culminating in her discussion with Downing about whether they should open an examination in January 2013 after her subordinates had repeatedly declined to do so.

iv. Stupak for Congress, Inc.

In at least one instance, Lerner and other senior IRS officials may have acted to stop a planned audit of a Democratic organization.

An organization affiliated with Democratic Congressman Bart Stupak was selected for examination in April 2010 by the National Research Program (NRP). TE/GE Division staff identified the organization as an "extremely sensitive" case, characterizing Stupak as an "anti-abortion Democrat" who was a "lightning rod for the Republicans and anti-abortion crowd" and whose "office was picketed by the Tea Party folks."[147] The proposed audit was elevated to Nan Downing, who then asked Lerner if the IRS should continue with the planned audit. Lerner, in turn, asked Ingram if the audit should continue. Ingram suggested that Lerner should see if the NRP would "toss them out" of the planned audit because the organization would cease to exist after Stupak left office in January 2011. Lerner indicated that she would follow up with the NRP as Ingram suggested.[148]

It is unclear if Lerner and Ingram were able to stop the audit. But regardless, their actions show a willingness to manipulate the audit process when political issues were at stake.

c. Nan Downing Allowed Lois Lerner to Make Audit Decisions and Did Not Refer Her to TIGTA

As noted throughout the discussion above, Downing allowed—and in some cases enabled—Lerner and other senior IRS officials to become directly involved in selecting organizations for examination. Although many of these discussions appear to be prohibited by IRS policy, their extended discussion about referrals for Crossroads GPS, described immediately above, is most troubling. Although Lerner did not overtly direct Downing to open an audit, Lerner's emails reveal her belief that the IRS should audit Crossroads GPS. Lerner's repeated involvement with this conservative taxpayer showed her persistence in making sure an audit was, in fact, opened—and further evidence her bias against organizations on the right side of the political spectrum.

Downing told Committee staff that interfering with the career Federal employees in EO Examinations charged with deciding whether to open audits had serious repercussions:

> You know, as a revenue agent and, you know, even as an IRS employee, you know, my folks are taught from the very beginning about, you know, several things. One is,

[147] Email chain between Lois Lerner, Sarah Hall Ingram, Nan Downing, and others (Apr. 19–0920, 2010) IRS0000713405–09.
[148] *Id.*

you know, no one will tell us who to do an audit on. If they did, you'd turn that in to TIGTA [for investigation].[149]

Downing stated that this rule would also apply to Lerner in the event that she tried to direct an audit.[150] Yet Downing did not refer Lerner to TIGTA.[151] Downing told Committee staff that a referral was not necessary because she did not consider Lerner's emails of January 4, 2013 and January 7, 2013 to be directing an audit:

Q. Is this Lois Lerner telling you or suggesting that Exams open up an audit?

A. No. That's not the way I took it. The way I took it is she worried—we were not lawyers, as I said. We were accountants. And whether or not we were correctly—if we knew what we were doing.

* * * * * * *

Q. Well, her statement that "twice we rejected the referrals for somewhat dubious reasons," doesn't that suggest the negative

A. That

Q. that the correct decision was not projected?

A. That is not the way I took it. And maybe it was because of my relationship of her. I did not take it that she was telling me what to do.[152]

Downing told Committee staff that she construed Lerner's message as a general comment about the referral process, and that it did not relate to Crossroads GPS specifically:

Q. How did you take the statement, "Please make sure all moves regarding the organization are coordinated up here before we do anything"?

* * * * * * *

A. Okay. So this was—okay. So this one—and I think she mentions somewhere in here that there's an application pending. And in our dual track process—so, to me, it wasn't Crossroads GPS, it was any of them, that the team, as we built the dual track process, they are to be cognizant if Rulings and Agreement[s] has an application. So we're going to go on and start an exam, but we just want to make sure, what if, right before we get ready to start exams, they issue a denial? And I don't even know what their process is, but what if they deny it? So it's coordinating, making sure that piece is in my process.

Q. I mean, because there's nothing in this email chain relating to general process, and it's all

A. No.

Q. with respect to one taxpaying group.

A. But I took it

Q. So that just doesn't follow from the

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[149] SFC Interview of Nanette Downing (Dec. 6, 2013) p. 18.
[150] *Id.* p. 19.
[151] *Id.* p. 76.
[152] *Id.*

A. Yeah. But that's how I took it because it's—it's because of an application pending.

* * * * * * *

Q. So if you took that statement to be a general statement about the process, why was your response totally with respect to one group?

A. Well, she was originally asking about

Q. Well, in the statement she's asking about one group.

A. She was asking about that referral, so I responded to that. You know, you had to know Lois. You had to know the emails you got. I responded with the facts, and the rest of it I just made sure that we had this built in to the process.

* * * * * * *

Q. So when she says, "Please make sure all moves regarding the org are coordinated up here before we do anything"

A. What I did was what my staffing says: Do we have a process in place that we know which ones have applications pending? They said yes.

Q. But did you feel that you had to apprise her of all moves regarding the org

A. No.

Q. with her?

A. No. What I took from that was, in that process, if any of them, GPS, Crossroads GPS, anything else, had an application pending, we built in to the process that if it was decided for the exam, they had a contact to reach out with [Rulings and Agreements] to see what the status was.

* * * * * * *

Q. And then her statement, "I need to think about whether to open an exam. I think yes, but let me cogitate on it a bit," that did not, to you, sound like it was her decision whether or not to open up an exam on

A. No. No. I didn't take it that way. I took it about, what is the process, and when we have any organization that has a potential application, and where is that application and whether, you know—and, again, how close is the decision on that application.[153]

In spite of Downing's imaginative interpretation, Lerner was clearly referring to Crossroads GPS in her messages of January 4, 2013 and January 7, 2013. These exchanges should have been referred to TIGTA as they amounted to an overt attempt by Lerner to open an audit on a specific taxpayer. But even taking Downing's testimony at face value, which we do not, her complacent attitude allowed Lerner to exert improper influence on the examination process.

D. Conclusions Regarding Lerner's Role and Culpability

There can be little doubt that Lois Lerner's personal political views directed the course of IRS interactions with a large number of tax-exempt organizations. The IRS's treatment of these organiza-

[153] *Id.* pp. 76–85 (portions omitted).

tions was almost universally consistent with Lerner's personal political views—this is, supporting Democratic candidates and opposing conservative tax-exempt organizations that engaged in political speech. Conservative organizations that sought to participate in the nation's political discourse, such as the Tea Party, drew the strongest ire from Lerner. Her influence led not only to indefinite delays in the processing of these groups' applications for tax-exempt status, but also to audits. During that same time, the IRS generally responded quickly and favorably to nonprofit organizations that were affiliated with progressive causes or politicians.

We conclude that Lerner was responsible for harm caused to conservative taxpayers during her tenure at the IRS. But we must hold IRS and Treasury management equally responsible for their failure to exert any meaningful oversight of Lerner's EO Division. A biased employee, such as Lerner, should not have been allowed to remain in senior positions for more than 10 years, and should never have been given free reign over such a vast and influential part of the IRS. To avoid exposing taxpayers to the risk of biased treatment in the future, the IRS and Treasury must keep a closer watch of their employees and ferret out politically-biased behavior.

III. SENIOR IRS OFFICIALS CONTINUOUSLY MISLED CONGRESS ABOUT THE IRS'S HANDLING OF APPLICATIONS SUBMITTED BY TEA PARTY ORGANIZATIONS

Senior IRS officials including Doug Shulman, Steve Miller, and Lois Lerner consistently misled Congress about the IRS's targeting of Tea Party and other political advocacy groups that were seeking tax exempt status. These misrepresentations covered up IRS wrongdoing, allowed the IRS to escape accountability for its abusive treatment of Tea Party organizations until the release of the TIGTA report in May 2013, and materially impeded Congress in the performance of its Constitutional oversight responsibilities.

A. Doug Shulman Misled Congress Regarding the Targeting of Tea Party Groups

On March 22, 2012, then-Commissioner Doug Shulman testified before the House Ways and Means Subcommittee on Oversight.[154] Prior to appearing before that Subcommittee, Shulman had become aware from press stories, as well as from letters he received from Members of Congress, of allegations that Tea Party groups that had filed applications for tax-exempt status were receiving intrusive development letters from the IRS that sought unusual information such as the names of their donors.[155] Shulman was also aware from these sources that there existed a backlog of applications for tax-exempt status and that many of these Tea Party groups had been waiting a substantial period of time for a decision from the IRS.[156] Coverage of these issues in the media had been so pervasive that Shulman anticipated that he might be asked questions during the hearing regarding processing delays and in-

[154] Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, "Internal Revenue Service Operations and the 2012 Tax Filing Season" (Mar. 22, 2012).
[155] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 58–65.
[156] *Id.* pp. 39–40.

trusive development letters.[157] During the course of the hearing, the following colloquy occurred between Representative Boustany and Commissioner Shulman.

> **Mr. Boustany:** . . . It has come to my attention, I've gotten a number of letters, we've seen some recent press allegations that the IRS is targeting certain Tea Party groups . . . Can you elaborate on what's going on with that? Can you give us assurances that the IRS is not targeting particular groups based on political leanings?
>
> **Mr. Shulman:** Thanks for bringing this up. I think there's been a lot of press about this and a lot of moving information, so I appreciate the opportunity to clarify. **First, let me start by saying, yes, I can give you assurances.**
>
> * * * * * * *
>
> **There is absolutely no targeting. This is the kind of back-and-forth that happens when people apply for 501(c)(4) status.**[158]

Shulman's response failed to acknowledge several facts of which he was aware at the time of his testimony. For example, he knew that the IRS had issued intrusive development letters to these groups, in many cases seeking the names of donors, yet he chose to depict these interactions as "the kind of back-and-forth that happens" when the IRS processes an application for tax-exemption.[159] Moreover, he was aware of the fact that these groups were experiencing substantial processing delays.[160] The intrusive questions and delays were facts that clearly suggested that these groups were being treated differently by the IRS, possibly as a result of their political views. In light of Shulman's knowledge at the time of his testimony, it is difficult to reconcile his emphatic assurance that the IRS was not improperly processing applications from conservative organizations. Indeed, characterizing these circumstances as part of the "back and forth that happens when people apply for 501(c)(4) status" was nothing short of misleading and had the effect of throwing Congress and the public off the scent of IRS wrongdoing.

In early May 2012, just five or six weeks after Shulman's appearance before the House Ways and Means Subcommittee on Oversight, Shulman was informed by Steve Miller of the existence of the BOLO list and that it contained an entry for the Tea Party.[161] Later that month, Inspector General George apprised Shulman that TIGTA was pursuing an investigation into the use by the IRS of inappropriate criteria in the processing of applications for tax exempt status.[162] Thus, by late May 2012, Shulman was not only aware that the IRS had been improperly focusing on Tea Party groups as a result of their political views, but also knew that the

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[157] *Id.* pp. 70–71.
[158] Hearing before the Subcommittee on Oversight of the House Committee on Ways and Means, "Internal Revenue Service Operations and the 2012 Tax Filing Season" (Mar. 22, 2012) pp. 93–94 (emphasis added).
[159] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 31–37.
[160] *Id.* pp. 34–35.
[161] *Id.* pp. 40–52.
[162] *Id.* pp. 76–77.

Inspector General was launching an investigation into the matter. In spite of this knowledge, Shulman elected to remain silent and make no effort whatsoever to correct his recent inaccurate testimony before the Subcommittee regarding the absence of targeting. His failures allowed the IRS to actively conceal its mistreatment of Tea Party and other political advocacy groups for more than a year until the issuance of the TIGTA report in May 2013, and thwarted the Subcommittee in the performance of its oversight responsibilities.

B. Steve Miller Withheld Information About Political Targeting From the Congress

During 2012, Steve Miller, while Deputy Commissioner for Services and Enforcement, was afforded a number of opportunities to apprise Congress about the use of inappropriate criteria to target Tea Party and other political advocacy organizations, but instead, elected at each instance not to do so.

1. Miller's Response To Senator Hatch's March 14, 2012 Letter Was Misleading

By letter dated March 14, 2012, Senator Orrin Hatch together with 11 other Republican Members of the U.S. Senate penned a letter to Commissioner Shulman regarding their concern over intrusive IRS inquiries to Tea Party and other conservative organizations that were seeking tax exemption under section 501(c)(4).[163] The letter stated that the Senators were concerned in ensuring that "tax compliance efforts are pursued in a fair, even handed and transparent manner—without regard to politics of any kind."[164] The letter sought information about how and why the IRS sought particular types of information from applicants and stated that the questions were born of "concerns about selective enforcement and the duty to treat similarly situated taxpayers" in the same fashion.[165]

Miller responded by letter dated April 26, 2012.[166] At the time of Miller's response, he was aware of a number of disturbing facts regarding how the IRS was processing applications for tax-exempt status received from Tea Party and other political advocacy groups. For example, he knew in February 2012 that many of the applications for tax exemption from Tea Party and other political advocacy groups that were awaiting decision in the Determinations Unit were very old.[167] He was also aware of the press stories focusing on the IRS's use of highly intrusive questions, including questions about the identity of applicant organizations' donors.[168] Miller himself told Senate Finance Committee investigators that he believed the questions constituted "overreaching" by the IRS.[169] Further, he

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[163] Letter from Senator Orrin Hatch to Commissioner Douglas Shulman (Mar. 14, 2012) IRS0000509339–42.
[164] *Id.*
[165] *Id.*
[166] Letter from Steven T. Miller to Senator Orrin Hatch (Apr. 26, 2012) TIGTA Bates No. 006998–7007.
[167] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 102–103.
[168] *Id.* pp. 159–160.
[169] *Id.* p. 159.

knew in late March of 2012 that TIGTA was going to conduct an audit into how the IRS processed applications for tax exemption under sections 501(c)(4), (5) and (6).[170] In addition, at the time of his response to Senator Hatch, Miller had grown alarmed about the press stories and Congressional inquiries reporting lengthy processing delays experienced by Tea Party groups and of the use of intrusive development questions.[171] Miller testified that in March 2012, his concerns over these reports caused him to send Nan Marks, a trusted senior advisor, to visit the Determinations Unit in Cincinnati to investigate how the cases were being processed and to report back to him.[172]

In spite of these facts, Miller's response to Senator Hatch of April 26, 2012 actually *defended and justified* the IRS's demands from applicant organizations for information such as: the names of the organizations' donors; copies of social media posts, speeches, and panel presentations; the names and qualifications of speakers and participants at events; and written materials distributed by these organizations at public gatherings. In his April 26, 2012 response, Miller explained these highly unusual and intrusive requests—which he subsequently characterized during his interview with Senate Finance Committee staff as "overreaching"—in the following manner:

> The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application." [173]

At best, Miller's written response to the Senators was disingenuous, and at worst, it was plainly false and likely calculated to forestall further Congressional inquiry into the matter of how the IRS was processing applications for tax exemption from Tea Party and other political advocacy groups.

2. Miller Became Aware of Important Information Regarding Targeting Within a Week of Issuing His Response to Senator Hatch's March 14, 2012 Letter, but Failed To Bring That Information to the Attention of Congress

During the first week of May 2012—a scant week after issuing his response to Senator Hatch's letter—Miller was briefed by Nan Marks on her findings regarding how applications were being processed.[174] He then learned first-hand that the reports of a backlog and the long delays that applicant organizations were experiencing, in some cases for better than two years, were accurate.[175] He also learned from Marks that the issuance of intrusive development

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[170] *Id.* pp. 146–147. Email from Richard Daly to Steve Miller and others (Mar. 29, 2012) IRS0000411131–32.
[171] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 123–130.
[172] *Id.* p. 129.
[173] Letter from Steven T. Miller to Senator Orrin Hatch (Apr. 26, 2012) TIGTA Bates No. 006998–7007.
[174] SFC Interview of Steven Miller (Dec. 12, 2013) p. 131.
[175] *Id.* pp. 133–135.

questions by Determinations Unit staff resulted from a failure to properly train that staff and to provide it with adequate technical support.[176] Most importantly, Marks apprised Miller of the existence of the BOLO list; that "Tea Party" was on the list; and that applications for tax exemption had been selected for full development based on the presence of terms in the applications, such as "Tea Party," "Patriots," and "9/12."[177]

Miller told Committee staff during his interview that he was "outraged" when he first learned of the existence of the BOLO list and felt that it was "stupid" and "inappropriate."[178] Miller's outrage over the existence of the BOLO list stemmed in part from his concern that such a list that focused on the names of organizations, rather than on their activities, suggested that the IRS was applying the tax laws in a partisan way, with regard to the political views of the organizations whose applications it was considering.[179]

Unfortunately, Miller's outrage over the use of terms like "Tea Party" to flag applications for full development did not motivate him to the point of contacting Senator Hatch, to whom he had most recently written, and to inform him of Marks's findings. This is particularly troublesome given the fact that the stated intent of Senator Hatch's letter was his concern whether the IRS was administering the tax laws in a fair and even way, "without regard to politics of any kind"—the very same concern that Miller formed when he purportedly became "outraged" over the fact that the IRS had been flagging applications for full development based on the political views of applicant organizations. Not more than a week after writing to Senator Hatch to provide answers to questions raised by their now shared concern whether the IRS was administering the tax laws fairly and without regard to the political views of tax payers, Miller was in possession of information directly germane and responsive to that concern. Rather than inform Senator Hatch of Marks's findings, Miller, once again, elected to remain silent on the matter.

Of further note, and again reflective of Miller's lack of candor with the Congress, is the fact that Marks told Miller that the intrusive development questions resulted from a failure to adequately train the EO Determinations Unit staff, as well as a failure to provide that staff with sufficient technical support.[180] Accordingly, by the week of May 3, 2012, Miller was fully aware that the intrusive development letters that had been issued by EO Determinations personnel most certainly were not the product of "sound reasoning" nor were they "based on tax law training and . . . experience," as he had asserted in his response to Senator Hatch dated April 26, 2012. Miller was content to leave his inaccurate and misleading response stand without revision, yet another disingenuous act aimed at obfuscating the true state of affairs with the IRS's processing of the Tea Party and other political advocacy applications.

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[176] *Id.* p. 134.
[177] *Id.* pp. 135–139.
[178] *Id.* pp. 139–141.
[179] *Id.*
[180] *Id.* p. 134.

3. Miller's Response to the June 18, 2012 Letter From Senator Hatch Regarding the IRS's Attempt to Collect Donor Information From Applicants Continued Miller's Pattern of Obfuscation

On June 18, 2012, Senator Hatch, together with ten other Republican Senators, corresponded again with Commissioner Shulman over the IRS's treatment of Tea Party organizations.[181] This time, the focus of the Senators' attention was on the collection by the IRS of the names of the donors who made, or were expected to make, a donation to Tea Party and similar political advocacy organizations seeking tax-exempt status. As explained in the June 18, 2012 letter, by operation of law, the identity of donors of tax-exempt organizations is not information subject to disclosure by the IRS. However, information provided to the IRS by an organization in furtherance of its application can be disclosed to the public once the IRS grants tax-exempt status. Thus, by asking organizations for the names of their donors as part of the application process, the IRS was, in effect, subjecting that information to disclosure and thereby nullifying the statutory safeguards designed to protect the privacy of donor information. In light of this anomaly, Senator Hatch wrote to Commissioner Shulman, posing specific questions about the IRS's requests for donor information.

Miller responded to Senator Hatch's letter three months later on September 11, 2012.[182] This response provided Miller with an excellent opportunity to inform Congress about the BOLO list and the targeting of Tea Party and similar political advocacy organizations, facts of which Miller was now well aware. However, rather than do so, Miller chose to avoid the topic of targeting entirely, providing a very technical and carefully drawn response to the immediate questions raised, that once again justified the IRS's collection of information regarding the identity of donors. By doing so, Miller elected to stay the course of obfuscation, relying once again on the IRS nostrum that:

> Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. . . . As noted above . . . donor information may be needed for the IRS to make a proper determination of an organization's exempt status.[183]

Miller's letter was misleading on an even more basic level. The September 11, 2012 letter failed to note IRS management's own concerns about the attempt to collect donor information, a concern that prompted Miller to direct on March 8, 2012, *some six months earlier*, that applicant organizations that called the IRS to discuss requests for the identity of their donors were to be informed that they did not need to provide that information.[184] Miller also failed to inform Senator Hatch that at the request of Lois Lerner, the Office of the IRS Chief Counsel had provided an opinion on May 21, 2012, that the donor information submitted by organizations in re-

[181] Letter from Senator Orrin Hatch to Commissioner Douglas Shulman (June 18, 2012).
[182] Letter from Steven Miller to Senator Orrin Hatch (Sep. 11, 2012).
[183] *Id.*
[184] Email from Nikole Flax to Lois Lerner (Mar. 8, 2012) IRS0000465957.

sponse to requests received from the IRS could be destroyed.[185] Similarly, Miller's response of September 26, 2012 omitted the fact that on June 27, 2012, Holly Paz directed IRS staff to expunge donor information from files and to send affected applicants a letter advising them that the donor information would be destroyed.[186]

Miller's statements to Congress defending the requests for donor information when he was fully aware that they were inappropriate, constituted "overreaching" and in fact, had been halted by the IRS, were false and misleading.

4. Miller's Explanation for Failing To Inform Congress Was a Sham

At Miller's interview with Senate Finance Committee Staff, he was asked why, after learning from Nan Marks about the BOLO list and that applications from Tea Party groups had been flagged for full development based on the basis of their political views, he did not convey that information to Senator Hatch. Miller's response was that he did not have all the facts yet, and that TIGTA was conducting a review.

> Q. . . . Why didn't you pick the phone up? Why didn't you write an email to Senator Hatch? Why didn't you ask your staff to contact the Senate Finance Committee staff and have them come over and brief them on what Ms. Marks had found? All those things were things that could have been done and should have been done, don't you think?
>
> A. No. I didn't have all the facts. TIGTA was working on the facts . . . .[187]

Miller took the position that he had no duty to inform Senator Hatch after learning about the BOLO list and how it had been used because TIGTA was now investigating the matter in order to establish "all the facts." In Miller's view, the involvement of TIGTA obviated any responsibility on his part to bring the facts of which he was aware to the attention of Congress.

The flaw in Miller's rationale for failing to inform Congress is evident when viewed in the light of Miller's subsequent actions in April and May of 2013. Miller had been briefed by Inspector General George on March 27, 2013 about TIGTA findings regarding the IRS's use of inappropriate criteria in the processing of applications for tax exempt status.[188] Shortly thereafter, either in March or April, Miller was also given a discussion draft of the TIGTA report to review.[189] Even though the TIGTA review was not yet completed nor the report finalized, Miller plotted with Lois Lerner to disclose the draft findings of that report to the public at an American Bar Association (ABA) meeting on May 10, 2013, before issuance of the final report, in an effort to get out in front of the unfavorable conclusions reached by TIGTA.[190] Accordingly, while Miller asserted to the Senate Finance Committee investigators that the ongoing TIGTA investigation relieved him of any responsibility to inform

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[185] Email chain between Margo Stevens, Lois Lerner and Kristen Witter (May 21, 2012) IRS0000177231.

[186] Email from Holly Paz to Sharon Light and Matthew Giuliano (June 25, 2012) IRS0000432414.

[187] SFC Interview of Steve Miller (Dec. 12, 2013) p. 168.

[188] *Id.* pp. 210–213.

[189] *Id.*

[190] *Id.* p. 218; SFC Interview of Nikole Flax (Nov. 21, 2013) pp. 190–194.

Congress that applications from Tea Party and other political advocacy groups had been flagged for full development based on the political views of the groups in question, apparently, he felt no such constraint when it came to leaking the contents of TIGTA's investigation to the public in furtherance of his own interests.

In sum, Miller's communications with Congress about IRS targeting evidenced a pattern of half-truths, misinformation, and downright deception. Unfortunately, this conduct served Miller well throughout 2012 and early 2013, as it kept Congress and the public from confirming as true what was then widely suspected as IRS wrongdoing in the treatment of Tea Party organizations.

C. Lois Lerner Actively Covered Up the Existence of IRS Targeting in Her Communications With Congress

Much the same as her superiors Shulman and Miller, Lerner also misled Congress about the targeting of Tea Party and other political advocacy groups.

1. Lerner Misled Staff of the U.S. House of Representatives Committee on Oversight and Government Reform

In 2012, Lerner provided several briefings to staff of the U.S. House of Representatives Committee on Oversight and Government Reform (OGR) regarding the treatment of applications received from Tea Party and other political advocacy groups.[191] During the course of one such briefing on February 24, 2012, she was asked by House Committee staff if the IRS had changed the criteria for evaluating applications for tax-exempt status.[192] Lerner apparently informed House Committee staff that it had not.[193] This answer was false, as Lerner knew that the criteria had changed in 2010 with the issuance of the BOLO list that identified the Tea Party as an emerging issue.[194] She was aware that screeners had used the names of conservative organizations like "Tea Party," "Patriots," or "9/12" as the criteria to select applications for full development.[195] She also knew that for other organizations whose names did not include these terms, screeners had used the conservative policies advocated by these organizations (e.g., balancing the budget, limiting government, reducing taxes, etc.) as the criteria for selecting their applications.[196] Moreover, Lerner herself had ostensibly changed the criteria in July 2011 when she directed Cindy Thomas to remove the "Tea Party" entry from the BOLO list and replace it with the more generic reference "advocacy orgs."[197]

Subsequently, on April 4, 2012, Lerner provided another briefing to House Committee staff regarding highly intrusive development questions that the IRS had sent to Tea Party and other political advocacy organizations, seeking unusual information that included,

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[191] U.S. House of Representatives Committee on Oversight and Government Reform, The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress (Dec. 23, 2014).
[192] *Id.* p. 55.
[193] *Id.*
[194] Email from Justin Lowe to Holly Paz and others (June 27, 2011) IRS0000431165–66.
[195] *Id.*
[196] *Id.*
[197] Email chain between Cindy Thomas, Ronald Bell, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735–40.

among other things, the names of the donors of the applicant organizations.[198] Lerner falsely characterized these requests for information as not being out of the ordinary.[199] As explained more fully below, Lerner herself had reservations about the information requests months earlier, information requests that TIGTA subsequently determined were irrelevant, burdensome and caused delays in the processing of applications.[200]

Indeed, on May 4, 2012, Lerner provided a 45 page written response to a letter dated March 27, 2012 from then Chairman Issa requesting additional information regarding the intrusive development questions, such as the names of donors, a list of issues important to the organization, and details about events held by the organization.[201] Lerner explained the circumstances under which the IRS would request each piece of information identified in the March 27, 2012 letter and repeated the IRS "go-to-line" that:

> The revenue agent working a case uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's tax exempt status. Follow-up information requested would be based on the facts and circumstances set forth in the particular application.[202]

Unfortunately, Lerner failed to convey in her response to Chairman Issa some very important additional information on the matter of the development questions. For example, Lerner failed to state that on February 29, 2012, she had grown concerned about the highly burdensome development questions (possibly as a result of the bad press and Congressional inquiries the IRS was receiving as a consequence of their use) and apprised Holly Paz to direct EO determinations to stop using the questions, as follows:

> Have we given Cincy new guidance on how they might reduce the burden in the information requests and make it clearer that recipients can ask for extensions? I don't want anymore [sic] letters going out on advocacy cases until the letters have been adjusted. **Also, I have been telling folks that not all the letters are the same because it depends on the facts. What I've seen so far though is identical letters—can you clarify for me please. Thanks** [203]

Moreover, on April 24, Holly Paz asked Judith Kindell to review development letters and to "create a list of what you consider to be the 5–10 most troubling questions . . . ." [204] Kindell complied and

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[198] U.S. House of Representatives Committee on Oversight and Government Reform, The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress (Dec. 23, 2014) p. 55.

[199] *Id.*

[200] TIGTA, Inappropriate Criteria Were Used to *Identify Tax-Exempt Applications for Review*, Audit Report 2013–10–053 (May 14, 2013).

[201] Letter from Lois Lerner to Chairman Darrell Issa (May 4, 2012) TIGTA Bates No. 007008–007052.

[202] *Id.*

[203] Email chain between Lois Lerner, Holly Paz, David Fish, and Cindy Thomas (Feb. 24–29, 2012) IRS0000209976–77 (emphasis added).

[204] Email from Holly Paz to Judith Kindell (Apr. 24, 2012) IRS0000512491.

prepared a list that she sent to Paz on April 25, 2012.[205] Among the seven types of development questions that Kindell identified as "troubling" were questions asking organizations to identify their donors, describe the issues important to them, and provide details regarding events held by them.[206] These were the very *same questions* that Lerner depicted in her May 4, 2012 letter as authorized under law and appropriate and necessary for the IRS to ask in order to properly evaluate applications.[207]

Accordingly, Lerner's May 4, 2012 response to then-Chairman Issa created the false impression that the questions were entirely proper and regular, when in fact, Lerner had recognized months earlier that they were burdensome and possibly not tailored to the facts of each application, and had therefore directed that EO Determinations agents stop using them. Moreover, among the questions that Lerner justified as appropriate were questions that her own Senior Technical Advisor, Judith Kindell, had flagged as "troubling" just a week earlier. Indeed, EO not only viewed these questions as "troublesome," but also concluded that they were "unnecessary."[208] Contrary to Lerner's misleading statements, the questions then, were not based on "sound reasoning," "tax law training and . . . experience" nor were they "based on the facts and circumstances set forth in the particular application."

2. Lerner's Testimony Before the House Ways and Means Subcommittee on Oversight Was False and Misleading

Sometime in April 2013, Steve Miller and Lerner agreed that she would make a public statement regarding the results of the TIGTA review in advance of the release of the TIGTA report.[209] Lerner ultimately chose the May 10, 2013 ABA Tax Section's Exempt Organizations Committee Meeting as the venue for her public announcement.[210] In order to make the plan work, Lerner needed to be certain that she would be asked a question that would afford her the opportunity to preview TIGTA's conclusions.[211] Accordingly, she contacted Celia Roady, an acquaintance and Washington D.C. tax attorney who would be attending the ABA meeting.[212] Lerner arranged to have Roady ask her a "planted" question during the question and answer portion of the ABA meeting.[213] The relevant portions of Lerner's statements at the meeting are as follows:

> **Ms. Roady:** Lois, a few months ago there was some concern about IRS review of 501(c)(4) organizations, 501(c)(4) applications by Tea Party organizations. And I'm just wondering if you can provide any update on any of that.

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[205] Email from Judith Kindell to Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868.
[206] *Id.*
[207] Letter from Lois Lerner to Chairman Darrell Issa (May 4, 2012) TIGTA Bates No. 007008–007052.
[208] TIGTA, Inappropriate Criteria Were Used to *Identify Tax-Exempt Applications for Review*, Audit Report 2013–10–053 (May 14, 2013).
[209] SFC Interview of Steven Miller (Dec. 12, 2013) pp. 218–221.
[210] Email from Lois Lerner to Steven Miller (May 8, 2013) IRS0000209214.
[211] Email from Lois Lerner to Nikole Flax (May 9, 2013) IRS0000209300.
[212] *U.S. News and World Report,* Exclusive: Woman Who Asked IRS's Lois Lerner Scandal-Breaking Question Details Plant (May 17, 2013).
[213] *Id.*

> **Ms. Lerner:** . . . So our line folks in Cincinnati that handle the applications did what we call centralization of these cases. They centralized work on these in one particular group. . . .
>
> However, in this case the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party, or Patriots. They selected cases simply because the application had those names in the title.
>
> That was wrong, that was absolutely incorrect, it was insensitive, and it was inappropriate. That's not how we go about selecting cases for further review. We select them for further review because they need further review, not because they have a particular name.
>
> The other thing that happened was they also, in some cases, cases sat around for a while. They also sent some letters out that were far too broad; they were asking questions of these organizations that weren't really necessary in the type of application.
>
> In some cases you probably read that they asked for contributor names. That's not appropriate, it's not usual. . . .[214]

Lerner's admission that "line folks" at the IRS had targeted Tea Party groups seeking tax-exempt status for "further review," subjected them to delays as well as to unnecessary and burdensome development questions, and her tepid apology for those actions, came as a shocking revelation. For over a year, Lerner, Shulman and Miller had steadfastly denied any wrongdoing by the IRS in the treatment of Tea Party groups. Indeed, just two days before her admission and apology, Lerner appeared before the Subcommittee on Oversight of the House Committee on Ways and Means.[215] Lerner was asked by Representative Joseph Crowley about the status of the IRS's own investigation into 501(c)(4) groups. The exchange between Representative Crowley and Lerner was as follows:

> **Mr. Crowley:** And finally, in the summer of 2012 it was reported that the IRS was going to undertake a similar investigation into the one taken here on colleges and universities on political entities that fund political campaign ads that were taking donations anonymously and are tax exempt. These are the folks that put on hundreds of millions of dollars in campaign ads in 2012 elections, all with no accountability and with taxpayer subsidy.
>
> This hearing highlights certain compliance problems in the tax-exempt sphere, and I hope the IRS aggressively looks into these political and business leagues to see if they are abusing the tax-exempt status. I don't want to speak for the chairman or for the ranking member, but I know my constituents in Queens do not want their tax dollars being used to subsidize political campaigns. I suspect neither do any of the members on this panel.

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[214] American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126–127.

[215] Hearing Before the Subcommittee on Oversight of the House Committee on Ways and Means, "Hearing on the Internal Revenue Service's Colleges and Universities Compliance Project" (May 8, 2013).

> So, Ms. Lerner, if you could comment briefly on the status of the IRS investigation into these political not-for-profits, I would appreciate that as well.
>
> **Ms. Lerner:** Well, there was a questionnaire that began this discussion and there is also a questionnaire out there, you can look at it on our Web site right now, that is seeking information from section 501(c)(4), (5), and (6) organizations, and a big piece of that questionnaire relates to their political activities. So that is our beginning.
>
> **Mr. Crowley:** I appreciate that. Thank you.[216]

Lerner's referral to an obscure IRS questionnaire in response to Representative Crowley's point-blank question regarding the status of the IRS investigation into "political not-for-profits" was pure deception. On May 8, 2013, the date of her appearance before the Subcommittee on Oversight, Lerner was aware of a number of incriminating facts. She knew at least as early as July 2011 that organizations seeking tax-exempt status that had the names "Tea Party," "Patriots" and "9/12" had been singled out on the BOLO List and subjected to additional scrutiny.[217] Also, nearly a year before her exchange with Representative Crowley, Lerner became aware that TIGTA would conduct a review of how the IRS processed applications for tax exempt status under section 501(c)(4) that involved political advocacy issues.[218] Lerner knew that the outcome of that review would be condemnatory. She told Sarah Hall Ingram, Holly Paz and others on June 22, 2012 that:

> It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were (sic) off track, we have done what we can to change the process, better educate staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and have written procedures. So, it is what it is.[219]

By March 21, 2013, Lerner had read TIGTA's Pre-Discussion Draft Report and thus was aware of the full extent of the "dinging" that she was about to receive from TIGTA.[220] She knew from reading that draft that TIGTA's findings would not be limited just to finding fault with the IRS's use of names like "Tea Party," "9/12" and "Patriots" to identify applications for further review, but would also ascribe blame to her organization for causing long delays in the processing of applications and for using unnecessary and burdensome development questions, including questions seeking the identity of donors and the amounts of their contributions. Yet when asked by Representative Crowley about the status of the investigation, Lerner could offer only a dissembling reference to an IRS questionnaire.

Lerner's failure to truthfully respond to Representative Crowley's question during the House Subcommittee on Oversight hearing was

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[216] *Id.*

[217] Email chain between Cindy Thomas to Ronald Bell, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.

[218] Email chain from Lois Lerner to Richard Daly, Sarah Hall Ingram, Holly Paz and others (June 22–25, 2012). IRS00000000475251–52.

[219] *Id.*

[220] Email chain between Lois Lerner, Troy Patterson, Holly Paz and others (Mar. 21, 2013). IRS0000053201.

yet one more act of deception and obfuscation in a series of such acts intended to either cover up the IRS's targeting of Tea Party groups, or mitigate the consequences of that targeting.

In sum, Shulman, Miller, and Lerner engaged in an active pattern of deception in their oral and written communications with Congress regarding the IRS's treatment of Tea Party and other conservative groups seeking tax-exempt status. That pattern of deception is evident not only in what these individuals told Congress about the treatment of Tea Party groups, but also in what they failed to tell Congress. It is also apparent in the way that Miller and Lerner conspired to disclose the existence of the targeting through the use of a planted question at an ABA meeting, so as to diminish the repercussions resulting from TIGTA's soon-to-be released findings. The duplicity in their communications with Congress allowed the IRS to keep the legislative branch at arm's length in 2012 and 2013 while they took whatever steps they felt were necessary to address the targeting. Lerner's email quoted immediately above clearly shows the plan—when the targeting was discovered and ultimately disclosed by TIGTA, the IRS would claim that it had long ago corrected the problem and had taken the steps necessary to "make things better."[221] By actively concealing IRS wrongdoing in an effort to avoid Congressional scrutiny and interference, Shulman, Miller, and Lerner also undermined Congress's exercise of its Constitutional authority to oversee the activities of the IRS.

IV. THE OBAMA ADMINISTRATION SIGNALED THE IRS AND OTHER AGENCIES TO TARGET CONSERVATIVE TAX-EXEMPT ORGANIZATIONS

Political pressure from the White House following the Supreme Court's Citizens United decision unduly influenced the IRS and other government agencies, most notably the Department of Justice and the Federal Election Commission, to scrutinize political spending by 501(c) organizations. These agencies coordinated with each other on initiatives targeting conservative tax-exampt organizations.

The Democratic Party has consistently called for increased controls on political spending. In fact, this issue has been included in their national platforms since 2000:

> 2000: "We must restore American's faith in their own democracy by providing real and comprehensive campaign finance reform, creating fairer and more open elections, and breaking the link between special interests and political influence. The Republicans will have none of this. Instead of limiting the influence of the powerful on our politics, they want to raise contribution limits so even more special interest money can flow into campaigns."[222]
>
> 2004: "To guarantee the integrity of our elections and to increase voter confidence, we will seek action to ensure that voting systems are accessible, independently auditable, accurate, and secure. We will support the full funding of programs to re-

[221] Email chain from Lois Lerner to Richard Daly, Sarah Hall Ingram, Holly Paz and others (June 22–25, 2012). IRS00000000475251–52.
[222] Democratic Party Platform of 2000 (Aug. 14, 2000).

alize this goal. Finally, it is the priority of the Democratic Party to fulfill the promise of election reform." [223]

2008: "We support campaign finance reform to reduce the influence of moneyed special interests, including public financing of campaigns combined with free television and radio time. We will have the wisdom to put the public interest above special interests." [224]

2012: "Our political system is under assault by those who believe that special interests should be able to buy whatever they want in our society, including our government. Our opponents have applauded the Supreme Court's decision in *Citizens United* and welcomed the new flow of special interest money with open arms. In stark contrast, we believe we must take immediate action to curb the influence of lobbyists and special interests on our political institutions." [225]

Political pressure to curtail political speech reached a crescendo following the Supreme Court's January 21, 2010 *Citizens United* decision, which struck down parts of the Bipartisan Campaign Reform Act of 2002 (McCain-Feingold Act).[226] That same day, President Obama sharply condemned the decision, stating:

> With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.[227]

A few days later, President Obama used his State of the Union Address as an opportunity to shame the Court and call for reform:

> With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections. I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. They should be decided by the American people. And I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems.[228]

During the next several months leading up to the 2010 mid-term election, President Obama repeatedly denounced the *Citizens United* decision and called on Congress to tighten the reins on political spending by nonprofits. The calls were echoed by others in the Obama Administration and by Democrats in Congress, who introduced the DISCLOSE Act, which would have required certain nonprofits that engage in political activity to report information about their donors.[229] When the Senate failed to pass the legislation, President Obama castigated Republican lawmakers and stat-

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[223] Democratic Party Platform of 2004 (July 26, 2004).
[224] Democratic Party Platform of 2008 (Aug. 25, 2008).
[225] Democratic National Platform of 2012 (Sep. 3, 2012).
[226] 558 U.S. 310 (2010).
[227] The White House, Statement from the President on Today's Supreme Court Decision (Jan. 21, 2010).
[228] The White House, Remarks by the President in the State of the Union Address (Jan. 27, 2010).
[229] S. 3295, 111th Cong. (2010); H.R. 5175, 111th Cong. (2010).

ed that the bill's failure was "a victory for special interests and U.S. corporations—including foreign-controlled ones—who are now allowed to spend unlimited money to fill our airwaves, mailboxes, and phone lines right up until Election Day." [230]

President Obama's statements did not go unnoticed by the IRS and other government agencies. As discussed more fully in Section IV(A) of the Bipartisan Investigative Report, employees throughout the IRS closely monitored media coverage of the issue. The Division Commissioner for TE/GE, Sarah Hall Ingram, even referenced the President's words directly in a September 2010 email to other senior managers, stating that the "secret donor theme will continue—see Obama salvo and today's Diana Reehm [sic]." [231]

As the President repeatedly called for tighter regulation of spending on political speech, the IRS began to systematically target Tea Party organizations that applied for tax-exempt status. Indeed, just a few weeks after the President's State of the Union address in 2010, the IRS made the pivotal decision to set aside all incoming Tea Party applications for special processing. In the following weeks, IRS executives who closely monitored news about the White House would set a course for these applicants that subjected them to long delays, burdensome questions, and ultimately proved fatal to some of them.

A major focus of the Committee's investigation was to determine to what extent the IRS coordinated with the Department of Justice (DOJ), the FEC, and the Treasury Department in responding to the political pressure from the White House. Our investigation revealed concerted actions by these arms of the Obama Administration which had the effect of targeting conservative tax-exempt organizations.

A. White House Coordination With the IRS

Due to the documentary limitations discussed more fully in Section II(C) of the Bipartisan Investigative Report, as well as Lois Lerner's refusal to cooperate with this investigation, the Committee was not provided with a full record of communications between the White House and IRS.[232] But we need look no further than the

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[230] The White House, Statement by the President on the DISCLOSE Act Vote in the Senate (Sep. 23, 2010).

[231] Email chain between Sarah Hall Ingram, Lois Lerner, Joseph Grant, and others (Sep. 21, 2010) IRS0000508974–76. The Diane Rehm Show that aired on September 21, 2010 included a segment called "Campaign Spending," which featured Democratic Congressman Chris Van Hollen and Sheila Krumholz, Executive Director of the Center for Responsive Politics, among other guests. Diane Rehm's website describes the segment as "Diana and guests explore campaign finance and the influence of secret donors." The Diane Rehm Show, Campaign Spending (Sep. 21, 2010).

[232] In June 2014, the IRS informed Congress that Lois Lerner's computer experienced a hard drive crash in May 2011, potentially resulting in emails being lost between January 2009 and May 2011, as described more fully in Section II(C) of the Bipartisan Investigative Report. In an effort to obtain lost Lerner emails, then-Chairman Wyden of the Senate Finance Committee and then-Chairman Camp of the House Ways and Means Committee sent letters to President Obama, requesting all communications between Lerner and White House employees between January 2009 and May 2011. Accordingly, the White House conducted a search for Lerner emails but did not find any direct emails between Lerner and White House employees. However, the White House did identify three emails that both Lerner and White House employees had received from a third party. On June 18, 2014, the White House responded to the Chairmen's letters and provided the Committees with these three emails, totaling 66 pages of documents. After review, the Committee determined that these emails were not relevant to the Committee's investigation: one email was spam and the other two were from an individual requesting tax

Continued

President's repeated public criticism of the *Citizens United* decision to determine the White House's influence on other executive agencies. Indeed, White House's continuous messaging rendered communication to individual employees unnecessary.

The Committee found evidence that several key employees within the IRS maintained regular contact with the White House. Most notably, Commissioner Shulman admitted that he had "pretty regular interactions" and "went to a whole number of meetings" with White House staff during his tenure at the IRS.[233] Indeed, the White House visitor log shows 174 visits from "Douglas Shulman" or "Doug Shulman" between February 2009 and December 2012.[234] Analysis by the House Ways & Means Committee staff shows that at least 17 entries on this log also appear on Shulman's calendar.[235]

When interviewed by Committee staff, Shulman indicated that his meetings with White House staff concerned implementation of the Affordable Care Act; issues related to the IRS budget; tax provisions in the American Recovery and Reinvestment Act; economic roundtables and other high-level domestic policy matters involving the IRS; and events open to the general public, such as the Easter Egg Roll.[236] However, Shulman could not recall anything about a number of his other meetings with White House employees.[237]

Shulman described four in-person meetings with President Obama:

- a press conference with the President and Treasury Secretary Geithner about offshore tax proposals on May 4, 2009;[238]
- a meeting where Shulman presented the daily economic briefing to the President about general matters of the tax gap on October 21, 2009;[239]
- a meeting with the President and other heads of agencies about how to improve the government on June 6, 2011;[240] and
- a photo-op with the President on December 14, 2012 after Shulman's term as IRS Commissioner expired.[241]

Shulman denied that the targeting of Tea Party organizations was ever discussed at any meeting with White House staff or the President.[242] Several other IRS employees met with White House staff between 2010 and 2013. Like Shulman, those employees de-

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assistance. *See* Letter from Chairman Dave Camp to President Barack Obama (June 16, 2014) and Letter from W. Neil Eggleston to Chairmen Camp and Wyden (June 18, 2014).

[233] SFC Interview of Douglas Shulman (Dec. 3, 2013) p. 19.

[234] SFC Interview of Douglas Shulman (Dec. 3, 2013) Interview Exhibit 8, also available at *White House Visitor Access Records*, http://www.whitehouse.gov/briefing-room/disclosures/visitor-records. This log includes visits to all buildings in the White House complex: the White House proper, the Eisenhower Executive Office Building and the New Executive Office Building.

[235] *Id*.; SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 87–116; and selected entries from Douglas Shulman calendar, IRS0000385548–49, IRS0000385566, IRS0000385577, IRS0000385584, IRS0000385604 and IRS0000385603.

[236] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 19–22, 87–116; Hearing before the House Oversight and Government Reform Committee, "The IRS: Targeting Americans for their Political Beliefs" (May 22, 2013) p. 51 (extraneous pages omitted).

[237] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 90–91, 93–95, 97, 101, 104, 106–107.

[238] *Id*. p. 93.

[239] *Id*. p. 96.

[240] *Id*. pp. 111–12.

[241] *Id*. p. 116.

[242] Hearing before the House Oversight and Government Reform Committee, "The IRS: Targeting Americans for their Political Beliefs" (May 22, 2013).

nied that they discussed the Tea Party applications with anyone in the White House or received any directions about how the applications should be handled.

We determined that the White House was briefed by Treasury officials before TIGTA released its report publicly. Former Treasury Chief of Staff Mark Patterson told Committee staff that he spoke with Mark Childress, who at that time was a Deputy Chief of Staff at the White House, twice in April or May 2013 about the IRS's plan to apologize in advance of the forthcoming TIGTA report.[243] Childress concurred with Patterson's view that if the IRS apologized, it should do so only once.[244] Patterson does not know if Childress spoke with anyone else at the White House about this issue.[245] Former Treasury Deputy Secretary Neal Wolin and Patterson indicated that, to their knowledge, the only meetings with the President and other White House staff about the Tea Party targeting occurred shortly after the TIGTA report was released.[246] The Committee did not interview any White House employees during the course of the investigation.

The Treasury Department and the White House also had advance notice about the IRS's loss of information potentially relevant to this investigation caused by Lois Lerner's hard drive crash. As described more fully in Section II(C) of the Bipartisan Investigative Report, the IRS first discovered a gap in Lerner's emails in early February 2014. The IRS did not inform Congress of this problem—which was material to this and several other Congressional investigations—until June 13, 2014. However, the Treasury Department learned of the problem in April 2014, when a senior IRS advisor notified an attorney in the Treasury's Office of General Counsel.[247] Treasury, in turn, informed the White House shortly thereafter.[248]

Overall, it is apparent that it was unnecessary for the President to direct any individual government employee to target the Tea Party and conservative organizations. Instead, the White House's frequent public statements condemning political spending ensured that government agencies were acutely aware of the President's wishes and they responded accordingly.

B. The DOJ Enlisted the IRS's Help in Potential Prosecution of Organizations Engaged in Political Speech

President Obama's repeated criticism of the Supreme Court's *Citizens United* decision and his frequent calls to curtail political spending quickly infiltrated the halls of the DOJ. One option that DOJ officials considered was the feasibility of prosecuting 501(c) organizations for engaging in political speech.

The Public Integrity Section (PIN) of the DOJ's Criminal Division combats corruption of public officials and prosecutes election crimes.[249] Documents produced to the Committee show that Lois

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[243] SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 33–36.
[244] *Id.*
[245] *Id.*
[246] *Id.* pp. 36–42; SFC Interview of Neal Wolin (May 1, 2014) pp. 22–25.
[247] TIGTA Memorandum of Interview or Activity, Personal Interview of Catherine Duval (July 1, 2014).
[248] Letter from Neil Eggleston to Chairman Camp and Chairman Wyden (June 18, 2014).
[249] DOJ, Public Integrity Section.

Lerner was the PIN's key contact at the IRS, and in this capacity she provided DOJ with critical data and access to IRS officials as she coordinated the IRS's response to DOJ's requests for assistance. Lois Lerner and PIN employees were communicating with each other and discussing campaign finance options as early as March 2009.[250] EO and DOJ staff were also discussing the Tea Party as early as July 2010 when staff discussed a campaign ad for Tea Party Congressional Candidate Rick Barber.[251] Emails produced to the committee document a clear, deliberate, and multi-year effort on the part of DOJ to scrutinize conservative tax-exempt organizations.

1. In 2010, the DOJ Enlisted the IRS to Help Examine Political Spending by Tax Exempt Organizations

On September 21, 2010, Jack Smith, PIN Chief, wrote to his subordinates Raymond Husler, PIN Principle Deputy Chief, Justin Shur, PIN Deputy Chief, and Richard Pilger, Director of the Election Crimes Branch, about a *New York Times* story on 501(c)(4)s intentionally using donations for political spending in order to skirt campaign finance law:

> This seems egregious to me—could we ever charge a 371 conspiracy to violate laws of the USA for misuse of such non profits [sic] to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)?[252]

Smith then recommended that PIN meet with TE/GE Division Commissioner Sarah Hall Ingram to discuss the feasibility of his idea. The following day, Pilger expressed skepticism about Smith's plan and advised him to take an alternate path forward:

> It would be good to gear up some enforcement, but very challenging as criminal work in the near term unless there is coordination with campaigns. Absent coordination, the Department's way in is probably most directly through Tax Division.[253]

Nancy Simmons, PIN Senior Counsel, agreed with Pilger's assessment, stating, "This area has been the subject of much debate and press articles over the past, but I don't see a viable way to make a prosecutable federal case here."[254] Despite the concerns raised by his staff, Smith decided to press forward with his plan and set up a meeting on September 22 with Pilger, Simmons and others to discuss these issues.[255] The following week, PIN employ-

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[250] Email chain between Craig Donsanto, Lois Lerner and others (Mar. 6, 2009) SFC IRS 000211

[251] Email chain between Justin Lowe, Nicole Siegel and others (June 30–July 1, 2010) SFC IRS 000751.

[252] Email chain between Jack Smith, Richard Pilger and others (Sep. 21–22, 2010) SFC IRS 000004. Although not noted by name, it appears that the DOJ employees were referring to a September 21, 2010 *New York Times* article titled "Donor Names Remain Secret as Rules Shift."

[253] *Id.*

[254] *Id.*

[255] Email calendar invite from Jack Smith (Sep. 22, 2010) SFC IRS 000006. Email calendar invite from Richard Pilger to Nancy Simmons (Sep. 22, 2010) SFC IRS 000007.

ees Smith, Shur, Simmons, Pilger, and Husler met again to discuss a "Possible 501/Campaign Finance Investigation."[256]

On September 29, Pilger reached out to Sarah Hall Ingram's office to set up a meeting with the IRS to discuss 501(c)(4) issues. Ingram told her staff, "we have to do this" but since she was traveling, Ingram asked Lois Lerner to organize the meeting.[257] The IRS planned to:

> [W]alk [PIN] through the basic civil law rules within our jurisdiction and find out what if anything else they are looking for. If they need more than the primer then we would need to assign carefully to preserve the civil-criminal wall. These are not tax people so [Lerner] may also take Joe Urban to do clear perimeters about tax info should they want to do any 6103 fishing (as opposed to public record 6104 info).[258]

On Monday, October 4, Lerner and Pilger spoke in preparation for Friday's meeting.[259] During the call, Lerner and Pilger discussed having the IRS provide the DOJ and the Federal Bureau of Investigation (FBI) with 501(c)(4) filing data and inviting the FBI to attend the Friday meeting.

On Friday, October 8, the IRS, DOJ and FBI held their first meeting to discuss political spending by 501(c)(4) organizations.[260] Siri Buller, an employee in EO Technical, prepared a summary about what was discussed during this meeting that included the following points:

- "[PIN] attorneys expressed concern that certain section 501(c) organizations are actually political committees posing' as if they are not subject to FEC law, and therefore may be subject to criminal liability. The attorneys mentioned several possible theories to bring criminal charges under FEC law," including a partnership between DOJ, FEC and IRS.
- Lerner explained the tax law surrounding 501(c)(4)s and challenges to criminally prosecuting these organizations including confusing terminology and a lack of clear definitions and rulings.[261]

In a follow-up meeting a few weeks later, Pilger asked for a contact from the IRS so that PIN could further discuss "criminal tax enforcement against tax exempt organizations" with the IRS.[262] Nancy Marks provided Pilger with the requested contact but noted the very unusual nature of DOJ's inquiry and warned that the IRS had not "seen activity that rises to the level of criminal investiga-

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[256] Email from Jack Smith to Richard Pilger and others (Sep. 30, 2010) SFC IRS 000016.

[257] Email chain between Richard Pilger, Cynthia Brown and Sarah Hall Ingram (Sep. 29, 2010) IRSC038433; Email chain between Sarah Hall Ingram, Richard Pilger, Lois Lerner, and others (Sep. 29, 2010) IRSC038466.

[258] Email chain between Sarah Hall Ingram, Richard Pilger, Lois Lerner and others (Sep. 29, 2010) IRSC038466.

[259] Email chain between Richard Pilger, Lois Lerner and Cynthia Brown (Sep. 29—Oct. 2, 2010) SFC IRS 000017–18.

[260] Email calendar invite from Richard Pilger to Sarah Hall Ingram, Jack Smith and others (Oct. 8, 2010) SFC IRS 000038. Email chain between Lois Lerner, Richard Pilger, Brian Fitzpatrick, and others (Oct. 6—7, 2010) SFC IRS 000034–35

[261] Email from Siri Buller to Lois Lerner, Judith Kindell and others (Oct. 11, 2010) IRSC038444–46. The IRS also provided the DOJ with a series of documents regarding political activity of 501(c)(4)s. Email from Siri Buller to Joseph Urban (Oct. 7, 2010) IRSC038472–73

[262] Email chain between Joseph Urban, Nancy Marks and others (Oct. 19, 2010) IRSC038471.

tion."[263] Apparently, the DOJ's overly zealous attempts to criminally prosecute tax-exempt groups were enough to make even the IRS uncomfortable.

2. The FBI Was Investigating Tax-Exempt Organizations in 2010

The FBI is tasked with investigating tax fraud and performing counterterrorism operations as part of its law enforcement responsibilities, and the FBI routinely coordinates work on these issues with the IRS. Cooperation between agencies is common during law enforcement actions and allows law enforcement personnel to take advantage of the expertise provided by other government agencies. This cooperation between the FBI and IRS was a common occurrence both before and during the time the IRS was inappropriately targeting conservative tax-exempt organizations, and the Committee possesses emails documenting numerous instances of cooperation that appears to be appropriate.

Nonetheless, one set of interactions between the agencies raises questions of impropriety. On October 5, Lerner informed her staff about DOJ's request for 501(c)(4) filing data:

> They [DOJ] would like to begin looking at 990s from last year for c4 orgs. They are interested in the reporting for political and lobbying activity. How quickly could I get disks to them on this? Also would 990 EZ filers have information on lobbying and political activity on the EZ?[264]

Lerner's staff immediately began working on this request, compiling a list of 501(c)(4)s that had engaged in political activity between 2007–2010.[265] Over the next couple of days Lerner and her staff worked with the DOJ to nail down details about the request as they shepherded DOJ's request through the IRS bureaucracy.[266]

On October 22, the IRS sent the requested documents, totaling 21 DVDs of information, to FBI Supervisory Special Agent Brian Fitzpatrick in Washington D.C.[267] These DVDs contained the 990s filed between 2007 and 2010 by 501(c)(4)s that had indicated they had engaged in some level of political activity.[268] On November 4, Lerner followed up with her staff to verify that the 990s had been sent to the FBI.[269]

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[263] *Id.*

[264] The 990 and 990 EZ forms are the annual tax return forms filed by 501(c)(4) organizations. Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker, and others (Oct. 5, 2010) IRS0000902548–50

[265] Cheryl Chasin evaluated if a 501(c)(4) was engaged in political activity based on the Form 990. Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker and others (Oct. 5, 2010) IRS0000902548–50; Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker and other (Oct. 5—Nov. 7, 2010) IRS0000807007–08.

[266] The IRS provided DOJ only with publically available data and did not produce the protected Schedule B of the 990 form. Email chain between Judith Kindell and Cheryl Chasin (Oct. 5, 2010) IRS0000902536–37; Email chain between Lois Lerner, Cheryl Chasin, Sherry Whitaker, and others (Oct. 5, 2010) IRS0000902548–50; Email chain between Lois Lerner and Richard Pilger (Oct. 5–7, 2010) IRSC038475–76; Email chain between Sherry Whitaker and David Hamilton (Oct. 5, 2010) IRSC038477–78; Email chain between Sherry Whitaker and David Hamilton (Oct. 5, 2010) IRSC038479–80; Email chain between Lois Lerner, Richard Pilger, Sherry Whitaker, and others (Oct. 5–7, 2010) SFC IRS 000034–35; Email chain between Lois Lerner, Richard Pilger, and Sherry Whitaker (Oct. 5–7, 2010) SFC IRS 000036–37.

[267] Email chain between Sherry Whitaker and David Hamilton (Oct. 7–22, 2010) IRSC038436.

[268] Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker and others (Oct. 5—Nov. 7, 2010) IRS0000807007–08; Email chain between Judith Kindell and Cheryl Chasin (Oct. 5, 2010) IRS0000902536–37.

[269] Email chain between Lois Lerner, Judith Kindell, Sherry Whitaker, and others (Oct. 5—Nov. 7, 2010) IRS0000807007–08.

The FBI's interest in this information, and the IRS's willingness to provide it, raises the question of whether the FBI was used by the administration to target political advocacy organizations.

3. The DOJ Again Reached Out to the IRS for Assistance in 2013

The IRS and DOJ continued to discuss political spending by 501(c) organizations sporadically throughout 2011 and 2012.[270] Serious consideration of prosecuting 501(c) organizations reemerged just days before news of the Tea Party targeting scandal broke.

In early 2013, DOJ gave Democratic staff of the Senate Judiciary Committee's Subcommittee on Crime and Terrorism a briefing on:

> The Department of Justice's approach to and investigation or prosecution of . . . material false statements to the IRS regarding political activity in order to obtain and maintain 501(c)(4) status . . . [and] knowing and willful violations of disclosure rules.[271]

On April 9, 2013, the Senate Judiciary Committee's Subcommittee on Crime and Terrorism held a hearing entitled "Current Issues in Campaign Finance Law Enforcement." Subcommittee Chairman Sheldon Whitehouse questioned IRS and DOJ witnesses as to why they had failed to prosecute 501(c)(4) organizations that appeared to make false statements regarding their political campaign activities:

> I would urge that the Department and the Service get together and rethink whether in these two specific areas, which I think bear little resemblance to traditional tax violations and are in fact very plain-vanilla criminal cases . . . or whether the Department could not proceed to . . . put together a criminal case showing a fairly straightforward false statement or a fairly [straightforward] shell corporation disclosure violation.[272]

In an apparent response to political pressure from Democrats, Richard Pilger again reached out to Lerner for assistance in May 2013—just two days before Lois Lerner revealed that the IRS had been targeting conservative groups. Lerner informed her colleagues of DOJ's meeting request:

> [Pilger] wanted to know who at IRS the DOJ folks could talk to about Sen. Whitehouse [sic] idea at the hearing that DOJ could piece together false statement cases about applicants who "lied" on their 1024s—saying they weren't planning on doing political activity, and then turning

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[270] In late 2011 and early 2012, the IRS, DOJ, and FEC worked on a report to The Council of Europe's Group of States against Corruption (GRECO), explaining U.S. campaign finance law to foreign tax officials. See Email from Jane Ley to Lois Lerner, Judith Kindell and others (Nov. 18, 2011) FECSUBP5000052–93; Email chain between John Brandolino, Nancy Simmons, Lois Lerner, Nancy Simmons, and others (Jan. 26–27, 2012) IRS0000313073–74; Email chain between Jane Ley, Lois Lerner and others (Nov. 19–21, 2011) IRS0000714413–15; Email chain between Jane Ley, Nancy Simmons, Lois Lerner and others (Nov. 19–21, 2011) IRS0000714408–09; Email chain between Lois Lerner and Richard Pilger (Jan. 26, 2011) SFC IRS 0000194–95.

[271] Email chains between DOJ staff and Democratic Staff of the Senate Judiciary Committee (Nov. 2012—Mar. 2013).

[272] Hearing before the Subcommittee on Crime and Terrorism of the Senate Judiciary Committee, "Current Issues in Campaign Finance Law" (April 9, 2013) pp. 13–14 (extraneous pages omitted).

> around and making large visible political expenditures. DOJ is feeling like it needs to respond, but want to talk to the right folks at IRS to see whether there are impediments from our side and what, if any damage this might do to IRS programs.[273]

In response to Lerner's email, Nikole Flax expressed support for DOJ's idea and asked about the potential of inviting the FEC to also attend the meeting. After some deliberation, Lerner decided to let DOJ invite the FEC, and she also recommended inviting IRS Criminal Investigations Division and their counsel to the meeting.[274] On May 10, 2013, Lerner revealed that the IRS had been targeting Tea Party organizations. Even in the midst of the fierce backlash that resulted from this revelation, she continued to assist DOJ in their efforts to target tax-exempt groups. On the evening of May 10, Lerner told Pilger that Nancy Marks would work on arranging this meeting between the IRS and the DOJ.[275] Majority staff does not know if this meeting ever occurred, as the IRS produced no further records regarding this meeting.

Throughout its dealings with DOJ, the IRS provided timely response to requests for information and assistance. Lerner was quick to respond to DOJ staff. On multiple occasions Lerner made herself available for calls, sometimes within a few minutes after receiving DOJ's request for assistance. Instead of delegating to her subordinates, Lerner personally handled these requests and she guided them through the IRS bureaucracy. These examples illustrate a multi-year coordinated effort between the IRS and the DOJ to constrain political spending by tax-exempt organizations, pursuant to the President's public statements and views.

C. The FEC and the IRS Worked Together To Target Conservative Organizations

In response to mounting pressure to constrain political spending in recent years, the FEC increased its scrutiny of political speech. Indeed, some of this pressure predated President Obama's administration as part of a broader Democratic push to limit the amount of money in politics, as noted above. But following the calls for reform after *Citizens United,* the FEC's scrutiny of conservative tax-exempt organizations reached new levels.

We found that the FEC worked with the IRS to investigate conservative organizations—but not any progressive organizations—with Lois Lerner's eager assistance. Lerner had previously worked at the FEC and was well known for her aggressive investigation of conservative groups, particularly those that she believed were attempting to expand the influence of money in politics.[276] Documents produced to the Committee show that the FEC also worked with the IRS on broader political spending issues, concurrent with

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[273] Email chain between Lois Lerner, Nikole Flax and others (May 8–9, 2013) IRS0000209398–400.

[274] *Id.*

[275] Email chain between Richard Pilger and Lois Lerner (May 8, 2013) SFC IRS 000201; Email chain between Richard Pilger, Lois Lerner and others (May 8–10, 2013) SFC IRS 000204.

[276] *National Review,* Lois Lerner at the FEC (May 23, 2013).

the IRS's systematic targeting of Tea Party applications for tax-exempt status.

1. The FEC Used Information Provided by the IRS To Target Four Conservative Organizations

On November 18, 2013, then-Ranking Member Hatch sent a letter to the Chair of the FEC requesting that the FEC provide all documents reflecting communications between FEC employees William Powers and Wade Sovonick and any employee of the Treasury Department (including the IRS), from January 2006 to the present. Lisa Stevenson, Deputy General Counsel—Law, FEC, responded to Senator Hatch's letter via email on November 26, 2013.[277] Ms. Stevenson noted that she had attached a complete set of responsive documents the FEC was producing in response to Senator Hatch's letter. The Committee also made a similar request to the IRS for communications its employees had with the FEC. On September 11, 2013, the IRS informed Senator Hatch that it had produced all relevant documents.[278] Review by the Majority staff confirmed that many of the same documents were produced by both agencies and that there were no substantive differences or omissions.

As a whole, the documents show that Lerner was the FEC's key contact at the IRS. In this capacity she and the IRS helped the FEC with enforcement actions against four conservative tax-exempt organizations.[279]

The first communication regarding these conservative groups occurred in July 2008, when FEC Enforcement Division attorney Wade Sovonick contacted Lerner to discuss a 501(c)(4) organization that he believed "recently filed [for tax-exempt status] with the IRS."[280] Shortly thereafter, Sovonick and another Enforcement attorney, William Powers, spoke with Lerner and revealed that their inquiry related to the tax-exempt status of the American Future Fund.[281] At the time of this conversation, the FEC was considering a complaint filed against the American Future Fund by the Minnesota Democratic Farmer Labor Party alleging violations of the Federal Election Campaign Act related to television advertisements.[282] According to materials cited in the complaint, the American Future Fund describes itself as a "mechanism to promote conservative, free market ideas, and to communicate them to the public."[283] It appears that Lerner provided only limited information to the FEC attorneys during the July 2008 conversation. She explained that section 6103 of the Internal Revenue Code prevented her from sharing further information about an application for tax-exempt status while the application is still pending before the IRS.[284]

On September 30, 2008, Powers and other FEC attorneys recommended that the FEC Commissioners find that the American

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[277] Email from Lisa Stevenson to SFC Staff (Nov. 26, 2013).
[278] Letter from Leonard Oursler to Senator Orrin Hatch (Sep. 11, 2013).
[279] Email chain between Lois Lerner, William Powers, Wayne Sovonick and others (Feb. 3, 2009) FECOGC000005–06.
[280] Email chain between Wayne Sovonick and Lois Lerner (July 9, 2008) FECOGC000001–02.
[281] FEC, Report of Telecon (July 10, 2008) FECOGC000003–04.
[282] FEC, First General Counsel's Report (Sep. 30, 2008).
[283] *Id.*
[284] FEC, Report of Telecon (July 10, 2008) FECOGC000003–04.

Future Fund violated three provisions of the Federal Election Campaign Act.[285] The recommendation memorandum did not directly reference the conversation with Lerner, but instead stated, "The IRS has not yet issued a determination letter regarding [American Future Fund's] application for exempt status. Based on the information from the response and the IRS website . . . it is likely that the [American Future Fund's] application is still under review."[286]

Just two weeks after President Obama was sworn in, Powers contacted Lerner for an update on the American Future Fund and for information about three additional conservative organizations: the American Issues Project, Citizens for the Republic, and Avenger, Inc.[287] As Powers noted in his message, American Issues Project was the successor of the other two subjects of his inquiry—Citizens for the Republic and Avenger.

At the time of Powers's request, the FEC was considering two complaints filed against American Issues Project: one by Obama for America, and another by Democracy 21—a liberal group that Lerner also directly corresponded with regarding complaints against conservative groups lodged with the IRS, as discussed above in Section II(C)(5).[288] American Issues Project described its mission as "[t]o advocate for and promote the core conservative principles of our founding fathers and Ronald Reagan."[289] FEC records show that at the time of Powers's inquiry, the FEC was trying to determine the amount of political spending by the American Issues Project. The FEC had scant information—it was only aware of the organization's spending on one advertisement—and could not determine the overall percentage of political spending because the organization had not "filed anything [with] the IRS yet."[290] FEC records also show that the FEC was apparently seeking the IRS's opinion about whether political spending constituted the organization's primary activity. Indeed, this appears to be the purpose of Powers's message to Lerner—"to see if an IRS determination has been made re exemption."[291]

Before Lerner responded to Powers's February 2009 message, the Commissioners closed the complaint against American Future Funds on a split vote.[292] On March 3, 2009, Lerner provided the requested information about all four organizations and Powers thanked her, noting that the information "looks as if it will be very useful."[293] Lerner apologized for the response taking so long.[294] On March 31, 2009, Michael Seto provided an additional 150 pages of records about American Issues Project and American Future Fund

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[285] FEC, First General Counsel's Report (Sep. 30, 2008) p. 15.
[286] *Id.*
[287] Email chain between William Powers, Lois Lerner and others (Feb. 3, 2009) FECOGC000005–06.
[288] FEC, Complaint by Obama for America, MUR No. 6081 (Sep. 8, 2008); FEC, Complaint by Democracy 21, MUR No. 6094 (Oct. 10, 2008) (exhibits omitted).
[289] FEC, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson (July 25, 2013) p. 10.
[290] FEC, Case Activation Meeting Notes (Jan. 21, 2009) FECOGC000195–98.
[291] *Id.*
[292] FEC, Amended Certification, MUR. 5988 (Feb. 25, 2009).
[293] Email chain between Lois Lerner, William Powers and others (Feb. 3—Mar. 6, 2009) FECOGC000008–09.
[294] *Id.*

to Powers, including the applications for tax-exempt status for both groups and the 2007 Form 990 for the former group.[295]

In January 2010, following the *Citizens United* ruling, President Obama began condemning the decision in his public statements including his State of the Union address. In, February 2010, just weeks after these events, Powers requested more information about American Issues Project—including the tax return for 2008, which would show financial information—while the FEC was still considering the two complaints lodged against the organization.[296] The next day, Lerner informed Powers that "we have checked our records and there are no additional filings at this time." [297] Neither the IRS nor the FEC produced any records of subsequent communications between the agencies about any of these organizations. In July 2013, the FEC Commissioners dismissed the complaints against American Issues Project, finding that the organization was not a political committee subject to FEC regulation.[298]

The IRS's attentive treatment of the FEC requests for information stands in stark contrast to the experience of conservative organizations that applied for section 501(c)(3) and 501(c)(4) status. Lerner was quick to respond to FEC attorneys; rather than having staff employees assist the FEC, Lerner shepherded their requests through the IRS herself, with the assistance of two senior managers: Michael Seto (Manager of EO Technical) and Robert Choi (Director of Rulings and Agreements). Powers noted that Seto in particular was "extremely helpful . . . in providing me the requested documents both promptly and professionally." [299]

2. The FEC Enlisted the IRS in Other Efforts To Restrict Political Speech

As early as 2006, the IRS was working with the FEC on examining political spending by 501(c)(4)s.[300] On November 3, 2006, FEC Assistant General Counsel Mark Shonkwiler asked Lois Lerner for assistance:

> Which division/office of the IRS would be in the best position to receive a report from the Commission . . . regarding apparent violations of the law in connection with an organization which claims tax exempt status under Section 501(c)(4) status, yet appears to be focused primarily, if not exclusively, on electoral politics—and actually is registered as a state political committee? [301]

Lerner told Shonkwiler that would that she would forward the report to the IRS Classification Office, which handles referrals.[302]

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[295] FEC, Fax transmission cover sheet from Michael Seto to William Powers (Mar. 31, 2009) FECOGC000069 (subsequent pages omitted by Committee staff).
[296] Email chain between Lois Lerner, William Powers and others (Feb. 2, 2010) FECOGC000013.
[297] Email chain between Lois Lerner, William Powers and others (Feb. 3, 2010) FECOGC000014–15.
[298] FEC, Statement of Reasons of Vice Chairman Donald F. McGahn and Commissioners Caroline C. Hunter and Matthew S. Peterson (July 25, 2013) p. 25.
[299] Email chain between Lois Lerner, William Powers and others (Apr. 3, 2009) FECOGC000012.
[300] Email between Lois Lerner and Mark Shonkwiler (Nov. 3, 2006) FECSUBP5000751.
[301] *Id.*
[302] *Id.*

In 2010, the FEC took the unusual step of requesting formal written comments from the IRS on proposed regulations for 501(c)(3)s.[303] IRS employees noted the unprecedented nature of this request, with Catherine Livingston saying "Mike [Blumenfeld] tells me he is not aware of a prior instance in which we have sent a formal written comment to the FEC on proposed regulations."[304] Nevertheless, the IRS Chief Counsel's Office worked with Lerner to draft comments on the FEC proposal, per the FEC's request.[305]

Overall, the Majority staff finds that the IRS and the FEC worked together to constrain political speech over a period of several years in direct response to the political pressure by Democrats, both in and out of the Obama administration. These efforts resulted in greater scrutiny on spending of political speech by organizations on the right side of the political spectrum.

D. Treasury Department Coordination With the IRS

Based on evidence uncovered by the Majority staff, it appears that top Treasury officials had some knowledge of the IRS's handling of Tea Party applications before TIGTA publicly released its report. Aspects of Treasury's overall role in the targeting remains unclear due to a lack of cooperation with the Committee investigation.

IRS Commissioner Shulman had regular contact with the Deputy Secretary of the Treasury and other high-level Treasury officials, but he denied that he spoke with them about the targeting of Tea Party groups.[306] Several other IRS employees met with Treasury officials between 2010 and 2013, including Acting Commissioner Miller, Chief of Staff Nikole Flax, and attorneys in the IRS Office of Chief Counsel, including Chief Counsel William Wilkins. Like Shulman, those employees denied that they discussed the Tea Party applications with anyone in the Treasury, or received any directions from Treasury about how these applications should be handled.

The Committee interviewed two former Treasury executives: former Deputy Secretary Neal Wolin and former Chief of Staff Mark Patterson. Wolin told Committee investigators that in 2012, Inspector General George told him that TIGTA had started an audit; however, Wolin claimed he only learned that Tea Party groups were targeted after Lerner apologized for that targeting in May 2013.[307] Patterson stated that he first learned that TIGTA was doing an audit in early 2013, but he did not learn about TIGTA's conclusions until a few weeks before its report came out.[308] TIGTA's records differ from Patterson's recollection: TIGTA informed the Committee that Inspector General George first briefed Patterson on September 14, 2012, and that, to the best of his recollection, George "conveyed the general sense that the IRS

[303] Email chain between Eugene Lynch, Michael Blumenfeld and others (Feb. 17–18, 2010) IRS0000713335.
[304] Email chain between Catherine Livingston, Nikole Flax and others (Feb. 26, 2010) IRS0000853254.
[305] Email between Lois Lerner, Michael Blumenfeld and others (July 23, 2010) IRS0000834396.
[306] SFC Interview of Douglas Shulman (Dec. 3, 2013) pp. 16–19, 77.
[307] SFC Interview of Neal Wolin (May 1, 2014) pp. 25–26, 30.
[308] SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 25–29.

had selected applications from certain political groups for additional scrutiny, including using descriptors such as 'tea party' to identify such applications."[309] Neither Wolin nor Patterson recalled discussing the Tea Party targeting with Secretary Lew until after Lerner's apology.[310] TIGTA informed the Committee that it briefed Secretary Lew about the audit on March 15, 2013.[311]

Below the Deputy Secretary's level, Treasury employees in the Office of Tax Policy discussed the political activities of tax-exempt organizations with Lerner and other IRS employees a number of times between 2010 and 2013. The primary Treasury employee who was involved in these discussions was Ruth Madrigal, an attorney in the Office of Tax Policy.[312] When forwarding an article about an appellate court's decision about political activity on 501(c)(4) organizations, Madrigal said that "I've got my radar up" about the issue and noted that "we mentioned potentially addressing them (off-plan) in 2013."[313] In spite of Madrigal's clear connection to the subject of the Committee's investigation, the Treasury Department refused repeated requests of the Committee to make her available for an interview. Thus, we could not definitively determine if Madrigal had any role in, or knowledge about, the IRS's decisions that disproportionately affected conservative organizations.

As discussed above, the Treasury Department and the White House also had advance notice about the IRS's loss of information potentially relevant to this investigation caused by Lois Lerner's hard drive crash. Indeed, in April 2014, IRS officials notified the Treasury Department that Lois Lerner emails were lost, and in turn, the Treasury Department notified the White House. In contrast, IRS only notified the Committee of the lost emails in June 2014.

In view of the limitations noted above, we are not able to determine the full scope of the Treasury Department's involvement in this matter. However, we conclude that Treasury had at least some knowledge of the IRS's targeting of conservative organizations before the matter was made public.

Overall, we conclude that the White House's drive to curtail political speech resulted in a coordinated effort across several executive agencies to increase scrutiny of conservative tax-exempt organizations. Furthermore, the IRS played a central role in the various attempts to target conservative groups engaged in political speech.

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[309] TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.

[310] SFC Interview of Neal Wolin (May 1, 2014) pp. 31–32; SFC Interview of Mark Patterson (Apr. 7, 2014) pp. 28–30.

[311] TIGTA Summary of Briefings to IRS and Treasury Leadership, Provided to SFC on May 19, 2014.

[312] See, e.g., email chain between Ruth Madrigal, Judith Kindell and others (Oct. 6, 2010) IRS0000446776–77 (regarding political activities of 501(c)(4), (5) and (6) organizations); email chain between Ruth Madrigal, Lois Lerner, Victoria Judson, and others (June 14, 2012) IRS0000015400–01 (discussing the possibility of addressing 501(c)(4) regulations "off plan"); email chain between Lois Lerner, Ruth Madrigal, Victoria Judson and others (Dec. 14, 2012) IRS0000189994–95 (regarding an upcoming meeting between Democracy 21, Campaign Legal Center and the IRS to discuss petition for rulemaking on political activities of 501(c)(4) organizations).

[313] Email chain between Ruth Madrigal, Lois Lerner, Victoria Judson and others (June 14, 2012) IRS0000015400–01.

V. DISPARATE TREATMENT OF CONSERVATIVE AND PROGRESSIVE APPLICANTS FOR TAX–EXEMPT STATUS

Applications received from Tea Party organizations were not only singled out, but were processed differently than other applications, including applications submitted by left-learning organizations. Left-leaning organizations were not subjected to the heightened scrutiny that Tea Party organizations encountered.

A. Applications From the Tea Party and Related Conservative Groups Were Singled Out for Special Treatment

While the Minority has attempted to create the impression that applications submitted by left-leaning groups were also singled out by the IRS, the facts recounted below demonstrate that applications received from Tea Party groups were not only singled out, but were processed differently than other applications.

1. The "Test Cases" Selected for Development by EO Technical Were Applications From Tea Party Organizations

On February 25, 2010, one of the first applications for tax exemption received by the IRS from a Tea Party drew the attention of Jack Koester, a screener in EO Determinations.[314] Koester noted that the application from the Albuquerque Tea Party had the potential to be a "high-profile" case since the Tea Party was the object of "recent media attention."[315] Koester also noted that the Albuquerque Tea Party indicated in its application that it may support political candidates.[316] Thereafter, the decision was made by Holly Paz to send several Tea Party applications to EO Technical so that EO Technical could work the cases.[317] The intention was for EO Technical to develop guidance to assist EO Determinations in processing these applications.[318] Ultimately, the applications for Albuquerque Tea Party and Prescott Tea Party were sent to EO Technical and assigned to Carter Hull to be worked.[319] When the Prescott Tea Party failed to respond to a development letter, Hull closed the application for "failure to establish" and requested another Tea Party application.[320] He was subsequently assigned an application submitted by a conservative organization applying for 501(c)(3) status called American Junto.[321] Steve Grodnitzky, Acting EO Technical Manager at the time Hull was assigned the cases, described the test cases as follows:

> Q. . . . [T]he cases that were under review in Cincinnati and the cases that were under review in EO Technical by Mr. Hull, those were—as far as you understood, what were they? Were they cases across the whole political spectrum, or were they essentially Tea Party cases?

[314] Email chain between Holly Paz, Cindy Thomas, Jack Koester, and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73.
[315] *Id.*
[316] *Id.*
[317] *Id.*
[318] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[319] *Id.*
[320] *Id.*
[321] *Id.*

A. Well, with—I guess with respect to the organizations that—I don't want to sound—in my mind, they were Tea Party organizations. They came in, and in their name, Albuquerque Tea Party——

Q. Uh—huh A.—Prescott Tea Party, those had "Tea Party" in their name.

Q. Uh-huh.

A. So I assumed that they were Tea Party organizations.

Q. And one of them—I think, if you'll—you probably recall this. At some point in 2010, Mr. Hull—and I think you actually had indicated that Prescott was a (c)(3) and it failed to establish, right?

A. That is correct.

Q. And Mr. Hull requested another case, and he got another case from Cincinnati, a (c)(3) to work; is that correct?

A. That is correct.

Q. And actually, if you look at the sensitive case report summary charts, but—but they will indicate that that replacement case, I think was American Junto?

A. American Junto or Hunto?

Q. Junto or Hunto, I don't know how they pronounce it either. Was your appreciation then that American Junto was either a Tea Party org or related or affiliated with the Tea Party, or perhaps espoused the same kind of political views as a Tea Party?

A. My understanding of a case that was coming up, American Hunto or Junto, that was to replace the Prescott Tea Party, was that it was connected in some way to the Tea Party. Perhaps it was—they had the same beliefs that—that the Prescott Tea Party or the Albuquerque Tea Party organizations had.[322]

As is evident from this exchange, the IRS's intention to scrutinize the Tea Party applications extended down to its selection of "test cases."

2. The Initial Process Used To Develop the Tea Party Applications Was Highly Unusual

In addition to working on the "test cases," Hull was assigned to assist Elizabeth Hofacre develop the Tea Party applications then pending in EO Determinations.[323] Hull provided Hofacre with several sample development letters to use on the Tea Party applications, but then also required Hofacre to send to him each draft development letter together with a hard copy of the application for his examination.[324] Hofacre could not release the development letters without first securing Hull's approval.[325] Moreover, once applicants responded to the development letters, Hull instructed Hofacre to send the responses to him for his review.[326] Under this scheme, Hofacre was unable to act independently and exercise the

[322] SFC Interview of Steve Grodnitzky (Sep. 25, 2013) pp. 70–71.
[323] SFC Interview of Carter C. Hull (July 23, 2013) (not transcribed).
[324] Email chain between Carter C. Hull, Steve Grodnitzky, Ronald Shoemaker, and others (May 17, 2010) IRS0000631583–84.
[325] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 57–64.
[326] *Id.*

normal range of discretion that an EO Determinations agent would have in determining how an application should be processed, or whether sufficient information existed upon which to base a recommendation to approve or deny the exemption request.[327] Hofacre described her experience to Committee staff as follows:

> Q. Okay. So this process that you've—that you've outlined where you would get the case and you would review the case and you would draft the letter and then you would send it to Mr. Hull, and Mr. Hull would send it back to you, and then you would release it, then you would get the response and you'd send the response to Mr. Hull . . .
>
> A. Yes. Exactly.
>
> Q. Is this—is this process a usual process, in your experience as an EOD agent in the—and the, I think it was almost 11 years that you'd been an EOD agent at the time that this process was put into place? Is that a usual—something that was usual in your experience?
>
> A. I had never seen that in my experience before or since then.[328]

Hofacre also told Committee staff that she had sufficient information in her possession in 2010 to recommend to her manager a decision on some of the Tea Party applications, but was prevented from doing so under the highly unusual review process imposed by Hull.

> Q. But for the process where you had to submit the—the development letter to Mr. Hull or perhaps—get Mr. Hull's approval on what the next step was, but for that process, could you have decided some of these cases and whether they had been a denial or a grant of the exemption request?
>
> A. Yes.
>
> Q. Okay. And that would have been in that window of time that you were in [Group] 7822, which would have been May to October of 2010?
>
> A. Right. There was enough information there to make a determination, whether or not positive or adverse.
>
> Q. But you were prevented from making that?
>
> A. I had no decision making authority.
>
> Q. Okay. And typically you would have that authority as an [EO Determinations] agent, right?
>
> A. Right. Like I said in my interview in May, this particular project and the procedure in this was so peculiar and so odd that I was—had no decision making authority. There was no—no freedom to do anything.[329]

The unfortunate consequence of imposing this highly rigid and unorthodox process on EO Determinations was that many Tea Party applications that could have been decided in 2010 were not. Rather, those Tea Party applications unnecessarily languished for several more years, while the IRS mismanaged its way through a series of failed initiatives designed to bring the applications to decision.

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[327] *Id.*
[328] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 65.
[329] *Id.* pp. 63–64.

3. Until July 2011, the Emerging Issues Tab of the BOLO Spreadsheet Specifically Targeted the Tea Party

The first iteration of the Emerging Issues tab of the Combined Issues spreadsheet dated July 27, 2010, contained an entry for Tea Party applications.[330] The entry read as follows: "These cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."[331] While the July 27, 2010 spreadsheet was distributed only to managers, subsequently, on August 12, 2010, Elizabeth Hofacre sent the first BOLO spreadsheet to all EO Determinations employees.[332] The Emerging Issues tab of the August 12, 2010 BOLO spreadsheet contained an entry for "Tea Party" identical to the entry found on the July 27, 2010 Combined Issue Spreadsheet. The entry specifically targeting the Tea Party remained in the Emerging Issues tab of the BOLO spreadsheet until the July 2011 revision. At that time, the entry was deleted and replaced with one for "Advocacy Orgs." which were described as "[o]rganizations involved with political, lobbying or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Elizabeth Hofacre, Emerging Issues Coordinator from May 2010 to October 2010, was shown a list that Carter Hull had prepared on October 18, 2010, reflecting the status of the 40 "Tea Party" applications then pending in EO Determinations. Hofacre told Committee staff the following:

> Q. . . . in looking at this list, I think you indicated this before, and I don't want to belabor the point, but these essentially are Tea Party cases, 9/12 cases or conservative cases. Is that correct?
>
> A. Yes, that would be correct.
>
> Q. All right. And there's no Emerge or Acorn or liberal or progressive groups in this list that you're aware of, right?
>
> A. No, there are not.
>
> Q. Okay. And that's because the criteria that was being used focused only on Tea Party, patriots, 9/12, conservative organizations; right?
>
> A. Yes, that's correct.[333]

Ronald Bell assumed responsibility as Emerging Issues Coordinator from Hofacre in October 2010, and remained in that position for more than a year.[334] Bell was shown a copy of the BOLO spreadsheet dated November 16, 2010. The Emerging Issues tab of the spreadsheet has an entry for "Tea Party" that states that "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."[335] Bell explained to Committee staff that he used this BOLO entry to perform secondary screening on the applications sent to him by screeners, in order to ensure that the applications

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[330] Email from Elizabeth Hofacre to Steve Bowling, John Shafer, and others (July 27, 2010) IRS0000008609–24.
[331] *Id.*
[332] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 130.
[333] *Id.* pp. 91–92.
[334] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[335] BOLO iteration chart (Apr. 30, 2012) IRS0000352979–84.

he received were, in fact, applications from Tea Party organizations. He stated to Committee staff as follows:

> Q. Okay. And then you were describing your process earlier when cases, new cases were referred to you as Tea Party coordinator. You would look at the criteria on the BOLO to see if it was actually really a case that should stay, is that correct?
>
> A. Correct.
>
> Q. So based on this criteria here [November 16, 2010 BOLO], which cases would you have kept in your group for processing?
>
> A. Which cases would I have kept and added to the advocacy inventory?
>
> Q. Yes.
>
> A. Ones that talked about the Tea Party.
>
> Q. Okay. So at the time [November 2010] this was on the BOLO, you weren't necessarily pulling any case that had political advocacy issues, it was just the ones that were related to the Tea Party?
>
> A. That's correct.[336]

The criteria developed by the screeners to identify "Tea Party" cases clearly illustrates that the IRS was focused, at least until July 2011, exclusively on applications received from Tea Party or related groups, and not just on applications containing general advocacy issues. An application was considered to be received from a "Tea Party" if it contained the words "Tea Party," "9/12 Project," or "Patriots."[337] If those words were not present it was still considered a Tea Party application if the application indicated that the group was concerned with government debt, government spending or taxes, or that it would educate the public via advocacy or lobbying "to make America a better place to live," or that it was critical of how the country was being run.[338] When asked about these criteria and their connection to the Tea Party entry on the Emerging Issue tab, Holly Paz told Committee staff the following:

> Q. Just to look at this, kind of, the connection between the criteria as you understand it and it was given to you by Mr. Shafer and this reference in the BOLO, it makes perfect sense, doesn't it, that the screeners were using the kind of criteria they were using if they were looking for cases involved with the Tea Party movement?
>
> A. Yeah, I mean, the language on this be-on-the-lookout list uses the name "Tea Party." So the other names appear to be an extrapolation of that.[339]

Accordingly, until at least July 2011, the IRS screening criteria exclusively targeted Tea Party and related organizations.

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[336] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).

[337] Email chain between John Shafer, Cindy Thomas, Steve Bowling, and others (June 1–10, 2011) IRS0000066837–40.

[338] *Id.*

[339] SFC Interview of Holly Paz (July 26, 2013) p. 84.

4. Until the Tea Party Entry Was Removed From the Emerging Issues Tab, Applications From Both Liberal and Conservative Groups That Did Not Meet the Tea Party Criteria Were Sent to General Inventory, Assigned, and Decided

Elizabeth Hofacre explained to Committee staff that during her tenure as Emerging Issues Coordinator, applications that contained political advocacy issues but that did not meet the criteria for a Tea Party case were handled differently than applications received from Tea Parties. She recounted the following to Committee staff:

> Q. Okay. And when you began to receive the applications from the groups, the liberal groups or the progressive groups, did you also perform a secondary screening function or task on those applications?
>
> A. I didn't start receiving those applications until July [2010]. The only screening that I performed was very limited, to make sure they either met or did not meet the Tea Party criteria.
>
> Q. Okay. And what was the Tea Party criteria?
>
> A. Well, a lot of times Tea Party was in their name, 9/12 Organizations, or Patriots. Some of the activities would be kind of Tea Party-type rallies. A lot of the applicants would educate—I'm sorry, educate the public on the Constitution, the Bill of Rights, those types of activities.
>
> Q. Okay. So if a case had that—those indicators in it then, is that a case you kept, you retained and began to develop?
>
> A. That is correct.
>
> Q. So just to draw a contrast now, so in July or in the subsequent months, if you received an application from an organization that was liberal or progressive that the screeners had sent to you, you know, what did you do with that case?
>
> A. Well, if it came from an agent and if it didn't meet the Tea Party criteria, I would send it back to that particular agent. If it came from a screener and they thought it met the Tea Party criteria, and if I determined that it did not, it went to general inventory.
>
> * * * * * * *
>
> Q. . . . if they went back in general inventory . . . they were in the normal pipeline to be worked and for decisions to be made on them. Is that correct?
>
> A. Yes it is.
>
> Q. Okay. So they didn't get hung up or held up in this collection of Tea Party cases?
>
> A. Correct.[340]

Therefore, until at least through Hofacre's tenure as Emerging Issues Coordinator, October 2010, and most likely until the July 2011 BOLO change in which the reference to Tea Party was deleted, applications that raised political advocacy issues but that did not met the "Tea Party" criteria were sent to general inventory, assigned and worked. In contrast, applications that did meet the "Tea Party" criteria were systematically collected by the IRS and subjected to a variety of delays and failed processing attempts.

[340] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 45–46, 48.

5. The IRS Continued To Target the Tea Party After the Emerging Issue Tab Was Revised in July 2011 to Remove the Entry for the Tea Party

In July 2011, at Lois Lerner's direction, Cindy Thomas revised the Emerging Issues tab to remove the reference to the Tea Party and in its place, to add an entry for "Advocacy Orgs." that were described as "organizations involved with political, lobbying or advocacy . . ."[341] Even after this change, Ronald Bell, the Emerging Issues Coordinator, continued to add Tea Party applications to his inventory of political advocacy applications if they merely contained the words "Tea Party" and otherwise exhibited no suggestion that the organization would engage in political advocacy. Bell explained this in the following exchange with Committee staff:

> Q. Okay. Do you recall seeing any groups that were affiliated with the Tea Party that didn't have political activity?
>
> A. You mean did they check the box "yes" or "no?"
>
> Q. No. In your evaluation of the application.
>
> A. We, in fact—in one exhibit, from the Exhibit 1 [Screening Workshop Notes—July 28, 2010],[342] it says to err to the conservative. So, if the Tea Parties—there was a question whether they were exempt or not. So, if I didn't maybe see that, "vote for this candidate" or whatever, it still went in the inventory.
>
> Q. When you say "err to the conservative," you mean for the screeners to err to the side of giving a case full development?
>
> A. Yes.
>
> Q. Okay. So is it accurate to say that after the BOLO change of July 2011, you still continued to pull all of the Tea Party cases that you saw into the full development Tea Party group?
>
> A. Yes.[343]

As Bell confirmed, the July 2011 change to the Emerging Issue tab was no more than a triumph of form over substance. While it outwardly created the appearance that applicants were being evaluated on the content of their applications, in reality it did nothing to change the practice of systemically selecting Tea Party applications and subjecting them to heightened scrutiny and substantial processing delays based on the mere presence of the words "Tea Party" in their applications. This is further borne out by the fact that TIGTA, in its May 14, 2013 review of the IRS practices related to the processing of political advocacy applications, found that 100 percent of all applications that contained the words "Tea Party," "9/12 Project," and "Patriots" were selected for full development by the IRS, and consequently experienced significant processing delays.[344]

On January 25, 2012, Cindy Thomas and Steve Bowling removed the "Advocacy Orgs." Entry from the Emerging Issues tab of the BOLO spreadsheet.[345] In their place, Thomas and Bowling inserted

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[341] Email chain between Cindy Thomas, Ronald Bell, and others (July 5, 2011) IRS0000620735.
[342] Email from Nancy Heagney to Ronald Bell and others (July 29, 2010) IRS0000006700–04.
[343] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[344] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) p. 8.
[345] SFC Interview of Cindy Thomas (July 25, 2013) p. 95.

a new entry captioned "Current Political Issues" that Bowling described as follows: "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, Social economic reform/movement."[346] Ronald Bell explained that part of the motivation for this change was to identify the Tea Party without actually using the name "Tea Party." Bell stated the following:

> Q. Were you guys just trying to get at Tea Party with the first, you know—because the Tea Party guys say they want to limit Government and that gets at the Tea Party while it also looks balanced because you also say "expanding Government?"
>
> A. Yeah.
>
> * * * * * * *
>
> Q. And the same thing on "educating on the Constitution and Bill of Rights," that you mentioned the Tea Party and 9/12, Patriots who that caught in that filter, right?
>
> A. Yeah . . .[347]

Accordingly, even after the Emerging Issues tab was revised to remove direct reference to the Tea Party, the changes made to the Emerging Issues tab in January 2012 were designed to continue to target the Tea Party without mentioning it by name.

The Tea Party applications continued to receive unwarranted scrutiny from the IRS even after the Emerging Issues tab was revised again in June 2012. The revision redefined "Current Political Issues" as "501(c)(3), 501(c)(4), 501(c)(5) and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention . . . ." In August 2013, Jack Koester, a screener in EO Determinations, told Committee staff he applied the revised BOLO criteria as follows:

> Q. If you saw—I am asking this currently, if today if a Tea Party case, a group—a case from a Tea Party group came in to your desk, you reviewed the file and there was no evidence of political activity, would you potentially approve that case? Is that something that you would do?
>
> A. At this point I would send it to secondary screening, political advocacy.
>
> Q. So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity in the application. Is that right?
>
> A. Based on my current manager's direction, uh huh.[348]

In sum, applications for tax-exempt status submitted by Tea Party and conservative organizations were treated very differently by the IRS than applications submitted by other groups, including those on the left. Beginning in early 2010, the IRS focused singular attention on Tea Party applications and selected several exemplars from among those applications to serve as "test cases." The IRS's exclusive focus on the Tea Party extended unbroken until the July 2011 change from "Tea Party" to "Advocacy Org." in the Emerging Issues tab of the BOLO list. Thus, until July 2011, the IRS grappled with the issue of the permissible extent of political advocacy

[346] BOLO iteration chart (Apr. 30, 2012) IRS0000352979–84.
[347] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[348] SFC Interview of Jack Koester (Aug. 1, 2013) pp. 39–40.

for a section 501(c)(4) organization only within the context of the Tea Party's political agenda. During that span of time, Tea Party applications were methodically and systematically culled from the application pool by IRS workers, subjected to a bizarre and dilatory development process, and eventually left to languish unattended for lengthy periods of time while the IRS bumbled its way through a variety of failed processing initiatives.

In contrast, throughout the period culminating with the July 2011 change to the Emerging Issues tab, applications received from other organizations, including those on the left that involved political advocacy issues, were assigned, worked and resolved by IRS staff, and consequently suffered no untoward delays in their resolution. Even after the July 2011 change in the Emerging Issues tab as well as the subsequent changes in January and June of 2012, applications received from every Tea Party organization as well as every organization with a name that included "9/12 Project" or "Patriots" automatically drew IRS attention and with it, the rigors of full development and its associated delays. This was true whether or not the organizations calling themselves "Tea Party," "9/12 Project" or "Patriots" indicated in their applications an intention to engage in political discourse. In this way, applications submitted by Tea Party organizations and other conservative groups were processed by the IRS in a fashion unlike any other applications.

B. The IRS Did Not Target Progressive Organizations

Throughout the Committee's investigation, there have been claims by the Minority and by others that the IRS targeted progressive groups in the same manner as the Tea Party. This is simply not accurate.

Our investigation revealed that there was no plan to systemically capture and delay left-leaning applications at the IRS, as there was for Tea Party and conservative applications. While it is true that some liberal groups got caught in the process, most of the groups that were harmed by the IRS were Tea Party and conservative groups, and those were the groups that endured the longest delays because they were the first to be set aside.

In the Additional Democratic Staff Views, there are various claims in support of the flawed assertion that the IRS "targeted" left-leaning groups, too. Each is discussed below in turn.[349]

1. ***Democratic Allegation:*** "Progressive" Groups Were Targeted Because They Appeared on the BOLO Spreadsheet

> ***Response:*** The term "Progressive" was on a part of the BOLO spreadsheet that was not actively used by IRS employees who screened incoming applications, and did not result in any disparate treatment.

The Minority correctly observes that certain terms identifying left-leaning organizations appeared on the BOLO spreadsheet from August 2010 through April 2013, including the term "Progressive."

[349] Many of the same arguments raised by the Minority have already been disproven. *See* U.S. House of Representatives Committee on Oversight and Government Reform, Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment (Apr. 7, 2014).

Indeed, during the three years that the BOLO spreadsheet was used, there were dozens of terms that appeared on the BOLO spreadsheet in some capacity—including other terms, besides the "Tea Party" entry, that involved conservative organizations or conservative values. Merely appearing on the BOLO spreadsheet does not indicate that the IRS improperly targeted a particular organization; what matters is how IRS employees applied the BOLO criteria to process applications.

From August 2010 until May 2013, the BOLO spreadsheet was distributed to all EO Determinations employees, who used it as a reference tool when screening and reviewing applications for tax-exempt status. The BOLO spreadsheet was comprised of five "tabs": [350]

Tab Name	Tab Characteristics/Purpose
Emerging Issues	• Groups of applications for which there is no established case law or precedent • Issues arising from significant current events (excluding disaster relief organizations) • Issues arising from changes to tax law or other significant world events
Watch List	• Applications have not yet been received • Issues were the result of significant changes in tax law or world events and would require "special handling" by the IRS when received.
TAG (also referred to as Potential Abusive).	• Abusive tax avoidance transactions including abusive promoters and fake determination letters • Activities that were fraudulent in nature including: applications that materially misrepresented operations or finances, activities conducted contrary to tax law (e.g. Foreign Conduits) • Applicants with potential terrorist connections
TAG Historical (also referred to as Potential Abusive Historical).	• TAG issues that were no longer encountered, but that were of historical significance
Coordinated Processing	• Multiple applications grouped together to ensure uniform processing • Existing precedent or guidance does not exist

While some terms discussed below that describe left-leaning organizations did appear on the BOLO spreadsheet, it is clear that these BOLO entries did not result in the same treatment as the "Tea Party" BOLO entry, which appeared on the Emerging Issues tab of the BOLO spreadsheet.

From 2010 through 2013, there was an entry for "Progressive" organizations on the TAG Historical tab of the BOLO spreadsheet. As Cindy Thomas explained, the entries on this part of the spreadsheet were there because "there were no current cases that they had seen, but they—we didn't want to lose track of it, and that's why it stayed on the Historical tab." [351]

It is unclear when, if ever, the "Progressive" entry was ever relevant. Indeed, no employee interviewed by Committee staff knew when, or why, the term was added to the TAG Historical tab. The manager of employees who screened all incoming cases, John Shafer, did not recall receiving any "progressive" applications during the last 10 years:

> Q. Now, do you recall seeing any—during the time, and I'm talking about the whole time that you were the screening manager, all the way back to 10 years, I guess, to 2003, do you recall any cases that came in that met this criteria of progressive?

[350] Heightened Awareness Issues (July 28, 2010) IRS0000557291–308.
[351] SFC Interview of Cindy Thomas (July 25, 2013) p. 154.

A. Not to my knowledge. You said this was TAG History?

Q. It was—the tab in the Excel document is called TAG Historical.

A. Okay.

Q. So do you recall any progressive cases that were sent to Washington for processing?

A. I do not.[352]

Shafer's testimony is consistent with other IRS employees who do not remember reviewing any "Progressive" applications in EO Determinations after 2006[353] or in EO Technical, in Washington, D.C., after 2007.[354]

Hofacre further explained that the TAG Historical tab of the BOLO spreadsheet was not relied on by EO Determinations employees:

Q. Okay. Would the EO [Determinations] agents need to know this information [in the TAG Historical Tab] in order to do their job?

A. Based on my opinion, no.[355]

Other employees also confirmed that they did not refer to the TAG Historical tab when reviewing incoming applications; instead, they focused on the Emerging Issues tab.[356] Thus, the entry for "Progressive" applications did not affect how the IRS screened incoming applications for tax-exempt status during the period covered by the Committee's investigation.

2. ***Democratic Allegation:*** Groups affiliated with association of Community Organizations for Reform Now (acorn) were targeted because they appeared on the bolo spreadsheet and were subsequently inappropriately scrutinized

Response: The IRS had legitimate cause to look for incoming cases from ACORN-related organizations following the dissolution of ACORN amidst widespread concern about criminal activity, and the BOLO spreadsheet was not used inappropriately to screen these groups.

From August 2010 until the beginning of January 2012, the BOLO spreadsheet contained an entry for "ACORN Successors." This entry appeared on the Watch List tab of the BOLO, which was used to mark issues that had not yet come before the IRS, but would require special handling if and when they arose.[357] The ACORN entry would only be placed on this part of the BOLO spreadsheet if the IRS was not actively receiving applications that met this criteria.

In fact, the IRS had good reason to look for incoming applications from ACORN-related groups. As the Minority acknowledges, ACORN purportedly disbanded in 2010 after accusations of fraud, embezzlement and mismanagement—all issues that would directly affect an organization's ability to maintain or attain tax-exempt status. In July 2009, the Ranking Member of the House OGR Com-

[352] SFC Interview of John Shafer (Sep. 17, 2013) pp. 129–130.
[353] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 140.
[354] SFC Interview of Judith Kindell (July 18, 2013) pp. 107–108.
[355] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) p. 136.
[356] SFC Interview of Ronald Bell (July 30, 2013) (not transcribed).
[357] Heightened Awareness Issues (July 28, 2010) IRS0000557291–308.

mittee issued a report entitled "Is ACORN Intentionally Structured as a Criminal Enterprise?" [358] This report, which was provided to the IRS,[359] raised many allegations regarding the operation of ACORN and its affiliates. Included among those allegations were the following: ACORN failed to report an embezzlement of nearly $1 million, covered up the crime for more than 8 years, and used charitable contributions to recover the losses due to the embezzlement; it comingled accounts of its federally funded affiliates with its politically active affiliates and then used those funds to engage in partisan political activities; it conducted voter registration drives that routinely produced fraudulent registrations; and ACORN illegally plundered employee benefits and relieved corporate debts through prohibited loans.[360]

In February 2010, Minority staff of the House OGR Committee issued a second report on ACORN entitled "Follow the Money: ACORN, SEIU and their Political Allies." [361] Included in this report were a number of new findings that shed light on ACORN's operations including the following: there was no distinction between ACORN and its affiliates making it impossible to consider them as separate organizations; ACORN and its affiliates used coercion and threats of litigation to extract concessions, loans and funds from sources; and ACORN controlled the Service Employees International Union (SEIU), received money from it and used its employees to advance ACORN's organizing and partisan political goals. Lois Lerner, Robert Choi, Holly Paz and others received a copy of this report on February 19, 2010.[362]

These accusations, together with those from other Congressional sources, were serious enough to prompt the IRS to establish its own research team in November 2009 to look into ACORN's activities.[363] The IRS research team completed its review in April 2010, finding evidence that: ACORN had covered up an embezzlement committed by a board member; ACORN employees worked for multiple affiliates and staff and members served on the Board of Directors, thereby creating potential conflicts of interest; affiliates improperly transferred money among themselves; ACORN and its affiliates failed to properly document financial transactions; and ACORN may have improperly used donations as well as employee pension and health care benefit funds. The research team concluded that these findings, together with ACORN's apparent loose governance and a lack of respect for the corporate structure, warranted that the IRS take a closer look into the financial practices of ACORN and its affiliates.[364]

Around that same time, OGR Minority staff issued a third report on ACORN entitled "ACORN Political Machine Tries to Reinvent

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[358] U.S. House of Representatives Committee on Oversight and Government Reform, "Is ACORN Intentionally Structured As a Criminal Enterprise?" (July 23, 2009).

[359] Email from Nancy Todd to Sarah Hall Ingram, Joseph Grant, Lois Lerner, and others (July 8, 2010) IRS0000713482.

[360] U.S. House of Representatives Committee on Oversight and Government Reform, "Is ACORN Intentionally Structured As a Criminal Enterprise?" (July 23, 2009).

[361] U.S. House of Representatives Committee on Oversight and Government Reform, "Follow the Money: ACORN, SEIU and Their Political Allies" (Feb. 18, 2010) IRS0000791014–81.

[362] Email from Joseph Urban to Lois Lerner, Robert Choi, Holly Paz, Nanette Downing and others (Feb. 19, 2010) IRS0000791013.

[363] IRS, Memorandum on Investigative Research Findings (June 21, 2010) IRS0000713488.

[364] IRS, ACORN Research Activities Summary Report (April 28, 2010) IRS0000713483–87.

Itself."[365] The report outlined how stories in the press that ACORN was disbanding were greatly exaggerated. In fact, many of the ACORN affiliates were simply changing their names so as to remove any reference to ACORN, or re-incorporating as new entities under new names, but maintaining the same boards, staff and Employer Identification Numbers as former ACORN affiliates. The report indicated that this "rebranding" activity was being orchestrated by the parent ACORN organization and its national senior leadership.[366] This report was provided to the IRS on June 3, 2010.[367]

Even before OGR Minority staff provided a copy of its report to the IRS in June 2010, several news stories and other reports began to surface about ACORN's attempts to rebrand itself.[368] These news stories most likely contributed to the IRS's awareness that some local ACORN groups were attempting to reorganize and regain tax-exempt status under other names that did not reference ACORN. These groups often had close ties to former or current ACORN organizations. Steven Grodnitzky found that in the case of one applicant, the Ballot Initiative Group of Missouri, "ACORN is a member of the organization, contributes money, appoints a member of the board, and the principal was a high ranking official with ACORN in the Midwest."[369]

Indeed, the BOLO spreadsheet entry for "ACORN Successors" indicates that the IRS was concerned with precisely those types of issues:

> Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.[370]

Thus, the issue with ACORN applications wasn't necessarily the existence or amount of political activity, but rather whether these applicants were affiliated with a former non-profit organization that was found to have engaged in criminal wrongdoing.

IRS employees interviewed by Committee staff recalled seeing a few incoming applications from ACORN-related groups. As Hofacre explained, those applications were processed using normal IRS procedures and were not subject to the specialized process or scrutiny that the Tea Party cases received:

> Q. And were the ACORN type cases treated the same as the Tea Party cases? In other words, did they go to a group and then
>
> A. Based on my recollection, no.

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[365] U.S. House of Representatives, Committee on Oversight and Government Reform, Staff Report, "ACORN Political Machine Tries to Reinvent Itself" (June 3, 2010) IRS0000742758–65.

[366] Id.

[367] Letter from Ranking Member Darrell Issa to IRS Commissioner Douglas Shulman (June 3, 2010) IRS0000742756–57.

[368] Fox News, ACORN Branches Rebrand After Video Scandal (Mar. 15, 2010); The American Spectator, ACORN Housing Boom (Mar. 2, 2010).

[369] Email chain between Steven Grodnitzky, Brenda Melahn and others (June 8, 2010) IRS0000054956.

[370] BOLO Spreadsheet (Feb. 2, 2011). Other versions of the BOLO spreadsheet had slightly different entries for ACORN Successors, but conveyed the same information.

Q. Did they go into general inventory or they go to the TAG—I guess they went to the TAG Group, right?

A. Based on my recollection, no, they were just in general inventory. I mean, some may have made it to that, but based on my job as a reviewer right now, a lot of times they are just sent to whoever gets them.

Q. Okay. And regarding the development of those cases, if you know this, and I don't know if you are competent to say if you know, in those particular ACORN cases, were development letters created?

A. Yes, they were.

Q. Do you know if they were sent to EO Technical for a review out of the same coordinated effort that was engaged in with the Tea Party cases?

A. Based on—I only reviewed a couple of them. And there was no processing like that.[371]

Although some ACORN-related organizations did receive heightened scrutiny from the IRS, they were not targeted for their political beliefs and their treatment was in no way comparable to Tea Party and conservative organizations.

3. ***Democratic Allegation:*** The IRS targeted groups affiliated with "Occupy Wall Street," through a standalone BOLO entry and also by expanding the BOLO entry for political advocacy groups to capture occupy groups that might submit applications

Response: Although these changes to the BOLO were misguided, they alerted the IRS to only two applications submitted by organizations affiliated with the "Occupy" movement. Those applications were promptly sent to the "bucketing" process for evaluation and there are no indications that the affected groups suffered harm.

The January 25, 2012 BOLO spreadsheet included two entries related to the Occupy Wall Street movement. The first reference to Occupy organizations appeared in the entry for "current political issues" on the Emerging Issues tab of the BOLO spreadsheet:

Issue: Current Political Issues

Issue Description: Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $ocial economic reform/movement. **Note:** typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.

Disposition of Emerging Issue: Forward to Group 7822. Stephen Seok is the coordinator.[372]

As explained more fully in Section VI(B)(5) of the Bipartisan Investigative Report, this change occurred after Paz, Thomas, and other managers expressed concern that the previous BOLO entry was overly broad. In response to this concern, Steve Bowling originally suggested modifying the BOLO to once again reference "Tea Party" organizations; but his manager Thomas informed him that

[371] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 146–147.
[372] BOLO Iteration Chart (Apr. 30, 2012) IRS0000352979–84 (emphasis in original).

Lerner had discontinued this practice. To capture the same organizations without using the words "Tea Party," Bowling drafted new criteria that described views of the Tea Party organizations: limiting the government, and educating on the constitution and bill of rights.[373]

A secondary aim of Bowling was also to capture any applications that might be submitted by groups affiliated with Occupy Wall Street. To achieve this goal, he inserted the phrase "$ocial economic reform/movement," which was "code" for the Occupy organizations.[374] Bowling believed that this phrase would also apply to other groups besides Occupy that may present themselves in the future and would advocate for similar positions.[375]

Bowling also created a separate BOLO entry, titled "'Occupy' Organizations," that applied more narrowly to organizations affiliated with the Occupy Wall Street movement. Like the "ACORN Successors" entry, the "'Occupy' Organizations" entry appeared on the Watch List tab of the BOLO spreadsheet, which indicates that the IRS had not yet received any applications meeting this criteria. The "'Occupy' Organizations" entry appeared only on the January 2012 version of the BOLO spreadsheet.

It is without doubt that Bowling's revisions to the BOLO spreadsheet were misguided. Indeed, as noted in Section VII(B) of the Bipartisan Investigative Report, Bowling had already committed several substantial errors that resulted in applications from Tea Party and conservative organizations being neglected for more than a year. As noted in Section VII(F) of the Bipartisan Investigative Report, Bowling also mismanaged the Advocacy Team in early 2012, thereby allowing it to issue burdensome and improper development letters that predictably resulted in an uproar in the media and in Congress.

Unlike some previous changes to the BOLO spreadsheet, the changes made by Bowling in January 2012 were not approved by Paz, Lerner, or any upper-level EO managers. When Paz and Lerner became aware of the changes in May 2012, they quickly ordered that the BOLO criteria be changed and removed all references to "Occupy," including the "code" reference, and instead use neutral language that would apply to all political advocacy organizations.[376]

The Minority correctly states that in May 2012, the IRS received two applications from organizations that the IRS deemed to be part of the Occupy movement (although neither group had the word "Occupy" in its name).[377] EO Determinations employees decided that these applications met the criteria for the "'Occupy' Organizations" Watch List BOLO entry, and sent them directly to the bucketing process, where they were evaluated along with applications from other political advocacy groups.[378] The Minority does not allege that the two "Occupy" groups were harmed by the IRS.

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[373] *Id.*

[374] Email chain between Ronald Bell and Steve Bowling (Jan. 25, 2012) IRS0000013187.

[375] *Id.*

[376] Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434–35.

[377] Email chain between Tyler Chumney, Stephen Seok and others (May 24–27, 2012) IRS0000013234–48.

[378] *Id.* Emails from Tyler Chumney and Peggy Combs indicate that the applications will be sent to the "bickerers." Subsequent email conversation between Chumney and Combs (not in-

Meanwhile, Majority staff analysis reveals that during that six-month period when the references to "Occupy" appeared on the BOLO, IRS employees used the same BOLO criteria to "centralize" 46 applications from Tea Party or conservative groups. A number of those 46 applications were still pending resolution as of September 2014, more than two years later.

4. ***Democratic Allegation:*** In 2008, An EO Determinations manager instructed employees to be on the lookout for applicants with the word "emerge" in their names. it took 3 years for the IRS to come to a conclusion on some of the emerge cases

> ***Response:*** The IRS approved a number of Emerge applications before realizing that these organizations, which were state chapters of the same organization, were recruiting and training Democratic Party candidates. The IRS subsequently determined that these activities conferred a private benefit on the Democratic Party and, thus, were not permissible activities for a 501(c)(4) organization. When the IRS learned about these activities, it decided to revoke tax-exempt status from the organizations that had been approved and deny tax-exempt status for pending applications. The IRS's ultimate disposition was delayed by several factors, including ongoing litigation.

In support of this claim, the Minority cites an email conversation dated September 8, 2008, which discusses several applications submitted by Emerge affiliates.[379] In the initial email, an employee noted that a total of eight Emerge organizations, each representing a different state, had filed applications and that the IRS could therefore expect more applications from affiliates in other states. The employee then noted that "[t]he purpose of the organizations appear [sic] to be similar—train 'Democratic' party candidates in areas such as campaigning, fundraising, public speaking, press relations, and leadership skills." Continuing, the employee noted that "[b]ecause of the partisan nature of the cases" further guidance is pending. In the meantime, the employee recommended that all incoming applications from Emerge affiliates be handled in accordance with section 7.20.5 of the Internal Revenue Manual (IRM).

The referenced IRM section specifies certain types of cases that should be sent to the Quality Assurance division for further review, including:

> Applications that present sensitive political issues, including the following types of activities:
>
> - Voter registration
> - Inaugural and convention host committees
> - Post-election transition teams (to assist the elected official prior to officially assuming the elected position)
> - Voter guides
> - Voter polling
> - Voter education

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cluded with this report) indicates that the word "bucketers" had been automatically changed by the email program to "bickerers."

[379] Email chain between Donna Abner, Sharon Camarillo, Joseph Herr and others (Sep. 8–24, 2008) IRS0000011492–94.

- Other activities that may appear to support or oppose candidates for public office.[380]

Based on information about previous Emerge organizations cited in the September 8, 2008 email, the IRS's decision to invoke this provision in the IRM seems reasonable. It was made based on actual knowledge of the organization's activities, which had been self-reported to the IRS and suggested the possibility of private benefit. This lies in stark contrast to the IRS's decision to set aside Tea Party applications in early 2010, which was based on very little information about the actual or planned activities of the organizations.

Finally, the Minority notes that some of the Emerge applicants waited three years to get a final determination (although others were approved very quickly by the initial screeners). As explained by several IRS employees, the issue presented by Emerge organizations was not the presence or amount of political campaign intervention, but rather the inurement of private benefit—which is a distinct legal issue.[381] As the Minority notes, the IRS was also waiting for the courts to resolve a "similar issue" that was being litigated.[382] This required the IRS to coordinate the review of Emerge applications with the Chief Counsel Office, as Judith Kindell explained:

> I believe [EO] coordinated [the Emerge applications] with Counsel and that we ultimately denied the cases, that there had been some that had been approved so we had centralized the ones that we were aware of and worked them together. We developed them. They were fairly similar so that once we had developed them we were able to apply it across the board because they basically had, they were basically doing the same thing.
>
> . . . We were aware of some that had been approved prior to us noticing the issue, and there was at least one that even after we had noticed the issue and told Cincinnati that we needed to bring them all in and work them together there was at least one that was approved on screening at the same time that we were developing the denials.[383]

The Emerge applications were all eventually denied when the IRS concluded that the organizations "were providing private benefit to the Democratic party."[384] The disposition of these applications supports the IRS's measured approach in developing the applications and waiting until the legal issues had been resolved before taking the consequential action of denying tax-exempt status. Clearly, the type of activities performed by the Emerge organizations was very different from those of most Tea Party groups, which were concerned chiefly with issue advocacy—an activity that is permissible under tax law for 501(c)(4) organizations.

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[380] IRM § 7.20.5 (Aug. 14, 2007).
[381] SFC Interview of Judith Kindell (July 18, 2013) pp. 111–113.
[382] Email chain between Deborah Kant, Cindy Westcott and others (Oct. 10–16, 2008) IRS0000012304.
[383] SFC Interview of Judith Kindell (July 18, 2013) pp. 111–112.
[384] *Id.*

5. ***Democratic Allegation:*** TIGTA's Audit, Which Culminated in Its Report Dated May 14, 2013, Established That IRS Employees Did Not Allow Their Own Political Beliefs To Influence The Manner in Which They Processed Tea Party Applications

Response: Minority staff has sought to advance the proposition that TIGTA made a finding, based on its audit work, that the actions of IRS employees were not politically motivated. Contrary to the assertions of the Minority staff, TIGTA made no "findings" regarding the absence of political motivation, but rather merely concluded, based on statements collected from IRS employees including Lois Lerner, that there was no evidence that political motivation influenced official action. With regard to the issue of the existence of political influences within the IRS, TIGTA arrived at its conclusion without the benefit of a record as substantial as the record developed by Majority staff investigators. In contrast to the self-serving statements relied upon by TIGTA, Majority staff investigators uncovered a compelling trail of evidence that demonstrates that Lois Lerner's political views affected not only the performance of her duties, but also shaped the way the IRS treated conservative tax-exempt organizations.

Shortly after the release of TIGTA's May 14, 2013 audit report, the Senate Finance Committee convened a hearing to further probe into the IRS's use of inappropriate criteria to process applications for tax-exempt status. During the course of that hearing, the following exchange occurred between Senator Crapo and Inspector General George.[385]

Mr. Crapo: You know, there's been a lot of discussion about who knew what and when they knew it. And, one of the big questions I have—this is probably for you, Mr. George—is it seems that there is an argument being made that there was no political motivation in these actions.

Is that a conclusion that you have reached?

Mr. George: In the review that we conducted thus far, Senator, that is the conclusion that we have reached.

Mr. Crapo: And how do you reach that kind of conclusion?

Mr. George: In this instance, it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter.

And so you take it one step by another and we directly inquired as to whether or not there was direction from people in Washington beyond those who were directly related to the determinations unit. And their indications to us—now I have to note that this was not done under oath, this was again an audit and not an investigation—but they did indicate to us they did not receive direction from people beyond the IRS.

Mr. Crapo: When you say people beyond the IRS, that could be anyone up the chain of the IRS?

[385] While Minority staff quoted a portion of this exchange in the Additional Democratic Views, it omitted the most significant part of Inspector General George's testimony, the portion emphasized in bolded text here.

Mr. George: In theory it could be, but we have no evidence thus far that it was beyond the people in the determinations unit.

Mr. Crapo: **So, in other words, you have simply the statement of those engaging in the conduct saying they were not politically motivated?**

Mr. George: **That is correct, sir.**

Mr. Crapo: **And based on that, and statements not under oath, you reached the conclusion that there was no political motivation? Now, have you reached the conclusion that there was none or that you haven't found it?**

Mr. George: **It's the latter, that we have not found any, sir.**[386]

At a later point in the hearing, Inspector General George had a further opportunity to clarify that TIGTA made no findings regarding the absence of political motivation. The following colloquy between Senator Portman and Inspector General George reinforces this very significant point.

Mr. Portman: So, on page seven of your report, you stated that Mr. Miller and subordinate employees, quote "stated that the inappropriate criteria was not influenced by any individual or organization outside of the IRS." That's on page seven of your report. And that's been used by the administration to say that there was no—no influence.

Let me be clear. Is that a finding of your report? Or is that simply a restatement of what IRS employees told you?

Mr. George: **It is a restatement of the information that we received from IRS employees, Senator.**[387]

Accordingly, TIGTA made no *findings* regarding the absence of political influence in the processing of applications for tax-exempt status. Rather, it simply concluded that no evidence of such influence existed in the self-serving statements that it collected from the very employees responsible for the processing of those applications.

Regarding the existence of Lois Lerner's political bias, and how that bias affected the performance of official duties, it is important to point out that TIGTA's audit work, which took nearly a year to complete, involved a review of a fairly confined number of emails (5,500) from within the IRS. It is without doubt that TIGTA should be commended on the quality and completeness of its audit into the IRS's processing of applications for tax-exempt status. However, in contrast, and building on the excellent work TIGTA had already performed, Majority staff spent more than two years conducting its own investigation into the matter, including examining the issue of possible political motivation by IRS employees. During the course of that investigation, Majority staff reviewed a substantially larger universe of documents (1,500,000 pages) from numerous sources including some outside of the IRS, documents that TIGTA auditors never saw. Unlike TIGTA, Majority staff interviewed former IRS

[386] Hearing before the Senate Finance Committee, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) (emphasis added).
[387] *Id.* (emphasis added).

officials who had occupied high-level IRS management positions including a former IRS Commissioner, as well as officials from the Treasury Department. Based upon disturbing information uncovered during the course of its more exhaustive investigation, Majority staff devoted particular emphasis to establishing the actions and the motivations of Lois Lerner, significantly eclipsing any similar effort by TIGTA. As a consequence, the Majority staff was able to uncover substantial evidence that Lerner's political biases influenced the manner in which the EO Division interacted with tax-exempt organizations, evidence that TIGTA did not find.

VI. TEA PARTY ORGANIZATIONS WERE HARMED BY IRS TARGETING

The Tea Party groups that were scrutinized by theIRS were generally small and were harmed significantly more than progressive organizations. The committee highlights four examples of groups that were harmed by the IRS targeting.

A. The Tea Party and Related Conservative Groups Whose Applications Were Centralized and Delayed Were Generally Small Organizations

Starting in 2009, Tea Party groups began to organize in virtually all parts of the country.[388] The Tea Party movement is a grassroots movement of both local and national groups.[389] There is no central organization that controls the various Tea Parties.[390] While each Tea Party organization exercises autonomy in deciding the subjects that it will advance, most Tea Party organizations share certain core beliefs, such as the elimination of excessive taxes, ending the national debt, reducing the size of government, and terminating deficit spending.[391]

As part of its investigation, Majority Committee staff spoke to a number of individuals who organized various Tea Parties that applied for tax exemption and whose applications were delayed by the IRS. All of these individuals shared the same abiding sense of purpose: that the United States needs to be placed on a course to ensure a fiscally responsible government that taxes with restraint and spends within its means.

The political left has sought to depict all Tea Party groups as well-funded organizations patronized by wealthy, anonymous donors.[392] In actuality, a vast majority of Tea Parties and related conservative organizations that sought tax-exempt status from the IRS during the period 2010 to 2013 were small operations. Majority staff reviewed a random sample of 40 applications submitted for exemption under 501(c)(4) by organizations with "Tea Party," "9/12," or "Patriots" in their names. Our review of these 40 sample organizations revealed very limited funding:[393]

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[388] Tea Party Platform, Tea Party Movement.
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] Sourcewatch.org, Tea Party.
[393] Based on information contained in applications and other documents provided by IRS.

SFC MAJORITY STAFF SAMPLE OF 40 RANDOMLY SELECTED TEA PARTY ORGANIZATIONS THAT FILED FOR TAX-EXEMPT STATUS BETWEEN 2010 AND 2013

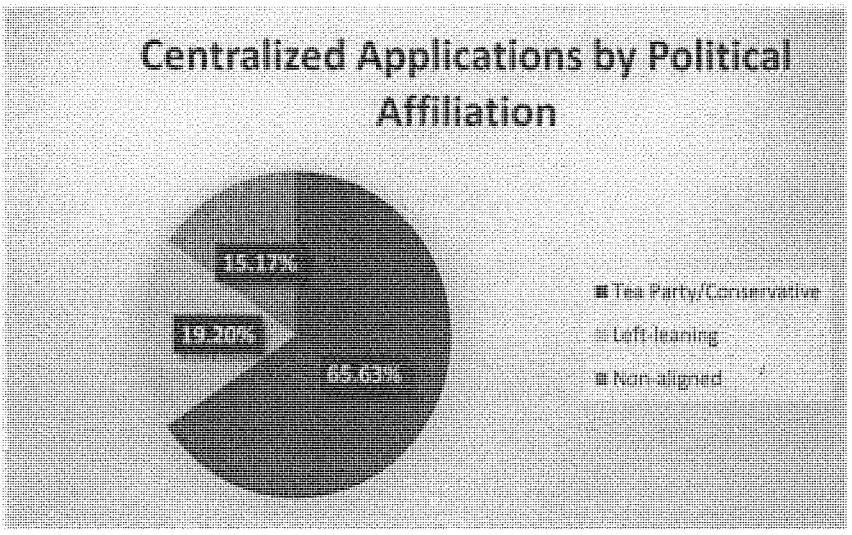
Average annual revenue	$21,329
Median annual revenue	$9,755

Indeed, one organization's annual revenue was a mere $1,500. This data confirms that Tea Party and related conservative groups that applied to the IRS between 2010 and 2013 for tax-exempt status were predominantly low budget operations, created by people with a deep sense of conviction that government growth, spending, and taxation need to be checked in order to make, and keep, America strong.

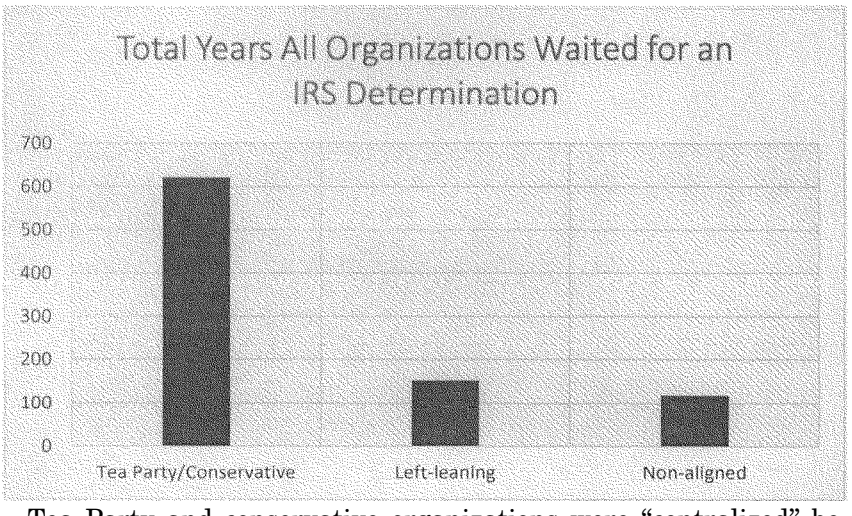
B. Tea Party Organizations Suffered Far Greater Harm Than Progressive Applicants

The Minority has asserted that left-leaning political advocacy groups that applied for exemption under 501(c)(4) experienced delays at the hands of the IRS just as the Tea Party and other conservative groups did. While some left-leaning groups may have encountered delays in receiving decisions on their applications for exemption, it is clear that the majority of applications that were delayed by the IRS were submitted by Tea Parties and other right-leaning groups. Based on information provided to the Committee by the IRS, 547 applications for exemption involving potential political activity were identified by the IRS during the time period 2010 through 2014.[394] The IRS "centralized" the 547 applications by sending them, at various points in time, to the Emerging Issues Group in EO Determinations for development and decision. Of those 547 applications, analysis by the Majority Staff shows that 359 were received from Tea Party or other conservative groups. This represents 65.63% of all applications presenting potential political advocacy issues. The remaining applications were almost equally divided between liberal organizations (19.20%) and non-aligned organizations that do not appear to be either right or left-leaning (15.17%).

[394] Data provided to the Committee by the IRS reflect that 25 of the 547 applications involving possible political advocacy were centralized between May 21, 2013 and April 28, 2014. Even though the Committee's investigation has principally focused on the IRS's treatment of applications centralized from January 1, 2010 to May 20, 2013, the charts and analysis in this section include the 25 applications centralized after May 20, 2013. Since these applications involved possible political advocacy issues, their treatment by the IRS was relevant to the Committee's investigation.

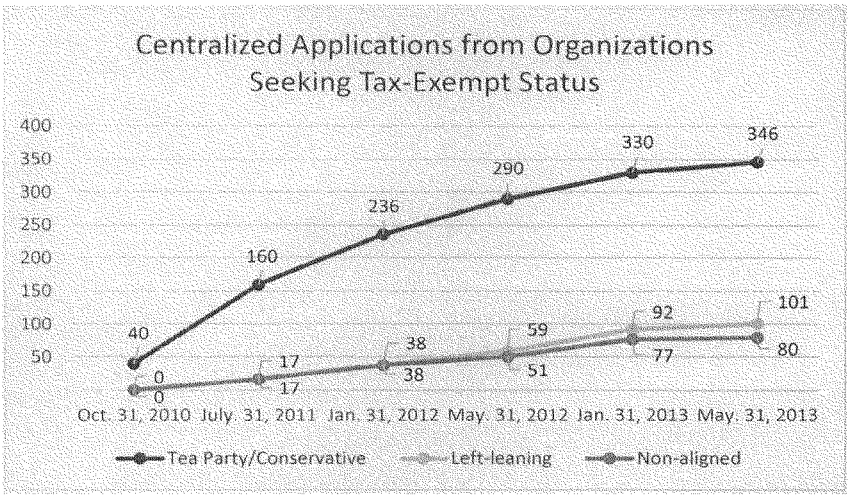


Moreover, Tea Party and other conservative groups whose applications were centralized waited longer, on average, for a decision on their applications for tax-exempt status. These groups, in total, waited 621 years for the IRS to make a decision on their applications for tax exempt status. In contrast, left leaning groups waited a combined total of 152 years and non-aligned groups waited 119 years. In addition, Tea Party and other conservative groups waited nearly 100 days longer than left-leaning and non-aligned groups to receive decisions on their applications for tax-exempt status.



Tea Party and conservative organizations were "centralized" beginning in February 2010, when Jack Koester first noticed an application from the Albuquerque Tea Party. In October 2010, some two months after issuance of the first BOLO spreadsheet containing an entry for "local organizations in the Tea Party move-

ment," there were 40 applications involving political advocacy awaiting decision in EO Determinations.[395] Every one of those applications (100 percent) was from a Tea Party or a related conservative organization.[396] Left-leaning groups were not captured by the BOLO Emerging Issues criteria until later—mostly in 2012 and 2013—and as a result, their applications were not delayed as long. By the time that the IRS began issuing decisions on political advocacy applications in June 2012, some of the Tea Party and other conservative groups had already been waiting nearly two and a half years. As shown in the succeeding chart, by January of 2012, the IRS had centralized 236 applications from Tea Party and other conservative organizations. In contrast, only 38 applications from left-leaning groups had been centralized by that time. Indeed, by January 2012, the IRS had centralized the same number of applications from non-aligned groups (38) than from left-leaning groups.



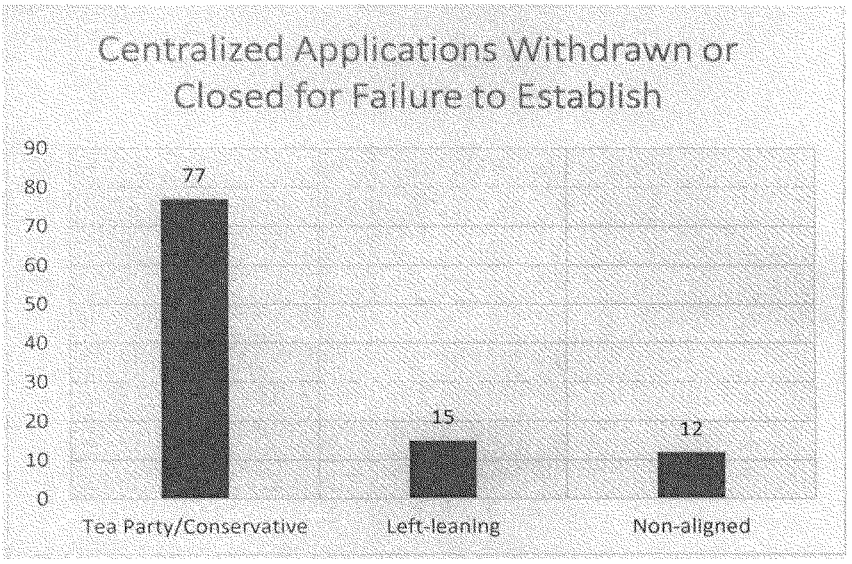
Furthermore, the lengthy application process, coupled with burdensome requests for information, caused some conservative applicants like American Junto to stop pursuing tax-exempt status. Data produced by the IRS confirms that substantially more Tea Party and conservative organizations than left-leaning groups withdrew their applications for tax-exempt status, or ceased responding to burdensome IRS requests, which resulted in the IRS closing their applications for "failure to establish." Between 2010 and 2014, 104 organizations withdrew their applications after being "centralized."[397] Majority staff analysis revealed that of the groups that withdrew or that had their applications closed for FTE, 77 were Tea Party or conservative, while only 15 were liberal or progressive. The remaining 12 had no political affiliation. Thus, for every liberal group whose application was either withdrawn or

[395] Email chain between Carter Hull to Ronald Shoemaker (Oct. 18, 2010) IRS0000165172–76.

[396] SFC Interview of Elizabeth Hofacre (Sep. 24, 2013) pp. 91–92.

[397] These 101 organizations include those that formally withdrew their application by notifying the IRS as well as those that withdrew informally by failing to respond to IRS requests for information.

closed for FTE, over 5 conservative groups suffered the same fate in their quest for tax-exempt status.



All of the above data confirm that Tea Party and conservative organizations waited longer and were more severely harmed than left-leaning groups.

C. Tea Party Groups Suffered Substantial Harm as a Result of IRS Delays

Majority Committee staff interviewed principals from a number of Tea Party and related conservative organizations whose applications for exemption were, and in some cases continue to be, delayed. These individuals all recounted similar stories of long delays, intrusive inquiries bordering on the Orwellian, and of adverse impact on the operations of their organizations. Recounted below are several representative stories told to Majority staff by these conservative groups.

1. The Albuquerque Tea Party

The Albuquerque Tea Party first filed its application for exemption under 501(c)(4) in December 2009. EO Determinations received the application on January 4, 2010.[398] In its application, the Albuquerque Tea Party indicated that it intended to: sponsor educational forums informing attendees about current political issues (40 percent of the organizations' activities); provide advocacy training to empower people to become more active in the political process (30–40 percent of its activities); hold candidate forums allowing non-partisan access to candidates for public office (20 percent of its activities); and organize event rallies that are non-partisan gatherings open to the general public for the purpose of educating and

[398] Email chain between Hilary Goehausen, Michael Seto and others (Feb. 28, 2012) IRS0000058356–61.

motivating (10 percent of its activities).[399] Question 15 of the application asks if the organization has spent, or intends to spend, funds attempting to influence the selection, nomination, election, or appointment of any person to public office or to office in a political organization. In response, the Albuquerque Tea Party stated that while no monies had yet been spent on these activities, that approximately 20 percent of its budget would be set aside for such purposes.[400]

On February 25, 2010, Jack Koester, a screener in EO Determinations, flagged this application as a possible "high-profile" case because of media attention surrounding the Tea Party.[401] Koester's managers agreed with his assessment and eventually, the application was sent to EO Technical and assigned to Carter (Chip) Hull to work as one of the two Tea Party "test cases."[402] Hull sent the organization a development letter in April 2010. Included among the questions in Hull's development letter was a query asking the Albuquerque Tea Party to describe its connection to "Marianne Chiffelle's Breakfasts," a breakfast gathering of the Bernalillo County Republican Party organized by Marianne Chiffelle, a then-83 year old great-grandmother.[403] Rick Harbaugh, the President of the Albuquerque Tea Party, told Majority staff that he found Hull's question about "Marianne Chiffelle's Breakfasts" to be peculiar, as Chiffelle simply hosted a breakfast club and offered a prayer before each breakfast. After the IRS granted a brief extension of time to respond, the Albuquerque Tea Party sent the IRS a reply in June 2010.

Thereafter, the Albuquerque Tea Party heard nothing from the IRS for nearly a year and a half, when in November 2011, it received a second development letter from Tax Law Specialist Hillary Goehausen. Goehausen's development letter asked for substantially more information than Hull's had, such as copies of every newsletter and publication of the Albuquerque Tea Party. Harbaugh stated that he considered Goehausen's development letter of November 2011 to be intrusive and burdensome. The Albuquerque Tea Party sent its response to the IRS in January 2012. Having heard nothing from the IRS for more than a year, in March 2013, the Albuquerque Tea Party retained counsel who made inquiry as to the status of its application. Goehausen replied by stating that she had prepared a recommended determination but that she could not disclose it to the Albuquerque Tea Party and that it was pending with her reviewer. Since April 2013, the Albuquerque Tea Party has not heard anything more from the IRS regarding the status of its application.[404]

Harbaugh spoke to Majority staff in February 2014. He stated that it was difficult for him to understand why his organization was still awaiting a decision on its application after 50 months, while the Barack H. Obama Foundation, a charitable organization

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[399] Email chain between Holly Paz, Cindy Thomas, Jack Koester, and others (Feb. 25–Mar. 17, 2010) IRS0000180869–73.
[400] *Id.*
[401] *Id.*
[402] SFC Interview of Carter Hull (July 23, 2013) (not transcribed).
[403] *Washington Examiner*, IRS Went After 89-year-old Tea Party Granny (May 20, 2013).
[404] The Albuquerque Tea Party is currently involved in litigation against the IRS. Generally, litigation does not preclude the IRS from coming to a final determination on a litigant's pending application for tax-exempt status.

operated by President Obama's brother, received its approval to operate as a 501(c)(3) from Lois Lerner within a month after it filed its application.[405] Harbaugh indicated that the Albuquerque Tea Party had never endorsed a political candidate, but rather has expended most of its effort in advocating for small government. Harbaugh also expressed concern about whether he had become a personal target for the IRS and other government agencies as a result of his Tea Party activities, as he was audited by the IRS in 2010 and 2011 and was approached by the U.S. Census Bureau on two occasions during that time and asked to answer "supplemental questions."

Harbaugh indicated that his ordeal in attempting to secure tax-exempt status from the IRS has negatively affected the operation of the Albuquerque Tea Party. He stated that the absence of a determination letter from the IRS approving tax-exempt status affects the willingness of donors to make contributions. He expressed his belief that donors are less inclined to make donations to an entity whose tax-exempt status has not yet been confirmed by the IRS. He also indicated that the lack of a determination letter negatively impacts his ability to secure affiliations from other groups, as people are afraid that they may also be "oppressed" by the IRS if they lend their name to the Albuquerque Tea Party. Lastly, Harbaugh told Majority staff that the absence of a determination letter has caused him to operate very cautiously from a fiscal perspective, as he must keep a portion of the group's revenue on hand in the event of an adverse determination by the IRS, as such a determination would result in a retroactive tax liability. This factor has prevented the Albuquerque Tea Party from engaging in the full range of activities that it would otherwise have undertaken. As of April 2015, the Albuquerque Tea Party was still waiting for a determination from the IRS, more than five years after they applied for tax-exempt status.

2. American Junto

In 2008, American Junto was formed by Chris Littleton, a self-described conservative, and several of his friends who had become increasingly concerned with the direction the country was taking, and with the sense that a growing number of Americans were losing faith in the political process. They wanted to do something to help others restore that lost faith. This motivated Littleton and his friends to create American Junto, an organization named after meetings that Benjamin Franklin hosted in his home to discuss issues of the day. American Junto was never intended to be an advocacy organization or to engage in political campaign intervention, and in fact, did not engage in these activities. Littleton's plan was to make American Junto a non-profit, community-centered, education organization that would provide scholarships and host educational events aimed at encouraging people to involve themselves in the political process.

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[405] *The Daily Caller*, IRS Official Lerner Speedily Approved Exemption for Obama Brother's "Charity" (June 4, 2013); Barack H. Obama Foundation, <http://www.barackhobamafoundation.org/>.

In 2009, Littleton decided that American Junto would best be able to accomplish its goal of encouraging citizen participation in the political process by becoming a charitable organization under 501(c)(3). As a 501(c)(3) organization, donations made to American Junto would be tax-deductible. Littleton, without legal assistance, prepared an application for tax-exempt status under 501(c)(3), and submitted it to the IRS in or about February 2010. Thereafter, Littleton incorporated American Junto, opened a bank account for it and began operating American Junto like a 501(c)(3) organization. American Junto sponsored a conference that dealt with liberty issues, hosted a conference on climate change, and raised hundreds of dollars for scholarships.

American Junto received a development letter from Carter Hull in July 2010. The letter inquired about American Junto's connection to the Tea Party, as well as to Ohio Liberty Council, a 501(c)(4) organization that Littleton had recently formed to take positions on political issues. Littleton felt that the questions asked by Hull were invasive and that the time and effort required to respond to the letter would be substantial. Nevertheless, he answered the development letter since he understood that American Junto's ability to raise funds through sustained donations was directly linked to its receiving approval from the IRS to operate as a 501(c)(3) organization. Sometime after responding to the development letter, one of the co-founders of American Junto called Hull to inquire as to the status of the application. The call to Hull was motivated by the need to get IRS approval so that the organization could raise in earnest the money it required to fund its planned activities. Hull responded by stating that the application was "under review."

While American Junto's application was "under review" by Hull and his IRS colleagues in Washington D.C., Littleton began to involve himself more with the activities of Ohio Liberty Council. Then, nearly 10 months after responding to Hull's first development letter, in April of 2011, he received a second development letter from Hull. The application for exemption was now 14 months old and Littleton began to lose heart that it would ever be approved. Littleton weighed the possibility of simply shutting down American Junto and moving on with Ohio Liberty Council. After consulting with his co-founders, Littleton decided to submit a response to Hull's development letter and did so in May 2011.

In November 2011, American Junto received yet a third development letter requesting more information, this one from Hillary Goehausen. This letter sounded the curtain call for American Junto. After waiting nearly 22 months and enduring several rounds of detailed and intrusive development letters, Littleton felt that no matter how he answered the development letter, American Junto would never be approved as a 501(c)(3) by the IRS. In December 2011, Goehausen called Littleton to inquire if American Junto was going to provide the information requested in the November development letter. Littleton informed Goehausen that American Junto would not respond and that the organization would be dissolved.

Goehausen subsequently sent Littleton a letter advising him that the application was closed.[406]

Littleton explained to Majority staff how the IRS's handling of the American Junto application had a profoundly negative effect on American Junto's ability to operate as a 501(c)(3) entity. First, the absence of an approval letter from the IRS prevented American Junto from fund raising effectively, since donations would not be tax-deductible until the IRS granted tax-exempt status. Littleton recounted how one donor offered American Junto several thousand dollars to fund an event, but withdrew the offer after learning that American Junto had not yet been approved as a tax-exempt organization. Second, Littleton indicated that the length of time that the application was pending and the string of burdensome development letters contributed to his decision to quit the process. In essence, the IRS's glacial pace in developing the application and the time consuming nature of its interactions with Littleton simply wore down his resolve to complete the application process. Third, Littleton feared that his activities with American Junto had elevated his profile with the IRS and other government agencies, a fear he believes was realized in 2010 when he was audited by the IRS. While there is no direct proof that the audit resulted from his activities with American Junto, Littleton was quick to point out that an acquaintance of his who is active with the Cincinnati Tea Party was also audited by the IRS at about the same time. Littleton's suspicions about the IRS's motivations in auditing him and his acquaintance stem from a deep-rooted lack of confidence in the impartiality of the IRS, a conviction shared by many of the groups with whom Majority staff spoke.

3. Pass the Balanced Budget Amendment (PBBA)

This organization was started by Charles Warren and several of his friends who share a common belief that the government must eliminate unnecessary spending and balance the federal budget. In November 2010, PBBA filed with the IRS an application for tax-exempt status under section 501(c)(4). In its application for exemption, PBBA indicated that its activities included education, research, lobbying and media efforts aimed at securing the passage of a balanced budget amendment to the Constitution. PBBA stated to the IRS that it would use town hall meetings, social media, speeches, rallies, and printed media to promote its message. In support of the requirement for exemption that it be primarily engaged in promoting the common good of the citizenry, PBBA asserted in its application that its activities would benefit the public by resulting in a more robust economy, limiting federal spending, and reducing inflation. Notably, in response to question 15 of the application which asks if the organization will attempt to influence the selection, nomination, election, or appointment of any person to public office or office within a political organization, PBBA answered "no." Indeed from a review of PBBA's application and the supporting documents submitted to the IRS, it is clear that PBBA's purpose and activities were dedicated exclusively to stimulating the

[406] This is one example of an application that the IRS closed for "failure to establish."

electorate into supporting the passage of a balanced budget amendment.

PBBA's application was screened in EO Determinations in January 2011. The screener noted that there was no indication of direct political activities in the application and supporting documents. However, the screener characterized PBBA as an "advocacy group" and sent its application to the advocacy inventory. While PBBA was not a Tea Party and was neither partisan in its message nor its educational activities, it did promote a common theme advanced by Tea Parties—the elimination of the national debt and of deficit spending. Indeed, one of the screening criteria relied upon by EO Determinations to identify "Tea Party" cases was the presence of statements in the application related to "Government spending, Government debt . . .."[407] If the screener applied the "Tea Party" screening criteria when reviewing the application, it is highly probable that his decision to send PBBA's application to the advocacy inventory was based on the conclusion that PBBA met the criteria for a Tea party application. In any event, the decision to send the case to the advocacy inventory proved a fateful one for PBBA, as explained below.

The application was initially assigned to an EO Determinations agent in California. She sent the first development letter to PBBA on March 31, 2011, and a second development letter on May 12, 2011. After PBBA had responded to the development letters and resolved an issue about its status as a "for-profit" corporation under state law, the EO Determinations agent was prepared to approve the application in September 2011. However, she then realized that PBBA was classified as an "advocacy group" and was therefore required to send the application to the Emerging Issues Group in Cincinnati.

The application was assigned to an EO Determinations agent in Cincinnati in February 2012. The agent sent PBBA an extremely detailed development letter containing, with subparts, 48 questions. A number of the questions asked for information that PBBA had already provided to the IRS in its responses to the prior two development letters. However, many of the questions asked for highly specific information:

- a hardcopy printout of PBBA's entire website;
- a hardcopy printout of its social media outlets;
- copies of all handouts and workshop materials for all public events conducted **or planned to be conducted** by PBBA, including:
  - ⊕ the content of all speeches delivered or **planned to be delivered** at those events; and
  - ⊕ the identities of the speakers and their credentials;
- copies of all communications distributed by PBBA regarding the outcome of specific legislation;
- copies of all radio, television or internet advertisements relating to lobbying activities; and
- copies of all written communications with members of legislative bodies.[408]

[407] Email chain between Holly Paz, John Shafer, Cindy Thomas and others (June 1–10, 2011) IRS0000066837–40.

[408] Letter from Joseph Herr to PBBA (Feb. 7, 2012) IRS0000048218–22 (emphasis added).

Shortly after receipt of the third development letter, PBBA secured the services of an attorney who then submitted a response to the IRS. On May 25, 2012, PBBA received a determination letter from the IRS approving its application for tax exemption under 501(c)(4).

Even so, PBBA was adversely impacted by the IRS's mishandling of its application. First, the application and supporting documents clearly demonstrated that PBBA, while undoubtedly espousing a conservative message, was not a Tea Party or an advocacy group. The decision to characterize PBBA as an advocacy group delayed the IRS's decision to approve PBBA's application for exemption. Had the application been assigned to general inventory and developed in January 2011, it is likely that it would have been approved shortly thereafter. Aside from speculation, it is clear from the case history that the EO Determinations agent in California was prepared to approve the application in September 2011. However, because PBBA had been characterized as an advocacy group, its application was sent to Cincinnati where its approval was further delayed by 8 months. In addition, PBBA was required to respond to three rounds of development questions, and in particular, extremely onerous and burdensome questions that were hardly justified in light of the information already provided to the IRS. That information bore stark witness to the fact that PBBA was not a partisan political organization engaged in campaign intervention. Finally, after receiving a third development letter in 14 months, PBBA deemed it prudent to secure legal counsel at substantial cost to it, as a hedge against the vagaries of the application process.

4. King Street Patriots and True the Vote

Catherine Engelbrecht founded King Street Patriots (KSP) and True the Vote (TTV) in 2009–2010 after witnessing voter fraud and related abuses while serving as a volunteer poll watcher in a Texas election. Her experiences as a poll watcher convinced her that more needed to be done to ensure the "sanctity of the vote." Accordingly, she formed KSP as a non-partisan, non-profit organization dedicated to addressing some of the problems at the polls that she had personally experienced. KSP's activities included enlisting volunteers to work at the polls, training those workers, leading voter registration drives, and hosting events to encourage voter turnout. In May 2010, Engelbrecht filed with the IRS, on behalf of KSP, an application for tax exemption under 501(c)(4).

In September 2010, Engelbrecht submitted to the IRS an application for exemption under 501(c)(3) for TTV. Engelbrecht described TTV's activities as centering on the recruitment and training of volunteers to work inside polling places. Among other things, TTV was formed to aggressively pursue voter fraud allegations to ensure prosecutions where appropriate, to provide a support system to assist poll watchers carry out their duties, and to engage in efforts aimed at validating existing voter registration lists.

The IRS issued its first development letter to KSP in February 2012, some 21 months after KSP's application was filed. The development letter contained 95 questions and requests for documents, including subparts. In a now all too familiar pattern, the develop-

ment letter sought from KSP an enormous amount of highly detailed information of dubious probative value:

- copies of every page of KSP's webpage;
- minutes of every board meeting;
- copies of every fundraising solicitation;
- a list of all issues important to KSP and KSP's position on each issue;
- the criteria KSP used when determining whether to endorse a candidate for political office;
- copies of all training materials;
- copies of all materials distributed at educational events;
- copies of all materials distributed at candidate forums; and
- copies of all materials distributed during voter registration drives.

KSP responded to the IRS's development letter in May 2012 with a submission totaling nearly 300 pages. The IRS's next development letter was sent to KSP eight months later in October 2012. KSP responded in November 2012 with the requested information. Almost a year later, in December 2013, after waiting nearly 3 and a half years, KSP received a determination letter from the IRS approving its application for exemption under 501(c)(4).

Development and resolution of TTV's application for tax-exempt status under 501(c)(3) followed much the same course as that of KSP's. TTV received its first development letter in February 2011, five months after filing its application. The letter asked a reasonable number of questions specifically aimed at eliciting information about TTV's activities, information clearly necessary for the IRS to be able to determine if TTV's activities were consistent with tax-exempt purposes. The next development letter that TTV received, a year later in February 2012, was not so reasonable. The number of requests for information and the demands for documents actually exceeded that of the February 2012 letter sent to KSP, topping the prodigious sum of 120.[409] Moreover, many of these oppressive and burdensome requests were identical to those contained in the KSP development letter. It is indeed difficult to understand how the answers and information provided to many of these requests would possibly assist the IRS reach a conclusion on whether TTV should be granted tax-exempt status. The following examples give a flavor of the irrelevance of most of these requests:

- the percentage of people trained as election administration workers versus the percentage trained as election observers;
- the names and credentials of the election law experts used by TTV to review TTV's materials and to staff its voter integrity center;
- the number of individuals trained to perform voter registration integrity activities as well as the number who are currently in training;
- the number of jurisdictions in which TTV conducted voter registration integrity activity;
- the name of the owner of the intellectual property rights to the software used by TTV to review lists of registered voters; and

[409] Letter from Janine Estes to True the Vote (Feb. 8, 2012) IRS0000084012–21.

- the name of any person or organization that provided educational services to TTV, together with a full description of the services and the political affiliation of the person or organization.

Notwithstanding the enormity of the effort required to respond to these largely superfluous and invasive requests, TTV did, in fact, respond in March 2012. Thereafter, TTV heard nothing from the IRS as another year passed. Then in March 2013, TTV was required to respond to yet another request for information from the IRS. Ultimately, after waiting three years, and responding to at least four different requests for additional information, TTV received its determination letter from the IRS granting it status as a 501(c)(3) tax-exempt organization.

Engelbrecht explained to Majority Staff that the delays experienced by both KSP and TTV adversely impacted the operations of these organizations. She recounted that the long delays and multiple rounds of development letters caused these entities to incur substantial legal fees, as assistance of counsel was required at nearly every juncture of the application process. She also indicated that KSP and TTV suffered the "stigma" of not having approved tax-exempt status while attempting to operate as tax-exempt entities, since the lack of IRS approval created the perception to some that the organizations lacked legitimacy. She also expressed frustration over TTV's inability to apply for foundation grants while it waited the three years required by the IRS to approve the application. Engelbrecht told Majority staff of one instance in which TTV had been awarded a grant with the condition that the funds could not be expended unless TTV was approved as a 501(c)(3) organization by the end of the year. When IRS approval was not forthcoming within that time, TTV was required to return the funds. Engelbrecht also noted that since KSP and TTV were both approved tax-exempt status, donations have increased, which lead her to the reasonable conclusion that the lengthy delays that both organizations endured from 2010 to 2013 negatively affected their ability to raise funds in those years.

Perhaps the most disconcerting aspect of Engelbrecht's saga is the heightened interest that several agencies of the U.S. Government took in her personally from 2010 through 2013, as well as in the operations of KSP, TTV and in Engelbrecht Manufacturing, the business that she and her husband operate. In January 2011, the IRS audited the tax returns of her business for tax years 2008 and 2009 and then in June of 2011, audited her personal returns for those same tax years. Throughout 2011, she was contacted by the FBI six times (four phone calls and two personal visits) regarding the general activities of KSP and about a particular individual who attended a KSP function. In 2012, a new round of government inquiry into her business affairs commenced with two audits of Engelbrecht Manufacturing by the Bureau of Alcohol, Tobacco, Firearms, and Explosives as well as an audit by the Occupational Safety and Health Administration. Engelbrecht indicated that between the years 1994, when she and her husband started their small business, and 2010, when she first filed the applications for tax exemption, the extent of her contact with the government had been limited to the filing of annual tax returns. However, this

changed dramatically after she submitted applications to the IRS in 2010 seeking tax-exempt status for KSP and TTV. It is unclear whether this increased scrutiny into the business of Catherine Engelbrecht and her husband was simply serendipitous, or was the product of an orchestrated campaign by the government to harass her. It may also have resulted from the decentralized actions of like-minded bureaucrats in various agencies who were executing an unstated directive to intimidate the political opponents of the administration, or perhaps was a combination of some or all of the above. Whatever the cause, Engelbrecht believes with unshakable conviction that she has been personally targeted by the government and that the actions directed against her, as recounted above, reflect the "weaponizing of government." [410]

VII. POLITICAL INFLUENCE WITHIN THE IRS

Recent events have demonstrated that the organizational structure of the IRS is fundamentally flawed, resulting in an environment rife with political bias.

A. The IRS's Lack of Independent Agency Status Fostered the Expression of Political Bias and Has Irrevocably Tainted the Agency's Credibility

One of the critical lessons learned from the Committee's investigation is the need for the IRS to be an independent agency. To fully appreciate the politicized environment of the IRS, it is necessary to understand the IRS's role as a bureau of the Treasury Department—an entity that is closely controlled by the President to implement his economic and financial initiatives.

Many errantly believe that the IRS already is an independent entity. Indeed, Jay Carney, the former White House press secretary, mistakenly called the IRS "an independent enforcement agency with only two political appointees," during a press briefing on May 10, 2013.[411] President Obama also claimed that the IRS was an "independent agency," during a May 13, 2013 press conference. Specifically, he stated, "If, in fact, IRS personnel engaged in the kind of practices that had been reported on and were intentionally targeting conservative groups, then that's outrageous and there's no place for it. And they have to be held fully accountable, because the IRS as an independent agency requires absolute integrity, and people have to have confidence that they're applying it in a nonpartisan way—applying the laws in a non-partisan way." [412]

Despite these claims from the Administration and the misperception of many in the public that the IRS is indeed an independent agency, the reality is that it is most definitely not. The IRS is a bureau within the Treasury Department, which is an executive branch agency within the Federal Government.[413] According to the IRS website, the agency was "organized to carry out the **re-**

[410] *Townhall*, True the Vote President Catherine Engelbrecht Slams IRS Abuse, Weaponizing of Government (Feb. 7, 2014).
[411] White House, Press Briefing by Press Secretary Jay Carney (May 10, 2013).
[412] White House, Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference (May 13, 2013).
[413] U.S. Department of Treasury, About Bureaus.

sponsibilities of the Secretary of the Treasury under section 7801 of the Internal Revenue Code."[414]

The IRS Commissioner is a political appointee nominated by the President and confirmed by the Senate. However, the IRS Commissioner does not report to the President, as the head of an independent agency would; instead, the IRS Commissioner reports to the Secretary of the Treasury via the Deputy Secretary of the Treasury.[415] This reporting line ensures that the IRS remains within Treasury's purview.

The law further states that the IRS Commissioner can be removed from the position "at the will of the President."[416] That action cannot be taken against the heads of some other "independent" agencies without a reason. For example, the Chairman of the National Labor Relations Board can "be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause."[417] Likewise, Members of the Federal Reserve Board, another independent agency, can only be removed "for cause."[418] These officials presumably have less concern that their judgment could result in removal if the Administration does not find it agreeable—unlike the IRS Commissioner, who can essentially be fired at will.

Indeed, President Obama may have indirectly exercised his authority to remove the IRS Commissioner on May 15, 2013, when he stated that he had directed Treasury Secretary Jack Lew to review TIGTA's findings. Soon after the President's directive, Lew requested and accepted the resignation of then-Acting IRS Commissioner, Steve Miller.[419] At that time, it had been reported that Miller was aware of the agency's targeting of conservative political groups and chose not to disclose it to members of Congress.[420]

One way that federal law attempts to remove partisanship from the IRS is through the use of five-year terms for its Commissioner that overlap the four-year presidential election cycles. The only other political appointee in the agency besides the Commissioner is the IRS Chief Counsel, who "provides legal guidance and interpretive advice to the IRS, Treasury and to taxpayers."[421]

Another safeguard is that the law prohibits the President, Vice President and members of their executive office staff from requesting, "directly or indirectly, any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer."[422]

The Treasury Department is supposed to keep an arms-length relationship with the IRS on matters of tax administration, enforcement and "process," which essentially means that it doesn't ask the IRS for information about taxpayers. However, on matters of tax policy and regulations, the Treasury Department works closely

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[414] IRS, The Agency, its Mission and Statutory Authority (emphasis added).
[415] U.S. Department of Treasury, About Treasury Order 101–05.
[416] 26 U.S.C. § 7803 (2008).
[417] 29 U.S.C. § 153 (1982).
[418] 12 U.S.C. § 242 (2010).
[419] White House, Statement by the President (May 15, 2013).
[420] *Washington Post*, IRS Officials in Washington Were Involved in Targeting of Conservative Groups (May 13, 2013).
[421] IRM § 1.1.5.1(5) (Oct. 28, 2008).
[422] 26 U.S.C. § 7217 (1998).

with the IRS. This dichotomy is a difficult one to balance and is made even more challenging because the IRS Chief Counsel is actually organizationally housed in the Treasury Department and is not a part of the IRS. Instead, the Office of Chief Counsel and the Chief Counsel reports through Treasury Department's chain of command, thereby adding an even greater appearance of politicization.

This close working relationship between IRS and the Treasury Department creates the appearance, if not the actuality, of an inherent conflict of interest that allows exactly the type of political bias that occurred when conservative groups applied for tax-exempt status between 2010 and 2013. If the IRS is to fulfill its mission to act in a fair and impartial manner while carrying out its very unique function, then it needs to be treated uniquely.

Making the IRS an independent agency, like the Social Security Administration, would minimize the political influence of the Treasury Department, while at the same time allowing the Commissioner to be an independent voice for tax administration. In order for the American public to ever have its faith in the IRS restored, it is essential that the IRS be taken out of the political realm and put squarely where it needs to be—as an independent enforcement agency that is free from all real and perceived political influence and bias.

B. Union Influence Within the IRS Has Created an Atmosphere of Political Bias

It is virtually impossible for the IRS to maintain the reality, much less the appearance, of neutrality and fairness to all taxpayers, when a substantial number of IRS employees are members of the highly partisan and left-leaning National Treasury Employees Union (NTEU). The NTEU is one of the largest and most powerful federal employee unions in the federal government. Currently the union represents about 150,000 employees in 31 government agencies, including the IRS.[423] At the IRS alone there are approximately 48,972 dues-paying union employees, representing 65.5% of the bargaining unit employees at the IRS.[424]

Politically, the NTEU is extremely active and twice endorsed Mr. Obama for President, first in 2008 and again in 2012. NTEU's current president, Colleen Kelley, was a 14-year IRS revenue agent and is now both union president and an Obama administration appointee to the Federal Salary Council, whose function is to recommend raises for IRS and other federal employees.[425] During the 2010 election cycle, when the IRS targeting of Tea Party groups began, the NTEU raised $613,633 through its political action committee (PAC), donating approximately 98% of that amount to Democrats. In 2012, $729,708—or 94% of NTEU PAC contributions—went to anti-Tea Party Democrats.[426]

Of further note is that as of 2011, at least 201 IRS employees worked full time on union issues. For that year, 625,704 hours of

[423] NTEU, Who We Are.
[424] IRS Briefing for Majority staff (May 30, 2014).
[425] *Breitbart*, Obama Met with IRS Union Boss Day Before Tea Party Targeting Began (May 20, 2013).
[426] *The American Spectator*, Obama and the IRS: The Smoking Gun? (May 20, 2013).

official employee time within Treasury Department (including the IRS) was spent on union duties. These union activities cost taxpayers an estimated $27 million.

Although IRS employees are career civil servants, many of them are political partisans. For example, in the past three election cycles, the Center for Responsive Politics's database shows about $474,000 in political donations by individuals listing "IRS" or "Internal Revenue Service" as their employer.[427] This money heavily favors Democrats: $247,000 to $145,000.[428] IRS employees also gave $67,000 to the NTEU political action committee, which in turn gave more than 96 percent of its contributions to Democrats. When NTEU political action committee contributions are added to the donations by individual IRS employees, those contributions favor Democrats 2 to 1.[429]

The IRS office in Cincinnati involved in the targeting of Tea Party applications is even more partisan than the IRS as a whole, judging by FEC filings. More than 75 percent of the campaign contributions from that office in the past three elections went to Democrats. In 2012, every donation traceable to employees at that office went to either President Obama or a particular Democratic Senator.[430]

These figures indicate that IRS employees are primarily paying for efforts to elect anti-Republican candidates, both through their union membership and by their direct contributions. Moreover, IRS employees are beholden to the NTEU, as it has negotiated favorable labor agreements with the IRS on their behalf that affect virtually every aspect of work life, such as "alternative work schedules, flexi-place, transit subsidies, performance awards and much more."[431] These labor agreements also make it more difficult for IRS management to discipline and terminate employees who are failing to perform their jobs.

In addition to the NTEU's leanings towards the Democratic Party is the fact that the Tea Party's anti-IRS views are well documented.[432] These factors together create an atmosphere that may foster an outright bias against Tea Party groups by IRS employees in the performance of their duties; or, at least one that may color their perspective to a degree that could cause them to administer the tax laws unfairly to the detriment of the Tea Party.

Under current law, most federal employees are permitted representation by a union. The major exception to this rule is Federal employees who work in national security or other agencies where the nature of their work requires them to be completely apolitical. The Federal Labor-Management Relations Statute provides that employees at the following agencies are not entitled to union representation: Government Accountability Office, Federal Bureau of Investigation, Central Intelligence Agency, National Security Agency, Tennessee Valley Authority, Federal Labor Relations Authority,

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[427] Center for Responsive Politics, data available at http://www.opensecrets.org.
[428] *Id*.
[429] *National Review*, A Partisan Union at the IRS (May 20, 2013).
[430] *Washington Examiner*, Tim Carney: The IRS is Deeply Political and Very Democratic (May 15, 2013).
[431] NTEU, The Voice of Federal Employees.
[432] *Wall Street Journal*, Tea Party Protesters Rally Against IRS, Government (June 19, 2013).

Federal Service Impasses Panel, and U.S. Secret Service and U.S. Secret Service Uniformed Division.[433]

The IRS is currently not one of the exempted entities, but the issues and facts brought forth by this investigation make a compelling case of why they should be exempted. The charge of the IRS is to administer the tax law in a fair and impartial manner. It is difficult, if not impossible, for that to occur when the union presence is so pervasive. The only way to completely eliminate the appearance of any bias is to add the IRS to the list of agencies where union membership is prohibited.

C. Recent Violations of the Hatch Act Show Pervasive Political Bias Throughout the IRS

The Hatch Act was enacted in 1939 following widespread allegations that Federal employees were exerting improper political influence in the course of their official duties. The Act has been amended several times since its enactment and prevents Federal employees from engaging in partisan political activity while on duty. The Office of Special Counsel (OSC) is authorized to issue advisory opinions about alleged violations of the Hatch Act throughout the Federal Government.[434]

Federal employees are routinely warned about the consequences of participating in prohibited political activity. Still, in every election cycle, there are violations of the Hatch Act. Some of these incidents occur when a reasonable person may have made a mistake in judgment. Often, though, the incidents are blatant violations, such as those described below in recent investigations into the activities of IRS employees.

In total, OSC received 38 allegations of Hatch Act violations committed by Treasury Department employees from fiscal year 2010 through fiscal year 2013.[435] Of those 38 allegations, 95% were lodged against IRS employees (the remaining 5% comprised employees from all other bureaus within the Treasury Department). In fiscal year 2013 alone—which included the months surrounding the 2012 election—there were 22 allegations of Hatch Act violations filed against IRS employees.

OSC issued a press release on April 9, 2014, announcing its investigation of several cases against IRS employees and offices suspected of illegal political activity in support of President Obama and fellow Democrats in 2012.[436] In the press release, OSC stated that it has evidence that an IRS employee used his authority and influence as a customer service representative for a political purpose.[437] When fielding taxpayer's questions from an IRS customer service help line, the employee urged taxpayers to reelect President Obama in 2012 by repeatedly reciting a chant based on the spelling

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[433] 5 U.S.C. § 7103(a)(3) (2004). In at least one case, subsequent legislation has allowed union representation at an agency exempted by the Federal Labor-Management Relations Statute. See 31 U.S.C. § 732(e)(2) (2008), authorizing a labor-management relations program for the Government Accountability Office.

[434] U.S. Office of Special Counsel, Request an Advisory Opinion.

[435] OSC Summary of Alleged Violations of Hatch Act, Produced to SFC Majority Staff (May 23, 2014).

[436] U.S. Office of Special Counsel, OSC Enforces Hatch Act in a Series of IRS Cases (Apr. 9, 2014).

[437] *Id.*

of his last name. In June 2014, OSC announced that the employee had agreed to serve a 100-day unpaid suspension and "acknowledged that he had used his authority and influence as an IRS customer service representative for a political purpose and did so while at work."[438]

In another recent IRS case, OSC found that an employee in Kentucky promoted her partisan political views to a taxpayer she was assisting during the 2012 Presidential election season.[439] The employee in question had previously been warned about violating the Hatch Act. A recorded conversation between the employee and a taxpayer revealed the employee saying that she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and . . . they're going to take women back 40 years." The employee explained that her mother always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.' And I went, 'You're right.' I found that out." The employee then told the taxpayer, "I'm not supposed to voice my opinion, so you didn't hear me saying that."

Following OSC's investigation, the employee entered into a settlement agreement in April 2014, agreeing to serve a 14-day suspension. In the agreement, the employee admitted to violating the Hatch Act's restrictions against engaging in political activity while on duty and using her official authority or influence to affect the result of an election.

Finally, OSC recently completed an investigation of allegations that an IRS manager in California violated the Hatch Act while on official travel to Las Vegas in November 2012. The manager allegedly canceled a meeting in Las Vegas to meet her husband at the site of a rally for President Obama's 2012 reelection campaign. OSC concluded that the manager's likely attendance of the Obama rally violated the Hatch Act's restrictions on engaging in political activity during official time. OSC referred its findings to the IRS, which is considering misconduct charges against the manager.[440]

In view of the IRS's targeting of conservative groups, the actions of these employees have re-focused attention on whether the IRS may have been used to benefit one political viewpoint or candidate over another. Incidents such as these are unfortunate, as they denigrate the public image of an agency that has been given tremendous influence over the lives of Americans and is supposed to be impartial in wielding this influence.

VIII. THE IRS HAS YET TO FULLY CORRECT ITS PROBLEMS

The IRS has failed to correct many of the fundamental problems that led to the inappropriate targeting of Tea Party groups.

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[438] U.S. Office of Special Counsel, OSC Obtains Disciplinary Action in Two Hatch Act Cases (July 10, 2014).

[439] U.S. Office of Special Counsel, OSC Enforces Hatch Act in a Series of IRS Cases (Apr. 9, 2014).

[440] OSC Briefing for SFC Staff (July 9, 2015).

Soon after being installed as Principal Deputy Commissioner, Danny Werfel recognized the importance of addressing the problems identified in TIGTA's report:

> I assure you, we're doing everything we can to re-look at this process to make sure that it moves more quickly and swiftly. It's too slow right now, I absolutely agree. But the reforms that we put in place, and I'm happy to send more time with you and your staff detailing exactly how we're looking at the reengineering these processes to make these improvements. We're going to do everything in our power to make sure that they take effect and take effect quickly.[441]

Commissioner Koskinen affirmed his commitment to fixing these problems—and to working with the Committee—during his confirmation hearing before the Committee:

> Taxpayer services need to be improved, particularly in the areas of tax-exempt organization filings and operations. There are several investigations ongoing into the delays encountered by many of those seeking to establish themselves as 501(c)(4) social welfare organizations. And I look forward to working with this committee as it concludes its investigation of that matter.[442]

Although there have been some changes at the IRS since May 2013, neither Mr. Werfel nor Mr. Koskinen has enacted the type of structural changes that are necessary to correct the serious problems identified by TIGTA and by this Committee. Moreover, the IRS unsuccessfully attempted to modify the regulations to constrain free speech of 501(c)(4) organizations, which would have institutionalized the type of targeting that TIGTA found to be problematic.

A. Although the IRS Has Addressed Some Problems Identified by TIGTA, There Is Much Work Left To Do

1. Initial IRS Response and Suspension of BOLO

There was a flurry of activity after the IRS targeting of conservative organizations became public in May 2013. The first glimpse inside the agency came on June 24, 2013, when the Principal Deputy Commissioner Werfel released a 30-day update. Among the key steps noted in that report were the results of the IRS's internal investigation, which found "significant management and judgment failures;" replacement of four levels in the management chain that had responsibility for the activities identified in the TIGTA report; and the suspension of use of the BOLO spreadsheet.[443] At the time

[441] Testimony of Danny Werfel, House Ways and Means Subcommittee on Oversight Holds Hearing on Oversight of the IRS Exempt Organizations Division After the Treasury Inspector General for Tax Administration's Audit (Sep. 18, 2013).

[442] Testimony of John Koskinen, Senate Finance Committee Confirmation Hearing on the Nomination of John Koskinen to be IRS Commissioner (December 10, 2013).

[443] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action (June 24, 2013). Appendix C is a memorandum from Karen Schiller titled Interim Guidance on the Suspension of BOLO List Usage (June 20, 2013). The memorandum instructed employees to immediately stop using the BOLO spreadsheet, including the Emerging Issues tab and the Watch

of the 30-day update report, Lerner had been placed on paid administrative leave by the IRS. She eventually retired in September 2013 after an internal investigation found that she was guilty of "neglect of duties" and recommended her removal.[444] Notably, before TIGTA's report was released, Lerner had been contemplating retiring on October 1, 2013—exactly one week after her actual retirement date.[445]

These initial actions did not immediately cease all of the practices that TIGTA found to be problematic. As discussed in Section III(G) of the Bipartisan Investigative Report, it appears that several months after TIGTA released its report, employees lacked appropriate instructions from management and possibly continued to pull out applications containing the words "Tea Party" for separate processing. Since the Committee conducted the interviews referenced in that section of the report, the IRS has issued additional guidance to employees implementing new procedures for reviewing tax-exempt applications.[446] We have no knowledge of whether the IRS's recent guidance has affected the screening procedures applied to incoming applications for tax-exempt status or whether the IRS continues to subject Tea Party applicants to improper levels of scrutiny named on their names or political affiliation.

2. The Expedited Process

In June 2013, the IRS also announced a "new voluntary process" for political advocacy organizations with applications for 501(c)(4) tax-exempt status that had been pending for more than 120 days.[447] The IRS would grant tax-exempt status to applicants that certified that the organization "satisfies, and **will continue to satisfy**, set percentages with respect to the level of its social welfare activities and political campaign intervention activities[.]" Specifically, applicants were required to certify that during each past year that the organization has existed, during the current year, and during all future years in which the organization will rely on the IRS's determination of tax-exempt status:

> The organization has spent, or will spend, 60% or more of **both** the organization's total expenditures **and** its total time (measured by employee and volunteer hours) on activities that promote the social welfare; and
>
> The organization has spent, or will spend, less than 40% of **both** the organization's total expenditures **and** its total time (measured by employee and volunteer hours) on direct or indirect participation or intervention in any political campaign on behalf of (or in opposition to) any candidate for public office.[448]

List tab. However, employees were permitted to continue using other lists to identify and prevent waste, fraud and abuse.

[444] Washington Times, Lois Lerner, IRS Official in Tea Party Scandal, Forced Out for "Neglect of Duties" (Sep. 23, 2013).

[445] Email from Richard Klein to Lois Lerner (January 28, 2013) IRS0000202615 (email attachment omitted by Majority staff).

[446] IRS, Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4) (Dec. 23, 2013); IRS, Memorandum from Stephen Martin, Streamlined Processing Guidelines for All Cases (Feb. 28, 2014).

[447] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action, Appendix E (June 24, 2013).

[448] *Id*. (emphasis in original).

As of April 2015, the IRS reported that 145 political advocacy organizations in the "backlog" were offered expedited treatment; of those, 43 elected to participate in the expedited process and were granted tax-exempt status.[449] The low participation rate—less than a third of eligible organizations—indicates that the expedited process was a deeply flawed proposition. First and foremost, the standards were based on an arbitrary measure of organizational activity that is not found in any statute or regulation. Rather than asking applicants to certify that they will comply with the existing law, the IRS created new standards.

A second and related problem is that the invented standards are, in fact, more stringent than the existing law. The expedited option was not available to an organization that had, in the past, performed a legally-acceptable amount of political campaign intervention that exceeded 40%. Likewise, by attesting to these requirements, an organization would be forfeiting its ability to ever engage in the amount of political campaign intervention allowable under the current law, thereby restraining its speech.

Finally, the expedited process required applicants to certify that their submission was accurate under penalty of perjury. The IRS frequently requires all types of taxpayers to sign submissions under penalty of perjury. But in this area of tax law—where the IRS had difficulty applying its own statues and regulations, and then invented new standards just for this process—risking perjury seems like a risky proposition, particularly when the organization must perform a precise calculation of all past, current, and future activities.

Indeed, many organizations that were eligible for the expedited process elected to proceed with the IRS's standard process rather than submit to these onerous demands. The Majority staff spoke with attorneys who together represent a large number of Tea Party organizations, and they uniformly advised their clients not to participate in the expedited process. Some of those attorneys believed that the IRS then drew adverse inferences about their clients' level of political activities, a charge that the IRS has denied.

Despite these concerns, the IRS later broadened the expedited option to "include all applicants for 501(c)(4) status (as opposed to only those with applications pending for more than 120 days as of May 28, 2013) whose applications indicate the organization could potentially be engaged in political campaign intervention or in providing private benefit to a political party[.]" [450]

Overall, as of March 26, 2014, 117 applicants that were "centralized" by the IRS were still waiting for a final determination—more than one-fifth of the total number that were delayed. Tellingly, all of those organizations preferred to stick with the IRS's normal determination process, which by that point had resulted in delays of more than three years for some applicants. As of April 2015, 10 of those applicants were still waiting for a final determination of their tax-exemption.[451]

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[449] IRS Briefing for SFC Staff (April 15, 2015).

[450] IRS, Memorandum from Kenneth Corbin, Expansion of Optional Expedited Process for Certain Exemption Applicants Under 501(c)(4) (Dec. 23, 2013).

[451] IRS Briefing for SFC Staff (April 15, 2015).

3. Further Updates on TIGTA Recommendations and Other Changes

Since May 2013, the IRS has continued to update the Committee about its progress in implementing TIGTA's recommendations and other changes to its review of applications for tax-exempt status. As of January 31, 2014, the IRS reported that it had implemented all of TIGTA's recommendations.[452] TIGTA concurred, writing in a March 2015 report that "[t]he IRS has taken significant actions to address the nine recommendations made in our prior audit report."[453] In that report, TIGTA made two additional recommendations: one related to employee training, and a second suggestion that if the expedited process becomes permanent, it should be available to "additional organizations with similar political campaign interventions."[454]

We note that in addition to its implementation of the recommendations outlined in TIGTA's March 2015 report, the IRS has also made a number of other changes to the EO division, which are reflected in the IRM and internal IRS operational procedures.

B. Attempts by the IRS and Others To Suppress Political Speech and Discourage an Informed Citizenry Must Be Rejected

Following the release of the TIGTA report, some argued that although the IRS's actions were misguided, the larger underlying problem lies in law and regulations that are vague, outdated, and difficult to apply. Indeed, this theory is advanced in the Additional Democratic Views. We disagree. As described throughout this document, the fault in this matter lies squarely with IRS executives in Washington, D.C. who purposefully misapplied and manipulated well-established rules, thereby interfering with the work of EO field offices.

In response to these concerns, the IRS proposed regulatory changes in November 2013 that would have constrained political speech by 501(c)(4) organizations. Although the IRS later withdrew the regulations, the proposal should be recognized for what it was: an attempt to suppress dialogue that leads to informed debate. Based on these and other concerns, the proposed regulations were roundly rejected by citizens, regardless of their personal political affiliation.

Legislative proposals that would require near-universal disclosure of donors, such as those advanced by the Minority Staff, should also be rejected. These proposals show a troubling indifference to harassment of individuals that follows from the publication of donor identities—a concern that was raised by the American Civil Liberties Union (ACLU) in response to the IRS's proposed regulations on political speech. As the ACLU and others of all political affiliation have noted, there is a dark side to disclosure.

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[452] IRS, Exempt Organizations Recommended Actions Ending May 23, 2014.

[453] TIGTA, Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention, TIGTA Audit Report 2015–10–025 (Mar. 27, 2015) p. 2.

[454] *Id*. pp. 11, 16.

1. Background on 501(c)(4) Exemption

Section 501(c)(4) provides a tax exemption for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and no part of the net earnings of which inures to the benefit of any private shareholder or individual. Treasury regulations provide that an organization is operated exclusively for the promotion of social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community or bringing about civic betterments and social improvements.[455] Contributions to 501(c)(4) organizations are not tax deductible.[456]

Treasury regulations provide that the promotion of social welfare does not include "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" ("political campaign intervention").[457] However, social welfare organizations are permitted to engage in political campaign intervention so long as the organization is primarily engaged in activities that promote social welfare.[458]

Under current Treasury regulations, the determination of whether an activity constitutes political campaign intervention depends on all the facts and circumstances of the particular case.[459] The rules concerning political campaign intervention apply only to activities involving candidates for elective public office; the rules do not apply to activities involving officials who are selected or appointed, such as executive branch officials and judges. Similarly, section 501(c)(4) organizations may engage in activities that educate the public on important issues. Thus, section 501(c)(4) organizations are allowed to hold candidate forums and distribute voter guides outlining candidates' positions on issues important, in the view of the organization, to the public. Section 501(c)(4) organizations also are allowed to conduct nonpartisan get-out-the-vote drives and voter registration drives.[460]

Similar rules apply for determining whether other types of section 501(c) organizations have engaged in political campaign intervention, including charities (section 501(c)(3)), labor and horticultural organizations (section 501(c)(5)), and business leagues (section 501(c)(6)). However, while section 501(c)(4), (5) and (6) organizations may engage in some political campaign intervention without jeopardizing exempt status, section 501(c)(3) organizations alone are prohibited by statute from engaging in any political campaign intervention.[461]

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[455] 26 C.F.R. §§ 1.501(c)(4)–1(a)(1) and (2)(i) (1990). An organization is not operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations that are operated for profit. 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii) (1990).

[456] 26 U.S.C. § 170 (2014). By contrast, contributions to 501(c)(3) organizations are deductible.

[457] 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii) (1990).

[458] Rev. Rul. 81–95, 1981–1 C.B. 332.

[459] Rev. Rul. 2007–41, 2007–25 I.R.B. 1421 (June 18, 2007) (analyzing 21 different factual scenarios involving section 501(c)(3) charitable organizations for political campaign intervention); Rev. Rul. 81–95, 1981–1 C.B. 332 (referencing section 501(c)(3) standards in determining whether activities of a section 501(c)(4) organization constitute political campaign intervention).

[460] The proposed section 501(c)(4) regulations, discussed *infra*, categorize all of these activities as political activity not consistent with the promotion of social welfare.

[461] 26 U.S.C. § 501(c)(3) (2014).

The lobbying and advocacy activities of a section 501(c)(4) organization generally are not limited, provided the activities are in furtherance of the organization's exempt purpose.

2. IRS's Proposed Regulatory Changes

On November 29, 2013, the Internal Revenue Service and the Treasury Department published proposed regulations regarding the political campaign activities of section 501(c)(4) organizations.[462] The proposed regulations, which were eventually withdrawn by the IRS in May 2014 in the face of fierce public opposition, sought to replace the present-law facts-and-circumstances test used in determining whether a section 501(c)(4) organization has engaged in political campaign intervention with an enumerated list of activities that constitute political campaign activities.[463]

The proposed regulations were intended to replace the political campaign intervention referenced in the existing section 501(c)(4) regulations (i.e., "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office") with a new defined term, "candidate-related political activity."[464] Candidate-related political activity is defined in the proposed regulations as: (1) communications that express a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates (often referred to as express advocacy communications); (2) certain public communications (as defined) within 30 days of a primary election or 60 days of a general election that refer to one or more clearly identified candidates, or in the case of a general election one or more political parties; (3) communications the expenditures for which are reported to the FEC; (4) contributions (including gifts, grants, subscriptions, loans, advances, or deposits) of money or anything of value to or the solicitation of contributions on behalf of a candidate, a section 527 political organization, or a section 501(c) organization that engages in candidate-related political activity; (5) conduct of a voter registration drive or "get-out-the-vote" drive; (6) distribution of any material prepared by or on behalf of a candidate or by a section 527 political organization; (7) preparation or distribution of a voter guide that refers to one or more clearly identified candidates, or in the case of a general election to one or more political parties; and (8) hosting or conducting a forum for candidates within 30 days of a primary election or 60 days of a general election.[465]

For purposes of candidate-related political activity, the proposed regulations define the term "candidate" to mean "an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual

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[462] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG–134417–13, 78 Fed. Reg. 71535 (Nov. 29, 2013); incorporating Prop. Treas. Reg. §§ 1.501(c)(4)–1(a)(2)(ii), (a)(2)(iii), and (c).

[463] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities*, REG–134417–13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71536.

[464] Prop. Treas. Reg. §§ 1.501(c)(4)–1(a)(2)(ii) and (iii).

[465] Prop. Treas. Reg. § 1.501(c)(4)–1(a)(2)(iii)(A).

is ultimately selected, nominated, elected, or appointed," including officeholders who are the subject of a recall election;[466] this includes certain judicial and executive branch appointments.

The proposed regulations would have applied only to section 501(c)(4) organizations.[467] Other section 501(c) organizations (including section 501(c)(3) charitable organizations, section 501(c)(5) labor and horticultural organizations, and section 501(c)(6) business leagues) would continue to use present-law rules concerning political campaign intervention. The regulations were proposed to be effective on the date they were published in the Federal Register as final regulations.[468]

Conservative social welfare organizations—the types of organizations targeted by the IRS—weighed in strongly against the regulations. But it was not just conservative groups that submitted comments critical of the proposed regulations. Left-leaning and progressive groups also were highly critical. The ACLU, for example, submitted a comment letter arguing that the proposed regulations would "produce the same structural issues at the IRS that led to the use of inappropriate criteria in the selection of various charitable and social welfare groups for undue scrutiny." The ACLU argued that social welfare groups should be free to participate in the political process because that kind of participation "is at the heart of our representative democracy. To the extent it influences voting, it does so by promoting an informed citizenry."[469] In all, the IRS received more than 150,000 comments on the proposed regulation before the comment period closed on February 27, 2014—by far the most comments ever submitted in response to a proposed IRS regulation.[470] On May 22, 2014, the IRS gave public notice that it view of the comments it received, it would make changes to the proposed regulation, issue a revised proposed regulation, and then hold a public hearing on that revised regulation.[471] The IRS has not indicated when the revised proposed regulation will be published.

3. Legislative Proposals

The legislative response to the proposed regulations that has garnered the most support from Republicans in the Senate is the Stop Targeting of Political Beliefs by the IRS Act of 2015 (S. 283), introduced on January 28, 2015, by Senator Jeff Flake (R–AZ). The bill would prohibit the Secretary of the Treasury from finalizing the proposed regulation, or from issuing other forms of guidance (e.g.,

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[466] Prop. Treas. Reg. § 1.501(c)(4)–1(a)(2)(iii)(B)(1).

[467] Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG–134417–13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71537.

[468] Prop. Treas. Reg. § 1.501(c)(4)–1(c). In the notice of proposed rulemaking, the IRS requested comments from the public on a number of issues, including: (1) whether the existing regulation that provides that an organization is operated exclusively for social welfare if it is engaged primarily in promoting in some way the common good and general welfare of the people of a community should be modified; and (2) whether the rules included in the proposed regulations should be extended to other section 501(c) organizations or to section 527 political organizations. Notice of Proposed Rulemaking, *Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities* REG–134417–13, 78 Fed. Reg. 71535 (Nov. 29, 2013) p. 71537.

[469] Public comment letter from ACLU to IRS Commissioner John A. Koskinen (Feb. 4, 2014).

[470] Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen Before the National Press Club, (Apr. 2, 2014).

[471] IRS, IRS Update on the Proposed New Regulation on 501(c)(4) Organizations (May 22, 2014).

revenue rulings, etc.) to restrict 501(c)(4) political activity. The bill also provides that the standards and definitions in effect on January 1, 2010, which are used to determine whether an organization is operated exclusively for the promotion of social welfare for purposes of section 501(c)(4), shall apply for determining the tax-exempt status of organizations under section 501(c)(4). The provisions in the bill would sunset after February 28, 2017.

The legislative solution suggested by former Chairman Wyden was the enactment of a bill he introduced on April 23, 2013, cosponsored by Senator Lisa Murkowski (R–AK), the Follow the Money Act of 2013 (S. 791). The bill required comprehensive disclosure of independent federal election-related activity—both the money coming in and the money going out. Independent federal election-related activity involved an expenditure made by any person for the purpose of influencing the selection, nomination or election of any individual to any federal office which was made by a person or entity independent of the candidate and which was not coordinated with the candidate. The full universe of independent political spenders was covered by this regime. This included independent spending by individuals, unincorporated organizations, partnerships, Limited Liability Companies, corporations, trade associations, labor unions, SuperPACs, Indian tribes, 501(c) organizations of all types and 527 groups.

Not later than January 1, 2015, the bill required the FEC to make available a real-time contribution disclosure system to its regulated community. Once this system was implemented, the regulated community would be required to report contributions, including covered contributions to certain politically active 501(c)(4) organizations, not more than 10 days after receipt and, in some cases, just 48 hours after receipt. The FEC would immediately disclose this information to the general public upon receipt.

The bill did not address the question of how much 501(c)(4) organizations can spend on political activity, but in many cases it would have required disclosure of 501(c)(4) donor information currently protected as confidential by the Internal Revenue Code. Thus, donor anonymity would be a thing of the past for many 501(c) organizations.

What supporters of donor disclosure fail to fully appreciate are the important Constitutional values that would be impaired by their proposals. Just as we should not allow the government to pull back the curtain of privacy that surrounds the voting booth, we also should not allow government to use donor identification information to suppress free speech or impair the right to anonymous political association, including when those rights are expressed in the form of financial support for the causes of one's choice. This country has a long history of reprisals and harassment that follow government disclosure of the identity of donors to controversial groups. As the ACLU observed in its letter commenting on the proposed 501(c)(4) regulations: "It is well and long established that forced donor disclosure for any controversial group—even partisan groups—is unconstitutional."[472]

[472] Public comment letter from ACLU to IRS Commissioner John A. Koskinen (Feb. 4, 2014).

The ACLU was not making a frivolous argument. It was referring to U.S. Supreme Court cases such as *McIntyre v. Ohio Elections Commission,* 514 U.S. 334 (1995), which recognized a Constitutional right to distribute anonymous campaign literature; *Brown v. Socialist Workers '74 Campaign Committee,* 459 U.S. 87 (1982), which required exemption from donor disclosure for controversial groups subject to reprisal or harassment, and *National Association for the Advancement of Colored People v. Alabama,* 357 U.S. 449 (1958), which prohibited the State of Alabama from requiring donor disclosure as a condition for in-state operation. As the ACLU pointed out, the *NAACP* Court expressly recognized that imposing taxes upon an activity as well as directly prohibiting an activity pose equally severe First Amendment concerns.

The pattern is well known. First, a governmental entity compels or permits the disclosure of donor identities. Next, private actors, armed with information regarding donor identities, embark on a campaign of reprisals and harassment. This is precisely the scenario that concerned the Supreme Court in the *NAACP* case: citizens that associate with particular groups, having had their identities disclosed, will be subjected to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility."[473] Nor should we forget that many of the taxpayer privacy protections in the Internal Revenue Code were added in response to the common practice of both Democrat and Republican Administrations in the 1970s and earlier of using the Internal Revenue Service and the government's taxing power to harass and intimidate political opponents.[474]

Contrary to the suggestion in the Additional Democratic Views, the Committee's Republican Members do not assert a Constitutional right to a charitable tax deduction or insist on a tax break when exercising one's free speech rights. As previously noted, contributions to 501(c)(4) organizations are not tax deductible. But the identity of the 501(c)(4) donors is protected. As set forth above, anonymity in one's political associations is an American value worth preserving and, as even progressive groups like the ACLU have observed, has Constitutional implications.

4. View of the Majority Committee Members on Legislative and Regulatory Proposals

In the view of the Committee's Republican Members, it would have been a grave mistake for the Treasury Department to finalize the proposed 501(c)(4) regulations and thereby institutionalize the very type of IRS targeting of grassroots organizations that came to light in 2013. On April 2, 2014, Commissioner Koskinen said, "It's going to take us a while to sort through all [of the] comments [re-

[473] 357 U.S. 449 (1958) at 462. For a recent example of the economic reprisals that can accompany the disclosure of a political donor's identity, see the following post on The Mozilla Blog, dated April 5, 2014 (emphasis added): "On April 3, 2014 Brendan Eich voluntarily stepped down as CEO of Mozilla. It has been well documented that Brendan's past political donations led to boycotts, protests, and intense public scrutiny. Upon his resignation, Brendan stated: 'Our mission is bigger than any one of us, and under the present circumstances, I cannot be an effective leader.' **The intense pressure from the press and social media made it difficult for Brendan to do his job as CEO and effectively run Mozilla."**

[474] For a recent example of the harassment political donors can experience from agencies of the U.S. Government, including the Internal Revenue Service, when their identities are disclosed, see *Wall Street Journal,* Obama's Enemies List—Part II, (July 19, 2012).

ceived by the IRS], hold a public hearing, possibly re-propose a draft regulation and get more public comments."[475] Subsequently, the IRS announced that it will publish a revised proposed regulation in the future.[476] We encourage the IRS to carefully review all existing and future comments and heed the warnings of people from all sides of the political spectrum. The IRS should refrain from issuing another fatally flawed proposed regulation.

Similarly, it would be a mistake for Congress to enact legislation that requires or allows the government to compel the disclosure of the identities of donors to 501(c)(4) organizations, or otherwise impose new limits on their operations or tax status. The Minority relies heavily on the notion that there was confusion at the IRS regarding the definition of "political activity" and imprecision in the term "primarily" to advance the argument that legislative changes to section 501(c)(4) are necessary. But the facts don't bear out the need for, much less the wisdom of, new legislation. First, testimony received by the Committee's investigators reveals that the EO tax law specialists in Cincinnati knew full well that "primarily" means 51%.[477] Second, the distinction between social welfare activity and political activity has a 55 year administrative track record of interpretation by the IRS. For example, nonpartisan activities like voter education, voter registration and get-out-the-vote drives have long been acceptable activities for 501(c)(4) organizations. It is the 2014 proposed regulation that has sown confusion in this area, not the well-worn 1959 regulation.

IX. CONCLUSION AND RECOMMENDATIONS

The Committee's investigation uncovered serious organizational problems throughout the IRS, which are detailed both in the Bipartisan Investigative Report and in these Additional Republican Views. The IRS has received recommendations from TIGTA and from others, such as the National Taxpayer Advocate, and has been receptive to implementing at least some of them. Those measures are a step in the right direction, but they are not sufficient to correct the underlying problems uncovered by our investigation. We believe that any attempt to address those problems, if it is to be successful, must immunize the IRS from the whims of the party that controls the Executive Branch, whether that party is the Democratic or the Republican Party. Achieving this goal will not only require legislative changes, but also constant vigilance by both Congress and the public to ensure that the IRS stays true to its mission and administers the tax laws fairly and without regard to politics of any kind.

A chief finding of the Majority staff is that the organizational structure of the IRS enabled the political bias of individual employees like Lois Lerner to flourish. Indeed, at least partly because of this bias, the IRS uniformly targeted applications from Tea Party and other conservative groups for extra scrutiny, which resulted in their experiencing lengthy delays and in many cases, multiple rounds of burdensome development questions. Unlike other organi-

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[475] Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen Before the National Press Club, (Apr. 2, 2014).
[476] IRS, Update on the Proposed New Regulations on 501(c)(4) Organizations (May 22, 2014).
[477] SFC Interview of Elizabeth Hofacre (Sep. 23, 2013) pp. 22–24.

zations seeking tax-exempt status including those on the left side of the political spectrum, applications received from Tea Party and other conservative groups were identified, collected and then subjected to full development based on the political philosophy of the groups, rather than on their planned activities. Accordingly, these Tea party and other conservative groups were, in fact, "targeted" by the IRS based on their political views. We found no evidence that the IRS scrutinized left-leaning organizations in the same manner, or for the same politically motivated reasons, as it targeted Tea Party and other conservative organizations.

Lois Lerner's personal political biases directly affected how the IRS processed applications received from Tea Party and other conservative organizations. Lerner managed a process that caused applications received from these organizations to undergo multiple levels of review by different components within the IRS, virtually guaranteeing that these applications would languish through the political campaign cycles of 2010 and 2012. Lerner showed complete disinterest in the plight of these organizations as they sought tax-exempt status, even in the face of growing Congressional interest in claims that they were being treated unfairly by the IRS because of their political views.

In 2012 Congressional interest finally prompted management above Lerner to intercede and take remedial measures to reduce the backlog of applications that she had allowed to grow. By that time, irreparable damage had been done to many of these Tea Party organizations. Most were small, grass-roots entities, unable to withstand the withering barrage of intrusive IRS development questions punctuated by year-long stretches of silence from the IRS. As a consequence, many of these Tea Party organizations simply withdrew from the application process. Without IRS approval of their tax-exempt status, those that stayed the course found it difficult to raise funds to carry out their stated purposes, which generally included engagement in the political process. Many were forced to secure legal help in fending off the IRS at considerable expense to their fledging budgets, and with a corresponding adverse impact on their ability to exercise political speech.

Majority staff also found that top IRS officials, including Doug Shulman, Steve Miller and Lois Lerner, continuously misled Congress throughout 2012 and 2013 regarding the IRS's mistreatment of Tea Party and other conservative groups. They also actively concealed from Congress the existence of the IRS's political targeting of the Tea Party and other conservative groups with names that included "9/12 Project" or "Patriots," thereby allowing the IRS to escape scrutiny for that conduct until Lois Lerner made her fateful admission regarding political targeting at an ABA Conference meeting, just days before TIGTA released its report in which it concluded that the IRS had used "inappropriate criteria" when processing applications for tax exemption. The lack of candor by these three individuals in their communications with Congress not only concealed IRS wrongdoing, but it also undermined the exercise of congressional oversight into the IRS's treatment of Tea Party and other conservative groups.

Unfortunately, the lack of candor by senior IRS officials in their dealings with Congress did not end with the release of the TIGTA

report in May 2013. The IRS was derelict in its duty to preserve backup tapes containing Lois Lerner's email and made subsequent false statements to Congress in June 2014 denying the existence of those backup tapes. Furthermore, IRS officials misrepresented to Committee staff in March 2014 that the documents that had been provided to the Committee by that date completed its production of documents. In truth, some senior IRS officials knew at that time that many of Lerner's emails from 2010 and 2011, a period critical to the ongoing Congressional investigations, were missing. In April 2014, the IRS concluded that the missing Lerner emails were not recoverable, and so notified the Treasury Department of their loss. Unfortunately, the IRS failed to also notify the Congressional committees conducting investigations of the IRS of their loss, choosing instead to conceal that fact, ostensibly in the hope that the loss might never be discovered by Congress. Only when this Committee demanded a written statement from the IRS Commissioner attesting to the completeness of the IRS's document productions did the IRS reluctantly reveal the loss of Lerner's emails. This pattern of shoddy conduct by IRS officials in their dealings with Congress is deeply disappointing and confirms that a "culture of concealment" remains at the agency.

In addition, Majority staff concluded that the Obama Administration's efforts to limit spending on political speech directly or indirectly influenced the treatment of conservative organizations by Executive Branch agencies. The IRS served as the lynchpin for Administration activities against conservative organizations. Not only did it engage in political targeting of Tea Party and other conservative groups, but it also actively assisted both the DOJ and the FEC in the pursuit of various initiatives aimed at chilling the political speech rights of conservative organizations. Indeed, the IRS provided advice to the DOJ on various proposals to criminally punish organizations that engaged in political activity in excess of that stated in their applications for tax-exempt status, and offered FEC information regarding specific conservative organizations under investigation by the FEC for airing political advertisements.

Even if the IRS is able to root out all of the specific causes of problems noted in this report, only the most significant of which are mentioned above, it will still operate in a politicized environment by virtue of its position as a bureau within the Treasury Department, where the omnipresent IRS union wields considerable influence.

To enable the IRS to meet its mission of administering the tax code "with integrity and fairness for all," the following changes are needed:

1. The IRS must be removed from the authority of the Treasury Department and established as an independent stand-alone agency.

2. The Federal Service Labor-Management Relations Statute must be amended to designate the IRS as an agency that is exempt from labor organization and collective bargaining requirements.

3. Congress should amend section 7428 of the Internal Revenue Code to enable applicants for tax-exempt status under 501(c)(4), (5), and (6) to seek a declaratory judgment if the IRS

has not rendered a decision on whether or not it will approve an application within 270 days. Doing so would afford these organizations the same remedy currently available only to 501(c)(3) organizations, thereby advancing parity among nonprofits.

4. A key finding of this report is that many small organizations with limited resources were overwhelmed by unduly burdensome IRS demands. We recommend that the IRS establish a streamlined application process for small organizations applying for tax exemption under 501(c)(3) and 501(c)(4) that enables them to avoid unnecessary administrative burdens, provided that appropriate conditions are satisfied.[478]

5. Any further attempt by the IRS to promulgate regulations revising the standard for determining whether section 501(c)(4) organizations have engaged in political campaign intervention must not chill the free exercise of political speech by those organizations, nor disproportionately affect organizations on either side of the political spectrum.

While Majority staff is confident in the soundness of the findings expressed herein, there is no doubt that its investigation into the IRS's treatment of political advocacy organizations seeking tax-exempt status was hampered, if not harmed, by the IRS's failure to preserve electronic records belonging to Lois Lerner, the central figure in this sordid story of how Tea Party and other conservative groups were targeted by the IRS because of their political views. Extraordinary efforts were made by TIGTA to locate and restore some of Lerner's lost email, and indeed, those efforts yielded positive results, with the recovery of over 1,300 emails not previously produced by the IRS. Moreover, Majority staff secured from sources, including the Treasury Department and the White House, copies of emails between their employees and Lerner in an effort to bridge the gap in the missing emails. Together with the nearly 1,500,000 pages of documents produced by the IRS, these documents reveal a disturbing pattern of mismanagement and politically motivated misconduct by IRS employees at all levels within the agency.

[478] We note that the IRS's expedited process for applicants is currently limited to organizations that engage in political advocacy. As discussed in these Additional Republican Views, we do not believe that this process is an effective way to handle these applications, nor do we endorse extending that process to all applicants for tax-exempt status.

ADDITIONAL VIEWS OF SENATOR WYDEN PREPARED BY DEMOCRATIC STAFF

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I. EXECUTIVE SUMMARY

The Committee has conducted significant investigations into the activities of nonprofits in recent years. The Finance Committee Democratic staff investigated Jack Abramoff's use of nonprofits such as Americans for Tax Reform and Citizens Against Government Waste to lobby Congress, summarized in a 2006 Finance Committee staff report.[1] Senator Grassley, when he was chairman or ranking member of the Committee, closely scrutinized the nonprofit sector, investigating religious organizations and nonprofit hospitals, among others. Together, Chairman Grassley and Senator Baucus investigated the Nature Conservancy, a 501(c)(3), in 2005.[2]

On May 10, 2013, the Director of IRS Exempt Organizations Lois Lerner disclosed that IRS employees selected tax exempt applications for further review with "names like Tea Party and Patriots and they selected cases simply because the applications had those names in the title." Lerner described this process of selecting cases for review because of a "particular name" as "wrong, insensitive, and inappropriate."[3]

In addition, Lerner described how the IRS improperly handled the tax-exempt applications that were set aside for further review, subjecting them to delays and overly broad and unnecessary requests for information.[4]

According to Lerner, IRS employees' inappropriate scrutiny of applications was not "because of any political bias." Rather, the employees were trying to streamline and centralize cases but "they didn't have the appropriate level of sensitivity about how this might appear to others and it was just wrong."[5]

On May 14, 2013, the Treasury Inspector General for Tax Administration (TIGTA) released a report finding that the IRS "used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based on their names or policy positions instead of indications of potential political campaign intervention."[6]

At the time of the disclosures from the IRS and TIGTA, there was speculation and concern expressed that singling out conservative organizations by name may have been a consequence of political bias or motivation on the part of IRS employees, possibly at the direction of political appointees at the IRS, Treasury Department or the White House.

The Committee began an in-depth bipartisan investigation to determine the facts surrounding the controversy due to the serious

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[1] Senate Finance Committee, Minority Staff Report: Investigation of Jack Abramoff's Use of Tax-Exempt Organizations (Oct. 2007).
[2] Washington Post, Senators Question Conservancy's Practices (June 8, 2005).
[3] American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126–127.
[4] *Id.*
[5] *Id.*
[6] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013–10–053, (May 14, 2013).

nature of allegations that political considerations may have driven the IRS's heightened scrutiny of conservative leaning organizations applying for tax-exempt status.

On May 20, 2013, the Committee requested that IRS answer questions and turn over internal documents relating to the targeting controversy.[7]

Key Democratic Staff Findings:

- Actions by IRS personnel were not politically motivated.
- Political appointees did not influence the enhanced scrutiny of 501(c)(3) and 501(c)(4) applications presenting political advocacy issues.
- Under federal tax law the IRS's scrutiny of tax-exempt applications showing political activity was completely justified.
- The *process* of examining applications was plagued by inefficiency, bad judgment, bad management, and unwarranted delay.

Staff investigators received over 1.5 million pages of documents and conducted 32 interviews with IRS employees.

The bipartisan narrative describes key events in the years 2010, 2011, and 2012 during which Tea Party and conservative-leaning applications were set aside for special analysis. A smaller number of politically left-leaning applications were also subject to special scrutiny during that time.

There are currently 1.5 million nonprofits in the U.S and 70,000 nonprofit applications per year are received by the IRS. Nonprofit organizations spent hundreds of millions of dollars to influence the 2010 and 2012 election cycles. A 501(c)(3) organization must be organized for religious, charitable, or educational purposes, and these organizations cannot participate or intervene in any political campaign activity.[8] A 501(c)(4) organization must be organized for the primary activity of promoting "general welfare of the people of the community" and may engage in political campaign activity only if the organization is determined not to be "primarily engaged" in campaign activity.[9]

Because federal law does not allow unlimited political activity by 501(c)(4) nonprofits, it was necessary for the IRS to scrutinize the applications of organizations seeking favored tax status, including those associated with the Tea Party. There is only a right to 501(c)(4) status under federal tax law if standards for that status are met by the applicant.

Some argue that there is a Constitutional First Amendment right to free speech through anonymous donations to 501(c)(3) and 501(c)(4) organizations. Contrary to this view, IRS Chief Counsel William Wilkins explained that case law indicates "the prohibition on political activity by 501(c)(3)s is not a prohibition on free speech because there are other avenues for the speech to proceed that don't generate charitable deductions for the donor and that there

[7] Letter from Chairman Baucus and Ranking Member Hatch to the Acting Commissioner Steven Miller (May 20, 2013).
[8] 26 U.S.C. § 501(c)(3) (2014).
[9] 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (1990).

is not a First Amendment right to a charitable deduction."[10] This same standard applies to 501(c)(4) nonprofits.

Section 501(c)(3) organizations must apply to the IRS to be recognized for tax-exempt status.[11] The tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, although most organizations apply for an IRS determination.[12] Once nonprofit status is granted, the IRS can investigate the political activity of nonprofits in a thorough, but evenhanded way. Nonprofit status can be terminated if it is determined that political activity is the primary activity of the nonprofit (see Section II(D) of the Bipartisan Investigative Report for discussion of the law governing 501(c)).

What is not defensible is the appearance the IRS gave of "targeting" the Tea Party, even though no evidence exists that it was based on political beliefs or orders from political appointees. And the best way to avoid that appearance would have been to process the Tea Party applications as quickly as possible using the fairest possible standards.

New IRS management has moved aggressively to address the broken system of processing 501(c)(4) applications with political advocacy issues by (1) removing key employees in the IRS who failed to properly manage the processing of these applications, (2) establishing new procedures to help process nonprofit applications quickly, and (3) processing nearly all the delayed applications.[13]

These actions will help ensure that mistakes made by the IRS in 2010, 2011 and 2012 are not repeated.

II. NO EVIDENCE OF POLITICAL MOTIVATION BY IRS EMPLOYEES

This investigation, based on staff interviews with 32 IRS employees and a review of 1.5 million IRS documents, found no evidence of political motivation driving the heightened scrutiny of Tea Party and conservative groups and the subsequent delays in processing their tax-exempt applications. Furthermore, TIGTA, whose report highlighting the inappropriate criteria used to identify tax-exempt applications for review was the impetus of this investigation, made no finding that political motivation was behind the inappropriate activity.[14]

During interviews with Committee staff, IRS employees did not cite political motivation as a factor for heightened scrutiny of Tea Party applications. Attached are questions and answers from each of the interviewees denying that politics was involved.[15]

While TIGTA should be lauded for exposing the flawed review process used by the IRS in screening tax exempt applications for political activity, the narrow scope of its report and its omission of key information contributed to a misimpression that the controversy was politically motivated.

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[10] SFC Interview of IRS Chief Counsel William Wilkins (Nov. 7, 2013) p. 28.
[11] 26 U.S.C. § 508(a) (2006).
[12] Notes of Steven Miller (undated) IRS0000505538–42.
[13] Based on data provided to the SFC by the IRS (April 8, 2015).
[14] TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) TIGTA Audit Report #2013–10–053.
[15] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

TIGTA documents released months after the report was published show that its investigative staff, based on a review of 5,500 emails, concluded three weeks prior to the release of the audit report that there was no political motivation on the part of IRS employees. An email from Timothy Camus, the Deputy Inspector General for Investigations at TIGTA, concludes:

> Review of these emails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. *There was no indication that pulling these selected applications was politically motivated.* The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[16]

Despite this finding of no political motivation by IRS employees in selecting Tea Party groups for additional scrutiny, in a glaring omission, TIGTA failed to mention this investigative finding by the Deputy IG in its audit report.

TIGTA Chief Counsel Michael McCarthy also concluded that TIGTA had no evidence that IRS employees had political motivations. After McCarthy reviewed a draft of the TIGTA 501(c)(4) audit report in late February 2013, he suggested that the TIGTA auditors had overreached in writing that IRS officials "targeted" the Tea Party. He wrote:

> As an initial concern, "targeted" has a connotation of improper motivation that does not seem to be supported by the information presented in the audit report. I think "selected" or even "singled out" would be more accurate.[17]

The same counsel commented on the criteria used in the BOLO list (discussed in the following section "The BOLO List").

It was not until a Congressional hearing held three days after the TIGTA report was released, in the midst of a media frenzy that Inspector General Russell George confirmed, in response to questioning from House Ways and Means Committee Ranking Member Sander Levin, that his office did not find any evidence of political motivation on the part of IRS employees.[18]

> Levin: Did you find any evidence of political motivation in the selection of the tax exemption applications?
>
> George: We did not, sir.[19]

Additionally, the public did not learn about TIGTA's review of IRS staff emails and its conclusion about the nonpolitical nature of this controversy until House Oversight Committee Democrats and

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[16] Email from TIGTA Deputy Inspector General for Investigations Timothy Camus to TIGTA staff (May 3, 2013) (emphasis added).

[17] Email from TIGTA Chief Counsel Michael McCarthy (Feb. 28, 2013) TIGTA008002.

[18] House Ways and Means Committee Hearing, Hearing on Internal Revenue Service Targeting of Conservative Groups (May 17, 2013).

[19] *Id.*

House Ways and Means Democrats released the internal TIGTA email describing the review in July 2013.[20] TIGTA failed to include critical information about the nonpolitical nature of the IRS mismanagement of the Tea Party applications that would have provided crucial context to a sensitive issue.

III. NO EVIDENCE OF PRESSURE FROM OBAMA ADMINISTRATION POLITICAL APPOINTEES TO INCREASE SCRUTINY OF POLITICALLY ACTIVE NONPROFITS

There is no evidence of Presidential appointees at the IRS, the Treasury Department or the White House pressing IRS personnel to target nonprofits engaging in political activity.

All of the IRS personnel interviewed were asked directly whether political appointees in the Obama administration had influenced the processing of the applications with political activity issues, and not one of them identified any pressure from the political ranks.[21]

In a Senate Finance Committee hearing on the TIGTA report in May of 2013, Senator Crapo questioned TIGTA IG Russell George on this issue.

> Senator Crapo: You know there has been a lot of discussion about who knew what and when they knew it. One of the big questions I have, Mr. George, is it seems that there is an argument being made that there was no political motivation in these actions. Is that a conclusion that you have reached?
>
> Mr. George: In the review that we conducted thus far, Senator that is the conclusion we have reached.
>
> Senator Crapo: And how do you reach that kind of a conclusion?
>
> Mr. George: In this instance it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter, so you take it one step by another and we directly inquired as to whether or not there was direction from people in Washington beyond those who are directly related to the Determinations Unit they did indicate to us that they did not receive direction from people beyond the IRS.
>
> Senator Crapo: When you say "people beyond the IRS," that could be anyone up the chain of the IRS?
>
> Mr. George: It in theory could be, but we have no evidence thus far that it was beyond, again, the people in the Determinations Unit.[22]

The TIGTA office reiterated this point in an answer to questions posed by the Finance Committee:

> Did any official from the office of the president or the White House have any form of communication with any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present?

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[20] Committee on Oversight and Government Reform, "Cummings Asks Issa to Recall IG for Testimony at Upcoming IRS Hearing," Democratic Press Release (July 12, 2013)

[21] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

[22] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 19.

U.S. Senate Committee on Finance

> List the days any communications occurred and the form it took (i.e. phone, email, in person, etc)

TIGTA responded:

> We have no knowledge of any communications between the White House and any employee in the Tax Exempt and Government Entities Division.[23]

And the question was asked again with a focus on the Treasury Department:

> Did any employee of the Treasury Department (excluding the IRS) who was appointed by the President have any form of contact with any employee of the Tax Exempt and Government Entities Division between January 1, 2010 and May 1, 2013?
>
> List the days any communications occurred and the form it took (i.e. phone, email, in person, etc.)

TIGTA responded:

> We have no knowledge of any communication between Presidential appointees at the Department of Treasury and any employees in the Tax Exempt and Government Entities Division.[24]

IV. DELAYS IN PROCESSING OF NONPROFIT APPLICATIONS

The key failure in this matter was the delay in processing the Tea Party and other conservative leaning applications for 501(c)(4) status. The IRS took over *two years* to process what were essentially a handful of applications. In February of 2010 the first Tea Party applications were received by the Cincinnati office. In March 2012 TIGTA began their audit. Making a decision on one application a day during this period would have avoided most of the delay in processing the applications.

Senior leadership at the Exempt Organizations office should have stepped in much earlier in the process and demanded expedited consideration of these politically sensitive applications. They failed to take charge. The applications piled up, complaints from Congress and the applicants intensified, and a crisis developed. Eventually TIGTA stepped in to investigate.

The decision in 2010 to allow the applications to pile up while a confusing and inefficient process for analyzing them was developed over the next two year period is inexplicable and inexcusable.

The IRS prides itself on being nonpolitical. However, in this case a more politically astute leadership team would have never let this problem develop.

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[23] Senate Finance Committee Hearing Questions for the Record, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 107.

[24] *Id.* p. 108.

V. LACK OF CLARITY IN STANDARDS FOR POLITICAL ACTIVITY BY 501(C)(4) NONPROFITS

While it is not an excuse for the delays in processing, it is a fact that the rules for political activity by 501(c)(4)s are extremely hard to understand.

501(c)(4) are intended to be organized exclusively for the promotion of social welfare, however, social welfare organizations are permitted to engage in political campaign activity so long as it is not the organization's *primary activity*.[25]

The primary activity standard (discussed in the following section entitled "Need for Reform of the Tax Code Related to Political Activity of Nonprofits") is confusing and imprecise. While it is logical to assign a percentage to determine whether political campaign activity is an organization's primary activity,—51%, 60%, 75%—the law and regulations *do not* set such a number.[26] Without a percentage standard to apply, it is extremely difficult to make judgments about an application from a 501(c)(4) nonprofit which shows an intent to engage in political activity.

Second, "political activity" is not well defined. The law provides virtually no guidance at all on what "political activity" means. This lack of clarity in the law, both on the primary activity standard and on what constitutes political activity, partially explains why IRS personnel froze at the sight of hundreds of applications exhibiting evidence of political activity.

This lack of clarity should have been well known to senior members of the Exempt Organizations team—the law and the regulatory structure had been on the books since 1959.

Focused and aggressive assistance to the Cincinnati office by senior management in Washington D.C. could have overcome the confusion surrounding the rules for 501(c)(4) nonprofits. Inept management plus an uncertain legal and regulatory situation led to two years of confusion and delay.

VI. THERE WAS AN INCREASE IN APPLICATIONS FROM RIGHT-LEANING NONPROFITS

The IRS was scrutinizing progressive non-profits with political activity in addition to Tea Party-related applications, as described

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[25] Joint Committee on Taxation, "Report to the House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups" (May 6, 2013) p. 35.

[26] The Additional Republican Views are dismissive of the difficulty in determining this standard, stating that stuff knew full well that "primarily" means 51%. While some IRS staff members admitted to using a percentage test, such a test is not supported by regulations or caselaw. The IRS points to a number of sources in this regard, see, e.g. Treas. Reg. 1.501 (c)(4)–1 (a)(2) (No percentage test established), Rev. Rul. 68–45, 1968–1 C.B. 259 (Principal source of income does not determine an organization's primary activity under 501 (c)(4); all facts and circumstances are considered). Haswell v. United States, 500 F.2d 1133, 1142, 1147 (CI. CI. 1974) ("A percentage test . . . is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization.") Contracting Plumbers v. United States, 488 F.2d 684, 686 (2d Cir. 1973) (multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). Seasongood v. Commissioner, 227 F.2d 907, 909, 912 (6th Cir. 1955) (expenditures, employees, and organization's time and effort considered). See also, Exclusively Standard Under 501(c)(4), prepared by IRS at 14, ("The IRS has not published a precise method of measuring exempt activities or purposes in any of its published guidance, thought three revenue rulings have state that all of the organization's activities must be considered and that there is no pure expenditure test.").

below in the section entitled "Liberal/Progressive Groups Were Scrutinized by the IRS."

However evidence suggests that applications from conservative-leaning groups substantially outnumber applications from left-leaning groups. In fact, EO staff told the Committee they were "inundated" with Tea Party application issues in 2010.[27] This trend continued at least through 2011, when Holly Paz observed "EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes, and similar matters."[28] The greater *number* of Tea Party applications resulted in a greater number of Tea Party applications being scrutinized. This outcome was used to establish an unproven narrative of bias against nonprofits on the conservative side of the political spectrum.

One explanation is the increase in the amount of political activity engaged in by the Tea Party and related organizations. The health care reform struggle resulted in many groups mobilizing to influence the political system in 2009 and 2010.

But this does not explain the intense interest by hundreds of groups in becoming 501(c)(4) organizations.

There is some evidence that conservative groups were competing for anonymous donations to fund their activities, donations from a number of very wealthy conservative donors. In 2010, Scott Reed, a Republican lobbyist and the Chamber of Commerce's political strategist, told the Center for Public Integrity in an interview that "501cs are the keys to the political kingdom . . . because they allow anonymity."[29]

A *Wall Street Journal* article published on August 28, 2013 provides some clues about why the Cincinnati office found itself in 2010 looking at dozens of right leaning organizations seeking nonprofit status under the Internal Revenue Code. The political activity of the Tea Party movement, which was born in the summer of 2009 as citizens participated in town hall meetings protesting efforts by Congress to reform the health care system, helped the Republican Party take control of the House of Representatives in the 2010 elections.[30]

The *Journal* article focuses on the Tea Party Patriots group, explaining that it applied for nonprofit status in late 2010. The *Journal* article stated that the Tea Party Patriots had a 400,000 person donor base, a $24 million a year budget and its director made $250,000 a year.[31]

The article explained: "One problem dogged the group: The Patriots didn't have tax exempt status, a disincentive to some potential donors. The group applied for such status in late 2010 but says it had heard nothing from the IRS during all of 2011."[32]

Nonprofits do not need to publically disclose who has donated funds, nor do they need to disclose how much an individual or corporation has contributed.

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[27] SFC Interview of Liz Hofacre (Sept 24, 2013) pp 61–64.
[28] Email chain between Holly Paz and Janine Cook (July 18–19, 2011) IRS0000429489.
[29] Center for Public Integrity, Campaign Cash: The Independent Fundraising Gold Rush since "Citizens United" Ruling (October 4, 2010).
[30] *Wall Street Journal,* "Anger at IRS Powers Tea-Party Comeback" (Oct. 10, 2013).
[31] *Id.*
[32] *Id.*

The *Wall Street Journal* article confirms a widely held belief that political contributions are disguised by cycling them through nonprofits. Again, no dollar amount from any individual is revealed to the public.

This same incentive for obtaining nonprofit tax status is identified in the article in a quote from Jenny Beth Martin, executive director of the Tea Party Patriots: "I kept telling everyone—including the big donors who wouldn't give to us without our nonprofit status—that the IRS appeared to be targeting tea-party groups."

The influx of 501(c)(4) applications to the IRS may have been the result of a desire to attract "big donors" who would not give to right leaning groups "without . . . nonprofit status." [33]

Finally, many point to the *Citizens United* decision as the reason political spending soared during the years in question.

Acting Commissioner Steven Miller told the Finance Committee that the number of 501(c)(4) applications doubled since "*Citizens United* released this wave of cash" and "some of that cash headed towards c(4) organizations. That's proven out by FEC data and IRS data." [34]

VII. THE "BOLO" LIST

Evidence suggests that the number of conservative-leaning tax-exempt organizations active in this time period outnumbered liberal organizations.[35] The number of 501(c)(4)s reporting political campaign activities almost doubled from tax year 2008 through 2010, and the amount of campaign activity for large filers almost tripled.[36] According to the Center for Responsive Politics, more than 80% of the political funds spent in the 2012 elections by nonprofits were sponsored by conservative 501(c)(4)s.[37] This amount of spending, along with the desire to attract large donors, partially explains why most of the nonprofit applications with political advocacy issues were from conservative-leaning organizations during 2010, 2011 and 2012. The IRS was not targeting these groups, rather it was facing the reality that more politically active conservative groups than left-leaning groups were sending in applications to the IRS Exempt Organizations office in Cincinnati.

A great deal of attention has been focused on the "Be On The Lookout" (BOLO) list which designated the Tea Party as a term for IRS employees to watch for when reviewing applications for nonprofit status.

There is no question that the use of the BOLO and the terms used therein presents a very unattractive picture of an IRS focus on Tea Party groups seeking nonprofit status. Even Lois Lerner believed it was wrong to place the term "Tea Party" on the BOLO

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[33] *Id.*

[34] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 23.

[35] The IRS receives 70,000 applications for nonprofit status each year. The Committee did not have the resources necessary to determine the total number of conservative and liberal organizations applying during this time period.

[36] Email chain between Justin Lowe, Justin Abold, and others (May 6, 2013) IRS0000494805–29.

[37] USA Today, Dark Money of Non-profit Political Groups Targeted (June 11, 2013).

list.[38] Placing names of right-leaning groups on the BOLO list was inappropriate.

While not endorsed by the Democratic staff, another point of view on how the IRS operated should be noted. The charge is that Cincinnati "targeted" the Tea Party because of its political affiliation. But once the IRS had selected the two Tea Party applications for review in the Washington D.C. office it can be argued that it was logical to develop a method of collecting *all* the Tea Party applications that continued to surface in Cincinnati. The BOLO list can be seen as an efficient procedure to use to make sure personnel in Cincinnati identified the right applications to set aside while Washington D.C. determined the best way to deal with these applications. Applications by left-leaning groups were also collected in this manner.

The IRS receives 70,000 applications a year for nonprofit status. With so many applications to process the placement of terms on a BOLO list was one way to gather all of the relevant applications in one place while the experts in Washington D.C. delivered to Cincinnati a plan for approving or disapproving the applications.

Supporting this perspective, TIGTA's Chief Counsel expressed concern about TIGTA describing the BOLO list terms—Tea Party, 9/12 and Patriots—as "inappropriate" because it did help IRS screeners centralize political cases. He wrote in an email:

> Also, it is not clear why exactly we find the criteria used were "inappropriate."
>
> It is because specific names associated with political activity shouldn't be used as criteria? That would seem to make it difficult for the IRS to identify potential political applications for referral to the specialized unit. If this is the rationale, the information in footnote 11, that the use of organization names occurs in non-political cases as well, seems like it needs more attention, since it suggests both that the IRS was not politically motivated in this case, and that our recommendations might need to be broader.
>
> Or are we saying it was inappropriate because the use of names was one-sided, i.e. name criteria included only certain types of groups seen as conservative, and names of other political groups with different policies should have also been included? If that is the rationale, do we have evidence that similarly situated groups from the left side of the political spectrum should have been included by name in the criteria, but were not? The later sections of the report seem to suggest this, but it is not clear.[39]

The TIGTA Chief Counsel makes two critical points:

> (1) Using names in the BOLO list simply helped the IRS "identify potential political applications for referral to a specialized unit." The names were not placed on the BOLO list because of political bias.
>
> (2) Use of names in the BOLO list identifying left-leaning groups (as reviewed in following section) is evidence that the

[38] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.

[39] Email from TIGTA Chief Counsel Michael McCarthy (Feb 28, 2013) TIGTA008002.

IRS was evenhanded in its administrative processing of 501(c)(4) applications.

VIII. LIBERAL AND PROGRESSIVE GROUPS WERE SCRUTINIZED BY THE IRS

The IRS's treatment of liberal, Democratic, and progressive organizations applying for tax-exempt status was similar to its treatment of Tea Party applicants. Although TIGTA intentionally limited the scope of its report to "narrowly focus on Tea Party organizations" at the request of the Chairman of the House Committee on Oversight and Government Reform,[40] many of TIGTA's findings with respect to the IRS's treatment of Tea Party groups also apply to the IRS's treatment of left-leaning organizations before and concurrent with the IRS's screening of Tea Party groups.

A. IRS Determinations Screened Left-Leaning Groups for Review

TIGTA characterized the IRS Determinations Unit's use of "specific names (Patriots and 9/12) or policy positions" to identify cases to be reviewed for political activity as inappropriate.[41] However, TIGTA's audit did not focus on similar methods used by the IRS to identify and select left-leaning applicants for review.[42]

A PowerPoint presentation and notes from a July 28, 2010 screening workshop meeting show that IRS employees were instructed to look for applications with the terms progressive and Emerge (an organization that sought to train female Democratic political candidates) in addition to Tea Party groups.[43] The notes from the meeting state that Gary Muthert indicated that the "following names and/or titles were of interest and should be flagged for review:

- ⊕ "9/12 Project,
- ⊕ "Emerge,
- ⊕ "Progressive
- ⊕ "We The People,
- ⊕ "Rally Patriots, and
- ⊕ "Pink-Slip Program."[44]

Similarly, the PowerPoint presentation from this screening workshop has a slide that reads, "Politics" with a picture of an elephant and a donkey. The slide states "Look for names like" preceding additional slides with the words "Tea Party . . . Patriots . . . 9/12 Project . . . Emerge . . . Progressive . . . We the People" under the heading "Current Activities."[45]

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[40] The Hill, IG: Audit of IRS Actions Limited to Tea Party Groups at GOP Request (June 26, 2013).

[41] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013–10–053 (May 14, 2013).

[42] It should also be noted that the term "Patriot" does not even necessarily indicate the organization is conservative leaning. According to Center for Responsive Politics, a group called Patriot Majority was the most active left-leaning group in 2012 election cycle, and the 14th most politically active of all 501(c)(4)s.

[43] Screening Workshop Notes (July 28, 2010) IRS0000012315; Screening Workshop PowerPoint (July 28, 2010) IRSR0000169695.

[44] Screening Workshop Notes (July 28, 2010) IRS0000012315.

[45] Screening Workshop PowerPoint (July 28, 2010) IRSR0000169695.

Numerous iterations of the BOLO spreadsheet included the term "progressive" on the "TAG Historical" tab. For example, a BOLO list dated August 12, 2010 instructed screeners to flag applications for the word "progressive." The BOLO list entry for "progressive" further instructed screeners that the:

> "Common thread is the word 'progressive.' Activities appear to lean towards a new political party. Activities are partisan and appear as anti-Republican. You see references to 'blue' as being 'progressive.'"[46]

According to IRS agent Ron Bell, who was responsible for the BOLO list, screening terms were placed on the "Tag Historical" tab after IRS employees were not seeing the cases as frequently.[47] While the organizations with the name "progressive" in their name were not applying for tax-exempt status as frequently as conservative or Tea Party organizations, the IRS was still instructing its employees to screen and set aside cases because of potential political activity based on the word "Progressive."

The Emerge applications that screeners were instructed to flag at the screening workshop were not specifically listed on the BOLO, but an IRS Determinations manager alerted screeners via email on September 24, 2008 to look for applicants with "Emerge" in their name along with other "politically sensitive" cases.[48]

1. ACORN

Another PowerPoint presentation presented at training events in June and July of 2010 titled "Heightened Awareness Issues," listed "Successor to Acorn" as a "Watch For Issue" specifying that "[s]pecial handling is [r]equired when [a]pplications are [r]eceived."[49] ACORN (Association of Community Organizations for Reform Now) was a national "community organization group" with local chapters that "fought for liberal causes like raising the minimum wage, registering the poor to vote, stopping predatory lending and expanding affordable housing."[50] In addition, ACORN assisted lower income families with tax return preparation.[51] The national organization declared bankruptcy in the wake of accusations of fraud, embezzlement, and mismanagement but several local organizations decided to regroup under new names.[52]

An entry for "ACORN successors" appears on copies of the BOLO list examined by the Committee from 2010 until it was removed by EO Director of Rulings and Agreements Holly Paz in June 2012.[53]

On March 22, 2010, EO Determinations Director Cindy Thomas notified EO Technical that descendants of ACORN were reorganizing citing three specific cases.[54] In April 2010, Sharon Camarillo

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[46] Email from Liz Hofacre to IRS Staff (July 27, 2010) IRS0000008609–24.
[47] SFC Interview of Ron Bell (July 30, 2013).
[48] Email from Joseph Herr to IRS EO screeners (Sep. 24, 2008) IRS0000011492.
[49] Heightened Awareness Issues PowerPoint, IRS0000557291; Email between EO Employees (May 18, 2010) IRSR0000195587.
[50] *New York Times,* "ACORN on Brink of Bankruptcy, Officials Say" (May 19, 2014).
[51] *Id.*
[52] *Id.*
[53] Email chain between Holly Paz, Cindy Thomas and others (June 1, 2012) IRS0000013434–35.
[54] Email from Cindy Thomas to Steven Grodnitzky (Mar. 22, 2010) IRS0000458448.

emailed Cindy Thomas and Robert Choi telling them that EO Determinations received two ACORN-successor cases.[55]

The August 2010 BOLO lists "ACORN Successors" as an "Issue Name." The description states that "Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications." Screeners are instructed to send these cases "to the TAG Group."[56]

An October 7, 2010 email from Jon Waddell alerted Steven Bowling and Sharon Camarillo to two ACORN-related cases. Waddell recommended sending an alert to screeners "to be on the lookout for the following name [and] application factors associated with ACORN related cases."[57] In addition he suggested adding the following "factors to the Watch Issue Description section for this category:

> "1. The name(s) Neighborhoods for Social Justice or Communities Organizing for Change.
> "2. Activities that mention Voter Mobilization of the Low-Income/Disenfranchised.
> "3. Advocating for Legislation to Provide for Economic, Heathcare, and Housing Justice for the poor.
> "4. Educating Public Policy Makers (i.e. Politicians) on the above subjects."[58]

Sharon Camarillo forwarded the alert to John Shafer instructing that his screeners "be on the lookout for these cases."[59] John Shafer forwarded Camarillo's email to IRS screeners in his group.[60]

The February 2, 2011 BOLO instructs IRS screeners to look for the words "ACORN" or "Communities for Change in the name and/or throughout the application." It reads:

> Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.[61]

ACORN cases continued to be screened in 2012. Ron Bell wrote an email to Carter Hull on May 13, 2012 stating: "I've got a case that I believe is an acorn successor org. I googled the name of the org and that is where several websites (such as the capital research center) indicate that it is an acorn successor. The BOLO list states to contact you . . . Please advise how you want to process this case."[62] [sic]

2. Watch For "Occupy" Groups

In January 2012, the IRS Determinations office began screening organizations with the term "Occupy" in its name on the "Watch

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[55] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.
[56] Copy of Combined Spreadsheet TAG 8 12 10. (Aug. 12, 2010).
[57] Email from Jon Waddell to Steven Bowling and Sharon Camarillo (Oct. 7–8, 2010) IRS0000410433.
[58] *Id.*
[59] Email chain between EO Employees (Oct. 7–8, 2010) IRS0000389342.
[60] *Id.*
[61] BOLO Spreadsheet (Feb. 2, 2011) IRS0000389362.
[62] Email from Ronald Bell to Carter Hull (May 13, 2012) IRSR0000054963.

For" list on the BOLO. After a news article was distributed within the IRS that suggested some organizations affiliated with the Occupy movement were seeking tax exempt status, Cindy Thomas told Steven Bowling, the manager of the IRS Determinations group that handles political advocacy cases, that the Occupy cases should be referred to his group so they can be worked "with the advocacy cases." [63]

EO Determinations Group Manager Steven Bowling told Cindy Thomas that the BOLO list would need to be modified in order to properly flag the Occupy cases but expressed frustration that the IRS does not want to use the words "Tea Party" or "Occupy" in screening.[64] Thomas replied:

> [w]e can't refer to "tea party" cases because it would appear as though we're singling them out and not looking at other Republican groups or Democratic groups . . . How about a compromise—What do you think about changing the description for advocacy organizations on the Emerging Issues tab to that which you've included under scenario #1; then, you could include the Occupy description from your scenario #2 on the Watch For tab specifying that these cases should be referred to your group? We could still have the same grade 13 agents working the advocacy and Occupy cases.[65]

After receiving this instruction from Thomas, Bowling adds "$ocial economic reform / movement" to the BOLO entry for advocacy cases. In addition, Bowling added "Occupy orgs" to the BOLO watch list. Ronald Bell wrote an email to Bowling questioning the need for a separate entry for "Occupy orgs" on the watch list since he thought "$ocial economic reform . . . was our 'code word' for the occupy organizations." Bowling replied, "I think we can leave it in. Some of the orgs are pushing that other than occupy groups." [66]

Emails written in May 2012 show that at least two Occupy cases were flagged by IRS screeners after the term was added to the BOLO list.[67] By the next month, Holly Paz had Cindy Thomas revise the BOLO list to "remove the references to ACORN and Occupy from the 'Watch List'" and replaced the "Emerging Issue" description of ideological positions of conservative and liberal groups with neutral language.[68]

3. Liberal and Progressive Organizations Experienced Three-Year Delays

TIGTA's finding that "[o]rganizations that applied for tax-exempt status and had their applications forwarded to the team of specialists experienced substantial delays" [69] applies to left-leaning applicant organizations in addition to Tea Party and conservative

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[63] Email chain between EO Employees, (Jan. 20, 2012) IRSR0000013418–19.
[64] *Id.*
[65] Email chain between EO Employees, (Jan. 20, 2012) IRSR0000013414; Email from Steven Bowling to Ronald Bell, (Jan. 25, 2012) IRSR0000013181.
[66] Emails between Steven Bowling and Ronald Bell (Jan. 25, 2012) IRS0000013187.
[67] Email chain between EO Employees (May 24–27, 2012) IRS0000013234.
[68] Email from Holly Paz to Cindy Thomas (June 1, 2012) IRS0000013434.
[69] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013–10–053 (May 14, 2013).

groups. The Committee investigation and press reports show that applicants affiliated with Emerge, ACORN successor groups, and others also waited years for a determination from the IRS after their applications were flagged as potentially political by screeners and forwarded to the EO Technical office in Washington, D.C.

Emerge

In the case of three of the Emerge groups, it took three years from the time they applied until the applications were denied. Previously the IRS erroneously approved five applications affiliated with Emerge for 501(c)(4) status from 2004 through 2008, including the main umbrella organization Emerge America.[70] These approvals were subsequently determined to have been in error because Emerge groups were found to benefit the Democratic Party.[71]

On September 2008, emails show that IRS employee Donna Abner recommended issuing an "alert" for other incoming Emerge cases because of the "partisan nature of the cases" as well as a reminder that "'sensitive political issue' cases are subject to mandatory review" per IRS guidelines and subject to full development.[72] EO Technical staff asked EO Determinations to transfer the Emerge Maine and Emerge Nevada applications on October 10, 2008 to be held "until the litigation on this issue and concluded and then we will work them."[73] EO Technical instructed EO Determinations to hold any additional Emerge cases "pending the outcome of a similar issue in the DLC litigation."[74] However, a January 18, 2010 Sensitive Case Report indicates that Emerge Massachusetts applied for tax-exempt status on August 15, 2008 and was transferred to EO Technical on April 16, 2009. Additionally, Emerge Oregon applied on February 9, 2010 and its application was transferred to EO Technical on April 14, 2010.[75] The IRS did not inform the four Emerge groups, whose cases were selected for review and then developed at EO Technical until 2011, that their applications had been denied, creating delays of approximately three years for some of the organizations.[76]

ACORN

Organizations the IRS determined to be related to the disbanded ACORN organization also experienced delays of nearly three years. EO Determinations began receiving ACORN-successor organizations in April 2010.[77]

ACORN-successor organizations were the subject of congressional interest at this time as well. On June 3, 2010, Ranking Member Darrell Issa on the House Oversight Committee submitted a letter with an attached report to Commissioner Doug Shulman urging him not to "stop your investigation into ACORN and its use of fed-

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[70] Email from Donna Abner to Cindy Wescott, Sharon Camarillo, and Brenda Melahn (Sep. 8, 2008) IRS0000012292.
[71] Email from Park Nalee to Vasu Nair (October 21, 2011) IRS0000636331.
[72] Email from Donna Abner to Cindy Wescott, Sharon Camarillo, and Brenda Melahn (Sep. 8, 2008) IRSR0000012292.
[73] Email from Justin Lowe to Jon Waddell (Oct. 10, 2008) IRS0000012299.
[74] Email from Deborah Kant to Cindy Westcott (Oct. 16, 2008) IRS0000012304.
[75] TE/GE Division Sensitive Case Report (Apr. 2010) IRS0000147518.
[76] Email from Holly Paz to Cindy Thomas (July 21, 2011) IRS0000429500.
[77] Email from Sharon Camarillo to Cindy Thomas and Robert Choi (Apr. 28, 2010) IRS0000458467.

eral funds. I ask that you maintain oversight over ACORN's rebranded affiliates." [78] In response, on June 8, 2010 the Acting Manager of EO Technical Steven Grodnitzky instructed Cindy Thomas not to develop or resolve ACORN-related cases until they receive further instruction.[79]

On July 15, 2010, Cindy Thomas alerted Robert Choi that EO Determinations received another "potential successor to ACORN" applying for 501(c)(3) status that is related to a 501(c)(4) ACORN-successor application received in April 2010.[80] Thomas reported that "[w]e placed the other case in suspense pending guidance from the Washington Office and are doing so with this case." [81]

Emails show that additional ACORN-successor organizations were flagged in October 2010.[82]

Cindy Thomas emailed Holly Paz on October 24, 2010 with a request for technical assistance on ACORN-successor cases from EO Technical. Over a month later, on November 26, 2010, Holly Paz told Cindy Thomas to work with Carter Hull in EO Technical on the ACORN-successor cases, the same employee in charge of developing the Tea Party cases.[83]

An EO Determinations employee contacted Carter Hull on March 4, 2011, telling him that "we have four exemption applications for organizations that have previously operated as ACORN. Could we arrange to discuss these cases with you by phone sometime next week?" [84] It is unclear what guidance Carter Hull provided EO Determinations on the ACORN-successor applications but he told another EO Determinations employee in July 2011 that "his manager informed him that he should not be doing research for our cases." [85] Hull asked EO Determinations to remove his name "from the BOLO list as a contact person." [86]

In April 2013, EO Technical was still developing two ACORN-successor applications including one of the applications that spurred EO Determinations managers to alert screeners to flag ACORN-successor cases in October 2010.[87] The other case mentioned in the email was transferred from EO Determinations to EO Technical in April 2012.[88] ACORN-successor cases were still on hold as of May 2013, according to Cindy Thomas.[89]

Other Left-Leaning Groups Also Experienced Delays

Other liberal and progressive groups told media outlets their applications were delayed as well. One left-leaning group, Alliance for a Better Utah, told NPR Morning Edition in a story that aired on

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[78] Letter from House Oversight and Government Reform Committee Ranking Member Darrell Issa to IRS Commissioner Doug Shulman (June 3, 2010) IRS0000459733.
[79] Email from Steven Grodnitzky to Cindy Thomas and Donna Abner (June 8, 2010) IRS0000054956.
[80] Email from Cindy Thomas to Robert Choi (July 15, 2010) IRS0000054948.
[81] *Id.*
[82] Email from Jon Waddell to Steven Bowling and Sharon Camarillo (Oct. 7–8, 2010) IRS0000410433.
[83] Holly Paz email to Cindy Thomas (Nov. 26, 2010) IRS0000054942.
[84] Email from John McGee to Carter Hull (Mar. 4, 2011) IRS0000631878.
[85] Email from Melissa Conley to Willian Agner (July 11, 2011) IRS0000054945.
[86] *Id.*
[87] Email from Cindy Thomas to Steven Bowling and Jon Waddell (Apr. 3, 2013) IRS0000054976.
[88] *Id.*
[89] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013) pp. 27–28.

June 13, 2013 that it had been waiting almost 600 days for a determination on its application for 501(c)(3) status to do "voter-education work."[90] The same group told *Politico* a month later that the delay was "causing problems because it can't apply for foundation and grant money while that application to become a charitable organization is in limbo."[91] Progress Texas reported that it took "18 months to get its 501(c)(4) approval."[92]

B. Inappropriate and Burdensome Information Requests to Left-Leaning Groups

As summarized by the TIGTA report and described in the bipartisan narrative of this report, in January 2012, the IRS Determinations Unit made unnecessary and burdensome requests to a number of tax-exempt applicants that in some cases included requests for donor information.[93] Many groups that received these questions saw the inquiry about donors as an unwarranted intrusion.[94] Ultimately, IRS officials decided the request of the donor information was inappropriate and ordered the donor information destroyed.[95] Left-leaning/progressive groups also received inappropriate development questions regarding donor information while experiencing lengthy delays in the application process, similar to Tea Party groups.

Although TIGTA points out in its report that thirteen of the 27 organizations that received requests for donor information had "Tea Party, Patriots, or 9/12 in their names,"[96] it is clear from reviewing documents that the IRS was not acting on a partisan basis. Liberal and progressive groups were subject to burdensome requests for information from the IRS, similar to the requests made of conservative groups. At least three of the groups that received donor information requests were left-leaning applicants for tax-exempt status.[97] This treatment was unfair and inappropriate whether directed at conservative or left-leaning groups.

This indicates that the donor list requests were not a concerted political effort within the IRS to harass or discriminate against conservative groups. While more conservative groups were subject to burdensome development letters, there were simply more conservative groups applying for tax-exempt status during this period.

In addition to asking liberal organizations about their donors, IRS Exempt Organizations Specialist Grant Herring asked burdensome questions to at least one voter registration organization.[98] The letter asked the organization to respond to approximately 82 different questions/requests for information within twenty days. Two of the requests asked the applicant to provide "recruitment

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[90] *NPR*, "Liberal Groups Say They Received IRS Scrutiny Too" (June 19, 2013).
[91] *Politico*, "IRS Scrutinized Some Liberal Groups" (July 22, 2013).
[92] *Id.*
[93] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013–10–053 (May 14, 2013).
[94] 501(c) entities are required to submit to the IRS a list of persons who have donated $5,000 or more on an annual basis. This information generally is not made public.
[95] SFC Interview of Holly Paz, July 26, 2013 pp. 130–132.
[96] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Audit Report #2013–10–053, (May 14, 2013) footnote 43.
[97] Email with attachment from Judith Kindell to Holly Paz and Sharon Light (Apr. 25, 2012) IRS0000013868.
[98] IRS Letter to a Voter Registration Organization (Nov. 29, 2010) IRS0000631009.

materials, training materials and manuals *you will* create and employ" (emphasis added) for the purposes of voter registration activities and assistance to other charitable organizations.[99] These questions indicate the IRS was asking the organization to provide documents that may not have existed at the time it was applying for tax-exempt status.

Herring provided the questionnaire as an example to another IRS employee who was reviewing a voter registration organization's application for tax-exempt status. In his email to the IRS employee he wrote:

> What worries me about the big ones is that they concentrate on turning out voters that historically support one of the two parties, and this is their unacknowledged purpose, rather than increasing civic participation or voter education.
>
> These questions are from one of my letters. I don't know how complicated your organization is. If it is big and ambitious all these questions may come in handy. I think we need at least to put them on record that in their voter contacts their conduct will be as pure as the driven snow, because I do not think we will ever apply the American Campaign Academy rationale to these organizations, as we should.
>
> If it is getting a lot of [private foundation] money and seem to lean to the left, make sure it isn't an ACORN successor.[100]

After EO Determinations employees began receiving ACORN-successor applications in April 2010, Herring flagged a "get-out-the-vote" organization that had already been approved as tax-exempt but "many internet sources allege is an ACORN affiliate or front" and had asked the IRS for an advance 4945(f) ruling. A 4945(f) ruling is an IRS determination that the organization's voter registration activities satisfy legal requirements to receive private foundation grants for that purpose. On May 18, 2010, Herring wrote:

> I question whether the applicant qualifies for exemption. 501c3s can engage in non-partisan voter registration, of course, but what is the basis of their exemption if that is their exclusive or primary activity, as in this case (no voter ed)? Also, I don't think this org's activities are nonpartisan in effect: they don't say "Republican" or "Democrat", but they target their extremely-well-funded-by-left-leaning-PFs voter registration activities to areas where traditional Democrat constituencies are concentrated. I don't think it would be difficult for EOT to revoke the approval letter.[101]

Grant Herring reported his activities related to developing this case in July 2010:

> A letter was sent on 7/15, with response due 8/4. I asked very detailed questions about how they are conducting

[99] *Id.*
[100] Email from Grant Herring to Susan Maloney (Nov. 29, 2011) IRS0000631168.
[101] Email from Donald Herring to Joseph Herr (May 18, 2010) IRS0000629458.

> their voter registration activities, to make sure that they are being conducted in a non-partisan manner. I do not think there is any doubt that the targeted demographics will vote overwhelmingly for Democratic candidates, and that it is the unstated purpose of the organization to turn out the vote for "progressive" candidates; but I don't think the request can be denied on that basis, although I am going to make sure of that before I issue a favorable letter. However, I thought that a politically biased applicant like this one should be made to demonstrate that it treats all political candidates and parties even-handedly in its contacts with unregistered voters. I am talking to Mike Repass in Technical about this case and a different voter registration organization.[102] [sic]

The case was sent to EO Technical as a result of Herring "raising concerns" because "it involved voter registration and a possible link to ACORN," according to an EO Determinations manager summarizing the case a year later. As of May 2011, there was a decision to grant a favorable 4945(f) ruling with a referral to the Review of Operations Division but the case was awaiting another layer of review by EO Quality Assurance.[103]

IX. WHAT COULD HAVE BEEN

Another useful perspective on the inefficiency and mismanagement at the IRS is a focus on the month when the Tea Party applications first arrived in Cincinnati and a two week period when the IRS first acted decisively on the Tea Party and right-leaning applications.

As discussed in the bipartisan narrative of this report, the first Tea Party application arrived in February of 2010. Cindy Thomas contacted Washington D.C. and asked for guidance from EO technical. Holly Paz, in Washington D.C., agrees that the applications should be reviewed by experts in Washington D.C.

Results Come 26 Months Later

In May/June of 2012, the IRS finally finds a process and personnel who make decisions relatively efficiently about the about 200 applications that have been piling up starting in February of 2010.[104] This was referred to as a "triage" effort by IRS personnel. A team of five Washington D.C. based staff, led by Sharon Light, was sent to Cincinnati. There they meet up with a team from the Determinations unit. The two teams conducted a workshop to establish a common understanding of the rules for political activity and 501(c)(4) nonprofits.

Teams of two—one from Washington D.C. and the other from Cincinnati—were given applications to review. They were allowed to reach one of these conclusions:

- If they both agree an application should be approved it is approved—no further appeals to multiple IRS personnel in Washington D.C. follow. The decision of the team is final.

[102] Email from Peggy Combs to Brenda Melahn (July 27, 2010) IRS0000622672.
[103] Email from Gerardo Fierro to Donna Abner (May 15, 2011) IRS0000640477.
[104] Email from Holly Paz to Winonna Holton (June 7, 2012) IRS0000344052.

- The team can also agree to deny the application. Again, no final review is necessary.
- Finally the two teams can agree to gather more information about the applications.

Using this process the Sharon Light led team approved 65 applications and denied 30, about 100 applications were set aside for more information gathering.[105]

If this process had been used in the summer of 2010, a few months after the first Tea Party applications were received, much of the delay in processing the applications could have been avoided.

Another possible way to address large volumes of political advocacy cases was devised by Acting Commissioner Danny Werfel in the aftermath of the TIGTA report. This process allows applicants to declare that over 60% of their activities are non-political. If this declaration is made, a favorable determination on the application is issued by the IRS within 2 weeks.[106] (see discussion of the IRS 30 day response in these views).

X. WHAT WAS

Between February of 2010 and the "triage" effort in June of 2012, the Finance Committee investigation found a continuing series of missteps, bad management, inefficiency, confusion and incompetence.

A quick summary of what transpired for two years in the Washington D.C. office is contained in an email from Steve Grodnitzky. EOT here is the Exempt Organization Technical office which had the lead in analyzing political advocacy issues related to 501(c)4s:

> EOT is working on the Tea Party applications in coordination with Cincy. We are developing a few applications here in DC and providing copies of our development letters with the agent to use as examples in the development of their cases. Chip Hull is working these cases in EOT and working with the agent in Cincy, so any communication should include him as well. Because the Tea Party applications are the subject of an SCR, we cannot resolve any of the cases without coordinating with [Robert Choi, the Director of Rulings and Agreements].[107]

In short, Tea Party cases piled up in Cincinnati for two years while Washington D.C. unsuccessfully tried to develop a way to process them, i.e. approve or deny them. For some time the focus was on two of the applications, but even that focus was lost toward the end of the two year period and the EO team became completely disorganized in its effort to make decisions on the applications.

On April 28, 2010 Grodnitzky emailed Lerner and Choi a summary chart of sensitive case reports (SCRs) being handled by EO Technical that included Tea Party applications.[108] He wrote:

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[105] *Id*.

[106] IRS, Charting a Path Forward at the IRS: Initial Assessment and Plan of Action, Appendix E (June 24, 2013).

[107] Email from Steven Grodnitzky to Cindy Thomas and Sharon Camarillo (July 6, 2010) IRS0000165422–24.

[108] Email from Steven Grodnitzky to Lois Lerner and Robert Choi (Apr. 28, 2010) IRS0000141809.

> Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to develop those cases based on our development of the ones in DC.[109]

The SCR dated April 19, 2010 describing the two Tea Party cases shows that the cases were flagged because they were determined to be "Likely to attract media or Congressional attention."[110]

On May 13, 2010, in response to an inquiry from Lerner about the basis for EO Technical's examination of Tea Party cases, Grodnitzky replied that:

> The [Tea Party] organizations are arguing education, but the big issue for us is whether they are engaged in political campaign activity.[111]

By November 3, 2010, the number of applications on hold in EO Determinations increased to 40 as Cincinnati continued to wait for development of the two Tea Party test cases in EO Technical.[112]

Robert Choi told Committee investigators that he inferred the Tea Party cases were likely on their way to being resolved because a November 2010 summary of the sensitive case reports indicated that EO Technical (Carter Hull) was drafting a favorable determinations letter for one of the Tea Party test cases.[113]

This was not the case—the confusion and bureaucratic buck passing continued until the triage effort, 19 months later, in June of 2012, well after the TIGTA investigation had begun, sounding alarm bells at the IRS.

The bulk of the responsibility for managing the processing of these applications falls on Lerner as manager of the nonprofit tax division of the IRS. She refused to testify in open session before the House Government Affairs Committee, pleading the Fifth Amendment.[114] She has refused to talk to Finance Committee and Ways and Means investigators. Consequently, her side of the story will not be completely told in this report.

Perhaps the best summary of her perspective comes from a TIGTA interview with her conducted on May 22, 2012. Lerner describes the initial process used to collect the applications containing political advocacy issues:

> It has been customary for the applications group in Cincinnati to document emerging issues through emails. However, we received complaints at a CPE that employees were receiving too much information via e-mail and there was no consolidated place where employees could go for this information. As a result, Cincinnati began consolidating information into what is called a BOLO (Be On the Lookout). In the spring of 2010, the applications group

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[109] *Id*.
[110] TEGE Sensitive Case Report Tea Party (Apr. 19, 2010) IRS0000164074.
[111] Email chain between Steven Grodnitzky and Lois Lerner and Robert Choi (May 13, 2010) IRS0000167872.
[112] Email from Holly Paz to Lois Lerner and Robert Choi (Nov. 3, 2010) IRS0000156478.
[113] SFC Interview of Robert Choi (Sep. 19, 2013) p. 67.
[114] New York Times, IRS Suspends Official at Center of Story (May 23, 2013).

> began seeing a surge in applications that were very up front about political work the organizations would be conducting. It is not unusual for us to send cases to a specific group when we see an uptick of applications with the same issues. We like to have a specific group or set of people work the applications so that we are consistent in our determinations.[115]

She continued in the interview to summarize her decision to order a change in the Tea Party designation in the BOLO list:

> When I heard the criterion being used, I immediately asked that the criterion be changed. While I don't believe our folks in Cincinnati meant any malice, I was disappointed with the language used to describe the emerging issue. I would agree that the language should be more about the issues in the applications and not about particular groups that are applying for tax exemption. I believe that Cincinnati was just using shorthand to describe the cases and was not thinking about the impact of describing the cases in a particular manner. Our work is much more out in the public and, while I believe the Cincinnati employees were just trying to find an easy way to describe the applications, our employees need to be cognizant of the fact that we need to make it clear that we do not select cases for additional determinations or examination work based on political affiliation. It should not enter into the conversation.[116]

Holly Paz, a key EO figure and by all accounts a conscientious worker, shifted jobs frequently and was often designated as "acting" while filling a position. She was not able, perhaps understandably, to take charge and move the Exempt Organization team towards a quick resolution of the Tea Party applications piling up in Cincinnati. Paz, between March of 2010 and May of 2012, went through four different position changes. This constant changing of jobs, and the multiple times she was placed in an acting position, whether as a manager or director, probably contributed to her inability to take charge and resolve the challenge of dealing with the dozens of 501(c)(4) applicants who were intending to become involved in political campaigns.[117]

She did not feel able, apparently, to confront Lerner about the endless process of review and delay that was inevitably leading to the TIGTA investigation, and the eventual explosion of the issue in Congress and in the U.S. media.[118]

Months and months went by with the IRS personnel developing "guidesheets," constructing a "bucket" system for analyzing the cases, drafting development letters, and training personnel on the 501(c)(4) political advocacy issues. "Triage" was attempted in the fall of 2011 (reviewing all the applications and attempting to make a quick decision on denial or approval), meetings occurred, various offices refused to take charge and resolve the pending applications.

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[115] Memorandum of Discussion between Lois Lerner and Troy Patterson (May 22, 2012).
[116] *Id.*
[117] SFC Interview of Holly Paz (July 26, 2013) pp. 14–17.
[118] SFC Interview of Holly Paz (July 26, 2013) pp. 50–51.

No evidence was uncovered that political motivations fed this bureaucratic nightmare, but that does not make it acceptable. Once the TIGTA investigation began it was too late to undo the damage.

Two email chains providing an example of the endless, confused and disorganized process is included in the appendix of this report. In one, two months are squandered in an email exchange that is almost incomprehensible. This occurs, incredibly, 18 months after the first Tea Party emails were received in Cincinnati, and 10 months after the Tea Party had been partially credited with taking back the House of Representatives for the Republican Party, an event that produced a massive amount of media exposure and national attention.[119] In another email the reader can see a narrative of buck passing and confusion that squandered three months, from June 8, 2012 to September 12, 2012. Incredibly this email covers a period after the TIGTA investigation had begun.[120]

Three opportunities to expedite the processing of the conservative leaning applications were missed from the summer of 2010 to the summer of 2011.

Carter Hull was given the job of analyzing two Tea Party applications (a 501(c)(3) and a 501(c)(4)) in April of 2010. As one of the EO Technical employees with the most experience with nonprofit political activity he was in a position to develop a definitive test for the applications waiting to be resolved.

He took until January of 2011 to recommend that one of these applications be approved. Had he been managed better and finished his analysis in September or October of 2010 the standards he set could have been used to test the dozens of applications sitting in Cincinnati.

Another opportunity was wasted when Hull recommended approving the (c)(4) application in January. A better management team would have seized this moment and used his analysis to immediately resolve the Tea Party applications pending in Cincinnati.

A "triage" team similar to the one formed in June of 2012 could have made short work of the applications using the standards set by Hull in recommending approval of the two applications selected by the Washington D.C. office for special analysis.

Instead of using the Hull decision on the 501(c)(4) application to kick off a final review of the pending applications his decision was reviewed by Senior Technical Advisory Judy Kindell. Kindell recommended the application be reviewed by Chief Counsel's office because the issue of private benefit, namely whether the Tea Party groups were operating for the benefit of the Republican Party, was not explored by Carter Hull in his examination.[121] This may have been a good idea if a two week deadline for that effort had been enforced. But the meeting with Don Spellman of the Office of Chief Counsel did not occur until August—seven months after Hull had belatedly made a final decision on the two applications.

No clear 501(c)(4) political activity guidance was ever given by the Counsel's office so this step in the process was a complete waste of time.

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[119] Email chain between EO Employees (Sep 15, 2011–Nov. 15, 2011) IRS0000057399–426.
[120] Email chain between EO Employees (June 8, 2012–Sep. 12, 2012) IRSR0000441141.
[121] SFC Interview of Judith Kindell (July 18, 2013) pp. 53–55.

A final missed opportunity was the failure to follow up on the July 2011 meeting between Lerner and her senior team with a plan to approve or disapprove the applications.

Lerner does get credit for ordering a change to problematic BOLO terms that specifically mentioned the Tea Party and conservative groups.[122] But at the same meeting (June 29, 2011) at which she ordered the offending language removed she did nothing to get her team to expedite the processing of Tea Party applications.[123] One hundred applications had piled up in Cincinnati at this point.[124]

This turned out to the last chance for the IRS to resolve the pending applications before the TIGTA investigation was initiated. From the June 29 meeting on, the IRS tax-exempt office continued drifting on the political advocacy cases. With no decisive action by Lerner or Paz, the IRS bureaucracy stumbled forward without establishing a competent and efficient plan for processing the applications.

Without a resolution of the applications in the fall of 2011 the frustration of the applicants increased. In early 2012 press reports and congressional inquiries triggered the TIGTA investigation.

XI. RESPONSE TO ADDITIONAL REPUBLICAN VIEWS

A. No Evidence of Political Bias in 501(c)(4) Determinations

1. No Evidence of Lois Lerner Political Bias

Federal employees are allowed to have political affiliations. The question is whether they let those affiliations affect their professional duties. There is no evidence that Lois Lerner allowed her political beliefs affect how she carried out her duties as manager of the Exempt Organizations, merely anecdotal evidence that she was a Democrat.

Even though the decision came too late, Lois Lerner was responsible for removing from the BOLO list the terms Tea Party, 9/12 and Patriots out of a concern that these terms gave the appearance of "targeting" the groups.[125]

In addition, a September 15, 2010 email chain shows that Lerner's office was concerned about the potential abuse of 501(c)(4) status by organizations from across the political spectrum.[126] After Lerner expressed concern about "a perception out there that" 501(c)(4) organizations were set up specifically for political activity, her colleague Cheryl Chasin emailed her and wrote the abuse was "definitely happening."[127] In this email she listed "a few organizations . . . that sure sound . . . like they are engaging in political activity:

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[122] Emails from Cindy Thomas to Steven Bowling and John Shafer (July 5, 2011) IRS0000619080–81.

[123] *Id.*

[124] TIGTA, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (May 14, 2013) See Appendix VII, "Over 100 applications were identified by this time. It was decided to develop a guide sheet for processing these cases."

[125] Email chain between Cindy Thomas, Steve Bowling, John Shafer and others (July 5, 2011) IRS0000620735.

[126] Email chain between Lois Lerner, Cheryl Chasin, Judith Kindell, Nannette Downing and others (September 15–16, 2010) IRS0000633894.

[127] *Id.*

Faulkner County Tea Party
Paradise Republican Womens Club
Culver PAC
Taxpayersadvocate Org State PAC
Escondido Republican Women Federated
Folsom Republican Women Federated
Alice B Toklas Lesbian & Gay Democratic Club
Obama Democratic Club Of Silicon Valley
National Breast Cancer Coalition Political Action Committee." [128]

Lerner's response was, "OK guys. We need to have a plan. We need to be cautious so it isn't a per se political project. More a (c)4 project that will look at levels of lobbying and pol. activity along with exempt activity." [129] The email shows that employees in the Exempt Organizations division were concerned about abuse of the tax code no matter what political views represented.

Lerner's weakness in managing her office's processing of tax-exempt applicants affected both left and right-leaning organizations. Both types of groups faced delays in the processing of their applications for nonprofit status. There is no evidence Lerner treated left and right-leaning groups differently.

There are no facts demonstrating that Lerner told her employees to focus in an unfair way on right-leaning applications. As the report states, left-leaning groups were also placed on the BOLO list, were asked extensive questions about their activities as part of the nonprofit approval or disapproval process and waited years for their applications to be processed.

Lerner's concern with the *Citizens United* decision was appropriate given her role at the IRS. If the Supreme Court decision led to more political advocacy activity by nonprofits then the case was central to the Exempt Organizations team that Lerner led. Making reference to it in conversations or in speeches is not surprising; to ignore the decision would have been odd.

It is similarly appropriate for Lerner to take notice of Congressional efforts to reform campaign finance through the DISCLOSE Act. The bill, which would require independent groups to disclose the names of contributors who gave more than $10,000 for use in political campaigns, had wide support in 2012. The Senate version, S. 3369, had 40 co-sponsors, while the House version, H.R. 4010 had 165 co-sponsors.

Furthermore, campaign finance reform and the *Citizens United* decision are issues that are important to many Americans. Eighty five percent of Americans believe we should either "rebuild" or make "fundamental changes" to our campaign finance system.[130] In addition, 75% of Americans believe that groups who participate in political campaigns should be required to publicly disclose their donors, and 8 in 10 Americans oppose *Citizens United*.[131]

As for congressional inquiries, media interest and outside groups contacting the EO office, this is the norm for any federal agency

[128] *Id.*
[129] *Id.*
[130] *New York Times,* "American's Views on Money in Politics" (June 2, 2015).
[131] *Id.*; *Washington Post,* "Poll: Large Majority Opposes Supreme Court's Decision on Campaign Financing" (Feb. 17, 2010).

or department. These interactions occur on a daily basis in every federal government office. There is no evidence that Lerner reacted to these contacts by ordering a delay in the processing of 501(c)(4) applications.

2. No Double Standard for Members of Congress

The Additional Republican Views cite three cases in which they say that Democratic Senators intervened to request that the review of applications for tax-exempt status be expedited, and where that apparently was done. The inference is that there was a double standard, contrasting the quick resolution of these cases to the long delays, described in this report, in the cases of applications for 501(c) status by Tea Party and other advocacy groups.

On their face, the facts of the three cases relied on do not support the inference of a double standard. It appears that the three applications were for 501(c)(3) status, organizations that are not allowed to engage in any political activity, not for the 501(c)(4) status which is the focus of this report. Further, there is nothing to indicate that the three applications were particularly difficult or controversial. The one exception appears to be a request for the expeditious consideration of an application for tax-exempt status by the One Boston Foundation, in order to facilitate fundraising and assistance to the victims of the Boston Marathon attacks in April, 2013; in that case, it appears that the IRS did in fact cut through some red tape so that the organization could get up and running quickly.[132] The three cases that the Additional Republican Views rely on were *not* cases where Democratic officeholders sought to ex-

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[132] Boston Bar Journal, Disaster Relief: The One Fund Boston Model (April 1, 2014). (An article in the Boston Bar Journal described the efforts to get 501(c)(3) status for the "One Fund":

In the wake of the Boston Marathon bombings on April 15, 2013, Boston Mayor Menino and Massachusetts Governor Patrick proposed creating a charity to benefit the survivors and families of those killed in the attack. On April 16, Mayor Menino reached out to local businesses Hill Holliday and John Hancock to assist with the creation of the One Fund Boston. Later that day, before the fund was even incorporated and before Ken Feinberg was brought on as administrator, the One Fund received its first $1 million commitment from John Hancock. As the One Fund's attorneys, we at Goodwin Procter had to seek quick incorporation of the fund and apply on an expedited basis for 501(c)(3) tax-exempt status with the IRS. However, applications for 501(c)(3) status often take up to eighteen months to process, and in addition, obtaining the necessary approval was challenging, due to IRS limitations on the types of distributions that charitable organizations can make to individuals in the context of disaster relief.

Generally, to qualify for tax-exempt status, an organization must show that it will assist a large enough or sufficiently indefinite charitable class so that it is providing a public rather than a private benefit. In addition, in IRS Publication 3833, the IRS takes the position that an organization cannot distribute funds to individuals merely because they are victims of a disaster, but generally must determine that a recipient lacks adequate financial resources of his or her own. The IRS therefore had questions about the One Fund's plans to make distributions without financial needs testing.

The One Fund team worked closely with the IRS to overcome these issues and to show that the One Fund instead met the criteria for a 501(c)(3) tax-exempt charitable organization as an organization that lessens the burdens of government, focusing on the organization's relationship with the City of Boston and the City's role in approving distributions. "Lessening the burdens of government" is an alternative method of qualifying as a 501(c)(3) organization. As far as we know, this method has not been used before in the disaster relief context. This approach to the formation of a relief organization allowed the One Fund Boston to accomplish its immediate and ongoing goals for distributions.

On May 14, just one month after the bombings, the IRS granted the One Fund Boston 501(c)(3) tax-exempt status. The One Fund's attorneys were able to use procedures for expedited approval and effective dialogue with the IRS to obtain this unusually quick and favorable result.

The One Fund has been a huge success and an important contribution to Boston's recovery. All of the $60 million in funds donated to the One Fund Boston through June 26, 2013 were distributed to those who were most affected by the bombings, in accordance with a protocol developed by Mr. Feinberg. In addition, the One Fund Boston will continue to provide support for those affected and has announced that it will make a second distribution.

pedite the approval of progressive groups' applications for 501(c)(4) status. Further, we have not looked carefully to consider how similar requests from Republican Senators and Representatives (i.e., requests for expeditious treatment of noncontroversial 501(c)(3) applications) were handled.

As the bipartisan narrative makes clear, the IRS took far too long to review 501(c)(4) applications from Tea Party and other advocacy groups, and subjected many of the groups to inappropriate review; the IRS was insufficiently responsive to requests, from those groups as well as members of Congress, for information and for better consideration. But the fact that the IRS was able to handle a few very different cases reasonably well does not show a double standard. In this regard, the Additional Republican Views are comparing apples and oranges.

3. No Evidence To Validate Charge of Union Bias

Union membership in and of itself does not mean political bias. The Additional Republican Views establish no factual evidence that any IRS employee, whether they belonged to a union or not, was politically biased in their actions related to the 501(c)(4) applications with political advocacy issues. Moreover, Lerner, as a senior manager, was not eligible for union membership.

4. No Evidence Individual Employee Views Influenced Decisions for Political Purposes

Again, there is no evidence of political bias on the part of IRS personnel involved in the processing of the 501(c)(4) applications with political advocacy issues. The Committee has received signed statements from each of the IRS employees in interviewed asserting that politics was not involved in the decision making process.[133] TIGTA also found no evidence of political bias on the part of IRS personnel involved in processing of 501(c)(4) applications.

Of the 85,000 employees at the IRS, the Additional Republican Views highlight three who engaged in political activity during company time in violation of the Hatch Act. None work in the IRS offices processing the 501(c)(4) applications.

5. No Evidence White House or Treasury Officials Influenced Tea Party Applications

There is no evidence of Treasury or White House officials participating in the processing of 501(c)(4) applications or influencing how they were processed. There is no evidence that any Treasury or White House employee directed or influenced the actions of the IRS with regard to Tea Party or other political advocacy applications. The Additional Republican Views provide only unfounded speculation about the involvement of Treasury and White House officials in the processing of advocacy applications.

Two high ranking Treasury officials were interviewed by the Committee, Mark Patterson, former chief of staff to the Secretary, and Neal Wolin, former Deputy Secretary. One other employee was

[133] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

requested by the Republican staff to appear for an interview, Ruth Madrigal. Madrigal served as a policy expert on 501(c)(4) law at main Treasury.

Her interview transcript with the Oversight and Government Reform/Ways and Means Republican staff was made available, and after reviewing the transcript of the interview the Democratic staff was satisfied that Madrigal had not even a remote connection to the key decisions made by the EO office regarding the applications with political advocacy issues. She did not participate in any way in the management of those applications by the IRS Exempt Organizations office. Nor did she consult with upper level management of the IRS on how to respond to the delay in processing of those applications once the mismanagement was uncovered.

B. IRS Failure To Preserve Lerner's Emails

On June 23, 2014, then-Chairman Wyden and then-Ranking Member Hatch asked Inspector General George to investigate the circumstances surrounding a June 2011 hard drive crash suffered by Lois Lerner, and to determine whether any additional documents belonging to Lerner could be recovered.[134] The hard drive crash predated any investigations of Lerner by nearly two years. TIGTA's resulting investigation found no evidence that any IRS employee intentionally destroyed records to hide information from Congress. TIGTA invested a significant amount of time and resources to activate available disaster recovery backup tapes used by the IRS. This effort resulted in the production of 1,007 emails that had not been previously produced as part of the 1,500,000 documents produced to the Committee.[135] Very few of these documents were germane to the Committee's investigation.

TIGTA's investigation also uncovered a second batch of backup tapes dating back to May 2011 that were erased by IRS employees in May 2014. TIGTA "did not uncover evidence that the IRS and its employees purposely erased the tapes and order to conceal responsive e-mails from the Congress, the DOJ and TIGTA."[136] The IRS reasonably, but erroneously, assumed that these backup tapes, which sat in storage in an IRS warehouse for years, had been destroyed long ago. Disaster recovery backup tapes do not store information in an easily accessible format and are rarely utilized in litigation.[137] However, given the extraordinary interest in this matter, the IRS should have exercised greater care and diligence in determining whether meaningful information could be recovered from disaster recovery tapes.

The Additional Republican Views take great issue with the amount of time that elapsed between when the IRS learned of Lois Lerner's hard drive crash, February 2014, and when it disclosed that information to Congress, June 2014. There is bipartisan agreement that the IRS showed a lack of candor in this matter. However, the Additional Republican Views characterize statements

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[134] Letter from Chairman Wyden and Ranking Member Hatch to J. Russell George (June 23, 2014).

[135] TIGTA, Exempt Organizations Data Loss, Report of Investigation 54–1406–008–I (June 30, 2014) p. 15.

[136] *Id.* p. 13.

[137] See, e.g., Fed. R. Civ. P. 26(b)(2)(B); Zubulake v. UBS Warburg LLC, 220 F.R.D. 212 (S.D.N.Y. 2003).

made by the IRS to the Committee on March 19, 2014 as "false" and "intended to hasten the Committee to complete its investigation." While the Democratic staff respects the Republican staff and their view about the veracity of these statements, we do not reach the same conclusions. On March 27, 2014, Committee staff asked the IRS for a statement attesting to the completeness of the IRS production. When the statement arrived on June 13, 2014, Lerner's hard drive crash was clearly disclosed.[138]

C. Misleading Congress

The Additional Republican Views charge that senior IRS officials continuously mislead Congress, citing hearings before various Congressional committees and subcommittees, a meeting with Finance Committee staff, and responses to letters from Senator Hatch and other Republican Senators. The veracity of these IRS officials' testimony and statements has not been a subject of our bipartisan staff investigation. While we have particular respect for Chairman Hatch's views about the veracity and completeness of responses to him, it would, in our view, take considerably more bipartisan work to reach conclusions about such serious charges.

D. IRS Independence

The IRS is organized under the Treasury Department because the tax function is a critical element of government and clear lines of authority and management need to be established. This report demonstrates how important accountability and the power to act quickly are when mismanagement has occurred. Treasury Secretary Jack Lew was able to fire the head of the IRS almost immediately after revelations about the alleged Tea Party targeting were unveiled. A truly independent agency, with lengthy burdensome process for removing executives, could have continued with its existing management for some period of time.

While there are clear lines of authority, this is balanced by the nonpolitical nature of the IRS, demonstrated by the fact that unlike other agencies, only two executives are political appointees—nominated by the President and confirmed by Congress. Except for the Commissioner and the Chief Counsel, every other employee at the IRS is nonpartisan, ensuring that the IRS acts in a nonpolitical fashion. Furthermore, it is important to note that Commissioner Shulman, the Commissioner during the relevant time of this investigation, was a George W. Bush appointee.

Most agencies and departments have dozens of political appointees, resulting in a much greater political focus by the managers of the department.

E. No Inappropriate FEC Interaction

501(c)(4) nonprofits report their campaign spending to the Federal Election Commission. It is clear from the investigation that the IRS tries to determine levels of political spending in their processing of 501(c)(4) applications with political advocacy. The FEC

[138] Letter from Leonard Oursler to Senator Wyden and Senator Hatch (June 13, 2014) Enclosure 3, p. 7.

deals with political spending even more directly. Essentially there is overlapping jurisdiction over campaign activities/spending between the FEC and the IRS. Agencies in the federal government, all existing under the umbrella of the executive branch, are encouraged to share information when that information will assist them in carrying out their responsibilities to the taxpayer. The information shared in this case between the FEC and the IRS constitutes proper cooperation between two agencies in the executive branch.

F. Attempts To "Suppress" Political Speech

Efforts to change the law governing nonprofit political advocacy are addressed in the following section entitled "Evolution of 501(c)(4) Nonprofits into Political Entities Creates a Need for More Transparency." The IRS withdrew proposed regulations governing political activity by 501(c)(4) nonprofits on May 22, 2014.

G. Ways and Means Referral Letter

On April 9, 2014, the Ways and Means Committee voted to send a letter to the Attorney General asking DOJ to investigate Lois Lerner to determine whether she violated "multiple federal criminal statutes."[139] The primary charge in the letter is that Lerner focused intensively on the 501(c)(4) application from Crossroads GPS and turned a blind eye to liberal groups. The letter attempts to make the case that Lerner relied on her own political party affiliation to investigate the group's activities, eventually seeking to cancel their 501(c)(4) status.[140]

The issues raised in the Ways and Means referral letter have not been the focus of the investigation conducted by the Democratic and Republican Finance Committee staff summarized in this report. There has not been enough development of the facts in the current investigation to reach any informed conclusion about the legality of Lerner's actions regarding Crossroads. In addition, it is properly the role of the Justice Department to determine the legality of Lois Lerner's actions highlighted by the Ways and Means Committee.

However, the public should also be aware of significant facts about Crossroads GPS that the House Ways and Means Chairman omitted from his letter to the Justice Department. These facts may explain why the Lois Lerner, the IRS official primarily responsible for ensuring that political campaign organizations are not masquerading as social welfare organizations, would focus on Crossroads GPS.

The IRS permits 501(c)(4) organizations to "engage in political campaigns on behalf or in opposition to candidates for public office provided that such intervention does not constitute the organization's primary activity."

A Federal Election Commission First General Counsel's Report filed in November of 2012 concluded that Crossroads GPS spent 53% of its budget on federal campaign activity in 2010. Chairman Baucus's letter to the IRS in 2010 was partially based on public re-

[139] Letter from the Ways and Means Committee to Attorney General Eric Holder (April 9, 2014).
[140] *Id.*

ports of the vast amounts of money being spent on political activity by Crossroads and left-leaning groups.[141] OpenSecrets.org concluded that in the 2010 and 2012 election cycles Crossroads spent almost $90 million on independent expenditures (ads that advocate the election or defeat of specific candidates). Consequentially it is not surprising that Lois Lerner examined the activities of Crossroads as Director of the Exempt Organizations team. Her job was to make sure that 501(c)(4) nonprofits obey the law and are not engaged primarily in political activities. Without a full investigation it is unfair to criticize her for doing her job on this matter.

Whether Lerner was evenhanded in doing her job is certainly a legitimate question for any full investigation. As pointed out in these views, left-leaning nonprofits were subject to delay, applications for nonprofit status were denied and withdrawn. Applications from left-leaning organizations were subject to full development. The BOLO list contained terms identifying left-leaning nonprofits.

A new investigation would have to examine the total number of left-leaning nonprofits conducting political activity and how Lerner dealt with each of them. Large left-leaning nonprofits involved in political activity such as Priorities USA and Organizing for America would be part of this inquiry. Only after a complete investigation examining Lerner's actions regarding both right and left-leaning applicants could a final determination of bias be established.

XII. IRS RESPONSE TO THE TIGTA REPORT

A. IRS 30 Day Report

On June 24, 2013 a report was released by the IRS describing their response to the TIGTA investigation.

- A team appointed by Danny Werfel, Acting Commissioner of the IRS, found no evidence of intentional wrongdoing by IRS personnel, or "involvement in these matters by anyone outside the IRS."
- Personnel were replaced in the four levels of the managerial chain that had responsibility for the activities identified in the TIGTA report.
- The following personnel were removed from or left their management positions: the IRS: Acting IRS Commissioner Steve Miller, Commissioner for Tax Exempt and Government Entities Joseph Grant, Lois Lerner (Lerner was put on paid leave on May 23, 2013 and retired from federal service in September of 2013), and Holly Paz.
- BOLO (Be on the Lookout) lists were suspended. These are the lists that contained the term Tea Party and that identified left-leaning organizations.

The 30 day plan also established a method of expediting the processing of applications for nonprofit status. The new procedures are available to applicants that are:

- Involved in political campaign activities or issue advocacy, and
- Have had applications pending for more than 120 days as of May 28, 2013.

[141] Letter from Chairman Baucus the Commissioner Doug Shulman (Sept. 28, 2010).

The IRS mailed letters to applicants caught up in the enhanced scrutiny process. They received Letter 5228, "Application Notification of Expedited 501c4 Option."

The organization is allowed to self-certify by signing and returning the letter if it agrees to abide by special rules for obtaining tax exempt status.

Groups are granted 501(c)(4) status within two weeks if they certify that 60% or more of their time and expenses are devoted to activities promoting "social welfare." They must also certify their political campaign intervention involves less than 40% of their spending and time.

B. Additional IRS Response

In testimony before the House Oversight and Government Reform Committee on March 26, 2014 IRS Commissioner John Koskinen summarized additional changes made following the TIGTA report:

- Establishing a new process for documenting the reasons why applications are chosen for further review;
- Developing new training and workshops on a number of critical issues, including the difference between issue advocacy and political campaign intervention, and the proper way to identify applications that require review of political campaign intervention activities;
- Establishing guidelines for IRS EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention; and
- Creating a formal, documented process for EO determinations personnel to request assistance from technical experts.

XIII. NEED FOR REFORM OF THE TAX CODE TREATMENT OF POLITICAL ACTIVITY BY NONPROFITS

The Joint Tax Committee summarizes the law addressing political advocacy by 501(c)(3) organizations as follows:

> [U]nder present law 501(c)(3) charitable organizations may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The prohibition on such political campaign activity is absolute and, in general, includes activities such as making contributions to a candidate's political campaign, endorsements of a candidate, lending employees to work in a political campaign, or providing facilities for use by a candidate. Many other activities may constitute political campaign activity, depending on the facts and circumstances. The sanction for a violation of the prohibition is loss of the organization's tax-exempt status.
>
> For organizations that engage in prohibited political campaign activity, the Code provides three penalties that may be applied either as alternatives to revocation of tax exemption or in addition to loss of tax-exempt status: an excise tax on political expenditures, termination assess-

> ment of all taxes due, and an injunction against further political expenditures.[142]

Section 501(c)(3) organizations are required to apply for exempt status.[143] Contributions to these organizations are tax deductible.

The Joint Tax Committee description of the law relating to 501(c)(4) organizations is as follows:

> The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office; however, social welfare organizations are permitted to engage in political campaign activity so long as it is not the organization's primary activity.
>
> [. . .]
>
> Social welfare organizations need not, but may, seek formal IRS recognition of exempt status, whereas charitable organizations are required to file an application for recognition of exemption.[144]

Along with section 501(c)(4) organizations (social welfare), (c)(5) organizations (labor unions) and (c)(6) organizations (trade associations) may participate in some political activity as long as that activity is not the organization's primary activity. [145]

If it is determined the primary purpose of the 501(c)(4) organization is political activity—that 70 or 80 or 90 percent of the money goes to political activity—then that organization could lose its tax exempt status.[146]

Contributions to 501(c)(4) organizations are not deductible.[147]

Section 527 organizations are political organizations and may engage in unlimited political activities. At formation, these groups must give notice to the IRS within 24 hours. These organizations are required to make public donors making contributions of more than $200 per person, per calendar year.[148]

A. Evolution of 501(c)(4) Nonprofits into Political Entities Creates a Need for More Transparency

Much has changed since the Tariff Act of 1894, which contained the earliest statutory reference to tax exemptions for nonprofits. A critical change was made in 1959 when the IRS issued an administrative rule opening the door to 501(c)(4) political activity by interpreting "exclusively" to mean that groups had to be "primarily" engaged in social welfare and helping the community. Whether or not this was a valid interpretation of the statute,[149] it put the IRS in the position of determining what level and type of activities constitute "primarily political" activities. The events described in this report illustrate the difficulty of such an exercise. This is especially

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[142] Joint Committee on Taxation, "Report to the House Committee on Ways and Means on Present Law and Suggestions for Reform Submitted to the Tax Reform Working Groups" (May 6, 2013) p. 35.
[143] *Id.* p. 20.
[144] *Id.* p. 39.
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] IRS, Section 527 Political Organizations—Tax Filing Requirements.
[149] See footnote 102 in the Bipartisan Investigative Report.

true given the vagueness of the existing regulations, which have not been significantly modified since 1959. A lot has changed since then, including the apparent surge of political activity by 501(c)(4) groups in recent years. The story told in this report is not just about mismanagement. It also is about vague regulations that are inherently difficult to apply and have become outdated.

For this reason, Democratic staff are surprised by the implication, in the Additional Republican Views, that the 1959 regulations never should be revised in any way. This goes too far. The current regulations are part of the problem. Granted, the revisions that the Treasury Secretary proposed in 2013 generated a huge public response, and there were places where the proposed revisions clearly went overboard, such as with respect to voter registration and get-out-the-vote activity. But that is not a sufficient argument for maintaining the 1959 regulations into perpetuity. Organizations seeking tax-exempt status, as well as the IRS itself, would benefit from greater clarity in this area, and we believe that the IRS and the Treasury Department should continue to seek improvements to the current regulations, with appropriate public input.

Better guidance on how to measure what is the "primary activity" of social welfare organizations was also recommended by the May 2013 TIGTA audit report.

We also are surprised by the Republican views' broad opposition to transparency with respect to disclosing the identity of contributors to groups engaging in extensive political activities. One of the underlying questions in this case is why there was such an apparent surge in applications for tax-exempt status under section 501(c)(4), thereby necessitating the IRS review of whether an applicant's primary activities would be political. As it now stands, groups can obtain tax-exempt status and engage in as much political campaign activity as they want: their activities can be not only *primarily* political but *exclusively* political. They simply have to obtain their tax-exempt status pursuant to section 527 rather than section 501(c)(4); section 527 requires, in turn, greater disclosure, including of the identity of those who contribute $200 or more. To some extent, the increase in applications may have been designed to avoid disclosure requirements.

According to the Center for Responsive Politics, in 2012 nonprofit 501(c)(4) organizations spent over $200 million on political activity.[150] By electing to use 501(c)(4)s instead of 527s, none of the organizations behind this $200 million effort were required to reveal their donors.

Some have pointed to the *Citizens United* case as the reason political spending by nonprofits has increased exponentially. In *Citizens United* v. *FEC* (2010) the Supreme Court invalidated restrictions on independent political campaign expenditures by corporations, associations and labor unions.

Acting IRS Commissioner Steven Miller said at the Senate Finance Committee hearing on the TIGTA report in May of 2013 that:

> There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash that some of that cash

[150] Center for Responsive Politics, 2012 Outside Spending by Group.

> headed towards c 4 organizations. This is proven out by FEC data and IRS data. That does put pressure on us to take a look.[151]

During a time where campaign spending is soaring and the Supreme Court is loosening controls on political spending it is critical that as much transparency as possible is required by federal regulation and law.

Finance Committee Chairman Max Baucus wrote a letter to IRS Commissioner Shulman in September of 2010 encouraging the IRS to investigate the flood of political spending by social welfare organizations. He asked this question: "Is the tax code being used to eliminate transparency in the funding of our elections—elections that are the constitutional bedrock of our democracy?" [152]

The Additional Republican Views sharply criticize proposals to increase disclosure requirements for political campaign contributions, arguing that such proposals would violate free speech, citing the Supreme Court's decision in *NAACP* v. *Alabama*. This shows a lack of confidence in the positive role that transparency plays in our political process, and it also dramatically overstates the constitutional point. The *NAACP* v. *Alabama* decision stands for the proposition that organizations cannot be required to disclose membership lists without a sufficient justification from the government that outweighs the implicated First Amendment and privacy rights.[153] In contrast, the Supreme Court has repeatedly upheld reasonable political campaign disclosure requirements. Most notably, in *Buckley* v. *Valeo*, the Supreme Court considered *NAACP* v. *Alabama* when deciding the constitutionality of campaign finance disclosure rules enacted in the Federal Election Campaign Act of 1971.[154] The disclosure provisions required candidates and political committees to file quarterly reports containing detailed information about donors who contributed over $100.[155] While the Court decided that, as a result of *NAACP* v. *Alabama*, campaign finance disclosure rules should be subject to strict scrutiny, it ultimately decided that the government's interest can prevail in matters where the '"free functioning of our national institutions' is involved." [156] The Court found that the disclosure requirements were a "reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view." [157] The Supreme Court cited three justifications for upholding campaign finance disclosure: (1) campaign finance disclosure laws provide voters with information about candidates, (2) the rules "deter actual corruption and avoid the appearance of corruption," and (3) recordkeeping is required to detect violations of disclosure limitations.[158] Similarly, in *McConnell* v. *FEC*, the Supreme Court upheld the expanded campaign finance

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[151] Senate Finance Committee Hearing, "A Review of Criteria Used by the IRS to Identify 501(c)(4) Applications for Greater Scrutiny" (May 21, 2013) p. 23.

[152] Letter from Chairman Baucus to Commissioner Doug Shulman (Sept. 28, 2010). (Sep. 28, 2010).

[153] NAACP v. Alabama, 357 U.S. 449 (1958).

[154] Buckley v. Valeo, 424 U.S. 1 (1976).

[155] *Id.* at 61.

[156] *Id.* at 66 (quoting Communist Party v. Subversive Activities Control Bd., 367 U.S. 1, 97 (1961)).

[157] *Id.* at 62.

[158] *Id.* pp. 66–68.

disclosure provisions of McCain Feingold, including a provision requiring the disclosure of contributors to political campaigns.[159] Most recently, in *McCutcheon* v. *FEC*, Justice Roberts cited campaign finance disclosure laws as part of the Court's justification for striking down aggregate limits on campaign contributions to candidates.[160] He argued that "disclosure of contributions minimizes the potential for abuse of the campaign finance system."[161] In addition, disclosure laws are more effective against corruption now as opposed to when *Buckley* was decided.[162]

Justice Scalia summed the point up well in a 2010 case (*Doe* v. *Reed*):

> Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.

Chief Justice John Roberts observed in the *McCutcheon* v. *Federal Election Commission* case:

> With modern technology, disclosure now offers a particularly effective means of arming the voting public with information.

Our political system will benefit from *more* transparency, not less.

An argument for why transparency matters was set forth in a New York Times article on March of 2014. A report from a special investigative committee in the Utah state legislature described a 501(c)(4) organization set up solely to fund a candidate for Attorney General who told payday loan companies he would advocate for their policy interests.[163] After winning election in 2012 the Attorney General resigned amid allegations of corruption a year later.[164] The article states that the campaign "exploited a web of vaguely named nonprofit organizations in several states to mask hundreds of thousands of dollars in campaign contributions from payday lenders."[165] According to the New York Times, the Attorney General knew that the public would view his defense of payday lenders as unsavory:

> It was important to 'not make this a payday race,' he (the candidate) wrote. The solution: Hide the payday money behind a string of PACs and nonprofits, making it

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[159] McConnell v. FEC, 540 U.S. 93. The Court left the door open to a challenge to disclosure laws in the case where a "group can show a 'reasonable probability' that disclosing its contributors' names would subject them to threats, harassment or reprisals from either Government officials or private parties." Citizens United v. FEC, 558 U.S. 310, 367 (2010) (citing 540 U.S. 93, 198).

[160] McCutcheon v. FEC, No. 12–536, slip op. (U.S April 2, 2014).

[161] *Id.* p. 35.

[162] *Id.* p. 36.

[163] New York Times, "A Campaign Inquiry in Utah is the Watchdogs' Worst Case" (Mar. 18, 2014).

[164] *Id.*

[165] *Id.*

difficult to trace donations from payday lenders to Mr. Swallow's campaign.[166]

The section in the bipartisan views on flaws in the IRS's response to a FOIA request also demonstrates the need for transparency in the operations of government.

The goal of greater transparency is the basis for many proposals to reform the law governing political advocacy by nonprofits.

B. Statutory Changes are Needed

Democratic staff believes further changes in the 501(c)(4) law are necessary and recommend the following be considered by the Senate Finance Committee.

(1) Require (c)(4)s, (5)s, and (6)s to file notice of formation within 24 hours (same as 527s)

(2) Create a bright-line test on political activity (lobbying and campaigning)—for example, a limitation of 10% of expenditures during the calendar year

(3) Penalty: Apply Section 4955 penalty to (c)(4)s—excise tax on excess political expenditures.

(4) Require the disclosure of donors who contribute over $200 to 501(c)(4)s who engage in political activity (same as 527 organizations), or $1,000, which is the threshold in the Wyden-Murkowski bill.

(5) Require FEC filings to be attached to 990s.

(6) Require electronic filing of 990s (included in the Senate Finance Committee's Tax Administration Discussion Draft).[167]

POSSIBLE ALTERNATIVE PROPOSALS

- Require disclosure similar to 527 organizations (or by cross reference) for tax exempt organizations that do any "electioneering communications" as defined under FEC rules;
- Require tax exempt organizations that wish to fund electioneering communications to fund these operations through a segregated 527 account, thus, contributions would be subject to disclosure; or
- Require these organizations be reclassified as 527 organizations

1. The Follow the Money Act

The Follow the Money Act introduced by Chairman Wyden and Senator Murkowski requires that all individuals and entities engaged in independent political spending, including 501(c)(4)s, disclose the names of donors that contribute over $1,000 per year. The legislation also requires real-time disclosure of significant independent political expenditures by 501(c)(4)s similar to the way political candidates report spending to the FEC. This legislation would lessen the processing burden on the IRS Exempt Organizations office because its disclosure regime will eliminate the incen-

[166] *Id.*

[167] Senate Finance Committee, Summary of Staff Discussion Draft: Tax Administration (Nov. 20, 2013).

tive for organizations to apply for tax-exempt 501(c)(4) status as a means to funnel large anonymous donations into federal elections.

2. Return to the Pre-1959 Standard

A final option which would not require changes in law envisions the IRS reversing its decision in 1959 to interpret "exclusively" as meaning "primarily." The regulatory decision that has led to hundreds of millions of dollars of political spending by "social welfare" organizations could be cancelled by another regulatory decision setting the same standards that applied before 1959.

3. Reform of 501(c)(5) and 501(c)(6) Organizations

The Democratic staff recommends that additional work be done to determine what reforms to 501(c)(5) and 501(c)(6) organizations are needed. Because the TIGTA report did not involve those nonprofit categories, the Democratic staff does not include a discussion of them in these views.

XIV. CONCLUSION

Hundreds of thousands of federal government employees work hard every day to perform their duties, from the CIA personnel that tracked Osama Bin Laden to Abbattobad, Pakistan to the NIH researcher who makes it possible to take steps toward stopping cancer, from border patrol agents preventing human trafficking to weather forecasters tracking hurricanes. Sadly, in this case IRS personnel fell short. They took exactly the wrong approach to evaluating many 501(c)(4) applications, in particular the flood of politically right-leaning organizations. There is no evidence IRS personnel had any political bias, nor did they receive outside interference or pressure from political appointees in the IRS, at Treasury or in the White House, but their actions created the appearance of political bias and discrimination.

This was a consequence of bad management and bad judgment. The director of the Exempt Organizations office, Lois Lerner, deserves the largest share of the blame. It was her job to manage and lead the EO division. In this case she failed to organize her staff to quickly review and either approve or deny the 501(c)(4) applications.

In a generous summary of her performance, former Acting IRS Commissioner Steven Miller said that Lerner "undermanaged" the influx of Tea Party applications.[168] Mr. Miller also took a personnel action against Ms. Lerner, showing his frustration with the failure to resolve the right-leaning applications.[169] Because Lerner refused to testify or be interviewed on this matter, we were not able to establish her side of the story.

This investigation, as well as the TIGTA investigation, did not find any of the IRS actions to be politically motivated. Interviews of IRS personnel showed them to be uninterested in politics or politically naive. The following email from a TIGTA investigator concludes that there was "no indication of" political motivation.

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[168] SFC Interview of Steven Miller (Dec. 12, 2014) pp. 164–165.
[169] *Id.*

> Review of these emails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[170]

Again, Russell George confirmed in a question from House Ways and Means Committee Ranking Member Sander Levin that no political motivation was found:

> Levin: Did you find any evidence of political motivation in the selection of the tax exemption applications?
>
> George: We did not, sir.[171]

IRS employees involved in processing and overseeing the processing of Tea Party applications were each asked if their actions were politically motivated. None of them answered affirmatively.

No evidence was found linking political appointees at the IRS, Treasury or the White House to this delay and mismanagement. No IRS employees identified pressure from political appointees as the cause of the delayed scrutiny of right leaning applications.[172]

This was a case of gross mismanagement, rather than an attempt to exert political influence. While the numbers of left leaning 501(c)(4) applications were not as great as the right-leaning 501(c)(4) applications, the IRS did use the BOLO list to select left-leaning cases. IRS personnel subjected them to a lengthy review, approving some applications and denying others.

The IRS employees set aside Tea Party applications, waiting on a review in Washington D.C., and placed the term on a BOLO list when the applications should have been treated like any other 501(c)(4) seeking nonprofit status and processed accordingly.

To compound the error, various IRS personnel in the Washington D.C. office allowed month after month to go by as they analyzed a handful of the applications. One application was approved on January 11, 2011 by one of the most experienced 501(c)(4) political activity experts, Carter Hull, but his superiors decided even more review was warranted.

At the same time this was taking place efforts were underway to develop a guidesheet to help Cincinnati process the applications. Months were wasted on this project. In the end no guidesheet was ever agreed to.

A key meeting in July of 2011 between Lois Lerner and her team discussed the idea of processing the applications expeditiously, but

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[170] Email from TIGTA Deputy Inspector General for Investigations Timothy Camus to TIGTA staff (May 3, 2013).

[171] House Ways and Means Committee Hearing on IRS Tax-Exempt Investigation (May 17, 2013).

[172] IRS Employee Responses to Written Questions from Finance Committee Staff (Dec. 19, 2013).

there was no follow through—the EO team stumbled along in the remaining months of 2011 until the TIGTA investigation began in early 2012.

While these disorganized efforts to process the applications continued, the Tea Party was attracting massive amounts of media coverage—multiple in-depth articles appeared in the *New York Times*, *the Washington Post*, the *Wall Street Journal* and other publications across the country.

Many political commentators credited the Tea Party with shifting control of the House of Representatives to the Republican Party.

Yet no alarm bells went off at the IRS after the mid-term elections in November of 2010. More than a year and a half went by after this historic election without any efficient or aggressive action on the 501(c)(4) right-leaning applications.

IRS personnel were completely oblivious to the harsh consequences waiting for them because they ignored a new wave of activism in the American political system.

No plan to process the applications quickly was organized until June of 2012—after the TIGTA investigation was begun. By that time it was too late to avoid damage to the reputation of the IRS.

Commentators have complained that any attempt to review an application for 501(c)(4) status, investigate how that nonprofit operates, or for the IRS to propose clarifying the political advocacy rules, is somehow a violation of the Constitution's First Amendment protection of free speech. This demonstrates a misunderstanding of the tax laws of the United States and the Constitution. Any American or group of Americans have freedom of speech in political matters. What they don't have is a Constitutional right to a tax break for engaging in political activity. IRS personnel have the responsibility to scrutinize applications for 501(c)(4) status in an evenhanded, thorough way. And after approving an application the IRS can investigate that nonprofit's activities to determine if the 501(c)(4) law is being followed. Under the law the tax status of nonprofits is determined by the IRS. If the participants in the nonprofit feel their freedom of speech is being limited they are free to engage in political activity outside the tax advantaged status of a 501(c)(4) nonprofit.

Management at the IRS has moved aggressively to address the broken system of processing 501(c)(4) applications with policy advocacy issues.

Four key employees in the IRS who failed to manage properly have been removed from their jobs.

A new process for quickly approving 501(c)(4) applications with political advocacy issues has been put in place.

Finally, the Democratic staff believes the law governing political activity by nonprofits must be strengthened further to prevent abuses.

The Finance Committee staff will continue to monitor the IRS to ensure these mistakes are not repeated.

XV. TIMELINE OF KEY EVENTS

2010

February 25: Tea Party case arrives in Cincinnati Determinations Unit. Because of recent media attention, the case is determined to be "high profile" and sent, along with two other Tea Party applications, to Washington D.C. for analysis.

March/April: Tea Party applications are held in Cincinnati while the D.C. office examines the 3 test cases.

April: Tax Law Specialist Carter Hull is assigned two of the three Tea Party test cases to review. Hull prepares development letters to send to the organizations.

July: EO Determinations holds a screening workshop in Cincinnati. A presentation instructs staff to "look for names like Tea Party, Patriots, 9/12 Project, Emerge, Progressive, We the People."

August: Be On the Lookout or "BOLO" spreadsheet distributed with Tea Party designation added to "Emerging Issues" Tab. Spreadsheet also identifies "Progressive" and "ACORN Successor" on other tabs.

October 18: Hull sends a memo to his manager summarizing the relevant issues of the Tea Party cases he is developing and apprising him of his progress.

October 26: Determinations Director Cindy Thomas expresses concern to her superior about the manner and pace with which Tea Party cases are being worked.

November: Burdensome development questions sent to left-leaning voter registration applicant.

December: Cindy Thomas inquires about status of Tea Party test cases in Washington D.C.

2011

January: Carter Hull recommends approval of Tea Party test case applications. Recommendation sent to senior staff for review.

March: Cindy Thomas is still concerned with pace of Tea Party applications. Recommends developing a specific plan of action to resolve cases.

April: Hull's recommendation is reviewed by a senior staff member, who decides more development of the test cases is needed. The case is sent to personnel in the Chief Counsel's office for review.

July 5: Lois Lerner meets with staff on BOLO list issue (at this point 100 Tea Party cases were in Cincinnati waiting for decisions).

July 5: BOLO terminology changed to remove Tea Party, per instructions from Lerner.

August: Meeting with Don Spellman of Chief Counsel's office to discuss the two Tea Party test applications that had been sent for review.

September: First attempt at application "triage."

November: Guidesheet for evaluating Tea Party applications sent to Cincinnati; IRS personnel did not find it helpful.

2012

January: BOLO terminology changed again, modified to capture conservative and left-leaning groups.

January: Extensive development letters are sent to Tea Party and a few left-leaning applicants.

February: Beginning of press attention regarding failure of IRS to approve or deny 501(c)(4) applications with political activity issues. Lerner attempts to disseminate new guidance to staff on how to reduce burdensome development requests.

March: TIGTA audit begins.

May: Commissioner Doug Shulman and Deputy Commissioner Steven Miller briefed on audit.

May: Workshop conducted on bucketing exercise to expedite Tea Party applications.

May 17: BOLO is changed again to eliminate current advocacy organization language that is capturing conservative and liberal groups.

June: Bucketing exercise begins in Cincinnati.

June 4: Acting General Counsel of Treasury Christopher Meade briefed by Russell George.

End of 2012: Commissioner Shulman leaves IRS, Steve Miller becomes Acting Commissioner.

2013

May: TIGTA report issued.

Chronological Listing of Significant Occurrences – 2002 to 2013

The chronologically arrayed events listed below were derived from documents secured by the Senate Finance Committee from the IRS and other sources, including from interviews conducted by Senate Finance Committee Staff with current and former IRS and Treasury employees.

Date	Occurrence	Key Personnel Involved	Authority
February 22, 2002	Jonathan Levin, attorney at the Federal Election Commission, emails Lois Lerner advising her that he is studying the Shays-Meehan campaign finance reform law. Lerner responds in part by stating "[i]t's pretty exciting that the campaign finance stuff may actually go through."	Lois Lerner, Jonathan Levin	FECSUBP5001236
October 12, 2004	Jonathan Levin, attorney are the Federal Election Commission, emails Lois Lerner and states "once this election is over, we need to get together. I do miss you." Lerner responds ". . . after the election, we'll get together – hopefully to celebrate, but it sure looks iffy!"	Lois Lerner, Jonathan Levin	FECSUBP5001079
November 3, 2006	Mark Shonkwiler, Assistant General Counsel, Federal Election Commission, emails Lois Lerner asking her "which division/office of the IRS would be in the best position to receive a report from the Commission . . . regarding apparent violations of the law in connection with an organization which claims tax exempt status under Section 501(c)(4) status, yet appears to be focused primarily, if not exclusively, on electoral politics – and actually is registered as a state political committee?" Lerner responds that she will accept the report and that she will forward it to the IRS Classification Office, which handles referrals.	Lois Lerner, Mark Shonkwiler	FECSUBP5000751

Date	Occurrence	Key Personnel Involved	Authority
December 19, 2007	A memorandum is sent from the Director of Exempt Organizations Rulings and Agreement Director Robert Choi stating that "[e]xemption applications that present the types of sensitive political issues described below should be assigned for full case development and should not be approved through the EO Determination merit screening process or the EO Technical inventory reduction project." The memo states that these types of activities may be indicators of sensitive political issues: • "Voter registration • "Inaugural host committees • "Post election transition teams (to assist the elected official prior to officially assuming the elected position) • "Voter guides • "Voter polling • "Voter education • "Other activities that may appear to support or oppose candidates for public office."	Robert Choi	IRS0000012298
September 8, 2008	Donna Abner alerts managers that a review of two pending Emerge applications led to the discovery that Emerge applications were previously approved. Abner notes that because of the "partisan nature of the cases – guidance from EO Technical is pending." She recommends "an alert be issued regarding this type of case as well as a reminder that 'sensitive political issue' cases are subject to mandatory review." Brenda Melahn sends forwards Abner's email to some EO managers, including Steven Bowling and John Shafer, reminding them that "any 'political sensitive' case should be sent to [EO Determinations Quality Assurance]. Memo from [Robert Choi] dated 12/19/07 indicate they should be worked as full development cases (not screened out) AND they are mandatory review." [sic]	Donna Abner, Brenda, Melahn, John Shafer, Steven Bowling	IRS0000012294-5
September 24, 2008	Further alerts are sent to EO employees reminding them that "politically sensitive cases" are subject to mandatory review and full development.	Joseph Herr, Sharon Camarillo, Cindy Wescott	IRS0000011492-94, IRS0000444815-16

Date	Occurrence	Key Personnel Involved	Authority
October 10, 2008	EO Technical Tax Law Specialist Justin Lowe asks Jon Waddell to transfer Emerge Maine and Emerge Nevada to EO Technical. He says that EO Technical "will hold on to them here until the litigation on this issue has concluded and then work them." Waddell tells Sharon Camarillo that "we might want to coordinate future receipt of Emerge Cases directly through Group 7821 and we can then send them from one spot to D.C."	Justin Lowe, Jon Waddell	IRS0000012299-12300
October 16, 2008	Deborah Kant tells Cindy Westcott that additional Emerge cases should be held "pending the outcome of a similar issue in the DLC litigation. At that point, we can decide on the best course of action."	Deborah Kant, Cindy Westcott	IRS0000012304
October 21, 2008	A Sensitive Case Report is submitted regarding the Emerge cases. The Sensitive Case Report states that "[t]wo organizations from 2 different states applied for exemption under section 501(c)(4) for the purpose of training women to run for political office. The services are only provided to women affiliated with the Democratic Party and focus on a variety of subjects such as public speaking and press relations, as well as how to conduct fund raising activities. The applications appear to represent potential partisan political activity. Coordination has taken place between EO Determinations, the Quality Office, and EO Technical."	Jon Waddell, Sharon Camarillo	IRS0000012307-08
October 21, 2008	Two Emerge cases are transferred from EO Determinations in Cincinnati to EO Technical in Washington, DC.	Justin Lowe	IRS0000124196

Date	Occurrence	Key Personnel Involved	Authority
February 3, 2009 – March 4, 2009	William A. Powers, Enforcement Attorney, Federal Election Commission, contacts Lois Lerner, Director, Office of Exempt Organizations, by email regarding American Future Fund, a 501(c)(4) organization, and American Issues Project. Powers is seeking information regarding the status of the applications for tax exemption filed by these organizations. Powers advises that American Issues Project appeared to be the successor to two other groups, Citizens for the Republic, and Avenger, Inc. Powers states that he spoke to Lerner "last July" and that Lerner told him then that American Future Fund had not received an exemption letter from the IRS. Lerner asks Judy Kindle and David Fish how the IRS can help the FEC get the information. Kindle locates information in Lexis on Citizens for the Republic (501(c)(4) approved by IRS) and sends it to Powers. David Fish indicates that Mike Seto requested the file in case FEC wanted it.	Lois Lerner, Judith Kindle, David Fish, Robert Choi, Mike Seto	IRS0000009372-75
March 31, 2009	Mike Seto faxes to William A. Powers the following: Form 1024 and Form 990 (2007) for American Issues Project, Inc. (formerly Citizens for the Republic, Inc.), and; Form 1024 for American Future Fund.	Mike Seto, William A. Powers	FECOGC000069
April 3, 2009	William A. Powers thanks Lois Lerner for providing answers to his inquiries about 501(c)(4) organizations. Powers notes that Mike Seto provided the requested information.	Lois Lerner, William A. Powers, Mike Seto	IRS0000123131
May 4, 2009	Siri Buller files a Sensitive Case Report on Emerge organizations noting that the "applications appear to represent partisan political activity." The Emerge cases were transferred to EO Technical in October 2008.	Siri Buller	IRS0000627566-67
June 22, 2009	Siri Buller files a Sensitive Case Report for three Emerge organizations	Siri Buller	IRS0000633497-98
November 19, 2009	A memo from EO Technical manager Steve Grodnitzky states that "[w]e have 3 applications for 501(c)(4) exemption from 'Emerge' organizations in our group. Several of the Emerge organizations have already been recognized as exempt entities. There may be other applications in the pipeline in Cincinnati."	Steve Grodnitzky	IRS00000124181
January 18, 2010	Siri Buller submits a Sensitive Case Report for four Emerge groups.	Siri Buller	IRS0000147518-19

Date	Occurrence	Key Personnel Involved	Authority
January 22, 2010	Michael Tierny, a Quality Assurance Reviewer in Exempt Organizations (EO), Rulings and Agreements (R&A), Quality Assurance (QA), Cincinnati, notes to several of his colleagues in the wake of the Supreme Court's decision in ***Citizens United v. Federal Election Commission***, 130 S. Ct. 876 (decided Jan. 21, 2010) that it "[l]ooks like yesterday's Supreme Court ruling is going to result in more (c)(4)s engaging in political activities and the death of 527s." Tierny's email contained an attachment with a January 21, 2010 article published by Politico. The article cites "[l]eading Republican election lawyer Ben Ginsberg and four colleagues at Patton Boggs" who circulated a memo titled "Citizen's United v. FEC – Opportunities for Participation Grow." Ginsberg described 501(c)(4)s and 501(c)(6)s in the following manner: "Likely to emerge as the biggest players in the 2010 and 2012 elections, ideological groups and trade associations also have been granted the ability to engage much more robustly in the political process. Meager disclosure requirements of their donors will make them a favorite repository of funds for independent expenditures."	Michael Tierny, Donna Abner	IRS0000639344-48
January 22, 2010	Lois Lerner communicates by email with Steve Miller, Sarah Hall Ingram, and Nancy Marks regarding the Supreme Court's decision in ***Citizens United***. Lerner summarizes the holding and expresses the view that the case probably does not change the IRS rules regarding tax exemption. Lerner suggests that the IRS prepare itself for inquiries regarding campaign spending by 501(c)(3) and (c)(4) organizations. Nancy Marks suggests doing a few "plain English Q&A's" that explain that the decision does not apply to the laws governing political activities by exempt organizations. Sarah Hall Ingram agrees and asks Lerner, Marks and Cathy Livingston to prepare a FAQ that can go on the IRS website. She also expresses the concern that the case will result in a "test of the tax exemption issue" in the courts.	Lois Lerner, Steve Miller, Nancy Marks, Sarah Hall Ingram, Cathy Livingston	IRS0000444375-77
January 24-25, 2010	Cathy Livingston prepares several draft FAQs on ***Citizens United*** and sends them to Lerner, Marks, Ingram, and Flax. Flax revises the FAQ's and sends them to Steve Miller. The FAQs re-state established law regarding the activities of 501(c)(3), (c)(4), (c)(5) and (c)(6) organizations and provide that the ***Citizens United*** case did not address the requirements that Congress imposed on organizations as a condition of being tax exempt.	Cathy Livingston, Lois Lerner, Sarah Hall Ingram, Steve Miller, Nikole Flax	IRS0000442110-12

Date	Occurrence	Key Personnel Involved	Authority
January 25, 2010	Lois Lerner expresses concern over the FAQ that states that the ***Citizens United*** case did not address the requirements that Congress imposed on organizations as a condition of being tax exempt. Lerner states that "[t]his is the danger zone no matter what we say." Cathy Livingston agrees and recommends that this FAQ not be used as the IRS has not had time to analyze the case and consider "language in the opinion that raises questions." The FAQs are provided to Doug Shulman, Steve Miller and Frank Keith who revise them, in case Shulman is asked about the case.	Cathy Livingston, Lois Lerner, Nikole Flax, Doug Shulman, Steve Miller, Frank Keith.	IRS0000442122-24
February 2, 2010	William A. Powers, Enforcement Attorney, Federal Election Commission, writes to Lois Lerner and states that last year, Lerner and her staff provided him with copies of publicly available information filed by American Issues Project, Inc. He notes that Lerner and staff provided him with the group's Forms 8718, 1024, 8868 and 990 for 2007. He asks Lerner if she would provide him with the group's Form 990 for 2008 and any additional publicly available forms that it may have filed after 2007. Lerner indicates that she will have someone check and get back to him.	William A. Powers, Lois Lerner	IRS0000123133
February 25, 2010	Jack Koester, a Determinations Unit screener in Cincinnati, is assigned an application for exemption under 501(c)(4) from a "Tea Party." Koester informs his manager, John Shafer, about the application and suggests that "recent media attention to this type of organization indicates to me that this is a 'high profile' case." Koester notes that the applicant organization has indicated in its 1024 that it may support political candidates. Shafer sends Koester's email to Sharon Camarillo, Area Manager, and tells her that he will "hold this case" pending a determination whether it is a "high profile case." Camarillo forwards the case to Cindy Thomas, requesting that Thomas "let 'Washington' know about this potentially politically embarrassing case involving a 'Tea Party' organization."	Jack Koester, John Shafer, Sharon Camarillo	IRS0000180869-73
February 25, 2010	Cindy Thomas alerts Holly Paz that EO Determinations has received an application for exemption under 501(c)(4) from a Tea Party organization and asks if EO Technical wants the case "because of recent media attention." Paz responds "I think sending it up here is a good idea given the potential for media interest." Thomas asks Shafer to "thank Jack for identifying the issue and elevating it."	Holly Paz, Cindy Thomas, John Shafer	IRS0000180869-73

Date	Occurrence	Key Personnel Involved	Authority
March 01, 2010	Sharon Camarillo asks Cindy Thomas to alert EO Technical to a "potential new twist on the former ACORN organization." Camarillo notes that "ACORN may have gone out of business, but has re-organized into several different organizations with the same purpose." She agrees with a recommendation from John Shafer that they "not open a new TAG issue until we actually receive one these organizations and can make an assessment for their potential for fraud or other abuse."	Sharon Camarillo, Cindy Thomas, John Shafer	IRS0000458448-51
Early March 2010	John Shafer, Screening Group Manager, asks Gary Muthert, a screener in his Group, to search the databases to find out if other Tea Party groups have filed applications for exemption. Muthert finds 7 Tea Party cases and sends them to Shafer. Muthert continues to search the databases until May 2010.	Gary Muthert, John Shafer	SFC Interview of Gary Muthert, (July 30, 2013) not transcribed
March 16-17, 2010	John Shafer advises Cindy Thomas that there are now 10 Tea Party applications pending in EO Determinations. In addition, three have been approved (one 501(c)(3) and two 501(c)(4) organizations). Thomas asks Holly Paz if all the cases should be transferred to EO Technical. Paz determines to take two cases in total and for Thomas to "hold the rest until we get a sense of what the issues may be."	Cindy Thomas, John Shafer, Holly Paz	IRS0000180869-73
March 17, 2010	Ronald Shoemaker sends an email to his staff advising "[b]e on the lookout for a tea party case. If you have received or do receive a case in the future involving an organization having to do with tea party let me know."	Ronald Shoemaker	IRS0000631577
March 17, 2010	John Shafer sends two Tea Party cases to EO Technical – one an application for exemption under 501(c)(3) and the other an application for exemption under 501(c)(4). Shafer tells Cindy Thomas that he will hold the remaining Tea Party cases in his group under status 75 (not for general assignment).	John Shafer, Cindy Thomas	IRS0000181003-07
March 22-24, 2010	Cindy Thomas forwards Sharon Camarillo's March 1, 2010 email about potential ACORN cases to Steven Grodnitzky. Grodnitzky alerts Robert Choi that "it appears that ACORN is morphing into new organizations. According to Cincy, there was one organization that came in for exemption, but they believe it was closed [for failure to establish]. Will keep you updated as to new developments in this area. May cause some press attention."	Cindy Thomas, Sharon Camarillo, Steven Grodnitzky, Robert Choi	IRS0000458448-51

Date	Occurrence	Key Personnel Involved	Authority
March 26-28, 2010	Robert Choi asks for a "summary from Cincy regarding this issue of ACORN morphing into new entities." A technical advisor from Rulings and Agreements tells Choi that "[a]lthough an organization is required to disclose on its application if it is taking over the activities of another…we may have difficulty trying to put an alert for these applications because I don't know if we have identifies all the ACORN entities they would replace." [sic] Jon Waddell writes that "[t]o my knowledge, we have yet to see any of these applications…"	Robert Choi	IRS0000458448-51
March 31, 2010 to April 2, 2010	Steve Grodnitzky, Acting Manager, EO Technical, is made aware that two Tea Party applications are being worked in EO Technical. Grodnitzky determines that a Sensitive Case Report (SCR) needs to be completed since "[t]hese are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them." Cindy Thomas agrees and informs Grodnitzky that there are a total of 11 Tea Party cases and that three have been approved (two have been granted exemption under 501(c)(4) and the third under 501(c)(3)).	Steve Grodnitzky, Cindy Thomas	IRS0000165413-14
April 1, 2010	Lois Lerner reminds Rob Choi and Nanette Downing that it is their responsibility to review Sensitive Case Reports (SCR) and provide feedback to staff before the SCRs go forward. She states that SCRs "go all the way to the Commissioner's Office."	Lois Lerner, Robert Choi, Nanette Downing	IRS0000162656
April 5, 2010	Steve Grodnitzky asks Cindy Thomas for information on each Tea Party case pending in Cincinnati so that the information can be included in the SCR. Thomas asks Gary Muthert, a Screener in the Screening Group, to prepare a list of the cases showing the code section that the organizations are applying under. Muthert prepares a list showing 18 cases, three of which have already been approved.	Steve Grodnitzky, Cindy Thomas, Gary Muthert	IRS0000165415-19

Date	Occurrence	Key Personnel Involved	Authority
April 5, 2010	Steve Grodnitzky assigns the two Tea Party cases to Ronald Shoemaker's Group within EO Technical. The plan is for EO Technical to work the cases and then develop some guidance for EO Determinations to use on its pending cases. Shoemaker assigns the two Tea Party cases to Carter C. Hull, a Tax Law Specialist in Shoemaker's Group, based on Hull's expertise on evaluating applications from organizations seeking exemption under 501(c)(4).	Carter C. Hull, Ronald Shoemaker	IRS0000433722 IRS0000166266-67 SFC Interview of Ronald Shoemaker (July 31, 2013) not transcribed SFC Interview of Steve Grodnitzky (Sep. 25, 2012) p. 23
April 6, 2010	Jon Waddell, Group Manager, EO Determinations, provides Sharon Camarillo and Brenda Melahn with a copy of the latest draft of the "Joint TAG/Emerging Issues Spreadsheet." The spreadsheet is based on the current TAG spreadsheet that informs agents about cases that may raise fraud issues, tax avoidance schemes or that may involve possible terrorist groups. The "Joint" spreadsheet is now expanded to include "Emerging Issues," which are issues for which there is no clear precedent, as well as "Watch for List" cases, which are cases not yet received, but that will require special handling when received. The draft "Joint" spreadsheet contains a tab for each group of cases. Waddell indicates that he and Joseph Herr have been meeting to discuss methods for updating the spreadsheet and will continue to work together to develop a proposal for consideration.	Jon Waddell, Sharon Camarillo, Brenda Melahn	IRS0000629335-48
April 6, 2010	Carter Hull asks Siri Buller for materials relating to Emerge cases because it may help him with his work on the Tea Party cases. Buller replies to Hull, "I'm not sure how similar they are to the Tea Party applications, but I have attached the proposed denial letter for one of the organizations."	Carter Hull, Siri Buller	IRS0000012132
April 10, 2010	Cindy Thomas advises Sharon Camarillo and Brenda Melahn to include in the Joint Issues spreadsheet a tab for "Consistency" cases, or cases that require consistent treatment but that are not cases involving TAG or Emerging issues. She directs that the spreadsheet be completed by the end of April 2010 and states that it can be introduced to the EO Determinations agents along with the Emerging Issues procedures at the Continuing Professional Education (CPE) training session in June/July 2010.	Cindy Thomas, Sharon Camarillo, Brenda Melahn	IRS0000629335-48

Date	Occurrence	Key Personnel Involved	Authority
April 12, 2010	Sharon Camarillo informs Cindy Thomas that several names for the Joint Issues spreadsheet have been considered, but rejected. She asks Thomas if she has "any ideas as to what to call this spreadsheet."	Sharon Camarillo, Cindy Thomas	IRS0000629335-38
April 14, 2010	The EO Determinations screening group (Group 7838) holds a group meeting. Gary Muthert gives a presentation on Tea Party cases. He informs the screeners that three cases have been approved, including a 501(c)(3) organization. Muthert advises that EO Determinations is awaiting guidance from EO Technical on the Tea Party cases and that John Shafer is holding Tea Party cases in his office.	Gary Muthert, John Shafer	IRS0000168256-57
April 16, 2010	Siri Buller submits an SCR about four Emerge chapters. The estimate closure date is June 30, 2010.	Siri Buller	IRS0000638426-27
April 19, 2010	Carter C. Hull prepares the first Sensitive Case Report on the two Tea Party cases assigned to him. The Prescott Tea Party is an applicant for exemption under 501(c)(3) and the Albuquerque Tea Party is an applicant for exemption under 501(c)(4). Estimated closure date is September 30, 2010. The applicable sensitive case criterion is that the cases are "[l]ikely to attract media or Congressional attention." Hull notes that "[t]he various 'tea party' organizations are separately organized, but appear to be part of a national politically conservative movement that may be involved in political activities. The 'tea party' organizations are being followed closely in national newspapers . . . ." Hull also informs that Cincinnati is holding three applications for exemption under 501(c)(3) and ten for exemption under 501(c)(4), and that Cincinnati has approved exemption for two 501(c)(4) groups and a 501(c)(3) group that may be Tea Parties.	Carter C. Hull, Ronald Shoemaker	IRS0000164074-75
April 23, 2010	Steve Grodnitzky informs Cindy Thomas that EO Technical is working on two Tea Party cases. A development letter has been sent out on the 501(c)(3) organization and a development letter will shortly be prepared for the 501(c)(4) organization. Grodnitzky suggests that EO Technical coordinate with EO Determinations in the processing of the cases.	Steve Grodnitzky, Cindy Thomas	IRS0000181051-52

Date	Occurrence	Key Personnel Involved	Authority
April 25, 2010	Cindy Thomas and Brenda Melahn assign to Joseph Herr, manager of EO Determinations Group 7825, an emerging issue called "Tea Party." Herr assigns to Liz Hofacre, the Emerging Issues Coordinator, approximately 20 Tea Party cases and tells Hofacre to contact Ron Shoemaker to coordinate her work on those cases with EO Technical' s work on its two Tea Party cases. Emerging Issues cases are those cases where there is little or no precedent, or unclear precedent.	Cindy Thomas, Liz Hofacre	IRS0000181051-52 SFC Interview of Joseph Herr (June 18, 2013) not transcribed SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 15, 39
April 27, 2010	Jon Waddell sends a revised version of the draft Joint Issues spreadsheet to Sharon Camarillo and Brenda Melahn for their information. The draft spreadsheet now contains tabs for TAG cases, Emerging Issues, Coordinated Cases, and Watch For cases.	Jon Waddell, Sharon Camarillo, Brenda Melahn	IRS0000629453-54
April 28, 2010	Grant Herring, EO Determinations agent, explains that Liz Hofacre designed the Joint Spreadsheet. Herring notes that "Watch For" cases are cases that EO Determinations thinks that they will see, but have not yet seen. Herring writes that the issues in the cases are driven by recent events like changes in the law.	Grant Herring, Jon Waddell, Brenda Melahn, Sharon Camarillo	IRS0000629453-54
April 28, 2010	Steve Grodnitzky, Acting Manager of EO Technical, prepares a chart summarizing the SCRs for EO Technical for the period ending April 28, 2010 and sends the chart to Lois Lerner and Robert Choi. In his email, Grodnitzky advises Lerner and Choi that EO Technical is working on two Tea Party cases and assisting EO Determinations in developing thirteen other Tea Party cases assigned to EO Determinations.	Steve Grodnitzky, Lois Lerner, Robert Choi	IRS0000141809-11
April 28, 2010	Sharon Camarillo emails Cindy Thomas and Robert Choi that EO Determinations has received two applications from successors to ACORN. One of the groups, previously closed for "failure to establish," has been reopened and no action has been taken on the other.	Sharon Camarillo, Cindy Thomas, Robert Choi	IRS0000458467

Date	Occurrence	Key Personnel Involved	Authority
April 28, 2010	An IRS inter-office research team completes its research into allegations of illegal activity by ACORN, its affiliates and employees. The research team was formed to investigate allegations that ACORN was engaged in actions inconsistent with tax-exempt status, including systematic commingling of funds between taxable and tax-exempt entities and individuals associated with ACORN. The Research team found evidence of: the cover-up of an embezzlement committed by a board member; possible conflicts created by employees working for multiple affiliates and staffers and members serving on the Board of Directors; improper money transfers among the affiliates; lack of proper documentation of financial transactions; and possible improper use of donations as well as pension and health care benefit funds. The research team concluded that these findings together with ACORN's apparent loose governance and a lack of respect for the corporate structure warranted a closer examination by the IRS into the financial practices of ACORN and its affiliates to determine if its tax-exempt status was appropriate.	Nancy Todd, Joseph Urban	IRS0000713483-87
May 1, 2010	The Groups within EO Determinations are realigned. Several employees are moved to different groups and some responsibilities are shifted among the Groups. Liz Hofacre moves to Group 7822 from Group 7825. With Hofacre's reassignment, responsibility for Emerging Issues now resides in Group 7822 (Steve Bowling, Manager). Hofacre remains Emerging Issues Coordinator in Group 7822. Joseph Herr, manager of Group 7825, is reassigned to new duties unrelated to supervision.	Liz Hofacre, Steve Bowling, Joseph Herr	SFC Interview of Steve Bowling (June 13, 2013) not transcribed SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 14-16 SFC Interview of Joseph Herr, (June 18, 2013) not transcribed
May 1, 2010-October 2010	Liz Hofacre's primary responsibility while in Group 7822 is to work Tea Party cases by reviewing applications and preparing development letters. Screeners send Hofacre applications for exemption, most of which contain the name "Tea Party" or that are from conservative organizations that engage in the same type of political activities as Tea Parties.	Liz Hofacre	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 18-19

Date	Occurrence	Key Personnel Involved	Authority
May 1, 2010 to October 2010	Liz Hofacre performs a secondary screening on the cases sent to her by the Screening agents and uses the criteria "Tea Party," "9/12," "Patriots," or statements in the application advocating for smaller government, or promoting the Bill of Rights to ensure that the cases are correctly identified as Tea Party cases. These are the same criteria that the screeners are using. Screeners are not first attempting to determine if there is possible political activity in an application. Any cases that contain the above words are automatically sent to Hofacre, along with cases that don't contain the words but that include statements about smaller government, etc. Over the months, Hofacre also receives cases from organizations that are left-leaning and right-leaning but do not fit the criteria for a Tea Party case. She returns the left-leaning cases to the EO Determinations agent that sent them to her. In the event the application from a left-leaning group comes from a screener, it is sent to general inventory. If an application from a conservative group is sent to her by another EO Determinations agent, and the application does not meet the Tea Party criteria, it is also sent back to the agent or to general inventory. Steve Bowling instructs Hofacre to treat the cases that don't meet the Tea Party criteria this way. Hofacre usually discusses the cases that don't meet the Tea Party criteria with Bowling before sending them back to an agent or to general inventory. Cases sent back to an agent or to general inventory are worked and determinations made on them. They are not caught in the Tea Party "net" and delayed.	Liz Hofacre	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 45-52
May 1, 2010 to October 2010	Upon preparing draft development letters, Hofacre emails them to Hull for his review per Hull's direction and faxes him a copy of the file containing the 1023 or 1024 and supporting documents. Hull reviews her questions and on occasion, suggests additional questions. He never writes any development letters for her and his revisions are not substantial. Steve Grodnitzky also revises her questions in one instance. Steve Bowling is aware of the process used by Hofacre and Hull. Hofacre generally communicates with Hull by phone.	Liz Hofacre, Carter C. Hull	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 55-58

Date	Occurrence	Key Personnel Involved	Authority
May 6, 2010	Liz Hofacre sends Joseph Herr a draft Joint Issues spreadsheet that refers to "Tea Parties" as an "emerging issue" and directs agents to "[c]oordinate with group 7825."	Liz Hofacre, Joseph Herr	IRS0000352978-84 IRS0000542119-24
May 13, 2010	Steve Grodnitzky sends Lois Lerner and Robert Choi information about cases handled by EO Technical in April 2010, which includes a reference to the Tea Party cases. Lerner responds asking about the Tea Party cases, and specifically, asks if they are seeking exemption under 501(c)(3), and if they are, the basis of their exemption requests. Lerner states that "[a]ll cases on your list should not go out without a heads up to me please." Grodnitzky replies by telling Lerner and Choi that EO Technical is working on two Tea Party cases – one an application for exemption under 501(c)(3) and the other under 501(c)(4). He tells Lerner that there are ten more cases pending in EO Determinations and that most are applications for 501(c)(4) status. He advises that the organizations claim that education is their primary purpose, but that the "big issue" is whether they are involved in campaign intervention. He tells Lerner and Choi that the cases in EO Technical are in development and that no case will be resolved until Lerner and Choi provide clearance.	Steve Grodnitzky, Lois Lerner, Robert Choi	IRS0000167872-73
May 17, 2010	Carter C. Hull sends two development letters to Liz Hofacre to use as samples when preparing her letters. Steve Grodnitzky tells Carter C. Hull to speak to EO Determinations about the development letters and how the questions that Hull asked in the letters applied to the facts of his cases. Grodnitzky is concerned that without an explanation, EO Determinations may just use Hull's letters without tailoring them to the specific facts of their cases. Hull advises Grodnitzky that he has spoken to Hofacre, that she has about 20 Tea Party cases, and that she will be sending her draft development letters to Hull for his review before sending them to the applicant organizations.	Steve Grodnitzky, Carter C. Hull	IRS0000631583-84
May 18, 2010	IRS employee Grant Herring alerts Joseph Herr to an application "which many internet sources allege is an ACORN affiliate or front." He writes, "I don't think this org's activities are nonpartisan in effect: they don't say 'Republican' or 'Democrat,' but they target their extremely-well-funded-by-left-leaning-PFs voter registration activities to areas where traditional Democratic constituencies are concentrated. I don't think it would be difficult for EOT to revoke the approval letter."	Joseph Herr, Grant Herring	IRS0000629458

Date	Occurrence	Key Personnel Involved	Authority
May 24, 2010	Carter C. Hull prepares an SCR for the Tea Party cases for May 2010. The SCR indicates that the Prescott Tea Party, the applicant for exemption under 501(c)(3), failed to submit requested information and that its application was closed for failure to establish (FTE). Hull requests that EO Determinations send him another 501(c)(3) application from a Tea Party. Albuquerque Tea Party, the applicant for exemption under 501(c)(4), requests an extension of time to respond to its development letter. Estimated closure date is September 30, 2010. Siri Buller prepares an SCR for the four Emerge cases. She notes the denial letter for Emerge Maine is being reviewed by TEGE Counsel. The estimated closure date is July 30, 2010.	Carter C. Hull, Ronald Shoemaker	IRS0000163997-164013 (Email attachments containing taxpayer information omitted by Committee staff) IRS0000163242-43
May 27, 2010	Steve Grodnitzky sends Lois Lerner and Rob Choi an SCR summary chart for May 2010. Included in the summary chart is a description of the Tea Party cases being worked by Hull.	Steve Grodnitzky, Lois Lerner, Robert Choi	IRS0000141812-14
May 27, 2010	Carter C. Hull begins reviewing proposed development letters prepared by Liz Hofacre for the Tea Party cases. Hull communicates his comments on the proposed letters to Hofacre by telephone. Hofacre cannot send out development letters until Hull approves them. According to Hofacre, the requirement that EO Technical first approve a development letter before EO Determinations can issue it is an unusual practice and not the way EO Technical had assisted EO Determinations in the past.	Liz Hofacre, Carter C. Hull	IRS0000433722 SFC Interview of Liz Hofacre (Sep. 24, 2013) pp. 58-65
May 28, 2010	Lois Lerner advises Nanette Downing and Robert Choi that she doesn't always have time to read SCRs and going forward, she would like to set up an hour to go over SCRs when they are ready, as she has many questions that cannot be answered in the short format of the reports.	Lois Lerner, Robert Choi, Nannette Downing	IRS0000162663
June 3, 2010	A freelance journalist submits a request under the FOIA to Eva Littlejohn, IRS Disclosure Office, seeking "documents relating to any training, memos, letters, policies, etc. that detail how [TE/GE] reviews applications for non-profits, 501(c)(3)s, and other not-for-profit organizations specifically mentioning 'Tea Party,' 'the Tea Party,' 'tea party,' 'tea parties.'"	Eva Littlejohn	IRS0000163600-06

Date	Occurrence	Key Personnel Involved	Authority
June 3, 2010	House Oversight Committee Ranking Member Darrell Issa writes a letter with an attached congressional report to Commissioner Doug Shulman informing Shulman that on "April 21, 2010, the United States Court of Appeals for the Second Circuit granted an emergency stay to the government, suspending the lower court decision declaring Congress's ban of federal funds to ACORN unconstitutional. The congressional ban on funds to ACORN thus remains in effect. I ask that you do not stop your investigation into ACORN and its use of federal funds. I ask that you maintain oversight over ACORN's rebranded affiliates."	Doug Shulman	IRS0000459733-42
June 6, 2010	Richard Daly sends a number of SCRs to Sarah Hall Ingram and Joseph Grant, among other recipients. Included in the SCRs is the May 24, 2010 SCR on the Tea Party cases prepared by Carter C. Hull. Estimated closing date is September 30, 2010. Ingram does not read the SCRs. She subsequently tells the SFC that "I relied on my directors to bring me the ones they thought they were worried about."	Richard Daly, Sarah Hall Ingram, Robert Choi	IRS0000163997-164013 (Email attachments containing taxpayer information omitted by Committee staff) SFC Interview of Sarah Hall Ingram (Dec. 16, 2013) pp. 41-51

Date	Occurrence	Key Personnel Involved	Authority
June 7, 2010 to July 19, 2010	EO Determinations conducts Continuing Professional Education (CPE) sessions for its employees. During these sessions, Determinations employees are given a PowerPoint instruction on "Heightened Awareness Issues." Those issues are now contained in a new "Combined Excel Workbook" (the Joint Issues spreadsheet of April and May) that contains tabs for: "TAG" (Touch and Go) cases; "TAG Historical" cases; "Emerging Issues;" "Coordinated Processing" cases; and "Watch For" cases. Agents are given an explanation of each tab of the spreadsheet. They are told that "TAG" cases are those that involve abusive tax avoidance transactions, fraud, or applicants potentially involved in terrorism. "TAG Historical" cases are TAG cases that are no longer generally encountered, but that may be encountered so agents should be aware of them. "Emerging Issues" are cases where there is no established precedent, or cases arising from significant current events or changes to tax law. An example of an emerging issue presented to the participants is the Tea Party cases. The PowerPoint indicates that: these are "High Profile Applicants;" the Tea Party is a "Relevant Subject in Today's Media;" there is a "Potential for Political/Legislative Activity;" and, "Rulings Could be Impactful." "Coordinated Cases" are defined in the PowerPoint as "Cases with Issues Organized for Uniform Handling" and that "Existing Precedent or Guidance Does Exist." For "Emerging Issue" cases like the Tea Party cases, agents are directed to "complete the required referral form and submit to your manager." "Watch For" issues are described as involving "applications not yet received" in which the issues are the result of significant changes in the law or in world events. When received, applications will require "special handling." An example of a "Watch For" issue presented to the participants is "Successors to Acorn." For "Watch For" issue cases, agents are also directed to refer the cases to their managers. The PowerPoint indicates that a designated coordinator will maintain the Excel workbook and issue alerts by email. The PowerPoint instructs agents to follow certain procedures when encountering cases on the Combined Excel Workbook."	EO Determinations staff	IRS0000557291-308 IRS0000195587

Date	Occurrence	Key Personnel Involved	Authority
June 8, 2010	Steven Grodnitzky tells Cindy Thomas that he wants to "make sure we are all on the same page as to ACORN-related cases. We should not be developing or resolving them at this point. I had spoken to Rob about a successor to one of the ACORN orgs in NY and he mentioned that some activity is going on in the TEGE Commissioner's office with respect to ACORN and to hold off." Grodnitzky recommended that an Acorn-related voter registration organization be "put on hold til we hear further from [Robert Choi]." He also stated that "ACORN is a member of the organization, contributes money, appoints a member of the board, and the principal was a high ranking official with ACORN in the Midwest."	Steven Grodnitzky, Cindy Thomas, Donna Abner	IRS0000054956
June 11 – 14, 2010	Sharon Baker, Disclosure Specialist, apprises Matthew Giuliano, Tax Law Specialist, EO, and Mike Seto of the FOIA request received from a freelance journalist on June 3, 2010 seeking documents related to how TE/GE reviews Tea Party applications. On June 14, 2010, Giuliano sends the request to numerous recipients and asks that they provide responsive documents by COB.	Sharon Baker, Matthew Giuliano, Mike Seto	IRS0000163600-06
June 21, 2010	An internal memorandum was sent to various IRS offices regarding "Investigative Research Findings" about ACORN and ACORN affiliates. The memo states that "[b]ased on the information reviewed, there appears to be sufficient evidence to warrant further investigations of the activities of ACORN and associated individuals and organizations."	Nancy Todd, Joseph Urban	IRS0000474708
June 22, 2010	Carter C. Hull prepares an SCR for the Tea Party cases for June 2010. The SCR advises that the 501(c)(4) Tea Party applicant submitted information in response to a development letter and that Hull was evaluating the information. Estimated closure date is September 30, 2010. Siri Buller prepares an SCR for the four Emerge cases. TEGE Counsel is reviewing the proposed denial of Emerge Maine.	Carter C. Hull, Ron Shoemaker	IRS0000164020-43 (Email attachments containing taxpayer information omitted by Committee staff) IRS0000163284-85
June 30, 2010	Carter C. Hull is assigned the application for exemption under 501(c)(3) from American Junto, a Tea Party-type organization, as a replacement for the application that he closed for failure to establish (Prescott Tea Party).	Carter C. Hull	IRS0000433722

Date	Occurrence	Key Personnel Involved	Authority
July 1, 2010	Richard Daly sends TE/GE's SCRs for June 2010 to Nikole Flax, Sarah Hall Ingram and Joseph Grant. Included in the SCRs was the June 22, 2010 SCR prepared by Hull and Shoemaker on the Tea Party cases assigned to Hull and the June 22, 2010 SCR prepared by Siri Buller on the Emerge cases.	Richard Daly, Nikole Flax, Sarah Hall Ingram, Joseph Grant, Siri Buller	IRS0000164020-43
July 6, 2010	Steve Grodnitzky informs Cindy Thomas that EO Technical is working the Tea Party applications in coordination with Cincinnati. Grodnitzky states: "[w]e are developing a few applications here in DC and providing copies of our development letters with the agent to use as examples in the development of their cases."	Steve Grodnitzky, Cindy Thomas	IRS0000165422-24
July 7, 2010	Carter C. Hull sends a development letter to American Junto, the 501(c)(3) Tea Party organization that he was assigned as a replacement when the application from Prescott Tea Party was closed. The letter contains 16 numbered questions.	Carter C. Hull	IRS0000011197-11200
July 8, 2010	Sarah Hall Ingram and Joseph Grant are provided a copy of the internal IRS investigation report into the activities of ACORN. The report concludes that there is sufficient evidence of improper activities by ACORN, its affiliates and associated individuals to warrant further investigation of ACORN by the IRS.	Nancy Todd, Sarah Hall Ingram, Joseph Grant	IRS0000713482
July 15-16, 2010	Cindy Thomas tells Robert Choi that "[i]t appears as though we have another case that may be a potential successor to Acorn…We placed the other case in suspense pending guidance from the Washington Office and are doing so with this case." Choi asks Thomas to "[c]heck-in with me next week re this case. We may be moving forward on developing these applications."	Cindy Thomas, Robert Choi	IRS0000054949-50
July 23, 2010	Siri Buller prepares an SCR for four Emerge cases. The estimated closure date is December 31, 2010.	Siri Buller	IRS0000163327-28
July 26, 2010	Carter C. Hull prepares an SCR for the Tea Party cases assigned to him. The SCR indicates that Hull is preparing a second development letter for Albuquerque Tea Party, the 501(c)(4) organization, and that he has sent a development letter to the replacement 501(c)(3) organization, American Junto. Estimated closing date is August 31, 2010.	Carter C. Hull, Ronald Shoemaker	IRS0000807114-15

Date	Occurrence	Key Personnel Involved	Authority
July 27, 2010	A "Combined Issue Spreadsheet" is prepared for use by EO Determinations agents. The "Emerging Issues" Tab of the spreadsheet informs the agents about "Tea Party" cases. The spreadsheet indicates that "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)." The entry in the spreadsheet further directs that "[a]ny cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT." The "Watch For" tab of the spreadsheet also contains the entry "ACORN successors." It states that "[f]ollowing the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications." The entry directs that "[i]f you see these cases, they should be sent to the TAG group." The TAG Historical tab contains an entry that concerns the term "Progressive" and indicates that the issue is "political activities." It states that the "[c]ommon thread is the word 'progressive.' Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican."	Liz Hofacre	IRS0000352978-84 IRS0000621837-52
July 27, 2010	Grant Herring reported that he sent a detailed development letter to a voter registration organization that he believed was a politically biased and may be an ACORN-successor organization.	Grant Herring	IRS0000622672

Date	Occurrence	Key Personnel Involved	Authority
July 28, 2010	EO Determinations holds a Screening Workshop in Cincinnati. Participants include the screeners, EO Quality Assurance staff, Area 1 and 2 Managers, and Cindy Thomas, the Determinations Program Manager. A PowerPoint presentation is given at the workshop. The slide that discussed "Politics" contained a picture of an elephant and a donkey. The slide presentation instructs IRS employees to "look for names like…Tea Party…Patriots…9/12 Project…Emerge…Progressive…We the People." The next slide advises that "[t]hese organizations may file a Form 1023 or 1024" and "[m]ost will file as IRC 501(c)(4)." A subsequent slide states: "Concerns: May be more than 50% political, possible PAC (Political Action Committee)." Notes from the presentation state that Gary Muthert addresses the group and indicates that the focus of review for Tea Party applications is on political activity, and that if a screener is in doubt about that activity, he/she should forward the case to Group 7822. Names and/or titles like "9/12 Project," "We The People," "Rally Patriots," "Emerge," "Pink-Slip Program," and "Progressive" should be flagged for review. Liz Hofacre, described in the notes as the "Tea Party coordinator" advises the attendees that "Progressive" applications are not considered "Tea Parties."	Gary Muthert, Liz Hofacre	IRS0000006700-04 IRS0000169695-720
July 30, 2010	Theodore Lieber sends SCRs prepared by Rulings and Agreements staff to Lois Lerner and others. Included among the SCRs is the July 26, 2010 SCR prepared by Carter C. Hull describing the work performed by Hull on the Tea Party cases (Prescott Tea Party, Albuquerque Tea Party, and American Junto) assigned to him.	Theodore Lieber, Lois Lerner	IRS0000807076-807115 (Email attachments containing taxpayer information omitted by Committee staff)
August 2010	A contest to rename the "Combined Issues Spreadsheet" (also called the "Joint Issues spreadsheet" and the "Combined Excel Workbook") is held in EO Determinations. The prize for the winning suggestion is one hour of administrative leave. Joseph Herr suggests using the name "BOLO" (Be On the Look Out) spreadsheet. The suggestion wins. Herr gives Liz Hofacre credit for suggesting the "BOLO" moniker.	Liz Hofacre, Joseph Herr	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 126-128
August 2010	In August 2010, Liz Hofacre stops hearing from Carter C. Hull. She sends him development letters to review, but doesn't hear back from him. Hull essentially stops communicating with Hofacre through August, September and October.	Liz Hofacre, Carter C. Hull	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 57-59

Date	Occurrence	Key Personnel Involved	Authority
August 2010 to October 2010	Liz Hofacre tells Steve Bowling that she is "inundated" with Tea Party cases and responses. Bowling tells her that EO Determinations is awaiting advice from EO Technical. When a case is assigned to Hofacre, she has 5 days to review it and 5 days to prepare the development letter. Even though Hull is not responding to her, she continues to prepare development letters and send them to him through August, September and October 2010. She does not release any of the letters, but just drafts them and sends them to Hull. Hofacre feels that she can decide some of the Tea Party cases based on the responses received from the applicants, but cannot do so without Hull's approval. Hull fails to respond to Hofacre's emails.	Liz Hofacre, Carter C. Hull	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 61-64
August 3, 2010	Jack Koester, a screener in EO Determinations, informs his supervisor, John Shafer, that he has identified an application for exemption under 501(c)(4) from an organization. Koester notes that the organization is planning to conduct some legislative/political activities, which it stated is not its primary focus. The applicant told the IRS that [t]o the extent permitted by Code § 501(c)(4), applicable regulations, and the Supreme Court's recent decision in ***Citizens United v. Federal Election Commission***, 130 S. Ct. 876 (2010), the Corporation will provide support and advocacy for or against specific candidates during election seasons where candidates have taken stances on issues of particular importance to the [redacted] business community. At no time will such activities constitute the primary purpose of the Corporation. The Corporation's primary activity is and will always be the promotion of social welfare through voter education and issue advocacy." He notes that the applicant appears to meets the requirements for exemption and that he would "normally consider closing the case on merit," but that given the "current political climate," it might be prudent to elevate the case to "upper management." Shafer forwards Koester's email to Sharon Camarillo, his Area Director, who then forwards the email to Justin Lowe, the subject matter expert on legislative activities. Camarillo asks that the application be held until Lowe responds.	Jack Koester, John Shafer, Sharon Camarillo, Justin Lowe	IRS0000487033-35
August 3, 2010	Lois Lerner asks her assistant to print out a number of SCRs so that she can review them. Included among them is an SCR for the Tea Party cases.	Lois Lerner	IRS0000163358-97

Date	Occurrence	Key Personnel Involved	Authority
August 5-6, 2010	Richard Daly forwards TE/GE's SCRs for August to Nikole Flax, Sarah Hall Ingram, and Joseph Grant. Included among the SCRs is the SCR that Hull prepared on July 26, 2010 regarding the Tea Party cases assigned to him	Richard Daly, Nikole Flax, Sarah Hall Ingram, Joseph Grant	IRS0000164044-72 (Email attachments containing taxpayer information omitted by Committee staff)
August 8, 2010	Jon Waddell and/or Steve Bowling instruct Liz Hofacre to prepare a "BOLO" spreadsheet and tell Hofacre what to include in it. She sends the BOLO spreadsheet to EO Determinations managers.	Liz Hofacre, Jon Waddell, Steve Bowling	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 129-133
August 12, 2010	Liz Hofacre distributes the BOLO spreadsheet to Determinations Unit agents. Tea Party cases are specifically identified under the Emerging Issues tab of the spreadsheet as follows: "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)." The BOLO directs agents to send Tea Party cases to Group 7822 and that Liz Hofacre is coordinator. ACORN Successors are specifically identified under the "Watch For" tab of the BOLO spreadsheet as follows: "Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications." The BOLO directs agent to send ACORN Successor cases to the TAG Group. The word "Progressive" is specifically identified on the TAG Historical tab of the spreadsheet as a "Political activities" issue. The entry states that the "[c]ommon thread is the word 'progressive.' Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to 'blue' as being 'progressive.'"	Liz Hofacre	SFC Interview of Liz Hofacre, (Sep. 24, 2013) p. 132 IRS0000352978-84 Combined Spreadsheet TAG 8 12 10
August 13, 2010	Matthew Giuliano provides Senior Disclosure Specialist Sharon Baker with copies of two Sensitive Case Reports on the Tea Party cases as documents responsive to the June 3, 2010 FOIA request from a journalist who requested "documents relating to any training, memos, letters, policies, etc. that detail how [TE/GE] reviews applications for non-profits, 501(c)(3)s, and other not-for-profit organizations specifically mentioning 'Tea Party,' 'the Tea Party,' 'tea party,' 'tea parties.'" Baker concludes that the SCRs are not responsive to the request, despite Giuliano's assertion the contrary. Baker notes in the Case Report that "I have been back and forth with Matthew and I am tried [sic]."	Matthew Giuliano, Sharon Baker	IRSC003755-61

Date	Occurrence	Key Personnel Involved	Authority
August 18, 2010	Carter C. Hull prepares an SCR for August for the Tea Party cases assigned to him. The SCR indicates that Hull is assisting Cincinnati in crafting development letters.	Carter C. Hull, Ronald Shoemaker	IRS0000165378-79
September 15, 2010	In response to an article in the *EO Tax Journal* about organizations that may be abusing their 501(c)(4) status by engaging primarily in political advocacy, Lois Lerner tells Judith Kindell, "I'm really thinking we do need a c4 project next year." Kindell responded, "My big concern is the statement 'some (c)(4)s are being set up to engage in political activity' – if they are being set up to engage in political campaign activity they are not (c)(4)s." Lerner replied, "I'm not saying this is correct – but the perception out there that that is what is happening." [sic] Cheryl Chasin added, "It's definitely happening. Here are a few organizations…that sure sound like they are engaging in political activity: Faulkner County Tea Party Paradise Republican Womens Club Culver PAC Taxpayersadvocate Org State PAC Escondido Republican Women Federated Folsom Republican Women Federated Alice B Toklas Lesbian & Gay Democratic Club Obama Democratic Club Of Silicon Valley National Breast Cancer Coalition Political Action Committee." In a subsequent email, Lerner tells Kindell and others "[w]e need to have a plan. We need to be cautious so it isn't a per se political project. More a c4 project that will look at levels of lobbying and pol. activity along with exempt activity."	Lois Lerner, Judith Kindell, Cheryl Chasin	IRS0000182865-68
September 20, 2010	Doug Shulman, Steve Miller and Nikole Flax are advised that the *New York Times* will likely run a story the following day on the large upswing in money donated to 501(c)(4) organizations whose primary activities are political in nature. The article notes that the identity of donors to 501(c)(4) organizations is not disclosed and that the IRS lacks resources to monitor these activities and enforce the rules. Sarah Hall Ingram, Lois Lerner and Judy Kindell provided background information to the reporter on a "not-for-attribution" basis.	Doug Shulman, Steve Miller, Nikole Flax, Lois Lerner	IRS0000211382

Date	Occurrence	Key Personnel Involved	Authority
September 20, 2010	Steve Miller, Nikole Flax and others develop a statement to be used in response to the release of the *New York Times* article on 501(c)(4) organizations.	Steve Miller, Nikole Flax	IRS0000219086-91
September 20, 2010	Steve Pyrek sends Nikole Flax a two-page document summarizing the rules on advocacy by exempt organizations. He asks that she share it with Steve Miller and advises that it was provided to IRS Media Relations for use in responding to the *New York Times* article on 510(c)(4) organizations.	Steve Miller, Nikole Flax	IRS0000267177-79
September 21, 2010	Sarah Hall Ingram sends an email to Lois Lerner, Joseph Grant and others indicating that the *New York Times* article "came out pretty well." She expresses her opinion that the "secret donor" theme expressed in the article will continue and says "see Obama salvo." She also indicates that the article "started the idea that we don't have the law to do something." The article attached to the email focuses attention on Crossroads GPS, a 501(c)(4) organization and asserts that the organization has spent millions on commercials attacking Democrats. The article notes that there is a growing popularity for organizations to seek 501(c)(4) status since they can engage in political activity, accept unlimited contributions from corporations, and keep the identity of their donors secret. The article attributes this growth in the popularity of 501(c)(4) organizations to the Supreme Court's ruling in ***Citizens United***. The article also notes that the majority of these 501(c)(4) organizations support Republican candidates. The article also depicts the IRS as not having the resources necessary to prevent this activity through enforcement of the laws.	Sarah Hall Ingram, Lois Lerner, Joseph Grant, Judy Kindell	IRS0000508974-76
September 21, 2010	Sharon Baker follows up on the June 3, 2010 FOIA request with Tiffany Eder, Office of Chief Counsel, Procedures and Administration (P&A). Eder informs Baker that she and Charles B. Christopher (Branch Chief, P&A, Office of Chief Counsel) are confused why Baker has concluded that the SCRs submitted by Matthew Giuliano are not responsive to the FOIA request. Baker notes in the Case Record that "[t]he request asks for guidance on how the applications would be reviewed, the Sensitive Case Reports are merely notification that an application referencing "tea party" was filed."	Sharon Baker, Tiffany Eder	IRSC003755-61

Date	Occurrence	Key Personnel Involved	Authority
September 22, 2010	Carter C. Hull prepares an SCR for September for the Tea Party cases assigned to him. The SCR continues to indicate that a second development letter is being developed for the 501(c)(4) Tea Party applicant, that the response received from the 501(c)(3) Tea Party applicant is being evaluated, and that Hull is continuing his efforts to assist Cincinnati in the development of the other Tea Party cases assigned to EO Determinations. Estimated closure date is December 31, 2010. Siri Buller prepares an SCR for the four Emerge cases noting that the "TEGE Counsel is reviewing approved similar applications for comparison."	Carter C. Hull, Ronald Shoemaker	IRS0000156464 IRS0000156447- 48
September 28, 2010	Senator Baucus writes to IRS Commissioner Shulman raising concerns that political campaign activity by organizations claiming tax exemption may be inconsistent with their tax exempt status under 501(c)(4), (c)(5) and (c)(6).	Douglas Shulman	IRS0000015430-32
September 28, 2010	Michael Condon, a member of EO Determinations Group 7821, informs Gary Muthert, an EO Determinations screener (Group 7838), that American Crossroads is a pro-Republican group that has accounted for more than half of Super PAC spending. Condon advises Muthert that the American Financial Group has donated more than $400,000 to American Crossroads, a contribution made possible by the fact that the Supreme Court in ***Citizens United*** lifted restrictions on corporate spending on elections.	Michael Condon, Gary Muthert	IRS0000487036
September 30, 2010	Steve Grodnitzky sends Lois Lerner and Robert Choi an SCR summary chart for September 2010. The summary chart, that contains 22 entries discussing a range of issues, advises Lerner and Choi that both the 501(c)(3) and (c)(4) Tea Party cases are being reviewed by EO Technical and that there are now 25 applications for exemption from Tea Party groups pending in EO Determinations. The chart also advises that TEGE Counsel is reviewing the proposed denials for the Emerge cases.	Steve Grodnitzky, Lois Lerner, Robert Choi, Siri Buller	IRS0000156433-36
October 2010	Liz Hofacre leaves Group 7822 and assumes a position in EO Quality Assurance. Hofacre leaves in part due to her frustration and irritation over the process employed to review Tea Party cases and the resulting delays. She states to the SFC that: "Mr. Hull or EOT was stonewalling me."	Liz Hofacre	SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 9, 69-70, 74-75

Date	Occurrence	Key Personnel Involved	Authority
October 2010	Liz Hofacre's responsibility as Emerging Issues Coordinator is reassigned to Ronald Bell. Hofacre briefs Bell before her departure from the Group. She gives Bell the name of the Washington D.C. EO Technical contact (Carter C. Hull) and forwards to Bell a few development letters that she was working on with Hull. Bell then becomes the primary contact for all political activity cases and is assigned all of these cases. Bell has between 50-100 cases when he takes over from Hofacre. Some of the cases are in development when they are transferred to Bell. Some have a development letter in the file and others have not been worked by Hofacre.	Ronald Bell, Steve Bowling	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed
October 2010	Ronald Bell's Manager, Steve Bowling, tells Bell that EO Determinations is awaiting guidance on the Tea Party cases from EO Technical. Bell infers from this statement that he should perform no work on the cases until receiving further guidance from EO Technical. Accordingly, Bell works on auto-revocation cases exclusively and ignores the Tea Party cases. When new cases are sent to him that meet the BOLO spreadsheet criteria for Tea Party cases, he places them in a filing cabinet and returns to work on auto revocation cases. Bowling is aware that Bell is not working the Tea Party cases.	Ronald Bell, Steve Bowling	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed
October 2010	The BOLO criteria that says "organizations affiliated with the Tea Party" is understood by the screeners to mean actual Tea Party groups or groups with a viewpoint similar to the Tea Party. The reference does not include or encompass other types of organizations that are engaged in political activity.	Ronald Bell, Liz Hofacre,	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed SFC Interview of Liz Hofacre, (Sep. 24, 2013) p. 19
October 2010 to July 2011	From October 2010 when Ronald Bell takes over Tea Party cases to July 2011, he works no Tea Party cases. There is no development and none of the cases are assigned to any EOD agents.	Ronald Bell, Steve Bowling	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed

Date	Occurrence	Key Personnel Involved	Authority
October 2010 to November 2011	As Emerging Issues Coordinator, Ronald Bell is charged with making updates to the BOLO list and informing EO Determinations agents and management of the changes. Bell's manager, Steve Bowling, sends Bell all changes to the BOLO list. Bowling receives some of those changes from his Area Manager (Bonnie Esrig or Sharon Camarillo). Bell summarizes the issues, sends the summary to EO Determinations agents and management by email along with an updated BOLO spreadsheet.	Ronald Bell, Steve Bowling	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed SFC Interview of Steve Bowling, (June 13, 2013) not transcribed
October 5, 2010	Democracy 21 and Campaign Legal Center send a letter to Commissioner Shulman and Lois Lerner requesting that the IRS investigate the activities of Crossroads GPS, to determine if it is operating in violation of 501(c)(4) tax status.	Douglas Shulman, Lois Lerner	IRS0000459877-93
October 6, 2010	Judith Kindell sends Ruth Madrigal, Attorney-Advisor, Office of Tax Policy, Treasury Department, IRS instructional materials on political activity by 501(c)(4), (c)(5) and (c)(6) organizations.	Judy Kindell, Ruth Madrigal	IRS0000446776-77
October 6, 2010	Ways and Means Oversight Subcommittee minority staff inquire of the IRS whether Crossroads GPS is a 501(c)(4) organization and whether American Crossroads is a 527 organization. Lois Lerner is made aware of the inquiry and takes the opportunity to express her view to Sarah Hall Ingram, Joseph Grant and others that the law is flawed because an organization can operate as a 501(c)(4) organization without prior approval of the IRS. By so operating, the IRS has no information on the organization until it files a 990. Therefore, an allegation that the organization is operating inconsistent with 501(c)(4) status would be referred to EO Exams, but the matter would be closed because there is no record of the organization. By the time a 990 is filed, there is no allegation to pursue because the exam has been closed. David Fish advises Lerner that Crossroads GPS has filed a 1024. She replies by suggesting that the case should be worked in Washington D.C.	Dave Fish, Lois Lerner	IRS0000453771-72

Date	Occurrence	Key Personnel Involved	Authority
October 7, 2010	John Shafer, Screening Group Manager, sends an email to his group forwarding a copy of a letter sent by Democracy 21 to IRS Commissioner Shulman that appeared in the press. In the letter, Democracy 21 makes the assertion that Crossroads GPS, a conservative organization operating as a 501(c)(4), is primarily engaged in political advocacy and should not be approved by the IRS as a 501(c)(4) organization. Gary Muthert receives Shafer's email and advises Steve Bowling, Group 7822 Manager, that he sent Crossroads GPS' application to Bowling's group as a "Tea Party" case and that he "might want to get the case." Bowling determines that the application is in status 51 (unassigned inventory). Bowling instructs an employee to change the status of the case to status 75 (not for general assignment) and to place the original application on his desk.	Gary Muthert, Steve Bowling	IRS0000487037-47
October 7, 2010	Siri Buller, Tax Law Specialist, EO Technical, Group 1 sends Ruth Madrigal, Attorney Advisor, Office of Tax Policy, Treasury Department, reference materials setting forth the IRS' policy on political activity for 501(c)(4), (c)(5) and (c)(6) organizations.	Ruth Madrigal, Siri Buller	IRS0000446776-77
October 7-8, 2010	Jon Waddell emails Steven Bowling and Sharon Camarillo suggesting that they alert IRS screeners to "Name and Application factors associated with Acorn related cases." Camarillo asks John Shafer to "[p]lease ask your screeners to be on the lookout for these cases." Shafer forwards the email to IRS screeners.	Jon Waddell, Steven Bowling, Sharon Camarillo, John Shafer	IRS0000410433-34
October 14, 2010	Lois Lerner, and other IRS officials are emailed a copy of a letter from Senator Dick Durbin to IRS Commissioner Douglas Shulman urging the IRS to investigate the activities of Crossroads GPS. Durbin alleges that Crossroads' spending on political campaign advertising demonstrates that its primary purpose is not the promotion of social welfare.	Lois Lerner	IRS0000262668-69
October 14, 2010	Sharon Camarillo tells Cindy Thomas that help from EO Technical is needed to work the ACORN successor cases.	Sharon Camarillo, Cindy Thomas	IRS0000054942-44

Date	Occurrence	Key Personnel Involved	Authority
October 18, 2010	Carter C. Hull prepares for his manager, Ronald Shoemaker, a memo describing his work to date on Tea Party cases. Hull indicates that the majority of the cases are under the jurisdiction of Cincinnati but that a 501(c)(3) and a 501(c)(4) application are being worked at HQ in Washington. He indicates that Cincinnati provides HQ with copies of the Tea Party files along with proposed development letters. Hull reviews the letters and provides comments to the agent in Cincinnati, Liz Hofacre. Hofacre then sends the development letters to the organizations.	Carter C. Hull	IRS0000165172-76.
October 19, 2010	Ronald Shoemaker sends to Holly Paz the memorandum prepared by Carter C. Hull dated October 18, 2010, describing Hull's efforts to date in assisting Cincinnati develop its Tea Party applications. Attached to the memo is a list of 40 "Tea Party" cases that are pending in EO Determinations. Only 6 do not have the words, Tea Party, Patriots, Conservative, or 912 in their name. However, all of the cases on the list are Tea Party or conservative cases. According to Hofacre, this is because all of the cases have been selected for full development based on meeting the Tea Party screening criteria.	Ronald Shoemaker, Carter C. Hull	IRS0000165172-76 SFC Interview of Liz Hofacre, (Sep. 24, 2013) pp. 91-92
October 19, 2010	Lois Lerner addresses Duke University students on the effects of the Supreme Court's decision in ***Citizens United***. Lerner says generally with regard to the decision that "[t]he Supreme Court dealt a huge blow, overturning a 100-year precedent that basically corporations couldn't give directly to political campaigns, and everyone is up in arms because they don't like it. The Federal Election Committee can't do anything about it. They want the IRS to fix the problem. The IRS laws are not set up to fix the problem." She goes on to state that "everyone is screaming at us right now 'fix it now before the election . . . see how much these people are spending.' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not. So I can't do anything right now."	Lois Lerner	https://www.youtube.com/watch?v=EH1ZRyq-1iM
October 24, 2010	Cindy Thomas asks Holly Paz for an EO Technical employee to assist with the ACORN successor cases.	Cindy Thomas, Holly Paz	IRS0000054942-44

Date	Occurrence	Key Personnel Involved	Authority
October 26, 2010	Cindy Thomas expresses her concern to Holly Paz about the manner in which the Tea Party cases are being worked. She questions why Carter C. Hull needs to review every development letter and notes that this results in EO Determinations "just 'sitting' on these cases." She asks Paz for a template development letter to use and states that there are now 45 of these cases pending.	Cindy Thomas, Holly Paz	IRS0000435238-39
October 26, 2010	Matthew Giuliano sends Sharon Baker a copy of the Memo dated October 18, 2010, prepared by Carter C. Hull that describes how Tea Party applications are being reviewed by the IRS. Baker concludes that the document is not responsive to the FOIA request "since it occurred after the FOIA request was received in our office."	Matthew Giuliano, Sharon Baker	IRSC003755-61
October 27, 2010	Carter C. Hull prepares an SCR for October for Albuquerque Tea Party and American Junto, the Tea Party cases assigned to him. No new information is included, except that the estimated closing date is now March 2011.	Carter C. Hull, Ronald Shoemaker	IRS0000164329-30
November 3, 2010	Holly Paz sends Lois Lerner and Robert Choi an SCR summary chart for November 2010. The chart indicates that there are now 40 applications from Tea Party groups pending in Cincinnati. The chart also has an entry for four Emerge cases that were received on January 11, 2008.	Holly Paz, Lois Lerner, Robert Choi	IRS0000156478-81
November 4, 2010	Lois Lerner asks Nanette Downing and Judith Kindell if the Democracy 21 letter of October 5, 2010, alleging that Crossroads GPS was acting inconsistently with tax exempt status, has been sent to "Dallas" (EO Exams). Mike Seto advises that Democracy 21's allegation was sent to "Dallas" on November 2, 2010.	Lois Lerner, Nanette Downing, Judith Kindell	IRS0000459877-95
November 16, 2010	The BOLO listing is updated to reflect that Ronald Bell is now coordinator for Tea Party cases. The description of Tea Party cases continues to read as follows: "[t]hese cases involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."	Ron Bell	IRS0000352978-84

Date	Occurrence	Key Personnel Involved	Authority
November 16-17, 2010	Carter C. Hull requests cases files and development letters from Ron Bell. Bell's advises Steve Bowling, Group 7822 Manager, of Hull's request. Bowling then asks Sharon Camarillo, Area Manager, how to proceed with the Tea Party cases. He informs Camarillo that Bell is telling applicants who call to inquire about their application that "the case is under review." Camarillo asks Cindy Thomas and she states that she will check with Holly Paz.	Ron Bell, Steve Bowling, Cindy Thomas	IRS0000163029-30
November 17, 2010	Paz discusses with Thomas the issues surrounding the backlog of Tea Party cases Thomas raised on October 26, 2010 and tells her that a template letter isn't feasible because the cases present different issues. Paz tells Thomas that EO Technical is planning on discussing these issues with Judith Kindell, Senior Technical advisor to the EO Director, Lois Lerner.	Holly Paz, Cindy Thomas, Judith Kindell	IRS0000435238
November 2010	Carter C. Hull speaks to Ronald Bell once or twice, but never receives any development letters from Bell.	Carter C. Hull, Ronald Bell	SFC Interview of Carter C. Hull (July 23, 2013) not transcribed
November 18, 2010	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR indicates that Hull will draft a proposed favorable ruling for Albuquerque Tea Party, the 501(c)(4) Tea Party applicant, by December 13, 2010, and will request limited additional information from American Junto, the 501(c)(3) Tea Party applicant. Hull indicates that he is continuing to coordinate with Cincinnati on the development letters. The estimated closure date is January 31, 2011.	Carter C. Hull, Ronald Shoemaker	IRS0000164331-33
November 29, 2010	EO Determinations sends a development letter to a voter registration organizations applying for 501(c)(3) status.	Grant Herring	IRS0000631009-13
November 26, 2010	Holly Paz responds to Cindy Thomas's request for EO Technical assistance with the ACORN successor cases telling her to work with Chip Hull on those cases.	Holly Paz, Cindy Thomas	IRS0000054942-44
December 13, 2010	Holly Paz informs Cindy Thomas that EO Technical is finishing a proposal to approve the 501(c)(4) case being worked in EO Technical and that upon completion, EO Technical will discuss it with Judith Kindell. Paz states that EO Technical is evaluating the response received from the 501(c)(3) organization and that it expects to discuss that case with Kindell in January 2011.	Holly Paz, Cindy Thomas	IRS0000435238-39

Date	Occurrence	Key Personnel Involved	Authority
December 13, 2010	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR indicates that Hull will prepare a proposed favorable ruling for Albuquerque Tea Party, the 501(c)(4) organization, by January 15, 2011, and a proposed denial for American Junto, the 501(c)(3) organization, by January 31, 2011. Hull indicates that he is continuing to coordinate with Cincinnati on the development letters.	Carter C. Hull, Ronald Shoemaker	IRS0000165343-44
December 17, 2010	Siri Buller prepares an SCR on four Emerge groups seeking 501(c)(4) status. The Emerge organizations recruit women who belong to the Democratic Party and train them in campaign-related skills. The SCR indicates that the applications will be denied based on substantial private benefit to the Democratic party.	Siri Buller	IRS0000159313-14
January 6, 2011	Sharon Baker's manager, Marie A Twarog, responds to the June 3, 2010 FOIA request, advising the journalist that "I found no documents specifically responsive to your request."	Sharon Baker, Marie Twarog	IRSC003765
January 10, 2011	Carter C. Hull completes a draft memo concluding that tax exemption should be granted to Albuquerque Tea Party, the 501(c)(4) organization that has been under his review since April 2010.	Carter C. Hull	IRS0000013885-86
January 10, 2011	Steven Grodnitzky informs Michael Seto that "the proposed denial for Emerge Maine will be issued to the taxpayer. This is the case in which the organization is training Democratic women for politics. We are relying on a private benefit denial, similar to the American Campaign Academy case, although this is a (c)(4)."	Steven Grodnitzky, Michael Seto	IRS0000012237
January 11, 2011	Carter C. Hull refers the draft memo recommending granting exemption to Albuquerque Tea Party, the 501(c)(4) organization, to his reviewer, Liz Kastenberg. Kastenberg reviews the memo and recommends sending it to Judith Kindell for review.	Carter C. Hull, Liz Kastenberg	IRS0000001323-24 SFC Interview of Carter C. Hull, (July 23, 2013) not transcribed
January 24, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR indicates that Hull has prepared a proposed favorable memo on Albuquerque Tea Party, the 501(c)(4) organization, and forwarded it for review. Hull indicates that he is continuing to coordinate with Cincinnati on the development letters.	Carter C. Hull, Ronald Shoemaker	IRS0000166302-03

Date	Occurrence	Key Personnel Involved	Authority
February 1 - 2, 2011	Mike Seto, Acting Manager EO Technical, sends an SCR table to Lois Lerner. She responds "Tea Party Matter very dangerous – This could be the vehicle to go to court on the issue of whether ***Citizen's United*** overturning the ban on corporate spending applies to tax exempt rules." Lerner indicates that Counsel and Judy Kindell need to be involved with these cases and that they should not be handled by Cincinnati. Holly Paz responds by advising Lerner that Carter Hull is supervising the cases handled by Cincinnati at every step and that no decision will be made on those cases until the review of the 501(c)(3) and 501(c)(4) cases are completed by EO Technical. Lerner notes that "even if we go with a 4 on the Tea Party cases, they may want to argue they should be 3s, so it would be great if we can get there without saying the only reason they don't get a 3 is political activity."	Lois Lerner, Holly Paz	IRS0000159431-33
February 2, 2011	The BOLO spreadsheet is updated. The reference to Tea Party cases now reads "[o]rganizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4)." The spreadsheet also indicates that the cases are being coordinated with Chip Hull in EO Technical.	Ron Bell	IRS0000352978-84
February 3, 2011	Mike Seto, Acting EO Technical Manager, informs Cindy Thomas that Carter C. Hull's memo recommending exemption for the 501(c)(4) is done and will be sent to Judith Kindell shortly. Seto states that the "timeline with the c3 application is near the end of Feb."	Mike Seto, Cindy Thomas	IRS0000620724-26
February 14, 2011	Siri Buller prepares a Sensitive Case Report on four Emerge cases.	Siri Buller	IRS0000164849-50
February 18, 2011	Holly Paz requests information about the TAG Group from Cindy Thomas, at Lois Lerner's request.	Holly Paz, Cindy Thomas	IRS0000008593-602
February 24, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR indicates that Hull will draft a denial for American Junto, the 501(c)(3) organization, by February 28, 2011. Hull states that he is continuing to coordinate with Cincinnati on the development letters.	Carter C. Hull, Ron Shoemaker	IRS0000164335-36
March 4, 2011	A revenue agent from EO Determinations asks Carter Hull to discuss "four exemptions applications for organizations that previously operated as ACORN" that are being held in Cincinnati EO Determinations.	Carter C. Hull, John McGee	IRS0000631878

Date	Occurrence	Key Personnel Involved	Authority
March 11, 2011	Lois Lerner asks Holly Paz and Cindy Thomas to "schedule a status on TAG and have a seriously discussion of the pros and cons…I want to better understand its utility and explore whether we should maintain it as is, or get rid of it altogether." [sic]	Lois Lerner, Holly, Paz, Cindy Thomas	IRS0000008593-602
March 16, 2011	Thomas responds to Paz regarding Lerner's TAG concerns by explaining that the BOLO list includes TAG cases as well as cases that represent "emerging issues," like the Tea Party cases. She explains that the purpose of "assigning 'emerging issue' cases to one designated group is so that: 1) we are consistent in our approach in working these cases, and 2) we can we can minimize time charges to cases. When we have an emerging issue category, the applications have many similarities." Thomas writes that the Tea Party cases are the only current "emerging issue" entry on the BOLO list. Thomas attaches the latest version of the BOLO spreadsheet. The BOLO list provided to Paz contains an entry for the Tea Party under Emerging Issues as follows: "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4)." Under the "Disposition of Emerging Issue" heading, the BOLO states: "Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech – Chip Hull."	Holly Paz, Cindy Thomas	IRS0000008593-602
March 17, 2011	Siri Buller submits an SCR for four Emerge cases. She notes that three proposed denials have been submitted.	Siri Buller	IRS0000159499
March 21, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR now indicates that a proposed denial for American Junto was forwarded for review on March 2, 2011.	Carter C. Hull, Ron Shoemaker	IRS0000166450-51
March 29, 2011	Carter C. Hull sends his draft memo recommending granting exemption to the 501(c)(4) organization to Judith Kindell for her review.	Carter C. Hull, Judith Kindell	IRS0000001323-24
March 30, 2011	Cindy Thomas is informed that the IRS has received Congressional inquiries regarding the status of two Tea Party applications. Thomas expresses to Mike Seto her concern regarding these inquiries and suggests that a plan be developed for completing the cases, otherwise the inquiries will eventually turn into Tax Payer Assistance Orders (TAO).	Cindy Thomas, Mike Seto	IRS0000576953-55 (Email attachments containing taxpayer information omitted by SFC staff)

Date	Occurrence	Key Personnel Involved	Authority
March 31, 2011	Cindy Thomas advises Steve Bowling that since EO Technical is still working on the two Tea Party cases, "[w]e still need to continue to work cases to the extent we can and then wait to issue the approval or denial letter. EOT needs to meet with Judy Kindell . . . and then with Lois Lerner before they can finalize the guidance for us." Bowling apparently fails to convey this message to Ronald Bell.	Cindy Thomas, Steve Bowling	IRS0000576953-55 SFC Interview of Ronald Bell, (July 30, 2013) not transcribed
April 6, 2011	Carter C. Hull and Liz Kastenberg meet with Judith Kindell to discuss Hull's draft recommendation regarding the 501(c)(4) organization. Kindell advises Hull and Kastenberg to send the recommendation to the Office of Chief Counsel for its review. According to Hull, it was not normal procedure for Kindell to get involved with specific cases. Hull says it is rare that he consults with others about his recommendations. Those recommendations are always reviewed, but the extra step of consulting with Kindell or another who was not a reviewer is not typical. According to Hull, Kindell neither agrees nor disagrees with the recommendation. She does not explain to him why the case needed to be reviewed by the Chief Counsel's office. Hull thinks that this decision is odd since under IRS procedures, only denials of 501(c)(3) applications are required to be reviewed by IRS Chief Counsel, and not approvals of applications for 501(c)(4) status.	Carter C. Hull, Liz Kastenberg, Judith Kindell	IRS0000001323-24 SFC Interview of Carter C. Hull, (July 23, 2013) not transcribed

Date	Occurrence	Key Personnel Involved	Authority
April 7, 2011	Judith Kindell informs Lois Lerner and Holly Paz that she just spoke to Carter C. Hull and Liz Kastenberg about two Tea Party applications that they are working on. Kindell states: "I recommended that they develop the private benefit argument further and that they coordinate with Counsel. They also mentioned that there are a number of other (c)(3) and (c)(4) applications of orgs related to the Tea Party that are currently in Cincinnati." Kindell recommends that all the Tea Party cases in Cincinnati be worked in DC because of their sensitivity, the need to coordinate with Counsel, and the fact that there are TAS inquiries on some of the cases. Paz states in response: "With so many EOT and Guidance folks tied up with ACA (cases and Guidance) and the possibility looming that we may have to work reinstatement cases up here to prevent a backlog in Determs, I have serious reservations about our ability to work all of the Tea Party cases out of this office." Lois Lerner replies to Paz and Kindell as follows: "yes but these could blow up like crazy if the Determs folks let one out incorrectly – think MN Firefighters. Can Cindy have all of them assigned to one or two folks who don't make a move without Counsel/Judy involvement?"	Lois Lerner, Holly Paz, Judith Kindell	IRS0000634444
April 7, 2011	Holly Paz informs Lois Lerner that the Tea Party applications "are currently being assigned to one group. They consult with Chip on all development. They have been told not to issue determs until we work through the test cases we have here."	Holly Paz, Lois Lerner	IRS0000350220-21
April 25, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR now indicates that he is drafting additional development letters for both the 501(c)(3) and (c)(4) organizations. Estimated closure date is July 31, 2011. Siri Buller prepares an SCR for four Emerge Cases. Final adverse determinations were made in regard to three of the organizations. A proposed denial was issued for the final organization.	Carter C. Hull, Ron Shoemaker	IRS0000166555-57 IRS0000163645-46
May 10, 2011	Lois Lerner asks Nan Downing to find out the circumstances surrounding the referral from TE/GE Exams to E&G on gift tax. Lerner expresses her view that the TE/GE Exams employee who made the referral failed to notify his managers before making the referral to E&G. Lerner says: ". . . we ensure that all our sr managers are aware of all highly visible hot button issues. Our job is to report up to our bosses on anything that might end up on the front page of the NY Times."	Lois Lerner, Nan Downing	IRS0000014917-20

Date	Occurrence	Key Personnel Involved	Authority
May 17, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR notes that the proposed favorable ruling on the application by Albuquerque Tea Party, the 501(c)(4) organization, was sent to Chief Counsel for review on May 4, 2011 and that an additional development letter was sent to American Junto, the 501(c)(3) organization, on April 27, 2011. Estimated closure date is July 31, 2011.	Carter C. Hull, Ron Shoemaker	IRS0000164425-27
May 25, 2011	Carter C. Hull sends his draft recommendation on Albuquerque Tea Party, the 501(c)(4) case, to a contact person in the Office of the Chief Counsel.	Carter C. Hull	IRS0000001323-24
May 26, 2011	Nanette Downing advises Lois Lerner that EO Exams has received two referrals on Crossroads GPS. Lerner tells Downing that in addition to the referrals, the organization has applied for 501(c)(4) status. She indicates that she has scheduled a meeting with Holly Paz, Mike Seto, David Fish, and Judith Kindell to discuss what is happening with this organization. Holly Paz informs Lerner that the application for this organization has just arrived from Cincinnati. Lerner states "Cindy tells me there is a whole passel of 'tea party related' cases being worked in Cincy that Chip is overseeing/coordinating?" She also states "I'm told Chip Hull is heading this up—scaring me - can I get a briefing?"	Lois Lerner, Holly Paz, Nanette Downing	IRS0000196482 IRS0000196483-84 IRS0000196488-89
June 1, 2011	Elizabeth Kastenberg, Tax Law Specialist, EO Technical, emails Carter C. Hull two cases that are denials of 501(c)(4) status based on political activity.	Carter C. Hull, Elizabeth Kastenberg	IRS0000012166-76
June 1, 2011	Holly Paz requests that Cindy Thomas provide her with the following: (1) A copy of the Grassroots Policy Strategies application. Paz states that "Lois wants Judy to take a look at it so she can summarize the issues for Lois." (2) The criteria used to label a case a "Tea Party case." She tells Thomas that "[w]e want to think about whether those criteria are resulting in over-inclusion." She also tells Thomas that "Lois wants a briefing on these cases. . . . We're aiming for the week of 6/27."	Holly Paz, Cindy Thomas	IRS0000066837-40
June 1, 2011	Brenda Melahn informs Holly Paz that she will send her the Crossroads Grassroots Policy Strategies application by UPS on June 2, 2011.	Brenda Melahn, Holly Paz	IRS0000066839

Date	Occurrence	Key Personnel Involved	Authority
June 2, 2011	Cindy Thomas asks John Shafer, Manager of the Screening Group, for the "criteria screeners use to label a case as a "tea party case." Thomas asks Shafer "how do we know an applicant is involved with the tea party movement?"	Cindy Thomas, John Shafer	IRS0000066839
June 2, 2011	John Shafer asks Gary Muthert and several other screeners (Dale Schaber, Roger Vance) what criteria they use to identify an applicant organization as a Tea Party group. Based on the information he receives from the screeners, Shafer informs Cindy Thomas that "[t]he following are issues that could indicate a case to be considered a potential "tea party" case and sent to Group 7822 for secondary screening. 1. "Tea party," "Patriots" or "9/12 Project" is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of how the country is being run." Thomas forwards Shafer's email to Paz.	Cindy Thomas, Holly Paz, John Shafer	IRS0000066838 SFC Interview of John Shafer, (Sep. 17, 2013) pp. 111-114 SFC Interview of Cindy Thomas, (July 25, 2013) pp. 40-41
June 3 - 6, 2011	Cesar Sabando, an EO Exams employee, tells Peggy Combs that he is on the Classification Referral Committee and is investigating a complaint about an organization named Crossroads Grassroots Policy Strategies. He asks Combs if there is a 1024 pending on the organization. Thomas tells Combs to tell Sabando that there is an application pending. She writes in an email to Ronald Bell that "Lois Lerner asked me about this case on May 26 after Steve Miller asked her about it. I told Lois that it was assigned to you and that you were coordinating these cases with EOT (Chip Hull) who is working with her senior technical advisor (Judy Kindell)." Cindy Thomas writes in an email to Steven Bowling, "After receiving and reviewing the [Crossroads] application, Holly sent an email and asked questions about criteria being used to identify cases as 'tea party cases.' The D.C. office thinks the criteria being used may be resulting in over-inclusion. They think Crossroads is associated with the Republican Party, not necessarily the Tea Party."	Cindy Thomas, Ronald Bell, Steven Bowling	IRS0000510245-46

Date	Occurrence	Key Personnel Involved	Authority
June 21, 2011	Mike Seto tells Carter C. Hull and Hilary Goehausen that there will be a briefing for Lois Lerner and Holly Paz to inform them of EO Technical' s review of two applications from Tea Party organizations and the assistance that EO Technical has provided to EO Determinations. He asks for Hull's memos in which Hull recommended denial of one group and approval of the other. Seto also provides his vision for a memo to Lerner on the two Tea Party applications that explains the cases. Seto subsequently tells Holly Paz that if the memo can't be prepared in time, that he will ask for a postponement of the meeting with Lerner.	Mike Seto, Lois Lerner Holly Paz, Carter C. Hull	IRS0000168069

Date	Occurrence	Key Personnel Involved	Authority
June 27, 2011	In preparation for the meeting requested by Lois Lerner to discuss the processing of Tea Party applications, Justin Lowe develops a briefing paper and sends it Holly Paz, Mike Seto, Carter Hull, Hilary Goehausen, and others. The paper indicates that EOD Screening identified as an "emerging issue" a number of 501(c)(3) and (c)(4) applications by organizations "advocating on issues related to government spending, taxes and related matters." These applications are sent to a specific group if they meet any of the following criteria: • "Tea Party," "Patriots," or "9/12 Project" is referenced in the case file. • Issues include Government spending, Government debt, or taxes. • Education of the public via advocacy/lobbying to "make America a better place to live." • Statements in the case file criticize how the country is being run. The briefing paper also notes that: • Over 100 cases that meet these criteria have been identified so far, but only two 501(c)(4) organizations have been approved. • EOT is assisting EOD by reviewing files and editing development letters; and • EOD requests guidance on how to process the cases to ensure uniformity. Among the suggestions for "next steps," the briefing paper proposes that EOT prepare a check sheet or Guidesheet that would consist of "a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying . . . ."	Holly Paz, Hilary Goehausen, Justin Lowe, Carter C. Hull	IRS0000431165-66 SFC Interview of Justin Lowe, (June 20, 2013) not transcribed

Date	Occurrence	Key Personnel Involved	Authority
July 5, 2011	Lois Lerner conducts a meeting with Holly Paz, Nancy Marks, Cindy Thomas, Carter Hull, Hilary Goehausen and others on the processing of Tea Party cases. Lerner directs that the applicants no longer be called "Tea Party" groups but rather "advocacy organizations" and that Thomas change the "Tea Party" reference in the BOLO to "Advocacy Orgs." Lerner also approves the development of a Guidesheet by EO Technical to be used as a tool to assist EO Determinations in the processing of applications that present political advocacy issues. She further sanctions the continued development of the "test cases" assigned to Carter C. Hull as an added means of assisting EO Determinations process the applications. A suggestion is made during the meeting that the cases could be approved and then examined subsequently by the Review of Operations (ROO) to see if the groups' actual activities are consistent with exempt status. Lerner rejects the notion on the basis that the ROO has insufficient resources to examine all the approved Tea Parties.	Lois Lerner, Holly Paz, Nancy Marks, Cindy Thomas, Carter C. Hull, Hilary Goehausen, Justin Lowe	IRS0000620735-40 SFC Interview of Holly Paz, (July 26, 2013) pp. 86-93 SFC Interview of Carter C. Hull, (July 23, 2013) not transcribed SFC Interview of Hilary Goehausen, (July 11, 2013) not transcribed
July 5, 2011	Thomas changes the Emerging Issues tab of the BOLO spreadsheet by deleting the reference to "Tea Party" in accordance with Lerner's directive. In its place she inserts a new issue called "Advocacy Orgs." and describes the issue as "[o]rganizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)." In an email to Ronald Bell and Steve Bowling, she indicates that she might also change the EO Technical contact person, pending further word from Washington D.C. Thomas then sends an email to her managers and informs them of the removal of the reference to "tea party cases" from the BOLO. Thomas explains Lerner's rationale for the change as follows: "Lois expressed concern with the 'label' we assigned to these cases. Her concern was centered around the fact that these type things can get us in trouble down the road when outsiders request information and accuse us of "picking on" certain types of organizations . . ." Thomas continues as follows: "Lois did want everyone to know that we are handling the cases as we should, i.e., the Screening Group starts seeing a pattern of cases and is elevating the issue." During the call, Lerner apprises Thomas that Washington D.C. will prepare a document to assist Cincinnati work the political advocacy cases.	Cindy Thomas, Steve Bowling, Ronald Bell, John Shafer	IRS0000620735-40

Date	Occurrence	Key Personnel Involved	Authority
July 2011	After Cindy Thomas changes the description of political advocacy cases in July 2011, screeners review applications to see if there is an indication of possible political activity. According to Bell, absent any such indication, the mere presence of the name "Tea Party" in the application is enough to warrant assigning the case to Group 7822 for full development.	Ronald Bell	SFC Interview of Ronald Bell, (July 30, 2013) not transcribed
July 6, 2011	Hilary Goehausen prepares a summary for Mike Seto of the "next steps" decided at the July 5, 2011 meeting with Lois Lerner on Tea Party cases. Included among the next steps are the following: • EO Technical will develop and draft a checksheet for Cincinnati to use when working c3/c4 "advocacy organization" applications to assist in spotting issues associated with these types of cases. • Cincinnati will send 15-20 developed cases to EO Technical in order for EO Technical to review. • Require c3/c4 "advocacy organizations" to make certain representations regarding compliance with the checksheet and certain issues (i.e. they won't politically intervene) in order to pin them down in the future if they engage in prohibited activities. • Cincinnati will also look to see if these organizations have registered with the FEC and if so, they should ask additional questions.	Hilary Goehausen, Mike Seto	IRS0000487709
July 11, 2011	Ronald Bell sends an email attaching the revised BOLO list to EO Determinations staff and management. The reference to "Tea Party" is deleted and replaced with "Advocacy Orgs." The BOLO now describes these cases as "[o]rganizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)." While Bell's covering email advises to "be on the lookout" for organizations seeking exemption under 501(c)(3) that provide "green" energy, the email fails to alert recipients to the change in the Tea Party/Advocacy Orgs. criteria.	Ronald Bell	IRS0000352978-84 IRS0000618365-70 SFC Interview of Ronald Bell, (July 30, 2013) not transcribed
July 11, 2011	Ronald Bell tells Steve Bowling that the ACORN entry on the BOLO list needs to be updated because Chip Hull was no longer the correct contact person at EO Technical for these cases.	Ronald Bell, Steve Bowling, Chip Hull	IRS0000054945-46

Date	Occurrence	Key Personnel Involved	Authority
After July 11, 2011	Gary Muthert, a screener in EO Determinations, continues to send cases that include the terms "Tea Party," "9/12," or "Patriots" to general inventory for full development even after the BOLO criteria is changed. His Manager, John Shafer, says he made no changes or adjustments to the way Tea Party cases are being screened by his staff. Shafer views Cindy Thomas' email of July 5, 2011 wherein she states that "Lois did want everyone to know that we are handling the cases as we should . . ." as affirmation that the screening process is fine.	Gary Muthert, John Shafer	SFC Interview of Gary Muthert, (July 30, 2013) not transcribed SFC Interview of John Shafer, (Sep. 17, 2013) pp. 120-123
July 19, 2011	Lois Lerner's computer hard drive fails. She requests that IRS IT personnel make an effort to recover the data on the hard drive, some of which Lerner characterizes as "irreplaceable."	Lois Lerner, Carl T. Froehlich	IRS0000651448-50
July 19, 2011	Holly Paz provides background information to Janine Cook about a meeting that Lois Lerner has scheduled for the following week to discuss an apparent increase in the number of applications for exemption under 501(c)(3) and (c)(4) filed by organizations "advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying." Paz goes on to state that "[w]e suspect that we will have to approve the majority of the c4 applications. . . we plan to have EO Technical compose some informal guidance re: development of these cases (e.g., review websites, check to see whether org is registered with FEC, get representations re: the amount of political activity, etc.). . . We will also refer these organizations to the Review of operations for follow-up in a later year."	Holly Paz, Janine Cook	IRS0000429489
July 20, 2011	A New York Times reporter asks why some Emerge groups were approved for tax-exempt status while others were not. Lois Lerner asks Holly Paz, Judith Kindell, and Nannette Downing for assistance in "determining why some [of the Emerge cases] were approved and what, if anything has occurred with them since approval."	Lois Lerner, Holly Paz, Judith Kindell, Nanette Downing	IRS0000623704 IRS0000196669

Date	Occurrence	Key Personnel Involved	Authority
July 20, 2011	Lillie Wilburn, Field Director, IRS IT Customer Service Support, advises Lois Lerner that "I checked with the technician and he still has your drive. He wanted to exhaust all avenues to recover the data before sending it to the "hard drive cemetery." Unfortunately, after receiving assistance from several highly skilled technicians including HP experts, he still cannot recover the data." Wilburn tells Lerner that she will explore the possibility of securing technical assistance in recovering the data from one additional source, and update Lerner on those developments when appropriate.	Lillie Wilburn, Lois Lerner	IRS0000651448-50
July 22, 2011	Carter C. Hull prepares an SCR on the two Tea Party cases assigned to him. The SCR notes that the proposed favorable determination for Albuquerque Tea Party was forwarded to Chief Counsel on June 16, 2011, and that the proposed denial for American Junto was revised to reflect additional information received from the applicant and sent to a reviewer on July 19, 2011. Estimated closure date is July 31, 2011.	Carter C. Hull, Ron Shoemaker	IRS0000163722-23
July 23 - 24, 2011	Mike Seto informs staff that Justin Lowe is the new contact person for EO Determinations on political advocacy cases. He states that "Justin will work with Hilary Goehausen and Chip Hull, who are initiators on political advocacy cases pending in EOT." Seto informs Goehausen to draft a Guidesheet for EO Determinations agents to use when working political advocacy cases, and directs Lowe to review the Guidesheet. Mike Seto directs that the Tea Party cases be reassigned to Hilary Goehausen and that the name on the SCR be changed from "Tea Party" to "political advocacy organization."	Mike Seto, Hilary Goehausen, Carter C. Hull	IRS0000644018 IRS0000159753-63
Week of July 25, 2011	Lois Lerner convenes a meeting with representatives of Chief Counsel to discuss the political advocacy cases. They discuss the possibility of developing a model template of development questions for EOD agents to use in processing political advocacy cases.	Nancy Marks, Holly Paz, Janine Cook, Don Spellman	IRS0000635899-90
July 27, 2011	The BOLO is revised to note that Ron Bell is coordinating the cases with Justin Lowe.	Ron Bell	IRS0000352978-84

Date	Occurrence	Key Personnel Involved	Authority
July 27, 2011	Democracy 21 and Campaign Legal Center file with the IRS a "Petition for Rulemaking on Campaign Activities by Section 501(c)(4) Organizations." The "Petition" calls on the IRS to revise existing regulations to preclude political campaign advocacy by organizations with 501(c)(4) tax-exempt status. The "Petition" describes Crossroads GPS as an organization engaged primarily in political campaign intervention, but that operates as a 501(c)(4) tax exempt entity, contrary to the requirements of the law.		IRS0000517176-96 http://www.democracy21.org/uploads/D21 and CLC Petition _to_IRS_7_27_2011.pdf
July 27, 2011	Lois Lerner forwards a copy of the "Petition" submitted by Democracy 21 to Ruth Madrigal, Office of Tax Policy, Department of the Treasury, stating to Madrigal "[t]hought you might be interested."	Lois Lerner, Ruth Madrigal	IRS0000196795-96
July 31, 2011	Mike Seto prepares an SCR summary chart indicating that EO Technical is developing both a 501(c)(3) Tea Party application and a 501(c)(4) Tea Party Application. A proposed favorable determination for the 501(c)(4) organization is under review and a proposed denial for the 501(c)(3) organization is also under review. The SCR indicates that the two cases were discussed with Judith Kindell on April 6, 2011 and that based on that discussion, additional development letters were sent out. The proposed favorable ruling was forwarded to Chief Counsel for comment on May 4, 2011. A meeting was held with the Director EO on June 29, 2011, to discuss the two cases.	Mike Seto	IRS0000159753-63
August 1, 2011	Lillie Wilburn advises Lois Lerner that she has sent Lerner's damaged hard drive to the IRS' Criminal Investigations forensic lab to attempt data recovery.	Lillie Wilburn, Lois Lerner	IRS0000651448-50
Early August 2011	Don Spellman and other representatives of the Office of the Chief Counsel meet with Carter C. Hull, Hillary Goehausen, Mike Seto and others to discuss the two 501(c) cases that Chief Counsel reviewed and are sending back to EO Technical with the recommendation that EO Technical "factually develop the election year of 2010." Also discussed is the "checksheet" that EO Technical is preparing, and IRS guidance and case law on the standard for exemption under 501(c)(4).	Don Spellman, Carter C. Hull, Hillary Goehausen, Mike Seto, David Marshall, Amy Franklin	IRS0000635899-90
August 4, 2011	Justin Lowe asks Holly Paz if the Office of Chief Counsel will review the "checksheet" prior to its issuance to EO Determinations. Paz answers "Yes."	Holly Paz, Justin Lowe	IRS0000435479

Date	Occurrence	Key Personnel Involved	Authority
August 4, 2011	After performing several unsuccessful procedures to try to recover data on Lois Lerner's failed computer hard drive, John Minesk, Investigative Analyst, IRS – Criminal Investigations, advises Lillie Wilburn, IRS IT Field Director, that "[a]nother option is an outside data recovery service." Wilburn responds as follows: ". . . there's no need to continue."	John Minesk, Lillie Wilburn	IRSC038572-77
August 5, 2011	Lillie Wilburn informs Lois Lerner that data recovery attempts on Lerner's hard drive failed because sectors of the hard drive were bad.	Lillie Wilburn, Lois Lerner	IRS0000651448-50
August 10, 2011	Don Spellman and other representatives of the Office of the Chief Counsel meet with Carter C. Hull, Hilary Goehausen, Mike Seto and others to discuss the two 501(c) cases that Chief Counsel reviewed and are sending back to EO Technical with the recommendation that EO Technical "factually develop the election year of 2010." Also discussed is the "checksheet" that EO Technical is preparing, and IRS guidance and case law on the standard for exemption under 501(c)(4).	Don Spellman, Carter C. Hull, Hilary Goehausen, Mike Seto, David Marshall, Amy Franklin	IRS0000635899-90 IRS0000520827-41
August 17, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases under his review. The SCR indicates that the draft proposed approval for Albuquerque Tea Party was returned for additional information and that he is preparing another development letter. The draft denial for American Junto is still pending with the reviewer. Estimated closure date is now December 31, 2011.	Carter C. Hull, Ron Shoemaker	IRS0000164564 - 66
September 15, 2011	Cindy Thomas and Holly Paz agree that Hilary Goehausen and Justin Lowe will triage all of the political advocacy cases pending in EO Determinations and place them in the following general "buckets:" those that can be approved; those that require development; and those that should be denied. Thomas sends a list of those cases to Paz.	Cindy Thomas, Holly Paz	IRS0000429529 (Email attachment containing taxpayer information omitted by Committee staff)
September 16, 2011	Mike Seto sends the August 31, 2011 SCR Report Table to Lois Lerner, Holly Paz and others. The reference to "Tea Party" is changed to "Political Advocacy Organizations." However, the stated issue is "whether a Tea Party organization meets the requirements under section 501(c)(3) and is not involved in political intervention."	Mike Seto, Holly Paz, Lois Lerner	IRS0000618548-57
September 21, 2011	Hilary Goehausen and Justin Lowe complete a draft "Advocacy Org. Guidesheet" and send it Judith Kindell, Carter C. Hull and others for comment.	Hilary Goehausen	IRS0000636285-97

Date	Occurrence	Key Personnel Involved	Authority
September 21, 2011	Holly Paz advises David Fish that there are over 100 "advocacy" cases pending in EO Determinations. Paz indicates her belief that "we cast the net too wide . . . and have held up cases that have nothing to do with lobbying or campaign intervention . . . We are tasking Hilary with the task of looking at these cases on TEDs and triaging them – identifying those that clearly are advocacy cases and those that are clearly not."	Holly Paz, David Fish	IRS0000010131
September 27, 2011	Carter C. Hull prepares an SCR for the two Tea Party cases assigned to him. The applicants are no longer referred to as "tea parties" but rather as "advocacy organizations." There are no further developments in either case.	Carter C. Hull, Ron Shoemaker	IRS0000163744-46
September 28, 2011	Democracy 21 and Campaign Legal Center send Lois Lerner a letter requesting that the IRS investigate Crossroads GPS, Priorities USA, American Action Network, and Americans Elect to determine if they are ineligible for tax-exempt status under section 501(c)(4).	Lois Lerner	IRS0000511970-93 http://democracy21.org/uploads/Letter_to_the_IRS_from_Democracy_21_and_Campaign_Legal_Center_9_28_2011.pdf
September 30, 2011	Lois Lerner directs David Fish to send to Dallas (EO Exams) the Democracy 21 letter of September 28, 2011 calling for an investigation into Crossroads GPS, Priorities USA, American Action Network, and Americans Elect.	Lois Lerner	IRS0000511994-2018
September 30, 2011	Lois Lerner asks Holly Paz and David Fish for "a status of where we are on revoking the determ letters of the other Emerge cases."	Lois Lerner	IRS0000640620
October 4 - 6, 2011	Cindy Thomas asks Mike Seto about the status of the Guidesheet. Seto responds that "[w]e have a draft on areas to watch out for, but it is being vetted and not completed yet."	Cindy Thomas, Mike Seto	IRS0000057399-426
October 5, 2011	Lois Lerner advises Nikole Flax that she is ready to meet with Steve Miller on political activity.	Lois Lerner	IRS0000463501

Date	Occurrence	Key Personnel Involved	Authority
October 19, 2011	Steve Miller meets with Lois Lerner, Nanette Downing, Nikole Flax, Nancy Marks and others to discuss a proposal to adopt the "Dual Track" review process for EO Examinations. Under Dual Track, the Review Of Operation (ROO) can initiate its own reviews of organizations for engaging in political activity inconsistent with their exempt purposes, based on an analysis of data collected from the organizations on the Form 990. These reviews would be in addition to reviews initiated as the result of referral from sources outside of EO Exams alleging that organizations are engaged in excessive political activity. The proposal is referred to as "Dual Track" because reviews can be initiated under one of two possible means: 1) as the result of data analytics, or 2) outside referrals. Under the Dual Track proposal, all referrals, whether resulting from data analytics or from outside sources, are sent to the ROO and tested to determine if the organization's return would have been otherwise selected for examination, and to review the Form 990 and other public information. Based on this test, the ROO can recommend that the organization be selected for examination, selected for a compliance check, or non-selected. The ROO's referral is then sent to the Political Action Review Committee, or PARC. The PARC reviews to ROO's recommendation and can either concur with it or modify it. If the organization is selected for examination or compliance check, the PARC also prioritizes the referral. High priority referrals are assigned to a group of agents and worked. All other referrals are dealt with under general exam procedures. Miller approves the Dual Track proposal but decides that he wants to "bounce it off Doug [Shulman.]"	Lois Lerner, Steve Miller, Nikole Flax, Nancy Marks, Nanette Downing	IRS0000468121-28 SFC Interview of Steve Miller, (Dec. 12, 2013) pp. 76-78
October 19, 2011	Carter C. Hull prepares an SCR for the two advocacy cases assigned to him, Albuquerque Tea Party and American Junto. There are no changes from the prior month's entry.	Carter C. Hull, Ron Shoemaker	IRS0000167129-30
October 21, 2011	The IRS revokes tax-exempt status for previous approved Emerge organizations.	David Fish	IRS0000636331-32
October 24, 2011	Hilary Goehausen prepares comments on each of the political advocacy cases pending in EO Determinations. The comments are intended to assist EO Determinations agents process the cases. Thomas Lieber forwards those comments to Cindy Thomas.	Cindy Thomas	IRS0000057399-426

Date	Occurrence	Key Personnel Involved	Authority
October 25, 2011	Cindy Thomas reviews Hilary Goehausen's comments on the political advocacy cases and states to Mike Seto "[n]ot sure where this leaves us and I'm unclear as to what action is being suggested for some of these cases . . . . Also, where do we stand on the [Guidesheet] . . . We're starting to get a lot of heat from the public on these cases sitting idle and now have Congressionals on some of these. What is the plan of action and estimated completion date?"	Cindy Thomas, Mike Seto	IRS0000057399-426
October 26, 2011	Hilary Goehausen explains to Cindy Thomas her notations with regard to the cases that she reviewed.	Hilary Goehausen, Cindy Thomas	IRS0000057399-426
October 30, 2011	Cindy Thomas expresses to Mike Seto her continued concern over Hilary Goehausen's comments on the cases reviewed by Goehausen. Thomas states that "[i]t was my understanding that from Holly that the cases were going to be put in buckets, i.e., those that can be approved as is, those that require additional development, and those that appear to be denials." Regarding the Guidesheet, Thomas tells Seto that "I'm not sure what the hold is on the document/guidance EOT is supposed to be providing for us . . ." Thomas expresses concern that continued delay in processing the political advocacy cases may result in Congressional inquiries.	Cindy Thomas, Mike Seto	IRS0000057399-426
November 2011	Mike Seto reassigns Carter C. Hull's political advocacy cases to Hilary Goehausen.	Carter C. Hull, Mike Seto, Hilary Goehausen	SFC Interview of Carter C. Hull, (July 23, 2013) not transcribed
November 3, 2011	Hilary Goehausen incorporates comments received from Carter C. Hull on the draft "Advocacy Org. Guidesheet." She sends a revised draft to Judith Kindell and others requesting comments and suggestions.	Hilary Goehausen	IRS0000057352-65
November 3, 2011	Lois Lerner emails Mike Seto, Cindy Thomas, and others expressing her concern about the amount of work in Rulings and Agreements and how that work is being handled. She states her view that "we should be making prioritization decisions based on EO as a whole, not in our own stovepipes." She asks for reports on workloads, backlogs, and cases pending in the Chief Counsel's Office.	Lois Lerner, Cindy Thomas, Mike Seto	IRS0000162701-08

Date	Occurrence	Key Personnel Involved	Authority
November 3, 2011	In response to Lerner's email of the same date, Cindy Thomas advises Lois Lerner that there is a backlog of advocacy cases in EO Determinations. She indicates that there are more than 161 cases sitting idle in EO Determinations and that some of the cases date back to 2009. She states that EO Determinations has been waiting for a guidance/reference document from EO Technical. She expresses her concern that there will soon be Congressional inquiries and Taxpayer Assistance Orders to deal with in addition to processing the cases. She also tells Lerner that she instructed one of her Determinations agents to send another development letter out in a case just to buy time and prevent a taxpayer from contacting his Congressional office.	Lois Lerner, Cindy Thomas	IRS0000162845-46 (Email attachment containing taxpayer information omitted by Committee staff)
November 6, 2011	David Fish, Acting Director for Rulings and Agreements, concludes that the guidesheet "won't work in its present form. I think we need to work with Determs to make it a usable document."	David Fish, Mike Seto, Cindy Thomas	IRS0000520827-41 SFC Interview of Holly Paz, (July 26, 2013) pp. 132-133
November 15, 2011	Cindy Thomas sends Hilary Goehausen's comments on the political advocacy cases to Judith Kindell, per the request of Lois Lerner.	Cindy Thomas, Lois Lerner, Judith Kindell	IRS0000057399-426
November 15, 2011	Hilary Goehausen prepares an SCR for Albuquerque Tea Party and American Junto, the two political advocacy cases that were reassigned from Carter C. Hull to her. Goehausen notes that a third development letter is being prepared for both organizations. She notes that EOT has reviewed approximately 160 political advocacy cases pending in EO Determinations.	Hilary Goehausen, Steve Grodnitzky	IRS0000163753-54
November 15, 2011	Steve Miller, Nikole Flax and others meet with Commissioner Douglas Shulman to apprise him of the proposed "Dual Track" process. Shulman approves the proposal.	Steve Miller, Douglas Shulman	SFC Interview of Steve Miller, (Dec. 12, 2013) p. 86 IRS0000468518-20
November 22, 2011	Mike Seto brings Cindy Thomas up-to-date on Hilary Goehausen's review of advocacy cases pending in EO Determinations. He advises Thomas that 162 cases have been screened; 12 may qualify for exemption, 15 may be denials; and the balance require further development.	Mike Seto, Cindy Thomas	IRS0000439824-26
November 23, 2011	Cindy Thomas provides Steve Bowling with a copy of the Guidesheet and tells Bowling "for those cases that EOT believes can be approved, I'd recommend you go ahead and have those cases worked now that the Guidesheet is available."	Cindy Thomas, Steve Bowling	IRS0000066140-66

Date	Occurrence	Key Personnel Involved	Authority
November 28, 2011	Mike Seto instructs Steve Grodnitzky to track all political advocacy cases in EO Technical. He tells Grodnitzky that Ron Shoemaker will screen the cases and that they will be assigned to Grodnitzky's Group.	Mike Seto, Steve Grodnitzky, Ronald Shoemaker	IRS0000012230
Week of November 28, 2011	Cindy Thomas replaces Ron Bell as Coordinator of political advocacy cases and installs Stephen Seok in his place. She meets with Seok and Steve Bowling to discuss the idea of forming a team of Determinations Unit Specialists to work the political advocacy cases (Advocacy Team). The Advocacy Team will be comprised of one GS-13 member of each of the EO Determinations Groups.	Cindy Thomas, Steve Bowling, Stephen Seok	IRS0000439824-26
November 29, 2011	Steve Grodnitzky asks Mike Seto if the advocacy cases are to receive "expedited" treatment. Seto responds by telling Grodnitzky that "[t]he advocacy cases are not expedited unless the taxpayer requested expedited treatment and the request was approved. The exceptions are the two cases that are on the SCRs."	Steve Grodnitzky, Mike Seto	IRS0000012231
November 29, 2011	An EO Determinations employee shares his questionnaire template with another employee working voter registration cases.	Grant Herring	IRS0000631168
December 7, 2011	Cindy Thomas announces the formation of the Advocacy Team, whose members will work on the political advocacy cases. Team members are: Stephen Seok (Coordinator); Ronald Bell; Janine Estes; Joseph Herr; Grant Herring; Mitch Steele; Carly Young; Jodi Garuccio; Annetta Morris; Gregory Woo; and Elizabeth Marquez.	Cindy Thomas	IRS0000436489-90
December 9, 2011	Liz Hofacre is named to the Advocacy Team. Mike Seto names Hilary Goehausen and Justin Lowe as EO Technical contacts for the Team.	Liz Hofacre	IRS0000439824-26
December 12, 2011	Stephen Seok sends a copy of the draft Guidesheet to the Advocacy Team.	Stephen Seok	IRS0000059316-28
December 16, 2011	Stephen Seok convenes the first meeting of the Advocacy Team. The Team discusses: the history of the advocacy cases; the purpose of the team; how the team will review the cases; and other matters. There are 172 political advocacy cases pending as of this date.	Stephen Seok	IRS0000013058-61

Date	Occurrence	Key Personnel Involved	Authority
December 29, 2011	Hilary Goehausen prepares an SCR for the political advocacy cases that are assigned to her. She notes that the application from American Junto will be closed for failure to respond to a development letter. The estimated closure date for these cases is now December 31, 2012.	Hilary Goehausen	IRS0000163764-66 (Email attachment containing taxpayer information omitted by Committee staff)
January 9, 2012	Cindy Thomas is sent an article from Tax Notes about Occupy groups applying for tax-exempt status with a note, "Elevating for consideration to add to BOLO."	Peggy Combs, Cindy Thomas	IRS0000013414-15
January 18, 2012	Stephen Seok informs Steve Bowling that 35 of the "170+" political advocacy cases have been assigned to the Advocacy Team and that he is reviewing development letters that will soon be ready to be released. Seok indicates that the Team will be creating template development questions in the near future.	Stephen Seok, Steve Bowling	IRS0000434203-08
Various dates in January 2012	The Advocacy Team begins to release development letters on the political advocacy cases. Team members use the questions in the Guidesheet when creating development questions to send to applicants for exemption. Many of the development letters contain intrusive and burdensome requests for information.	Advocacy Team	IRS0000483837-59 IRS0000626189-91 IRS0000455273-74 SFC Interview of Joseph Herr, (June 18, 2013) not transcribed
January 19, 2012	Hilary Goehausen prepares an SCR for the political advocacy cases that have been assigned to her. Only the Albuquerque Tea Party application remains open and Goehausen notes that she is reviewing the latest response from the organization. Estimated closure date is May 2012.	Hilary Goehausen	IRS0000163774-75
January 20, 2012	Cindy Thomas tells Steven Bowling that the Occupy groups should be referred to his group so they can be worked "with the advocacy cases." Bowling agrees they should be worked with the advocacy cases and says the BOLO needs to be modified to "capture these as well as to try and weed out the ones that we do not want in this inventory…I know we don't want to use the words 'tea party' or 'occupy' but I'm not sure how we could weed out a simple advocacy type organization." Cindy Thomas suggests they speak to some other managers to see "if they have any ideas" on wording the revised entries on the BOLO.	Steven Bowling, Cindy Thomas, Cindy Thomas	IRS0000013418-19

Date	Occurrence	Key Personnel Involved	Authority
January 24, 2012	Bowling presents two options to Cindy Thomas to modify the BOLO list. The first scenario "is very general but we think it's better than what we currently have." The second scenario "is what is preferred; we think it is clear and to the point but if we can't site 'tea party' or 'occupy' then we don't need to consider it." [sic] Thomas replies, "[w]e can't refer to 'tea party' cases because it would appear as though we're singling them out and not looking at other Republican groups or Democratic groups…How about a compromise – What do you think about changing the description for advocacy organizations on the Emerging Issues tab to that which you've included under scenario #1; then, you could include the Occupy description from your scenario #2 on the Watch For tab specifying that these cases should be referred to your group? We could still have the same grade 13 agents working the advocacy and Occupy cases."	Cindy Thomas, Steven Bowling	IRS0000621814-17
January 25, 2012	Steve Bowling changes the BOLO spreadsheet entry for "Advocacy Orgs" and replaces it with "Current Political Issues." Bowling revises the criteria as follows: "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, $ocial economic reform/movement." Bowling changes the coordinator contact from Ronald Bell to Stephen Seok.	Steve Bowling	IRS0000352978-84 SFC Interview of Ronald Bell (July 30, 2013) not transcribed
January 25, 2012	Steve Bowling informs Ronald Bell that he has made changes to the emerging issues tab of the BOLO to "remove advocacy groups" and "to update the issue in an effort to capture what we are looking for." Bowling explains to Bell that the July 2011 BOLO criteria was too broad and was catching cases that did not involve political advocacy issues. He instructs Bell to send out the revised BOLO. Bell asks about Bowling's use of the phrase "$ocial economic reform" in the revised criteria. He states that this was "code" for the Occupy groups and since Bowling added the Occupy groups to the BOLO, there was no need to use this phrase. Bowling advises to leave the phrase in the BOLO, as other groups might also advocate for social economic reform.	Steve Bowling, Ron Bell	IRS0000013187 SFC Interview of Ronald Bell (July 30, 2013) not transcribed

Date	Occurrence	Key Personnel Involved	Authority
February 10, 2012	Cindy Thomas emails Holly Paz the Tax Notes article previous emailed on January 20th. Thomas writes, "The information below is what we have for the 'Occupy' groups. We added this to our 'Watch List' tab on our BOLO spreadsheet. Also, our revised write up for the advocacy cases is included on the "Emerging Issues" tab." Attached to Thomas' email is a copy of the BOLO spreadsheet. The Emerging Issues tab of the spreadsheet contains an entry for an issue labeled "Current Political Issues." The issue is described as "[p]olitical action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $ocial economic reform / movement."	Holly Paz, Cindy Thomas.	IRS0000013754-60
February 15, 2012	Stephen Seok distributes draft template development questions to the Advocacy Team together with the Guidesheet. He plans to convene a meeting in the near future to finalize the draft template development questions and development guidance.	Stephen Seok	IRS0000594910-29
February 21, 2012	Hilary Goehausen prepares an SCR for the political advocacy cases assigned to her. She notes that with regard to the only open case, the Albuquerque Tea Party, she is now preparing a proposed denial.	Hilary Goehausen	IRS0000163778-80 (Email attachment containing taxpayer information omitted by Committee staff)
February 22, 2012	Stephen Seok, Joseph Herr, Ronald Bell and others meet with Steve Bowling to discuss the draft template development questions.	Steve Bowling, Stephen Seok, Joseph Herr, Ronald Bell	IRS0000594936

Date	Occurrence	Key Personnel Involved	Authority
February 22, 2012	In preparation for a meeting with Steve Miller, Lois Lerner asks Holly Paz for the number of all advocacy cases in the pipeline, whether they are screened or sent to full development, and whether there is history on similarly situated organizations. Paz asks Cindy Thomas for the number of advocacy cases and to confirm that all applications meeting the BOLO criteria receive full development. She also asks Thomas "[h]ow do we have this described in the bolo?" Thomas responds by providing Paz with information showing that there are over 200 advocacy cases pending, and tells Paz that all cases that meet the BOLO criteria get full development. She also provides Paz with the Emerging Issues tab from the BOLO spreadsheet that contains the entry for political advocacy cases. That entry reflects the changes made by Steve Bowling on January 25, 2012 and now reads: "Current Political Issues – Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, Social economic reform/movement. **Note: typical advocacy type issues that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria unless they are also involved in activities described above.**"	Lois Lerner, Holly Paz, Cindy Thomas	IRS0000013739-48
February 24, 2012	Holly Paz sends Don Spellman the Guidesheet for his review. The draft Guidesheet is dated November 2011. Spellman forwards the Guidesheet to his supervisor, Janine Cook, and informs her that the Guidesheet requires "corrections, additions, changes all over." He indicates that he will assemble a working group with EO to review the Guidesheet. Cook does not know why TE/GE waited so long to seek Chief Counsel input on the Guidesheet. Spellman determines that in its current form, the Guidesheet departs from published IRS guidance, necessitating review and approval by Treasury's Office of Tax Policy.	Holly Paz, Don Spellman, Janine Cook	IRS0000056937-50 SFC Interview of Janine Cook, (Sep. 9, 2013) p. 72 SFC Interview of Donald Spellman, (July 10, 2013) pp. 88-90

Date	Occurrence	Key Personnel Involved	Authority
February 24, 2012	Lois Lerner meets with Republican Congressional staff to discuss the IRS' processing of several applications for exemption from Tea Party groups (Ohio Liberty Council and Shelby County Liberty Group). She tells Holly Paz, Janine Cook and Don Spellman that Congressional Staff has asked for a copy of the Guidesheet. She asks Spellman and Cook to review the Guidesheet and let her know their concerns so that the Guidesheet can be finalized. Lerner also asks Paz to prepare for her a timeline showing the increase in the number of applications from political advocacy groups, and when cases were sent to R&A for guidance.	Lois Lerner, Holly Paz	IRS0000220094-98 IRS0000220078-83
February/March 2012	Victoria Judson reviews the Guidesheet. She suggests that the Guidesheet be revised to instruct agents to ask applicants for representative samples of documents, instead of copies of every document generated by the applicant.	Victoria Judson	SFC Interview of Victoria Judson, (Sep. 11, 2013) pp. 60-61
February 27, 2012	Joseph Herr, a member of the Advocacy Team, asks Stephen Seok when the Team will be permitted to again send out development letters. Seok forwards Herr's inquiry to Steve Bowling who forwards it to Cindy Thomas. Thomas asks why development letters are not being sent out. Bowling denies telling Seok to stop sending out development letters and explains that Seok misunderstood Bowling's directive to not develop template questions.	Steve Bowling, Cindy Thomas	IRS0000594958-63
February 28, 2012 to March 1, 2012	Stephen Seok sends Steve Bowling a list of template development questions that the Advocacy Team generated for use in processing political advocacy cases. Bowling forwards the template questions to Cindy Thomas and she sends them to Holly Paz, Justin Lowe and Andy Megosh. Thomas tells Paz that she will check to make sure that "our folks were instructed not to ask questions if information is in the case file."	Cindy Thomas, Steve Bowling	IRS0000605973-80
February 28, 2012	Lois Lerner adds a sentence to a statement prepared by Michele Eldridge in response to an AP inquiry. The sentence states that 501(c)(4) organizations can operate without material barrier in the absence of approval of their tax exempt status by the IRS. In explaining her suggested edit, Lerner states that "it doesn't harm you that we take a long time."	Lois Lerner, Steve Miller, Nikole Flax	IRS0000341674-76

Date	Occurrence	Key Personnel Involved	Authority
February 29, 2012	Steve Miller asks Nikole Flax to find out how many cases are pending in EO Exams that involve allegations of political activity. She indicates over 100 501(c)(3), (4), (5) and (6) cases have allegations of political activity and that there are 51 501(c)(4) cases in Exams (not limited to allegations of political activity).	Steve Miller, Nikole Flax	IRS0000219479-82
February–April 2012	Numerous news articles begin to appear in the press reporting on complaints from various Tea Party organizations about the IRS use of intrusive, burdensome and repetitive questions, as well as the IRS' failure to issue determinations on applications for exemption. Congressional interest in the IRS' treatment of Tea Party groups increases.		IRS0000341677-80 IRS0000325929-30 IRS0000212412-414
February 29, 2012	Lois Lerner asks Holly Paz and Cindy Thomas if Cincinnati has been given "new guidance on how they might reduce the burden in the information requests and make it clearer that recipients can ask for extensions." Lerner states "I don't want any more letters going out on advocacy cases until the letters have been adjusted." She also expresses concern that the letters that EO Determinations staff is sending to applicants are identical. In response, Thomas asks Steve Bowling to find out what the agents are doing. Bowling reports back that the agents are modifying the template questions to fit the circumstances and understand that they shouldn't ask for information that has already been provided.	Lois Lerner, Holly Paz, Cindy Thomas, Steve Bowling	IRS0000594977-80
March 2, 2012	Janine Cook forwards to Victoria Judson an article from the *Huffington Post* entitled "IRS Battles Tea Party Groups Over Tax Exempt Status." The article states that "[t]he fight features instances in which the IRS has asked for voluminous details about the groups' postings on social networking sites . . . , information on donors and key members' relatives, and copies of all literature they have distributed to their members . . . ." Cook tells Judson that other than reviewing the Guidesheet, she hasn't heard anything from the client about its review of applications from advocacy organizations.	Janine Cook, Victoria Judson	IRS0000014473-76
March 2012	Douglas Shulman is scheduled to testify before the House Ways and Means Subcommittee on Oversight on March 22, 2012. In preparation for the hearing, Shulman discusses with Steve Miller the allegation that intrusive questions are being asked to Tea Party organizations.	Douglas Shulman, Steve Miller	SFC Interview of Douglas Shulman, (Dec. 3, 2013) pp. 59-66

Date	Occurrence	Key Personnel Involved	Authority
March 2, 2012	A member of Congress reaches out to Commissioner Doug Shulman regarding "Applicant X," an organization seeking exemption under 501(c)(3). The organization had submitted an application in October 2011 and had twice requested expedited review, and twice the IRS denied the request. Shulman is advised to tell the member that he doesn't get involved in individual cases and that he convey to EO why the member thinks the application should be expedited.	Doug Shulman	IRS0000411951-52 (Email attachment containing taxpayer information omitted by Committee staff)
March 5, 2012	Don Spellman asks to meet with EO to go over his comments and suggestions for the Guidesheet. Lois Lerner expresses the view that there won't be enough time to finalize the Guidesheet since it is already with Steve Miller and she will be visiting the Senate Finance Committee on March 8, 2012 to discuss the Guidesheet.	Lois Lerner	IRS0000057789-90
March 5, 2012	In response to an email from Stephen Seok asking whether EO Technical will review the first proposed approval of a political advocacy organization's application for tax exemption, Mike Seto directs that: • "EOD will send the application up; • Hilary will look at it first then Justin; • Once EOT/EOG review is completed and recommendations made, we send the application to Counsel for review based on the information in the file and front office concurrently; • We will then do a briefing with the executives on the case." Thomas tells Seto that EO Determinations will be sending to EO Technical a 501 (c)(3) denial soon and asks EO Technical review it.	Mike Seto	IRS0000594982-84
March 5, 2012	In reaction to stories in the press regarding complaints from Tea Party groups about the nature of the development letters that they are receiving from the IRS, Holly Paz instructs Cindy Thomas to suspend sending out development letters. She also asks Thomas to send her some copies of "development letters we have sent to these orgs that have different questions from the ones that have been reported in the press . . . Lois wants to support her story that we are not asking everyone the same questions – that the letters are tailored."	Holly Paz, Cindy Thomas	IRS0000477182-83

Date	Occurrence	Key Personnel Involved	Authority
March 6, 2012	Nikole Flax asks to meet with Lois Lerner and Holly Paz to discuss the member of Congress' request for expedited treatment of "Applicant X's" application for exemption under 501(c)(3). Lerner responds that the application will be approved that day. Flax asks Lerner if the approval is based on new information received from the organization. Cindy Thomas advises Lerner that the case was approved based on the information already in the file.	Lois Lerner, Nikole Flax, Cindy Thomas, Holly Paz	IRS0000429946-47
March 6, 2012	Cindy Thomas sends a draft approval of a 501(c)(4) political advocacy case to Mike Seto for review.	Cindy Thomas, Mike Seto	IRS0000617020-21
March 7, 2012	Janine Cook sends the Guidesheet to William Wilkins and to Erik Corwin. She explains to them that EO prepared the Guidesheet to assist EO Determinations in processing applications for exemption that involve political advocacy and lobbying. She further indicates that Congress has made inquiries of Lois Lerner as to how the advocacy cases are being handled because of concerns over delays and allegations of intrusive development questions. Cook tells Wilkins and Corwin that Congress has asked to see the Guidesheet. Cook explains that her staff has worked quickly in turning around comments on the Guidesheet.	Janine Cook, William Wilkins, Erik Corwin	IRS0000056969-83
March 7, 2012	Lois Lerner directs that EO Determinations advise organizations that have received a development letter that they will be given 90 days to respond to the development letter, and that if they do not respond within those 90 days, that their case will be put in suspense for an additional 90 days. Thereafter, the case will be closed and the organization will be required to re-apply. Cindy Thomas tells Paz that "obviously, we'll do what we are told" but questions Paz why Lerner is directing this change. Paz states that "when we have had a case for a long time without taking action and are asking for a lot of stuff, we have to give more time." Paz notes to Thomas: "I also do what I am told."	Cindy Thomas, Holly Paz, Lois Lerner	IRS0000593393-96
March 8, 2012	TIGTA staff meets with Oversight and Government Reform staff to hear their concerns regarding the IRS' treatment of Tea Party groups seeking tax-exempt status.	Matt Sutphen, Nancy Nakamura, Troy Patterson	Emails from Matt Sutphen to Nancy Nakamura, Troy Patterson and others, Mar. 1-8, 2012

Date	Occurrence	Key Personnel Involved	Authority
March 8, 2012	Steve Miller directs that if an organization that has been asked to provide donor information calls about the request, agents are to permit the organization to not send in the donor information.	Steve Miller	IRS0000414835-36
March 9, 2012	Mike Seto announces a 7-step process by which EO Technical will provide technical assistance to EO Determinations on political advocacy cases. The seven steps are as follows: 1) Request assigned to Hilary Goehausen; 2) Goehausen's recommendation is then reviewed by Justin Lowe (EO Guidance); 3) When Lowe completes his review, Seto schedules a meeting with Cindy Thomas and Donna Abner; 4) EO Technical meets with Thomas and Abner to discuss; 5) The recommendation is then sent to the Chief Counsel's office for review; 6) Once Counsel comments, a meeting is scheduled with Lois Lerner and Holly Paz to discuss the recommendation; and 7) The recommendation is issued.	Mike Seto	IRS0000066875
March 13, 2012	William Wilkins receives the Chief Counsel TE/GE biweekly report. It contains an entry explaining how EO requested expedited review of the Guidesheet (within one week) and how Chief Counsel staff worked quickly to provide EO with comments and suggested revisions.	William Wilkins	IRS0000061498-61505
March 14, 2012	Steve Miller analyzes the holding of the ***Citizens United*** decision in handwritten notes. Miller notes that after the decision, there was a "rise of super PACS." He also notes that the decision contributed to an increase in 501(c)(4)s that can engage in "unlimited issue advocacy" but "limited political campaign activity." He further notes that if approved, a 501(c)(4)'s "donor list is not public."	Steve Miller	IRS0000506870-71

Date	Occurrence	Key Personnel Involved	Authority
March 15, 2012	In coordination with Steve Miller's office, EO develops guidance for treating advocacy cases. For cases in which an additional development letter was sent but no response was received, the organizations will be given a 60-day extension. Cases already placed in suspense for failure to respond to a development letter will be taken out of suspense and the applicant will be provided an additional 60 days to respond. Stephen Seok informs the Advocacy Team of the guidance.	Holly Paz, Cindy Thomas	IRS0000455356-58 IRS0000599500-02
March 21, 2012	Hilary Goehausen prepares an SCR for the political advocacy cases assigned to her. Regarding the Albuquerque Tea Party, she notes that it has retained counsel and that counsel has requested an extension of time until May 15, 2012 to respond to the second development letter. Estimated closure date is now July 31, 2012.	Hilary Goehausen	IRS0000163796-97
March 21, 2012	Janine Cook sends a revised version of the Guidesheet to Lois Lerner. She indicates that Lerner was not satisfied with the initial round of edits by Chief Counsel staff and asked that the Guidesheet be revised so as to be more usable to EO Determinations staff. Cook suggests a meeting and expresses her concern that the Guidesheet must not state new guidance, but rather just restate existing rules, so as to avoid the necessity of securing Treasury Department review.	Janine Cook, Lois Lerner, Victoria Judson	IRS0000056992-57043
March 22, 2012	In response to a question from Rep. Boustany about the IRS targeting Tea Party organizations for additional scrutiny, Douglas Shulman tells the House Ways and Means Subcommittee on Oversight that "[t]here is absolutely no targeting."	Douglas Shulman	Transcript of W&M Hearing on IRS Targeting Mar 22. 2012
March 23, 2012	Stephen Seok provides Cindy Thomas with template questions distributed to the Advocacy Team of EO Determinations Specialists. Included in the questions is a demand for donor information. Seok denies using these questions as a "template." Rather, he asserts that the questions were distributed to the Team "just for reference."	Stephen Seok, Cindy Thomas	IRS0000414842-55

Date	Occurrence	Key Personnel Involved	Authority
March 2012	Steve Miller discusses with Nancy Marks, Senior Technical Advisor to the TE/GE Commissioner, his concerns with the processing of Tea Party applications in Cincinnati. These concerns are a product of both media stories and Congressional inquiries. Miller asks Marks to visit the Cincinnati operation, find out what is going on, and make recommendations to address any issues.	Steve Miller, Nancy Marks	SFC Interview of Steve Miller, (Dec. 12, 2013) pp. 128-129
March 26, 2012	David Marshall, Attorney in the Chief Counsel's Office, submits an inventory of his assignments to his supervisor. Marshall includes his work on the Guidesheet and states that it is a matter of the "highest priority" and that the issue of political campaign intervention by 501(c)(4) organizations is the subject of much Congressional attention.	David Marshall	IRS0000058862-71
March 26, 2012	The *EO Tax Journal* publishes a letter from Landmark Legal Foundation to TIGTA calling for an investigation of the IRS' handling of Tea Party applications. Joseph Urban sends the letter to Nancy Marks and Joseph Grant. Marks responds by stating "we might want to call TIGTA to say we'd welcome this." Grant also states that "it would be a good idea to have TIGTA review this."	Nancy Marks, Joseph Grant	IRS0000218372-75
March 29, 2012	TIGTA sends Lois Lerner and others an email containing an audit planning notification. The notification advises that TIGTA will audit IRS' handling of applications for 501(c)(4), (c)(5) and (c)(6) organizations.	Lois Lerner, Steve Miller,	IRS0000509688 (email attachment omitted)
Late March 2012	Steve Miller informs Douglas Shulman that he is sending Nancy Marks to Cincinnati to find out how EO Determinations has been processing political advocacy cases. Miller tells Shulman that TIGTA will also be doing a report on the matter.	Douglas Shulman, Steve Miller	SFC Interview of Douglas Shulman, (Dec. 3, 2013) pp. 35-36
April 3, 2012	Victoria Judson sends William Wilkins and Erik Corwin an agenda for the TE/GE bi-weekly meeting. Included in the agenda is the Guidesheet.	Victoria Judson, William Wilkins	IRS0000232208-09
April 16, 2012	Steve Miller is informed that TIGTA is in Ogden, Utah investigating the disclosure of the 2008 Schedule B of the National Organization for Marriage (NOM). The Schedule B contains a list of donors who have given $5,000 or more to the entity.	Steve Miller	IRS0000279572-73

Date	Occurrence	Key Personnel Involved	Authority
April 17, 2012	Nikole Flax sends Lois Lerner an article from *The Hill* in which GOP lawmakers state that the IRS harassed Tea Parties and call for an investigation. Lerner responds by stating "I get more and more concerned that these cases can't properly be worked in Cincy."	Lois Lerner, Nikole Flax	IRS0000325929-30
April 17, 2012	Hilary Goehausen prepares an SCR for the political advocacy cases assigned to her. Goehausen notes that Cincinnati sent EO Technical the case file for a 501(c)(4) organization (First Coast Tea Party) that Cincinnati determined should be approved. EO Technical and EO Guidance reviewed the file and determined that the application should be denied. EO Technical is preparing the denial that will need to be reviewed by TE/GE Counsel. Goehausen further notes that there are nine additional political advocacy cases pending in EO Technical.	Hilary Goehausen	IRS0000163812-14 (Email attachment containing taxpayer information omitted by Committee staff)
April 23 - 25, 2012	Nancy Marks, together with Holly Paz, Sharon Light (Senior Technical Advisor to the Director, EO), Rob Malone, and Joe Urban (Senior Technical Advisors to the TE/GE Commissioner) visit EO Determinations in Cincinnati to interview employees on the handling of political advocacy cases and to review applications for exemption by political advocacy organizations.	Holly Paz, Sharon Light, Rob Malone, Nancy Marks, Joe Urban	IRS0000003152-55
April 25, 2012	At Holly Paz's request, Judith Kindell reviews development letters sent to applicant organizations by EO Determinations. Kindell reports back to Paz a list of troubling questions that EO Determinations asked of applicant organizations. The questions ask, among other things for: the names of donors; a list of all issues important to the organization and its positions relative to the issues; the substance of conversations between the members of the organization and audiences at events; whether officers or directors will run for office; the political affiliations of officers, directors and speakers; and the activities of other organizations.	Holly Paz, Judith Kindell	IRS0000013868 (Email attachment containing taxpayer information omitted by Committee staff)
April 25, 2012	Don Spellman provides Lois Lerner with comments on the draft Guidesheet.	Don Spellman, Lois Lerner	IRS0000512392-419

Date	Occurrence	Key Personnel Involved	Authority
April 27, 2012	Cindy Thomas advises the Advocacy Team of changes in the process for reviewing advocacy cases. She states "[u]ntil further notice, you don't have to request new political advocacy cases for assignment. . . you won't be sending development letters to your individual contacts [in EO Technical]. Instead, they will all be sent to Sharon Light, who will control them. . . Holly will let us know when . . . we need for you to start requesting new political advocacy cases for assignment."	Cindy Thomas, Advocacy Team members	IRS0000005394
April 29, 2012	Steve Miller and Nikole Flax ask Cathy Livingston, Deputy Associate Chief Counsel, TE/GE Division, to review the Guidesheet. She responds with several pages of questions and comments and concludes that the Guidesheet reflects "the best efforts of a team that has not had the requisite experience with working the cases and issues."	Steve Miller, Nikole Flax, Cathy Livingston	IRS0000063118-21
April 30, 2012 to May 2, 2012	A team of TIGTA auditors visits EO Determinations in Cincinnati for a walkthrough of the application process and to obtain information on the availability of data.	Tom Seidell, Cheryl Medina, Michael McGovern	Email from Troy Patterson to Thomas Seidell, Apr. 30, 2012
May 2, 2012	Lois Lerner writes to Steve Miller and asks for a better understanding of roles and responsibilities in dealing with the 501(c)(4) cases. She states that Miller has asked Nancy Marks to "take a deep look" at what is going on and that unbeknownst to her, Cathy Livingston has made comments on the Guidesheet and Nancy Marks has directed one of Lerner's employees to meet with Livingston.	Lois Lerner, Steve Miller	IRS0000468556

Date	Occurrence	Key Personnel Involved	Authority
May 3, 2012	Nancy Marks reports to Steve Miller on the results of her 3-day trip to EO Determinations in Cincinnati from April 23-25, 2012, during which time she interviewed employees and reviewed cases. Marks tells Miller that: the use of intrusive development questions resulted from a lack of guidance and training by EO Technical to EO Determinations; there are 250-300 political advocacy cases in the queue; the EO Determinations agents used a "BOLO" list with "Tea Party" and "9/12" on it as screening criteria but that the problem with using such criteria had been "fixed" earlier; among the political advocacy cases in the queue are cases on both sides of the political spectrum; TIGTA is reviewing EO's treatment of the cases; and she found no evidence of political bias. Marks makes the following recommendations to Miller: train the EO Determinations agents; pair EO Determinations agents with EO Technical staff to provide direct assistance; and review all of the political advocacy cases through a "bucketing" exercise that allows the cases that didn't require much or any further development to be quickly decided. Based on Cathy Livingston's concerns about the Guidesheet, Steve Miller decides to proceed with Nan Marks' suggestion to train EO Determinations agents instead of using the Guidesheet. Further development of the Guidesheet ceases and it is shelved.	Nancy Marks, Steve Miller	SFC Interview of Steve Miller, (Dec. 12, 2013) pp. 133-144 SFC Interview of Nikole Flax, (Nov. 21, 2013) pp. 85-86
May 3, 2012	Steve Miller briefs Douglas Shulman, Commissioner of the IRS, on Nancy Marks' findings. He conveys to Shulman the salient points, including the existence of the BOLO list and its criteria. He also tells Shulman that the BOLO list issue has been resolved.	Steve Miller, Douglas Shulman	SFC Interview of Steve Miller, (Dec. 12, 2013) p. 142 SFC Interview of Douglas Shulman, (Dec. 3, 2013) pp. 37-40
May 2012	Steve Miller believes that Stephen Seok and John Shafer are responsible for the change made to the BOLO by Steve Bowling on January 25, 2012. Accordingly, Miller has Shafer and Seok counseled by Cindy Thomas for changing the BOLO criteria. Miller is subsequently told that neither Seok nor Shafer were behind the change, but he never finds out who actually did direct the change (Thomas and Bowling). He also has Seok reassigned so that he no longer is the Advocacy Team coordinator since Seok was responsible for the intrusive development letters and because he had not performed well as the Advocacy Team coordinator.	Steve Miller, John Shafer, Stephen Seok, Steve Bowling	SFC Interview of Steve Miller, (Dec. 12, 2013) pp. 143-145

Date	Occurrence	Key Personnel Involved	Authority
May 8, 2012	Holly Paz informs Cindy Thomas that a team from Washington D.C. will arrive in Cincinnati on May 14, 2012. The team members (Matthew Giuliano; Hilary Goehausen; Judy Kindell; Sharon Light; Justin Lowe; Andy Megosh) will provide training to the Advocacy Team. Training will begin on May 14 and end on May 15. Paz informs Thomas that starting on May 16, 2012, the training team and several Determinations Unit Specialists will start to place the political advocacy cases in "buckets" as follows: Bucket 1 – favorable (no further substantive development required). Bucket 2- favorable (limited development required). Bucket 3 – significant development. Bucket 4 –likely denial Two reviewers will review each case. Both reviewers must agree to place a case in a particular "bucket." If they disagree, another reviewer will look at the case and attempt to reconcile the disagreement.	Holly Paz, Cindy Thomas	IRS0000596252
May10, 2012	Cindy Thomas explains to Holly Paz how the BOLO list is updated. Thomas states that Group 7822 is responsible for updating the BOLO and sending BOLO alerts to Determinations specialists and managers when changes are made. For the Watch List, Potential Abusive and Coordinated Processing tabs, managers send their suggested revisions to the Group 7822 manager for consideration. For Emerging Issues, the suggested revisions are sent to the Emerging Issues Coordinator in Group 7822. The Group 7822 manager then consults with the area manager or with the Program Manager. Thomas states that the BOLO spreadsheet was introduced in June/July 2010. The name "BOLO" was adopted in August 2010.	Cindy Thomas, Holly Paz	IRS0000004755-62
May 13, 2012	Ronald Bell emails Carter C. Hull advising him that he has an application from a group that he believes may be an ACORN successor group. Bell tells Hull that "[t]he BOLO list states to contact you" and asks Hull to "[p]lease advise how you want to process this case."	Ronald Bell, Carter C. Hull	IRS0000054963
May 14-15, 2012	The Advocacy Team receives training on political advocacy cases from the Washington D.C. team. Sharon Light is named Coordinator of the Advocacy Team.	Sharon Light	IRS0000599626-28

Date	Occurrence	Key Personnel Involved	Authority
May 15, 2012	Lois Lerner asks how the BOLO list is used. Cindy Thomas explains that the BOLO is used by all EO Determinations specialists and managers. Screeners use it to determine if a case needs to go to a particular Group. Others use it when they receive information from the applicant that would suggest that the case needs to go to another Group. Lerner is provided a copy of the BOLO that contains the entry for political advocacy cases. That entry reads: "Current Political Issues – Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $ocial economic reform/movement."	Cindy Thomas, Lois Lerner, Holly Paz	IRS0000013776-82
May 16, 2012	Members of the training team from Washington D.C. and members of the Advocacy Team begin "bucketing" the political advocacy cases pending in EO Determinations.	Holly Paz	IRS0000599626-28
May 16, 2012	Holly Paz asks Lois Lerner and others for feedback on language for the BOLO that would "replace the current advocacy org language on the BOLO as well as the separate references to ACORN successors and Occupy groups. The language proposed by Paz reads as follows: "501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention or close connection to a political party or candidate(s). Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria."	Holly Paz	IRS0000013697
May 17, 2012	Holly Paz issues a Memorandum regarding the BOLO spreadsheet. In the Memorandum, she states that Abusive Transactions and Fraud Issues, Emerging Issues, Coordinated Processing cases and a Watch List will be tracked on the BOLO and occupy separate tabs. The Emerging Issues Coordinator will maintain the spreadsheet, receive updates and enter them on the BOLO. Any updates or changes must be approved by the Group Manager of the Emerging Issues Coordinator, the Determinations Program Manager and the Director, Rulings and Agreements.	Holly Paz	IRS0000437639-41
May 17, 2012	IRS employees identify a case as an "occupy BOLO case."	Roger Vance, Karl Beckerich, Gary Muthert	IRS0000014349

Date	Occurrence	Key Personnel Involved	Authority
May 21, 2012	Margo Stevens of the IRS Chief Counsel's Office informs Lois Lerner that since the IRS did not rely on or use the donor information submitted by some applicants in response to a request for same by the IRS, that the donor lists were not records within the meaning of the Federal Records Act and could be destroyed by the IRS or returned to the applicant.	Lois Lerner, Margo Stevens	IRS0000182318-19
May 24, 2012	A telephone call script is developed to inform some organizations that had not responded to the additional information requests that it was not necessary to send the requested information and that their applications had been approved. Also, an additional paragraph is developed for the favorable determination letters sent to these organizations.	Cindy Thomas	IRS0000005204-08
May 24, 2012	IRS Determinations staff identifies an Occupy group application based on its entry on the "Watch For" tab of the BOLO list. Tyler Chumney tells Peggy Combs that Steven Bowling told him there is one other Occupy case. Chumney explains to Combs that Occupy cases are not "considered to be Current Political Issues" because they do not advocate for expanding/limiting the government, so they have a separate entry on the BOLO under the "Watch For" tab.	Tyler Chumney, Peggy Combs	IRS0000013231 – 33
May 25, 2012	Joe Urban forwards to Lois Lerner and others an article in *Tax Analysts* on Democracy 21 and Campaign Legal Center's request that the IRS deny Crossroads GPS application for exemption. Lerner requests a status from Cindy Thomas on Crossroads GPS' application and Thomas refers Lerner to Sharon Light, since Light is overseeing the Advocacy Team and tracking the cases. Light tells Lerner that the case has been reviewed by two reviewers and that one has recommended general development while the other has recommended limited development. Lerner responds by telling Light "full development may be the best course . . ." Lerner further states to Light that "I will leave it in your capable hands. Having said that -- as they say they have been filing 990s, you should be looking at those as well."	Lois Lerner, Sharon Light	IRS0000199184-86
May 30, 2012	TIGTA briefs Steve Miller on the scope of the review that it will conduct on the way EO processes political advocacy cases. TIGTA tells Miller that criteria targeting "Tea Party," "9/12" and "Patriots" were used in reviewing applications for tax exempt status.	Steve Miller	SFC Interview of Steve Miller, (Dec. 12, 2013) p. 151

Date	Occurrence	Key Personnel Involved	Authority
June 1, 2012	Holly Paz sends Lois Lerner a draft letter to be sent to applicant organizations that were asked for, and provided donor information. The letter advises that the donor information will be destroyed.	Holly Paz, Lois Lerner	IRS0000182990-91
June 1, 2012	Holly Paz sends Cindy Thomas new "wording that should be used for the Emerging Issue description for advocacy cases." Paz tells Thomas that "[w]e'll remove the references to Acorn and Occupy from the 'Watch List' – the issues we are concerned about in those cases should be captured by the language below." The new language is: "501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria."	Holly Paz, Cindy Thomas	IRS0000013434-35
June 1, 2012	Mark Tornwall, an acquaintance of Lois Lerner, sends Lerner an email in which he states that Australia is politically "a lot more progressive than here in 'Tea Party' Land." He then asks Lerner: "[s]o speaking of regressive politics – does 'Citizens United' scare you as much as it scares me?" Lerner responds as follows: "Citizens United is by far the worst thing that has ever happened to this country. More on that later." Tornwall agrees with Lerner's depiction of the *Citizens United* decision and notes that his "take on this is that the right wing and five of the Supreme Court Justices have concluded that the wealthy among us are entitled to decide what happens here." Lerner then summarizes to Tornwall her views on the *Citizens United* decision in the following manner: *"We are witnessing the end of 'America.' There has always been the struggle between the capitalistic ideals and the humanistic ideals. Religion has usually tempered the selfishness of capitalism, but the rabid, hellfire piece of religion has hijacked the game and in the end, we will all lose out. it's* (sic) *all tied together money can buy the Congress and the Presidency, so in turn, money packs the SCt. and the court backs the money – the "old boys" still win."*	Lois Lerner, Mark Tornwall	IRS0000800024-26

Date	Occurrence	Key Personnel Involved	Authority
June 6, 2012	Steve Grodnitzky prepares a list of advocacy cases pending in EO Technical. There are 12 cases on the list. None are completed and a number have been pending in EO Technical for months with little or no activity.	Steve Grodnitzky	IRS0000011212-14
June 7, 2012	The bucketing exercise is concluded. Holly Paz reports the results as follows: 83 501(c)(3) organizations bucketed: 16 approvals 16 limited development 23 general development 28 likely denials 199 501(c)(4) organizations bucketed 65 approvals 48 limited development 56 general development 30 likely denials Paz informs that applicants who submitted donor information will be advised by letter that the request was an error and that the donor information will be destroyed. Going forward, Mitch Steele and Joseph Herr will bucket all new cases and send their bucketing worksheets to Sharon Light who will reconcile any differences of opinion between Steele and Herr. Ron Bell will track advocacy cases going forward. Bucketed cases are assigned to EO Determinations agents to work.	Holly Paz	IRS0000578664-66
June 14, 2012	Ruth Madrigal, Attorney Advisor, Office of Tax Policy, Treasury Department, transmits to Lois Lerner, Victoria Judson, Janine Cook, and Nancy Marks a news story about the 4th Circuit upholding the "major purpose" test for political committees. She indicates that she has her "radar up" on 501(c)(4)s and that "we mentioned potentially addressing them (off-plan) in 2013."	Ruth Madrigal, Victoria Judson, Janine Cook, Nancy Marks	IRS0000015400-01

Date	Occurrence	Key Personnel Involved	Authority
June 15, 2012	The BOLO is revised. Under the Emerging Issues Tab, the issue name is now "Current Political Issues." The Issue Description reads as follows: "501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: advocacy action type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria." Under the Disposition column, the BOLO instructs to "[f]orward case to Group 7822."		IRS0000195830 BOLO furnished by TIGTA
June 18, 2012	Lois Lerner asks Nancy Marks to react to an idea. Lerner is concerned about 501(c)(4) organizations for which the IRS has received referrals, but which have not applied for exemption and have not yet filed a 990 return. Lerner suggests that for organizations that have received an EIN over a year and a half ago, that the IRS perform an audit (compliance check) on the organization. During the audit, Lerner suggests that the IRS ask the organization why it hasn't filed a return. Marks thinks the idea has merit, but suggests that the Chief Counsel P&A react to it.	Lois Lerner, Nancy Marks	IRS0000475783-84
June 19, 2012	Nikole Flax asks Lois Lerner to give her an update on all of the letters that the IRS has sent out on 501(c)(4) political activities. Andy Megosh prepares a list showing that 17 letters have been released (14 Congressional); 8 Congressional letters remain open; and 13 non-Congressional letters remain open.	Nikole Flax, Lois Lerner, Andy Megosh	IRS0000178125-31
June 20, 2012	Mike Seto sends an email to EO Technical Managers informing them that before their staffs issue any favorable or denial rulings on any cases with advocacy issues, the reviewers must first notify their managers and Seto and get approval. Seto indicates that he may also require a short briefing on the facts of the particular case.	Mike Seto	IRS0000182786
June 22, 2012	TIGTA informs Joseph Grant and Lois Lerner by way of Engagement Letter that it is initiating a review of the manner in which the IRS has reviewed applications for tax-exempt status involving political advocacy issues. Steve Miller is made aware of the letter.	Joseph Grant, Lois Lerner, Steve Miller	IRS0000284200-04 IRS0000219503-06

Date	Occurrence	Key Personnel Involved	Authority
June 25, 2012	Lois Lerner is apprised by Richard Daly that TIGTA will conduct a review of the manner in which IRS deals with applications from 501(c)(4) organizations. Daly provides Lerner with a copy of the engagement letter. Lerner states in response: "[i]t is what it is. Although the original story isn't as pretty as we'd like, once we learned this were [sic] off track, we have done what we can to change the process, better educate our staff and move the cases. So, we will get dinged, but we took steps before the "dinging" to make things better and we have written procedures. So, it is what it is."	Lois Lerner, Sarah Hall Ingram, Joseph Urban, Nancy Marks	IRS0000475251-52
June 27, 2012	Holly Paz issues directions to staff involved in the bucketing exercise. She informs staff to expunge donor information from files and to send affected applicants letters to that effect. If there is an outstanding development letter and a new one is being sent, she directs that staff advise the applicant to disregard the prior letter. She also tells staff that "there is no need to engage in extensive development" of political activity. If such activity is present, then the key question is "does the applicant have sufficient social welfare activity to meet the primary test."	Holly Paz, Cindy Thomas	IRS0000005234-38
June 28, 2012	Cindy Thomas reports to Holly Paz that 41 cases have been approved and that 31 development letters have been sent to bucket 2 applicants.	Cindy Thomas, Holly Paz	IRS0000005239
June 2012	With the bucketing exercise completed, development letters once again are sent to applicant organizations.	Joseph Herr	SFC Interview of Joseph Herr, (June 18, 2013) not transcribed
July 9, 2012	Lois Lerner forwards to Nikole Flax and Nanette Downing a memo from Judith Kindell and others reflecting the results of a review of the write-ups produced by the ROO Referral Committee when considering allegations of improper political activity. Lerner indicates her concern that the ROO may not appreciate the sensitivity required by these cases nor know when to use resource people from Rulings and Agreements. Lerner states that "Steve is very sensitive to DC involvement with Exam decisions." The memo generally finds that the write-ups don't objectively describe the allegation and that the recommendations don't always rely on tax policy.	Lois Lerner, Judith Kindell	IRS0000179069-71

Date	Occurrence	Key Personnel Involved	Authority
July 17, 2012	A *ProPublica* reporter asks to interview Lois Lerner on matters related to 501(c)(4) organizations. Michele Eldridge, IRS Media Relations Chief, advises Steve Miller, Nikole Flax, and Lois Lerner that the reporter has gathered both IRS records and FEC documents on more than 70 groups including many high-profile social welfare groups. Lerner's response is: "I think she has an interesting angle and it might be a good thing to explain why an organization might be reporting "political" activity to FEC, but not to IRS."	Steve Miller, Nikole Flax, Lois Lerner	IRS0000180842-44
July 18, 2012	Judith Kindell reports to Lois Lerner on the "bucketed" cases. She tells Lerner that "[o]f the 84 (c)(3) cases, slightly over half appear to be conservative leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum. Of the 199 (c)(4) cases, approximately ¾ appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on name. The remainder do not obviously lean to either side of the political spectrum."	Lois Lerner, Judith Kindell	IRS0000585328
July 24, 2012	Lois Lerner advises Holly Paz, David Fish and others that "NO responses related to c4 stuff go out without an affirmative message, in writing from Nikole."	Lois Lerner, Holly Paz, David Fish	IRS0000179669
August 7, 2012	Joseph Urban sends Steve Miller copies of various monthly SCRs prepared by Carter C. Hull in 2010 and 2011, along with Hull's October 18, 2010 memorandum on his activities in processing Tea Party cases.	Steve Miller	IRS0000165070-80
August 9, 2012	David Monroe emails to Victoria Judson, Janine Cook and others an excel chart that contains information about exempt organizations regulatory issues being considered by the Treasury Department Office of Tax Policy and the IRS. The spreadsheet contains fourteen items published in the Priority Guidance Plan and six items on the "Local List (i.e., work off plan). The "off-plan" list includes considering "[w]hether 'operated exclusively' has the same meaning under section 501(c)(3) and (c)(4)" along with five other exempt organization issues.	David Monroe	IRS0000458989-92

Date	Occurrence	Key Personnel Involved	Authority
September 12, 2012	Donna Abner asks Mike Seto and Holly Paz if Cincinnati "can go ahead and complete our review of the proposed denial letters and issue them to the [taxpayers.]" Paz responds that "[a]ny denials will need to be briefed to Lois before being issued, and she will need to give folks up the chain a heads up. This is because these will be the first denials on cases in the advocacy bucket and will be looked at VERY carefully by the public so we have to tread carefully."	Holly Paz, Mike Seto, Donna Abner	IRS0000441138-40
September 26, 2012	TIGTA provides a TE/GE quarterly briefing to Joseph Grant on its activities. TIGTA describes a review that it is conducting as addressing "Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Potential Political Advocacy Issues." Among other things, TIGTA is looking to determine if TE/GE management sanctioned "the use of criteria targeting applications for tax exemption that mention: the "Tea Party," "Patriots," or the "9/12 Project."	Joseph Grant	IRS0000468928-30 SFC Interview of Steve Miller, (Dec. 12, 2013) pp. 208-210
October 2012	Steve Miller is disappointed with Lois Lerner's overall performance for FY 2012. Miller believes that she has "under-managed." He does not approve Lerner for a retention bonus.	Steve Miller	SFC Interview of Steve Miller, (Dec. 12, 2012) p. 184
October 19, 2012	Steve Miller suggests to Nikole Flax that they meet with Cathy Barre to discuss an article in *Politico* about an organization (Americans for Prosperity). The article states that the organization has spent "$72 million on ads bashing Democrats so far this year." The article describes the organizations as a "Koch brothers-backed nonprofit" that did not disclose to the IRS when it was seeking exempt status in 2004 its intention to spend funds on political campaign intervention. The article is critical of the IRS for failing to audit Americans for Prosperity.	Steve Miller, Nikole Flax	IRS0000345931-37
October 30, 2012	Cindy Thomas emails Holly Paz regarding the bucketing exercise, and specifically, the bucket 4 cases (likely denials). She indicates that the specialists don't know what to do with the responses received from the organizations, whether someone in Washington is supposed to be looking at the responses, and that at the pace the cases are being worked, the specialists believe that "they'll be working the bucket 4 cases until they retire."	Cindy Thomas, Holly Paz	IRS0000005378

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October 31, 2012	Lois Lerner asks Nanette Downing "why of the 88 referrals reviewed by the PARC they only recommended 33 for exam?" Lerner also asks "[d]o we plan to do a post review of the PARC decisions?" Downing can't answer Lerner's first question, but tells Lerner that "a post review will be done." Lerner states that "I looked at the names of the orgs selected and only one is one that had been in the news. I would like to see the list of the ones not selected. Don't plan to talk about this with Steve. He needs to be outside case selection. He's Commissioner now."	Lois Lerner, Nanette Downing	IRS0000184801
November 2, 2012	Lois Lerner answers questions posed to her by TIGTA regarding her knowledge of the use of the BOLO criteria. Lerner says that (1) executive management did not review or approve the use of the BOLO criteria at the time of its adoption in early 2010; (2) Paz learned of the criteria that was being used to flag Tea Party cases when she asked Cindy Thomas about the criteria in June 2011; (3) "the BOLO description and the . . . list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group;" (4) Lerner first became aware that the BOLO referenced the Tea Party and that EO Determinations was using the criteria when she was briefed on the cases on June 29, 2011.	Lois Lerner, Holly Paz	IRS0000005950-53

Date	Occurrence	Key Personnel Involved	Authority
November 9, 2012	While in England, Lerner writes an email to her husband, Michael Miles, in which she states as follows: "Overheard some ladies talking about American (sic) today. According to them, we've bankrupted ourselves and at (sic) through. We'll never be able to pay off our debt and are going down the tubes. They don't seem to see that they can't afford to keep up their welfare state either. Strange." Her husband replies: "Well, you should hear the whacko wing of the GOP. The US is through; too many foreigners sucking at the teat; time to hunker down, buy ammo and food, and prepare for the end. The right wing radio shows are scary to listen to." Lerner responds to this email as follows: "Great. Maybe we are through if there are that many assholes." Her husband states in reply: "And I'm talking about the hosts of the shows. The callers are rabid." Lerner concludes this exchange with the following observation: "So we don't need to worry about alien teRrorists (sic). It's our own crazies that will take us down."	Lois Lerner, Michael Miles	IRS0000890492-95
December 6, 2012	Christopher Giosa sends Lois Lerner a paper entitled ***Trends in Donations to, and the Political Activities of Certain Nonprofit Corporations***. The hypothesis of the paper is that the holding in ***Citizens United*** "has led to increased donations to, and political activities of nonprofit corporations under 501(c)(4), (c)(5) and (c)(6)." The paper identifies various sources of data that could be examined and questions that would need to be answered in order to test the hypothesis.	Lois Lerner	IRS0000185323-27
December 14, 2012	Democracy 21 and Campaign Legal Center contact Lois Lerner about setting up a meeting to discuss the 'Petition for Rulemaking" that these organizations had submitted to the IRS on July 27, 2011. Lerner agrees to meet and invites representatives of the IRS Chief Counsel and the Treasury Department. The meeting is scheduled for January 4, 2013.	Lois Lerner	IRS0000122502-05

Date	Occurrence	Key Personnel Involved	Authority
December 14, 2012	Hilary Goehausen prepares an SCR on the five political advocacy cases now assigned to her. Two cases have been closed for FTE. Two are open pending review by Judith Kindell and/or Sharon Light including Albuquerque Tea Party, which is a proposed denial. Goehausen notes that "EOT is working approximately 9 other advocacy application cases in the office."	Hilary Goehausen	IRS0000011237-40
December 14, 2012	In response to a FOIA request filed by a *ProPublica* reporter, the IRS improperly discloses tax return information (Form 1024 and accompanying documents) from a conservative group Crossroads GPS that is seeking exempt status. Lois Lerner notes that "[e]veryone understands that mistakes happen, but because this is a disclosure, we will be referring to TIGTA." Lerner makes Nikole Flax aware of the disclosure.	Lois Lerner	IRS0000189992-93
December 18, 2012	Lois Lerner brings to Nanette Downing's attention some issues with a letter sent to organizations that have not responded to a Group Ruling Questionnaire. Lerner is critical of Downing's staff and says "[b]ut they don't think like that—they just do whatever they've always done." Lerner points out that the letter is appropriate for a compliance check, but not for reminding organizations to return a questionnaire. She goes on to tell Downing of her staff that "these folks have very little ability to apply any judgment." She also tells Downing that "I'm not really sure where Exam management is on the projects. They aren't reporting to you about the progress—who are they reporting to? . . . More and more I'm feeling like it's me, and that doesn't work." She tells Downing to "plan on coming up here after the New Year. We need to figure out how to get a handle on this so we don't get ourselves in trouble."	Lois Lerner, Nanette Downing	IRS0000185603-613
January 2, 2013	*ProPublica* requests comments from the IRS on an article that it will publish about the efforts of Democracy 21 and Campaign Legal Center to have the IRS investigate Crossroads GPS. The article is entitled "Watchdog Groups Again Call on IRS to Deny Tax-Exempt Status to Karl Rove's Crossroads GPS." Lois Lerner advises Nikole Flax and others that she has referred the letter from Democracy 21 and Campaign Legal Center to EO Exams. She also states that "Ruth Madrigal, Vickie Judson and I are meeting with Democracy 21 and some others on Friday regarding their request for guidance on c4. This has been set up for some time. . . . We will be very cautious."	Lois Lerner, Nikole Flax	IRS0000122515-18

Date	Occurrence	Key Personnel Involved	Authority
January 4, 2013	Lois Lerner, Victoria Judson and Ruth Madrigal meet at 11:00 AM with representatives of Democracy 21 and Campaign Legal Center to discuss changes in the 501(c)(4) policy relative to political advocacy. These groups had sent in several referrals in the prior two years specifically alleging that Crossroads GPS and other organizations were engaged in campaign intervention to a degree inconsistent with exempt status under 501(c)(4). After the meeting, Lerner tells Nanette Downing that the ROO referral committee had twice non-selected Crossroads GPS for audit. Lerner says "I don't know where we go with this – as I've told you before—I don't think your guys get it and the way they look at these cases is going to bite us some day." Lerner tells Downing that while the organization has currently been referred to the ROO, that "this is an org that was a prime candidate for exam when the referrals and 990s first came in." Lerner also states that "I'm not confident they will be able to handle the exam without constant hand holding – the issues here are going to be whether the expenditures they call general advocacy are political intervention." Lerner closes by instructing Downing to keep her "apprised of the org's status in the ROO and the outcome of the referral committee. You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn't exempt. Please make sure all moves regarding the org are coordinated up here before we do anything."	Lois Lerner, Victoria Judson, Ruth Madrigal, Nanette Downing	IRS0000122519-20 IRS0000446771-75
January 4, 2013	Lois Lerner tells Nancy Marks that "I have said from day one that Exam is not capable of dealing with the political stuff . . . ." Lerner tells Marks "[w]e always feel safer because Exam decisions are made by 'career IRS agents.' I think they make poor decisions . . . they don't have a clue and just non-select the referral."	Lois Lerner, Nancy Marks	IRS0000122525-26
January 4, 2013	Lois Lerner schedules a meeting for 3:30 PM on January 4, 2013. Holly Paz notes to Nancy Marks that the call is to discuss the Crossroads GPS application. Paz tells Marks that "I suspect this will be the first of many discussions . . ." EO Determinations agent Joseph Herr, who has been working on the Crossroads GPS application for exemption since January 30, 2012, is invited to the meeting. Herr notes in the case log for the Crossroads GPS case that he participates in a conference call with EO Technical on January 4, 2013, "[o]n how best to proceed with case."	Lois Lerner, Holly Paz, Nancy Marks, Joseph Herr	IRS0000071224-26 IRS0000475846

Date	Occurrence	Key Personnel Involved	Authority
January 7, 2013	Joseph Herr writes in the case log for Crossroads GPS as follows: "Based on conference begin reviewing case information, tax law, and draft/template advocacy denial letter, all to think about how best to compose the denial letter."	Joseph Herr	IRS0000071224-26
January 7, 2013	Lois Lerner tells Nanette Downing that the reasons given by the Political Activity Review Committee (PARC) on two prior instances when the PARC did not select Crossroads GPS for exam are "most disturbing." Lerner tells Downing "[a]s I said, we are working on the denial for the 1024, so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it."	Lois Lerner, Nanette Downing	IRS0000122549-51
January 24, 2013	An article appears in the *EO Tax Journal* about how an Obama-endorsed entity called Organizing for Action will operate as a 501(c)(4). Lois Lerner asks, "Has this org actually come in? If so, do we have it in DC? We need to be careful to make sure we are comfortable." Holly Paz replies, "I am not aware that we have received this but will check." Sharon Light tells Lois Lerner that the organization intends to operate from both Chicago and Washington DC. In response, Lois Lerner states "[o]h—maybe I can get the DC office job!"	Lois Lerner, Sharon Light	IRS0000217252- 67
January 28, 2013	Jorge Castro prepares for Nikole Flax a summary chart showing 35 Congressional inquiries regarding tax exempt issues received by the IRS from October 2008 through June 2012. Castro notes that the chart does not contain letters from outside groups like CREW and Democracy 21.	Nikole Flax	IRS0000292300-09
January 28, 2013	Richard Klein, IRS Benefits Specialist, prepares at Lois Lerner's request, a retirement estimate based on a projected retirement date of October 1, 2013.	Lois Lerner	IRS0000202615 (attachment omitted by Committee staff) IRS0000202620-21
January 30, 2013 to February 8, 2013	Lois Lerner is advised that a Congressman has inquired about the application status for a tax exempt organization. Holly Paz informs Lerner that the IRS correctly denied the organization's request for expedited processing of its application. Cindy Thomas has the case assigned and informs Lerner that the application will be approved on merit. Lerner states that "almost every time I ask them to go back and look at a case that has been sitting—it miraculously gets closed on merit after it has been sitting for months and months awaiting full development."	Lois Lerner, Holly Paz, Cindy Thomas	IRS0000194742-45

Date	Occurrence	Key Personnel Involved	Authority
January 31, 2013	Lois Lerner emails Christopher Wagner, Chief of Appeals, telling him that she informed his staff that in the near future, his office will "get a lot of business from our TPs regarding denials on 501(c)(4) applications. I explained the issue is whether they are primarily involved in social welfare activities and whether their political intervention activities, along with other non-social welfare activities mean they don't meet the c4 requirements. I explained the issue was very sensitive and visible and there is a lot of interest—Congress, press, political groups, you name it . . . this is a new issue driven by a recent Supreme Court case expanding spending in elections to corporations, and a desire by some to make the expenditures without having their names show up on Federal Election Reports. . . I told them that this is a place where we have worked very hard to be consistent and have all our cases worked by one group, and suggested they may want to do something similar. . . If I were you, this is definitely something I'd want to be aware of and have a high level person overseeing and reporting regularly to me. . . Hope this doesn't should [sic] like I'm trying to run your shop."	Lois Lerner, Christopher Wagner	IRS0000122863-64
March 8, 2013	Holly Paz informs Lois Lerner that the first denial of a 501(c)(4) organization is ready to be transmitted to Chief Counsel for review. Paz is concerned about the length of time it takes Counsel to complete a review and suggests to Lerner that they ask Chief Counsel to only review the letter and not the accompanying file.	Lois Lerner, Holly Paz	IRS0000202795-807
March 13, 2013	Sharon Light, in response to a question from Donna Abner, clarifies that political advocacy cases that are bucketed involve political campaign intervention and not lobbying. Abner sends this clarification out to her employees in QA.	Sharon Light, Donna Abner	IRS0000012122-26
March 13, 2013	Connie Peek, an IRS Program Analyst, informs Lois Lerner, Joseph Grant and David Fish (among others) that the IRS has disclosed the list of donors (Schedule B) for the Republican Governors Public Policy Committee. Lerner responds "[w]hile this happens sometimes- this is not the best org. it could have happened with – sigh." Lerner advises Nikole Flax that she will notify TIGTA.	Lois Lerner, Nikole Flax	IRS0000320844-46
March 14, 2013	Janine Cook advises Lois Lerner that Chief Counsel concurs in the first 501(c)(4) denial, but has comments on the letter. Cook indicates that the comments will be complete by the following Monday or Tuesday.	Lois Lerner, Janine Cook	IRS0000202865

Date	Occurrence	Key Personnel Involved	Authority
March 14-15, 2013	An IRS employee asks for an update on guidance from EO Technical regarding an ACORN-related application that the Determinations group determined did not meet the requirements for tax-exempt status. The employee notes that EO Technical told EO Determinations in August 2012 that the case would be "back in a couple weeks."	April Garrett, Peggy Combs	IRS0000544897-98
March 15, 2013	Inspector General J. Russell George briefs Treasury Secretary Jacob Lew about TIGTA's audit.	Russell George, Jacob Lew	Summary of TIGTA briefings produced by TIGTA to the Committee on May 19, 2014
March 18, 2013	Troy Patterson provides Lois Lerner with an advance copy of the TIGTA report "regarding applications" so that Lerner "can have a little extra time to consider the issues in the report . . ."	Troy Patterson, Lois Lerner	IRS0000053201
March 21, 2013	Lois Lerner advises Troy Patterson that "Holly and I have gone over the report and will try and incorporate our concerns into one document and get it to you by Monday. . ."	Lois Lerner, Holly Paz, Troy Patterson	IRS0000053201
March 26, 2013	Jon Waddell elevates an ACORN-related issue to Cindy Thomas. He explains the background on these cases: "1. Acorn-related cases were previously reflected on the BOLO and subsequently folded into the political advocacy category over a year ago. "2. Currently, we have two proposed denials under review in D.C. involving Acorn-related cases… "3. These cases contain some of the same characteristics as other identified political advocacy cases as the applications contain instances of partisan political activity and excessive legislative and mobilization activities precluding approval under c(3)."	Jon Waddell, Cindy Thomas	IRS0000054976-78
March 28, 2013	TIGTA provides IRS Legislative Affairs with a "discussion draft report-Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review. . ."	Joel Rustein	IRS0000509688 (email attachment omitted)
March 29, 2013	David Fish provides Nancy Marks, Richard Daly, Lois Lerner and others with a list of proposals for guidance projects. Among them is "[a]mend 501(c)(4) regulations to incorporate substantial part limitation (this is far and away the most important)."	Lois Lerner, David Fish, Nancy Marks	IRS0000188368-81

Date	Occurrence	Key Personnel Involved	Authority
April 2, 2013	In response to inquiries about two ACORN-related cases from Cindy Thomas, Holly Paz informs her that the cases are "still going back and forth between the initiator and reviewer."	Holly Paz, Cindy Thomas	IRS0000054976-78
April 9, 2013	Lois Lerner sends Maria Hook (IRS IT) an email message in which she states as follows: "I had a question today about OCS (Microsoft Office Communications Server – Instant Messaging). I was cautioning folks about email and how we have had several occasions where Congress has asked for emails and there has been an electronic search for responsive emails – so we need to be cautious about what we say in emails. Someone asked if OCS conversations were also searchable – I don't know, but told them I would get back to them. Do you know?" Hook responds by advising Lerner that while OCS messages are not set to automatically save, one or both parties to the OCS conversation could copy and save the contents to an email or file that then could be identified through an electronic search.	Lois Lerner, Maria Hook	IRS0000659345-46
April 12, 2013	Justin Abold sends Lois Lerner and others a copy of a draft report entitled ***Baseline Analysis of 501(c)(4) Form 990 Filers with Schedule C Political Campaign and Lobbying Activities***. The question that the report seeks to answer is whether the ***Citizens United*** decision has contributed to the potential misuse of 501(c)(4) organizations for political campaign activity due to their tax exempt status and the anonymity of their donors. Among other things, the report finds that after the decision, there has been an increase in the number of 501(c)(4) organizations engaged in political campaign activity and that there has been an increase in the relative financial size of 501(c)(4) organizations engaged in campaign activity.	Lois Lerner	IRS0000195666-90
April 12, 2013	TIGTA provides IRS with a copy of its draft report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review."	Richard Daly	IRS0000509688 (email attachment omitted)
April 17, 2013	Lois Lerner tells Nikole Flax that she must deliver a speech at Georgetown University and asks what she could speak about. Flax asks Steve Miller and he says of her speech "may want to use it to burst a bubble." He then tells Flax that Lerner "can apologize for undermanaging."	Steve, Miller, Lois Lerner, Nikole Flax,	IRS0000468870-71

Date	Occurrence	Key Personnel Involved	Authority
April 19, 2013	Lois Lerner advises Holly Paz to tell Cindy Thomas to watch for an application for exemption recently filed by "Applicant Y" and that when it comes in to EO Determinations, to send the application it to Washington, so that it can be worked under the supervision of Meghan Biss and Judy Kindell. Paz asks Lerner if she should add the group by name to the BOLO list or to describe it more generally in the BOLO list like "[o]rganizations providing relief to victims of recent acts of mass violence."	Lois Lerner, Holly Paz	IRS0000012957-60
April 19, 2013	Sharon Light advises Lois Lerner, Holly Paz and others that Chief Counsel has concluded its review of the first denial for a 501(c)(4) organization. Light has incorporated Chief Counsel's comments.	Lois Lerner, Sharon Light, Holly Paz	IRS0000195712-21
April 25, 2013	Lois Lerner tells Mike Seto to "get the ["Applicant Y"] application thru screening right away and up to R and A. . . . Would like it today, if possible."	Lois Lerner, Mike Seto	IRS0000189156
May 2013	Steve Miller decides to get in front of the impending release of the TIGTA report on the use of inappropriate criteria. He decides to have Lois Lerner make an apology at the ABA conference on May 10, 2013, in response to a planted question from someone in the audience. Miller discusses the idea with Mark Patterson, Chief of Staff to the Treasury Secretary, and with Mark Mazur, Assistant Secretary for Tax Policy, Treasury. Patterson tells Miller that he wants to think about it. Mazur doesn't get back to Miller. Miller decides to proceed with the idea.	Steve Miller, Mark Patterson, Mark Mazur	SFC Interview of Steve Miller, (Dec. 12, 2013) p. 220 SFC Interview of Mark Patterson, (Apr. 7, 2013) p. 36
May 1, 2013	The IRS sends "Applicant Y" a development letter.		IRS0000013040-49
May 3, 2013	"Applicant Y" responds to the development letter.		IRS0000013040-49
May 3, 2013	Lerner informs Nikole Flax and Joseph Grant that she just concluded a conversation with an applicant (presumably "Applicant Y"). Lerner tells Flax and Grant that "I told her our goal was to assist them in understanding what troubles us about the application, suggest ways they might modify it and discuss other situations reported in the media so we could all be on the same page regarding what occurred. I'm not feeling particularly confident about this one. They seem to think that because Congress passed a special bill after 9/11, IRS has authority to incorporate the same rules here. She sounded like she wasn't taking no for an answer."	Lois Lerner, Nikole Flax, Joseph Grant	IRS0000662208

Date	Occurrence	Key Personnel Involved	Authority
May 4, 2013	Steve Miller informs Mark Patterson that he will speak to the Mayor's Chief of Staff about "Applicant Y" after a phone call with Chief Counsel and EO. Patterson suggests emailing the Mayor's Chief of Staff to let him know that the IRS is working the matter over the weekend.	Steve Miller, Mark Patterson	IRSC032185
May 4, 2013	The Form 1023 application for "Applicant Y" is sent to Meghan Biss. She summarizes it for Lois Lerner and points out issues with it. Lerner sends the summary of the application for exemption under 501(c)(3) to Steve Miller.	Lois Lerner, Steve Miller	IRS0000322699-700
May 6, 2013	Lois Lerner sends Nancy Marks a one-page summary of "Applicant Y's" application and plan of operation, together with an analysis of the problems in the organization's plan of operations that would preclude the IRS from granting the organization 501(c)(3) status.	Lois Lerner, Nancy Marks	IRS0000013050-51
May 6, 2013	Justin Abold sends Steve Miller a copy of a report entitled **Updated Baseline Analysis of 501(c)(4) Form 990 Filers with *Political Campaign Activities*** in preparation for a meeting scheduled for the following day to discuss the conclusions reached in the report. The Report examines whether "501(c)(4) organizations have become increasingly involved in *Political Campaign Activities* (PCA) since 2010." The Report reaches three main conclusions: 1) The number of 501(c)(4) filers reporting PCA almost doubled from TY2008-TY2010; 2) the amount of PCA for large filers almost tripled from TY2008-TY2010; and that there is a limited number of 510(c)(4) filers that engaged in PCA and filed a Form 990 for only one year. The report notes two events that occurred in 2010: the ***Citizens United*** Supreme Court decision in January, and the ACA Reconciliation Act (from October 2009 to June 2010).	Steve Miller, Justin Abold	IRS0000494805-29
May 6, 2013	Holly Paz advises Lois Lerner that the first proposed denial of a 501(c)(4) organization will be released the following day.	Holly Paz, Lois Lerner	IRS0000007348
May 6, 2013	Nikole Flax informs Steve Miller that "[f]irst proposed c4 denial going tomorrow – not the well known org."	Nikole Flax, Steve Miller	IRSC032193
May 7, 2013	A Senator inquires about the application from "Applicant Y." Lois Lerner tells Holly Paz to tell the Senator's office that the application is assigned and is being worked on and that the IRS has had several conversations with the organization.	Lois Lerner, Holly Paz	IRS0000207919-20

Date	Occurrence	Key Personnel Involved	Authority
May 7, 2013	Steve Miller meets with Nikole Flax, Dean Silverman and Eric Schweikert to discuss the report entitled **Updated Baseline Analysis of 501(c)(4) Form 990 Filers with *Political Campaign Activities.***	Steve Miller, Nikole Flax, Dean Silverman, Eric Schweikert	IRS0000456399
May 8, 2013	Lois Lerner advises Nikole Flax that Richard Pilger at the Department of Justice wants to meet with IRS officials to discuss the possibility of criminally prosecuting 501(c)(4) organizations under the False Claims Act if they "lied" on their Form 1024s by stating they would not engage in political activity, but did, in fact engage in that activity.	Lois Lerner, Nikole Flax	IRS0000209199
May 8, 2013	Steve Miller announces that Joseph Grant has been selected as the TE/GE Commissioner.	Steve Miller	IRS0000208974-75
May 8, 2013	Lois Lerner tells Steve Miller "I do need to talk to someone as early as possible about ABA and whether we're still on? Will need to reach out if so." Miller responds "[t]hink we do it." (Lerner is referring to asking someone who will be in attendance at the ABA Conference to ask her a "planted" question about the IRS' treatment of the Tea Party.)	Steve Miller, Lois Lerner	IRS0000209214
May 9, 2013	Lois Lerner asks Nikole Flax "[d]o we have a plan for Friday re c4? Do I need to reach out re asking me a question or directly hit it head on? Need to know soon please." Flax responds "[w]e have a call for 11:30."	Lois Lerner, Nikole Flax	IRS0000209300
May 9, 2013	Lois Lerner calls Celia Roady Esq., an attorney at Morgan Lewis, and requests that Roady pose to her a question about the IRS' handling of Tea Party applications after Lerner's prepared remarks at the Tax Section Meeting of the ABA Conference scheduled for the following day. Roady agrees and Lerner provides her the question to ask.	Lois Lerner	US News, Woman Who Asked IRS's Lois Lerner Scandal-Breaking Question Details Plant

Date	Occurrence	Key Personnel Involved	Authority
May 9, 2013	Steve Miller meets with ABA representatives. He intends to discuss with the ABA representatives: 1) the IRS's handling of Tea Party applications; 2) the IRS intention to move forward with a discussion on imposing the gift tax on donations to 501(c)(4) organizations and how the ABA might help; 3) the (c)(4) regulation and how "a wave of cash [was] unleashed by ***Citizens United***" and "that cash chose a favorable port due to disclosure and under-enforced gift tax rules." Miller intends to ask for the ABA's views on: 1) whether the IRS should craft new rules in the (c)(4) area; 2) whether the IRS should also change the rules for (c)(5) and (c)(6) organizations; and 3) the distinction between 501(c)(3) and (c)(4) organizations after the rule changes. Miller intends to explore various options including whether the ABA would sponsor a study on some of these issues. It is unclear whether Miller addresses all these issues with the ABA representatives.	Steve Miller	IRS0000506547-50
May 9, 2013	William Wilkins, Janine Cook, Victoria Judson, Steve Miller, Lois Lerner, and Nikole Flax meet with ABA Committee and Sub-Committee Chairs the day before an ABA Conference to discuss campaign activity by exempt organizations.	William Wilkins, Janine Cook, Victoria Judson, Steve Miller, Lois Lerner, Nikole Flax	IRS0000014699-718
May 10, 2013	Lois Lerner attends the Tax Section Meeting of the ABA Conference in Washington D.C. In response to a question asked by Celia Roady, Esq. at the Conference for an update on concerns about the IRS' review of applications for tax exemption by Tea Party groups, Lois Lerner states: "line people" in Cincinnati selected applications for "further review" based on the existence of names in their applications like "Tea Party" or "Patriots;" the cases "sat around for too long;" "[t]hey also sent some letters out that were far too broad . . . they asked for contributor names . . . they didn't do it correctly and they didn't do it with a higher level of review." Lerner ends her remarks as follows: "So, I guess my bottom line here is that we at the IRS should apologize for that, it was not intentional, and as soon as we found out about what was going on, we took steps to make it better and I don't expect that to reoccur."	Lois Lerner	http://meetings.abanet.org/webupload/commupload/TX319000/sitesofinterest_files/may_2013_aba.pdf

Date	Occurrence	Key Personnel Involved	Authority
May 10, 2013	Shortly after making her statements during the morning session of the ABA Conference, Celia Roady emails Lerner a copy of a national news alert entitled "IRS apologizes for inappropriately targeting conservative political groups." According to the news alert, Lerner attributed the IRS practice of targeting conservative groups to "low-level workers in Cincinnati . . ."	Lois Lerner, Celia Roady	IRS0000662454-55
May 10, 2013	By early afternoon, Terry Lemons, IRS Communications Chief, suggests to Steve Miller, Nikole Flax, Joseph Grant, and Lois Lerner that Lerner send a voice message to staff explaining her comments earlier in the day at the ABA Conference. Lemons also informs Miller, Flax, Grant, and Lerner that the "NTEU press person just called; they are hearing from employees as well . . ."	Lois Lerner, Steve Miller, Nikole Flax, Joseph Grant, Terry Lemons	IRS0000662535
May 10, 2013	Lerner sends an email to Steve Miller, Nikole Flax, Joseph Grant and Terry Lemons advising that she spoke to Cindy Thomas who informed her that "employees are especially upset with RAs being referred to as "lower level" employees."	Lois Lerner, Steve Miller, Nikole Flax, Joseph Grant, Terry Lemons	IRS0000662538
May 10, 2013	Lois Lerner sends the voice mail message to Cindy Thomas and Donna Abner, instructing them to send the message to their staffs. Lerner laments to Thomas and Abner as follows: "I know the press that came out today is upsetting, and I'm guessing there will be more to come. . ."	Lois Lerner, Cindy Thomas, Donna Abner	IRS0000662553
May 2013	Steve Miller writes a handwritten chronology of events in this matter. He marks in capital letters that in June 2011, "LOIS DID NOT ELEVATE ANYTHING."	Steve Miller	IRS0000468988
May 14, 2013	IRS grants "Applicant Y" 501(c)(3) status.	Holly Paz	"Applicant Y" 501(c)(3) Approval Letter (May 14, 2013)
May 14, 2013	TIGTA releases its report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review." The report concludes that "[t]he IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based on their names or policy positions instead of indications of potential political campaign intervention. Ineffective management: 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, 2) resulted in substantial delays in processing certain applications, and 3) allowed unnecessary information requests to be issued."	TIGTA	TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Date	Occurrence	Key Personnel Involved	Authority
May 14, 2013	Chairman Darrel Issa, House Oversight and Government Reform Committee, sends Lois Lerner a letter requesting that Lerner provide a briefing on the IRS handling of Tea Party applications. When informed of the request, Lerner responds as follows: "So what do they expect of me?"	Lois Lerner	IRS0000190728-29 IRS0000189591-600
May 15, 2013	Chairman Issa's staff informs the IRS that there will be a hearing the following week and requests Lois Lerner to respond to the invitation to appear and testify at the hearing by noon the following day. When informed of the invitation to testify, Lerner says: "I am not ready to respond. I need to talk to some people first."	Lois Lerner	IRS0000189624-26
May 15, 2013	Nancy Marks sends Lerner a list of the BOLO entries for the Tea Party and political advocacy cases, and indicates that she will send Lerner a full copy of the TIGTA report.	Lois Lerner	IRS0000190733-34
May 16, 2013	Joseph Grant announces that he intends to retire from the IRS effective June 3, 2013.	Joseph Grant	IB Times, IRS Scandal Claims Second Agency Casualty_ Joseph Grant To Retire Over Controversy
May 16, 2013	At the request of Secretary Jacob Lew, Steve Miller resigns as Acting Commissioner of the IRS and retires from Federal Service. His resignation/retirement is effective in 2 weeks.	Steve Miller	SFC Interview of Steve Miller (Dec. 12, 2013) pp. 12-13 SFC Interview of Mark Patterson, (Apr. 7, 2013) pp. 41-43
May 23, 2013	Lois Lerner is placed on administrative leave by the IRS.	Lois Lerner	The Washington Post, Lois Lerner put on Administrative Leave by IRS

Date	Occurrence	Key Personnel Involved	Authority
May 2013	After release of the TIGTA report, Nanette Downing realizes that there is a "pile" of Tea Party cases that EO Determinations had referred to EO Exams. The cases had "just been sitting" and were marked for 3- to 5-year follow-ups. Downing turns the issue into TIGTA and after meeting with Ken Corbin and Karen Schiller (former head of R&A), they decide to send the cases back to EO Determinations. The Tea Party cases were referred by more than one employee in EO Determinations and were sent "in intervals" and not all at once. In addition, the PARC received the first batch of political referrals in February 2013 and recommended 20-30 exams. When the TIGTA report is released, IRS halts the exams.	Nanette Downing	SFC Interview of Nanette Downing, (Dec. 6, 2013) pp. 39-40, 47-49, 92-95
May 30, 2013	Joseph Herr sends Sharon Light a draft denial on the application for exemption by Crossroads GPS.	Joseph Herr, Sharon Light	IRS0000529074-91
June 24, 2013	The IRS suspends the use of the BOLO spreadsheet in the application process for tax-exempt status.		IRS, Report Outlines Changes for IRS To Ensure Accountability, Chart a Path Forward; Immediate Actions, Next Steps Outlined
August 1, 2013	Jack Koester, a screener in EO Determinations states that if he currently reviews an application from a Tea Party that contains no indicia of political activity, he would send the application to secondary screening for political advocacy. "Q. So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity in the application. Is that right? A. Based on my current manager's direction, uh huh."	Jack Koester	SFC Interview of Jack Koester, (Aug. 1, 2013) pp. 39-40
September 2013	Lois Lerner retires from the IRS after an internal investigation finds that she was guilty of "neglect of duties" and recommends her removal.	Lois Lerner	The Washington Times, Lois Lerner, IRS Official in Tea Party Scandal, Forced Out

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendices

Appendices

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Appendix F: Documents Cited in Report

ABA, Comment Letter on 501 (C)(4) Organizations (May 7, 2014) SFC 000604

ABA, Transcript of the Exempt Organizations Tax Review (May 10, 2014) SFC 000661

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United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix A:

Memoranda from Senate Finance Committee Staff and Office of Senate Legal Counsel Regarding Use of Section 6103 Information in Committee Report

MEMORANDUM

To: Senate Finance Committee Members

From: Senate Finance Committee Staff (Mark Prater and Mike Evans)

Re: IRS Investigation, Draft Report, and Section 6103

Date: July 24, 2015

The Finance Committee's investigation of alleged IRS targeting of certain tax-exempt groups is coming to a close. The bipartisan staff have completed a draft report and are prepared to brief Committee members.

As the Committee moves forward, it faces important and unprecedented questions about how to report on the investigation consistently with the provisions of Internal Revenue Code section 6103, which generally requires that taxpayer information remain confidential.

This memo discusses those questions. First it provides background about section 6103. Then it discusses how section 6103 applies to the investigation. Finally, it recommends an approach in which the Committee enhances the informative value of the report by including a limited amount of material covered by section 6103, but does so in a way designed to minimize the disclosure of sensitive taxpayer information, protect members and staff from legal liability, and maintain strong controls over the release of section 6103 information in the future.

General Background

Internal Revenue Code section 6103, which was substantially tightened in 1976 in the wake of the controversy surrounding the Nixon Administration's attempt to review the tax returns of political enemies,[1] requires that all taxpayer returns and return information submitted to the IRS be kept confidential. Violating section 6103 is a felony, punishable by imprisonment and fines and also subject to civil lawsuits for damages.

The term "return information" is defined broadly. It includes "the taxpayer's identity"; information about whether the taxpayer "was, is being, or will be examined or subject to other investigation or processing"; any "other data, received by, recorded by, prepared by, furnished to, or collected by" the IRS with respect to a return; and "any part of any written determination or any background file document relating to such written determination." It does *not* include

[1] This practice did not begin with the Nixon Administration. At a 1976 hearing by a subcommittee of the Senate Finance Committee, a witness included in the record a report by the Center for National Security Studies, which said, "[t]he IRS has from time to time used its power to conduct audits of groups and individuals whose political views and activities were of concern to others. Special groups were established to conduct such audits under the Kennedy, Johnson, and Nixon Administrations. On at least one occasion an audit was conducted at the request of a congressional committee." *Federal Tax Return Privacy, Hearings before the Subcommittee on Administration of the Internal Revenue Code of the Committee on Finance*, Jan. 23, 1976, p. 10.

"data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer." However, the Supreme Court has interpreted this latter provision narrowly, holding that it is not satisfied by simply redacting the taxpayer's name or other specific identifying information, saying that "'return information' remains such even when it does not identify a particular taxpayer."[2]

There are several exceptions to section 6103's broad prohibition against the release of taxpayer-specific information. One, in section 6103(f), requires the IRS to provide taxpayer-specific information requested by the Congressional tax committees (Finance, Ways and Means, and Joint Tax),[3] and authorizes the Chairmen of the tax committees or the Chief of Staff of Joint Tax to designate staff members to "inspect returns and return information at such time and in such manner as may be determined by [the] chairman."

As a general matter, staff who are designated to review taxpayer-specific information are themselves subject to the confidentiality requirements of section 6103. In other words, they are required to keep the information confidential, subject to criminal and civil penalties. However, section 6103(f)(4)(A) goes on to provide that "[a]ny return or return information obtained by or on behalf of such committee ... may be submitted by the committee to the Senate or the House of Representatives, or to both." Thus, notwithstanding the general requirement of confidentiality, taxpayer-specific information reviewed by the Finance Committee under section 6103 may be submitted to the full Senate. Further, it appears that this submission to the Senate may be in open session, and, consequently, that the submission may be made available to the public as part of the regular process that makes Senate proceedings public.[4]

The Finance Committee occasionally utilizes section 6103 authority, either to assist in its review of policy issues or in the course of an investigation. The Committee also occasionally has, with the consent of the taxpayer, released extensive taxpayer-specific information gathered as part of an investigation. However, the Finance Committee has never before made taxpayer-specific information obtained under section 6103(f) public by submitting it to the Senate under the exception in section 6103(f)(4)(A).[5] The House Ways and Means Committee has taken the

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[2] *Church of Scientology of California v. IRS*, 484 U.S. 9, at 15 (1987).

[3] Section 6103(f) also allows other (i.e., non-tax) congressional committees to receive taxpayer-specific information, but only pursuant to a Senate or House resolution. Further, section 6103 contains a series of other exceptions, such as for disclosure to federal or state law enforcement officials in certain circumstances and disclosure to various federal agencies for the purpose of compiling government statistics.

[4] Contrast section 6103(f)(4)(A) with section 6103(f)(4)(B), which provides that information obtained by a committee *other* than the Finance, Ways and Means, or Joint Tax Committees may be submitted to the Senate or the House "only when sitting in closed executive session" (unless the taxpayer consents). In the case of a submission by one of the tax committees, there is no equivalent requirement that the submission occur in closed session.

[5] In 2002-2003, the Committee investigated the Enron Corporation, resulting in a report that included extensive detail about Enron's tax practices. The taxpayer-specific information in the report had been given to the Committee voluntarily and the taxpayer also consented to the Internal Revenue Service disclosure of its information. The Committee did not submit the report to the Senate under section 6103(f)(4)(A). However, section 6103 may have been a factor, serving as a sort of backstop, because the taxpayer knew that if it refused to provide the information voluntarily, the Committee could obtain the information pursuant to section 6103. Consistent with this, the disclosure agreement between the Committee and Enron expressly provided that the information disclosed voluntarily by Enron to the Committee could be disclosed publically by the Committee only "through official reports, meetings, or hearings" of the Committee, thereby establishing a requirement for formal Committee action

equivalent action once, in 2014, when it submitted to the House (and thereby made available to the public) a referral letter to the Department of Justice requesting an investigation of alleged criminal misconduct by Lois Lerner, which contained extensive taxpayer-specific information covered by section 6103.[6]

The Current Investigation

In May, 2013, after the Treasury Inspector General for Tax Administration issued a report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," which raised troubling questions, Chairman Baucus and Ranking Member Hatch directed the staff of the Committee to conduct a bipartisan investigation into allegations that the IRS had targeted applicants for tax-exempt status based on the applicants' political beliefs. Over the past two years, the staff have reviewed more than 1,500,000 pages of documents and interviewed 32 employees from the IRS Exempt Organizations and Determinations units in Cincinnati and Washington, D.C., and from the Chief Counsel's office. In the case of both interviews and documents, the material includes taxpayer-specific information covered by section 6103. For example, the Committee staff has reviewed many specific 501(c)(4) applications and the details of how the applications were handled by the IRS.

As the Committee completes its investigation, it is considering the issuance of a report, which will provide factual details about how the IRS handled the applications, along with conclusions (featuring both Majority and Minority views) and recommendations.

Recommendation

The Finance Committee staff, after careful consideration and after consultation with Office of Senate Legal Counsel (see attached letter), recommends that the report include a limited amount of taxpayer information and that that information be made available to the Senate and the public; this would be done by the Committee submitting the report to the Senate under section 6103(f)(4)(A). We make this recommendation for three reasons.

First, this approach is clearly permissible under section 6103. Although the principal purpose of section 6103 is to protect taxpayer-specific information, section 6103 also clearly contemplates the need for the public disclosure in compelling circumstances, and it establishes a

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similar to that under section 6103(f)(4)(A) which provides that the information "may be submitted *by the committee* to the Senate or House of Representatives or to both. . . ." (Emphasis added).

[6] The Ways and Means Committees decision to submit section 6103 information to the House, and thereby make the information public, has been subject to criticism. Most notably, a former Chief of Staff of the Joint Tax Committee, Professor George Yin, argued that the Ways and Means Committee released the information in violation of section 6103, saying, "the committee gave no explanation for its public release of the tax return information contained in the referral letter ... and, for virtually all 9if not all) of the taxpayers involved, there was no legitimate committee purpose for doing so." *Protecting Taxpayers from Congressional Lawbre*aking, NYU School of Law Spring 2015 Colloquium on Tax Policy and Public Finance.

formal and carefully considered process for a release: a submission by one of the tax committees to the House or Senate.

Second, the disclosure of limited taxpayer information facilitates a fully informative report. There has been a great deal of speculation about exactly what happened during the IRS review of 501(c)(4) organizations, and this has important implications for our governmental and political institutions. Under Supreme Court and IRS interpretations of section 6103, it would be difficult to provide a comprehensive review of the facts without making a formal submission to the Senate and thereby allowing disclosure notwithstanding section 6103.[7] In light of this, we have included some of the names of specific organizations, both conservative and progressive, who submitted section 501(c)(4) applications during this period, along with details about the handling of the applications which are essential to understanding the underlying facts.

Third, we have limited the disclosure to the minimum degree necessary to provide an informative report. We have omitted material, redacted material, and summarized wherever appropriate, and we have disclosed no personal names, financial information, or other details that are not necessary to understanding the essential facts. We also have, wherever possible, relied on information that already is in the public record.

[7] Section 6103 broadly public prohibits disclosure of "return information" in order to protect taxpayer privacy. Section 6103(2)(b) defines "return information" as information that can be identified with a particular taxpayer, but allows for disclosure of aggregate data for statistical analysis as long as that data doesn't directly or indirectly identify a taxpayer. Therefore, a report that does not contain return information protected under 6103 would necessarily be based on aggregated data, making a comprehensive review of the entity-specific facts at issue difficult. .

MORGAN J. FRANKEL
COUNSEL
PATRICIA MACK BRYAN
DEPUTY COUNSEL
GRANT R. VINIK
ASSISTANT COUNSEL
THOMAS E. CABALLERO
ASSISTANT COUNSEL

TELEPHONE: (202) 224-4435
FAX: (202) 224-3391

United States Senate

OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, DC 20510-7250

MEMORANDUM

To: The Honorable Ron Wyden
The Honorable Orrin G. Hatch

From: Morgan J. Frankel MF
Patricia Mack Bryan PMB

Re: Section 6103(f)(4)(a) of the Internal Revenue Code

Date: June 4, 2014

This memorandum responds to the request of the Committee on Finance ("the Committee") for our opinion about the Committee's authority to submit to the Senate tax returns or return information that the Committee has obtained from the Internal Revenue Service pursuant to the provisions of 26 U.S.C. § 6103(f) ("section 6103 information"). For the reasons that follow, we conclude that the Committee may submit section 6103 information to the Senate by voting to file a public Senate report under the Senate's rules. While all members of the Committee, along with properly designated staff, may lawfully access section 6103 information in connection with their committee responsibilities, no member or employee of the Committee may lawfully disclose such information to anyone other than members and designated staff of the Committee except following the submission, and through circulation, of a formal filed committee report to the Senate. Once the Committee has submitted its formal report to the Senate in open session, that report will be publicly available and the section 6103 information contained in the report will no longer be protected from disclosure.

In 1976, following revelation of the White House's improper efforts to obtain tax return information from the Internal Revenue Service for political purposes in connection with Watergate, Congress amended the Internal Revenue Code to strengthen the protections for the privacy of tax return information in the possession of the Internal Revenue Service. Congress significantly revamped the nondisclosure regimen of section 6103 of the Code by mandating "as the general rule return and return information are to be confidential and not subject to disclosure except as further provided in the section." S. Rep. No. 94-938, pt. 1, at 318 (1976). As presently worded, Section 6103(a) states the default rule:

> Returns and return information shall be confidential, and except as authorized by this title . . . no officer or employee of the United States . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

The term "disclosure" is broadly defined to "mean[] the making known to any person in any manner whatever a return or return information." 26 U.S.C. § 6103(b)(8). To enforce the new protections, Congress created a civil cause of action for victims of unauthorized disclosures and provided for criminal felony penalties for willful unauthorized disclosures. 26 U.S.C. §§ 7213 (criminal penalty), 7431 (civil damages).

Among the changes that Congress made in 1976 were modifications to the circumstances and procedures under which congressional committees could obtain individually identifiable tax return information from the Service. As the Senate Finance Committee explained at the time,

> While the Congress, particularly its tax-writing committees, requires access in certain instances to the data contained in return and return information in order to carry out its legislative responsibilities, the committee decided that the Congress could continue to meet these responsibilities under more restrictive disclosure rules than those provided under present law.

S. Rep. No. 94-938, pt. 1, at 319-20.

Section 6103(f)(1) mandates the procedure for the tax-writing committees to obtain tax return information:

> Upon written request from . . . the chairman of the Committee on Finance of the Senate . . . the Secretary [of the Treasury] shall furnish such committee with any return or return information specified in such request, except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer shall be furnished to such committee only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

Thus, the law provides for section 6103 information to be furnished, upon request of the chairman, to the Finance Committee, albeit "only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure." *Id.* The statute further provides that the Committee "shall have the authority . . . to inspect returns and return information at such time and in such manner as may be determined by such chairman. . . ." 26 U.S.C. § 6103(f)(4)(A). As the Committee is composed of its members, the information may be shared with all members of the Committee "at such time and in such manner" as the chairman determines. Members should take care, however, not to make any disclosure outside the Committee, as the Committee is authorized to receive section 6103 information only in closed session. Whether the Committee receives the section 6103 information at an executive session meeting, or otherwise as determined by the chairman, the information may not be shared outside the Committee, except pursuant to the provisions of the law, as described below.

Under section 6103(f)(4)(A), which applies to the Finance Committee and other tax-writing committees, "Any return or return information obtained by or on behalf of such committee [described in paragraph (1)] pursuant to the provisions of this subsection may be submitted by the committee to the Senate. . . ."

In contrast to the tax committees, section 6103(f)(3) provides that the Secretary of the Treasury may furnish *nontax*-writing committees, only if they have been specially authorized by the Senate by resolution, when "sitting in closed executive session, with any return or return information which such resolution authorizes the committee . . . to inspect." Further, section 6103(f)(4)(B) states,

> Any return or return information obtained by or on behalf of such committee [described in paragraph (3)] . . . pursuant to the provisions of this subsection may be submitted by the committee to the Senate . . . except that any return or return information which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, shall be furnished to the Senate . . . only when sitting in closed executive session unless such taxpayer otherwise consents in writing to such disclosure.

Thus, absent taxpayer consent, the Treasury Secretary may furnish identifiable return or return information to all congressional committees – tax or nontax – only when "sitting in closed executive session." Further, without taxpayer consent, the nontax-writing committees may submit such information obtained under section 6103 to the Senate "only when sitting in closed executive session." For the tax committees, however, including the Senate Finance Committee, the law states that section 6103 information "may be submitted by the committee to the Senate." Reading this language together, the natural understanding of section 6103(f) is that the tax-writing committees, unlike other Senate committees, do not need taxpayer consent to submit identifiable return or return information to the Senate when sitting in other than closed session. In the words of the Finance Committee report accompanying the 1976 amendments to section 6103, "The tax-writing committees could submit relevant tax information to the Senate or House, as the case may be. The nontax-writing committees could submit such information to the Senate or House sitting in closed executive session." S. Rep. No. 94-938, pt. 1, at 320. Although not stated expressly (and rarely, if ever, used in the forty years since), the inference is inescapable that the Finance Committee may submit section 6103 information to the Senate in open session.

The process by which committees "submit" such information to the Senate is not defined in the statute, and, accordingly, the process is presumably governed by Senate rule and procedure. Although the "submission" of information to the Senate does not appear to be a distinctive term of art in the Senate, in at least two circumstances the Senate rules appear to use "submit" either interchangeably or in conjunction with "report." *See* Senate Rule XXVI.8(b) ("In each odd-numbered year, each such committee shall *submit*, not later than March 31, to the Senate, a *report* on the

activities of that committee under this paragraph during the Congress ending at noon on January 3 of such year.") (emphasis added)[1]; S. Res. 400, 94th Cong., 2d Sess. § 1 (1976) (as amended) (Senate Select Committee on Intelligence shall "*submit* to the Senate appropriate proposals for legislation and *report* to the Senate concerning such intelligence activities and programs") (emphasis added).

Senate Rule XXVI.7-.13 spells out the form and manner of committees' reporting "a measure or matter" to the Senate. In general, under the rules of the Senate, committees may report to the Senate only by a committee vote, which "shall require the concurrence of a majority of the members of the committee who are present," and only if "a majority of the committee were physically present." Senate Rule XXVI.7(a)(3), (1). For additional information on reporting to the Senate, or potential other means of submitting information to the Senate under the Senate's rules, the Senate Parliamentarian is the best authoritative resource for consultation.

It is worth emphasizing that section 6103 does not authorize the congressional tax-writing committees to disclose tax return or return information publicly in so many words. Rather, section 6103(f)(4)(A) authorizes (by inference) the tax committees to submit return or return information obtained from the Internal Revenue Service under the law to the Senate or House, as the case may be, in open session, by committee report. Public disclosure occurs not through independent action of the committee, but because Senate committee reports are, except under special circumstances, public when filed. Hence, the information in the filed report loses its confidential character only *following, as a result of, and in the form of*, its filing as a report to the Senate.

Accordingly, care should be taken to make no public disclosure of section 6103 information apart from, prior to, or in a form other than, the Committee's filing of its committee report with the Senate. Any disclosure of section 6103 information contained in a publicly filed Senate report should make reference only to the inclusion of the information in the public report as filed. There is no case law on the disclosure of information contained in a congressional committee report pursuant to section 6103(f)(4)(A). However, the Internal Revenue Service has observed in analogous circumstances, "If otherwise confidential return information has become a matter of public record in a judicial or administrative proceeding pertaining to tax administration, taxpayers no longer have a legitimate claim of privacy in the information and the information is no longer afforded the protection of section 6103." IRS Pub. 4639, *Disclosure and Privacy Law Reference Guide* 2-7 (2012). Although courts have applied different tests in analyzing the status of section 6103 information disclosed in court proceedings, *see id.* at 2-29–2-31 (collecting cases), once a committee has submitted a public report to the Senate under section 6103(4)(A), we do not believe that citing information contained in the report as filed raises any serious issues under the law.

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[1] *E.g., Report on the Activities of the Committee on Finance of the United States Senate During the 109th Congress*, S. Rep. No. 100-41 (2007).

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix B:

Committee Requests for Production of Documents Related to Investigation, and Final Production Letters from Organizations That Produced Documents

This Appendix contains the following documents related to development of the record in this investigation:

(1) outgoing letters from the Chairman and Ranking Member requesting information related to this investigation; and

(2) when available, final production letters from organizations that provided information to the Committee related to this investigation.

Attachments and enclosed documents have been omitted from the letters in this Appendix.

Separately in Appendix C, we have included the declaration of IRS Commissioner John Koskinen, which attests to the completeness of the IRS's production in response to the Committee's May 20, 2013 letter and subsequent requests.

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

May 16, 2013

Mr. J. Russell George
Inspector General for Tax Administration
City Center Building
1401 H Street, NW
Suite 469
Washington, DC 20005

Dear Inspector General George:

As members of the Senate Finance Committee, we are charged with oversight of the Internal Revenue Service (IRS). We are writing to request that the Treasury Inspector General for Tax Administration (TIGTA) investigate the IRS's improper, and likely illegal, disclosure of nine organizations' applications for tax-exempt status.

Along with the American public, we were surprised by the IRS's sudden apology for improperly targeting certain conservative organizations that applied for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. These allegations have existed for some time. In addition to this recent revelation, we are also troubled by the possibility that IRS improperly disclosed confidential information about certain conservative groups during 2012, including application materials and donor names. Together, the IRS's recent actions have at least the appearance of injecting partisan politics into what is supposed to be an impartial process and causes us, and the American public, to question the integrity of the IRS administration and their ability to impartially uphold the nation's tax laws.

In November 2012, the journalist group ProPublica made a Freedom of Information Act (FOIA) request to the IRS for the 501(c)(4) applications of 67 social welfare organizations operating as nonprofits.[1] Just 13 days later, the IRS responded by producing documents submitted by 31 of those organizations – including applications from nine organizations that were still under consideration by the IRS. Subsequently, ProPublica disclosed six of those applications in

[1] http://www.propublica.org/article/irs-office-that-targeted-tea-party-also-disclosed-confidential-docs.

redacted form on its website and wrote articles analyzing the information contained in the applications.[2] These materials remain publicly available on ProPublica's website.[3]

Section 6104 of the Internal Revenue Code authorizes the IRS to disclose the application and related materials of organizations that have been granted tax-exempt status under Section 501 of the Internal Revenue Code.[4] Notably, this section only authorizes the IRS to disclose applications that the IRS has already approved. We are aware of no legal authority that would permit the IRS to disclose applications for tax-exempt status that are still under review by the IRS. In fact, section 6103 prohibits such disclosure.[5] Thus, we believe that disclosure of applications that are still pending is a violation of the Internal Revenue Code and other related provisions, which could result in civil and criminal penalties.[6]

This Committee has raised similar issues recently about the IRS's disclosure of information submitted by conservative nonprofit organizations. On May 8, 2012, Ranking Member Hatch sent a letter to then-Commissioner Shulman requesting that the IRS investigate whether the IRS publicly released confidential donor information about the National Organization for Marriage (NOM), a nonprofit tax-exempt 501(c)(4) organization. As Senator Hatch noted in that letter, if the IRS disclosed this information, it would not only violate the law but also call the IRS's integrity as a non-partisan agency into question. To date, the IRS administration has not provided any response to Senator Hatch or the Finance Committee on this issue. We enclose a copy of Ranking Member Hatch's letter for your reference.

In view of the recent disclosure to ProPublica and the unresolved question of whether the IRS also disclosed NOM donor information, we respectfully request that your office investigate the following issues:

1. Which employees at the IRS were responsible for improperly disclosing documents to ProPublica?
2. How did the IRS respond to the improper disclosure of applicant documents? Were any of the IRS employees disciplined? Have any civil or criminal actions been taken against the IRS employees who were responsible for releasing these documents?
3. What steps has the IRS taken to ensure that it does not improperly disclose similar confidential documents in the future?
4. What is the IRS's typical response time for FOIA requests? Did the IRS follow its usual FOIA procedures when responding to ProPublica's request?

---

[2] The six applications that were disclosed were submitted by: Crossroads GPS, Americans for Responsible Leadership, Freedom Path, Rightchange.com II, America Is Not Stupid, and A Better America Now.
[3] See http://www.propublica.org/article/what-karl-roves-dark-money-nonprofit-told-the-irs and http://www.propublica.org/article/controversial-dark-money-group-among-five-that-told-irs-they-would-stay-out.
[4] 26 U.S.C. § 6104.
[5] 26 U.S.C. § 6103.
[6] See 18 U.S.C. § 1905; 26 U.S.C. §§ 7213, 7213A; and 5 U.S.C. § 552a.

5. Has the IRS undertaken an investigation to determine if the IRS was responsible for disclosure of NOM donor information?

We request that you initiate this work immediately and provide us with ongoing updates as to when we can expect a final report on your findings. Thank you for your attention to this matter and we look forward to reviewing your final work product. Should your staff have any questions, please do not hesitate to have them contact Kim Brandt of the Finance Committee minority staff at 202/224-4515.

Sincerely,

Orrin G. Hatch

Charles E. Grassley

Mike Crapo

Pat Roberts

Michael B. Enzi

John Cornyn

John Thune

Richard Burr

Johnny Isakson

Rob Portman

Patrick J. Toomey

Appendix B

MAX BAUCUS, MONTANA, CHAIRMAN
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AMBER COTTLE, STAFF DIRECTOR
CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

May 20, 2013

Honorable Steven Miller
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20230

Dear Commissioner Miller:

The Senate Finance Committee has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving tax-exempt organizations.

The Treasury Inspector General for Tax Administration (TIGTA) report released on May 14, 2013 entitled "Inappropriate Criteria Were Used to Identify Tax-exempt Applications for Review" raises troubling questions about the operation of the IRS in processing applications for tax-exempt status.

According to the report, the IRS developed and used inappropriate criteria to identify applications from organizations applying for tax-exempt status based "upon their names or policy positions instead of indications of potential political campaign intervention."

In addition, the 48-page report finds that "ineffective management" at the IRS allowed for this inappropriate practice to stay in place for 18 months, resulted in substantial delays in processing certain applications, and allowed unnecessary information requests to be issued.

While the TIGTA report does not say that the IRS was intentionally partisan, it did find that the agency's use of narrow screening criteria "gives the appearance that the IRS is not impartial in conducting its mission."

These actions by the IRS appear to be a clear breach of the public's trust. Targeting groups based on their political views is not only inappropriate but it is also intolerable.

Several members of this Committee received reports over the last two years from numerous nonprofit civic organizations that had applied to the IRS for 501(c)(4) tax-exempt status. The reports conveyed instances of excessive and intrusive IRS inquiries regarding the internal operations and practices of these organizations, such as requiring them to provide donor lists, as well as copies of all internal and public communications. In response to these reports, Senator Hatch, together with several other Senate colleagues, wrote to Commissioner Shulman on March 14, 2012 and again on June 18, 2012, expressing concern over possible selective enforcement of the tax laws and inquiring as to the procedures employed by the IRS when considering applications for 501(c)(4) tax-exempt status. While the responses provided a basic description of general IRS procedures for processing applications for 501(c)(4) tax-exempt status, they failed to acknowledge that the IRS had, based on information presented in the TIGTA report, improperly targeted certain groups based on their political views and subjected them to intrusive and unwarranted scrutiny of their donor lists and activities. In addition, the TIGTA report noted that the IRS also improperly targeted certain groups applying for 501(c)(3) tax-exempt status.

Targeting applicants for tax-exempt status using political labels threatens to undermine the public's trust in the IRS. Lack of candor in advising the Senate of this practice is equally troubling. To help us begin to explore the facts in this matter, we respectfully request that you provide us with the following information:

1. Provide a copy of any and all questions, questionnaires and information requests used by the IRS to attempt to elicit additional information from 501(c)(3)-(6) applicants from February 1, 2010 to the present regarding their donor lists, volunteer lists, financial support for, and relationships with, political candidates, and any and all other similar information.
2. The TIGTA Report indicates that the number of applications for 501(c)(4) tax-exempt status remained relatively constant between fiscal year (FY) 2009 (1,751 applications) and FY 2010 (1,735 applications). Explain why the Determinations Unit considered it necessary or expedient in February 2010 to develop and begin using criteria to identify potential political cases for review that inappropriately targeted specific applicants based on the existence of words or phrases in their applications.
3. Provide a list of all words and phrases used by the IRS to target applications for additional scrutiny, including words or phrases that were not reported in the TIGTA audit regarding BOLO criteria.
4. How many applications for each tax-exempt status, 501(c) (3)-(6), were filed and processed each year from FY 2005 through the present? In addition, provide the number of people in the Determinations Unit tasked with handling these applications during each fiscal year.
5. Please provide a description of the training given to the Determinations Unit to review tax-exempt applications from February 1, 2010 to the present. Please also provide copies of all training materials.

6. Explain the circumstances of how the IRS discovered that the practice of targeting certain organizations seeking tax-exempt status for additional scrutiny had occurred.
7. Identify by name, grade and position title the IRS supervisor(s), manager(s) and official(s) who made, participated in, or approved the decision to target tax-exempt applications for additional review if the applications contained words or phrases identified as inappropriate by TIGTA. In addition, provide the same information pertaining to IRS employees who approved BOLO criteria that was not identified as inappropriate by TIGTA.
8. Identify by name, grade and position title every IRS supervisor, IRS manager or other IRS employee who become aware of the procedures that were being used in the Cincinnati office to inappropriately target these applications, the manner in which such persons became aware of such procedures, including but not limited to notification by TIGTA, the date that the supervisor, manager or other employee became aware of the practice. Explain what each supervisor, manager or other employee identified immediately above did in response, including but not limited to, his or her actions when they first became aware of the existence of the practice.
9. Provide all documents related to the manner in which any person identified in the previous question became aware of such procedures, including, but not limited to, notification by TIGTA, as well as any and all documents and communications related to the identified persons' response to such knowledge.
10. Evidence suggests an IRS component may have disclosed the National Organization of Marriage's 2008 Form 990 Schedule B to the press. Has the IRS performed, or requested TIGTA to perform, an internal inquiry to determine whether the 2008 Form 990 Schedule B was disclosed to the press by the IRS? If so, please inform the Committee of the results of any internal inquiry into this disclosure. If not, please explain why the IRS has not undertaken a review of this matter.
11. Provide copies of all documents between IRS employee(s) and anyone else regarding the targeting of applications based on the existence of certain phrases and/or subjecting those targeted applications to full development or heightened scrutiny.
12. Was the decision to target any tax-exempt applications for review and subject them to full development or heightened scrutiny influenced or prompted in any way by political pressure directed at the IRS from any members of the Congress or other elected officials?
13. Did the actions of employees in the Determinations Unit in designating applications and organizations for heightened scrutiny based on the existence of inappropriate words or phrases in their applications violate existing IRS policy?
14. If so, provide a copy of the existing policy and every version of that policy from February 1, 2010 to July 31, 2012.
15. What disciplinary action has been taken against IRS employees who were responsible for targeting applications for additional scrutiny based on the existence of inappropriate words or phrases in the applications?

16. Identify each employee by name, grade and position title and the level of disciplinary action that has been taken against that employee.
17. Provide a list of every 501(c)(3)-(6) applicant organization that was targeted for additional scrutiny based on the existence of inappropriate words or phrases in its application.
18. Provide a list of every targeted organization subjected to full development or heightened scrutiny that withdrew its application for 501(c)(3)-(6) status and the date of the withdrawal.
19. Does the IRS intend to contact organizations subjected to such scrutiny that withdrew their applications and invite them to re-submit those applications?
20. Was any targeted organization denied tax-exempt status based on the results of heightened scrutiny from February 2010 to the present? If so, please provide a list of those organization(s) and the date(s) of the denial(s).
21. Will the IRS re-examine the applications of targeted organizations denied tax-exempt status in order to determine whether they were properly decided?
22. Will the IRS offer any type of restitution for the time, expense, and effort that targeted organizations expended to comply with IRS's excessive scrutiny?
23. Have any applicant organizations or individuals connected to the organizations targeted for additional scrutiny as a result of their application received additional IRS attention in the form of tax return audits or other action?
24. Have any donors to the applicant organizations been subjected to full development or heightened scrutiny as a result of their applications been audited or suffered any additional attention from the IRS by virtue of their donor status?
25. What changes in IRS policy has the IRS taken to prevent future targeting of certain 501(c)(3)-(6) applicants based on their political affiliation and or views?
26. Provide copies of the new IRS procedures instituted to ensure that IRS will no longer target organizations seeking 501(c)(3)-(6) status by virtue of their political affiliation and or views, as opposed to amount of their political activities, and include the date on which those procedures were implemented.
27. What corrective actions will the IRS take to ensure that employees of the Determinations Unit will apply the tax laws in the future fairly and without regard to the political affiliation and/or views of citizens and organizations whose applications for 501(c)(3)-(6) tax-exempt status they review?
28. Have there been, or will there be, any changes in the management of the Determinations Unit or the Exempt Organizations Department as a consequence of the practice of inappropriately targeting certain organizations for heightened scrutiny?
29. Provide copies of all documents, between any IRS employee and anyone else, including, but not limited to, individuals outside the IRS, that were generated as a consequence of, or that relate to, the letters sent by members of the Congress to the IRS since 2012 regarding the issue of inappropriately targeting organizations seeking 501(c)(4) status for heightened scrutiny.
30. According to the May 14, 2013 TIGTA report, after the Determination Unit specialists and managers created the BOLO criteria, 298 applications were selected for additional review. Please provide copies of the 298 applications pursuant to the Senate Finance Committee's §6103 authority.

31. Of the 108 applications approved by the Determinations Unit by December 17, 2012, how many contained inappropriate BOLO criteria?
32. According to the TIGTA report, 89 applications for 501(c)(3) tax-exempt status were selected for additional review. Out of these 89 applications, how many contained inappropriate BOLO criteria?
33. Were any 501(c)(3) applications from February 1, 2010 to April 30, 2010 that contained any of the inappropriate BOLO criteria approved? If so, please provide a list of these organizations.
34. For the period July 2010 to the present, has the IRS conducted any investigations of 501(c)(3)-(6) organizations for engaging in political activity, beyond the 298 organizations referenced in the TIGTA report?
35. Provide the names and titles of all managers who worked in the Tax Exempt and Government Entities Division and the Exempt Organizations (EO) Department, including EO Rulings and Agreements, Determinations (in all locations), and Technical, Guidance and Quality Assurance components, and their dates of service, from March 1, 2010 to the present.
36. Provide every version of every organization chart for the following components from February 1, 2010 to the present: Office of the IRS Commissioner and Deputy Commissioner for Services and Enforcement; Tax Exempt and Government Entities Division and Exempt Organizations Department; IRS Office of Chief Counsel; and Department of Treasury.
37. Explain the actions taken by the IRS to investigate or review the disclosure of pending applications for tax exemption to ProPublica in November 2012.
38. Provide all documents pertaining to the disclosure of pending applications for tax exemptions to ProPublica including records related to any IRS internal investigation of that disclosure. Provide all documents relating to any and all communications between any and all IRS employees and any and all Treasury Department employees regarding the targeting of organizations seeking 501(c)(3), (4), (5), or (6) tax-exempt status for full development or heightened scrutiny based on the existence of certain words or phrases in their applications, from February 2010 to the present.
39. Provide documents relating to communications between any and all IRS employees and any and all White House employees including, but not limited to, the President, regarding the targeting of organizations seeking 501(c)(3), (4), (5), or (6) tax-exempt status for full development or heightened scrutiny based on the existence of certain words or phrases in their applications, from February 2010 to the present. This includes documents relating to communications received by any IRS employee from either the White House or Treasury, whether or not the IRS employee was simply the recipient of such a communication from either the White House or Treasury.
40. Identify by name, grade and position title every IRS supervisor, IRS manager or other IRS employee who become aware that any individual in the White House or Treasury Department became aware of any improper targeting of an organization applying for 501(c)(3)-(6) tax-exempt status, as well as the name and title of the individual(s) in the

White House or Treasury Department, and the date such individual(s) in the White House or Treasury Department became aware of any improper targeting.

41. Please provide any written communication, memos, policy drafts, or other documents related to the interpretation of section 501(c)(4) of the Internal Revenue Code since 2009.

In addition to providing a narrative response to the above-mentioned inquiries, the information requested and documents should be provided, where possible or practicable, in a searchable or sortable electronic format, such as Excel or PDF.

For purposes of this request, the term "document" or "documents" includes writings or records of every kind or character, conveying information by electronic, photographic, or other means, whether encoded, taped, stored or coded electrostatically, or otherwise. "Document" or "documents" includes, but is not limited to, correspondence, e-mail, notes, memoranda, minutes, summaries, telephone records, telephone message logs or slips, calendars, date books, interoffice communications, results of investigations, videotapes, audiotapes, any electronic media, and accounting and financial records of any kind. "Document" or "documents" refers to any record in the IRS's possession, custody, or control, and "document" or "documents" includes all drafts or unfinished versions of a document or documents.

To the extent the response to this letter requires the production of returns or return information covered by section 6103, pursuant to section 6103(f)(4)(A), the Chairman will designate appropriate staff to receive such information. In your response, please identify material that is covered by section 6103.

We request that you provide your response no later than May 31, 2013. Should you have any questions regarding this letter, please have your staff contact John Angell or Kim Brandt of the Finance Committee staff at (202) 224-4515.

Sincerely,

Orrin G. Hatch
Ranking Member
Senate Finance Committee

Max Baucus
Chairman
Senate Finance Committee

Appendix B

MAX BAUCUS, MONTANA, CHAIRMAN
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AMBER COTTLE, STAFF DIRECTOR
CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

May 31, 2013

The Honorable Russell George
Treasury Inspector General for Tax Administration
1401 H Street, NW Suite 469
Washington, DC 20005

Dear Inspector General George:

The Treasury Inspector General for Tax Administration (TIGTA) report released on May 14, 2013 entitled "Inappropriate Criteria Were Used to Identify Tax-exempt Applications for Review" raises troubling questions about the operation of the IRS in processing applications for tax-exempt status. The Senate Finance Committee on May 20, 2013 announced an investigation into these matters.

I recognize that some of the material related to your office's May 14 report may be protected by section 6103. Pursuant to the authority of IRC section 6103(f)(4), the Chairman designates that John Angell, Christopher Law, Tiffany Smith, Ann Cammack, and Mac Campbell have access to section 6103 information under this letter. The Chairman further designates that Ranking Member Orrin Hatch, as well as Kimberly Brandt, Mark Prater, James Lyons, Justin Coon, and John Carlo of his staff, have access to the section 6103 information.

This request letter and all documents created by TIGTA in response to this request letter remain Congressional records that are entrusted to TIGTA for the agency's use only in connection with responding to the Committee. Neither the request letter nor any documents created in response to the request may be disclosed without the prior approval of the Committee on Finance. In addition, as these materials constitute Congressional documents, they should be maintained separate from the agency's general record system and access to them by agency personnel should be limited to those persons necessary to respond to the Committee's request. This is a Congressional record and is entrusted to TIGTA for the sole purpose of obtaining confidential information pursuant to section 6103(f) of the IRC.

Thank you in advance for your assistance with this request. If you have any questions about this request, please contact John Angell of the Senate Finance Committee at 202-224-4515. You may also contact James Lyons of Ranking Member Hatch's staff at 202-224-4515.

Sincerely,

Max Baucus
Chairman, Senate Finance Committee
United States Senate

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

November 18, 2013

The Honorable Ellen L. Weintraub
Chair
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Ms. Weintraub:

The Senate Finance Committee (Committee) has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving tax-exempt organizations. As the Ranking Member of the Committee, I write to request that you assist the Committee with its ongoing investigation of a tax-related matter that may involve the Federal Election Commission (FEC).

The Treasury Inspector General for Tax Administration (TIGTA) report released on May 14, 2013 entitled "Inappropriate Criteria Were Used to Identify Tax-exempt Applications for Review" raised troubling questions about the operations of the Internal Revenue Service (IRS) in processing applications for tax-exempt status. The Committee subsequently initiated a bipartisan investigation into these matters and has been conducting a thorough review of all issues associated with the matters raised in the TIGTA report.

During the course of the investigation, we have discovered the IRS has communicated with certain employees in the FEC's Office of the General Counsel about at least one organization that had applied to the IRS for tax-exempt status, while that application was still pending before the IRS. These communications raise questions about the extent to which the IRS may have shared with the FEC private information of an organization applying for tax-exempt status. For your reference, I have enclosed three such communications. Please note that any information which could be construed as "return information," as defined by 26 U.S.C. § 6103(b), has been redacted from these documents.

To help us continue to explore the facts in this matter, we respectfully request that you provide us with the following information:

1) Provide all documents reflecting communication between William Powers and any employee of the Department of Treasury (including the IRS), from January 2006 to the present.

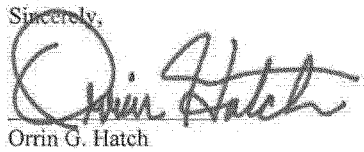
2) Provide all documents reflecting communication between Wade Sovonick and any employee of the Department of Treasury (including the IRS), from January 2006 to the present.

In addition to providing a narrative response to the above-mentioned inquiries, the information requested and documents should be provided, where possible or practicable, in a searchable or sortable electronic format, such as Excel or PDF.

For purposes of this request, the term "document" or "documents" includes writings or records of every kind or character, conveying information by electronic, photographic, or other means, whether encoded, taped, stored or coded electrostatically, or otherwise. "Document" or "documents" includes, but is not limited to, correspondence, e-mail, notes, memoranda, minutes, summaries, telephone records, telephone message logs or slips, calendars, date books, interoffice communications, results of investigations, videotapes, audiotapes, any electronic media, and accounting and financial records of any kind. "Document" or "documents" refers to any record in the FEC's possession, custody, or control, and "document" or "documents" includes all drafts or unfinished versions of a document or documents.

We request that you provide your response no later than November 26, 2013. Should you have any questions regarding this letter, please have your staff contact Kim Brandt of the Finance Committee staff at (202) 224-4515.

Sincerely,



Orrin G. Hatch
Ranking Member
Senate Finance Committee

Appendix B

RON WYDEN, OREGON, CHAIRMAN
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CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

5/7/2014

The Honorable Russell George
Treasury Inspector General for Tax Administration
1401 H Street, NW Suite 469
Washington, DC 20005

Dear Inspector General George:

As part of Senate Finance Committee's ongoing investigation into the IRS's scrutiny of tax-exempt groups, Committee staff, in a May 5, 2014 email with the subject "Senate Finance Committee - Request for Information," requested that TIGTA provide written information about its investigations into incidents of alleged improper disclosure of taxpayer information.

I recognize that some of the material related to this request may be protected by section 6103. Pursuant to the authority of IRC section 6103(f)(4), the Chairman designates that Joshua Sheinkman, John Angell, Christopher Law, Tiffany Smith, and Mike Evans have access to section 6103 information under this letter. The Chairman further designates that Kimberly Brandt, Mark Prater, James Lyons, Justin Coon, and John Carlo of the Ranking Member's staff, have access to the section 6103 information.

This request letter and all documents created by TIGTA in response to this request letter remain Congressional records that are entrusted to TIGTA for the agency's use only in connection with responding to the Committee. Neither the request letter nor any documents created in response to the request may be disclosed without the prior approval of the Committee on Finance. In addition, as these materials constitute Congressional documents, they should be maintained separate from the agency's general record system and access to them by agency personnel should be limited to those persons necessary to respond to the Committee's request. This is a Congressional record and is entrusted to TIGTA for the sole purpose of obtaining confidential information pursuant to section 6103(f) of the IRC.

Thank you in advance for your assistance with this request. If you have any questions about this request, please contact John Angell of the Senate Finance Committee at 202-224-4515. You may also contact James Lyons of Ranking Member Hatch's staff at 202-224-4515.

Sincerely,

Ron Wyden

Ron Wyden
Chairman, Senate Finance Committee
United States Senate

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CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

June 23, 2014

J. Russell George
Treasury Inspector General for Tax Administration
1401 H Street, NW
Suite 469
Washington, DC 20005

Dear Inspector General George:

Since May 2013, the Senate Finance Committee (Committee) has been conducting a bipartisan investigation into the Internal Revenue Service's (IRS) processing of certain applications for tax-exempt status. The Committee is performing this investigation pursuant to its authority to conduct oversight of the IRS. The Treasury Inspector General for Tax Administration (TIGTA) has greatly assisted the Committee in its investigation over the last year by providing numerous documents and other relevant evidence gathered during its recent review of the treatment of these applications by the IRS.

During the course of our investigation, Committee staff have reviewed more than 750,000 pages of email communications and other documents produced by the IRS in response to a number of requests for information. Committee staff have also conducted approximately 30 interviews, largely consisting of current and former employees of the IRS in addition to two former employees of the Treasury Department. Throughout this effort, particular focus has been directed on the actions and communications of Lois Lerner, former Director of Exempt Organizations. The task of fully understanding Ms. Lerner's actions and motivations has been complicated by her refusal to submit to an interview by Committee staff. This has heightened the Committee's need to secure and analyze copies of all of Ms. Lerner's relevant emails and other documents related to the IRS's treatment of applications that raised the issue of possible political advocacy, copies of which the Committee first requested of the IRS in May 2013.

On June 11, 2014, Committee staff contacted IRS staff to verify that all relevant documents requested by the Committee had, in fact, been produced by the IRS. In response, the IRS provided a letter (copy enclosed as Attachment 1) that asserts that Ms. Lerner's emails and other documents from the period 2009 to 2011 were lost as a result of a computer hard drive crash. Subsequently, the IRS indicated that several other employees who are also custodians of records that may be relevant to our investigation suffered similar computer malfunctions. Those employees are:

- Nikole Flax, Chief of Staff to former Acting Commissioner Steven Miller;
- Michelle Eldridge, Supervisory Public Affairs Specialist;
- Kimberly Kitchens, Revenue Agent;
- Julie Chen, Revenue Agent;
- Tyler Chumney, Supervisory Revenue Agent; and
- Nancy Heagney, Revenue Agent.

The IRS indicated that it took certain measures to attempt to find Ms. Lerner's emails, but that those measures were not entirely successful. The IRS is still determining whether the other six employees suffered a loss of data comparable to Lerner's, and if so, whether the agency has already taken measures to try to recover that data.

As the entity charged with providing independent oversight of IRS activities, TIGTA is uniquely positioned to help the Committee by using its access to IRS documents and employees. Accordingly, the Committee strongly requests that TIGTA immediately perform an expedited investigation to determine (1) whether the seven employees identified above did, in fact, lose data; (2) whether, in addition to the seven employees listed above, any of the other employees identified as custodians of potentially relevant records lost data (see list of "Group A," "Group B," and "Group C" custodians enclosed as Attachment 2); (3) what steps, if any, the IRS took to attempt to recover data for each employee who lost data; (4) whether any additional measures could reasonably be taken to attempt to recover lost data; and (5) for each employee who lost data, the date when the IRS first became aware that the missing data could be relevant to the Committee's investigation. Additionally, if any of the damaged computers are still available, we ask that TIGTA perform its own analysis of whether any data can be salvaged and produced to the Committee. Finally, we request you investigate whether there is any evidence of a deliberate effort to withhold information from the Committee.

Thank you for your attention to this request. Given the importance of this matter, we request that you provide Committee staff with continual updates until your work is concluded. Please have your staff contact John Angell of the Majority Staff or Justin Coon of the Minority Staff at 202/224-4515, to further discuss the objectives of this review.

Sincerely,

Ron Wyden

Senator Ron Wyden
Chairman

Orrin Hatch

Senator Orrin G. Hatch
Ranking Member

Appendix B

RON WYDEN, OREGON, CHAIRMAN
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CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

June 25, 2014

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

The Senate Finance Committee (Committee) has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the federal tax system. Since May 2013, the Committee has been conducting a bipartisan investigation of whether the Internal Revenue Service (IRS) improperly targeted certain applicants for tax-exempt status based on their political affiliation.

As Republican members of the Finance Committee, we are determined to get to the bottom of what happened at the IRS and why it happened. To date, the Committee's investigation has largely consisted of evaluating information provided by the IRS. Unfortunately, following the IRS' recent pattern of misleading the Committee and failing to provide accurate and timely information, we now need to look outside of the IRS. We require your help to construct a more complete record of communications between the IRS and the Department of Justice (DOJ).

On June 11, 2014, Committee staff contacted the IRS to verify that all relevant documents requested by the Committee had, in fact, been produced by the IRS. In response, the IRS asserted that some of Ms. Lerner's emails and other documents from 2009 to 2011 were lost as a result of a computer hard drive crash. Subsequently, we have learned that several other employees who are also custodians of records relevant to our investigation may have suffered similar computer malfunctions. Those employees are:

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- Mitchell Steele, Revenue Agent;
- Justin Lowe, Technical Advisor; and

- David Fish, Senior Manager.

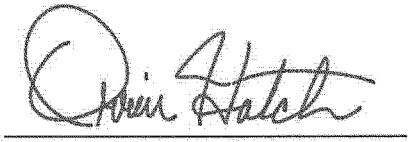
The IRS indicated that it took certain measures to attempt to find Ms. Lerner's emails, but that those measures were not entirely successful. The IRS is still determining whether the other employees identified above suffered a loss of data comparable to Ms. Lerner's, and if so, whether the agency has already taken measures to try to recover that data. Collectively, these missing documents are a serious impediment to the Committee's investigation and may prevent us from reaching definitive conclusions.

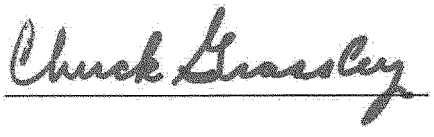
The most flagrant information gap is instances when Ms. Lerner, or any other IRS employee whose computer malfunctioned, sent or received a message outside of the IRS. Unless another IRS employee was copied on the message, the IRS may not be able to produce a copy of the communication to the Committee. Based on publicly-available information, we are aware that Ms. Lerner communicated with DOJ during the relevant period of our investigation.[1] However, we do not know the full extent to which Ms. Lerner and the other IRS employees identified above corresponded with DOJ employees.

We strongly request that you conduct a thorough search of your records for communications to and from any of the IRS employees identified herein. We request that you produce all messages between any DOJ employee and Ms. Lerner generated between January 1, 2009 and June 15, 2011 (the approximate date of Ms. Lerner's computer malfunction). We further request that you produce all messages between any DOJ employee and the other IRS employees identified above generated between January 1, 2009 and May 15, 2013, as we do not yet know the date when the IRS lost data for those employees. Given the importance of this matter, please provide all responsive records to the Committee no later than July 2, 2014.

We appreciate your cooperation in helping the Committee with this investigation. If we become aware that additional IRS employees lost data relevant to our investigation, we may ask that you produce information for those employees as well. Committee staff can be reached at (202) 224-4515 if there are any questions regarding this letter.

Sincerely,





[1] *See* "Judicial Watch Obtains IRS Documents Showing Lerner in Contact with DOJ about Potential Prosecution of Tax-Exempt Groups," (April 16, 2014) available at http://www.judicialwatch.org/press-room/press-releases/jw-obtains-irs-documents-showing-lerner-contact-doj-potential-prosecution-tax-exempt-groups/.

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

June 25, 2014

The Honorable Lee E. Goodman
Commissioner
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Commissioner Goodman:

The Senate Finance Committee (Committee) has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the federal tax system. Since May 2013, the Committee has been conducting a bipartisan investigation of whether the Internal Revenue Service (IRS) improperly targeted certain applicants for tax-exempt status based on their political affiliation.

As Republican members of the Finance Committee, we are determined to get to the bottom of what happened at the IRS and why it happened. To date, the Committee's investigation has largely consisted of evaluating information provided by the IRS. Unfortunately, following the IRS' recent pattern of misleading the Committee and failing to provide accurate and timely information, we now need to look outside of the IRS. We require your help to construct a more complete record of communications between the IRS and the Federal Election Commission (FEC).

On June 11, 2014, Committee staff contacted the IRS to verify that all relevant documents requested by the Committee had, in fact, been produced by the IRS. In response, the IRS asserted that some of Ms. Lerner's emails and other documents from 2009 to 2011 were lost as a result of a computer hard drive crash. Subsequently, we have learned that several other employees who are also custodians of records relevant to our investigation may have suffered similar computer malfunctions. Those employees are:

- Nikole Flax, Chief of Staff to former Acting Commissioner Steven Miller;
- Michelle Eldridge, Supervisory Public Affairs Specialist;
- Kimberly Kitchens, Revenue Agent;
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- Mitchell Steele, Revenue Agent;

- Justin Lowe, Technical Advisor; and
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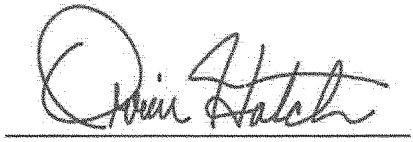
The IRS indicated that it took certain measures to attempt to find Ms. Lerner's emails, but that those measures were not entirely successful. The IRS is still determining whether the other employees identified above suffered a loss of data comparable to Ms. Lerner's, and if so, whether the agency has already taken measures to try to recover that data. Collectively, these missing documents are a serious impediment to the Committee's investigation and may prevent us from reaching definitive conclusions.

The most flagrant information gap is instances when Ms. Lerner, or any other IRS employee whose computer malfunctioned, sent or received a message outside of the IRS. Unless another IRS employee was copied on the message, the IRS may not be able to produce a copy of the communication to the Committee. Based on publicly-available information, we are aware that Ms. Lerner communicated with FEC during the relevant period of our investigation.[1] However, we do not know the full extent to which Ms. Lerner and the other IRS employees identified above corresponded with FEC employees.

We strongly request that you conduct a thorough search of your records for communications to and from any of the IRS employees identified herein. We request that you produce all messages between any FEC employee and Ms. Lerner generated between January 1, 2009 and June 15, 2011 (the approximate date of Ms. Lerner's computer malfunction). We further request that you produce all messages between any FEC employee and the other IRS employees identified above generated between January 1, 2009 and May 15, 2013, as we do not yet know the date when the IRS lost data for those employees. Given the importance of this matter, please provide all responsive records to the Committee no later than July 2, 2014.

We appreciate your cooperation in helping the Committee with this investigation. If we become aware that additional IRS employees lost data relevant to our investigation, we may ask that you produce information for those employees as well. Committee staff can be reached at (202) 224-4515 if there are any questions regarding this letter.

Sincerely,



[1] *See* "Judicial Watch Obtains Records: IRS' Lerner Disclosed Confidential Information about Tax Status of Conservative Groups to FEC," (October 31, 2013) available at http://www.judicialwatch.org/press-room/press-releases/judicial-watch-obtains-records-revealing-irs-lerner-disclosed-detailed-confidential-information-about-tax-status-of-conservative-groups-to-federal-election-commission-attorneys/.

Appendix B

RON WYDEN, OREGON, CHAIRMAN
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CHRIS CAMPBELL, REPUBLICAN STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

June 25, 2014

The Honorable Jacob J. Lew
Treasury Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Lew:

The Senate Finance Committee (Committee) has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the federal tax system. Since May 2013, the Committee has been conducting a bipartisan investigation of whether the Internal Revenue Service (IRS) improperly targeted certain applicants for tax-exempt status based on their political affiliation.

As Republican members of the Finance Committee, we are determined to get to the bottom of what happened at the IRS and why it happened. To date, the Committee's investigation has largely consisted of evaluating information provided by the IRS. Unfortunately, following the IRS' recent pattern of misleading the Committee and failing to provide accurate and timely information, we now need to look outside of the IRS. We require your help to construct a more complete record of communications between the IRS and the Treasury Department.

On June 11, 2014, Committee staff contacted the IRS to verify that all relevant documents requested by the Committee had, in fact, been produced by the IRS. In response, the IRS asserted that some of Ms. Lerner's emails and other documents from 2009 to 2011 were lost as a result of a computer hard drive crash. Subsequently, we have learned that several other employees who are also custodians of records relevant to our investigation may have suffered similar computer malfunctions. Those employees are:

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The most flagrant information gap is instances when Ms. Lerner, or any other IRS employee whose computer malfunctioned, sent or received a message outside of the IRS. Unless another IRS employee was copied on the message, the IRS may not be able to produce a copy of the communication to the Committee. Based on publicly-available information, we are aware that Ms. Lerner communicated with Treasury during the relevant period of our investigation.[1] However, we do not know the full extent to which Ms. Lerner and the six other IRS employees identified above corresponded with Treasury employees.

We are in receipt of your letters dated June 20, 2014 and June 24, 2014, in which you produced communications between Treasury employees and Ms. Lerner from January 1, 2009 through May 1, 2011. We appreciate you providing these documents to the Committee; however, to construct a more complete record of communications between the IRS and Treasury, we require additional information.

We strongly request that you conduct a thorough search of your records for communications to and from any of the IRS employees identified herein. To supplement the documents that you have already provided, we request that you produce all messages between any Treasury employee and Ms. Lerner generated between May 1, 2011 and June 15, 2011 (the approximate date of Ms. Lerner's computer malfunction). We also request that you produce all messages between any Treasury employee and the other IRS employees identified above generated between January 1, 2009 and May 15, 2013, as we do not yet know the date when the IRS lost data for those employees.

We further request that you provide copies of all communications between any Treasury employee and any IRS employee regarding the IRS' loss of data for any of the employees named above. We also request that you provide any such communications between any Treasury employee and any employee of the White House. Given the importance of this matter, please provide all responsive records to the Committee no later than July 2, 2014.

We appreciate your cooperation in helping the Committee with this investigation. If we become aware that additional IRS employees lost data relevant to our investigation, we may ask that you produce information for those employees as well. Committee staff can be reached at (202) 224-4515 if there are any questions regarding this letter.

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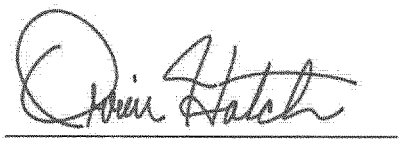
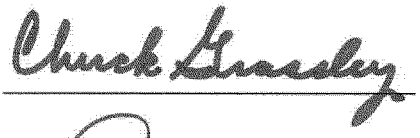
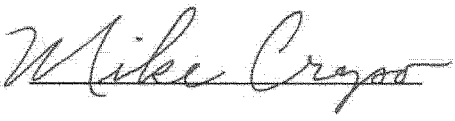
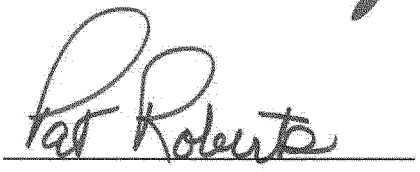
[1] *See* "Camp Blasts Treasury & Lois Lerner for Developing 501(c)(4) Rules 'Off-Plan,'" (February 5, 2014) available at http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=369014.

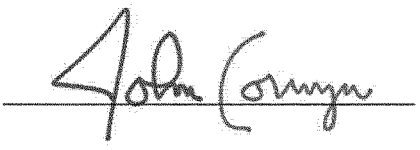
Sincerely,

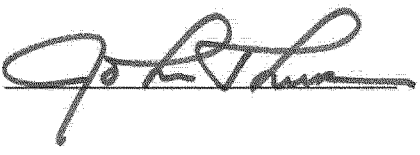


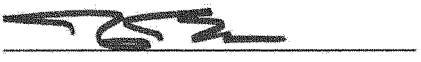


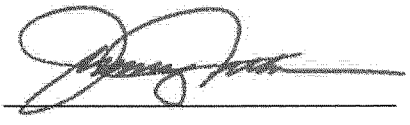


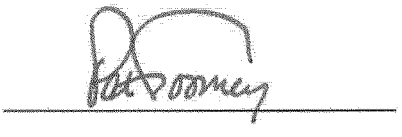












United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

November 17, 2014

Ms. Eileen Akerson
Executive Vice President and General Counsel
KBR, Inc.
601 Jefferson Street
Suite 3400
Houston, TX 77002

Dear Ms. Akerson:

Since May 2013, the Senate Committee on Finance (Committee) has been conducting a bipartisan investigation into the Internal Revenue Service's (IRS) processing of certain applications for tax-exempt status. The Committee is performing this investigation pursuant to its authority to conduct oversight of the administration of the federal tax system, including the IRS. As described below, I have reason to believe that KBR may possess records relevant to the Committee's investigation and therefore request your assistance in providing the Committee with a full record.

During the course of the Committee's investigation, we have discovered that the IRS' former Director of Exempt Organizations, Lois Lerner, was in regular contact with KBR employee Mark Tornwall about a variety of matters unrelated to the business of KBR. Although the IRS has produced to the Committee a number of these communications, due to alleged technological problems, the IRS has not produced all such records. Many of the documents produced by the IRS evidence conversations between Ms. Lerner and Mr. Tornwall that may be relevant to the Committee's investigation.

Let me emphasize that the documents produced by the IRS do not disclose any official business of KBR, nor is that a focus of the Committee's investigation. However, as Mr. Tornwall conducted these conversations using his corporate KBR email account, it is possible that KBR possesses additional documents containing communications between Ms. Lerner and Mr. Tornwall which have not already been produced by the IRS.

I therefore request that KBR take necessary steps to ensure that it preserves all documents and data in sources under the control of the KBR relevant to this investigation, as described in the attached preservation notice, related to the following records:

> All documents showing communication between Mr. Tornwall and Ms. Lerner from January 1, 2000 to the present. Please note that these documents may include messages to and from Ms. Lerner's IRS email account (SFC [redacted] as well as her personal email account (SFC [redacted]).

I further request that KBR identify and produce the above-referenced records to the Committee no later than November 21, 2014.

Finally, before taking any of these actions, I suggest that you contact Kim Brandt of my staff at (202) 224-4515 to discuss this matter.

I appreciate KBR's help in providing these documents to the Committee.

Sincerely,

Senator Orrin G. Hatch
Ranking Member

ORRIN G. HATCH, UTAH, CHAIRMAN
CHUCK GRASSLEY, IOWA
MIKE CRAPO, IDAHO
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JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

January 29, 2015

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

The Senate Committee on Finance has jurisdiction over revenue matters and is responsible for conducting oversight of the federal tax system. Along with other Republican members of the Committee, I previously contacted you regarding the Committee's ongoing investigation of the Internal Revenue Service's improper targeting of certain applications for tax-exempt status based on their political affiliation. I appreciate the Department of Justice's (DOJ) response to my previous letter, and now believe that you may possess additional records relevant to this investigation.

On April 21, 2014, Judicial Watch filed a Freedom of Information Act (FOIA) request seeking:

> Any and all records concerning meetings and/or communications between the Department of Justice Criminal Division Public Integrity Section and the Internal Revenue Service Tax Exempt and Government Entities Division, the White House, Members of Congress and/or congressional staff, and any non-government entity, regarding 501(c)(4) or other tax-exempt organizations.

In July, Judicial Watch commenced an action in federal court regarding this FOIA request, *Judicial Watch, Inc. v. U.S. Department of Justice*, 14-cv-1239 (D.D.C). On September 23, 2014, a Meet and Confer Report directed DOJ to make rolling productions of documents to Judicial Watch. In a letter dated November 18, 2014, the Chief of DOJ's FOIA/PA Unit told Judicial Watch that it had identified records that were responsive to the FOIA request:

> After carefully reviewing 834 pages of records, this Office has determined that two pages may be released in part, and 832 pages are being withheld in full pursuant to the following Freedom of Information Act exemptions …

The letter then cited four provisions of the FOIA that exempt certain records from release. Attached to the letter, DOJ produced two pages of redacted records to Judicial Watch.

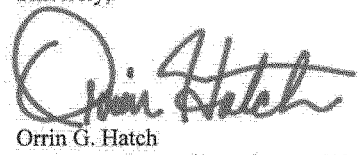
Based on the subject matter of Judicial Watch's FOIA request, as well as subsequent documents filed in the federal court action and the limited DOJ production on November 18, 2014, I believe that the records sought by Judicial Watch may also be relevant to the Committee's investigation.

I request that DOJ produce all 834 pages of records it has identified to the Committee as soon as practicable. As these documents have been previously withheld on the basis of FOIA exemptions, I note that 5 U.S.C. § 552a(b)(9) specifically authorizes disclosure to a committee of Congress for matters within its jurisdiction. I therefore expect that DOJ will not withhold or redact any documents on the basis of FOIA exemptions.

I further request that DOJ provide the Committee with unredacted copies of all additional documents that it identifies as responsive to the Judicial Watch FOIA request, beyond the 834 pages noted in the November 18, 2014 letter. I understand that this process is ongoing and that productions may occur on a rolling basis, as directed by the Court.

I ask that you respond to this request by no later than February 20, 2015. Thank you for your cooperation in this request, should you have any questions do not hesitate to contact Justin Coon of my Committee staff at (202) 224-4515.

Sincerely,



Orrin G. Hatch
Chairman, Senate Committee on Finance

Coon, Justin (Finance)

From: SFC @fec.gov
Sent: Tuesday, November 26, 2013 12:43 PM
To: Brandt, Kim (Finance)
Cc: Coon, Justin (Finance); SFC @fec.gov
Subject: FEC response to Letter from Senator Hatch
Attachments: FECOGC000001-204.pdf

Dear Ms. Brandt

Attached is the complete set of responsive documents that the Federal Election Commission is producing in response to Senator Hatch's request of November 18, 2013. These documents are bates numbered in the bottom left hand corner FECOGC 000001-204. The bates number in the lower right hand corner reflects the prior production of these documents to the House Administration Committee and the House Oversight and Government Reform Committee, in response to earlier requests from those two Congressional committees.

This production includes, as requested, documents reflecting communications between FEC employees William Powers and Wade Sovonick and any employee of the Department of Treasury, dating back to January 1, 2006. The attached production is not a waiver of attorney client or work product privileges.

Please feel free to give me a call if you have any questions or have problems opening the attached file. I would appreciate it if you could confirm receipt of this production.

_____
Lisa J. Stevenson
Deputy General Counsel - Law
Federal Election Commission
SFC
@fec.gov

From: Duane Pugh/FEC/US
To: Lisa Stevenson/FEC/US,
Date: 11/25/2013 04:18 PM
Subject: Fw: Letter to FEC from Senator Hatch

----- Forwarded by Duane Pugh/FEC/US on 11/25/2013 04:18 PM -----
"Brandt, Kim (Finance)" <SFC > To <SFC SF @fec.gov>,
cc "Coon, Justin (Finance)" <SFC v>
11/18/2013 06:04 PM Subject Letter to FEC from Senator Hatch

Dear Mr. Pugh – Attached please find a letter from Ranking Member Orrin Hatch of the Senate Finance Committee requesting the

FEC's immediate assistance in producing documents related to an ongoing bi-partisan investigation being conducted by the Committee. A hard copy of the letter is forthcoming via regular mail. If you have any questions about the request please contact Justin Coon, Investigative Counsel for the Committee, at SFC. He is also cc'd on this email. Thanks in advance for your cooperation. Kim Brandt

Kim Brandt
Chief Oversight Counsel
U.S. Senate Finance Committee, Minority Staff
219 Dirksen Senate Office Building
Washington, DC 20510
W: SFC

[attachment "11 18 13 OGH to FEC.pdf" deleted by Lisa Stevenson/FEC/US]

SFR00851B

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

May 22, 2014

VIA FACSIMILE AND
FIRST CLASS MAIL

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510-6200

Dear Chairman Wyden:

This is in response to your letter dated May 7, 2014, requesting information on certain Treasury Inspector General for Tax Administration (TIGTA) investigations. As you mention in your letter, Christopher Law, a Senate Committee on Finance staffer contacted my office by e-mail on May 5, 2014, requesting that TIGTA provide in writing specific information about its investigations into the following incidents of alleged improper disclosure of taxpayer information:

1. National Organization for Marriage Schedule B Form in April 2012

Question: Did an improper disclosure occur? Describe TIGTA's findings and recommendations.

Answer: Yes. Internal Revenue Service (IRS), Return and Income Verification Services (RAIVS) unit employee Wendy J. Peters, printed unredacted copies of the National Organization for Marriage's IRS Form 990 (Return of Organization Exempt From Income Tax) and the associated Schedule B Form (Schedule of Contributors) and sent them outside the IRS. The disclosure was a probable work error by the IRS employee. We did not identify any link between Ms. Peters and the organizations or individuals involved in posting or publishing the unredacted forms. We were also unable to determine whether the IRS received a valid Form 4506-A (Request for Public Inspection or Copy of Exempt or Political Organization IRS Form) for the information at issue because we became aware of the allegation after the IRS's 45-day retention period for the Form 4506-A had passed.

Question: In the event TIGTA discovered an improper disclosure, what disciplinary actions were imposed on the IRS employees determined to be responsible?

Answer: On August 10, 2012, TIGTA referred this matter to the U.S. Department of Justice (DOJ), Public Integrity Section. The DOJ declined prosecution on September 19, 2012. The matter was then referred by TIGTA to the IRS for administrative action on October 17, 2012. On January 30, 2013, the IRS issued a "Closed Without Action" letter with a cautionary statement to IRS employee Wendy J. Peters.

Question: Is there evidence that any of the improper disclosures were motivated by political animus?

Answer: No.

Question: Has the IRS made any changes to their process for responding to FOIA requests or other policies as a result of the improper disclosures?

Answer: Yes. Previously, IRS RAIVS unit employees had access to both redacted and unredacted copies of the IRS Forms 990 and associated Schedule B Forms on the IRS's Statistics of Income Exempt Organizations Return Image Network (SEIN). The IRS has now restricted RAIVS unit employees' access to only redacted Forms 990 maintained on the SEIN. In addition, the IRS's retention period for IRS Forms 4506-A was extended from 45 days to three years from the last day of the calendar year in which they are received.

2. Disclosure of tax-exempt applications to ProPublica in November 2012

Question: Did an improper disclosure occur? Describe TIGTA's findings and recommendations.

Answer: Yes. On November 15, 2012, online media organization ProPublica submitted to the IRS a Freedom of Information Act (FOIA) request for copies of tax-exempt applications of certain organizations. In response to ProPublica's FOIA request, IRS employee Sophia Brown printed and sent to ProPublica copies of not yet approved tax-exempt applications for nine organizations: Crossroads Grassroots Policy Strategies, Rightchange.com,

Freedompath, Citizen Awareness Project, Americans for Responsible Leadership, A Better America Now, America Is Not Stupid, YG Network, and Secure America Now.

Question: In the event TIGTA discovered an improper disclosure, what disciplinary actions were imposed on the IRS employees determined to be responsible?

Answer: This matter was referred to the IRS for administrative action on January 30, 2013. On March 7, 2013, the IRS issued a "Letter of Admonishment" to IRS Employee Sophia Brown."

Question: Is there evidence that any of the improper disclosures were motivated by political animus?

Answer: No.

Question: Has the IRS made any changes to their process for responding to FOIA requests or other policies as a result of the improper disclosures?

Answer: Yes. Approvals for the release of tax-exempt entity documents under FOIA requests are now made at the IRS headquarters level.

3. Republican Governors Public Policy Committee Schedule B Form in March 2013

Question: Did an improper disclosure occur?

Answer: The investigation into this matter is currently ongoing.

4. Austin Goolsbee allegedly disclosed taxpayer information about the Koch brothers

Question: Did an improper disclosure occur? Describe TIGTA's findings and recommendations.

Answer: No. The allegation was disproved. We developed no evidence that IRS information pertaining to Koch Industries was either accessed for or disclosed to the President's Economic Recovery Advisory Board.

If you have any questions, please do not hesitate to contact me at (202) 622-6500, or have your staff contact my Congressional Liaison, SFC [redacted] at (202) SFC [redacted]

Sincerely,

J. Russell George
Inspector General

THE WHITE HOUSE

WASHINGTON

June 18, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
United State House of Representatives
Washington, D.C. 20515

The Honorable Ron Wyden
Chairman
Committee on Finance
United State Senate
Washington, D.C. 20515

Dear Chairmen Camp and Wyden:

I write in response to your letters to the President dated June 16, 2014 and June 17, 2014, respectively, regarding the Committees' investigations related to the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report. Your letters requests all communications between Lois Lerner and any persons within the Executive Office of the President (EOP) for the period between January 1, 2009 and May 1, 2011.

We conducted a search for responsive documents and were unable to identify any communications between Lois Lerner and persons within the EOP during the requested period. We identified three communications where a third party emailed both Lois Lerner and persons within the EOP. One communication is a spam email from October 2009. Two communications are emails from February 2009 where a person sought tax assistance and, according to one of the emails, included a number of officials in Congress and at Federal agencies as recipients. These documents are enclosed. As the two documents from February 2009 include personally identifiable taxpayer information, we trust you will treat the information with appropriate care.

Chairman Camp's letter also asked when the EOP was informed, and by whom, that some of Lois Lerner's emails could not be located. In April of this year, Treasury's Office of General Counsel informed the White House Counsel's Office that it appeared Ms. Lerner's custodial email account contained very few emails prior to April 2011 and that the IRS was investigating the issue and, if necessary, would explore alternate means to locate additional emails.

Sincerely,

W. Neil Eggleston
Counsel to the President

Enclosures

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

October 20, 2014

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Hatch:

I write in response to a recent request from your staff in connection with the Senate Finance Committee's ongoing investigation of the IRS and the Treasury Inspector General for Tax Administration's May 14, 2013 audit report.

Treasury is committed to continuing to work with Congress as it performs its oversight role. You requested that we produce communications with certain IRS employees during certain time periods. Enclosed you will find the materials we have located that are responsive to your request.

Sincerely,

Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs

Enclosures

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 14, 2014

Mr. Justin Coon
Committee on Finance
United States Senate
SD-219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Coon:

As you recall, the Committee on Oversight and Government Reform (OGR) has subpoenaed the FEC for "[a]ll communications sent to or received from Lois G. Lerner" for the period from January 1, 1986 to June 23, 2014, and the FEC is continuing to work to identify and produce on a rolling basis documents that are responsive. As noted in my letter to you of July 28, when we identify documents in that subpoena response process that are also responsive to the Senate Finance Committee Republican members' request of June 25, 2014, we will provide them to you.

The enclosed documents are responsive to the June 25, 2014 request. They consist of e-mails that were located through a search of FEC's back-up tapes. Back-up tapes from the three-year period October 2010 to June 2014 were restored to a searchable format. Then, the e-mails on those back-up tapes were searched for messages to or from Ms. Lerner, including e-mails cc'd or bcc'd to Ms. Lerner, and the search results were deduplicated against what the FEC has already produced. As previously discussed with OGR staff, some of the back-up tapes were unavailable for restoration or unreadable after restoration. The back-up tapes for February through September 2011 were unavailable because those tapes were inadvertently reused in 2011 such that later information was copied over earlier information. The back-up tapes for May and September 2012 and March 2013 were available but unrecoverable.

The e-mails included in this production from the available back-up tapes are from the period covered by the June 25, 2014 request. These e-mails are Bates numbered in the range from FEC SUBP 5004364 to 5004839, although not every page from that range is enclosed, as only the e-mails from the period responsive to June 25, 2014 request are included.

We have redacted home addresses and telephone numbers from FECSUBP 5004783, 5004786, 5004826, 5004832 and 5004839.

November 14, 2014
Page 2

We are continuing to work to identify and produce responsive documents on a rolling basis to OGR, and if we identify additional documents responsive to the June 25, 2014 request, we will provide them to you. Please let us know if you have any questions regarding the enclosed production.

Sincerely,

J. Duane Pugh Jr.
Director, Congressional Affairs

Enclosure

cc: Joshua L. Sheinkman, Staff Director

Appendix B

Akin Gump
STRAUSS HAUER & FELD LLP

RAPHAEL A. PROBER
SFC [redacted] fax: SFC [redacted]
SFC [redacted]@akingump.com

December 5, 2014

VIA HAND DELIVERY

Justin Coon
Senior Counsel
U.S. Senate Finance Committee, Minority Staff
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Coon:

Pursuant to your request dated November 17, 2014 to Mark Tornwall's employer, please find enclosed relevant records. Please let us know if you have any questions.

Sincerely,

Raphael A. Prober

Enclosure

Appendix B

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

December 17, 2014

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Wyden and Senator Hatch:

This responds further to your letters to the Attorney General dated June 25 and July 15, 2014, requesting records of communications between ten employees of the Internal Revenue Service (IRS) and Department of Justice (the Department) employees between January 2009 and May 2013. This letter also responds to an email from your staff dated September 11, 2014, which clarified the list of IRS employees. We have not located any additional documents that reflect communications by Department employees to, from or copying the requested custodians. As a result, the documents we produced previously complete our production of communications responsive to your letters. As you know, we also received requests from other congressional committees for documents and communications related to this same topic. To the extent that we discover additional documents responsive to your requests, we will produce such documents to the Committee at that time.

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance in this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

July 23, 2015

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letter to former Attorney General Eric Holder, dated January 29, 2015, regarding the rolling document productions in *Judicial Watch, Inc. v. U.S. Department of Justice*, 14-cv-1239 (D.D.C.) ("*Judicial Watch*"). Enclosed please find 832 pages released in full and 63 pages released in part by the Criminal Division in its final installment of its rolling production in this matter. As you can see, several pages have been referred to the Office of Information Policy (OIP) for processing and direct response to the requester. When this production becomes available, we will supplement this response.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Ron Wyden
Ranking Member

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix C:

Declaration of IRS Commissioner John Koskinen

DECLARATION OF JOHN ANDREW KOSKINEN

I, John Andrew Koskinen, do hereby declare as follows:

1. I am the Commissioner of the Internal Revenue Service (IRS), a position that I have held since December 23, 2013. In my capacity as Commissioner, I serve as the chief executive officer for the IRS. I am responsible for overseeing the administration of federal tax laws and for managing the operations of the IRS. I also oversee the planning, direction, and evaluation of IRS policies, programs, and performance.

2. By letter dated May 20, 2013, the United States Senate Committee of Finance (Committee) requested of then-Acting IRS Commissioner Steven Miller certain records and information in the possession of the IRS that are relevant to an investigation being conducted by the Committee relating to the use by the IRS of improper criteria to identify possible political activity by certain applicants for tax-exempt status.

3. Since May 20, 2013, the IRS, under the executive leadership of my predecessors as well as myself, has fully cooperated with the Committee's investigation. In response to the May 20, 2013 letter, as well as subsequent requests for documents and information made to the IRS by Committee investigators, the IRS conducted a broad and deliberate search for relevant records. Throughout the course of this search, the IRS discussed with the Committee various aspects of our document collection, review, and production, including the set of employees from whom records were collected, as well as the search terms used to identify potentially responsive electronic records. As a result of this search, the IRS identified and produced to the Committee approximately 1.3 million pages of documents responsive to the Committee's requests.

4. This document production consists of the following records: every document the IRS has identified for the time period from January 2009 through May 2013 (the "investigations period") pertaining to Internal Revenue Code Section 501(c)(4) determinations; every email the IRS has identified for the investigations period to which Lois Lerner was a party, regardless of subject matter; and every email the IRS has identified for the investigations period to which Holly Paz was a party, regardless of subject matter. There is one exception: The IRS has not produced to the Committee certain documents that it received from the Treasury Inspector General for Tax Administration (TIGTA), which TIGTA had forensically recovered from IRS disaster recovery tapes and other electronic equipment, as I understand that TIGTA has provided these documents directly to the Committee.

5. Should the IRS identify or locate any additional documents in its possession that are responsive to any of the Committee's requests for information related to its investigation, I will cause the IRS to promptly produce those documents to the Committee. Furthermore, the IRS will continue to provide the Committee with copies of all relevant documents that it produces to other committees of Congress conducting investigations into the same matter, including the House Ways and Means Committee, the House Oversight and Government Reform Committee, and the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations.

6. I declare, under penalties of perjury, that the foregoing is true and accurate to the best of my knowledge and belief.

Executed the 17th day of July, 2015.

John A. Koskinen

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix D:

List of IRS Employees Referenced in Report

List of IRS Employees Referenced in Report		
Reporting Period: 1/1/10 through 5/20/13		
Name	Title(s)	Dates Held
Abner, Donna	Spvy. Revenue Agent (EO, Determinations - Quality Assurance - 7810)	1/1/10 - 5/20/13
Abold, Justin	Executive Officer (CDP Candidate)	5/2011 - 7/2013
Baker, Sharon E.	Senior Disclosure Specialist (DC Disclosure & FOIA Office)	1/1/10 - 7/31/12 (retired)
Barre, Cathy	Senior Technical Advisor to the DCSE	6/2011 - 9/2013
Bell, Ronald	Revenue Agent, (EO Determinations - Group 7823)	11/4/12 - 5/20/13
	Spvy. Revenue Agent, (Detail as Group 7822 Mgr., EO Determinations)	7/15/12 - 11/4/12
	Revenue Agent, (EO Determinations - Group 7822)	4/25/10 - 7/15/12
	Revenue Agent, (EO Determinations - Group 7838)	1/1/10 - 4/25/12
Bowling, Steven	Program Manager, (Area 1 - EO Determinations 7820)	1/27/13 - 5/20/13
	Spvy. Revenue Agent, (Detail to Group 7830)	11/4/12 - 1/27/13
	Program Manager, (Temp Prom to Area 2-EO Determinations 7820)	7/15/12 - 11/4/12
	Spvy. Revenue Agent, (Detail to EP/EO Programs & Support 7846)	3/25/12 - 7/15/12
	Spvy. Revenue Agent, (Group Mgr in Area 1-EO Determinations 7822)	6/6/10 - 3/25/12
	Spvy. Revenue Agent, (Group Mgr. in Area 2-EO Determinations 7822)	1/1/10 - 6/6/10
Buller, Siri	Tax Law Specialist, (EO Technical, Group 7871)	1/1/10 - 6/29/11 (resigned)
Camarillo, Sharon	Program Manager, (EO Determinations - Area 1)	1/1/10 - 12/31/10 (retired)
Castro, Jorge	Counselor to the Commissioner (Sr. Atty. Advisor),	1/1/10 - 5/20/13
Choi, Robert	Director, Employee Plans	4/2011 - 5/20/13
	Director, Exempt Organizations Rulings and Agreements	4/2007 - 4/2011
Christopher, Charles B.	Spvy. General Attorney, (Branch Chief, P&A, Ofc of Chief Counsel)	1/1/10 - 5/20/13
Combs, Peggy	Spvy. Revenue Agent, (EO Determinations-7826; EP/EO Prog. & Spt.-7846)	7/15/12 - 5/20/13
	Program Manager, (Temp Prom to Area 2 - EO Determinations 7820)	3/25/12 - 7/15/12
	Spvy. Revenue Agent, (EP/EO Programs & Support - 7846)	1/2/11 - 3/25/12

	Spvy. Revenue Agent, (EO Determinations - 7824)	1/1/10 - 1/2/11
Condon, Michael	Revenue Agent, (EO Determinations - Groups 7827/7824/7821)	1/1/10 - 5/20/13
	(Detailed to Revenue Agent, in Determinations - Quality Assurance)	8/1/10 - 9/12/10
Cook, Janine	Deputy Division Counsel/Deputy Associate Chief Counsel	5/2011 - 5/20/13
	Acting Deputy Division Counsel/Deputy Associate Chief Counsel	2/2011 - 5/2011
	Supervisory General Attorney (Tax)	3/2004 - 2/2011
Corbin, Ken	Deputy Director, Submission Processing	7/2012 - 5/20/13
	Submission Processing Field Director	10/2011 - 7/2012
	Executive Officer (CDP Candidate)	9/2008 - 10/2011
Corwin, Erik	Deputy Chief Counsel (Technical)	2/2012 - 5/20/13
	Acting Deputy Chief Counsel (Technical)	8/2011 - 2/2012
Daly, Richard	Executive Assistant, (TEGE)	1/1/10 - 5/20/13
Davis, Johnathan	Chief of Staff/Executive Director, Strategy and Organizational Development	3/2012 - 11/2012
	Commissioner Shulman's Chief of Staff	3/2008 - 3/2012
Downing, Nanette	Director of EO Examinations	3/2012 - 6/2014
	Executive Officer (CDP Candidate)	5/2009 - 3/2012
Eder, Tiffany	Paralegal Specialist, - Ofc of Chief Counsel, Procedures & Admin.	1/1/10 - 8/26/11 (resigned)
Eldridge, Michele	Chief, National Media Relations,	1/1/10 - 5/20/13
Elliot-Moore, Donna	Tax Law Specialist, (EO Technical - Group 7873)	1/1/10 - 5/20/13
Esrig, Bonnie	Program Manager, (EO Determinations 7820 - Area 1)	5/22/11 - 1/1/13 (retired)
	Spvy. Associate/Taxpayer Advocate,	1/1/10 - 5/22/11
Estes, Janine	Revenue Agent, (EO Determinations - Group 7829)	9/25/11 - 5/20/13
	Revenue Agent, (EP/EO Programs & Support-7846; EO Determ, Grp 7822)	1/1/10 - 9/25/11
Fish, David	Spvy. Tax Law Specialist, IR-987-01 (Rulings & Agreements - EO Guidance)	1/1/10 - 5/20/13
Flax, Nikole	Steve Miller's Chief of Staff	11/2012 - 6/2013
	Deputy Chief of Staff	9/2012 - 11/2012

	Assistant Deputy Commissioner for Service and Enforcement	10/2010 - 9/2012
	Tax Law Specialist	9/2008 - 10/2012
Garuccio, Jodi	Revenue Agent, (EO Determinations - Groups 7830/22)	4/25/10 - 5/20/13
	Revenue Agent, (EO Determinations - Group 7830)	1/1/10 - 4/25/10
Giosa, Christopher	Economist, (TEGE Headquarters	1/1/10 - 3/17/13 (resigned)
	(Detailed to Management & Program Analyst, Compliance Analytics Ofc)	5/20/12 - 11/18/12
Giuliano, Matthew	Spvy. Tax Law Specialist, (Rulings & Agreements - EO Guidance)	9/9/12 - 3/15/13 (resigned)
	(Temp Prom-Spvy. Tax Law Specialist, (Same as above-Group 7861)	5/20/12 - 9/9/12
	Tax Law Specialist, (Same as above - Group 7861)	2/13/11 - 5/20/12 1/1/10 - 12/19/10
	(Temp Prom-Spvy. Tax Law Specialist, (Same as above-Group 7862)	12/19/10 - 2/13/11
Goehausen, Hilary	Tax Law Specialist, (EO Rulings & Agreement-Technical, Group 7871)	1/1/10 - 5/20/13
Grant, Joseph	TEGE Commissioner	May 2013 - June 2013
	Deputy Division Commissioner of TEGE	October 2007 - May 2013
Grodnitzky, Steve	Spvy. Tax Law Specialist, (EO Rulings & Agreement-Technical, Grp 7871)	1/1/10 - 5/20/13
	(Detail-Spvy Management & Program Analyst, Congressional Corresp Br)	6/17/12 - 10/6/12
	(Detail-Spvy. Tax Law Specialist, EO Guidance - 7861)	6/19/11 - 8/28/11
	(Detail-Spvy. Tax Law Specialist, , Rulings & Agreements - 7800)	3/14/10 - 7/3/10
Herr, Joseph	Revenue Agent, (EO Determinations - Group 7824)	11/20/11 - 5/20/13
	(Detail to Spvy. Reveue Agent, Group 7924)	12/5/10 - 6/19/11
	Spvy. Revenue Agent, (EO Determinations - Group 7825)	1/1/10 - 11/20/11
Herring, Donald G	Revenue Agent, (EO Determinations - Groups 7827/7824/7825)	1/1/10 - 5/20/13
Hofacre, Elizabeth (Liz)	Detailed-Revenue Agent, (EO Determinations, Quality Assur Grp 7810)	10/10/10 - 5/20/13

	Revenue Agent, (EO Determinations - Groups 7825/7822)	1/1/10 - 10/10/10
Hull, Carter (Chip)	Tax Law Specialist, (EO Technical Group 7872)	1/1/10 - 5/20/13
Ingram, Sarah Hall	Project Director, ACA	5/2013 - 7/2013
	Commissioner of TEGE	5/2009 - 5/2013
Judson, Victoria	Division Counsel/Associate Chief Counsel (TEGE)	8/2011 - 5/20/13
Kastenberg, Elizabeth	Tax Law Specialist, (EO Technical - Group 7873)	1/1/10 - 5/20/13
	(Temp Prom - Spvy. Tax Law Spec., in EO Technical - Group 7871)	8/12/12 - 10/7/12
Keith, Francis (Frank)	Executive Chief, Communications & Liaison (National Office)	1/1/10 - 11/2/12 (retired)
Kindell, Judith	Tax Law Specialist, (Exempt Org 7700-Sr Tech. Advisor to Lois Lerner)	1/1/10 - 5/20/13
Klein, Richard	Human Resources Specialist, (IRS Benefits Specialist)	1/1/10 - 5/20/13
Koester, John (Jack)	Revenue Agent, (EO Determinations-Groups 7826 & 7838 [screener])	1/1/10 - 5/20/13
Koskinen, John	Current IRS Commissioner	12/2013 - 5/20/13
Lerner, Lois	Director, Exempt Organizations	1/2006 - 9/2013
Lieber, Theodore (Ted)	Spvy. Tax Law Specialist, (EO Technical - Group 7873)	3/14/10 - 5/20/13
	Tax Law Specialist, (EO Technical - Group 7871)	1/1/10 - 3/14/10
	(Detail to Tax Law Specialist, Rulings & Agreements - 7800)	1/10/10 - 1/16/10
Light, Sharon	Tax Law Specialist, (Exempt Org 7700-Sr Tech. Advisor to Lois Lerner)	1/10/11 - 5/20/13
Livingston, Cathy	Health Care Counsel in the Office of Chief Counsel	10/2010 - 2/2013
	Assistant Chief Counsel (EO/ET/GE)	2/2004 - 10/2010
Lowe, Justin	Tax Law Specialist, (Sr. Tech. Advisor, TEGE HQ - 7140)	9/9/12 - 5/20/13
	Tax Law Specialist (EO Guidance - 7862; JITSIC Tech. Adv. Team)	1/2/11 - 9/9/12
	Tax Law Specialislt, (EO Technical - Group 7871)	1/1/10 - 1/2/11
Marks, Nancy	Senior Technical Advisor	2/2012 - 8/2013
	Senior Operations Advisor	6/2011 - 2/2012
	Division Counsel/Associate Chief Counsel (TEGE)	3/2005 - 6/2011
Marquez, Elizabeth J.	Revenue Agent, (EO Determinations - Group 7888)	1/1/10 - 5/20/13
Marshall, David L.	Sr. Attorney, (Chief Counsel, EO Branch)	1/1/10 - 5/20/13

Megosh, Andrew (Andy)	Spvy. Tax Law Specialist, (EO Guidance - Group 7862)	2/13/11 - 5/20/13
	Tax Law Specialist, (EO Guidance - Group 7862)	1/17/10 - 2/13/11
	(2 Temp. Promotions-Spvy. Tax Law Specialist, [Same as above])	1/31/10 - 2/13/11 & 1/1/10 - 1/17/10
Melahn, Brenda	Program Manager, (EO Determinations - 7820, Area 2)	1/1/10 - 10/14/11 (retired)
Miller, Steven	Deputy Commissioner for Services & Enforcement (S&E)	10/2009 - 5/2013
	Acting Commissioner (detail)	11/2012 - 5/2013
Morris, Annetta	Revenue Agent, (EO Determinations - Group 7880)	1/1/10 - 5/20/13
Muthert, Gary	Revenue Agent, (EO Determinations - Groups 7830/7821/7838)	1/1/10 - 5/20/13
	Temp. Promotion-Spvy Revenue Agent, (EO Determ-Group 7823)	11/7/10 - 11/21/10
Paz, Holly	Director of Exempt Orgs, Rulings and Agreements	5/2012 - 6/2014
	Supervisory Tax Law Specialist	6/2008 - 5/2012
Peek, Connie	Program Analyst, (TEGE, BSP - Submission Processing Programs)	1/1/10 - 5/20/13
Pyrek, Steve	Spvy. Public Affairs Specialist (TEGE - Headquarters)	1/1/10 - 12/31/10 (retired)
Sabando, Cesar	Spvy. Revenue Agent, (EO Examinations - Group 7910)	1/1/10 - 5/20/13
Schiller, Karen	Director, Examination Planning and Delivery	10/2011 - 1/2014
	Director, Examination Operation Support	4/2011 - 10/2011
	Director, Examination Area South Atlantic	2/2011 - 4/2011
	Executive Officer (CDP Candidate)	5/2009 - 2/2011
Seok, Stephen	Spvy. Revenue Agent, (EO Determinations - Groups 7822/7823)	2/24/13 - 5/20/13
	Detail to Spvy. Revenue Agent, (EO Determinations-Group 7822)	11/4/12 - 2/24/13
	Revenue Agent, (EO Determinations - Groups 7822/7827)	4/25/10 - 2/24/13
	Revenue Agent, (EO Determinations-Group 7827)	1/1/10 - 4/25/10
Seto, Michael	Spvy. Tax Law Specialist, (EO Technical - 7870)	7/29/12 - 5/20/13
	Spvy. Tax Law Specialist, (EO Guidance - Group 7861)	1/1/10 - 7/29/12
Shafer, John	Spvy. Revenue Agent, (EP/EO Prog & Spt - 7846, EO Determ Grp. 7838)	1/1/10 - 5/20/13
Shoemaker, Ronald	Spvy. Tax Law Specialist, (EO Technical - Group 7872)	1/1/10 - 5/20/13
Shulman, Doug	Commissioner	3/2008 - 11/2012

Spellman, Don	Sr. Tax Attorney, (Chief Counsel, EO Branch)	1/1/10 - 5/20/13
Steele, Mitchell	Revenue Agent, (EO Determinations - Grps. 7828/38/23/27/24)	1/1/10 - 5/20/13
Stevens, Margo	Deputy Associate Chief Counsel	2/2004 - 8/2012
Thomas, Cindy M.	Program Manager, (Rulings & Agreements, EO Determinations 7820)	1/1/10 - 5/20/13
Twarog, Marie	Tax Law Specialist, (Disclosure Headquarters)	4/22/12 - 5/20/13
	Disclosure Manager, (HQ FOIA & Tax Checks)	1/1/10 - 4/22/12
Urban, Joe	Tax Law Specialist, (Sr. Technical Advisor to TE/GE Commissioner)	1/1/10 - 8/31/12 (retired)
Waddell, Jon	Program Manager, (EO Determinations, Area 2)	11/04/12 - 5/20/13
	Spvy. Revenue Agent, (EO Determinations - Group 7830)	1/1/10 - 11/4/12
Wagner, Christopher	Chief of Appeals	5/2011 - 3/2013
	Commissioner, SBSE	9/2008 - 5/2011
Werfel, Daniel	Acting Commissioner	8/2013 - 12/2013
	Principal Deputy Commissioner	6//2013 - 8/2013
Wilkins, William	Chief Counsel	8/2009 - 5/20/13
Wilson, Curt	Associate Chief Counsel (Pass-throughs & Special Industries)	11/2008 - 5/20/13
Woo, Gregory	Revenue Agent, (EO Determ.-Grps. 7887/7886) Advocacy Team Member	1/1/10 - 5/20/13
Young, Carly	Revenue Agent, (EO Determ.-Grps. 7887/7886) Advocacy Team Member	9/25/11 - 5/20/13
	Revenue Agent, (EO Determinations - Group 7830)	1/1/11 - 9/25/11

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix E:

Committee Interview Transcripts (cited portions only)

RPTS MCCONNELL

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: SHARON CAMARILLO

Thursday, September 26, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth

House Office Building, commencing at 10:04 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For SHARON CAMARILLO:

ROBERT WEINBERG, ATTORNEY AT LAW

JOSHUA B. SHIFFRIN, ATTORNEY AT LAW

SFC [redacted]

Washington, D.C. 20005

for how that function was supposed to work.

I was also -- we did that for 3 months, and then the last 3 months I was in charge of the function that oversaw all of the tax-exempt design teams, and we were responsible for coordinating the reports, making sure that they were on time with their time projections, and that they were accomplishing what they were supposed to accomplish.

Q And then from 2002 through 2010, you were an area manager in, you said, EO Determinations?

A Yes, EO Determinations.

Q What types of duties and responsibilities did you have in that role?

A I was primarily an administrator.

Q Uh-huh.

A I had no technical training in the area of Exempt Organizations, so I was not able to address technical issues.

Q Sure.

A I looked at processing issues, timeliness issues, were people working the cases in the order that they were supposed to. I did a lot of coordination work, letting upper management know of the problems that we had. I worked with NTEU, personnel-type issues, but it was primarily an administrative role --

Q Okay.

A -- as opposed to a technical one.

Q So managing whether cases are on time, whether employees were doing good jobs or not, was that --

page 4. It's from John Shafer to you on February 25th --

A Okay.

Q -- 2010. Was this, to your knowledge, the first time you heard about Tea Party applications?

A Actually I remember him calling me --

Q Okay.

A -- alerting me to the fact that this was going to be coming. Because I was so untechnical, I did not have the EO background, and John would often call and explain an issue to me so that I would understand it, and then he would forward the email to me so I -- as I remember it, this -- I would have known this was coming to me. And I simply reiterated what John had said and forwarded it on to Cindy.

Q Do you recall what he told you in that telephone call?

A I just remember a call regarding Tea Party issues and the fact that, because of all of the media attention that Tea Party cases were getting, we wanted to send this one to Washington for some advice on how to handle it.

Q Do you remember when that was?

A Like I said, I thought it was in the spring, so that was --

Q I mean, is that call on the same day as this email, or do you recall?

A I'm -- I don't recall if it was that day or the day prior to it, but it would have been very close to the day the email was sent.

Q If you look at the two emails on this page, the lower -- the email from Koester is at 12:51 p.m., and the email to you is at 10:14

Q Did I understand you correctly to say you took absolutely no training in that 10-year period on any of these technical issues, screening issues that your employees were attending?

A That's right. Now, I was the area manager for 8 years, and if you look at my record, you'll see that I was supposed to have attended a 6-week training in I think it was 2008. The reality was I attended 1 day of training, and then at that time Cindy Westcott was the area manager. She pulled me out of training.

Mr. Weinberg. Program manager.

Ms. Camarillo. I'm sorry, program manager.

She pulled me out of training to conduct interviews for all people who were being promoted. She pulled me out of training for staff meetings. She had me responding to NTEU matters. And so I really -- even though I was supposed to have received training, the reality is I received no training.

BY SFC [redacted]:

Q Okay. When technical issues came up, that's a long period, 8 years?

A Right.

Q Did you ever have any, I guess, inclination to try to understand what those technical issues were?

A All the time.

Q And how did you -- did you educate yourself about them or --

A Usually I would talk to the managers, get a very brief overview on specific issues, and at least for a short time I would

RPTS MCCONNELL

DCMN ROSEN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: ROBERT CHOI

Tuesday, September 19, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:04 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

SFC [redacted]

SFC [redacted]

SFC [redacted]

For ROBERT CHOI:

CHRISTOPHER LANDRIGAN, ATTORNEY AT LAW

THE BROWNELL LAW FIRM

SFC [redacted]

Washington, D.C. 20036

decisions or actions did you put into place to address the increase?

A I don't recall anything that I did in terms of -- upon reviewing this. I stated earlier that the following month, the sensitive case report indicated that a draft favorable proposal letter was being -- was being drafted on -- on one of these cases, and -- and that gave me indication that they were moving forward with resolving at least one of the two cases that we had here in Washington.

Q So the -- the resolution of one out of at least 40, then, gave you some sense that -- that the -- that the folks in EOT and EOD were managing this workload in an appropriate way?

A I believe so. If the -- I -- I inferred from the fact that they were drafting a favorable proposal, a favorable determination letter that they had worked through the issues and they were prepared to rule on one of the two cases, which obviously would be a foundation for managing or assisting Cincinnati with the other inventory that they had.

Q Okay. So you say you inferred that, but did you follow up with anyone to see if that was in fact the case?

A I do not recall a specific conversation about it.

Q Do you recall if the numbers, so the subsequent months also were an increase over this month's, over the -- I think the September report?

A I do not recall that it had increased beyond that, no.

SFC [redacted]. Thank you.

SFC [redacted]. Can I -- can I jump in?

RPTS MEGAN

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JANINE COOK

Monday, September 9, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For INTERNAL REVENUE SERVICE

JOHN TKACIK, CHIEF COUNSEL

thing they want, John, I don't know how we follow up.

Q Okay.

SFC [redacted]. We will probably get it. We have been working with them, but we find it through them if you can just mention it.

Mr. Tkacik. Because again, we are going by priorities, what is requested. And, you know, there is a lot of documents out of our office. So we are doing the best we can.

SFC [redacted]. Okay.

BY SFC [redacted]:

Q So Ms. Cook, you indicated there was a gap of about 3 months between when the guidance was prepared and then when it was sent to the Chief Counsel's Office. Do you know why there was that delay?

A I have no idea. And actually, it was about 3 months from, I mean, it was obviously prepared before November, so there was a period there in which it was being worked on by EO without our involvement. There had been a document completed to some degree by November 21st, because the document was embedded in that email when it was shared. So the gap was 3 months before we were brought in, but there was a longer gap if you look at the prep time because we really hadn't heard anything since, probably since September 2011.

Q Did you ever talk with Ms. Goehausen directly about the guide sheet?

A No, no. I did not. I suspect my staff did. But I did not. She could have been on some conference call when we were talking about it, but she would have been one of the supporting staff, not much -- not

RPTS BLAZEJEWSKI

DCMN HOFSTAD

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: NANETTE DOWNING

Friday, December 6, 2013

Washington, D.C.

The interview in the above matter was held in Room 1102, Longworth House Office Building, commencing at 10:13 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For NANETTE DOWNING:

MATT KAISER, ESQ.

The Kaiser Law Firm, PLLC

SFC [redacted]

Washington, D.C. 20005

All right. We will then pause for about 10 minutes if you want to run out and use the bathroom or anything, and then we'll plan to start back at 10:30. Okay, thanks.

Mr. Kaiser. Sure.

[Recess.]

SFC . We are back on the record at 10:35.

I'd ask the staff who have entered the room to introduce themselves.

SFC . SFC , minority staff, Senate Finance Committee.

SFC . SFC , Senate Finance Committee, majority staff.

SFC . Thank you.

EXAMINATION

BY SFC :

Q Ms. Downing, what is your current position at the IRS?

A Currently, I am the Director of EO Examinations in Dallas, Texas.

Q And can you briefly walk us through your experience at the IRS?

A Okay. I started -- and I often tell people this. I interviewed for a job as a revenue agent. I got offered a job in the Exempt Organizations division. I was young, 25, you know, fairly new out of college, single parent, needing to find a job, a career, and I got offered a job in Exempt Organizations. And, you know, I was so excited, my first job. I'm sure you guys remember that.

staff, and I was responsible for coordinating things for EO like the budget, the hiring, you know, TIGTA things, you know, anything for the whole division of Exempt Organization.

While I was her executive assistant, I was selected to go into the Executive Readiness Program. And during that time, I did a couple of details. I was in D.C. as Lois's exec assistant for 2 years, but during that time I did two details for 4 months each. One, I was the acting director of Federal, State, and Local Governments. That was still within TEGE, Tax-Exempt and Government Entities Division.

Q Uh-huh.

A And then I was also on a detail working cross-functionally with a team from the whole IRS building, the 5-year strategic plan. And that was a few months of a detail.

From there, I was selected to go into the Candidate Development Program, which is to become an executive. That was a 5-month training program. You were pulled off-line, you go into the training.

And as I stepped out of that in 2009, I was the assistant to the Director of EO Exams. Sunita Lough was the director at that time, but she had just stepped out of the career development program. She was temporarily in that position. When I stepped out of it, I assisted her for a few months, but then they selected me in that position. And I moved back to Dallas, Texas, because that is where the Director of Exempt Organizations Examination position was. So I moved back to Dallas in 2010.

And then I've been the Director of EO Examinations since then.

different buckets of work.

Q I would like to kind of go through your relationships and then kind of how you interact with various offices in the IRS.

So, in your role, who is your immediate supervisor? Who would have to approve if you get bonuses or reviews or things like that?

A The Director of EO. Currently, Ken Corbin is my boss.

Q Okay.

Do you have interaction with the TEGE Commissioner?

A Yeah, at times. You know, I can be in meetings with them. Normally, if I'm in a meeting, my boss would be in the meeting, you know.

Q Okay.

A And it depends. I mean, the Commissioner of TEGE will have direct report staff meetings, but there's time as the executives that he has all. Like, right now we're working on our vision. I mean, I had a meeting yesterday that all the directors of TEGE were in on because we're working on the vision of TEGE.

Q Yeah.

A There might be times that we're working on a particular EO issue that, you know, I might be working just directly with my boss, but there's times that I might be working with the Commissioner of TEGE. But always my boss would be involved with that.

Q It's usually, though -- yeah, so if you're interacting with the TEGE Commissioner, odds are the EO Director is involved, as well?

A Yes. Or if they can't attend, I'm letting them know what

I did.

Q Understood.

A And a lot of times it's briefing them on my program when I'm the subject matter expert of something, you know?

Q Sure.

And how often do you interact with the EO Director? Is that a daily contact?

A No, not daily. As needed.

Q Okay.

A I mean, there might be periods -- you know, there might be periods of a week or so that you don't talk to them. There might be -- it's just really as needed.

Q Sure.

A I mean, I view my responsibility is to, you know, keep them apprised when they need to know things, you know, and if I need to call and say, can I get on your calendar, I do it.

Now, I do have -- Ken, my current boss, has weekly scheduled calls with me and monthly op reviews, so there are scheduled times that we have. But then ad hoc, as needed, we will schedule meetings.

Q Tell us about your relationship with Ms. Lerner. Was it cordial? Was it friendly? How would you describe it?

A I mean, Lois was my boss. And, I mean, it was a normal relationship.

Q What did you think about Ms. Lerner's management style?

A I've had several managers. Everybody's style is

different.

Q Sure.

A Her style was different than mine. You know, just as an example, she wasn't good on email. You know, you would email her and it might be a month later before -- you know, her style, she just was more technology-challenged, I guess I would say.

She wasn't as organized -- you know, if I compare her to Ken right now, I mean, Ken is much more organized about, you know, having regularly scheduled meetings and things like that.

But I would just say her style was different than mine. But every manager I've had has had a different style.

Q Was Ms. Lerner closely involved with Exam operations?

A No, I wouldn't say she was. I mean, my opinion was she let me run my program.

Q Uh-huh.

A Most of the projects I ran, but a few projects that had more of the R&A component, you know, the attorney component, sometimes she was more heavily involved, like the colleges and universities, partially because she was going to be very involved in that final report and she wanted to keep more in touch so that she knew what was going on so that when she reported out she would understand it.

But for the day-to-day operations of my program, I would say, no, she was not real involved.

Q Would Ms. Lerner ever contact you about specific taxpayers?

A Yes. Often, she would have requests for -- I mean, we get

that kind of stuff all the time: congressional requests, media requests. And she would need to know the status of something and whether or not we got it. But then, also, if she got referrals, she would send referrals to us.

But in the normal course of duty, you know, I would respond so that they could deal with whatever they needed. I mean, I didn't necessarily know whether it was -- sometimes I might know if it was congressional or media --

Q Uh-huh.

A -- or, you know, I would assume someone was asking her because we needed to respond to something. But, yeah, I often got requests for stuff.

Q Would Ms. Lerner weigh in in terms of specific actions to take toward a taxpayer -- for instance, to open up an audit?

A No.

Q No.

A You know, as a revenue agent and, you know, even as an IRS employee, you know, my folks are taught from the very beginning about, you know, several things. One is, you know, no one will tell us who to do an audit on. If they did, you'd turn that in to TIGTA.

You know, as a revenue agent, you're also taught that, you know, the exempt organization community, you're dealing with a lot of social issues -- political, religious -- and you cannot let your views impact an examination.

Q Right.

A You're taught that you go in and you do your audit, you look at the records, you look at -- especially in Exempt Organizations -- you look at the activities, and you base your decisions on the law. And those are things that are engrained in us from the day we start.

So did she ever tell me to do an audit? Absolutely not. If she did, my duty would be to turn that in to TIGTA.

Q Right.

Has the role of EO Director of Examinations changed at all in the past year? Have the daily interactions kind of changed at all in the last year?

A Do you mean with the change of leadership?

Q Yes.

A Yes, it has changed, but we're dealing a lot with the TIGTA investigation and the reporting out.

Q Right.

A And, you know, it's kind of hard to say, you know, if all that wasn't going on, would it change. I mean, I'm probably providing more information on taxpayers right now because of congressionals or TIGTA inquiries. I mean, we are getting a lot of TIGTA inquiries right now than we've ever had on folks under audit that think they're being targeted.

Q Sure. Right.

A So, you know, we're really in a -- I wouldn't say a crisis mode, but on my side we're spending more time getting the information and providing for it to answer the questions that are coming in.

A Yeah.

Q When a group was picked to be in a ROO, who had to approve that decision? Who --

A I'm not sure exactly what you mean.

Q -- had that power?

Yeah, if a group is being placed in a ROO, by inside referral or outside referral, who would decide what groups were ROOed and what groups were not?

A Well, as I talked about what the different types of buckets the ROO has --

Q Sure.

A -- some of them are the randomly statistical sample. That's a data analytics. Somebody goes in through the computer and pushes a button, and it randomly selects those that will go to the ROO.

If it's a project case, the project team kind of does the same thing. It's the data analytics that's pulled, and the project team sends it through the ROO.

If it's a referral, it's treated like any other referral, and it goes through a process. And, I mean, if we get any referral in, we take it and look at it and make a decision whether -- our classifiers make a decision. They do their research and decide whether there's a reasonable belief that there's a potential issue. If there's not, they just, you know, close it. And so --

Q Well, then, let's kind of, I mean, step back from the ROO then and talk about referrals and how exactly they work --

A Okay.

Q -- what that process is.

A And, yeah, that's good. That will probably help you put some of this in context --

Q Sure.

A -- because we do get a lot of referrals.

Q Right.

A You know, we get whistleblower referrals, we get terrorist referrals, we get fraud promoter, we get referrals from CI, we get internal/external referrals, and we can get referrals from other divisions.

Our referral process is -- it's a very stringent process that, with safeguards in place, the referral has been -- our referral process has been looked at a couple times by TIGTA, different types of things different times, you know, and they've blessed -- you know, they made some recommendations --

Q Sure.

A -- and we've implemented recommendations they made.

If a referral comes in, they all come in to my Dallas classification unit. And we have this database that we put referrals on.

Q Let me ask a quick question. Are these both outside referrals --

A All referrals.

Q -- and inside referrals? Okay.

A Yeah. That way, when we get requests from Congress and stuff, we have this database we can pull the data out from.

Q Right.

A When they first come in, they are screened to make sure it is an EO referral. Sometimes it maybe is not ours, it's misrouted, it should go to another division.

Q Uh-huh.

A But then we have criteria set in certain situations where we deem that it's a very sensitive referral. We do not want any one individual to have to make that decision. So there's certain criteria for whether or not one classifier would look at it themselves or whether it would go to a committee. Anytime it's a committee, like a church, churches, those are one of the criteria, those are one of the things that, you know, TIGTA has -- when it meets a certain criteria, we'll go to a committee of three managers that will make that final decision.

And our database and our safeguards in place as we've built that database to systemically -- the classifiers or the three managers will go in and put their decisions and their comments, and then the system automatically selects it or not. Because it's a majority vote of the three committee members. So no one else besides those committee members have that say and that final decision because it's their decisions.

So whether it's them or whether it is the individual -- and my political referrals are just a little bit different -- but they'll look at it, they'll do their classification, they'll look at whether or not

they think there's a reasonable belief in the allegations to make a decision, yes or no.

Q All right.

A Our database is set up -- and I have to say, over the last few years, we've done extra training and we've tweaked the database to make it a little better. The classifier should put in what is the allegation, the application of law, and their final recommendation, or their final decision.

And we went through a period of time a few years ago that, you know, if we were pulling information -- because a lot of times, TIGTA or somebody will come in and they'll just pull that classification sheet out of the database. Well, you know, there were times that people above me were saying, you know, how did you make that decision? But what I found was my folks weren't good about -- and we've added some extra fields in the database. Because the thing about a database, you know, your comment box is very limited. So how can they be clear, concise so that people can see that -- we've done training and added some extra fields so they can be very clear, concise of what the allegation was, the application of law, and their final decision.

Q Sure.

A But that's how the system works in most all of my referrals.

With the political referrals, we've put a few more safeguards in place and a few extra steps to the process. Do you want me to talk about that?

Q Yes, please.

A Okay.

Q Actually, I'll pause 1 second.

SFC , if you can introduce yourself?

SFC . SFC , majority staff, Finance Committee.

Ms. Downing. Hi.

BY SFC :

Q Okay.

A So, political referrals. For years, as you guys are probably all aware, before my time as the Director, we had 501(c)(3)s with political referrals. The Service and EO had a very formal project in place with very tight timeframes of processing every step of the process. And they made a formal announcement at the beginning of an election cycle, an educational announcement of the dos and the don'ts. And, you know, any referral we got through, they went through a process. And I don't know exactly every step of the process, but they did go through a committee of folks.

But, you know, about 2010, Citizens United came out. We started -- well, let me back up. We've had several years of this very formal process.

Q Right.

A Before 2010, we said, you know, the public is aware of the dos and don'ts of the (c)(3)s, politicals; we're not going to make a formal process, we're not going to have these very tight timelines that the classifier has to classify within 10 days, they have to send it to the next person. You know, we're going to process them, but we're

going to process them just like any other referral. Everybody knows what to do; agents have been trained.

So it had gone -- we call that project to process. Just like I talked about the colleges and universities, in the future, once we finish a project, you know, folks are trained, if we get something on it, it won't be a formal project. So 501(c)(3)s and politicals was just normal -- process as any other referral. It still would go through just a normal committee, because it's very sensitive.

Then, 2010, Citizens United came out. We started getting referrals on 501(c)(4)s, political, we started getting congressional.

Q Uh-huh.

A You know, folks above me came and said, how are you going to deal with these? We know this is going to be very --

Q Who was that? Who would have come and asked you?

A Lois, up the chain, you know.

Kind of like for your work plan, what are you going to do, how are you going to do this? We had to take a step back. We said, this is a new area, we need processes, we need procedures, we need training.

Q Right.

A At that time, we said, stop (c)(3) referrals because we want to make sure we're being consistent with them all.

So, you know, this was the end of 2010. 2011, we developed -- you know, they tasked to me, what are you going to do, as the Director? I put a team together, a cross-functional team, said, how are we going to do this? And we wanted to use, you know, what we learned from the

the impact? You know, was it -- you know, if it's -- you know, what was the impact of the political nature? Was it a speech that went out on the Internet? You know, just to help -- or was it one sign one time? You know, again, just some definitions to try to help them to give them some clear guidance on making those final decisions so that we were consistent.

Q Does the PARC look at or consider whether or not a group has a ROO recommendation?

A Do they consider the ROO?

Q Is that known to the PARC as they look at a case?

A I can't be certain to answer that question.

Q Would the PARC have information that was obtained by a ROO?

A Yes, they will have the ROO file.

Q They have the ROO file.

A And if the PARC needs to do additional research, that is part of their --

Q They also have the ability to --

A The ability to do additional research.

EXAMINATION

BY SFC [redacted]:

Q So when they do additional research and when they have the ROO file, that all becomes part of the PARC file with respect to that referral?

A Yes. Yeah. It will all go in the file.

Q Okay. And that's electronically, as well, or just the hard

copies?

A No, it will all be put in the electronic file.

Q So it will be loaded up into that system we were discussing?

A Uh-huh.

Q And can any one person override a PARC decision?

A No. No.

Q So once the PARC makes a decision one way or the other, no one can come in and say --

A No. And I would expect -- I don't think you were in here when I talked about this. I would expect if anybody tried to do that, they would turn that in to TIGTA. We are not allowed to do that.

Q Okay.

SFC [redacted]. Well, right now, we're at an hour. Do you want to take a break?

Mr. Kaiser. Your call.

SFC [redacted]. It's up to you.

Ms. Downing. I'm okay.

SFC [redacted]. Okay. Great.

BY SFC [redacted]:

Q So, going back to the issue of referrals, does it make a difference, is there a different way, depending on if it's a referral, you know, from the outside or if it's a referral inside IRS? Like, how is the origin of the referral considered?

A It should not be considered at all.

Q Well, I mean, for instance, if there's a referral from an

outside group or there's a referral from a 20-year IRS Exam veteran, that's not looked at at all?

A Huh-uh, no. I mean, if it's a referral from inside and someone did an examination of something and they're referring it over, most likely there will be proof there so that that classifier would make a decision. I mean, if it's an inside referral, it might have more information in the packet.

But it should not matter, the source of the decision. And there still has to be enough information to give that classifier reasonable belief that there is -- and, you know, so if it's an individual who says, "I don't like my neighbor, you need to look at them, I think they look funny," I mean, they are treated exactly the same.

Q So if it's, you know, for example, the 10-year IRS, you know, veteran, it would be treated differently because it would have more content?

A It would not be treated differently.

Q Well, no, no, no, I mean, if it were, it would be based on the content of the referral; it's not the origin.

A It's never based on the source, right.

Q Understood.

A Right.

BY SFC :

Q Do you have any safeguards in place to ensure that internal referrals aren't treated differently? Because I would think that human nature would dictate that you would trust a referral coming from

inside the IRS more than one from --

A I mean, it goes on the database. And you missed the beginning, that on the database they have to say what the allegation is, applying it to the law, and what their final recommendation is. The manager does quality reviews.

Q But if it's a ROO referral, you're not sure if that would be part of the packet.

A No, it would be part of the packet.

Q So they would know that it's coming from inside the IRS, from someone in Determs.

A They would know -- yeah, they would -- I mean, all that file would be in there. But, again, there's got to be information to provide that there's reasonable belief.

Q Okay.

EXAMINATION

BY SFC [redacted]:

Q And just a couple more questions on the process.

A Uh-huh.

Q So once an agent who's working in the ROO has finished looking at a case that's come in, what options do they have?

A Well, they send it on to the PARC. Or are we talking about the dual track, the political referrals?

Q Yes, let's stick with the political referrals.

A Okay. They send it to the PARC. It's either an examination, it's not an examination. It could be a compliance check,

that maybe they think they need to send it over to my EOCA to send out some kind of contact trying to gather more information. But, in most cases, it's yes or no as an examination.

Q So even if the ROO agent finds no merit to the allegations, they'll go ahead and send it over to the PARC?

A Everything goes to the PARC, yes.

Q And then, same question for the PARC. Once they've reviewed the case and the allegations, what options do they have?

A Examine, not examine, potentially go over for a compliance check.

Q And if they do an examination, would that be done within the PARC, or is that somebody else who would do it?

A No, if an examination goes to my field group -- and if we're talking about these dual-track political referrals, we have trained specific training for, you know, about 70 agents nationwide to do these, but I have to say we're not doing any exams right now. We built the process, we have sent things through the ROO, the PARC. We had just started about 20, 30 exams. The first small little batch went out. They started exams in February. The TIGTA report came out in May. We had a new leadership come in. We said, let's just pause because of the allegations on the other side. Nan thinks her processes are good and sound, but I'm new leadership, let's just pause, let's take a step back.

I brought in a cross-functional team in June, other folks outside of EO, outside of even TEGE, to look at what I've built, again, because

of what was said in the TIGTA report on the other side. These 20, 30 exams that we started, we did come up with a communication to the taxpayer telling them that in light of, you know, what was said on the other side, we were just taking a second look to make sure, you know, that we were using proper criteria.

The cross-functional team has been working. They came back with final recommendations that they think it's a solid process. You know, a few little recommendations about things like formalizing my training, making sure of my procedures. I had issued procedures, but they're not yet in the IRM. And, you know, we're briefing up and I'm waiting for a decision to start back up on those examinations.

But once we get the approval to go forward, I mean, once the PARC approves things, they will go in my inventory stream just like any other -- you know, in my work plan and inventory stream, and they will be worked as they can be worked. And you've got to realize that you've got certain agents, certain grades in certain locations, and, you know, you've just got a lot of things that you're trying to juggle with a work plan throughout the year.

EXAMINATION

BY SFC [redacted]:

Q When do you think the exams will start again?

A I don't know.

Q Because it will be a year in February. No exams for the year, is that really healthy?

A You know, we wanted to make sure our processes were sound.

And I'll give you a minute to look it over.

A Okay.

Q All right. This starts out with an email you sent to Ms. Lerner about an Exam and Rulings and Agreements, a meeting about referrals.

A Uh-huh.

Q And then Ms. Lerner responds that she wants to start tracking all referrals.

I'm trying to get a sense of, like, background and kind of the context of this email, of what the meeting was about and what prompted Lois Lerner to want to track all referrals.

A I don't recall what prompted this. I do recall this is where I really jumped in to understand the ROO referral process and realized these referrals, when they set this up before I came on, the referrals were going straight from Determs to the ROO.

And, you know, to me, these are referrals. You know, they weren't calling them -- their side was calling them referrals; my side was calling them future follow-ups. And, you know, as Holly and I talked, I realized, you know, to me, these are like any referral from anybody else internally. And that's when I changed the process so that when I'm pulling stats out of my referral database I have these included.

But I don't recall what started this conversation.

Q Do you recall if a part of the context was Determs over political cases or Tea Party cases?

A I do not believe it was. Because, to the best of my

knowledge, the first time I found out -- as we were working through the dual-track process -- you know, I had a dual-track team built in the process. And as they were working through the process, they kept telling me at some point they needed to talk to me about these bucket of referrals they from Determs. But they were future-year follow-ups. They weren't going to deal with those until later because they were trying to build the process.

Well, sometime around the TIGTA report coming out, somebody that had these referrals realized -- they happened to open them and realize, oh, you know, they sent these referrals over and the referrals -- somebody asked, what are these?

Q Right.

A And somebody said, these are Tea Party cases referrals. When the dual-track team -- and they'd just been sitting. They'd been sitting in a pile for quite a while.

Q Sure.

A But, again, they were 3- to 5-year follow-ups. They were just sitting there, and the team brought to it my attention. We turned it in to TIGTA. I had a meeting with Ken and Karen, and we made the decision that, due to the TIGTA report and the, you know, inappropriate criteria that was used, we made the decision, we kicked them all back to Determs to look at them again.

And then that is when I also -- it was after that that -- this is when I started having my discussions about the process, and that's when I formally changed my process and said in the future -- and they

issued guidance on their side that, in the future, you send anything over to Exam, you do it just like anybody else. You fill out this form, it goes to classification, and it --

Q That's everything.

A Everything. Yeah.

But as far as I recall, that is the first time I ever saw anything about referrals of a political nature from Determs.

Q Was --

A Yeah, when the dual-track team brought it to my attention after the -- you know.

Q After the audit report was out.

A Yes. Yes.

Q Since you mentioned it, can we talk about dual track and, kind of, A, exactly what it is and then, as well, what the origin was?

A So I mentioned earlier that, you know, we started getting the (c)(4) inquiries. We needed to build a process.

Q And this was --

A For the (c)(4) political audits. And we knew we had referrals, but we also knew we had this new 990.

We came up with this dual-track process. We started it with political activities, but I think it's a process we will use going forward with any type of issue that we've got referrals on and we've got now data analytics.

So it's really a dual-track process. And testing the data analytics, what we really hoped to be able to find out in the future,

on any of my committees. And one of the things I didn't say at the beginning, the reason I am in Dallas is because we wanted clear distinction.

Q Uh-huh.

A And this happened -- this is the best of my knowledge -- at stand-up, when decisions were made of where the positions were, that position was to be in Dallas. And when I was up in D.C. for 2 years, I got selected to be the Exam Director, it was made clear I was to move to Dallas. And it kind of helps keep that involvement away, you know, clear and distinct.

And so we did not put any of the R&A folks on my committees. We just had them give us the training to be better writers and then come in and help do some of those consistency checks.

Q Is that because it would be inappropriate for someone in D.C. on top of a role in referral decisions, in PARC decisions -- they wanted it completely separate from the D.C. office?

A Yeah. Yeah. I mean, that's always been my -- well, that's always kind of been what it's been told for me. And, you know, I would guess that is why that never happened. And I said, let me do this, this, and this. And after some of the -- you know, we trained the folks and they did those consistent reviews, I think, you know, Judy and Tom did not have any concerns and thought, you know, everybody was applying everything appropriately and consistently.

Q Okay.

SFC [redacted]. So as a result of the consistency reviews, PARC

yeah. But, again, there's got to be a reasonable -- there's got to be enough -- yeah, it could sound bad, but if there's not --

Q Uh-huh.

A I mean, it will go through our process.

SFC [redacted]. Let me ask you, if a group is selected for the ROO, is it more likely or less likely to be audited than a group that's not selected for the ROO?

Ms. Downing. It --

Mr. Kaiser. You mean for political activity or in general?

BY SFC [redacted]:

Q Both. In general, and then for political.

A You know, it really just depends on my work plan. I mean, it really wouldn't have a difference because it went to the ROO. It really is based on my work plan, my priorities, and where it fits in the bucket.

Q Well, then, if a tax-exempt organization is referred for political activity, placed in the ROO, IRS would see a lot more information on that group than they otherwise would. Is it likely that that would increase the odds of an audit on that group?

A No. I mean, if it's selected in the ROO, it goes into my inventory bucket. At the beginning of the year, I have priorities. It will really depend on where it fits on the priorities and, even within the priorities, what the staffing is, what the grade level, what the location.

Just because it's selected, it might not get examined. Often,

at times, managers have to survey inventory because they don't have the time, the agent, and the location to work it. So just because it's selected, there's no guarantee. But, again, it goes into my priority, and they could or could not get an examination.

BY SFC :

Q What percent of tax-exempt orgs are audited every year?

A A very small percentage.

Q And what percentage of ROO organizations are audited, if you're in that population?

A Now, I'm talking just the best of my knowledge. I recall having the senior manager pull me some stats, and I believe it was maybe 1 percent.

Q Of ROO?

A Yeah.

BY SFC :

Q And it's zero percent for political activity related to 501(c)(4) cases, correct? Since February of last year, zero percent.

A Correct.

Q Nothing. Okay.

A Well, no. We started 28 of them. I'm sorry.

Q But you've just stopped them.

A The question was the start of the exams, right?

Q Oh, started. Okay.

A Yeah.

SFC . Or just selected for exam.

Ms. Downing. Yes, yeah. Yeah.

BY SFC [redacted]:

Q Were you saying that a group is equally likely to be selected for an exam regardless of whether or not somebody has referred them to the ROO?

A I mean, that's a guess, but, I mean -- because there's certain things that can go through classification. You know, there's different buckets of work. But, yeah, it doesn't have to go through the ROO to get an examination.

Q But then, if that's true, then a referral to the ROO would never result in an examination.

A Why do you say that?

BY SFC [redacted]:

Q Well, what would be the point of the ROO?

A ROO does -- so, okay. You know, again, there's different buckets of work. We got claims. Claims don't have to go to the ROO. Claim is a claim. Statutorily we're required to do the audits.

We had NRP audits. That was an IRS-wide project. We had to work those. You know, those were required. Those don't go through to the ROO.

The ROO can't -- not everything goes through the ROO. We send things through the ROO when we think they can do some extra case-building for us. Certain projects go through the ROO.

Q Case-building for what?

A To do that publicly available extra classification, look

at the information, pull the information, put it in the file, and say, yeah, there's potential.

Q So it's case-building for an audit.

A Case-building and decision-making on whether they recommend an audit, yeah.

Q Uh-huh. But that's not done with respect to every tax-exempt org.

A Right. Right.

Q So if you're in the ROO, I mean, someone is building a case. If you're not in the ROO, no one is building a case.

A Well, no, because classification builds those -- it's case-building, it's just a little more case-building. Everything else goes through classification. They build a case, too. Classification looks as some referrals. They make those decisions. In a way, they do the same thing, but the ROO just does a little more.

Classification, a regular referral might go through classification, they make the decision, yes or no, whether it should be an audit. If they say yes, they build that case file, they send it out.

NRP that didn't go through the ROO, that file was still built and sent out. Those were mandatory. There's no need to send them through the ROO. We had to do those audits.

Q Right. But I think what we're trying to compare is the likelihood of audit if you're just a regular (c)(4) out there versus someone that has been referred through the ROO.

A So there's a difference if it's a referral --

Q I'm saying no referral.

A We have projects, material diversion projects. It's a data analytics; there may be some (c)(4)s that come out of there. I mean, we do do (c)(4) audits that aren't political, but they usually fall out of some kind of project that we're doing.

Q But how many (c)(4) political audits were there in the last couple years?

SFC [redacted]. We've asked that question. Hasn't been answered yet. We asked that question 3 months ago of the IRS, and there's no response yet.

SFC [redacted]. They keep track of the --

Ms. Downing. What was your question?

SFC [redacted]. How many tax-exempt orgs were audited on political issues.

BY SFC [redacted]:

Q Yeah, you realize we asked that question of the IRS, right? Have you heard that we asked that question?

A Yeah.

Q Okay.

A But since 2010, we haven't done any, because we were building this process. And we started the 28, they were a mixture of different functions, (c)(3), (c)(4)s. I think that was --

Q I thought you said you hadn't done any since February of last year. Now you're telling me you haven't done any since 2010?

A We stopped the process when we started getting the Citizens United to build the dual-track process.

Q So you've done no --

A Yeah.

Q -- examinations of 501(c)(4) political activity cases since 2010?

A To the best of my knowledge.

Q When in 2010 did you stop doing --

A Yeah, the end of -- well, it's really the beginning of 2011.

Q Okay. You're saying the end of 2010?

A Yeah.

BY SFC [redacted]:

Q Well, you had said that the audit rate for a (c)(4) in the ROO is about 1 percent?

A No, that's not correct.

Q Okay.

A I said I think the examination rate of the ROO, of what they looked at, was about 1 percent. I think. You know, I --

Q Of the pool of (c)(4)s who are in a ROO versus the pool of (c)(4)s who aren't, do you know the audit rates for those two groups?

A No. No. I mean, we could pull, and I think we have, pulled how many audits of a (c)(4) we've done over the last few years. And I think we've probably already provided that.

BY SFC [redacted]:

Q You haven't provided that yet. We asked the question

2 months ago --

A Was that the political --

Q -- 3 months ago -- yeah -- and I've received nothing. I keep poking people at the IRS. And, you know, we need it before we complete this report.

A Yeah.

Q It's not your fault. It's your superiors' fault.

A But I believe we've provided in the past how many audits, period, we've done of (c)(4)s.

Q That's the question we asked. That was not provided.

A Okay.

Q So we don't have that, and we need it.

BY SFC :

Q But you had indicated earlier that if a group is referred to the ROO, one potential outcome is that there will be an exam. Is that right?

A Correct.

Q Okay. So that referral to the ROO would increase that chance that it will have an exam.

A No.

Q That follows, right?

A No. No, I don't agree with that statement. I mean, pulling up project data analytics -- I mean, it doesn't give you a higher chance than anything else.

Q I mean, so there's two reasons a group could be selected

for an exam, right? One would be based on the data analytics, the other one would be on referral.

A Or dual track.

Q Right. So either one of those is sufficient to get the possibility of an exam, right?

A Wait. Say that again?

Q The group could be referred for an exam based on the data analytics or based on the referral.

A Correct. And they all go through the ROO.

Q Okay.

A So just even if they're in those two piles, they could get an exam.

Q Right. So you could have the same group that wouldn't turn up in the data analytics, but then somebody refers it to the ROO, and then that group could end up having an exam.

A Just like the other side, too. So it doesn't have a higher chance.

Q Right. But what I'm saying is the fact that -- and I think what we're all getting at here is that when somebody makes a referral to the ROO, it does increase the chances that the group that's referred will eventually be audited.

A I think it's a better statement to say, when someone sends a referral to the IRS, it goes through a process, and they could potentially have an examination. It doesn't matter whether it goes to the ROO or not. When we get a referral, we look at them to see whether

there's reasonable belief for a potential audit.

Q Okay. I don't think you're answering this question, but we can move on.

BY SFC :

Q So if the IRS -- let's just treat it like ROO is a regular referral.

A Yes.

Q If the IRS is generating a lot of referrals with respect to specific groups, the chances of those groups being audited are increased, as they would be with all referrals, versus if you're just out there functioning as a (c)(4).

If someone writes a referral about your organization every month, your chances of being audited -- I mean, every single time you get a referral, you have to make a decision on whether or not an audit is initiated, right?

A Correct.

Q I mean, that just -- I mean, statically, your odds are better of being audited.

A I wouldn't say that.

Mr. Kaiser. Can I -- I think your -- if you don't mind. I mean, I think your question is relative to whether no referral of any kind had ever happened with respect --

SFC . Right. Exactly. Those are the two populations that we're comparing.

Mr. Kaiser. You've got organization A out here, and it's not in

But, also, what do you do -- do you have built in the process if by chance -- and Crossroads GPS, I don't think -- it wasn't that. But what if it's a new organization and, you know, it's brand-new, their first year of activity, it's not even finished yet, how -- you know, I just made sure those were all built in to the process.

Q Is this Lois Lerner telling you or suggesting that Exams open up an audit?

A No. That's not the way I took it. The way I took it is she worried -- we were not lawyers, as I said. We were accountants. And whether or not we were correctly -- if we knew what we were doing.

So I just took a step back and trained my folks. You know, if I thought she was telling me to do an audit, I would have turned her in to TIGTA. I just took it that she was telling me she doesn't have confidence in my people. And I took a step back and said, what can we do to make sure we do a better job of documenting everything so that when they pull the files, pull the documentations, they can understand the reasons we made?

Q Well, her statement that "twice we rejected the referrals for somewhat dubious reasons," doesn't that suggest the negative --

A That --

Q -- that the correct decision was not projected?

A That is not the way I took it. And maybe it was because of my relationship of her. I did not take it that she was telling me what to do.

SFC [redacted]. How did you take the statement, "Please make sure all

moves regarding the organization are coordinated up here before we do anything"?

Ms. Downing. Where is that statement at?

SFC [redacted]. At the bottom right here.

BY SFC [redacted]:

Q Because that sounds like --

A Okay. So this was -- okay. So this one -- and I think she mentions somewhere in here that there's an application pending. And in our dual-track process -- so, to me, it wasn't Crossroads GPS, it was any of them, that the team, as we built the dual-track process, they are to be cognizant if Rulings and Agreement has an application. So we're going to go on and start an exam, but we just want to make sure, what if, right before we get ready to start exams, they issue a denial? And I don't even know what their process is, but what if they deny it? So it's coordinating, making sure that piece is in my process.

Q I mean, because there's nothing in this email chain relating to general process, and it's all --

A No.

Q -- with respect to one taxpaying group.

A But I took it --

Q So that just doesn't follow from the --

A Yeah. But that's how I took it because it's -- it's because of an application pending.

BY SFC [redacted]:

Q Would you ever have exams of an audit of an organization that had not had its application resolved yet?

A Yes.

Q You would relate that to this?

A Well, I think how we've built the process, we will be aware --

Q Okay.

A And, you know, if one is pending -- you know, but things are changing over on that side because of the process improvements they're putting in place. You know, what we know from the TIGTA report is things could have sat there for years. I did instruct my staff, as we build the dual track, we are not suspending something because it's got an application pending.

Q Okay.

A But we should reach out and make sure they're not getting ready to issue something as we're starting an exam because that could look kind of -- you know, we should at least coordinate and know what's going on.

BY SFC [redacted]:

Q So if you took that statement to be a general statement about the process, why was your response totally with respect to one group?

A Well, she was originally asking about --

Q Well, in the statement she's asking about one group.

A She was asking about that referral, so I responded to that. You know, you had to know Lois. You had to know the emails you got.

I responded with the facts, and the rest of it I just made sure that we had this built in to the process.

RPTS BLAZEJEWSKI

DCMN HOFSTAD

[12:53 p.m.]

BY SFC [redacted]:

Q So when she says, "Please make sure all moves regarding the org are coordinated up here before we do anything" --

A What I did was what my staffing says: Do we have a process in place that we know which ones have applications pending? They said yes.

Q But did you feel that you had to apprise her of all moves regarding the org --

A No.

Q -- with her?

A No. What I took from that was, in that process, if any of them, GPS, Crossroads GPS, anything else, had an application pending, we built in to the process that if it was decided for the exam, they had a contact to reach out with R&A to see what the status was.

If by chance the status is it's still in the process, I instructed my people, we're going to start the exams. If maybe by chance a ruling one way or the other was -- you know, they were to kind of get back to me. We've not had one come in like this yet.

Q So in her response to you, when she says, "As I said, we are working on the denial for the 1024, so I need to think about whether to open an exam. I think yes, but let me cogitate on that a bit," you think that relates to the process generally on whether to open an exam

on all cases --

A I think any of them --

Q -- even though she's specifically referring to a denial of one 1024 --

A Yes.

Q -- on the organization that was the subject for the entire email string?

A I can't say what Lois was thinking. I can tell you what I did, and I made sure our process had a process in place for any organization.

And we've, you know -- I can't talk about cases, yeah. It is in our pipeline. As soon as we get the approval to start exams, my folks will be telling me what -- and I don't know, you guys might know more than me, I don't know where that stands on the other side. I have no way of knowing right now. I know that it was a potential, it was close to being, but you know how things, you know, were in the past. I mean, it could be sitting there for a while or it could be that a decision could be being made imminently.

Once we get the approval for exams, any of them, this one or anything else that is in there, I will just reach out and just say, has a decision been made? If so, what is the decision? If not, I'm starting the exam.

Q So when she says she needs to think about whether to open an exam, you don't attribute any meaning to that statement, you just ignored it?

A What I attribute to that statement is, you know, again, everything kind of --

Q I mean, for me, this would be the basis for a TIGTA referral.

A It's, you know, we're in a different light now because we put everything on hold. If everything went through and it wasn't, you know, wasn't on hold, we got to the point where we were ready to start the exam, if I had gone to her and said -- her, R&A -- and said, we're going to start an exam and if they said no, we're issuing the denial next week, then I wouldn't have a problem.

If she said, no, don't start it, we don't have a denial, don't start it, I don't want you to do an audit on them, yeah, that would be a TIGTA. But just based upon this, no, I didn't.

Q I have another question about your response.

A Uh-huh.

Q You noted that "the PARC reviewed in December 2012 and selected it for examination. I have pulled the files and see that they went back to the committee in December 2012 for final committee review."

Can you explain that? Because it seems like there was a selection and then it went back to committee for final committee review.

A I don't recall. It could be that --

Q So do you know what the final committee --

A It could be that we were doing a consistency check on it. I don't know.

Q Is there a final committee review?

A No. No, I don't know.

BY SFC [redacted]:

Q Let me ask you, as well, on the next page, at the bottom of her email, it says, "You should know that we are working on a denial of the application, which may solve the problem."

Why would Examinations find that relevant, the fact that Determinations was planning on ruling one way or another? And, also, how would Lois Lerner have that information?

A Well, that piece, how she would have that information, I don't know. As far as I know, this is the first time something like this came up, you know, so we needed to make sure we built something in our process.

But you asked about why it would matter. If they issued a denial, we are specifically saying they're not exempt. I would assume -- and, again, this is the first time it happened. We've officially said you're not exempt. I would not start an exam because they're not an exempt organization.

So that's why I would need to know. It would be, I'm assuming, it would be something going over -- I mean, if we issued a denial -- and, again, this is the other side, so, you know, I know I'm not technically correct, or I don't have the full knowledge. But if we issued a denial and they're not exempt, I guess they're a for-profit. So I wouldn't do an exempt organization audit on them.

Q Right. Is there a usual procedure for R&A to tell Exams if there's been a denial? Because here it's sort of giving advance notice that, hey, this is occurring in the future.

A I don't know that a situation like this has ever happened before. Normally, when an agent, you know, gets an exam and even when it goes through that classification process, they look up the system and the system codes. If something was denied, an agent, a classifier or somebody should recognize that they're not an exempt organization.

So, again, I'm not aware that this has ever happened, but an agent should catch it before they would even start an examination.

Q Had Lois ever written to you, other than this, in the context of her deciding whether or not to open up an exam? Is this a common thing for Lois to say?

A Not that I'm aware of, no. I can't recall any other times. And, again, I didn't take it that she was telling me to start an exam.

Q When you read this email, though, how did you take it? Did this initially surprise you? Or you just didn't read it to --

A You know, you kind of had to know Lois and her personality.

Q I understand.

A And we were accountants. You know, we weren't attorneys. I often got emails, not on political things, just on anything, asking, do your folks know what they're doing, you know.

Q Right.

A And so, taking it into that context, I would get an email and say, okay, we need to have some training, we need to -- you know, whatever it is, the context is, whatever we can do to just make us look better.

Q And then her statement, "I need to think about whether to

open an exam. I think yes, but let me cogitate on it a bit," that did not, to you, sound like it was her decision whether or not to open up an exam on --

A No. No. I didn't take it that way. I took it about, what is the process, and when we have any organization that has a potential application, and where is that application and whether, you know -- and, again, how close is the decision on that application.

Q Let me ask you, if you'll go to the fourth page -- it's IRS0000122525 -- this is an email with Ms. Lerner writing to Nan Marks about Exam function. And she writes that "we always feel safer because Exam decisions are made by 'career IRS agents,'" in quotes. And she says, "I actually think they make poor decisions."

Had Ms. Lerner ever expressed dissatisfaction with the idea of, kind of, career IRS civil servants making these decisions or that they --

A No. No.

Q Okay.

A The concern that was always with me was, again, we were accountants, we weren't attorneys, we couldn't make good decisions. And we were revenue agents, you know?

Q Well, why, then, here do you think Ms. Lerner chose to write Nan Marks?

A I have no idea. I mean, Nan was a senior technical advisor, but I don't know.

Q Had Ms. Lerner ever expressed to you that these

mention of the Tea Party or of conservative organizations?

A No.

BY SFC :

Q You probably can't answer this, but was Lois thinking, instead of worrying about what Cincinnati was doing on these applications, I'm going to have Exams look at them, investigate them to figure out what they're up to? Since you said you can do an exam of a nonprofit whose application has not been approved, right?

A Uh-huh.

Q I mean, you can't answer that because you probably don't know what Lois was up to, but that's one theory here.

A Yeah, I can't --

Q Otherwise, why would she be talking to you? Because you were sort of irrelevant to this process.

A I don't know, but I never had that indication.

Q She never raised that with you?

A No. No.

[Downing Exhibit No. 7
was marked for identification.]

BY SFC :

Q This is Exhibit 7, an email from Holly Paz. And you're not on this, so I'll just give you a minute to take a look at it.

All right. This email references -- so it's Ms. Paz writing to Janine Cook, who works for Lois Lerner; is that right?

A No. Janine Cook is IRS Counsel.

Q Counsel's Office. Thank you.

And it outlines, kind of, the cases that were the topic of the audit, of the TIGTA audit.

A Uh-huh.

Q And it says that "we suspect we will have to approve the majority of the c4 applications." And then it says on the bottom, "We will also refer these organizations to the Review of operations for follow-up in a later year."

At this point -- you know, this is about 2 weeks after that last email -- had Ms. Lerner had a conversation with you about this plan to approve organizations and then just --

A Not that I can recall. When the dual-track team came to me and they said they had these 60 organizations, I was not aware of them. If they hadn't brought them to my attention, I probably wouldn't have known about them.

Q When was that? When did the dual-track people come to you about the organizations?

A As they were building the process, somewhere in the process, they mentioned a couple times, "At some point, we need to deal with this bucket of stuff. We don't know what it is. You know, we've got a bucket from Determ. But they're future-year follow-ups, so we'll deal with those." You know, they were more worried about getting the referrals and the data analytics through the process. I don't know --

Q When was that, roughly?

A I don't know. I mean, we started working on the process

in 2011, so somewhere between 2011 and 2013. Then I know it was after the TIGTA report came out that one of the folks said, "Ooh" -- because of the inappropriate criteria --

Q Right.

A -- "I better look at what this bucket is." And then they saw the email traffic where, actually, one of the employees asked the Determ folks what these were. And they'd asked them quite a while ago, but nobody had really paid much attention to it. And the Determ people said, "Oh, these are Tea Party cases."

I know that was after the TIGTA report came out. And we turned it in to TIGTA. Then Ken, Karen Schiller, and I spoke, and we said, "Send all these back. We're not doing anything with them." And he brought somebody in from the outside, I know, to look at them again, and if they needed to come over, to send them through my new process. I have no idea if any of them have come over or not, and I wouldn't have any way, really, to know, or any reason to know.

Q Uh-huh. When you heard about it, though, in 2011 or '12, do you recall how they were referenced, what the name was? It was just, kind of, a group of cases?

A My dual-track team just kept saying, we have this bucket of cases from Determ.

Q "This bucket."

A Yeah.

Q And who would have said that, "bucket of cases," do you recall?

A Well, I have a team leader for dual track. Her name's Fran McKenna. And I believe it was her who kept telling me, you know, that at some point we needed to talk about those.

And it was really not talking about those buckets but talking about the process and where and when. Because these would -- part of the process is the future years, and they'll go in suspend, and really just figuring out that process and how exactly it's going to work and make sure we had it all documented.

BY SFC [redacted]:

Q Do you know who it was specifically in EO Determinations that had referred these cases over?

A No. I think I did -- when I turned it in to TIGTA, I saw it on the email chain, but I don't recall who it was. I think it was an employee, not a manager, but --

Q Was it the same employee who had referred all of the cases?

A I don't recall that. I know that there was -- they didn't all come at once. They were sent in intervals. But, no, I don't know.

And Karen Schiller and those guys would have all that record because we sent it all back to them.

[Downing Exhibit No. 8
was marked for identification.]

BY SFC [redacted]:

Q I want to ask you about Exhibit 8. It does not have a Bates number. This is a document that the IRS produced to us, and it outlines the ROO process and numbers.

RPTS JANSEN

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: NIKOLE FLAX

Thursday, November 21, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:00 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For NIKOLE FLAX:

ERIC SNYDER, ESQ.

DILLON GRIMM, PARALEGAL

Kobre & Kim LLP

SFC [redacted]

Washington, D.C. 20036

SFC Yes. I don't think it matters. We're just going to look at this document.

Mr. Snyder. Okay.

BY SFC :

Q Okay. So the one we do want to ask you about, though, at the top it identifies the case name as Prescott Tea Party and Albuquerque Tea Party. Are you familiar with those groups?

A So I'm familiar with this document because when I came up to brief all the committees after the -- after the story broke on this, the -- Finance asked if we had sensitive case reports, so I went back to the office and looked to see if we had them and pulled them. So I looked at them -- I looked at this in May of '13 in terms of pulling it at the time. And now I don't recall getting it in 2010, but clearly I did. I don't know who -- I don't know at the time if -- if I was responsible for sensitive case reports or if Jennifer was. But I hadn't recalled receiving it, but I did look this up after I briefed Finance in May of '13. And so I know that this one exists, and I think there was one other one.

Q I see. So you're not sure if you actually had reviewed this document in July of 2010 when it was sent to you?

A Right.

Q Okay. That's fine. Let me ask just you a couple questions. I understand that point.

So obviously both the cases here, these are Tea Party groups. And the -- the reason that this -- actually, the third box down on the left,

honest with you, I looked at this when Finance asked. I don't -- this -- this on its face does not flag anything for me. Nothing in here does.

Q Okay. Well, let me ask you about the last sentence in that block: "The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity."

Is that an issue that the IRS had been looking at in 2010? Was that an active issue?

A I'm not aware that it was, like, more active than any of the -- I mean, if you looked at the whole stack of sensitive case reports, there are -- I mean, I wasn't aware that this was, like, a big issue at the time; that that was a bigger issue than all of the other sensitive issues that EO was dealing with.

Q Okay. And certainly the issue of campaign intervention, that's something that the IRS has dealt with for a long time.

A Yes.

Q It's not a new issue, in other words?

A No, it's not. I mean, there have been programs for every -- you know, every election year EO has had a program where they look at this stuff.

BY SFC [redacted]:

Q I'd like to just ask a question processwise about sensitive case reports. Do they come from every division in the IRS, or is --

A Yes.

Q -- it just TEGE or -- and are they directed to the Commissioner, or where do they stop? Who is the person who is supposed to know about them?

A They stop with the person that they get sent to, which, as I said, the contact changed over the time that I was there. I don't -- I don't believe the reports got shared higher than that. I think if there were issues to flag, the person who was responsible may need to flag potential issues.

Mr. SFC Thanks.

BY SFC

Q Okay. Yeah, and along that same line, for this period in July of 2010, do you recall if any -- any of these issues were discussed with Mr. Miller or Mr. Shulman, any --

A July of '10?

Q Yes.

A No.

Q So you don't recall any --

Mr. Snyder. No, they weren't, or, no, you don't recall?

Ms. Flax. I don't think they were.

Mr. Snyder. Okay.

BY SFC :

Q So you don't recall any meetings to talk about the sensitive case reports or anything like that?

A No, there weren't -- I'm not aware that there were any meetings talking about sensitive case reports.

don't know if I agree with her or not because I don't know -- I don't know enough about the substantive law. I know that Cathy is a great lawyer, and so my lack of knowledge and her knowledge, I would probably defer to her. But I don't know.

Q Okay. What did you do after you got all these comments from Cathy?

A So this was -- you know, I believe I told Steve that Cathy had concerns with the guide sheet. And at -- by this day we were -- if it hadn't been sent by this day, I mean by early in this week, we were going to meet with Nan to talk about kind of what she learned in Cincinnati, like, you know, the next few days after this. So I think it was, like, a realization that, okay, the guide sheet's not perfect.

Q And you're referring to Nan Marks?

A Yes, I'm sorry.

Q Yeah, and I'll come back to that in just a minute.

And ultimately the decision was made that the guide sheet would not be used; is that right?

A Not on this day, but ultimately, yes.

Q Okay. Who made that decision?

A Well, I think in terms of after -- after Steve learned what Nan learned in Cincinnati, and she had recommended a new approach going forward, it was just kind of part of the new approach, assume that the guide sheet wasn't going to be the key tool.

Q So was it Steve Miller's decision, then, not to use it?

A Steve agreed with the new approach that they took. I don't

know if he opined specifically on the guide sheet. But he was -- you know, he was comfortable with the new approach they were taking, which didn't include this.

Q Okay. And was that -- was that around this time? This is now the end of April, the beginning of May?

A It was -- so we met with Nan on May 3rd. And then we had a meeting the following week where Nan went through her recommended, like, approach. So it would be approximately a week after May 3rd.

Q Okay. So about May 10th, give or take somewhere around there. And you had first become aware of the guide sheet at the end of February, so that's a period of about 2-1/2 months; is that right?

A Yes.

Q Do you know if the EO group was able to process cases during that 2-1/2 month period while the guide sheet was still being revised?

A I don't know. I don't know. I don't know what happened during that -- I don't recall.

Q Okay. Okay. And around that time -- let me jump back a little bit now, back to, say, like March or so, March or April, somewhere in that period. Did you consider whether the IRS should refer its handling of these cases to TIGTA?

A At the -- at the end of March -- well, at the end of March, there was the -- I think at the end of March -- it's all -- I'm not going to have the days with clarity. I mean, it was all around the same timeframe of -- like, the Landmark Legal letter came, the TIGTA email that they were going to start looking at it.

It was inappropriate. I mean, I don't know why we should have had "Acorn," "Occupy," and "Emerge" on the list. I mean, you should look at the applications and all the cases. But I think the issue is they were taking a shortcut. And I know that, you know, I don't have all the most recent facts, but that is my understanding of the situation, is they were taking a shortcut. They had real Tea Party cases, and they thought they should centralize them with the other organizations doing political activity.

Q Okay. When you say they all would've ended up in the same place, do you mean they all would've languished for years without a determination being given to them by the IRS?

A And I agree that was a problem. I mean, yes. And those are the problems that we were focused on, is all the organizations that ended up in the centralization, where they all sat too long. I mean, I'm not defending any of that. That, in my mind, is the biggest offensive thing, is, like, cases should not sit for 2 years or 3 years or whatever they did. I mean, there is no excuse for that.

BY SFC [redacted]:

Q And I think we talked about it a little bit earlier, but you don't actually know that all of those cases would have gone to full development, right? Because --

A All I can tell you is what I was told. So, no, I don't know. I don't know, myself. I didn't look at any of them.

Q And this is where we were talking about the little Suzie's tea party case. Because you said, you know, somebody -- who told you?

and that kind of thing.

Q So I think you indicated that several of the Oversight Board members were Presidential appointees?

A I thought -- that was my assumption of how it worked in the statute, but I'm not positive of that.

Q Okay. Do you know if those appointees reported up to the White House about the substance of the TIGTA report?

A I don't -- no, I don't know. I have no reason to think they would, but I don't know.

Q Okay.

BY SFC :

Q We had access to some of your calendar entries that were produced by the IRS. And we don't have the document here, but there was another IRS Oversight Board meeting in February of 2013?

A Uh-huh.

Q Do you recall attending that meeting?

A I don't recall the meeting, but I attended them all. So, you know, I would have -- I would have attended.

Q Okay. At that meeting, were there any issues that were discussed related to either the TIGTA report or the (c)(4) issues?

A I don't think so.

BY SFC :

Q On May 10, 2013, Lois Lerner was asked a question at an ABA conference in Washington D.C.

A Uh-huh.

Q And the question was asked by an attorney named Celia Roady. And the question related to the treatment of Tea Party organizations by the IRS. And in response to that question, Ms. Lerner gave a response essentially in which she apologized for targeting of the Tea Party organizations by the IRS. Subsequently, it was revealed, I think by the attorney, Celia Roady herself, that Ms. Lerner had asked her on May 9 to pose this question to her during the ABA conference.

And, thereafter, Mr. Miller came and testified before the Senate Finance Committee. He indicated that both he and Ms. Lerner had developed this idea of using a planted question. And Mr. Miller said he thought, upon how things played out, that it was an incredibly bad idea.

A Uh-huh.

Q Okay? Were you present during the conversation between Mr. Miller and Ms. Lerner wherein they developed this idea of using a planted question?

A I was.

First, I'd just like to clarify, Lois I don't believe ever said the word "targeting." We can disagree on that. I don't think Lois has ever said it was targeting.

But I was in the conversations where ABA was discussed.

Q Okay. Was there more than one conversation?

A So what happened was, when we had the final TIGTA report and knew that there was a 2-week turnaround -- we were told that it was 2 weeks because the House Oversight staff was getting briefed the

first week of May, and that was not going to move. So we knew that there were a number of ugly TIGTA reports coming and thought that it might make sense, now that we knew all the facts, to, like, tell the public what was in there.

Q Okay. So the idea of doing this through a planted question, was that an idea that was hatched by Mr. Miller, by Ms. Lerner, by you? Whose idea was that?

A Well, originally, Lois was going to just announce it at a speech at Georgetown, which had been, I think, 2 weeks prior to that.

We were told that Steve had a hearing that week. We were told it was going to come up in the hearing. So Lois didn't say it because Steve thought he was going to get it in the hearing. And it didn't come up in the hearing.

So we were looking for another opportunity to get the facts out. And I think the -- I mean, I think the thought was Lois was on a panel, and it was odd to just, like, proclaim something on a panel. Just like at a congressional hearing, where questions are planted, it would make more sense for someone to ask, and she would answer the question.

Q Okay. But whose idea was it to use a planted question?

A I think it was probably a conversation of Lois saying, you know, "Am I just going to say it or do you want someone to ask?" And it was probably Steve saying, you know, "Just have somebody ask you the question."

SFC [redacted]. Just to follow up briefly, Lois brought up the possibility of having someone plant a question, and then Steve Miller

said, yes, have them plant a question?

Ms. Flax. No. I don't know exactly how it came about. There were -- we were looking for opportunities to, like, explain what happened to folks. And the idea was, at least at Georgetown and ABA, if you had a group of tax professionals who understood the law, we'd have a better chance of getting the facts out before it became skewed by, you know, other things.

So Lois also had a hearing in this timeframe, and there was discussion of, you know, if it came up, she would, you know, answer all the questions that were asked.

So I don't know precisely if Lois said -- I don't know how it came about. I mean, it's clear Steve was on board with, you know, someone asking a question. I mean, I remember, you know, talking about should she just say it, should someone ask. And I don't know if she said it or he said it, but, I mean, he was fine with it.

It was a bigger discussion. It was, like, there were other people in the meeting. It wasn't a --

BY SFC [redacted]:

Q Yeah, who else was in this conversation?

A We had a meeting, like, the day before. It was me -- I don't -- Lois may have actually been on the phone, I'm not sure. Jennifer Vozne, the Deputy Chief of Staff; Terry Lemons, like, the press people; and Cathy Barre. And that's where we talked about it.

Q Did anybody express any reservations about using a planted question? Did anybody say that might not be such a hot idea?

A I don't -- I don't recall.

Q So there was general concurrence that that was the way to go?

A I don't -- honestly, the -- I don't know. I don't remember much discussion about the planted question. We were -- I mean, we were coming from a bunch of hearings where we would get heads-up that questions were going to be asked. It didn't seem that -- to me, it didn't seem that out of the ordinary. But, obviously, it was not a good idea.

Q Was there any discourse at this meeting about notifying Treasury and letting them know ahead of time that a planted question was going to be used?

A I mean, so when we thought about doing it at Georgetown, Treasury knew about that.

BY SFC [redacted]:

Q When you say "Treasury," who at Treasury?

A I know -- I sent Wale draft remarks that Lois might use. So I know he -- I knew he knew.

Q Anyone else?

A I don't know who he would have talked to. In general, the relationship was I would talk to Wale and Steve would talk to Mark Patterson. So I don't really know.

SFC [redacted]. Do you know if anybody at Treasury notified someone at the White House that this was going to happen?

Ms. Flax. No.

RPTS HUMISTON

DCMN SECKMAN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JOSEPH H. GRANT

Friday, September 20, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:04 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For JOSEPH GRANT:

BARRY J. POLLACK, ATTORNEY AT LAW

Miller & Chevalier Chartered

SFC [redacted]

Washington, D.C. 20005-5701

After I -- when I came to the IRS, I was initially the Director of Employee Plans, Rulings and Agreements and served in that capacity for a year; and then became the Director of Employee Plans and served in that capacity for a year; and then became the Deputy Division Commissioner for Tax Exempt and Government Entities, and served in that capacity for about 3 years; and then became the -- and when I say that, it was actually longer than that, but I became the acting division commissioner in December of 2010. So I was still the deputy commissioner during that period of time but was serving as the acting commissioner of the division.

SFC I apologize. I actually missed introductions. My name is SFC I work for Chairman Kemp in house Ways and Means.

Mr. Grant. Very good.

SFC SFC, Senate Finance Committee, minority staff.

Mr. Grant. Very good.

SFC SFC Senate Finance Committee, majority staff.

Mr. Grant. Okay.

SFC SFC Senate Finance Committee, minority staff.

SFC. And I'm SFC Senate Finance Committee, minority staff.

Mr. Grant. Okay.

SFC. I'd ask your attorney to also introduce himself for the record.

Mr. Pollack. Sure. I'm Barry Pollack, and I'm here representing the witness, Mr. Grant.

SFC . Okay. Thank you.

Mr. Grant. Yep.

EXAMINATION

BY SFC :

Q After -- after you were the deputy commissioner of TEGE, what was -- what was your next position?

A Well, I became the division commissioner. They took "acting" off my title --

Q Okay.

A -- in, I don't know the exact date, but late May of 2013, and I retired on June the 3rd of 2013.

Q Who had been the prior commissioner of TEGE?

A Prior to me, the Division Commissioner of TEGE was Sarah Ingram.

Q What were her dates in that position, if you recall?

A I don't recall precisely. The -- she came in following Steve Miller's move from the Division Commissioner of TEGE to the Division Commissioner of what was then L -- Large and Medium Sized Business, LMSB, and I really don't recall exactly when -- what that was, those -- I just don't remember exactly what the -- what the time frame was for her to come in as the Division Commissioner. She had, prior to that time, been the chief appeals. So the service would have that information.

BY SFC [redacted]:

Q When did she leave as Division Commissioner of TEGE?

A Well, she accepted -- she began working as a detail in December of 2010, as I recall, working over on the services, the IRS' implementation of the Affordable Care Act, but she was -- she remained with the title of Division Commissioner after that until -- until, as I say, some time in May of 2013, but I was acting as the Division Commissioner from December of 2010 until I -- acting until, you know, toward the very end, and then -- and then I retired. Am I making sense to you?

Q Yeah. It's a little confusing just sort of what her role was. I think we're going to try to get that a little more clarified.

A Okay.

Q As we've seen she was in, you know, meeting with Steve Miller on some of these issues that were -- technically, you would have been handling as the acting and she was still participating --

A Uh-huh.

Q -- and, you know, anyway.

A Sure.

BY SFC [redacted]:

Q We'll delve more into that as we go.

Was there a time at IRS when you first became aware of applications by so-called Tea Party groups?

A That I became aware of the Tea Party groups would apply for --

Q Tax-exempt status.

A Again, I'm trying to --

Q Sure.

A -- to -- the Tea Party groups would apply for tax-exempt status was -- you know, I would have been aware of that probably. I mean, you know, it wouldn't be a surprise to me that a group would apply for tax-exempt status, so the Tea Party groups would be doing that, you know, I suppose in a general sort of way I was aware of that probably all -- all along.

Q Do you recall how you became aware? Was it a media or --

A I think -- let me sort of rephrase this.

Q Uh-huh.

A Did I become aware that there was concerns or problems with Tea Party -- with Tea Party groups applying for this status?

Q First, as an initial matter, just the existence of -- of the -- of groups that were applying for tax-exempt status with the IRS.

A Yes. Within -- okay. So, within TEGE, there's several divisions, one of which was the Exempt Organizations, and within Exempt Organizations, you had Employee Plans, Rulings -- not employee plans. Exempt -- EO Rulings and Agreements. Excuse me. And groups that would be interested in tax-exempt status would -- would file, you know, requests for determination letters with that organization, and I suppose, you know, generally I was aware that groups were applying. And I don't -- I couldn't recall specifically when I became aware that -- of the -- paid any particular attention to the Tea Party or

became aware that they might be applying for it, but wouldn't have surprised me that they were.

Q Are you aware of -- were you at any time aware of concerns within IRS about the applications or about the parties qualifying for tax-exempt status?

A I don't recall that until the -- 2012, in sort of the -- maybe late February-March time frame in 2012, there were a number of press stories and some letters, or some inquiries from Members of Congress that were -- that came in during that time frame, and at that point, I was aware that there was some concerns in the public generally about the Tea Party applications.

Q Remind us again. What was your position in -- in 2010?

A At that time, I was the deputy division commissioner.

Q In that role, what were your responsibilities?

A Worked with the Division Commissioner and had general responsibility for all of TEGE, so that included the employee plans, which, of course, was where my background was for my whole professional career, retirement and security, and that's when I came over from the PBGC, which is the Pension Benefit Guaranty Corporation, so into that side of the -- of the organization. But also the TEGE has responsibility with respect to Federal, State and local government tax payments, Indian Tribal Governments, tax-exempt bonds and of course Exempt Organizations. So that was the full range of TEG.

And, of course, as the deputy division -- I say of course, but as the Deputy Division Commissioner, I would be, you know, paying some

attention to the -- to the -- how the -- the use of IT -- I'm sorry, information technology within the division to -- you know, as time went on to the -- some more attention to the -- to the overall budget and allocation of resources within the division.

I'm saying it this way to make it clear, my background was not one of exempt organizations, and when I came to work for TEGE in the deputy capacity, Steve Miller was the commissioner. He had been the prior director of Exempt Organizations.

BY SFC :

Q And when you say "the commissioner," you mean the commissioner of TEGE --

A Yes. I'm sorry. The division --

Q -- as opposed to the IRS commissioner?

A Please -- yeah. Thank you for the clarification. The division commissioner. And so, yeah, you know, you sort of -- you look at different things and, you know, where you have the background and where you have the strength, and I primarily paid attention to the employee plans.

BY SFC :

Q In that -- in that role, did you interact with the Exempt Organizations Examinations office?

A In sort of when? I'm sort of --

Q In 2010 --

A In 2010 --

Q -- you interacted with --

A Yeah.

Q -- EO Examinations?

A Well, a bit late in the -- in the year. You know, I became the Acting Division Commissioner in --

Q Right.

A -- December of 2010, so really starting then. I mean, interacting with them, yeah, I mean, I -- I was in meetings at times, I guess, where they would -- you know, would talk about the -- where they would talk about their overall activity and the -- sort of how they were proceeding toward meeting their -- their goals and objectives for the year. You know, I sat with Steve Miller as we received reports from them, and they would be in meetings, yes, so to that extent, I would be interacting.

Q In that time, were you -- they were -- already received applications for tax-exempt status by Tea Party groups?

A I'm -- I'm sure they did, yes.

Q Were you aware, though, at the time?

A No. I don't believe so.

Q Was there a time in 2011 you became aware they had in fact received applications or -- or that they had asked EO Technical for assistance in those matters?

A Yeah. When you ask the question, am I aware that Tea Party organizations would be applying for tax-exempt status, I think generally I would be aware that they might have, just as any other organization that wanted to become a (c)(4) or (c)(3), 501(c)(4),

501(c)(3), would apply. I had no particular involvement with or awareness of Tea Party groups are coming in, in that time frame, none that I recall.

Q I think more knowledge that they had in fact applied.

A You know, I wouldn't know in my capacity as the -- either the deputy or the acting division --

Q That's fair.

A -- about specific organizations that were coming in and applying and what the status was or, you know, but -- and how that was being processed --

Q Sure.

A -- for that -- for that particular organization, so that's why I'm trying -- I'm sort of working with you.

BY SFC

Q I guess to flesh it out a little bit, there were -- they were on the sensitive case reports, and there were meetings held, like, in 2011, Lois Lerner called folks together, had a meeting. So you were the division commissioner of TEGE at the time, which is above Lois Lerner.

A Right.

Q And so I think what he's kind of getting at is, were you aware of any of this as it was going on?

A And I'm trying to recollect being specifically aware of any particular case, and I don't remember being involved with or particularly aware of any particular application.

Q And I don't know if he's asking about just if you're aware of a particular application, but also the group of applications. For instance, there was -- you know, it says the Tea Party cases on the sensitive case report.

A Right.

Q Were you aware of that?

A The -- I would have had access to sensitive case reports, although not -- I suppose if I'd asked or something -- not all of them, because sensitive case reports, I think, were prepared by the different subparts of TEGE, and then some of them were forwarded on to the commissioner's office and others weren't, and I wouldn't --

Q Division Commissioner's Office?

A No. The Commissioner's Office, the Deputy Commissioner For Services and Enforcement is part of the -- part of the IRS commissioner's staff.

Q So would the sensitive case reports come through you? Did you get a copy?

A I think -- I think, at times, I would get copies of them. Mike Daly -- Richard Daly, but goes by Mike -- was coordinating the collection of those reports and the -- and, you know, which ones were forwarded on to the Commissioner's Office, so I wouldn't have -- as a routine basis, I wouldn't have been directly involved in that, but I, certainly to the extent they were forwarded on, I could have been.

BY SFC [redacted]:

Q Would you usually -- in your duties, did you usually review

SCRs as a part of your job, or is that not part of your --

A I didn't routinely review them. They were -- I think those reports were more intended as a heads up or an awareness of something that was going on. And, you know, to the extent that I had any expertise or special knowledge or, you know, would need to bring value to that, I'd be aware of it, but other than that, no.

Q I'm going to represent to you that in July of 2011, Lois Lerner, out of concern with how Cincinnati was referring and to examine Tea Party applications, directed Cincinnati to stop -- I'm sorry, directed Cincinnati to begin referring to those applications as advocacy cases. Is this a concern that she ever -- ever told you about?

A Okay. So I'm going to -- I'm trying to -- July of 2011 --

Q Yeah.

A -- Lois Lerner --

Q Held a meeting with, it included folks out of EO Exams in Cincinnati, and the topic of the hearing was --

A Hearings?

Q I'm sorry. Of the meeting --

A Uh-huh.

Q -- was Cincinnati's screening for and grouping certain applications, including Tea Party applications.

A Uh-huh.

Q Is that a meeting or is that a concern that Lois ever told you about?

A I don't recollect --

Q I said "exams." I'm sorry. I meant --

SF SFC Determinations.

SF SFC I meant Determinations.

SF SFC EO Determinations in Cincinnati.

BY SF SFC

Q I meant EO Determinations. I apologize.

A The -- I don't have any recollection of that, of a particular meeting that you're referring to.

Q Sure.

A The use of -- or the creation of a group that would handle particular areas was a practice that EO had had over the years, and so, to the extent that I would have heard about it or that she may at some time have said, you know, we're -- we're going to have (c)(4) applications handled by a set of folks in Cincinnati who are generally familiar with the process so that we get consistent handling of those applications, that wouldn't have caused me to pay -- to be of -- to have any particular concern or pay any special attention.

BY SF SFC

Q I think -- I mean, we've heard that she said, Stop calling the Tea Party organizations Tea Party organizations; call them advocacy organizations.

A Okay. So that I did not learn about until sometime in late April, early May of 2012.

Q And when we're asking you questions, if you know as of today, tell us that you know. Don't say you don't recall or you didn't know.

the deputy and then the Acting Division Commissioner of responsibilities all across TEGE. And I would have meetings with those different divisions about the various projects that were in their work plan. And concerns that they might raise with me or that I might become aware of to try to make sure that we were providing good service and meeting the -- you know, the responsibilities that we had.

Within EO, there were, you know, quarterly reports, which are certainly available to you, to look at. I no longer have access to them, that talked about projects or challenges that EO was facing. And there -- and there were other things. I did not become aware of this challenge, the issues that you're concerned about with the delays and backlogs, as I've said, until the end of April and very early May of 2012.

Q Do you think as the manager of Lois Lerner, you should have become aware before that?

A In retrospect, of course I wish that. I would have liked to have known about that and been informed about the challenges and backlogs that they faced. The only thing that I can say toward that end is that I -- I suspect -- I think that Lois felt that she had in fact addressed those concerns in July of '11 and the -- and therefore, did not feel a need to bring that up to my attention. But I don't know why, you know, specifically why that was not done.

Q And I guess to continue kind of up the chain of command at the IRS, if you didn't sort of, you know, find out or manage effectively Lois', you know, backlog that was underneath her, above you was whom?

A Well, I reported -- as the Acting Division Commissioner --

Q Yeah, this is back in 2010, before you took over in December of 2010.

A Well, in 2010 -- up until December of --

Q I'm sorry, starting in December of 2010.

A That's right. From that point forward, I was reporting directly to Steve Miller, who was the deputy commissioner for services and enforcement.

Q Uh-huh. And then above him was Doug Shulman at the time.

A Correct, yes, sir.

Q And then Steve Miller at some point took over as acting IRS commissioner; right?

A When Commissioner Shulman stepped down because his term, his statutory term came to an end, Steve Miller became the acting commissioner of the IRS. And I believe that would have been in November of 2012.

Q And he still wore the hat of deputy commissioner for services and enforcement; right?

A I believe that's -- that's correct. They didn't name someone else to do that job so he kind of helped out with that.

Q So, at the time, if you weren't -- according to sort of Steve Miller, managing things, effectively, he would have been the next one up in the chain of command to sort of take action --

A Yes.

Q -- or figure out what was going on or it would just remain

a problem. And then above him, it would have been Doug Shulman, who would have, if Steve Miller wasn't taking action to manage the situation, you know, below him would have needed to take action; above him, there really is obviously no one else at the IRS.

A Not the IRS.

Q And then at Chief Counsel, Bill Wilkins is the top guy. So if people below --

A Is the top guy --

Q Chief Counsel. He is the IRS Chief Counsel.

A That's correct.

Q And so Vicky Judson is below him. So if she's not managing things effectively with her people, like Don Spellmann, who is helping out with advice, then it goes up. I mean, ultimately, the responsibility goes up top if people don't know what's going on below them and there's big problems that are being highlighted in sensitive case reports. Unless you might disagree and think that the responsibility doesn't really lie at the top levels of management because they don't have responsibility to know what's going on beneath them because it's a big organization and lots of matters and -- you know.

SFC . I'm sorry. I didn't mean to interrupt.

SFC . No, no.

BY SFC :

Q You reminded me, I did want to follow up on one thing. You mentioned earlier that you didn't have a lot of expertise in the Exempt

Organizations area. Is that right?

A That's correct.

Q Do you know if Lois Lerner would ever reach out on Exempt Organizations issues directly to Steve Miller?

A Yes, I believe that at times she did. And I believe at times, Steve Miller reached directly over to her.

Q Do you know if Lois Lerner ever reached out directly to Steve Miller about the Tea Party cases?

A Do I know that that happened --

SFC [redacted]. Yeah, do you know that that happened.

Mr. Grant. I'm trying -- to the extent that -- I can't think of -- I wasn't -- I wouldn't have been at meetings or part of email conversations that they might be, you know, going back and forth with. If they were reaching out directly to each other and not including me. But I am generally aware that, at times, Steve would be working directly with Lois and Lois would be working directly with Steve. So I believe that's the answer to your question.

BY SFC [redacted]:

Q Do you have any reason to -- to think the -- that Miss Lerner spoke with Mr. Miller about the Tea Party cases?

A I have no knowledge of that. So -- so I don't know that.

Q Did you ever hear secondhand that that had taken place?

A The -- I'm trying to --

Q Sure.

A If I say I believe -- I was aware that, from time to time,

they were talking directly to each other. So I have answered that yes, they were communicating directly with each other. They were communicating directly with each other about (c)(4) processing and political groups that were engaging in some level of direct political intervention, and was it an appropriate level or not? But I wasn't part of those conversations so I don't know exactly what was said.

Q Were those conversations, if you know, typically conducted in person, over the phone, over email?

A I -- I would suspect all three, but I have no --

Q All three. Okay.

A -- have no particular knowledge of that.

Mr. Pollack. I was just going to say, if we could take a break at some point here, I would like to do that. But if you're right in the middle of something, that's fine.

SFC If I could ask a couple.

SFC I have a couple followups along the same line.

BY SFC :

Q Yeah. Because Miller used to have Lois Lerner's position at the IRS, right, Director of Exempt Organizations?

A Correct.

Q So he was familiar with that area of law, Exempt Organizations; right?

A Yes.

Q And so I guess it's not that surprising that your background's Employee Plans, his background is Exempt Organizations,

that Lois would not go over your head, but in a sense, I guess but just talk to Steve Miller because he was more familiar with the issues.

A That's correct. Lois -- that's exactly correct. And Lois had worked for Steve when he was the director of Exempt Organizations. And then when he was the commissioner of TEGE, Lois became the Director of Exempt Organizations and again she reported directly to him. And so that efficiency of conversation I think would work both ways. He was more familiar with the law and the challenges that she would have been facing in Exempt Organizations, he had had her job before, and he was familiar with those issues and how she might be thinking about them. And, no, it did not trouble me as some act of insubordination or inappropriate going around me, it was two knowledgeable, experienced people who were working through whatever issues they were working through.

BY SFC [redacted]:

Q I just wanted to go back to the case inventory and the backlog there, and I think SFC [redacted] had asked you was there one person perhaps at IRS who was managing all this and we kind of had a long discussion about the managers in EOD versus Chief Counsel. So I just wanted to go back to what you were doing or not doing. Did you call over to say Vicky Judson or anyone else in chief counsel about the backlogs?

A No.

Q Okay. Did any of your staff that you know of call to Chief Counsel about the backlogs?

Ms. Lerner like to work with, in your various capacities at IRS?

A Sure. Well, I had -- until I became the Deputy Commissioner, I had almost no interaction with her. I sat in meetings where we were reporting on different things.

And as -- during the time when Steve Miller was the Division Commissioner and then when Sarah Ingram was the Division Commissioner, I had relatively minimal interaction with Lois. I mean, certainly, I'm at meetings and now I'm in a different capacity. But the areas that I was continuing to focus on sort of the -- didn't involve EO all that much. So I found her, as I became the acting commissioner, I found Lois to be professional. I found her to be knowledgeable about the things that were in her purview. She had expertise.

The -- and so I certainly had no cause for complaint about Ms. Lerner during her service. I felt that she was doing, to my knowledge, a good job with the set of responsibilities that she had. She was at times a very zealous advocate for EO, the Exempt Organizations, function, and it fell to me on, certainly upon becoming the Acting Commissioner, to sometimes have to tell people no. You know. I'm not complaining about resources, so don't read it that way. But you're working with a set of resources, both people and talent and funds, and we were attempting to make changes within TEGE as a whole that all of the folks on the team had to incorporate into their various functions. And so, as I say, Lois was a zealous advocate for EO, and at times, I had to say, well, that's great, but here's what we -- here's what we are going to do.

And Lois was always very zealous in our support of her direct reports. When I say "direct reports," the people that were reporting directly to her or immediately around her. And I had to reach some judgments at times about, well, that's great, but we can't all be perfect. And so -- and those were the places where I would interact with Lois.

So, in that, I think Lois was enjoying being in charge of EO. And that was something that she ran with and I certainly did not have a complaint about that. But it -- it required me to make more effort -- I think I've said to you earlier, I would have appreciated in hindsight knowing about this problem earlier. And I didn't.

Q Would you describe Ms. Lerner as a partisan or as a -- as an idealogically political individual?

A No, I really did not see that in my interactions with her. The -- so I wouldn't. I really don't know, to this day, what party she would affiliate with. I just don't know.

SFC [redacted]. Okay. Did you want to?

SFC [redacted]. Yes.

BY SFC [redacted]:

Q I wanted to get back just a little bit more, just from a management perspective, we've come to a little bit how Ms. Lerner would go to Steve Miller on issues and all. Could we talk a little bit more about what were the issues you discussed? How did you interact with her on a regular basis as her manager? Like what were the -- did you have regular meetings with her? What was the nature of your day-to-day

RPTS HUMISTON

DCMN ROSEN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: STEVEN GRODNITZKY

Wednesday, September 25, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:13 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

[redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

[redacted]

[redacted]

[redacted]

For STEVEN GRODNITZKY:

JUDITH WHEAT, ATTORNEY AT LAW

Griffith & Wheat PLLC

SFC [redacted]

Washington, D.C. 20036

involved, and particularly if there are more cases coming in to EO Determinations, which is -- which I'm sure you know, which is kind of where the cases -- appli- -- which is where the applications for tax exemption initially come into the IRS, we'd be able to provide them with some type of guidance and direction on -- on how to work those cases.

Q Okay. At the time that Ms. Paz was going out and you were coming into that position, had she already assigned the cases to a group within EO Technical?

A I don't -- I don't know. Let me -- let me think about this for a second. You know, I don't -- I don't recall if she had just asked for the cases and they were on their way up or they were already here.

Q Okay.

A I -- that's -- that's the best I could do. Sorry. I just --

Q Do you recall the group that the cases were assigned to?

A Yes. The cases were assigned to Ron Shoemaker's group. Ron is a group manager for one of the technical groups.

Q Now, did Mr. Shoemaker's group have an area of specialty?

A I don't know that his -- in 2010, we're talking about, I don't recall if his group had a particular area of specialty.

Q And was there a specialist within Mr. Shoemaker's group that was assigned these two cases?

A Carter Hull.

Q Okay. And did Mr. Hull have an area of specialty or

A Are we looking -- are we thinking about how I was thinking about them in 2010?

Q Yeah. Let's look at it in that context. In 2010, the -- the concern and the -- about media attention all centered around the Tea Party, correct? Your concern, right?

A Correct.

Q Okay. And so the -- what prompted the entire focus on the Tea Party was the fact that several Tea Parties, and perhaps more than just a few, had submitted applications for tax-exempt status under (c)(3) and (c)(4); is that correct?

A That's correct.

Q Okay. So, as you move through this continuum, and you're the EOT manager --

A Uh-huh.

Q -- and you're now sitting here at perhaps it's September 2010, the cases that were under review in Cincinnati and the cases that were under review in EO Technical by Mr. Hull, those were -- as far as you understood, what were they? Were they cases across the whole political spectrum, or were they essentially Tea Party cases?

A Well, with -- I guess with respect to the organizations that -- I don't want to sound -- in my mind, they were Tea Party organizations. They came in, and in their name, Albuquerque Tea Party --

Q Uh-huh.

A -- Prescott Tea Party, those had "Tea Party" in their name.

Q Uh-huh.

A So I assumed that they were Tea Party organizations.

Q And one of the -- I think, if you'll -- you probably recall this. At some point in 2010, Mr. Hull -- and I think you actually had indicated that Prescott Tea Party was a (c)(3), and it failed to establish, right?

A That is correct.

Q And Mr. Hull requested another case, and he got another case from Cincinnati, a (c)(3), to work; is that correct?

A That is correct.

Q And actually, if you look at the sensitive case report summary charts, but -- but they will indicate that that replacement case, I think, was American Junto?

A American Junto or Hunto?

Q Junto or Hunto, I don't know how they pronounce it either.

Was your appreciation then that American Junto was either a Tea Party org or related or affiliated with the Tea Party, or perhaps espoused the same kind of political views as a Tea Party?

A My understanding of a case that was coming up, American Hunto or Junto, that was to replace the Prescott Tea Party, was that it was connected in some way to the Tea Party. Perhaps it was -- they had the same beliefs that -- that the Prescott Tea Party or the Albuquerque Tea Party organizations had.

SFC [redacted] Okay. All right. I don't have any further

IRS. Is that right?

A That's what it appears to be.

Q Okay. So now you've got, of your three cases that you were working to try to assist EOD with, two have fallen off, one is still hanging in there after better than 2 years with no determination.

Were you at all concerned about the fact that these cases, these organizations were -- were either dissolving or not responding to the requests for development? Did that give you any sense for maybe there was not good customer service here to these organizations?

A If an organization decides not to respond for whatever reason, that's their prerogative. And our policy and rules are if they don't respond to a particular letter, we close it out FTE. I really have no -- I mean, I usually don't feel one way or the other about any organization when they close FTE. It could be for a lot of different reasons.

Q Well, one reason could be the fact that they were driven into being closed by the IRS's failure to respond, or perhaps by the fact that the IRS perpetually bombarded them with development letters over the course of 2 years, right? Couldn't that be a reason, too?

A I couldn't say what their reason was.

Q Well, that could be a reason, wouldn't it -- couldn't it be?

A Honestly, I really couldn't say what -- why they failed to establish --

Q Yeah. And I'm not -- I'm not asking you --

SFC [redacted]. He's asking --

SFC [redacted]. Yeah.

SFC [redacted]. -- is that a possible reason.

SFC [redacted]. And I -- and I'm not --

SFC [redacted]. Is it possible.

BY SFC [redacted]:

Q And I'm not asking you to divine their intent or to divine why they closed. I'm asking you a broader question. Stepping back and looking at these three cases, these are the three cases that are sitting in your group and you're charged with the responsibility of developing these cases to assist the IRS, all right, get through all the other cases that are either in EOT or EOD, right?

A Uh-huh.

Q And in this process of assistance, which is now dragging on for better than 2 years, where taxpayers are getting multiple development letters, sometimes waiting a year between one development letter to the next, aren't you at all looking at this, aren't you at all concerned about the effect of this process on these organizations? That's what I'm getting at. The impact on these taxpayers: Is that a concern to you?

A As I sit here today, I really don't recall what my concern --

Q Well, is it a concern to you today?

A [No verbal response.]

Q Do you have a concern today what impact these organizations felt from this process?

A You know, what I'll say is we do the best customer service that we possibly can.

Q You call this customer service? If you were on the receiving end of this, how would you feel?

A I couldn't say, because I'm not.

Q I doubt you would be happy.

Now, did you hear of any concerns expressed by any of your superiors in -- you're moving this information up the line.

A Uh-huh.

Q Are any of your superiors, like, say, maybe Ms. Paz or Ms. Lerner or Mr. Seto, are they at all expressing any concern about the impact and the effect of this process on these organizations to you?

A When you're talking about the three organizations --

Q Yeah.

A -- timeline?

Q Exactly.

A Not to my recollection.

Q But did you ever hear anybody at the IRS express any concern about the effect of this processing of these cases on these organizations? Did anybody ever say anything about it?

A Not -- not to my personal recollection.

[Grodnitzky Exhibit No. 10
was marked for identification.]

BY SFC [redacted]:

Q I'm showing you an exhibit that's marked 10.

A [Witness reviewed the document.] Okay.

Q All right. And in this email -- and I presume you've seen this email before. Right?

A I have.

Q Okay. Mr. Seto's outlining a process that you're responding to requests from EOD for technical assistance on advocacy cases. Is that correct?

A That's what it says.

Q Okay. And if -- if I'm understanding this process, maybe we can walk through it together, when EOT had -- or EOD, excuse me, requested technical assistance from EOT, it appears that step one, and I'm going to call them steps so I can keep them straight in my head --

A Sure.

Q -- the technical assistance request was assigned to your group, to Hillary, for review and then she worked on it. And presumably when she was done, step two would be that the -- her recommendation or her work would move to -- to EO Guidance. Is that correct?

A To Justin Lowe.

Q Right. And at the time, Justin Lowe was in EO Guidance. Isn't that right?

A That's my understanding, yes.

Q Okay. Okay. So -- and then I guess step three, once EOG and EOT had completed the review and had performed an analysis and made a recommendation, presumably then that would move to Mr. Seto, right,

because Mr. Seto says here he's going to schedule a meeting with Cindy Thomas and Donna Abner. Is that correct?

A That's what it says.

Q Okay. So step three, the recommendation goes to Mr. -- to Mr. Seto, and presumably -- I'm going to -- just to break it up so it's clear in my head, step four would -- then would be when presumably if Mr. Seto was satisfied, he would then schedule a meeting with Cindy Thomas and Donna Abner. Is that right?

A That's what it says, yes.

Q Okay. And then after the meeting, the application with the analysis and recommendation would go to IRS chief counsel. So that would be step five, right?

A Counsel would most likely be TEG counsel.

Q Oh. TEG counsel.

A I would think.

Q All right. Very good. And Holly would be notified. And that's a reference, I presume, to Holly Paz. Right?

A Most likely, yes.

Q Okay. And then once counsel's commented on it, then the next step, which would be step six, would be a briefing with the EO director and the EO R&A, director, which would be Lois Lerner and Holly Paz respectfully, as well as the EO Guidance manager. Is that correct?

A That's what it says, yes.

Q Okay. And then not stated here, but presumably after all that, step seven, the final step, would be the technical assistance

or response would presumably be given then to -- to the requester, which would be EOD. Is that right?

A That probably is the last step, yes.

Q Okay. Now, did you actually run any requests for technical assistance through this seven-step process?

A When you say "run," what --

Q Did you ever -- did you actually receive any requests for technical assistance from EOD and then have that request move through all these steps?

A My recollection is that there was a request for at least one that I had tracked on the tracking sheet.

Q All right. And did that one make it through all seven steps?

A That I don't recall. As you can see, I'm not even listed on the steps.

Q No. I -- and I appreciate that, but you were tracking the cases, so --

A Correct. And I was tracking the cases.

Q So you don't recall if the one that you can think of did make it through all seven steps?

A I don't know if it went through this entire process here. It's gone -- goes right from Hillary to Mike Seto.

Q Okay. All right. So you wouldn't have a sense for how long it would take a case to get through all these steps, would you?

A I really don't know.

Q Is this, I'll call it the seven-step process --

A Okay.

Q -- is the seven-step process, the -- is that something Mr. Seto created or is that a process that you may have weighed in on, because I see here he says, if you have questions, ask Steve or me. Presumably that's a reference to you.

A I presume.

Q Is that process that I've gone through here, is that something you weighed in on and helped create?

A I don't recall putting this process together. How Mike Seto came up with the process, I -- or if he was the one that came up with it, I don't know.

Q All right. Would anybody else have come up with the process? Wasn't it Mr. Seto?

A It could have been someone higher up than Mr. Seto. I -- I'm just not sure.

Q Did -- when you -- when you were first apprised of this process, did you have any concerns about all of the hand-offs that were being worked into this -- into this process?

A Truthfully, as I sit here today, I -- I see the email here, and I've obviously looked at it before I came in today, but, you know, I don't recall what I was thinking at the time.

Q All right. Just looking at it now, if you were looking at this process now, does this -- does this look like it's a work process that's conducive to moving cases on a -- on a -- you know, even on a

reasonable basis?

A This looks like a process where they would want to ensure that the right people reviewed this particular document.

Q Okay. And admittedly that might well have been the motivation for it, but what I'm getting at is -- is the time, the speed, the amount of time that's going to take for something to move through and get a determination. Aren't you at all concerned about this? Is that a factor -- let me put it this way. As you sit as a manager in Technical Group 1, are you concerned about the time that it takes for your TLS's to perform their tasks and to move their cases?

A As a group manager, I am concerned, or cognizant of how long it may take for a tax law specialist to review and resolve a particular case. That is correct.

Q Okay. And -- and I think as you -- as an EOT acting manager, you had prepared the statistics and other information for the use by Mr. Choi and Ms. Lerner showing presumably cases coming in, cases going out, the time period it would take to process cases. Isn't that correct?

A I provided them with statistics on how many cases came in, and most likely how many cases were resolved.

Q Okay. And somewhere in there, doesn't the time it takes to process a case factor in? Aren't your managers interested in that, too? Not particular cases, perhaps, but aggregate numbers about, you know, how long it would take to move a case, an average or something like that?

A How -- I mean, I'm sorry. Can you repeat that?

Q Yeah.

A I'm just trying to process it.

Q Let me put it to you in a broader way. Is there anyone at all at the IRS that you know of that is at all interested in how long it takes to process cases? Or is that not a concern at all?

A That is a concern.

Q Okay. So how is that concern communicated to your superiors? How did -- what data do they rely on in order to make judgments about whether or not cases are moving at an appropriate pace?

A Well, I mean, that is not within my jurisdiction. That is -- there is another section of the Exempt Organization office that deals with statistics, and I guess time frames. That's not something that I'm involved with.

Q But aren't you -- didn't you indicate to me you're concerned, though, with the time it takes for cases to move through your group?

A Yes, but you didn't ask me that question. You asked me how my superiors --

Q Yes.

A -- were alerted to those time frames, and what I'm saying is there is another piece of the Exempt Organization office that deals with statistics, deals with time frames, deals with how many cases are coming in, how many cases are moving out, and that's not something -- and that's their -- their jurisdiction, not my

jurisdiction --

Q Okay. Let's talk about that.

A -- for purposes of alerting -- if they alert the executives, I can't speak for them, but that's what they do.

Q Okay. Well, let's talk about your piece, then. This process that Mr. Seto outlined presumably would include requests for technical assistance for cases that were being worked in Group 1. Right? Group 1's not exempt from this process, is it?

A Well, technical assistance to EOD. These are cases that are --

Q Right.

A -- in -- in the determinations section --

Q Yes. Understood.

A They're not assigned into the technical unit.

Q Understood. But -- but their request for technical assistance is being directed to EOT, isn't it?

A Correct.

Q Okay. So -- and that request for assistance in any given case could be a request that was assigned to Technical Group 1?

A Correct.

Q All right. So in looking at this, since you're the manager of Technical Group 1 and you're concerned about the length of time it takes to move cases, it's something that falls within your ambit as the manager, and looking at this process and the seven steps, do you think it would have an effect on your -- the processing speed or the

time it would take to move cases through your -- your Group 1?

A Well, the more individuals that look at a particular case, theoretically the longer it would take to resolve.

Q Okay. In looking at this process, do you think that this would expedite or perhaps slow down the movement of cases through your group?

A Having more people that are involved in the process would result in a case taking longer to resolve.

Q So this process would slow things down, right?

A Yes, it could.

Q All right. And the reference here to counsel, in your experience, was the TEGE counsel quick with their advice? If you went to them and asked them for assistance or you handed something to them, did they -- did they usually deal with it -- that issue in an expeditious, quick fashion?

A It depended on what you were asking them, but if they were reviewing a particular case, typically it took a period of time for them to get back to us.

Q Okay. And a period of time could be what?

A It could be 3 months, 6 months, a year. It -- it depends. I -- it varies on what their -- well, let me step back. I don't want to speak for counsel, but I can only speak for my experience in working with counsel, and it would -- it's varying lengths of time, but in my experience, counsel has taken -- can take a great deal of time.

Q Okay. So including them in the process can lengthen the

period of time to get a case --

A It could.

Q All right. So in looking and thinking about this now, so your recollection is you don't recall having any concerns about this process and how it might affect you as a manager of Technical 1 and your responsibility to move cases?

A Sitting here today, I don't recall what I was thinking in March of 2012 and whether this was a concern or not. I'm not saying it wasn't. I'm just saying, as I sit here today, I don't recall whether I was concerned about it or not. That's the best I can do.

[Grodnitzky Exhibit No. 11
was marked for identification.]

BY SFC [redacted]:

Q I'll show you a document that's marked Exhibit 11.

A [Witness reviewed the document.] Okay.

Q All right. And can you identify the document?

A Are you talking about the email?

Q Yeah. The email and the attachment.

A So the email is an email from Ms. Goehausen to myself regarding the December 2012 advocacy organization sensitive case report.

Q Okay. And the -- the attachment you've seen before, presumably?

A Is the advocacy organization sensitive case report dated December 13th, 2012.

RPTS HUMISTON

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: SARAH HALL INGRAM

Monday, December 16, 2013

Washington, D.C.

The interview in the above matter was held at Room 1105, Longworth House Office Building, commencing at 2:35 p.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For SARAH INGRAM HALL:

PHILIP T. INGLIMA, ESQ.

Crowell & Moring LLP

SFC [redacted]

Washington, D.C. 20004-2595

minute. Trying to remember who was there. Whoever was in charge then, I'm blanking on that --

Q Okay.

A -- moved me back as Commissioner of TEGE. So I had been Deputy, gone to Appeals, came back as Commissioner.

Q And that started approximately May of 2009?

A May of '09. May of '09.

And then in December, almost a little over -- 3 years and 1 week -- December -- early December of 2010, Doug Shulman asked me to go -- to take on a full-time detail assignment to take over the work on ACA. So I moved to that job. They named my Deputy as Acting Commissioner, and I did that -- I'm still doing it now, but I did that while they left me on the books as Commissioner of TEGE. And they moved me on the books sometime in the spring of 2013.

Q And that was when Joseph Grant was --

A He --

Q -- gone from Acting TEGE Commissioner to actual TEGE Commissioner? Is that when they moved you on the books?

A Yes. Yes, because you had to move me off to do that.

Q And --

A You can't double encumber.

Q And then he stayed for about a few weeks in that position and then retired. And did your status stay the same at that point?

A Well, when they -- I had been Acting Director of the business ACA office all that time, and so when they finally moved me on the books,

I took "Acting" off my signature block. So that was whenever that was. It was supposed to be -- I thought it was happening in February, and then I think it may have happened a little later than that.

Q So what is your title now?

A Director S&E ACA office. S&E stands for Services and Enforcement. That's the business half of the Service.

Q And ACA is Affordable Care Act?

A Yeah. Affordable Care Act. Sorry.

Q Okay. And that's where you currently serve, right?

A Yep. Yep.

Q And so it was sometime in the spring that you went from Acting Director to Director?

A Well, I thought they had moved me in January or February, so I might have taken "Acting" off early, but then I found out that they were finishing the paperwork in April or May or whenever they did it. I would have to go look for the exact date that they actually managed to cut the paper.

Q Okay. So it's --

A But they told me in January --

Q -- approximately April, May?

A -- to go ahead and formalize it.

Q So it actually got formalized approximately in April or May?

A Yeah. You have to look at the personnel records to know exactly when they --

Q Okay. What's your experience with Exempt Organizations?

A When I became Associate Chief Counsel -- not Deputy, because when I was Deputy Associate Chief Counsel, the Associate Chief Counsel didn't let anybody else do EO. That was his baby. When I became Associate Chief Counsel in '94, I started as a student of EO at that point. So I had jurisdiction over EO litigation decisions, whether to litigate something, whether not to, and I had people under me who were EO experts who were far more expert than I was. But in my stint in Appeals, I did none that I can recall, because the issues don't tend to get to Appeals.

When I was Deputy, I worked for the -- when I was Deputy Commissioner, the Commissioner of TEGE was Steve Miller, from whom I would learn EO things. He knew a lot more of EO -- forgot more EO than I've ever learned. And when I was Commissioner of EO, I got more deeply into it, but there were a lot of experts I consulted.

Q And you said you were Commissioner of the EO. You mean Commissioner --

A TEGE.

Q -- of TEGE?

A TEGE. Yeah. Sorry. I'll have some more of this coffee.

Q And how -- what type of responsibilities did you have in your job as Commissioner of TEGE?

A I had five customer areas that I had to keep track of. One was certainly EO, but another very large one was Employee Plans, which I had more background in. As I had mentioned, I started years ago working on pensions. But I had both of those. Those are the two biggest

were there as Commissioner of TEGE?

A Well, we have all -- we have regularly scheduled things like staff meetings, where people go around the room and say what's hot or not. Whether we were both in every single one would depend on the schedules of each of us.

We'd have quarterly reviews to prepare for the quarterly review that would go up to the Deputy Commissioner, business -- it's a business performance review that happens quarterly.

We might have any number of other topical meetings happen during the week, depending on what was going on. So whether we'd see each other face to face every day, probably not, but probably get an email back and forth at least daily.

Q And once you went to take over the Affordable Care Act detail, what level of contact did you have with Lois at that point?

A Very little. Part of ACA includes topics that TEGE EO needed to implement, particularly around charitable hospitals, and I tended to hear from her staff more than her about status, or Joseph would give me the status. He would come to the meetings where people would report out status from the various parts of Service and Enforcement, so she didn't really participate in those.

When I first left, she kept me on some emails out of habit, but then the emails tended to be about either a particular item that Steve had asked me to engage on or do as a favor, or it was her saying, when are you coming back? There were a fair number of when-are-you-coming-back emails.

Q Yeah, because your status as sort of being detailed to head up the Affordable Care Act implementation was temporary --

A Yeah.

Q -- until it became final?

A It was announced as temporary. Shulman sent around an email to the senior executives. So he had said 3 to 6 months, I think, when he announced it. It was 6 months. When we got to about month 4, it was pretty obvious to me I wasn't -- they didn't have a replacement at ACA, and at 6 months they extended me to a full year, and then they sort of stopped talking about when I was going to go back to TEGE. We would talk occasionally about who would be good to replace me in ACA or who would be good to run TEGE, but it was always pretty theoretical.

Q How often did you talk or meet with Joseph Grant once you started doing the ACA issues?

A When I first went, both Joseph and Steve Miller wanted two things. They wanted me to be available to Joseph if he needed me, because there were things I knew about that he didn't know about, you know, because of the way we divided work, and so that he wouldn't be in -- he would have a sounding -- a safe sounding board about whether he should take something to Steve or not, that kind of thing.

The other reason was the plan had been that I would go back to the TEGE job in 3 to 6 months, and so it was dangerous if I got way out of the loop. It was pretty obvious to both Joseph Grant and I pretty quickly that that wasn't going to happen soon, so the kinds of things that he would mention to me became fewer and fewer.

We did set up a mechanism, one of those repeating calendar things -- that's about as far as my computer skills go -- so that we would have a protected 30 minutes every week. And I think we actually -- we put them on -- after a couple of months, we put them on once a week, and then they dropped off, and then we put them on twice a week just to see if we could salvage one of them each week. I know we had some of those conversations over the months, or the couple years. I've been asked how many. It's very hard to tell, because it's a repeating slot, and I don't clean out my calendars, so sometimes it's on, sometimes it's not.

Tended to talk about things that would be hard for me to reverse upon return, so things like big personnel issues, posting an SES position or succession planning charts, you know, who would be good for what jobs; tended to be at that level, big budget decisions, and then some of the things that I'd worked on more than he had, like the tribal stuff.

Q So in areas that you had worked on more often, you would sometimes advise him on those areas?

A He'd say -- he'd ask for history, you know: So this has come in. Does that ring a bell? And I'd say, Oh, ho, ho, don't let them pull the wool over your eyes. That's what this means. That kind of discussion.

Or the other thing we did was that, to keep my hand in a little so I didn't fall off the face of the Earth when I started the detail, I kept a couple of topics that they had to come to me on, not daily, but before they went to the Deputy Commissioner. One of them was the

political advocacy by 501(c) organizations, to your knowledge?

A Before I was born maybe. I'm sorry, I didn't need to be snide. I just --

Q That's good.

A That's a very broad question, so --

Q No. You can be snide. I can try to rephrase the question.

A So the rules in the statute have been there for quite a while.

Q So it's not a new issue?

A Not a new issue.

My observation when I started doing EO in the '90s was that there was a well-developed rhythm -- and I say that not in terms of IRS activity, but in terms of dynamics overall -- around 501(c)s and election cycles; that as organizations who were passionate about their mission work, that sometimes advocacy or their desire to achieve whatever their particular mission was, no matter what flavor organization or mission they had, their issues could arise as part of the election cycle, be they Federal election cycles, local election cycles, midterms, governorships, whatever. So when I started doing EO, there were people with a lot more experience than I who were used to what kind of education needs to be done, what kind of discussions need to be done, what kind of training needs to be done, et cetera, et cetera. So that to say "when was the Service first" is a little broad. So if you can -- I just wanted to get that point out and then let you ask questions --

Q Okay.

A -- more particularly.

Q But the answer to my question is for decades that they've been concerned with political advocacy by 501(c) organizations?

A For decades the issue of what activities are on which side of the line and what's permitted, and the factual issues around who's crossed lines and who hasn't, that is a very old question.

Q Okay. So this isn't a novel, unique, new issue?

A No. Not in the terms of the institution trying to deal with it.

SFC [redacted]:

Q You can save more time. That's all right. Ask you a question if you want to look through it again.

So, on this, there's -- it looks like just a handful of folks, including yourself, in crafting this response to Citizens United in this question and answer; right?

A Uh-huh. Yes.

Q And you said you didn't believe that this ever went up on the Web site?

A I'm -- to the best of my recollection, it did not. One of the reasons was that it was sort of hard to explain why the IRS would be commenting on the FEC case in an affirmative way and also because all the other answers were already up on the Web in one format or another.

Q Thanks.

SFC [redacted]. And this is -- I'll mark Exhibit 4.

[Ingram Exhibit No. 4
was marked for identification.]

BY SFC [redacted]:

Q Take a look. If you could take a look -- take a look at the first paragraph, top email, first page, "had to give Doug something if pushed specifically asked for." Is that Doug Shulman?

A It's Doug Shulman who was going to be in some public settings and might get asked.

Q Okay. And "specifically asked for" means that Doug Shulman specifically asked for some guidance on this or help on this?

A If asked, what should he say?

Q Okay. And do you know if he did use this in that public setting?

A I don't remember the event. Having seen the emails, I'm remembering that Lois had something she had to appear at. And I don't -- I don't know what it was he was going to be in public for, but it was one of those, if asked, what should I say?

SFC . Okay. I'll mark this one as Exhibit 5.

[Ingram Exhibit No. 5
was marked for identification.]

BY SFC :

Q This one is, to save trees, not a printout of the entire set of sensitive case reports, but it contains the Prescott Tea Party and Albuquerque Tea Party sensitive case report.

Before we get to the document itself, when did you first become aware of -- of the Tea Party itself?

A Of the Tea Party itself?

Q Tea Party movement. Was it through popular press --

A Popular.

Q -- newspapers, TV?

A Popular press. Yes. And I have no idea when that was.

Q Okay.

A Before you ask.

Q No problem.

A Whenever it was in the popular press.

Q And when did you become aware of the Tea Party at work, when did that first cross your desk at work?

A I've become aware recently of this and other emails like it.

Q And this --

A Because I have no memory of opening them, I can't remember hearing about Tea Party cases as cases.

Q When we talk about this email, this email is June 6, 2010 --

A Yeah, and I'm copied on it.

Q -- from Richard; M, standing for Mike Daly, to Jennifer Vozni, with a CC to you as well as two other folks.

A Right. Right.

Q Okay.

A Right. I will admit I did not read these. If I opened it, I may have. But I don't remember. I relied on my directors to bring me the ones they thought they were worried about. So then when you say, when did I first --

Q Learn about -- when did the Tea Party issue first cross your desk, essentially?

A So, at some point while I was at ACA, there was press around accusations being made, be they by Members of Congress or by people representing organizations. And they were press clippings because press clippings circulate at the service for folks, that people were worried, accusing, complaining, whatever the particular tone was, that the IRS was giving inappropriate scrutiny to a cluster of cases that were being called Tea Party cases, in Determination applications.

Q And this is when?

A I remember it back to about January of 2012. But I think there was probably noise around the end of the previous year.

Q When you say "noise," what do you mean?

A Press clippings, stuff like that. But I became aware early in 2012 just by sitting in staff meetings where I was there for ACA, but there were people from all the other offices that there were inbound Congressionals, an increasing number of inbound letters from Members of Congress, asking about, complaining about, asking for questions to be answered about, determination applications of people who self-identified at Tea Party organizations and how they were being handled or delayed or whatever.

Q I'll go mark this one as Exhibit 6.

[Ingram Exhibit No. 6
was marked for identification.]

SFC [redacted]. It's again, sake of saving trees, I didn't print out the entire stack of sensitive case reports, but it contains the Tea Party report.

SFC [redacted]. While you're doing that, can I ask a foundational question?

SFC [redacted]. Sure.

Ms. Ingram. Sure.

BY SFC [redacted]:

Q I guess you mentioned a little about the -- what your process was when you got sensitive case reports. But can you just walk us

through how they came into your office? And I guess this would be TEGE commissioner.

A An email.

Q Okay. So -- can you go a little -- a step beyond that, though, and tell us, I guess, were they gathered by the various components under the Commissioner's Office and then sent up? Can you tell us how that happened?

A Right. So sensitive case reports have been used different ways at different times in different parts of the service and probably every other agency, for that matter. And so it was always expected that the higher such a collection happened, the -- not everything would roll up as it went up. So the director of Exam would get a longer list than the director of EO would get a list.

I have never in my management experience found it very useful, frankly. Because if there is something that needs to be discussed, it needs to be in a room and have a discussion. And so I always relied on my directors, if it's important enough, you need to talk to me about it and not send me mountains of papers and ask me to intuit what the issue or problem is. Because sometimes the things that are important don't get put in print anyway.

So the discussions with directors, whether they're EP or in Appeals or wherever I'd been, or in Counsel, have always -- I've not personally found them particularly useful documents, which explains why I was not always very vigilant about looking at them.

Q Was there anyone on your staff who was -- who was charged

with looking at the sensitive case reports when they came in, or did they just go directly to you?

A No, Mike Daly was on my staff.

Q . And what was his position?

A Asking me to remember his title.

SFC . He's got it written here.

Ms. Ingram. Executive assistant --

SFC . TEGE.

Ms. Ingram. Okay. Well, that helps since I can't remember.

SFC . According to Exhibit 6 signature block.

Ms. Ingram. So there are about 20 direct reports with commissioner, 18 to 20.

BY SFC :

Q So he would coordinate the sensitive case reports that came in from the different components within TEGE.

A The mechanics of them, yes.

Q Right. Then he would forward them to you.

A Well, I was copied when they were sent to Jennifer Vozni, according to this.

Q And Jennifer Vozni, was she was in the level above the Services and Enforcement office; is that right?

A She was a special counsel or something to the deputy commissioner.

Q Okay. I see. So you were kind of -- you were copied on it, but you weren't at this stage, you weren't really expected to do anything

with the reports themselves?

A I don't know what my supervisor expected me to do. I think he knew I didn't look at them.

Q Your supervisor was Steve Miller at this time?

A In 2010, yes. In 2009, it was somebody else.

Q Do you know what he did when he got the sensitive case reports?

A No, I don't. And I don't actually know whether he saw them or whether -- what Jennifer's job was to do with them.

SFC [redacted]. If you look on here, Nikole Flax got -- she's an addressee on Exhibit 6. So Nikole worked directly to Steve.

Ms. Ingram. Yeah, but be careful about when she moved. So I think by 2010 she was there. But as you look at various emails, I'm not sure -- he stole her fairly quickly, but I think I had her for most of 2009 and some of 2010.

SFC [redacted]. And she was deputy, I believe --

Ms. Ingram. Assistant deputy.

SFC [redacted]. Yeah, Assistant Deputy Services Enforcement, right? Before she became his chief of staff.

SFC [redacted]. She was also --

Ms. Ingram. Here's the sequence. She was in TEGE on the advisor's staff when Ron Schultz was the advisor. He stole her from some committee, I guess. And then he moved with Steve Miller when Steve Miller went to Large Business. So she was acting technical advisor to me for a while. When he became deputy commissioner, at some point, he

stole her to be his assistant deputy commissioner.

SFC . Okay.

Ms. Ingram. And Doug Shulman kept trying to steal her from Steve. So I'm not exactly sure when she became chief of staff. I think that was before Doug Shulman left.

SFC . Thanks.

SFC . Just one more.

SFC . Go ahead.

SFC . So for the period of time you were commissioner of TEGE, did Mr. Miller or anybody else in the Services and Enforcement Office, did they ever ask you about a sensitive case report that had worked its way up to their level?

Ms. Ingram. Not that I remember. If they did, I don't remember it.

SFC . How many of these did you get a week?

Ms. Ingram. These.

SFC . Does this email contain just one SGR?

Ms. Ingram. No, they would have been a roll-up batch.

SFC . A hundred --

Ms. Ingram. They would have been a batch. I don't know how many were in it.

SFC . Like I was kind of saying, SFC in order to save paper, I didn't print them all out. But there was, I don't know, there's 20 of the reports in.

SFC . 20 pieces of paper, like one-pagers?

SFC . It might have been 20 pages. You know, don't quote me on that.

Ms. Ingram. But at this stage, it should have -- I don't know that it did, but it should have included employee plans, governments, government entities, bonds, it would be the whole -- by the time Mike would have handed anything on, it would have been the whole TEGE, whatever picture it was.

BY SFC :

Q Did you ever open one of these emails to see how many pages were attached, how many SGRs were in the email?

A Not for that purpose. I probably opened one because I would probably forget what SGR was and open it to remind myself what the thing was.

Q How often I do think you got these email?

A Well, these two are about a month apart. Right? I don't know in they were monthly. That sounds too frequent to me.

Q Did you feel comfortable letting months, weeks, years go by without sitting down at least once a year and looking through all the SGRs to see what was happening in your department?

A I --

Q I can see not looking at it every week because you are busy. But, as a former manager myself, I try to look at everything occasionally.

A I don't remember -- I think it is likely I probably looked at something sometime during the year. I have no memory of looking at

one and -- on any regular basis. I did see the directors on a regular basis. And we did do topical reviews, and we did do quarterly performance reviews. And I would expect my direct reports, if something was important enough, to brief it to me.

Q And your director was Lois Lerner, in this case.

A One of them.

Q In this case, with the SGR for the 501(c)(4)s, it was Lois Lerner.

A Yes. The example here was Lois Lerner, yes. But there would be other ones -- there were other sensitive matters besides EO.

Q Sure. But --

SFC . But Mike Daly worked for you, and he sent you this email, right?

SFC . Just for the record, it's a cc.

SFC . Yeah.

Let me introduce Exhibit 7, which is directed to her. She can take a look at that one.

[SFC Exhibit No. 7
was marked for identification.]

BY SFC :

Q So that one Exhibit 7 is to you; right?

A Right. Because he forgot to copy us on the one that went to Nikole.

Q Okay.

A So he sent it to Nikole and then sent it to us.

Q And did you read this one?

A I have no memory of these at all.

Q Did you normally read your emails?

A I get hundreds a day. I try to read them as much as I can.

Q So you would have tried to read this one, then?

A Depending on what else was going on, I would have tried to read all my emails. But I rarely get to read all my emails.

BY SFC [redacted]:

Q So you had said, and I don't want to put words in your mouth, but I think you said that you expected the people who reported to you to bring any significant issues or important issues to your attention. Is this -- that right?

A Yes.

Q Would that include issues that might be -- might be coming up in the future in the press and in Congress, those types of things would be important issues that you would expect them to bring to your attention.

A In the area of -- I'm going to answer it this way, and then you can ask me if I fail to be responsive. In the area of TEGE, the issues that are of potential to come up from Congress and the press are without end. So it's important to think proactively about programs, and it's important to deal with things that have already gotten to the press or the Hill and so forth. But if you try to anticipate every issue or case or topic that we would -- that would be of interest to people outside the IRS, there aren't, under the laws of physics, enough hours

in the day. The entire area, whether it's tribes or bonds or State and local government retirement plans, or employment tax, EO has got on lot of sensitive issues in it by the nature. But it sure ain't the only thing under TEGE. And so you expect people to bring you trends, high-impact stuff, decisions about whether to go right or left on a program. But you have to understand that one -- there were a lot of other things going on, including the question of hundreds of thousands of EOs losing exemption because of the 3-year revocation, auto revocation, that's a lot of EOs, that's a lot of press attention, a lot of attention from this end of Pennsylvania Avenue. There was a lot of noise about the employment tax audit program.

Q Were those issues that were brought to your attention?

A Absolutely. Absolutely. That I spent time with Lois and other EO people working on when I was there.

Q Sure. Let me ask you, and I appreciate your answer, and let me just --

A Now ask me what you really wanted to know.

Q Yes. Let me focus it a little more. Because I'm looking at these last three exhibits, 5, 6, and 7 that we have here. I understand that you may not have reviewed the Sensitive Case Report, but if you look at it, there's a portion about a third of the way down where it says "Sensitive Case Criteria."

A Could you tell me which one you're looking at?

Q Yes. Right now, I'm looking at 7, Exhibit 7.

A Okay.

treated as referrals if they're complaining about a particular entity and go into the queue for consideration as a referral.

Q I'll hand you Exhibit 13 now.

A That was the week I moved to ACA.

Mr. Inglima. Are you skipping 12?

SFC [redacted]. Sorry. Let me rewrite that. Make it 12.

[Ingram Exhibit No. 12 was marked for identification.]

Ms. Ingram. Okay. 12.

BY SFC [redacted]:

Q On this one, if you could look at the second email here, it's the one from Joseph Grant and Nan Marks. He says, "I, of course, would want to have Sarah's input." This is dated March 27, 2012.

A Uh-huh.

Q General subject matter of this is, you know, whether to refer this stuff to TIGTA. There's an article attached from the EO Tax Journal about potential agency misconduct by the IRS. So why would Joseph Grant say, "I, of course, would want to have Sarah's input" at this point in 2012?

A Well, you'd have to ask Joseph that.

Q Were you still having communications with him at this point, with Joseph Grant?

A So I had seen the noise in the press, and I knew from staff meetings that there was a growing stack of Congressional inbounds about whether the IRS was treating a group of cases appropriately or not,

because at staff meetings, people would talk about we have this many letters, we have that many letters and so forth.

I also historically have had experience with TIGTA, not only on program audits but on if accusations get made, the appropriate place to route them is to TIGTA. And I was raised in that tradition that the way to get a neutral party to look at things and either exonerate you or say what's wrong, it has to get fixed, is to send these to TIGTA. And I had done that in the past.

So whether he thought he should ask me because he knew I had talked about doing that before or whether because -- I don't know why he would think I had to vote on it, why I even had a vote on it. I would have told him to send it if he asked me, but I don't remember him asking me.

RPTS HUMISTON

DCMN HERZFELD

[4:31 p.m.]

BY SFC [redacted]:

Q So at this point in time, Joseph was still -- you still had the title Commissioner of TEGE, right?

A I had the title, but I hadn't been running the place for a year and a half at that point, year and 4 months.

Q And you were still testifying; like, you testified before the Finance Committee on the tribal issues, right?

A Yeah. I was -- later that spring I was asked could I pick that up. The fall before, I had testified in front of Mr. Boustany's oversight committee on an ACA topic.

SFC [redacted]. All right. Go ahead, SFC [redacted].

BY SFC [redacted]:

Q Did you say -- did I hear you correctly when you said that you had heard about these allegations in the staff meeting?

A Yeah. So Steve would have a weekly staff meeting. Once a month the Commissioner would have a staff meeting. Part of what happens is people go around the table and say, what are you working on, what's coming up? Also, in an election cycle, the press office and Leg Affairs office, and anybody who's ever been around at all knows that political activities used to be at churches, now it's a variety of organizations, always would bubble up and be something that had to be dealt with, either people turning each other in, or things that came across our desk at

the referral level, for example.

So at the staff meetings that I remember, you know, there'd be -- each person would have a list, and my ACA list would be top three things working on in ACA. EO, one of them by this point I recall would be (c)(3), (c)(4) letters. So I was aware of letters, and I was aware that the letters had a variety of different accusations, or turning each other in, or accusing us of stuff, and those needed to be answered, that there was a backlog.

Q Was it Ms. Lerner who presented that information or somebody else?

A No. She wouldn't have been at those staff meetings. It would have been Joseph Grant.

Q And --

A Or -- or Nikole Flax, or whoever else was working on them.

Q Okay. So Mr. Grant or Ms. Flax presented that information. And was Commissioner Shulman at these meetings?

A No. The Deputy Commissioner ones would be Steve Miller's direct reports. The monthly senior executive team meetings would be all of the Commissioner and Deputy Commissioner direct reports. It's like 35, 40 people. And you might have something to share or you might not, depending on the topic and given how many people were in the room. So it really depended.

Q And at the senior executive meeting, do you remember the political advocacy issue ever being raised?

A In general, yes. I think there were some -- I think Leg

Affairs raised that there might or might not be hearings at various times, depending on what time of year it was, or what month, or what committee was thinking about it. I know it would be very typical for them to go through there are hearings going on on this topic, if we're not -- even if we're not a witness, depending on the topic; or there's a hearing -- there might be a hearing in X month, we'll see if it pans out. You know, that kind of list.

They might have -- they also track letters, so I don't know whether they were the ones that mentioned we got a lot of letters in on, and then they'd have a list, and something on the list would be political advocacy questions. But there would also be other issues on their list, ID theft, or refund fraud, or whatever else there were hearings about or in-bounds on.

[Ingram Exhibit No. 13
was marked for identification.]

BY SFC [redacted]:

Q I'll give you Exhibit 13.

A Okay. Great.

Q Did you attend this meeting?

A Well, I attended a couple of meetings in this period. I don't know when this -- when the meet -- the first meeting after October 5th was, but --

Q What about the other meeting? You mentioned you attended a couple meetings during this period. Can you tell me about those?

A So -- and I'm sorry, there's a story, so I'm going to make

you listen to my story first.

Q That's okay.

A When the focus over the years had been 501(c)(3)s and churches, the law has a -- just to be a legal nerd for a second -- a Peppercorn rule. You can't do any political intervention, according to the statute. I know people debate whether that's constitutional, but that's what the statute says. And in that environment, the Service always received lots of referrals from people turning each other in. And we had designed a process to have an independent group of career people with some technical expertise review those referrals and not simply put them into the exam stream; that there ought to be some judgment about is it a he-said/she-said referral or is there something there.

Q And that was the PARC under Everson, as part of the PACI initiative?

A Yeah. It was part of the PACI initiative.

Q PARC was the name of the referral committee, right, the --

A I guess so, yeah. I thought it was the referral committee, but you learn something every day.

Q Political action --

A Yeah. There you go. Right, right, right.

Q Advocacy or whatever it is?

A The little group of career people.

A couple of things always were on our minds going forward, two things. One is the 990 annual return was getting -- had gotten substantially redesigned, and that meant it would have a lot more

information on it where the exempt org had to actually state or say yes or no as to certain kinds of activity. And so for the first time, in the fall of '10, we were beginning to get the first cycle of new 990 data sets from those returns at the same time that we knew there was discussion after Citizens United about (c)(4)s.

There's a Peppercorn rule in EOs, so if you get a referral or have information that is probative and merits investigation, you don't have to wait for the annual return, you can even do it during that tax year, because if somebody really has a problem with their activity, it doesn't matter what else they've done that year if you're a (c)(3).

If you're a (c)(4), it's a balance under -- whether you liked our reg or not, it was a balancing, and, therefore, you had to wait for the whole year to be over and to get the information from the return to be able to figure out whether that entity had a problem or not, so on a completely different timing cycle.

So in the fall of 2010, before I left, and they did -- they kept going after I left -- but we were trying to put together how would you put the referral review process that already existed with all the cards and letters people send and the new data coming off the annual returns, which churches may not file, but a (c)(4) would have to file, and data analytics on the return data, and how would you put those together in a rational way that still happened with career folks in the right location? All of that discussion was about Exams. None of it was about Determs.

In the fall of -- and this thing from Nikole was -- I did another

Stephanie Strom interview, because Steve asked if I could, on about 2 days' notice, help Lois do the Stephanie Strom interview in the fall of 2011. So it was pretty much a repeat of the one from the year before that we already talked about. And because that interest was coming up kind of early for a Presidential cycle -- usually it wasn't -- you know, you wouldn't be dealing with this cycle until you got to 2012 -- Steve said, could you re-up what you tried -- we talked about a year ago and see whether your thinking has gelled on how to put these various pieces together into a steady-state program.

So that's what -- I forget when the New York Times article actually ran, but my memory of this is, okay, 2012 cycle's coming up, you had that work you did last year, let's put it together. But I think I sat -- I know I sat in on one and got some copies of some briefing materials, but I dropped out after, and I might have gone to two meetings.

Q Okay. On that, if -- so the career or non -- you know, nonpolitical people are making the decisions on that political advocacy, or whatever it was called, referral committee, as you said, the referral committee, would it -- could folks in D.C. sort of then cherry-pick a case and say, all right, those people, you know, that are sort of doing it under this process, they decided one way, but I want to go ahead and open an exam up on them anyway? Was that --

A Not in my experience, no. The whole reason to have -- I mean, one of the reasons Exam Directors are in Dallas and not Washington, for goodness sakes, is to have a process where the decisions on case selection are not -- are happening at that lower appropriate level.

So in terms of this guide sheet, was that what the meeting was about?

A The meeting I sat in on did not discuss the guide sheet.

Q Okay. What was the meeting that you sat in about?

A The meeting I sat in on was Steve Miller expressing great frustration, and I'm putting that mildly, that he had -- he wasn't -- he lacked confidence that he was getting a complete description of what was going on --

Q Okay.

A -- and the desire to send a team --

Q Got it.

A -- to go --

Q Got it.

A -- and that Nan -- he wanted Nan to head the time.

Q Okay. And so Cathy was at that meeting as well?

A No, she was not.

Q Okay. But she had just --

A She was not pulled into that at all --

Q But she just knew --

A -- that I knew.

Q Sorry. She just knew that you were at that meeting?

A I probably complained that I was at that meeting --

Q Okay.

A -- because it meant I wasn't at whatever ACA meeting she needed me to be at.

Q Okay. And --

A She received this from Nikole, not from Nan or me.

Q Thanks.

And Cathy says, "Quiet sharing." She's the one in this chain that added that on --

A Uh-huh.

Q -- to you and Nan. Do you know why she said, "Quiet sharing"?

A I recollect that she was sensitive that since she no longer worked in EO and was known in the EO community as having strong views, that any number of people would be highly offended that she was opining on their work product --

Q Do you know who --

A -- which is probably right.

Q Do you know who she was concerned about? Is it, like, Lois that she's concerned about or others in EO?

A I -- I don't know in particular, except that Janine Cook was Cathy's successor in Counsel.

Q Okay. So she was a little worried that -- that Janine Cook, for one at least, might feel like she was stepping on her toes?

A That's my interpretation of why she was, you know, labeling the end of the message and the title that way.

Q Okay.

A And I probably feel that way because they probably would have been.

BY SFC [redacted]:

Q And who was Steve Miller frustrated with? Was it anybody in particular?

A I've been asked that, and I've tried to re- -- remember, but -- remember the movie of that meeting. I don't recall him being frustrated with any -- there were so many layers between him and the frontline. I don't remember him being more or less frustrated with people in Washington, or people in Cincinnati, or some combination. I remember him being very frustrated that he was not comfortable responding to the congressionals based on the information that he had at that point.

SFC [redacted]. And just one more.

SFC [redacted]. Go ahead.

BY SFC [redacted]:

Q Did he say if he felt that people were deliberately misleading him, or was it more the case where he felt like he just wasn't getting the full story?

A It was more that he wasn't getting the full story. I kind of felt like I had walked into a conversation where he had been asking and asking.

Q And that's fine. I don't need more than that. I was just --

A Yeah.

[Ingram Exhibit No. 15
was marked for identification.]

BY SFC [redacted]:

Q Here's Exhibit 15. Give a copy to you.

A I remember not being consulted on what the right answer was on what had -- had happened or what the inbound letters were. I remember being asked if I remembered other examples of where we had done field directives of the nature of "until further guidance, stand down." And I always get asked that because I had been involved in frequent fliers earlier in my career, which is the ultimate example everybody mentions. So I remember being asked what did we do with frequent fliers. But that kind --

Q It was a nonenforcement --

A Elephant's memory kind of question as opposed to what to do about gift tax.

Q Okay. When did you first hear about the BOLO?

A I remember hearing about it either in the meeting before the team went to Cincinnati or in the meeting after. I can't promise you which.

Q Uh-huh.

A But that there was something that was using criteria in a way that wasn't right. And at some point in that series of meetings late April, early May, it was a meeting where Lois was there where she sort of put her head on the table and said "I thought I had fixed it."

Q So Lois --

A I don't remember whether I saw it or saw one or a version of one. But I know that was an issue that was discussed as part of either -- before they went or after they came back or whatever.

Q So this was a 2012 meeting where Lois puts her head on the

RPTS JOHNSON

DCMN ROSEN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: ELIZABETH HOFACRE

Tuesday, September 24, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:00 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For ELIZABETH HOFACRE:

ROBERT WEINBERG, ATTORNEY AT LAW

JOSHUA B. SHIFFRIN, ATTORNEY AT LAW

SFC [redacted]

Washington, D.C. 20005

Q And what date did you first take that position of quality assurance revenue agent?

A It was around October 12, 2010.

Q Okay. And what function does EOD Quality Assurance perform?

A Our function is the quality control portion of EO Determinations. There is three primary roles that we play. We do what they call mandatory review. And they are specific cases in what they call the Internal Revenue manual. And these cases are determined by management what cases need to be subject to mandatory review. Examples might be any adverse determinations to protect taxpayers' rights, charter schools, schools that are formed in Mississippi and Louisiana to make sure that they are following a nondiscriminatory policy.

At the time, political advocacy was on them. Voter registration activities were on them. And there is numerous other examples. Another function would be, it's called SQMP, and that's statistical analysis. And what we do is we randomly pull cases based on -- based on, I guess, statistics, to ensure that certain criteria are being made. And the last function would be reports and reviews as determined by our manager.

Q Okay. And with regard to the mandatory review, at what point do you conduct this mandatory review? At what point in the development of an application?

A Well, I work on seven, so I refer to QA in this discussion would probably be seven, and four is EO Determinations. So when the

that worked --

A I have no idea.

Q You don't know?

SFC [redacted]. If I could jump in real quick.

SFC [redacted]. Yeah, go ahead.

SFC [redacted]. Who is the other area manager other than Steve Bowling?

Ms. Hofacre. It's Jon Waddell?

SFC [redacted]. Thanks.

Mr. Weinberg. You are talking about as of today.

SFC [redacted]. Yes.

SFC [redacted]. Can I ask one follow-up question on that?

BY SFC [redacted]:

Q Do you know why Ms. Thomas was put in a different position?

A No.

Q Have you heard any explanation?

A No.

BY SFC [redacted]:

Q Just rumor?

A I think I had an email. There was an email on a Friday.

Q That advised what?

A Based on my recollection, it just said Cindy Thomas has been reassigned. I don't remember the exact position.

Q Okay. Would it have been to technical advisor?

A That sounds about -- I believe that's correct.

Q Does she still sit in Cincinnati, or has she physically been moved to another location?

A I am not sure.

Q All right. During your time in Group 7822, did the group have a specialty area, kind of a special area or types of cases that it worked that other groups didn't work?

A Well, Steve Bowling was the manager. And I was in the emerging issue coordinator. So we worked emerging issues. And he also had the assignment of working accelerated processing cases.

Q Okay. The emerging issue cases then, they were unique to that group, right, 7822? They belonged to 7822?

A Yes.

Q Okay. And what exactly are emerging issue cases?

A I am going to clarify something. Before I was assigned to Steve Bowling, I had worked for Joseph Herr. And I had changed groups in May, around May 1st, 2010, give or take a couple weeks. And before that, Joseph Herr's group was responsible for the emerging issue cases.

Q Okay.

A So the emerging issues parameter or definition that we worked under was developed by Joseph Herr. And essentially, they are issues or subject matters that involve cases where there was little precedent or unclear precedent. A lot of times, the subject matters or issues were driven by current events or law changes. So initially Joseph's group was responsible for these cases.

Q Okay. But that function had migrated over to 7822?

A Correct.

Q And do you remember roughly when that happened?

A Like I said, before -- around May 1st, 2010.

Q Okay. Okay. And you said also there was another type of case, I think you said accelerated processing?

A Right. And there was really no correlation between the two.

Q What are accelerated processing cases?

A Well, they are cases that screeners have determined only need one or two administrative items in order to make the file complete. And those cases were assigned at what we call accelerated processing agents. And it was their job to get these one or two items to close the file.

Q And that was unique to 7822?

A Yes.

Q And was there a third category? I am sorry, I wasn't writing it down.

A If there was, I am not -- those are the only two I remember.

Q Okay. What about consistency cases? Is that a phrase that rings a bell?

A From several years ago, yes.

Q Okay. What is the context there? What is a consistency case?

A Sometimes cases were grouped in order for agents or groups to treat them consistently.

Q Okay. And would that have included the political advocacy cases?

Mr. Weinberg. We have got to give a time frame for what you are talking about.

SFC [redacted] Okay.

BY SFC [redacted]:

Q Let me back you up then. Why don't you go ahead and tell me the time frame that consistency cases was kind of --

A Probably around 2005 maybe.

Q Oh, that far back?

A Right. And based on my memory and my recollection, consistency cases evolved into the emerging issue cases.

SFC [redacted] SF [redacted], if you want to just announce yourself.

SFC [redacted] Oh, sure. I am SFC [redacted] from the Senate Finance Committee.

BY SFC [redacted]

Q Okay. Just so I have -- I don't know -- let me put it this way. I don't know if things worked this cleanly, but it kind of sounds like consistency cases morphed into emerging issue cases? Is that right?

A That's how I understand it.

Q Okay. Okay.

A I mean, that was 3 or 4 years ago, but yes.

Q Okay. So once we began talking about emerging issue cases, no one referenced or referred anymore to consistency cases?

A Based on my recollection, no.

Q Okay. And was the concern the same there in the sense that an emerging issue case and a consistency case, you would group them together and wanted to treat them consistently? Was that the theory?

A That is the theory.

Q Okay. Now, as the emerging issues coordinator -- I think you said you were the coordinator, right?

A Yes.

Q In 7822, what duties and tasks were you required to perform?

A Well, at that time, I had already been assigned the political advocacy cases, so that was my primary task, to determine, based upon the parameters management had described, determine what cases met those parameters.

Q And that was your sole responsibility as the emerging issues --

Mr. Weinberg. When you say at that time --

Ms. Hofacre. Well, May 2010, like you said earlier, it morphed?

BY SFC [redacted]:

Q Right. Okay. What I am looking at, kind of walking you back through your --

A Okay.

Q -- employment history, so kind of where you are now is you are in 7822.

A Correct.

Q So during the time you are in 7822, what sorts of duties

and functions did you carry out with regard to the emerging issue cases?

A Well, at that time at 7822, my primary duty was working the Tea Party cases.

Q When you say "work them," you mean develop the cases?

A Yes. Again, to use your terminology, it morphed. Initially, the screeners had sent me -- had provided me the cases with -- that were -- that met -- that were Tea Parties. Most of them had Tea Parties in their names. And it morphed or it evolved. And by the time I left that job in October, I had become what we then called, I guess, a secondary screener.

Q Okay.

A So screeners as well as other agents who felt they had cases that involved political advocacy sent them to me to determine if they met the Tea Party criteria.

Q Okay. And when you say Tea Party cases, you are referring there to applications received from actually Tea Party organizations or organizations with kind of similar political views?

A Same type of political -- same type of activities.

Q And would that be like conservative organizations?

A At that time, yes.

Q Yeah. Okay. And again, focusing on that time period you were in 7822.

A Uh-huh.

Q I am sorry, you said from May to October of 2010. Right?

A Yes.

Q Okay. And you said -- I am sorry if I am being repetitive here, I just want to make sure I understand this -- you say there were no other emerging issues that you were working while you were in 7822?

A Not that I remember.

Q Okay. Did you work on any other cases, aside from the Tea Party cases, as the emerging issue coordinator? Did you have just like a general inventory of cases?

A I believe I had GS 13-type cases.

Q And those would have been cases that would have been referred to 7822?

A No. They would have been cases just from general inventory.

Q Okay. And maybe this is another good question for you, just to clear up some confusion in my head. The groups, it seemed to me, looking at what we received from the IRS, many of the groups had specific areas that they worked in. But in addition to that, the groups, and perhaps just in your experience, the groups also just worked general inventory cases too?

A At that time they did.

Q And was Mr. Bowling your manager for the entire length of time that you were in Group 7822?

A Yes, he was.

Q Just in your experience in working with Mr. Bowling, did you think he had a good grasp of the work that was being performed in the group?

A Can you clarify that, please?

Q Yeah. Did he understand what the agents were working on? Did he have a good sense for what each agent's workload looked like?

A I mean you are asking me to give an opinion, right?

Q No, no, it's not -- it's an opinion, it's your own impression as he is your boss and you are working with him, presumably for now what, 4, 5 months there, 5 months almost. And I am just asking your experience. Did he have a good understanding of what you were working on?

Mr. Weinberg. You are talking about your own impression.

SFC . Yeah. Because you --

Ms. Hofacre. I can preface that. I don't want to malign him or anything, but I trained him 10 years earlier. I was his OJI. I mean I think he was a good manager. I don't think his technical expertise was -- it was adequate, but again, you are asking my impression. I mean, I have nothing, you know, concrete to give you, examples?

BY SFC :

Q That's a fair thing. I mean whatever your impression was, he was your supervisor, you trained him and so forth, as you said, and you had a history of working with him. You say that -- I guess my question really was did he have a good grasp of the work that you were doing? At any given point in time, would he know what you were working on?

A All the managers know what we are working on. We have really strict inventory control. He knew exactly what I was working

on.

Q Was he aware of the issues and the cases that you were working on, the Tea Party cases?

A Can you give some specific examples?

Q Yeah. Well, let me put it to you this way. What was your sense or impression of the predominant or principal issue that was being presented in these Tea Party cases?

A Well, the issue was -- I mean, we are talking about two different things -- was whether or not they qualified, whether or not they were 51 percent, you know, social welfare. But because, again, this is my impression, because of the sensitive nature of these cases and the potential for media attention, he was following -- based on my impression, what his managers told him to wait for EO Technical in D.C. to give him feedback on how to process these cases.

Q Okay. Let me put it -- let me see if I can get at it this way. Were you reporting to him kind of on a periodic basis as --

A All the time.

Q Okay.

A I mean, I don't know if you know the way we work, but I go in the office 80 to 90 percent of the time. So I had daily interaction with him. So I was reporting to him the number of cases I was getting, the types of cases.

Q Were you keeping him apprised of what kind of activities you were engaging in, what efforts you were making in these cases that you -- political advocacy or Tea Party cases that you were working?

A I believe I was.

Q Okay. And did he understand the technical issues that were presented here to you?

A In a very broad sense, yes. It was determined whether or not they were 51 percent social welfare, if they were primarily organized for political purposes.

Q You said that he was a good manager, I think you said, but that his grasp --

A Right. Exactly. I am sorry.

Q That his grasp of the technical wasn't perhaps as strong? Is that a fair way to put it?

A I believe, yes.

Q Okay. And did you feel that was true with these Tea Party cases too, that he didn't really have a strong grasp of the technical issues?

A Yes, I would say that.

SFC [redacted]. I am going to jump in real quick.

BY SFC [redacted]:

Q Where did you guys get the 51 percent test from?

A Well, there was a regulation back in 1959 that -- because I believe the actual code says none, but based on how the law evolved in 1959, a court case, it was determined that 51 percent social welfare, 49 percent could be political.

Q Because I think the regulation says primarily social welfare. And then you said there was a court case that said 51 percent.

A I believe so. And it's over 50 years old, 54 years old.

Q The regulation is?

A That court case, how it morphed in 1959. I mean that's -- again, this is my speculation. That's part of our confusion.

Q I guess I have just heard from Treasury, they say no, there is no 51 percent test. But you guys I know were using one. We talked to Joseph Herr. He said, you know, it's 51 percent is what he used. So I am trying to kind of clarify that discrepancy between what Treasury says there is no 51 percent test, you guys used a 51 percent test.

A Exactly.

Q Can you shed any light on that discrepancy?

A Just what I just said, there was some kind of either court case or something in 1959, that that's how I understand the law, how we came up with the 51 percent versus 49.

BY SFC [redacted]:

Q All right. So we are going to come back to your activities in 7822 in a bit. And I am sure you are waiting anxiously for me to ask you some more questions about that.

A Of course.

Q But I wanted to just to back you up now in the timeline. I think you had indicated that prior to your time in 7822 you were in 7825, and that Mr. Herr was your manager in that group. Is that correct?

A Yes, it is.

Q Okay. And how long were you in 7825?

A I believe from 2008, spring of 2008 until 2010. Either 2007 or 8, 2 or 3 years. I am trying to -- sorry, my memory is shot.

Q I am sorry, you said spring 2008. Would that have been until like May of 2010?

A Correct. I just don't remember exactly when I started.

Q That's fine. It just gives me a rough idea about where that fits in. And did 78, Group 7825 then have a specialty area as well?

A I think you touched on it earlier. Consistency that morphed into emerging issues.

Q Okay. And what kind of consistency cases were there? Again, during this 2008 to May 2010, aside from the political advocacy or Tea Party cases, what other kind of consistency cases do you remember?

A Oh, yeah. I mean, there were some really basic examples. We would get say -- say a group ruling of like a booster club or something where they were in a group ruling in Michigan, for instance, and they broke up. So we would get, say, 200 booster clubs that were under a group ruling, so we wanted to make sure that they were all treated consistently since they were under the same parent. That's a good example.

I remember these clubs in upstate New York concerning maintaining parks for snowmobiling. Again, there were 10 of them. So we wanted to make sure that they all were treated consistently. Usually activities like that.

Q I see. And while you were in 7825, I think you indicated

earlier that you were also the emerging issues coordinator?

A It morphed into that, yes.

Q Yeah.

A I don't know when that title, you know, actually came in existence.

Q And prior to getting that title, were you coordinator for any other kinds of cases in Group 7825?

A I was coordinator for some of the consistency cases.

Q I see. Okay. And so you worked those cases as well as general inventory cases?

A I either worked them or I looked at them to make sure they met that criteria at the time.

Q The criteria for being a --

A Consistent cases.

Mr. Weinberg. You might ask her what -- because she was a coordinator, what her role was.

BY SFC [redacted]:

Q Certainly. Would you like to --

A Well, in general, I don't want to jump ahead, in general as a coordinator, I was the one who would look at these cases and work with my manager to determine if they actually met the criteria of either a consistency case or an emerging issue case. A lot of times, as I have said in my previous interviews, a lot of agents tried to dump or unload their more difficult cases on us under this parameter of being consistency or emerging issues.

Q Looks like a consistency case to me.

A Exactly. Exactly. So I was kind of the gatekeeper.

Q Okay.

A And then I would advise my manager, and he would make the ultimate determination whether or not they met those parameters.

Q Okay. And did you keep any of these cases and actually develop the application to see --

A I don't recall any specifically that I actually kept.

Q Okay. So the function you were performing then essentially was a screening function kind of, a secondary screening function?

A Yes. I am not sure when that term came into being, but that's true.

Q In principal you were performing a second tier of screening --

A Uh-huh.

Q -- on a case to ensure that it met certain criteria?

A Exactly.

Q Okay. And if you concluded that the case did not meet the criteria, then you informed your manager, as you said?

A Right.

Q And the manager would do what?

A He would look at it, and then usually he agreed. I can't think of one time he did not. And then it went back to general inventory, or the agent then tried to, you know, dump it on us, for lack of a better word.

Q You sent it back to that agent --

A Exactly.

Q That's what they get.

A Exactly.

Q Okay. And then your entire length of time that you spent, I think you said 2008 to 2010 in 7825, was Mr. Herr your manager for that entire period?

A Yes, he was.

Q And again, this is kind of the same sort of questions I asked you about Mr. Bowling, did you find that Mr. Herr had a good grasp of your work? Did he understand what kind of cases you were working on and did he kind of appreciate the effort that you were applying to the task?

A Yes, he did.

Q All right. And did he ask you questions about your work?

A Yes, he did.

Q And did you give him periodic updates?

A Yes. Joseph, I mean, this is my opinion, he was a micromanager, so he knew.

Q Okay.

A I think he would agree with that, too.

Q Micromanager in a good way?

A Exactly. He is a nice guy.

Q He is. Yeah. We have met Mr. Herr. Did he have a good grasp of the technical issues that were being presented by the cases?

A Yes, he did.

Q Would it have been better than Mr. Bowling, in your opinion?

A In my opinion, he was more technically proficient.

Q Okay. Now, why did you go from Group 7825 to Group 7822?

A I was reassigned.

Q Okay. So you didn't volunteer for that?

A No. I just -- Cindy just had a major change in personnel, and she just moved us around.

Q All right. And did she make any assignment regarding Mr. Herr about that time that she put you into Group 7822?

A I think so, but I don't specifically -- I don't remember.

Q Okay. And then we are going to come back, again, and talk about some more of your experiences in 7825. But just moving back in the timeline, to understand your experiences at the IRS, prior to your assignment to Group 7825 what organization did you work in?

A I worked for Ken Bibb's group. It was Group 7830.

Q And did that group have a specialty?

A We worked consistency, and I can't think of -- I think they were TAG cases. They had morphed into other terms.

Q Was that considered to be the TAG unit or the TAG group?

A Yes, it was.

Q And TAG is an acronym that stands for what?

A Touch and go.

Q And what were the touch and go cases? What are touch and go cases?

A A lot of -- based on my memory, this was 5 years ago, at that time, they were cases that involved issues that, you know, a lot of times they appeared to have some fraud involved, a lot of times they appeared to be controversial.

Q Would they also include things like terrorism?

A Yes.

Q And abusive tax avoidance transactions?

A Exactly.

Q Okay. And I know this is going back a ways.

A Yeah, those terms are jogging my memory.

Q Okay. You say 2008. And when did you start with the TAG?

A August of 2005.

Q Okay. So you spent roughly 3 years in there?

A Correct.

Q Okay. Now, was it important for the EOD agents that were outside of the TAG unit to be aware of the existence of applications or applicants who might submit, you know, applications that included -- for example, were fraudulent or that included abusive tax avoidance schemes or where the applicant might have been, you know, connected to some kind of terrorist organization?

A It was very important. I would agree with that.

Q Okay. And why would that have been important for the agents to know?

A For numerous reasons. First of all, to ensure that -- for consistency, especially for ATAT and to make sure these cases were

worked correctly. And educate the other revenue agents that these cases existed. And if they did exist, again, they would send them to our group, and agents in our group would screen them to ensure that they met that criteria.

Q Okay. And once they screened the cases, assuming that -- and they concluded, for example, that a particular case, in fact, did meet the criteria, was the case then -- was the case put back into general inventory or was it retained by the TAG group?

A Well, it was retained. The way our inventory worked is each group at that time had a particular dummy number. So the case was put in a dummy number until it would be assigned to an agent. So our dummy number was unique to that group.

Q Okay. And would the agent who received the TAG case be in the TAG unit?

A At that time, yes.

Q All right. And how were employees in EOD made aware of the existence of these cases?

A There was a spreadsheet.

Q Okay. And that's commonly referred to as the TAG spreadsheet?

A Yes.

Q And what information was contained in the TAG spreadsheet?

A The information, based on my memory from, I guess that was 5 years ago, it would have like an acronym or a code name that we would use. I am trying to remember. There were three or four different

things on the Excel spreadsheet. I just remember the name and -- that's all I remember is the name or the -- like it would have a number. And then it would have the name and I think a description. Maybe a date of when they were first identified.

Q And it would be a description of the issue?

A Correct.

Q Would there be any instructions to the agents regarding how the case should be handled?

A Right. At that time, all the cases on that spreadsheet came to 7830.

Q I see. Okay. But what if -- what if an agent in 7825 -- and I don't know, if 7825 existed then, but let's just say assuming it did, they pulled a case from general inventory and then they looked at it and saw, look, this involves an issue that's on the TAG spreadsheet. What did that agent then do?

A They would inform their manager and mark on their CCR, and then they would forward it to 7830. And then somebody in 7830 would look at it to make sure it indeed actually met, you know, the criteria on that spreadsheet. And if it did, it would stay. If it did not, it would go back.

Q Okay. Now, what about the screeners? Did they also use the TAG spreadsheet?

A As I remember, yes, they did.

Q Okay. And how did they use that spreadsheet?

A In the same way you just demonstrated or illustrated. They

would look at it. And if, like you said, terrorists, if, say, an organization was operating in Syria, we will say that would come to our group and it would -- it would directly come to our group.

Q Okay. And who maintained the spreadsheet?

A At that time it was Nancy Stuerenberg.

Q And was she an EOD agent in the TAG unit?

A Yes.

Q I am sorry, her last name?

A It's Stuerenberg. I can spell that if you want. It's S-t-u-e-r-e-n-b-e-r-g.

Q And how often was the TAG sheet distributed to the EOD agents?

A Periodically.

Q Was it on, like, a monthly schedule perhaps?

A I don't remember.

Q And what kind of process existed for changing the information in the TAG spreadsheet? Do you remember?

A No.

Q Do you know who approved changes to it?

A No, I do not.

Q Was there a process in the TAG group where if let's say you saw a case and from general inventory, and it looked like, well, this is suspicious, it might involve fraud or abusive tax avoidance schemes or terrorism, was there a process where you could bring that to the attention of Mr. Bibb for possible inclusion in the TAG spreadsheet?

Q Would that have been Mr. Herr?

A I don't remember. I was transitioning. It was either Mr. Herr or Mr. Bowling. It was transitioning groups.

Q Okay. But this would have been in April, so you were -- I think in April you were still in 7825?

A I think so.

Q Okay.

Mr. Weinberg. She said April 30th, which is --

Ms. Hofacre. Right. So it was right -- I mean there is -- it's gray in my mind. I was transitioning?

BY SFC [redacted]:

Q Sure. Understood. And we are going with back 3 years. It's hard to remember all these things.

A Uh-huh.

Q Now, when you were assigned these cases did you receive a number of them?

A April 30th I got around 20 of them.

Q Okay. And these were the cases that had been received in EOD in the preceding months?

A Yes, they were.

Q I guess the cases Mr. Muthert had made reference to then?

A I believe they were the same cases.

Q Sure. And do you know if they were in a queue waiting for assignment, or had they already been assigned? Do you know what status they were in prior to your receiving these cases?

function in these cases as I understand it. Is that correct?

A It morphed into that.

Q Okay. So when you got an application, why don't you just walk me through, what did you do with each application that you received as you received those applications.

Mr. Weinberg. You are talking about from Tea Party groups or from other groups?

SFC No, let's just talk about all of them.

BY SFC :

Q So, you know, you have gotten initially Tea Party ones, and you say you had some from the liberal or progressive organizations later. What did you first do when you got the case?

A Well, it kind of -- the whole process evolved over time. I was assigned the cases on April 30th. And then I was told around the same time that I was to coordinate these cases with EO Technical. And in the first two weeks of May, I was notified that I was supposed to talk with Carter Hull.

Q Okay.

A So around the middle of May, I called him because I had learned previously that he had been assigned a couple of these cases.

Q Okay. Can I just stop you there? Actually, what I was trying to get at is what tasks did you perform? Let me put it to you this way. Did you actually review the applications? Did you look at each one and perform kind of a secondary screening function to make sure that they were in fact a Tea Party or a political advocacy case?

Mr. Weinberg. See, you are lumping those two together. I think you need to ask her whether -- during the time she was there she didn't necessarily treat the Tea Party cases or any other cases the same.

BY SFC [redacted]:

Q Right. And that's kind of where I am trying to get at essentially how you treated the cases. Let me just deal with the Tea Party cases then. Okay. We will walk back. And this will be May --

A All right.

Q -- okay, of 2010. And you received a Tea Party application. Did you perform a secondary screening function on that case?

A I did, but at that time they were -- I would say close to 100 percent of them were called Tea Party. So there was really no need, because they were self-identifying based on their name.

Q Okay. And when you began to receive the applications from the groups, the liberal groups or the progressive groups, did you also perform a secondary screening function or task on those applications?

A I didn't start receiving those applications until July. The only screening that I performed was very limited, to make sure they either met or did not meet the Tea Party criteria.

Q Okay. And what was the Tea Party criteria?

A Well, a lot of times Tea Party was in their name, 9/12 Organizations, or Patriots. Some of the activities would be kind of Tea Party-type rallies. A lot of the applicants would educate -- I am sorry, educate the public on the Constitution, the Bill of Rights, those types of activities.

Q Okay. So if a case had that -- those indicators in it then, is that a case you kept, you retained and began to develop?

A That is correct.

Q So just to draw a contrast now, so in July or in the subsequent months, if you received an application from an organization that was liberal or progressive that the screeners had sent to you, you know, what did you do with that case? Did you retain that case? Did you send that case back to general inventory? What was the process that you employed for working that case?

A Well, if it came from an agent and if it didn't meet the Tea Party criteria, I would send it back to that particular agent. If it came from a screener and they thought it met Tea Party criteria, and if I determined it did not, it went to general inventory.

Q Okay. So is it fair to say, and correct me if I am wrong, is it fair to say then that the Tea Party cases or the cases that met the Tea Party criteria you screened and then you retained if they met the criteria and you worked them through -- by developing them? The progressive and liberal cases didn't meet the Tea Party criteria, so those went either back to general inventory or went back to the agent that had sent them to you. Is that a fair statement?

A I would say 80 percent.

Q Okay. Where did I go wrong?

A Well, you seem to, I guess -- you seem to imply that only progressive cases went back. I sent cases both with conservative leanings and liberal leanings back to general inventory.

Q Okay.

A I mean, obviously, we were -- we were keeping the Tea Party cases, but even if an organization that leaned to the right were outside the parameters of a Tea Party criteria, that went back too.

Q Okay. So as I understand it then, only the cases that met the precise Tea Party criteria were retained in 7822 and worked by you. If you had, let's say, a conservative organization -- is that correct?

A Yes.

Q All right. And so if you had a conservative organization but it didn't meet the Tea Party criteria, and it didn't have Tea Party in the name, 9/12, Patriot I think you said --

A Uh-huh.

Q -- or advocate for what was it that you said, smaller government?

A Smaller government, Bill of Rights, those sorts of things.

Q If it didn't say those things, but it was still a conservative organization, then that either went back to general inventory or to the agent that referred it as well?

A Correct.

Q Okay.

BY SFC [redacted]:

Q And I guess just to clarify, when you said that the Tea Party applications went on for development, was that full development?

A I kept them for full development at that time.

Q Okay. And the cases that were non-Tea Party cases, what

type of development, if any, would those receive?

A I can't answer that.

Mr. SFC . I have got that. I am going to --

Mr. SFC . Cool.

BY SFC :

Q So you can't answer that. That actually was my next question, if they went back in general inventory then they were not -- they were in the normal pipeline to be worked and for decisions to be made on them. Is that correct?

A Yes, it is.

Q Okay. So they didn't get hung up or held up in this collection of Tea Party cases?

A Correct.

RPTS HUMISTON

DCMN SECKMAN

[11:02 a.m.]

Q All right. And did -- you know, and actually, as I note here, we're at an hour mark. I just will offer you the opportunity now, we can just --

A I'd like to take a break.

Q Okay.

A Is it okay with that?

Q I'm perfectly fine.

SFC [redacted]. Let's do it.

SFC [redacted]. Why don't we go ahead and let's say 5 minutes?

Ms. Hofacre. That's perfect. I'll just take a --

SFC [redacted]. Okay?

Ms. Hofacre. -- stroll around the hall?

SFC [redacted]. We're off the record.

[Recess.]

BY SFC [redacted]:

Q And, Ms. Hofacre, you think -- I think you said earlier that the screeners were performing the functions in these cases and you were doing the secondary screening. This is on the Tea Party cases. Right, roughly?

A It morphed into that.

Q Okay.

A Essentially, they were all Tea Party cases, so there was

really no secondary screening function.

Q Okay. Do you know the criteria that the screeners were using to select the cases?

A Just by hearsay.

Q Okay. And what do know by hearsay?

A Essentially, of course, Tea Party was in the name, that was a big indicator; 9/12 was in the name; "patriots" may have been in the name; "liberty" in the name, those types of indicators.

Q And essentially, the same indicators you were using when you were looking at a case?

A Exactly.

Q Okay. Now, did anyone instruct you, I guess maybe Mr. -- if we're talking about May, it would have been Mr. Bowling or maybe Mr. Herr or anyone else instruct you to send the applications that didn't meet this criteria, didn't have these magic words in them, to send them back to the agent or to the -- to general inventory?

A I don't recall getting any such applications in May.

Q Okay. No, beyond May. Let's say April or June.

A In July, I remember Steve Bowling specifically instructing me that if they didn't meet those criteria, they go back.

Q And how did Bowling become aware that you had these cases? Do you know?

Mr. Weinberg. "These cases" being?

SFC . I'm sorry. Yeah.

BY SFC :

Q The cases that didn't meet the criteria.

A He -- managers are aware of every case that comes into the group, because there's really, really, you know, strict inventory controls, so he knew of every case I got, not -- maybe not intimately, but he knew what I was getting and -- because of the sheer numbers of them, and I would advise him that, I mean, you know, I might have gotten, say, 15 cases today, that if they did not meet those criteria, they went back.

Q Okay. So -- but -- and Bowling would know essentially, what, the name of the applicant organization?

A As a manager, he'd have an overview. Again, I mean, he had other things he was doing, so he would -- he would know, but I was just one of maybe 10, 15 employees.

Q Well, would Bowling approach you and say, you know, you've been assigned some cases, and I know some of them don't meet the Tea Party criteria, send them back, or was that --

A It was more I initiated.

Q Okay.

A I mean, he knew the number of cases I was getting, but he made it very clear that if they didn't meet those criteria, they were going -- they were not remaining in 7822.

Q Okay. And so your understanding was the focus was strictly on -- the focus here, the screening and the review here was strictly on Tea Party cases or cases that met this Tea Party criteria?

A That's how it was communicated to me by Steve.

Mr. Weinberg. If you had a case that didn't meet the Tea Party criteria, did you talk to your manager about that or --

Ms. Hofacre. I would discuss it with him, especially if they were -- especially if -- a lot of times, I mean, if an agent -- again, I was a dumping ground. If an agent was notorious for trying to unload their cases, I would tell him. Or if -- if the cases were, like, I don't know -- a couple that -- I had a couple that agents tried to send back to me once or twice, I would tell him about that or tell him the types of issues that were coming to me that didn't meet it, but other than that, no.

Q Okay. So you initiated the -- the dialogue with Mr. Bowling and then received some direction as to what to do with these cases that didn't meet the criteria and --

A In that -- in that context, yes.

Q And then you followed his directions?

A Yes.

Q Okay. All right. Now, I think earlier you had mentioned that you -- you had contact with Mr. Hull, Chip Hull, in EO Technical. Is that correct?

A Yes. I contacted him the middle of May.

Q And was EO Technical assisting EO Determinations with the Tea Party cases?

A The only person I knew involved at that time when I first contacted him was Chip --

Q Okay.

A -- Carter Hull. And then on a conversation subsequent to my first one, I had learned that Grodnitzky had played some kind of a role in it.

Q Okay. All right. But -- but was it your understanding that EO Technical was kind of assisting EOD in this -- in this --

A In a general context, yes.

Q Okay. And assisting them with the development and the processing of the Tea Party cases, is kind of the end of my question.

A Yes.

Q Okay. All right.

Mr. Weinberg. Well, just to be clear, you testified earlier that you were instructed to coordinate with Chip Hull.

Ms. Hofacre. Right. And I don't know if it was expressed in the way you just stated it, but the way it was advised to me, I couldn't make any decision or do anything without EO Technical/Chip Hull's involvement?

Q Okay. And Mr. Hull is located in Washington. Is that correct?

A Yes.

Q Okay. And did you contact Mr. Hull, or did he contact you?

A I was told to contact him.

Q And when you spoke to him, do you recall what you told him or what he may have told you about the -- about this issue, the Tea Party cases?

A I'm sorry. I didn't understand what you were asking.

Q Yeah. When you contacted him and spoke to him, do you recall what he told you about the Tea Party -- the Tea Party cases?

A There -- there was conversation, so I'll summarize --

Q Yeah.

A -- based on my recollection. When I contacted him, either he told me or someone had told me that he had been assigned a few of these cases, and we talked about in general terms the development of these cases, and I had asked him to email the letters he had sent out to his applicants to use as a foundation for my development letters.

Q Okay.

SFC [redacted]. And I'm sorry. Did you want to say something, Mr. Weinberg?

Mr. Weinberg. No, no. If you were going to summarize the conversations, you should --

Ms. Hofacre. You want me to keep going?

SFC [redacted]. Well, that actually brings me to the point where I was going to ask you the next question --

Ms. Hofacre. All right. I don't know how -- how much further I need to go?

SFC [redacted]. No. That's fine?

Mr. Weinberg. I just wanted the record to be clear that she didn't finish summarizing those conversations.

SFC [redacted]. Clearly, clearly understand. We'll try to get to --

Ms. Hofacre. All right.

SFC [redacted]. -- to the rest of the conversations with Mr. Hull as

we work through the timeline here.

BY SFC [redacted]:

Q Okay. So did you actually receive these development letters that Mr. Hull had prepared in his cases?

A He emailed me those letters.

Q And did you use those, then, to -- to draft development letters in the cases that you were assigned?

A Yeah. I used them as a tool to ensure that my cases that I had, that we were looking for the same thing to get the same information. I didn't just kind of cut and paste, you know, blindly. I actually -- I developed the case, used his as a foundation and made up my own questions.

Q Okay. And -- and we'll look at some of those questions in a moment, but I'm -- what areas were -- did Mr. Hull kind of focus in on his -- in his questions?

A I just remember the first letter he sent, maybe -- activities, primarily, and a lot of times for activities, you'd want their Web site, you'd want their literature, you might want to know some board member data. That's all I remember concerning his letters.

Q Okay. And do you recall the cases that he sent you by name? Was it --

A Albuquerque Tea Party, and I believe it was Prescott.

Q Okay.

A And then later -- I know he was assigned American Junto.

I'm not sure if I got that letter or not.

Q Okay. All right. And once you drafted your development letters, did you -- what did you do with them next?

A Once I drafted them, I was told to email him the letters in order to ensure that the questions were adequate, and at the same time, I would fax him a copy of the file so he could use the file, which contained the 1023 or 1024 application, all supporting documents, and he used that to ensure that the letters corresponded to the file and that I had asked the adequate questions.

Q Okay. And -- very good. And when he took a look at your development letters, did he suggest revisions?

A In general terms. I may have touched on it earlier that I asked one question concerning the applicant to provide copies of all agreements and contracts, and then Steve Grodnitzky put a different spin on it, and that's when I found out Grodnitzky was involved with something.

Q I see.

A You know, I had something, such as provide copies of all agreements and contracts, and then he added the -- the clause that you are currently enter -- claim enter into, something of that -- you know, that context.

Q Do remember if Mr. Grodnitzky was involved in just one development letter or multiple development letters?

A I don't know. I just know that one case.

Q Okay. And did Mr. Hull, I guess, going back to this, asking

about revisions, did he revise the questions that you -- that you had asked in some cases?

A I don't remember.

Q How about, did he suggest additional questions?

A He may have. It wasn't -- it wasn't substantial.

Q And did he write any of the development letters for you? Did there ever come a point in time where you -- you know, you just shipped the application and the supporting documents to him and he gave you a draft development letter for your consideration?

A Never.

Q Okay. So you always initiated by drafting the letter?

A That would be correct.

Q Okay.

[redacted]. [redacted] if I could ask a question.

[redacted]. Yes. Go ahead, please.

BY [redacted]:

Q Who was it that told you to send copies of the development letters to Mr. Hull?

A Mr. Hull advised me of that.

Q I see. So it wasn't your manager, Mr. Bowling?

A Mr. Bowling advised me to coordinate with EO Technical, and EO Technical/Mr. Hull advised me to provide him the copies of the letters before they went out.

[redacted]. Okay. Thank you.

BY [redacted]:

Q Did -- and were you keeping Mr. Bowling apprised of this process when you were --

A Yes. He knew the whole process.

Q Okay. Now, how did Mr. Hull communicate his suggestions to you? If he looked at a development letter or if he reviewed the application, what was his preferred method of contacting you?

A Over the phone.

Q And did he -- did he contact you multiple times during the day on some occasions?

A Multiple -- I mean, again, it was -- this took place over numerous months.

Q Sure.

A And it would maybe be twice a week at first. And then I kept sending him letters, and by the beginning of October, when I left that position, I hadn't heard from him for weeks.

Q When did you stop hearing from him? I'm sorry.

A My best guesstimate would be August 2010.

Q Did you try to call him or --

A Yes, I did.

Q Did -- did you actually speak to him or --

A I don't remember speaking to him. I may have emailed him. I don't --

Mr. Weinberg. Did you speak to him after -- after August?

Ms. Hofacre. I know I provided him copies of draft letters in September 2010, but I never got any feedback from him.

SFC [redacted]:

Q So did, like, communications cease on his part after August 2010?

A Yes. I would say that.

Q So you had August, September and October essentially you didn't hear from Mr. Hull?

A Correct.

Q I think you indicated that, just so I understand it, you also sent him the applications. And my understanding was that he needed the apps to make sure that your questions were on track and you were getting at the right kind of issues that required development. Is that fair?

A That's a fair statement.

Q Okay. And then, ultimately, did any of the applicant organizations respond to the development letters?

A I received numerous responses.

Q And I guess I left a step out of here. Presumably after Mr. Hull gave you comments and you issued those development letters, right?

A I mailed them out, yes.

Q And -- okay. And that you would have mailed them to the applicant organizations?

A [Nonverbal response.]

Q And then when you received the responses, what did you do with those?

A I -- I read them. And then, after the first few responses, I called Mr. Hull and consequently or subsequently he told me to fax him a copy of the responses.

Q Okay. And would this conversation have occurred before August, then, of 2010?

A June.

Q Okay. Okay. And you faxed him a copy of the responses, right?

A Yes.

Q And do you know if he reviewed them?

A I don't know.

Q So he never called you back and told you anything about the responses?

A Oh, I called him because, I don't want to jump ahead, but taxpayers were calling me to find out the status of their applications, so I would call him to find out what was going on, and --

Q What did he say?

A He just told me they were under review, and that was it.

Q Okay. And would -- again, this would have been prior to August of 2010?

A The process was ongoing till I left.

Q Okay.

A I mean, I received phone calls all the time concerning these -- these applications.

Q Yeah.

Mr. Weinberg. But I think he's asking you about your conversation with Mr. Hull that you were just describing.

Ms. Hofacre. Those were in -- that was in June.

Mr. Weinberg. Okay.

BY SFC [redacted]:

Q Did you have any recollection of the application, the name of the applicants?

A There were so many of them.

Q So many of them, you're not sure. Okay. I mean, you can't keep track of 40 applications?

A And then it morphed into more than that, and I -- sorry.

Q Okay. No. That's perfectly understandable.

Okay. So then, now you've received these responses and you've sent them to Mr. Hull and you haven't heard from Mr. Hull, and essentially didn't hear from Mr. Hull again right until the -- because you left the Group 7822 in October, and you hadn't heard from him between August and October.

A For the most part, no.

Q Okay.

A I'm -- I don't believe I heard from him at all.

Q And when you had these responses, then, did you go to Mr. Bowling, for example, and ask him for any guidance?

A Well, I -- I informed him that I -- I was -- I mean, I was inundated with these cases and the responses. And he -- I remember one comment in August, he just said we're -- we're waiting on their

advice, "their" being EO Technical, and that I have emails and essentially an audit trail to show that we've been trying to, you know, resolve these issues.

Q Okay. And from August to October, did you continue to send out development letters?

A I wrote numerous development letters, and I had actually emailed them to Mr. Hull and faxed him the copy, because that -- that was my guidance from EO Technical and from Steve Bowling, because I was sitting on these cases.

Q Sure.

A And it was -- it's peculiar, because in EO Determinations, we have a really strict inventory system, and at that time, we had 5 days to review the case and another 5 days to prepare a letter. So, on one hand, I'm under these parameters, and on the other hand, EO Technical is stalling me. So I continued writing the letters, because, you know, I was at -- it was a disconnect there, so I continued writing them.

Mr. Weinberg. You were writing them and you were --

Ms. Hofacre. I never sent any out.

Mr. Weinberg. You were sending them out to Mr. Hull.

Ms. Hofacre. Correct.

Mr. Weinberg. Right.

Ms. Hofacre. I never -- I never sent any letters out that did not go through EO Technical or Mr. Hull.

BY SFC [redacted]:

Q Okay. When you received the -- the responses back -- and

you reviewed them, correct?

A Yes, I did.

Q -- did you feel that at that point that you had the technical expertise that was necessary in order to make a judgment as to whether the exemption should be approved or denied?

A I -- I did have the expertise to determine, you know, where -- what the -- where the application should go from there.

Q And -- but my question relates to whether you felt that you could, based on the -- on the responses that you received from the development letter, whether you were comfortable saying, okay, I can approve this one or this one ought to be denied. Did you ever get to that point? Did you feel --

A Well, there were some like that. There was -- a decision could have been made from multiple responses. Other cases probably required more letters because the responses were not complete or they raised other things that needed to be, you know, developed.

Q Okay. So tell me if this is a fair statement, then. But for this process where you had to submit the -- the development letter to Mr. Hull or perhaps -- and get Mr. Hull's approval on what the next step was, but for that process, could you have decided some of these cases and whether they had been a denial or a grant of the exemption request?

A Yes.

Q Okay. And that would have been in that window of time that you were in 7822, which would have been May to October of 2010?

A Right. There was enough information there to make a determination, whether or not positive or adverse.

Q But you were prevented from making that?

A I had no decisionmaking authority.

Q Okay. And typically you would have that authority as an EOD agent, right?

A Right. Like I said in my interview in May, this particular project and the procedure in this was so peculiar and so odd that I was -- I had no decisionmaking authority. There was no -- no freedom to do anything.

Mr. Weinberg. But just to clarify, your normal decisionmaking authority, you would make a recommendation to your -- to your manager.

Ms. Hofacre. Right. We'd make a recommendation, or if -- or if it was an adverse, there were some other hoops you had to jump through, but normally, you would make a recommendation.

BY SFC [redacted]:

Q And that recommendation starts with the EOD agent typically in a normal case?

A Yes.

Q And in your experience, and we went back a long ways, you've been -- you were a pretty seasoned --

A Uh-huh.

Q -- specialist and an experienced specialist. In any other context or instances in the period of time you had been in EOD as an agent, did you ever work with EOT?

A Not to the extent in here. I would -- first of all, we couldn't just arbitrarily contact them.

Q Right.

A We had to have management approval to contact them, and usually, it was just to ask a question or two, not to the extent that this project warranted.

Q Okay. So this process that you've -- that you've outlined where you would get the case and you would review the case and you would draft the letter and then you would send it to Mr. Hull, and Mr. Hull would send it back to you, and then you would release it, then you would get the response and you'd send the response to Mr. Hull.

A Yes. Exactly.

Q Is this -- is this process a usual process, in your experience as an EOD agent in the -- and the, I think it was probably almost 11 years that you'd been an EOD agent at the time that this process was put into place? Is that a usual -- something that was usual in your experience?

A I had never seen that in my experience before or since then.

Q And then from -- from April to October, when you left EOD, about how many cases would you estimate that you handled in the fashion that I just described or as you just described and I just summarized?

A Are you talking just Tea Parties or the whole gamut here?

Q Let's just talk about the Tea Parties.

A I don't know, 60 to 75, we'll say.

Q Really. Okay. And then you say other cases, there were

other cases also that you handled in this way?

A Well, the way I understood your question, I thought you meant from a secondary screening point of view.

Q Okay. All right. Let me be more specific. I mean, what I was really referring to were the Tea Party cases in the way -- that process of you reviewing them and sending them to Mr. Hull and that entire mechanism that was put in place. You think about 60 to 70 of them?

A That's a reasonable estimate.

Q All right. And I think earlier you said that, on a number of occasions, applicant organizations had contacted you in this period of time and asked, you know, what's the status of my application? Is that -- is that correct?

A Yes, it is.

Q Okay. And what was it that you told them when they asked you?

A I told them the same thing, that the application and their responses were under review.

Q Okay. Was that technically correct in all those cases?

A I mean, yeah, within the -- you know, semantically, it was correct.

Q Now --

SFC [redacted]. Can I just --

SFC [redacted]. Yeah. Go ahead.

SFC [redacted]. Who -- who told you to say that they were under

review?

Ms. Hofacre. Well, Steve Bowling and Chip. I mean, Steve in more of an official capacity, and Chip just as his role in the EO technical.

BY SFC [redacted]:

Q Now, how did you feel personally at that point in time when, you know, you've -- people are calling you and saying, what's the status of my application? Oh, it's under review. You've got these files and you've issued development letters in some cases, you've gotten responses and you can't make that next -- that next move, which would have been recommended determination. How did you feel about that process?

A Well, it was initially very frustrating, because in June when I provided their responses, I expected a quick turnaround time, but as time progressed and these taxpayers were -- I mean, I was frustrated, the taxpayers were frustrated. And by the end of June, I just -- I was getting really irritated that I was in a position not to make a decision, but yet I was the front man or front person for these cases. And I was the go-to person for the taxpayers, and like I think I made in the newspaper, it was like working in lost luggage. I mean, you know, it was like you never had a good day. I dreaded when the phone rang. I mean -- and they called back, I mean, multiple times. So, by the end of June, I decided that I -- I decided to look for another job.

Q Okay. Now, was some of this frustration you described, was

it precipitated by your inability to contact Mr. Hull and get guidance from Mr. Hull?

A That was a part of it. I mean, part of it was I was in a no-win position. Here I am being, you know, inundated by taxpayers, and they wanted to know what was going on. And at the same time Mr. Hull wasn't responsive, and I was in a no-win position.

Q Okay. Now, this frustration that you had, did you express this, your concern or your frustration to Mr. Bowling?

A I believe I did, I did to Mr. Bowling, that it was just in a -- I was in a no-win situation. And I also, I believe, I expressed my concern that, you know, these cases had been in the newspaper for several months and that it's funny, I was the front man, I mean, I was perceived as the rogue agent, which was interesting how that came, you know, into play 3 years later, and I didn't want to be perceived as this rogue agent, so it just wasn't a comfortable place to be.

Q Okay. Did Mr. Bowling offer any kind of guidance, or did he tell you -- what did he tell you?

A There was no solace there. I just -- I didn't get any kind of, you know, warm fuzzy feeling, so -- basically just process them and, you know, it'll -- it'll play out.

Q Okay. So he directed you to keep on working the cases?

A Exactly, and just, you know.

Q Was the expectation that EOT was going to somehow weigh in on this and kind of clear up the -- the logjam?

A At that time, I think that was our expectation.

Q Okay. And I think you mentioned there in your -- in an answer a few moments ago that this sense of frustration prompted you to look for employment in another component?

A That is correct.

Q Okay. So you said in June, I think, that you made an application?

A Well, I didn't put the application in until the middle of July, but I made the decision around the end of June that it was not a comfortable place to be, you know, for two reasons, or multiple reasons, the one being that I had no autonomy, and secondary, because of the nature of these cases, the high profile characteristics, that it could really have, you know, imploded.

Q So you felt like you were walking around with a bull's eye on your --

A Exactly. Walking through a mine field.

Q Blind folded.

A Exactly.

Q Okay. All right. And this -- the move that you made to Quality Assurance, was that a lateral move or a promotion?

A It's lateral, but there's an interview process. I had to compete against three or four other agents.

Q So it was competitively posted and you -- you won the position?

A Well, there were two of us that won, but, yes.

Q Okay. Okay. Very good. Okay. I'd like to show you a

document at this point. We're going to get into the fun stuff.

A Okay. Yeah.

Q It's all easy. I'll mark this one as Exhibit 1.

[Hofacre Exhibit No. 1
was marked for identification.]

BY SFC :

Q Tell me when you're --

A I'm ready.

Q Okay. Very good. Yeah. And before I ask you anything, I just want to preface our discussion about the document by saying that it was produced by the IRS to the committee as part of an application from a Tea Party organization, and the document that I've handed you consists of some selected pages from the -- from the case, so it's not the entire case file and it's not every page in -- in the sequence in which these pages were produced by the IRS.

Do you recognize some of these documents?

A I recognize the first one. I don't recognize the one that Mitch Steele mailed out.

Q Okay. Now, let me just take you to the first page, the cover sheet. It appears here that you had submitted to Mr. Hull the form 1024 for the SFC . Is that right?

A That is correct.

Q Okay. And so that -- that that to me tells me that the application from the SFC was for a (c)(4) status, tax-exempt status. Is that right?

Q Sure.

A -- 75 days, but because of our inventory procedures, I was still getting these cases, and instead of just letting them sit, I still did what I would do as a revenue agent. I would read the case, write the letter, provide Mr. Hull a copy of the file via fax and then provide him the letter, even though I wasn't getting any feedback, it was to put the ball in his court and not keep it in mine.

Q All right. So now I understand. Okay. So you sent it to Mr. Hull, and he didn't respond, you -- then you issued the development letter. Is that correct?

A It never went out. There were a glut of these letters in EO Technical. I mean, there were multiple letters that were sent out October the 9th. I'm sorry. That were sent to Mr. Hull, but they were never sent to the taxpayer.

Q Okay. But this letter --

A It never made it to the taxpayer.

Q You say this letter was never sent to the taxpayer?

A Not by me.

Q Okay. I -- all right. And I would represent to you that upon going through the file, that I actually have seen the responses to this development letter, so that the taxpayer did receive this letter, but -- but you're saying you didn't issue this letter?

A No. I did it --

Q Okay.

A -- to follow our procedure. Again, that was one reason I

left in my frustration.

Q Okay.

A On one hand I have to develop the letter and send it out in 5 days, but on the other hand, Mr. Hull or EO Technical was stonewalling me.

Q All right. I -- all right. I understand.

A Sorry.

Q No. The confusion is borne by the fact that I know the letter went to the taxpayer.

A This letter did?

Q Yeah.

Mr. Weinberg. The letter sent by Elizabeth Hofacre?

SFC [redacted]. Yeah.

Ms. Hofacre. I don't remember providing it to the taxpayer. Unless he gave me feedback. I -- when was it -- I honestly don't --

SFC [redacted]. I didn't -- yeah. I didn't re- --

Mr. Weinberg. October.

BY SFC [redacted]:

Q Right. I didn't reproduce the entire file, I don't have access to it, but -- but the -- but it's okay. I don't -- I mean, we don't need to belabor this point.

I -- one of the questions I had for you, and I do -- would like to walk you through the letter a little bit. The first issue I really had was the -- the October 9 and October 30 dates, and that's 3 weeks. Is that standard to provide the applicant a 3-week period to respond

letter that did go out to the Georgia Tea Party.

SFC [redacted]. It may. I believe that it did. I think that first column, Mr. Weinberg, that letter on file reviewed means that that draft letter was sent to Mr. Hull to -- for his review, and then the next column would be letter on file discussed, which apparently doesn't have any annotation there, so -- and that would have been discussed generally with Ms. Hofacre, if I understand Mr. Hull's document. And then, of course, reply reviewed and reply discussed are the other columns. So, yes, this certainly would suggest at least as of October 18th that headquarters here, I believe Mr. Hull, had reviewed the Georgia Tea Party letter, but this chart certainly doesn't indicate that it had been discussed.

Mr. Weinberg. No. And all I'm saying is --

SFC [redacted]. Yeah.

Mr. Weinberg. -- it could be that neither letter went out or that --

SFC [redacted]. Yeah.

Mr. Weinberg. -- but there's -- but she was not sending letters out that he had not approved.

SFC [redacted]. Yeah. I under -- I understand. Yeah. And I can appreciate that.

Ms. Hofacre. Another thing on here that I find interesting is all the dates are, like, May, but it -- it's not clear whether the first 20 cases are on here. There don't seem to be that many pre-July 1st.

BY SFC [redacted]:

Q No. You're right. Actually, many of them seem to be from --

A So I -- I mean, it's -- I don't -- based on my knowledge, I'm not sure if it's complete --

Q Okay.

A -- but I don't know if that's relevant.

Q Okay. No. I just -- that's fine. And -- and I just -- in looking at this list, I think you indicated this before, and I don't want to belabor the point, but these essentially are Tea Party cases, 9/12 cases or conservative cases. Is that correct?

A Yes, that would be correct.

Q All right. And there's no Emerge or Acorn or liberal or progressive groups in this list that you're aware of, right?

A No, there are not.

Q Okay.

RPTS MCKENZIE

DCMN SECKMAN

[12:02 p.m.]

BY SFC :

Q And that's because the criteria that that was being used focused only on Tea Party, patriots, 9/12, conservative organizations; right?

A Yes, that is correct.

Q Okay. We are done with this document. It was a quick hitter.

It's a little after 12:00. I offer you the opportunity now, before we get into the next document, would you like to have a short break before we get into the next document?

A Sure. Just a couple of minutes.

Q Okay. Very good.

[Recess.]

SFC . I would like to show you another exhibit. We'll mark this one as Exhibit 3. And I apologize for the way it's put together.

[Hofacre Exhibit No. 3
was marked for identification.]

Ms. Hofacre. This is interesting.

SFC . Let me just say, about this exhibit, this is the exhibit, as produced by the Internal Revenue Service to the committee. The only thing I did to it is I added those dividers that say "Tag" and "Emerging Issue" and so forth. And I did that because I couldn't

get the document to print with those tabs identified. So this is really just something I added to the document to ease our discussion about it today.

Mr. Weinberg. Are you saying those headings were on it, but you couldn't read it?

SFC . Exactly. It displays on the Excel spreadsheet. And the tabs were named at the bottom of the sheet, but I couldn't get that to print with those tabs. So I had to create them myself.

Mr. Weinberg. Do you understand what he is saying?

Ms. Hofacre. I believe so.

BY SFC :

Q Are you ready?

A Yes. I think so.

Q Okay. Next, I would like to discuss with you your involvement in the development of a BOLO spreadsheet.

Prior to the creation of the BOLO spreadsheet, how were EOD agents made aware of issues and trends in cases that they needed to know about in order to perform their jobs?

A Well, there are various spreadsheets or worksheets or emails. What it looks like that you have in this particular attachment was the consistency spreadsheet.

Q Okay. And so prior to the development of this document -- and you know, agents -- I think you mentioned email?

A Well, there were emails, and then there was also a spreadsheet, like we talked about earlier, the tag spreadsheet.

Q Okay. And I just wanted to focus for a moment, aside from this tag spreadsheet with these emails, who was it that was sending them out?

A I remember usually -- I remember Nancy Steurenberg but it always went through management, whatever agent was in charge of the spreadsheet. I mean, years ago it was Cynthia Robinson, Nancy Steurenberg.

Q But aside from the tag spreadsheet, which is what I think you are referring to, was there a process of informing agents about cases through emails?

A Right. And again, I -- remember, I thought they came from management, from either Cindy or someone of her stature. Or screen -- I don't remember who specifically.

Q Okay. So your sense is that those emails were either issued or approved by Cindy Thomas?

A Yes.

Q Okay. Do you know the process through which those emails were developed or how --

A No.

Q -- a case would get on an email?

A I don't know.

Q Was there an issue or a problem with telling agents about cases through emails?

And let me put it to you a different way. As an agent, did you find it difficult -- or perhaps you didn't find it difficult -- to keep

track of all the developments in cases if you were receiving them through emails?

A It was difficult. A lot of times, things would get lost or people wouldn't pay attention to them.

Q Okay. And do you know if the spreadsheet was a format that was selected to kind of consolidate or make it easier for agents to put their finger on the information that they wanted?

A That's my understanding.

Q Okay. And did there come a point in time then when a decision was made to actually put this data into a spreadsheet?

A Yes.

Q And do you recall roughly when that was?

A I mean, there had been some kind of spreadsheet for several years.

Q Okay. Aside from the tag spreadsheet. And since I already let the cat out of the bag by letting you see the exhibit --

A Well, there was a consistency when it evolved. The whole BOLO emerging issue thing evolved from the consistency in the tag spreadsheets.

Q Okay. Maybe if we could focus on this particular document and take a look at this. And I think I had asked for you to recognize a document if you did or didn't. But do you recognize this spreadsheet?

A I recognize this particular -- this.

Mr. Weinberg. Identify what "this" is.

Ms. Hofacre. I'm sorry. It's the one which starts with "Project

agents were expected to be using it?

A I suppose. I really don't remember.

Q Would there have been any other reason for to you have sent this to all these managers?

A No. Just to make them -- I mean, in a broad sense, the reason would be to make them aware of the Tea Party cases.

Q Well, even in a kind of a broader way, what about this development of this Combined Issues spreadsheet?

A It may have been. Maybe for their input. Like I said, I really don't know.

SFC [redacted]. SFC, can I ask a question?

SFC [redacted]. Please go ahead.

SFC [redacted]. Ms. Hofacre, do you know how the entry for the Tea Parties, are you aware of how that got on the Combined Issues spreadsheet in the first place?

Ms. Hofacre. I'm not aware of the process that went into putting it on there.

SFC [redacted]. You are not aware of who made that decision to put the Tea Party on any spreadsheets?

Ms. Hofacre. Well, I know later -- I remember the BOLO list. The first one that went out probably about 2 weeks after this one, I remember that one, and I was involved with a couple meetings. And Jon Waddell and Steve Bowling essentially told me what to put on it. I emailed them basically a draft. They gave it their okay. And then Waddell and Bowling, one or the other, told me to send numerous managers

A I don't know what the note taker -- what they left out. So I don't understand the correlation there.

Q So your understanding of this time is that if it had the word "Tea Party" in it, it would get sent to 7822 for secondary screening?

A Definitely. If it was called X, Y, Z Tea Party, it was a no-brainer for the agents. They would just send it to me.

Q So even if they looked at it and it said, we don't plan on doing, you know -- 20 percent political activity --

A It was still send to me. "Tea Party" was an automatic, you know, "do not pass go." It came straight to me.

SFC [redacted]. Can I ask a question too and follow up?

So if it said "little Suzy's Tea Party" and they were a small group selling lemonade, that would also come to you because it had the word "Tea Party" in it.

Ms. Hofacre. It probably would have. But thank God we had enough sense to send it back.

BY SFC [redacted]:

Q That was one case that was mentioned to us that the only one that the one witness or the interviewee could remember that did say "Tea Party" but wasn't involved with the Tea Party movement and that, we were told, was sent back.

A I'm not aware of that case. I know I was -- there's another spreadsheet, which you guys may have that -- before the project took off, before -- well, I'd say March of 2010, there were three

RPTS JOHNSON

DCMN SECKMAN

[1:57 p.m.]

SFC [redacted]. We are back on the record. It looks to be about almost 2 o'clock.

So I would like to start off by presenting you with yet another document for your review. And this is the long-awaited, much promised BOLO --

Ms. Hofacre. Oh, good.

SFC [redacted]. -- of August. One that you actually probably know something about.

[Hofacre Exhibit No. 7
was marked for identification.]

Ms. Hofacre. Uh-huh.

SFC [redacted]. And let me just preface it, again, our discussion, take all the time you need to review this, the dividers here again are a document of my own creation, the spreadsheets are not. But I could not get the tabs to produce when I hit print.

Mr. Weinberg. But the words on the dividers are words that you took of off of --

SFC [redacted]. Exactly. These are the exact words that were on the tabs on the Excel worksheet.

Ms. Hofacre. I am ready whenever you are.

BY SFC [redacted]:

Q Okay. Very good. Do you recognize the document?

A Yes, I do recognize it.

Q Okay. And if you were to look under the first tab, which I think is marked TAG, T-A-G --

A Uh-huh.

Q -- the numbers on the far left corner are at 2010812?

A All right. I see it now.

Q You see those?

A Uh-huh.

Q And do those numbers identify this as an August 12, 2010? Do you know is that the way they were numbered?

A Yes, that is how I would interpret that.

Q Okay. And I referred to this as BOLO. And BOLO stands for what?

A Be on the lookout.

Q Okay. And I think we had -- before we broke for lunch we were focusing on a document that I think was dated July 27. And it was named the "Combined Issues Spreadsheet." And this one has been produced to us and the IRS identified it as a BOLO spreadsheet. So I was a little curious about the name change here. At this juncture then this document became known as the BOLO spreadsheet? Is that correct?

A Officially, it was known as the BOLO spreadsheet.

Q And do you know what the process was for changing the name?

A I know I was credited with the name change, which -- Joseph Herr came up with the name sometime I would say spring 2010 for be on

the lookout, as this document was evolving into what it is here. So, essentially, because he was a manager, and he wanted a catchy phrase, so he came up with the BOLO. And because of his management position, I had the dubious honor of receiving the credit for it.

Q Oh, I see. So he couldn't accept the honor?

A Well, he felt it was a conflict of interest being a manager and, you know, accepting this honor.

Q Okay.

BY SFC [redacted]:

Q When you say conflict of interest, there was a cash award. Right?

A Well, I got an hour of admin time, which, unfortunately, I don't remember taking for all the trouble it's caused.

SFC [redacted]. Okay.

Ms. Hofacre. There was no money.

BY SFC [redacted]:

Q That was the award?

A One admin hour.

Q One admin?

A Exactly.

Q Was it a contest?

A I didn't know until I won.

Q So someone entered you?

A Exactly.

Q Okay. Very good. Now, the document itself, and I know you

have had a chance to flip through all the tabs, is this a document that you created or assembled from existing --

A I assembled it would be a good word.

Q Okay. And was Mr. Bowling or Mr. Waddell involved in the assembly or the creation, in their case perhaps, of this document?

A That would be correct. I attended meetings with them beginning sometime I believe in July of 2010, which resulted in this document.

Q I am sorry. Did you say you attended meetings with them or with him?

A Both Jon Waddell and Steve Bowling. There may have been other people there. I don't remember.

Q Okay. And during these meetings, in July, I think you said, right, what was discussed about this document?

A Based on my memory, it was just that we were -- the IRS wanted to centralize all these different documents into one workbook. So, consequently, I was tasked with putting these all in a single workbook. And also I was also responsible for creating the Emerging Issue tab.

Q Okay. And you say that Bowling and Waddell were involved. How about Mr. Herr? Was he involved?

A I don't remember if he was or not.

Q How about Ms. Thomas or Ms. Camarillo?

A I don't remember them being at these meetings.

Q So just your recollection is that Bowling and Waddell?

A Correct.

Q Okay. Now --

Mr. Weinberg. Could you hang on a second?

SFC [redacted]. Sure.

Ms. Hofacre. I just wanted to add to this that I was at a couple meetings around I believe August the 8th, give or take a couple days. I got the terminology -- I believe it was from Waddell, basically in a conversation. So what I did is I put that in a draft format and emailed that particular document to Waddell. And then he gave his approval. I was in there on a Sunday doing credit hours. And then, on Monday, I believe is when he gave me his approval. And then, on Tuesday, which was around first week, second week in August, he had asked me to send it to Sharon and Brenda and Cindy. And they were in the process on that distribution list on Tuesday. So, after it had been sent to them, and Waddell then shortly after that told me to send it to everybody in EO Determinations. But that was that Thursday. And what happened was instead of just sending it to the folks in Cincinnati, I in error sent it to the people up here?

Q Okay. We will get --

A I am kind of jumping ahead.

Q That's fine. That's a long answer. We will take it apart and look at each little bit of it.

A Okay.

Q But I think you said that Mr. Waddell gave you the terminology?

A Right.

Q What did you mean by "terminology"?

A Well, he essentially, what I remember, is advised me to put the Tea Party -- you know, create the Emerging Issue tab. That I think that (c)(2) part was on there concerning the title holding companies. To essentially put the Tea Party movement on the spreadsheet. And once I did that, he advised me to send him the spreadsheet to make sure it met their criteria, you know, as far as what they were looking for as far as how they wanted that captured.

Q Okay. And then if we just think about that one and then think about that July 27th combined spreadsheet that was issued a couple of weeks --

A Uh-huh.

Q Apparently, you had sent out a couple weeks before that, the language, the Tea Party language was also in the combined issues spreadsheet.

A I guess it was. And I am not sure if it was the same language. Let me look. But based on July 27th, I think it was essentially --

Q Excuse me, July 27th.

A It was very similar, if not the same.

Q Yeah. Okay. And so I think you indicated that, if I got this right, in a fairly long answer there, that Mr. Bowling and Mr. Waddell had given you the directions to assemble this document. Did they also review the document once you had it put together?

A Oh, yeah, that's what I tried to indicate before, is once they told me to do it, I sent them -- I sent -- I know I sent Waddell, I am not sure Bowling got a copy or not, on -- it was a Sunday.

Q Yeah.

A And then, on Monday, he had told me verbally that what I -- the verbiage I used was okay, and to provide Cindy and Brenda and Sharon a copy. And there were a couple other people on that distribution list.

Q Okay. And when you sent it to Cindy Thomas and to Brenda Melahn and to who else?

A Sharon.

Q Sharon Camarillo, were you sending it to them FYI, or was that going to them for their approval?

A I don't know.

Q Okay. And then, subsequently, you say you sent it to everyone in EOD?

A That Thursday. The Tuesday I provided Sharon, Brenda, and Cindy a copy, and then Thursday is when I was advised to send the copy to everybody.

Q Okay. Mr. Waddell advised you to do that?

A That is correct.

Q And did Mr. Waddell, in addition to approving the verbiage as it related to Tea Parties, did he also generally approve the way that you had assembled the document, the tabs and so forth?

A That was my understanding.

Q Okay. And when he gave his approval, consent to you, did he specifically reference the Tea Party language or did he just say this is good to go, send it out?

A More the latter. "It's good to go" is the verbiage he probably used.

Q Okay. And I think you said that you errantly sent this to the employees in Rulings and Agreements as well?

A I sent it up here to the tax law specialists.

Q Oh, just to the tax law specialists?

A I don't know. You know, when you misfire like that, it's humiliating, so -- anyway, everybody was making these jokes. And then someone from EO Technical up here called me and wanted to know what it was. And it was all tongue in cheek, but he honestly didn't know what it was.

Q I see. So it went to more than just --

A Who it was supposed to.

Q Okay. Got it. And I think you said to employees in Rulings and Agreements. Is that it?

A Yes.

Q All right. So, aside from the gentleman who called you to let you know that he got it -- and who was that, by the way? You remember?

A His name was Ward Thomas.

Q And was he an EO tech tax law specialist?

A That is correct.

Q Did anyone else acknowledge receipt from Rulings and Agreements?

A Not from up in D.C.

Q So if it went -- did you use like a global email address?

A I used the wrong one.

Q Global email?

A Exactly.

Q So it would have gone to everyone in Rulings and Agreements. Is that your understanding?

A That is how it was communicated to me.

Q Okay. And did you attempt to recall the email?

A Yes, I did.

Q Did that fail or --

A Well, it was too late then. I didn't know it was wrong for a couple hours.

Q I see. So people had already opened their emails?

A Exactly.

Q Okay. And if it went to Rulings, and everyone in Rulings and Agreements, would you know if it went to the director of Rulings and Agreements as well?

A I asked someone this summer, and they know it probably went to whoever was probably in Holly Paz's position, might have been Rob Choi. But other than that, I don't know who else would have gotten it.

Q And you wouldn't know if that global distribution also

included Lois Lerner or anyone else?

A No, I don't. I have no idea.

Q Okay. Maybe we can just look at the document together.

A All right.

Q And we can walk through this one, and hopefully, we won't have to belabor any points here. But the first tab is labeled "TAG." And again, those are the touch-and-go cases as we discussed. I think before touch and go were the fraud, terrorism, and then potential abusive taxpayer schemes. Is that correct?

A Yes, it is.

Q Okay. So this document here would have been a document that was probably created by the TAG group, and the contents of it were --

A That would be correct.

Q Okay. So the contents here were provided to you by the TAG unit?

A Uh-huh.

Q This isn't something you created, you know, from scratch or anything like that. Right?

A That is correct. I didn't create it.

Q Okay. All right. And then the next tab is marked "TAG Historical." And this goes a couple of pages. This is a new tab. I mean, I didn't see this in the July 27 combined issues spreadsheet or in the prior spreadsheet that was dated May for which there was some issue about its origin. What was the genesis of this particular tab?

A Like I tried to iterate before, the TAG spreadsheet

basically became, you know, an unmanageable document. So consequently, they broke it down. And historical, at one time, these things were on the TAG, but for whatever reason management decided they were no longer needed on the TAG. So this was to keep some kind of historic record that these were on the TAG.

Q Okay. Would the EOD agents need to know this information in order to do their job?

A Based on my opinion, no.

Q All right. So these are all issues that had -- or are these all issues that had come up in the past and yet -- and probably hadn't come up any more in the future? Or rather in the present time?

A That's what I understand it. I know they were in the past, and the management decided that they were no longer concerns.

Q Okay. And you wouldn't know if there was any kind of cut off, right?

A No.

Q Whether it was a year or two or whatever before something would move to TAG historical?

A I don't know.

Q Okay. Now, if we can just look at that second page then under the TAG Historical, and there is a line item, I think it's number 170, I presume that -- I don't know if that's a line item or if that's the number assigned to this particular issue. It says "progressive"?

A If you are interested in how the 170, like I said, this spreadsheet really took a life of its own. So, at one time, there were

over 200 issues on it.

Q Okay.

A So, consequently, I mean, they cut it down, but the 170 was progressive at that time.

Q Okay. Yeah. That was the number assigned to the progressive?

A Exactly.

Q Okay. And then it looks like the first column, which is "Issue," it says "Political Activities." And then the second column, which is "Issue 2," if I am reading -- and this is not the easiest thing to read. I think it says, "Common thread is the word progressive. Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to blue." I believe the remaining sentences that follow that belong to 180, the Karen Hood Cases, if I am reading that right?

A That's how I read it.

Q Okay. And then if you move over to the column, I think it might say tax law issue, it doesn't actually produce that column on this page, but I think if you line it up, the tax law issue is, "Applicants submit form 1023. Their progressive." And am I reading that right?

A Yes, that is correct.

Q Okay. And with regard to these cases, were there any more applications being received that to your knowledge had the word "progressive" in them or --

A Well, we received applications with progressive, but I worked one or two of these cases, and this was around I think 2006 when, you know, you had the red States and the blue States, and we were getting organizations that were -- I mean, they referred to themselves as blue State organizations, and they were applying for 501(c)(3). And it was more the blue State issue. And most of those applications were worked in D.C., based on my recollection.

Q Okay. So were they sent to the TAG unit for secondary screening?

A Yes. I believe so.

Q And then from secondary screening, if they met this criteria then they were shipped to EOT?

A Based on my memory, they were; some of them were shipped up here.

Q Okay.

SFC [redacted] If I could just jump in real quick.

SFC [redacted] Yeah, go right ahead.

SFC [redacted] Were there any 501(c)(4)s in the progressive?

Ms. Hofacre. At that time, I was in 7830, and these were (c)(3)s.

BY SFC [redacted]:

Q And with the (c)(3), can a (c)(3) engage in any political activity?

A Zero.

Q Okay. So were these -- do you know if these were difficult or complex cases for them, you know, to develop or to determine?

A Well, my experience as an EO Determinations agent, I had one of them, and they were really difficult because it was -- it was Tea Party on the other side of the aisle. A lot of these applicants, you know, if they are engaging in political activity, they want to change -- it seems like -- they appeared to be wanting to change the political landscape of the U.S. That was the blue case I had. Red and blue States were the current common jargon in 2006. So, as a (c)(3), we didn't think it would qualify, but EO Technical wanted them any way because it was kind of a different twist on the law. So they kind of went extinct. They died, I think, 2007, 2008.

Q Do you know how many there were?

A No. I couldn't tell you.

Q Do you have a sense was it more or less than the Tea Party cases?

A Substantially less.

Q Okay.

A Because they were (c)(3)s again.

BY SFC [redacted]:

Q When you say it was a different twist on the law, what do you mean?

A Again, it's kind of a -- they are using -- I mean, they are purporting to educate the public in order to change the political landscape of America. But when you change the political landscape of America, is that a political purpose or educational purpose? I mean, it's open to interpretation.

BY SFC [redacted]:

Q Do you know ultimately how those cases were resolved? Were the exemptions granted or the exemptions --

A I have no idea what happened to them.

Q Do you know, roughly, the length of time it took?

A I have no idea. I just know we sent them up here, a couple of them.

Q Okay. And what is your recollection of the last time you sent those cases up?

A We are talking 2006 maybe.

Q Okay. And you say they pretty much died out after 2006?

A I don't remember seeing any after 2006.

Q Do you know if it took like 3 or 4 years for the IRS to reach a decision like with the Tea Party cases?

A I know there was kind of -- we sent them up here and we never heard any more about them.

Q Were all of them worked here in EO Technical?

A I can't answer. I don't know.

BY SFC [redacted]:

Q One more question on that. What does TAG Historical mean?

A Well, TAG --

Q As opposed to TAG?

A Well, this spreadsheet, like I tried to explain earlier, took a life of its own. So there were -- I mean, there were over 200 different issues on it, which was unmanageable. So management decided

years. So I have seen them as a reviewer.

Q Can you say some of these have been approved for (c)(4) status, the ACORN?

A Yeah, I can think of -- I know of at least two.

Q Was the issue in the ACORN cases political activity?

A No. The denials that I am aware of are (c)(3). And they are being denied for legislative and lobbying activities.

Q Okay. And you mentioned that one or two have been pending for several years?

A Yes. I have had one -- there is two -- because like I said this morning, all adverse determinations come through the seventh floor, Quality Assurance. And there is at least two (c)(3)s that are I believe successor to ACORN organizations that are pending. We want to send out the letter, but we are waiting for approval from up here to send those out.

Q And were the ACORN-type cases treated the same as the Tea Party cases? In other words, did they go to a group and then --

A Based on my recollection, no.

Q Did they go into general inventory or they go to the TAG -- I guess they went to the TAG Group, right?

A Based on my recollection, no, they were just in general inventory. I mean, some may have made it to that, but based on my job as a reviewer right now, a lot of times they are just sent to whoever gets them.

Q Okay. And regarding the development of those cases, if you

know this, and I don't know if you are competent to say if you know, in those particular ACORN cases, were development letters created?

A Yes, they were.

Q Do you know if they were sent to EO Technical for a review out of the same coordinated effort that was engaged in with the Tea Party cases?

A Based on -- I only reviewed a couple of them. And there was no processing like that.

Q Okay. Now, this BOLO -- you were the emerging issues coordinator, so I presume this BOLO, it fell to you to assemble and to distribute. Is that correct?

A Yes, that would be correct.

Q And did you issue this BOLO on a regular basis or a periodic basis?

A I know I sent it out once in August, and I believe maybe once in September. But after that, I think I handed it over to Ron Bell.

Q All right. When you sent out that one in September I think you said, was it materially different than this one?

A No.

Q Had you received any changes or -- let me put it this way. Who would be responsible for changing the individual tabs in this BOLO spreadsheet?

A I would be the scribe, but management, probably Steve would tell me or whoever took my place, what the changes were to be.

Q Now, with regard to the TAG spreadsheet, was that true as well, or did Mr. Waddell retain control over the content of the TAG spreadsheet?

A Actually, I don't remember that.

Q Okay. I don't have any more questions about the BOLO, or if anyone else does.

SFC [redacted]. I have one.

On the TAG spreadsheets, were those only used for abusive transactions? Another witness had mentioned that some of the TAG leaned toward coordinated processing as well?

Ms. Hofacre. That would be correct. It included what we at the time, 5 or 6 years ago, called consistency, which evolved into the coordinated processing.

SFC [redacted]. Okay.

BY SFC [redacted]:

Q Okay. Well, we can get in our time machine and move forward in our timeline a little bit.

A Okay.

Q And we can fast toward ourselves up to October of 2010.

A All right.

Q This is I think the month when you left Group 7822 and you began your new assignment, which is your current assignment with the Quality Assurance unit. I think you mentioned a little bit about this in one of your answers before, but I just want to make sure we have it clear on the record. Did Mr. Bowling reassign your duties as the

emerging issues coordinator to anyone else after you left?

A Yes, he did.

Q And to whom did he assign those duties?

A I believe it was Ron Bell.

Q Did you have any discussions with Mr. Bell, prior to your departure, maybe even after your departure, to bring him up to date on your activities and efforts and your work as Emerging Issues coordinator so that he would know what you did and so he could continue on or --

A I remember having conversations with him concerning the Tea Party cases in particular, and that I was coordinating these cases with Mr. Hull, that I had several letters pending Mr. Hull's approval up here in D.C. I also explained to Mr. Bell the process on how I would have been assigned the case, reviewed the case, prepared a letter, and then I would provide Mr. Hull a letter via email, and then I would fax the file. I also provided Ron Bell questions that I had used in my development of these cases. And I believe what I did is I just went over all my letters and reviewed them, and just sending a Word document with no questions that I had to use for these cases. I don't believe I sent him any particular letters from any taxpayers.

Q Okay. And if I had this right, earlier you said that when Mr. -- back in August when Mr. Hull had stopped kind of communicating with you, that you nevertheless continued to at least develop the letters, even though, you know, you may have sent them to Mr. Hull, he didn't get back to you, but at least were you working on those case

files. Is that accurate?

A That is accurate.

Q So all those letters that you prepared in these files would have been in there with those files, right, when they were transferred over to Mr. Bell?

A They were in there when I transferred the files in October of 2010. We are jumping ahead of the game here, but these cases were reassigned around the end of 2011. And a few agents had seen that I had prepared letters because we do what we call a CCR. But those letters had not been in the file.

Q Okay. All right. So but when you left 7822, you turned everything over to Mr. Bell, lock, stock, and barrel?

A Yes, I did.

Q Including the drafts and all the material that you actually had prepared and sent out and the responses that you had received from the taxpayer organizations?

A Everything was transferred to him.

Q Did Mr. Bell express to you any confusion, or did he appear like he didn't understand what you had done, your efforts up to that point in time?

A I don't remember him expressing anything like that.

Q Did he have any questions about what you had done?

A I don't remember if he did.

Q Did he indicate to you how he intended to carry out his assignment now as the emerging issues coordinator?

A No, he did not.

Q Did you meet with Mr. Bell and Mr. Bowling, or were these communications strictly between you and Mr. Bell?

A I remember them being just between myself and Mr. Bell.

Q Were you ever witness or party to any discussion or conversation about this continued activity in October, November, when you were gone, where Mr. Bowling directed Mr. Bell as to how to handle these cases?

A I don't remember if I was.

Q Did you ever tell Mr. Bell not to send any more cases to Mr. Hull?

A I don't believe I did. I don't recall.

Q Would there have been any reason for you to tell him not to send the cases to Mr. Hull?

A No.

Q Okay. Did you ever tell Mr. Bell to cease working the cases?

A No.

Q Would there have been any reason to?

A I had no authority to tell him that.

Q Okay. I have no further questions about your involvement up to October 2010. So we are going to jump in the time machine again --

A All right.

Q -- and take a ride. But before we go to December 2011,

which is my next point in time, did you have any connection or activity related to these Tea Party cases between October 2010 and December of 2011? So it would be October of 2010 to December of 2011?

A No.

Q No? Okay. And in your capacity during that time, you were a QA agent, right?

A That is correct.

Q A Quality Assurance agent? And none of these Tea Party cases were in Quality Assurance then?

A No, we had the ACORN cases, but not the Tea Party cases.

Q Okay. And in December of 2011, were you -- what was your involvement? Why don't I ask it that way.

A Well, my manager, Donna Abner, had told me that they were having these meetings concerning reassigning these Tea Party-type cases. At that time, they were referred to as advocacy cases. And because of my involvement before I came up to QA, I was tasked to go to these meetings.

Q Did she ask you to go to a meeting or had she placed you on this team that was being formed?

A I wouldn't say it like that. I was just asked to go to the meeting. QA usually performs kind of an advisory-type role at these meetings. So I was not assigned in any official capacity to any kind of committee or team.

SFC [redacted]. I am going to show you a document marked as Exhibit 8.

[Hofacre Exhibit No. 8

RPTS COCHRAN

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: VICTORIA ANN JUDSON

Wednesday, September 11, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For INTERNAL REVENUE SERVICE

JOHN TKACIK, CHIEF COUNSEL

BY SFC [redacted]:

Q Give you a moment to --

A Okay.

Q This -- so these emails reference a request for a meeting from Fred Wertheimer of Democracy 21. To your knowledge, did this meeting take place?

A Yes, it did.

Q Did you attend that meeting?

A Yes, I did.

Q Describe for us the topic and the content of the meeting.

A We may -- I actually -- I guess you know there's an additional email that I had back and forth that predated this meeting. Because I reached out to P&A, which is Procedures and Administration within the IRS. Because I was concerned I wanted to check that -- whether it was appropriate for us to meet with them. And --

Q This was earlier than these emails?

A The meeting occurred I believe -- no. I think it was after this. I believe the meeting occurred in January. But I'm not sure exactly when.

Q Right.

A But Lois emailed me, saying, can you attend the meeting also. And I emailed back that I didn't want to accept until I talked to P&A.

So I had some back and forth with P&A, and then got in touch with them. And they indicated that it was fine to talk with them as long as we made clear that we couldn't disclose or tell them anything either

about individual taxpayer matters, because they had -- there was some -- I guess -- I hadn't seen it, but I heard this was correspondence and we couldn't talk to them about what we were thinking about but we could be in listening mode listening to their suggestions as long as we made ourselves available for that generally, which we do. And, in fact, in talking about it, P&A encouraged me to have someone take notes at the meeting. So if there was ever a question we would know what it was. So there was also a lot of back and forth because they wanted to limit the number of people at the meeting. But we ended up inviting Susan Brown, my staff special counsel, to attend and take notes. So the one reason I do remember what was at the meeting is I asked her when this had come up when people were saying you were interested I asked her if she could give me a copy of the notes which I reviewed but not right before here. So -- and we -- I don't think the notes reflect but I recall starting out the meeting by making it very clear to them that we could not discuss any individual taxpayer matters and they shouldn't raise any with us. And that we welcomed hearing their thoughts. And so then they proceeded to talk to us about the (c)(4) reg. They were suggesting that we move to a tighter percentage standard for the primarily exclusively aspect of (c)(4) and they were recommending 90 percent. They talked some about 527 plans. They asked us to consider issuing guidance that would make clear to folks that our two revenue rulings could apply out in context of (c)(3) (c)(4)s, not just the -- and 527s, not just the context in which they occurred.

They indicated a desire to have more disclosure and push people

into 527s, and made some suggestions on how to move people more into 527s.

They noted that while they thought the gift tax, that donations were taxable, that because of the announcement from the service people outside did not think so.

And that's what I recall.

Q Those notes also been -- are they IRS?

Mr. Tkacik. I don't know what's the production.

Ms. Judson. We're glad to give them to you.

SFC . I started for follow up.

Ms. Judson. I mean, I didn't actually have the notes until we were preparing and people said -- and that's when I asked. Because I don't keep track of things. I have my staff keep them so I asked her for them.

SFC :

Q Of course. Why did you -- sorry. After Lois asked you to attend the meeting, why did you originally reach out to P&A? What was your concern?

A Well, I think as I said, I'm concerned about appearances and being fair. And we didn't have an official open reg project, in which case there are -- you know, when we propose regs, we have hearings and they are open to everyone to speak to us. On the other hand, we often -- I won't say we. Treasury often meets with other groups from outside and usually invites us to attend as well. And then sometimes we meet but in a kind of meeting like that where the people coming want to talk to us about potential guidance, we would bring in Treasury. And

that's actually what Lois did in this meeting. I guess she reached out to her and she was indicating -- I believe -- she indicated to them that this is the kind of meeting that Treasury would be involved in. So Treasury was invited. That was Ruth Madrigal who came from Treasury. And I just -- I just try to be fair and open and so I thought it was appropriate to contact P&A to ask them if it was appropriate for me to have this meeting. And I followed their directions.

Q Was it unusual for an advocacy group to reach out directly to Lois Lerner and ask for a meeting?

A I don't really know. Because again, as I said, I have more -- I have about 25 years of experience in the employee benefits area and less experience in the EO area. I will say in the employee benefits area we meet constantly with tons of groups. It's usually arranged through Treasury because they like to meet a lot of people but we get calls to a lot and then we reach out to Treasury to schedule the meetings. I mean, part of the issue and challenge we have particularly in the tighter budget climate is just managing our time. And so that's another reason I wanted to talk to P&A. The general sense is one wants to be fair. So if you are going to meet with one group, you have to be available for more and you have to figure out do you have the resources to do that. You don't want to have repeated meetings with one group without opening it up to others. I don't know about the EO areas, but I know in the employee benefits area we had many, many meetings with outside groups who have views on what kind of guidance they would like us to promulgate.

RPTS MCCONNELL

DCMN BURRELL

[12:20 p.m.]

BY SFC [redacted]:

Q And if I mentioned a few others that your office may have been involved with perhaps you can tell me if it rings any bells. Albuquerque Tea Party?

A As to others, prior to establishment of the new process, I was not aware of any individual cases. As part of the process, I have been assisting the team working on backlog, so I get periodic lists of the 132 cases identified in the backlog, and I believe that case is on it. But I don't remember all of the names, and I don't know which cases got approvals or denials, or for which they are seeking more development. I just talked to them about the general numbers.

Q I see. You also mentioned that Ms. Lerner advised you about the backlog and that she had this concern and the guide sheet was kind of aimed at helping her get through this backlog, if I recall correctly.

Am I correctly characterizing your testimony?

A She said she wanted the guide sheets to be used as a tool for people in Determinations.

Q Okay. And that conversation was in the context of the backlog, correct, or perhaps it wasn't?

A I don't remember that. I remember it coming up when I first was given the guide sheets. When I first saw them and looked at them, one of my personal reactions was they -- it was unclear to me whether

they were intended for Determinations or for Exams because the scope of the question seemed overly broad, and in fact, if you look, one of the -- the only, one of the few substantive changes I suggested to the guide sheets is earlier drafts had asked for copies of every single minutes, postings, you know, and I said, well, couldn't you ask for a representative sample?

Part of the challenge, I think, in the determinations process is that you have groups coming in. And often they are just -- either they are just starting out, so they don't have a lot of materials, or you ask questions and they can be perceived of as overly burdensome to taxpayers, and because the people in Determinations are so worried that a group may be doing something, they ask too many questions about too much. So that was sort of my broader perspective suggestion, and I had some discussions -- I don't think it was with her, it was people on her staff and my staff -- about what really is the purpose of this guide sheet. And as part of that, I was told it was for Determinations. And I said, well, it looks to me in some ways more like an examinations document. Can that part be modified?

Q Okay, what I'm trying to understand is, was there a connection between the concern about the backlog and the, I guess, the request to your office to review the guide sheet? In other words, was the backlog and the guide sheet connected in any way?

A You need to -- you need to ask Ms. Lerner.

Q So she didn't raise the backlog as an issue with you in the context of discussion of the guide sheet?

RPTS MCKENZIE

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JUDITH KINDELL

Thursday, July 18, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth

House Office Building, commencing at 10:05 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For MS. KINDELL:

JONATHAN BIRAN, ATTORNEY AT LAW

SFC [redacted]

[redacted]

Washington, D.C. 20004

I wasn't part of the design of the project, but I came on fairly quickly after.

Q Then after that? Other involvement with political activity issues?

A Yeah. It was basically whenever somebody had a political activity question. In my early part of the career it was my mentor and I who they would go to. When he retired it was me. And I had some other people who I was trying to bring along and pass on my knowledge to. But at that point when he retired, I became the go-to person.

Q After that '04-'05 -- the projects, what types of issues, what types of cases in this area have you worked on?

A Well, again, I don't actually work the cases.

Q Sure. Okay. Issues then.

A Yeah. So we have been -- again, we had -- and that political activity compliance initiative project is part of what happened, is why we issued the guidance in 2007. So some of the issues that we were seeing got built into that guidance. But those issues were largely, are the charities complying, are they or are they not intervening with political campaigns. We also have, you know, obviously recently been looking at these applications, and so these were coming in with both (c)(3) and (c)(4) applications. The rules are different for them. The (c)(3)s cannot participate or intervene in a political campaign. The social welfare organizations can do so, but it is not a good social welfare activity. So they have to have an activity -- they have to have a purpose and have their primary

A I don't remember the particulars of the cases from that. I remember that I raised the issue of that we needed to look to the DLC briefs and make sure that we had addressed that argument.

BY SFC [redacted]:

Q Why would Chip Hull have this thing for a year before you saw it? Why won't he have looked at the private benefit?

A I don't know.

Q Aren't the attorneys informed about what senior leadership wants them to look for?

I mean this is a hot issue. Why wouldn't all the attorneys know that this is something they had to develop? They had a whole year to work on this. And it gets to your level and the issue you think is most key isn't even looked at? How can that happen?

A I didn't say this was the most key. I said --

Q But to you it was.

A I was one issue. The other issue was how much political campaign intervention did they do?

Q Was that developed?

A Did they do political campaign intervention and if so how much.

Q Was that developed?

A Yes.

Q By Chip Hull?

A Yes.

Q So now you saw that spelled out?

A Yes.

Q But not the private benefit?

A Not the private benefit.

BY SFC :

Q On private benefit, just to follow up a little bit, the 501(c)(4) applications are made public once they are approved, right?

A Yes.

Q And so private benefit brings in the issue of who are your donors, right?

A It can.

Q And so that becomes a very sensitive issue in terms of 501(c)(4) donors which are normally private, can sometimes be made public if you start asking about private benefit, right?

A Possibly.

Q And it becomes part of the file?

A If it becomes part of the file then it does become public.

Q And it becomes part of the file if you ask the taxpayer to send who their donors are and they send their donors in, right?

A Yes.

Q And so that was part of the issue with when you guys were destroying the donor lists, part of that was because you were asking for too much of that info, right?

A That was the decision that was made, yes, that when we went back and started looking at -- again this was part of the process of trying to deal with the development letters that had been made public,

and the decision was made, as I understand it, now I was not part of that decision making process, but the decision was made that they had been asking for donor information in cases where it may not have been needed and therefore to the extent it was provided they were going to destroy it. That is what Holly told me they were doing.

Q And the decision maker in that was Steve Miller or was it somebody else?

A I have no idea who the decision maker in that was. This was after the process was put in place Holly told me about it.

Q It was all another issue about gift tax that the IRS got into as well, but I guess we will hold off on that.

SFC . Excuse me, SFC , do you mind if I jump in? This is SFC again for the Senate Finance Committee minority staff.

BY SFC :

Q Regarding, and I know that SFC had shown you a briefing paper that was prepared for Ms. Lerner, a meeting that was held in June I believe and I think you indicated you did not attend that meeting or have no recollection?

A I do not recall attending that meeting.

Q But in that briefing paper, had you seen that briefing paper before?

A I do not recall seeing that briefing paper.

Q At some point in time there was, did you become aware of the fact that Cincinnati, the EOD agents were actually selecting cases for additional development based on the existence of words like Tea

A We were preparing denials on those and we were briefing her on that, and we ultimately never issued the denials because the execs went, some of them went and talked to people on the Hill and got some legislative history that gave us another ground to approve those organizations so we never actually issued the denials in those cases.

Q Ms. Paz also wrote, we are in overly sensitive climate right now and have to be aware of that.

To your recollection, what does that refer to?

A I don't know for sure.

Q Sure.

A So I know that we were dealing with a lot of Congressional inquiries about, in particular about the letters that were released to the public. So there had been a lot of Congressional inquiries flowing from that and we were still responding to that.

Q Okay.

BY SFC [redacted]:

Q Do you recall whether any advocacy cases were brought to your attention or -- brought to your attention or you were sought out for advice wherein the applicant's name was Progressive, Progressive something, Progressive on its own?

A There were and there were some cases back, and this was probably this may have been before I became a senior technical adviser that I think there were some and I don't know whether it was Progressive or there was some with Blue in the title, that I talked to some agents, some specialists, about developing so there may have been some that

said Progressive but I don't have a particular memory of that.

SFC . Okay.

[Discussion off the record.]

SFC . Back on the record.

SFC . One follow-up on just on her answer.

SFC . About the Progressive question.

BY SFC :

Q I was going to ask when it was that you became a senior technical adviser?

A I became a senior technical advisor in October 2007.

Q So it was some time before that that you had seen the Blue and --

A I think so. I'm not sure but I'm basing it more on where I was sitting at the time, so it could have been shortly after I became a senior technical adviser as well because I didn't move offices right away when I got the job so.

[Kindell Exhibit No. 10
was marked for identification.]

BY SFC :

Q I'm going to show you Exhibit I'm going to label Number 10. And this is a document that was produced to the Committee on Ways and Means by IRS. The Bates number is 20 -- you know what? I keep saying Bates numbers, it is actually just a number that is embedded in the text. I will read it: 20100812. I will have a copy for you to take, but for right now I just have one. I will hand that to you. If you

Q Very good. Okay. Thanks for your patience in my poorly formulated questions, but to the best of your recollection do you remember being told about or looking at an application or issues arising from applications involving an applicant named Progressive in the year 2010 or would it be earlier in time to the best of your memory?

A To the best of my memory, it would have been earlier in time.

Q Do you recall being told about or looking at applications wherein the applicant's name was some variant of the word Emerge?

A Yes.

Q Tell us about that. How did you come to know about it?

A I don't remember exactly how I came to know about it. I know that they had, that somebody had discovered that there was these cases that involved training women to be Democratic candidates, which seemed directly in line with the American Campaign Academy as we applied it to the 501(c)(4) context in our DLC briefs. I know I talked with, I remember talking with somebody and I know I have, I had conversations with Holly about the cases. And I believe I may have pointed somebody to the DLC briefs on the case. I know, I think they coordinated those with Counsel. I believe they coordinated those with Counsel and that we ultimately denied the cases, that there had been some that had been approved so we had centralized the ones that we were aware of and worked them together. We developed them. They were fairly similar so that once we had developed them we were able to apply it across the board because they basically had, they were basically doing the same thing.

We denied those cases. We were aware of some that had been

approved prior to us noticing the issue, and there was at least one that even after we had noticed the issue and told Cincinnati that we needed to bring them all in and work them together there was at least one that was approved on screening at the same time that we were developing the denials.

I went over some conversations that we had about how to handle the ones that have been approved and how to deal with those. I do not know what happened with the ones that had been approved.

Q Okay. So these cases were denied. Do you recall why they were denied?

A They were denied because they were providing private benefit to the Democratic Party. It was in line with the American Campaign Academy decision and under the same rationale that we used in the DLC briefs.

Q Was it a hard call? Was it difficult to determine whether it was for private benefit of the Democratic Party or easy? Do you recall?

A I don't know. I think we had to make sure that we had all of our, all of the facts in the case and make sure that that was in fact what was happening and make sure that we had Counsel on board with how, with that. So.

Q So if the case were developed such that there were facts sufficient to show that the group was, through its activities, benefiting not social welfare generally but a particular political party or I guess group, too, right?

A Yes.

Q Narrow group, if there were facts sufficient then would that be an easy call?

A Once we had the facts developed then it became an easy call, so that is what we needed to do.

SFC . That is all I have.

BY SFC :

Q In that particular case, private benefit for a particular group, was that political activity?

A That was not political activity.

Q That was a different thing?

A That was a different thing.

Q How do you distinguish the two?

A That goes back to the original case, American Campaign Academy, which was not as a charitable organization, we did not deny them on the basis of political campaign intervention, we denied them on the basis that they were operating for the private benefit of the Republican Party.

BY SFC :

Q At what point did you learn that Ms. Lerner would or had disclosed the existence of the Tea Party BOLO and the targeting at the ABA conference?

A I knew that the TIGTA report was coming out. And I knew that Lois was talking with Steve about whether or not to say something about it before the TIGTA report came out. I had been speaking at a

RPTS MCKENZIE

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JOHN KOESTER

Wednesday, August 1, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For MR. KOESTER:

ROBERT WEINBERG, ATTORNEY AT LAW

JOSHUA B. SHIFFRIN, ATTORNEY AT LAW

SFC [redacted]

Washington, D.C. 20005

A Yes, uh-huh.

Q When was that, if you recall?

A I can't recall exactly.

Q Okay. Was there a time when you first became aware of the Tea Party in your role as an IRS revenue agent?

A There was.

Q Is there a time that you recall?

A This would have been in February of 2010.

Q How did you become aware?

A I became aware when I was assigned a screening case to review.

Q What was that case?

A The case was the Albuquerque Tea Party case, Incorporated, organization.

Q Had you previously been told that these applications might come along or that this is something you should look out for?

A No, I didn't. No, I hadn't.

Mr. Weinberg. Could you do me one favor and just represent that everyone here is --

SFC [redacted]. I apologize. Yes. Everybody in the room has been authorized either by Chairman Camp or Chairman Baucus to receive and discuss taxpayer information under 26 USC 6103.

Mr. Weinberg. Thank you.

SFC [redacted]. Of course.

SFC [redacted]:

Q After you had this application arrive on your desk, did you

mark you did on your email to John Shafer?

A I don't recall exactly. But I would think it was a default setting. I believe it was a default setting.

Q You write in this email, Here is the case that we discussed this morning.

Is this the conversation you had just related? On the top line of the email.

A Yes, it is. Yes, it is.

Q Okay. You had said here that "recent media attention to this type of organization indicates to me that this is a 'high-profile' case."

Describe to us the media attention you are referring to. If you had seen this or --

A I can't say specifically, but I had seen it during that time period on the TV.

Q Okay.

A Newspapers.

Q Where do you usually get your --

You had said you had seen this on TV, read about it in the papers. Is this an issue you had read about at the office at all or heard about at the office?

A No, it is not.

Q Or is this kind of your own time you had heard about it?

A This was on my own time.

Q Okay. How usually would you receive an application that is high profile or that could attract media interest? I mean, how is that

typically handled?

A A case that an agent would consider to be a high-profile case would be discussed. The agent would take the case to his or her manager to see if it needed to be elevated to EO Technical.

Q After this email, what other interaction did you have with the Albuquerque case after you emailed it up the chain to John Shafer?

A I held the case at my desk.

Q Was that at his direction?

A It would be more or less standard procedure --

Q Okay.

A -- because I would be waiting for direction. And actually, I think the first email on the top of page 4 indicates -- John indicated that he would hold the case. Essentially -- I don't know if I took it into his office. But we did not process it any further at that point.

Q This is the email from John Shafer to Sharon Camarillo where he writes, "I will hold this case for a decision concerning this type of organization, may be considered a 'high profile case.'"

A Yes.

Q What happened after this as it relates to this case? And how long did you hold the case? If you recall.

A I can't recall specifically how long I held it, but I held it until I got further direction.

Q Do you recall what that direction was?

A That direction was from my manager that --

Q Is that Mr. Shafer?

A I don't know if I can differentiate what your question is there. In other words --

SFC [redacted] Maybe rephrase it?

SFC [redacted] Yeah. Let me try it again.

BY SFC [redacted]:

Q What did catch your attention to the case? Let me put it that way to you. What caused you to bring it to Mr. Shafer's attention?

A It was the fact that I had seen and heard so much in the media about the Tea Party organization, movement. I am not sure what exactly term to put on the Tea Party movement, organization but --

Q Okay. So it was the fact that the applicant for tax exempt status was a Tea Party that caused you to kind of feel it was something to important to bring to Mr. Shafer's attention?

A Yes.

BY SFC [redacted]:

Q If you hadn't seen any news reports or any media on it, would that have flagged for you that Tea Party should have been sent on? Or are you saying that it would have continued on through the normal process? But because you had seen previous media reports -- or that you had seen the Tea Party in the media, that that is what flagged it for you?

A Yes.

Q Okay.

BY SFC [redacted]:

Q Were there Tea Party activities in the Cincinnati area that

a broader range of political advocacy cases.

Q And do you recall a change, again, to the BOLO list in January of 2012?

A I don't recall it specifically, no.

Q Do you recall a change in the BOLO that specified political action-type organizations involved in limiting expanding government, educating on the Constitution and the Bill of Rights, socioeconomic reform? Are those words that you recognize on the BOLO or remember?

A I don't remember. I don't recall.

Q Okay. Describe for us how -- today how your work has changed in terms of the -- or I will rephrase that.

Today, currently, how do you analyze advocacy cases. If, for example, Tea Party of Arkansas came in today, how would you handle it?

A Well, the BOLO list doesn't exist anymore.

Q Sure.

A If a political advocacy case came in today, I would give it -- or talk about it to my manager because right now we really don't have any direction or we haven't had any for the last month and a half.

Q After the --

A After the BOLO list.

Q Right.

A Because what I do, I do based on my manager's concurrence.

Q Sure.

Is there an effort today to ensure consistency among advocacy cases? Or are they kind of handled individually as they come?

RPTS [redacted]

DCMN [redacted]

[11:05 a.m.]

BY [redacted]:

Q Right. Replacing 7822. And now the process is sort of, as you say, out of an abundance of caution if it's a political advocacy case, including Tea Party cases, you will take it to your manager and then your manager will say send it over to 7823. Right?

A That's correct.

Q So before the BOLO told you to send it to 7822, which is now 7823, right?

A Uh-huh.

Q And then --

A Yes.

Q And now your manager tells you to send it to 7823. Right?

A Yes. As a secondary screening case.

Q Right. So it's -- essentially, I don't see what's different other than it's the manager instead of the BOLO telling you send that to the 7822 or 7823, whichever the version is at the time. What's the difference?

A Secondary screening, it's a category that we use for health care cases, there is like two or three credit counseling cases. When a case is sent to secondary screening, an agent in the group that handles those cases takes a look at the case to make sure everything is consistent. You know, you kind of got the consistency thing.

SFC . Okay.

BY SFC :

Q I want to go back to the recent Tea Party case that you mentioned you had seen?

A Uh-huh.

Q And you said that you had seen evidence of political activity in the file. What was the evidence?

A I don't recall offhand.

Q Was it something you saw in the file itself, or did you check the organization's Web site?

A I didn't check the organization's Web site on that case, no.

Q So it would have been something that was on the Form 1023 or Form 1024?

A Yes. Uh-huh.

Q And I wanted to ask you just one other question. A moment ago, when SFC was talking to you, you said that one option you have is to close out a case. Is that right? On the merits?

A That is an option. Well, to present it to my manager as an approval.

Q If you saw -- I am asking this currently, if today if a Tea Party case, a group -- a case from a Tea Party group came in to your desk, you reviewed the file and there was no evidence of political activity, would you potentially approve that case? Is that something you would do?

A At this point I would send it to secondary screening,

political advocacy.

Q So you would treat a Tea Party group as a political advocacy case even if there was no evidence of political activity on the application. Is that right?

A Based on my current manager's direction, uh-huh.

BY SFC

Q So she told you that every Tea Party or other political advocacy case, to talk to her about it?

A I would do that out of caution right now. Because I don't know where management is going, you know.

Q The reason I am asking is because you said based on her direction.

A Oh, God.

Q So did she tell you to do that?

A She said on that specific case to send that case to secondary screening, Group 7823, as a political advocacy case. That is what she instructed me to do.

Q Okay. And has she told you anything regarding how to handle the other Tea Party or other political advocacy cases?

A No, she hasn't.

SFC . Okay.

SFC . Do you guys have --

BY SFC :

Q Is it easy to distinguish between lobbying and political activity just sort of based on the application? Just your initial

RPTS BINGHAM

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: STEVEN MILLER

Thursday, December 12, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:00 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For STEVEN MILLER:

STEVEN M. HAUSS, ESQ.

WILLIAM A. BURCK, ESQ.

SCOTT LERNER, ESQ.

Quinn Emanuel Urquhart & Sullivan, LLP

SFC [redacted]

[redacted]

Washington, D.C. 20004

could act.

Q I see. And when would that 210 days have run?

A In -- I think the calculation went into June of '13.

Q Okay. And I think I had asked you this before. You served as the Acting Commissioner until May of this year; is that correct?

A Into May, yes.

Q Okay. Into May. All right.

And did you retire from Federal service then in May?

A I did. Either May or June 1, whichever one that works. I don't know.

Q Okay. And when you retired, would that have been coincidental with the date that your -- the 210 days when the Vacancies Act would have run?

A No.

Q Okay. Were you asked or directed by anyone to resign or retire in May?

A I was asked by Secretary Lew by letter to resign.

Q And did he explain the reasons why he was asking you to resign?

A He did not. Mark Patterson, his chief of staff at the time, indicated that it was an untenable place for me to be, and that the President was going to speak about accountability and fresh blood at the IRS.

Q Was it your understanding that the request to have you resign emanated from the President?

A Didn't know, but it was clearly in -- it was clearly being discussed there as well as other places.

Q Now, had you planned to leave Federal service at any point in time in 2013?

A I don't know. Had I planned? No. Was it possible? Yeah.

Q Because we heard that you were going to retire anyway. It wasn't clear whether you were --

A I don't know whether I would have stayed for a new Commissioner to help that new Commissioner enter the business or not. I was thinking about it, but had made no decision.

Q I see.

And had there been a new Commissioner, would you return back to your prior position?

A Probably for a period of time to help that individual break into the business, and then I probably would have left at some point.

Q Okay. And as Acting Commissioner, did you have occasion to meet with representatives of the White House to discuss IRS matters?

A I don't believe I ever did.

Q So you never took a trip to the White House to discuss IRS matters as Acting Commissioner?

A So what I did do -- and it was -- there were times when I met with OMB on things like the budget, things like identity theft, things like -- I think one time the EITC, although that wasn't as the Acting. Those were things that were done in OMB, but not the Executive Office.

Q I see.

Now, when you went to see -- I guess you visited the White House or the -- where OMB is located, right?

A I visited the New Executive Office Building.

Q Okay. And when you took those trips as the Acting Commissioner, did you ever discuss with anyone from OMB tax applications or applications by organizations for tax-exempt status?

A No.

SFC [redacted]. And just for the record, SFC [redacted] is now entering the room. SFC [redacted] is Senate Finance Committee staff.

BY SFC [redacted]:

Q And as Acting Commissioner did you have occasion to meet with representatives of the Treasury Department to discuss IRS matters?

A Generally?

Q Yes.

A IRS matters? Sure.

Q Okay. And did any of those conversations or discussions involve individual taxpayer cases?

A Generally no. I would think that there were occasions when it might have come up, but generally we did not do that. But I think it's permissible, but we did not do that.

Q How about conversations with Treasury Department people related to the applications filed by organizations for tax-exempt status; did those conversations ever come up?

A I think the only time those conversations came up was in

two pieces, and I'll talk about both in turn, and never the specifics. There was a time as the report was coming out when we had it that I did talk to Mark Patterson and to Mark Mazur a bit, but never just in terms of the report itself.

And I would go earlier than that. Just so we're all clear, I, in probably December or January of '12-'13, there were discussions about government gift tax and (c)(4)s, and as part of the wind-up of the explanation of what was going on, I refer to a bunch of (c)(4) issues, and one of those was all of the congressionals on the (c)(4) application process, but never about specific cases in those.

Q Okay. And you said that you had these conversations with him when the report was first coming out; is that correct?

A Well, not first, but when it was eventually coming out, yes.

Q Okay. Was it before, I guess, the actual draft had been shared with the IRS? Or was it at the time that the IRS was in your --

A I might have had an earlier draft, but it was in that same timeframe. I'm not sure we had the final draft. We may have had early drafts.

Q And what was the substance of the conversation with Mr. Mazur?

A I don't think I had more -- I mean, that would have been -- most of those conversations would have been very late about the rollout, which I'm sure we'll get to talk about, and whether it made sense for us to sort of apologize in advance as this thing rolled out. So that would have been in April or March. April, I think.

The -- I had a meeting over -- I had heard from someone, and I don't remember who, that Mr. George had briefed Neal Wolin on three reports, and I went over there to talk to Neal about those three reports in early April. And one of the reports was this one. We actually ended up not speaking about it. I don't recall speaking about this one. We spoke about the other two.

Q Okay. So the substance, then, of the conversation was about the rollout and whether there should be an apology essentially?

A The conversation with Mazur --

Q Yeah, with Mazur.

A -- was that one. There were conversations with Mark Patterson as well in that vein and during the same timeframe.

Q And we'll get to those issues a little bit later, but I think we are going to try to walk you through this kind of chronologically, so we'll hold our questions on the apology issue until a little bit later in the interview.

Okay. And so let's talk about the position that you held at the IRS immediately prior to November of 2012, and that position was the Deputy Commissioner for Services and Enforcement; is that correct?

A Correct.

Q Okay. And to whom did you report as the Deputy Commissioner?

A To the Commissioner.

Q And what were your responsibilities as the Deputy Commissioner?

A General administrative management of the taxpaying

functions of the Internal Revenue Service.

Q Okay. And the Deputy Commissioner for Services and Enforcement, is that the only Deputy that reports to the Commissioner at the IRS?

A No. There are two Deputies. The other Deputy is Operations Support.

Q And what are the responsibilities of that other Deputy?

A The other Deputy has responsibilities over several areas including IT, finance, disclosure, the basic building control and things of that nature.

Q HR, would that be included in that?

A HR would be in there as well.

Q And the word "services" in your title, then, is a reference to services to the taxpayers?

A I believe so, yes.

Q And in your capacity is the Deputy Commissioner, did you oversee the Tax-Exempt and Government Entities organization?

A Did I ever see them?

Q I'm sorry. Did you oversee them?

A Oh, oversee them. Yes.

Q And the head of that organization -- I will call it TEGE for short -- the head of that organization would have been a Commissioner, correct? It would be Commissioner of TEGE?

A A division Commissioner, yes.

Q OKAY. And am I correct in stating that Ms. Sarah Hall Ingram

was going to California, I think. I don't have the time exact, but I believe so.

Q All right. And then during the period of I think it is 2008 to 2012, then Douglas Shulman would have been the Commissioner; is that correct?

A Yes. Again, the 2008 throws me, but I don't have exact --

Q Okay. Well, I mean, for purposes of our conversation today, I don't think we're going to take you too far before 2010. So at least from 2010 to 2012, he was the Commissioner?

A Yes.

Q Okay. So I guess in your capacity as the Deputy Commissioner of Services and Enforcement, would you say that you held substantial authority over the day-to-day operations of the Internal Revenue Service?

A Substantial authority?

Q Yes.

A I held authority over it, but whether it was substantial or not, much of it was run by the businesses. So I don't really know what that means, to be honest with you. Did I have line authority over it? Yes, I did.

Q And they all reported up to you, correct?

A Correct.

Q Okay. So if they were going to undertake a major initiative or a make a major determination regarding policy, that probably would have to get funneled up to you; is that correct?

A Depended on what it was.

Q Now, regarding your work experience with Mr. Shulman, did you find that he involved himself in the day-to-day operations of the organization?

A Depended on the topic. So I operated sort of as a COO to his CEO, and if it was a topic that he was heavily interested in or involved in, or one of his places that he wanted to push forward, then he would have been very involved in that.

Q And this would be also with regard to like the day-to-day operations in the organization; would he get himself involved with those or --

A I don't know what you really are talking about when you talk about -- and I don't mean to be pejorative, but day-to-day operations, I'm not sure where policy oversight and care and feeding vary from the day-to-day operations.

Q Okay. Well, let me give you the context. We spoke to Mr. Shulman, and he gave us the impression that as the Commissioner, he was more involved with high-level -- very high-level sorts of oversight and management of the organization and determinations, and that essentially the other sorts of decisions that were required to be made in order to make sure that the agency was functioning effectively and efficiently were delegated down the line to the other officials at the IRS. That is the impression essentially what he told us.

A And I think that would depend --

Q Is that accurate?

There's actually two of them. And the one of the recipients is Nikole Flax. And the dates of these documents are July, I believe, and August of 2010. So in July and August of 2010, Nikole Flax would have been your Assistant Deputy Commissioner; is that correct?

A I believe so. Again, I have no reason to think that is not -- I don't know exactly when she came on in that job.

Q Okay. So she would have been reporting directly to you?

A She would have.

Q And working for you essentially, correct?

A She would have.

Q As your Assistant Deputy.

Okay. And I will represent that these documents -- that there were more than just these sensitive case reports attached to these emails. There were a number of them. And I removed them from this document because many of them were just -- they were just irrelevant. The only ones I have left attached here are the Tea Party ones.

A May I ask why they were irrelevant?

Q Well, they were irrelevant to my conversation with you because they dealt with organizations that are of no interest to me, like, for example, SFC [redacted] and things of that nature. So the ones I want to focus on are the Tea Party ones.

A Okay. So Mike's got more than --

Q Yeah. Yeah. There were probably, I'm going to say, maybe about -- what do you think, 10; maybe 10 or 12?

SFC [redacted]. Uh-huh.

BY SFC [redacted]:

Q Roughly with each one.

So what is a sensitive case report? What was your understanding of that document?

A So sensitive care reports are prepared, and they're prepared by the functions, all the functions, on what cases might be of interest up the line. And they tail off to a precious few, although not that few, up to the Deputy's office.

Q I see. And what's the purpose of them?

A To apprise us of things that are going on.

Q And --

A This one was likely media interest.

Q Okay. So at the time -- well, let me put it this way to you. This document -- who is Richard Daly? Let's start with that.

A Richard Daly works in TEGE, for the Commissioner of TEGE.

Q So why would he have been transmitting these sensitive case reports up to Nikole Flax?

A That probably was how they did it.

Q And would that have been to keep people apprised, like yourself and Ms. Flax, of significant cases --

A Yeah.

Q -- of the IRS at the time?

And then what did Ms. Flax -- what was her responsibility regarding these documents? When she received them, what was expected of her?

A So, this is -- I can answer more generally because this was

a function that was done by various people at different times in the office. And I didn't even remember that Nikole had done this, but she advised me apparently did. They would receive, you know, a pile of these things from, that were collected from all the functions and make me aware of those that they thought I should be aware of.

Q Okay. And do you recall Ms. Flax making you aware of these sensitive case reports?

A I don't.

Q Is it possible that she showed them to you?

A Of course it's possible, but I don't have a memory of it.

Q So if we could just maybe look at the sensitive case report for a moment. And actually both of them are essentially the same. I think one of them is just a month later and -- but for purposes of my conversation with you, we can just look at the first one. If you look at the upper left-hand corner there, it has got the name of the -- I guess the organizations here, and you can see the Prescott Tea Party and Albuquerque Tea Party; is that correct?

A Uh-huh. Yes, sorry.

Q And then the "sensitive case criteria" box that's kind of like two boxes below it, it's checked. It says, "Likely to attraction media or congressional attention"?

A Yes.

Q And I note that the box below it, "unique or novel issue," is not checked. And the issue, if you look at the case or issue summary essentially, it apprises the reader here that the -- there were various

meeting we had a few weeks ago," the meeting that was a few weeks back from this, what meeting was that? What was the subject of that meeting?

A So I don't know specifically, but during this time Lois was talking to us about I guess what we'll call a dual-track system of how to do exam selection in the political activities area. So that may have been it. That's my guess. Maybe I shouldn't guess, but that's my guess.

Q All right. And then the reference here to a plan going forward, would that that have been a plan you were interested in, in going forward with a dual-track system?

A That would have been any changes we were going to make in the political activities area with respect to selecting cases for examination. It did not have anything to do with particular taxpayers.

Q Yeah, understood, but it would have been about dual track, right?

A I don't know. That's my guess, as I say.

Q Well, that was what was on the table, right, this dual-track system?

A I believe that this is the timeframe. That's my guess.

Q Okay. Well, then you ask, What are the next steps? So she asks for you, What are the next steps? And that would have been next steps in what? The implementation of dual track?

A No. It hadn't been approved yet, right? I mean, I think they talked to me about it. I was generally okay with it. Ultimately I think we brought it to Doug.

Q Okay. So the -- at the point in time, dual track was just kind of a proposed way to deal with these referrals; is that right?

A No. The -- I mean, I don't think dual track changed the referral process, unless I'm mistaken. What it did was add a second track, which was to look at the 990 and do some looking, some picking up of stuff off the 990.

Q That would have been through data analytics?

A Yeah.

Q Okay.

A Pretty simplified data analytics at that point, though.

Q Okay. Now, she indicates here that another Steve meeting is required. Was there another Steve meeting?

A Don't remember it, but I don't think we got to Doug until later in the year, so there probably was.

Q All right. And then, therefore, the meeting that you had with her, were any decisions made?

A Again, if it was the dual-track sort of stuff, I wanted to bounce it off, and I wanted her to bounce it off of Doug.

Q And would this have been one of those areas where Doug would have the ultimate say as opposed to you in whether or not to proceed with the dual track?

A Let's be clear. I reported to Doug. Any time Doug was in the room, he had the call. Didn't mean he didn't say "Okay, do what you want to do," which I think he may have done in this case. So this seems fine to me. And -- but had he said, "Hell, no," then that would

have been a decision.

Q Well, I thought that you had indicated earlier that a lot of decisions were made in the operating components, and you had, you know, authority to make decisions on your own initiative, that you didn't need to run everything through Doug.

A Not everything, right. But if it was in front of Doug, then it was either for his concurrence or for just an update of him.

Q Right. And it was in front of Doug because you put it in front of Doug, right?

A I think I did.

SFC [redacted]. Exhibit 8.

[Miller Exhibit No. 8
was marked for identification.]

Mr. Miller. Give me a moment, please.

BY SFC [redacted]:

Q I only have a few questions on this one.

A Okay. So this is the same letter.

Q Yeah, essentially.

A Let me just -- okay. I may need to read it, but go ahead.

Q Yeah, my questions -- I only have a few. But Michelle Eldridge, was she in the IRS press office?

A She was.

Q And then why would she have been sending you, you know, Democracy 21 press release?

A Because of the inbounds.

was marked for identification.]

Mr. Miller. I see. They are raising ROO. Okay.

BY SFC [redacted]:

Q And this is a quick one. I'm not going to delve too deeply in this.

The document itself is an email dated November 10th, and it appears to be transmitting some documents, some of which we've seen before in the prior exhibit in preparation for a meeting with Commissioner Shulman. And the purpose of this meeting presumably, then, I think, from your prior testimony we guess would have been to get Commissioner Shulman's approval or consent to proceed with a dual track?

A Yeah. I don't know whether -- which of those terms is really right, but to make sure he was okay with it. I don't know if I brought it into him to say yea, nay, or whether it was this is what we are doing, complain if you don't like it. But either way had he taken the position that he was uncomfortable with it, we would have modified it or not done it.

Q And the position he took at the time was to go ahead and proceed with dual track?

A That's my recollection. My recollection was he didn't -- he was generally okay.

Q Okay. All right. That's all I've got for this exhibit.

[Miller Exhibit No. 11

was marked for identification.]

BY SFC [redacted]:

application, "if we take a long time." And your language and the language, I think, that you made suggests here about the organization can operate without the letter without material barrier. There's almost like kind of a disconnect between those two concepts, right? I mean, because you weren't suggesting here about delay by the IRS and making a determination, were you, when you --

A Well, let's look. I actually was -- the timeframe would indicate that we were talking about the donor letters, and that's why this all came out, right? February of 12, is it?

Q Well, the document doesn't refer to the donor letters, does it?

A But I'm guessing this was within the context of the news at that time.

Q Okay. And?

A And so it was -- some of these were old cases, and I was aware of that at this point.

Q Okay. So you were aware at this point in time that there were cases pending in Determinations that hadn't been dealt with expeditiously, or appropriately, or normally?

A I was aware that there were -- I mean, this is maybe ahead of where you want to be, but this is the donor. This is the first time I'm aware that there were some cases in this timeframe. And this is when some organizations are coming forward, some representatives are coming forward and saying, these letters are overbroad.

Q Okay. All right. And in that context, you also learned

that some of these cases were very old; is that correct?

A Old. Yes.

Q Okay. All right. So then her reference here to taking a long time would be kind of connected to that allegation?

A That's my guess. I mean, it's not out of the blue, let's put it that way. I don't think it's out of the blue.

Q Okay. Then let's look at this document. Perhaps we can focus on that first page. Again, you also here to be asking -- you appear to be asking here for some information regarding the number of political cases pending, and it appears to be both in Determinations as well as in Exams, if I call your attention to your second -- the second email down on the first page?

A Let me take a quick look again, please.

Q Yes.

A So I must have seen the numbers at some point and wondered what was going on. I don't know, were there numbers in the back here?

Q I believe there are. It appears to me that you were asking for numbers here.

A But they're not in here. I'm just trying to focus on what I think I might have been asking for.

Q So in that second email down, it appears that that's a request for information, that you're expressing an interest in getting information regarding the number of cases in Determinations, and presumably that means cases with political activity in them, and then the ever-shrinking number of exams. Is that right? Am I reading that

Q In use. In use.

A I don't know whether it was ever supposed to be in use. My understanding was it wasn't supposed to be used, but it was shared for comment and --

Q Okay. So it was -- so you are not sure if the EOD agents actually used the guide sheet; is that what you are saying?

A I was told, I think, in May when Nan came back and briefed us that Stephen Seok, or I'm not sure how to pronounce it, may have used it as a template to do some of the letters that we saw in February that were objectionable.

Q Okay. All right. So at some point, though, it looks like -- as I have said earlier, from this email it appears that Lois requested the Chief Counsel to look at this, to look at the guide sheet, and that request looks like from the second email that it happened sometime in March, but that the guide sheet was, in fact --

A Actually I thought it was earlier than that. I know what this says, but my memory is it was earlier than that.

Q That the Chief Counsel and the guide sheet?

A But it looks -- you're right. The Janine Cook email looks as though it was more recent than that. And the first time I, you know -- that's okay, yeah.

Q What I'm trying to get at is the length of time it looks like the guide sheet was developed, it looks like it was shared with folks that may have actually used it, and then subsequently it was reviewed by Chief Counsel. It looks like the Chief Counsel part got -- it was

And did you weigh in on that? Did you have an opinion about it?

A I don't think I did.

Q Was a decision made just to kill it at that point, or did it just die on its own accord?

A I think it died on its own accord, but I wasn't part of a discussion to kill it, let's put it that way.

Q Okay. So you had no role in the decision --

A I don't think so.

Q -- that would have ended this?

A I don't recall that.

Q Could you wait until I finish --

A I apologize.

Q I know that you realize what I'm going to ask you, but it makes her -- very confused record ultimately for Madam Court Reporter.

A Okay. Sorry about that.

Q Yeah. Actually, I'm reminded that there was a set of circumstances we discussed with one of the witnesses about the guide sheet. And I think the impression she had was that the guide sheet was overtaken by events, meaning that at some point the determination was made to train the EOD specialists, and that that would be the better way to instill in them the kind of fine distinctions that they needed to be aware of in order to make the determinations that they needed to make on these applications.

A So that may be the case, actually, because I think in May -- the issue was this, and we'll talk about it quite a bit, I'm sure,

but the issue with those cases was that they were sitting there, and the poor people in Cincinnati and wherever else they were on the determinations side didn't get the help they needed. And the guide sheet was a good-faith attempt to get them the help they needed, but it was not -- it didn't work. When Nan came back and we talked about this, how else could we get those people some help, and what happened was they were trained, there was a workshop that was done, and they were paired with somebody in EO Technical to try to help them.

And so I guess that is -- that is -- you know, maybe the same thing, which is, there was no need for the guide sheet, which wasn't working anyway, because we went with a different approach.

Q Okay. Okay. And you said the guide sheet was a good-faith attempt. Did you feel it was enough, the guide sheet in and of itself was enough of a -- of an effort? Was that the tool that EOD really needed to get these cases moving along?

A Clearly it wasn't, because it didn't work.

Q Okay. But assuming that the guide sheet was -- let's say had been put into -- into a format that was usable, do you think that would be -- was -- would have been sufficient to get the cases off the mark?

A I don't know, because I don't know what the thing would have looked like. I don't know what those discussions would have been like. My suspicion is no, we still needed to push in different areas and train people up.

Q Okay.

A Because, you know, if it was -- one of the problems with it is it was -- it was all over the place, and they couldn't ask everything, and they needed training. They didn't have to ask everything.

Q Okay. Okay. Okay. I'm going to switch gears on you, change the topic. And next I'd like to talk to you about the processing of applications for exemption by EO Determinations in the early part of 2012. And in February of 2012, there were a number of stories in the press that were circulating indicating that something might be amiss with the way the IRS was processing applications for tax exemption, particularly for Tea Party groups. Do you recall any of those stories flying around?

A I do.

Q Let me go ahead and show you Exhibit 14.

[Miller Exhibit No. 14
was marked for identification.]

BY SFC [redacted]:

Q Exhibit 14 is an email dated February 29, 2012, and it's to you, Mr. Miller, from Faris Fink. And the email is transmitting an article entitled "Is the IRS Attempting to Intimidate Local Tea Parties?" And the substance of the article is essentially that Tea Party organizations began receiving, I think, what it refers to as onerous requests for information and documents in January and February of 2012, and also that many of the applications of these Tea Party groups had been sitting around for quite some time, I think, for a number of things, or at least the reference here is to 2010.

Did you read this article? Do you recall reading this article?

A I don't recall reading this article.

Q Was it -- did you receive other articles kind of like this, the same theme, the same tenor at or about this time?

A I think so, yes.

Q Okay. So it would have been fairly typical of the kind of articles that were floating around in the press at the time?

A I don't know what typical would be, but there were complaints about the letters.

Q Okay. And there were others like it, right?

A Yes, there were.

Q Okay. Now, were you concerned when you saw these press stories? Did you have some sense of concern about what might be going on in EO Determinations?

A Yeah.

Q Okay. And so -- and what did you do with that concern? How did you respond to these press --

A Either I reached out or somebody from the office reached out and asked EO what was going on.

Q Okay. And then who in EO was asked?

A Probably was Lois, although I'm not sure of that.

Q And who did the reaching out?

A It was either myself, or it was one of my office. Might have been Nikole.

Q Okay. And do you recall what Miss Lerner may have said

either to you or to Nikole?

A You mean in the initial inquiry?

Q Yeah. In other words, you had a concern here, right?

A Yes.

Q Okay. Was the concern centered around the intrusive and oppressive sorts of requests that were being reported in the press here?

A I'm not sure. I'll take my own characterization rather than --

Q I'm borrowing from this article. I'm not trying to stray off. You call it whatever you want.

A The inquiry was about what appeared to be overreach in terms of the letters.

Q Okay. All right. And what about the fact that the -- many of these applications had been sitting around since, you know, 2010, 2011? Was that also a concern?

A Not at the start. As I found out more about the cases, then, yes, that was a concern.

Q Okay. All right. So you said you -- either you or Miss Flax reached out to Lois, probably --

A I said it was someone --

Q Probably.

A It was either Nikole, myself, or somebody else from my office.

Q Okay. And what -- and my question to you at the point that we kind of got off track was what was response back from Lois? What

did Lois indicate regarding the fact that these -- there were these press reports complaining about intrusive and oppressive inquiries, and burdensome document requests, and so forth?

A So I'm at a loss, because I'm wondering whether you -- whether you want the answer to be the specific conversation, which I don't recall, or the situation, which I sort of do.

Q Okay. Well, if you don't -- you don't recall, you have no recollection whatsoever what Ms. Lerner --

A Of the immediate reaction?

Q Yeah.

A No. But we talked about the issue over the course of the next month.

Q Okay. So why don't you go ahead and synthesize that for me, if you could.

A So she started briefing out what I was told was 20 to 30 cases had received this sort of letter. I think I was told there were more cases than that. I was told they were not all Tea Party cases, even in the 20 and 30 were not all Tea Party cases. Lois told me, I believe, that there was a spectrum of cases there, a political spectrum of cases. And I learned that the particular issues in the letters that I'm remembering are the following: They asked in some cases for the list of donors, they asked for every screen shot that had ever been on a Web site, and they gave 14 days to come back. And all of those I scratched my head over.

Q So they seemed kind of onerous to you and unnecessary?

A They raised, sure as heck, an issue as to whether they were going to be necessary in these cases or not. And I asked, and I was told, maybe they weren't, and maybe these particular situations were not necessary.

Q Okay.

A And the 14 days was the standard. But, as you mentioned, we had been sitting on these cases for a long time, and then to come back with a pretty long list of questions and give 14 days didn't seem like a reasonable thing to do either.

Q Okay. Did anyone in your office, either at your direction perhaps or yourself, also reach out to Miss Thomas?

A No, I don't think so, but I'm not sure about that.

Q Okay.

A I generally would have worked through Lois. I think I talked to Holly Paz as well.

Q And what did she tell you about this?

A That the letters were -- as I mentioned, that the letters may have gone farther than they needed to go.

Q Okay. And at that point what did you determine to do to address this issue?

A So I thought -- we talked amongst ourselves, and it seemed like we should remedy the situation by giving people more time, by ameliorating the screen shot to be a sample, and if we really didn't need those done, more or less, we should reach out and say we don't need those donor lists.

And, again, to go back to your comment earlier, in that situation the objectionable piece was that if the -- if approval occurred, and we had asked for donors, those donors would be public. And that's fine if we need them. And there are cases when we could need donors. But if we didn't need them, then we shouldn't be asking for them because they're entitled to privacy.

Q Okay. And so how was your decision in that regard put into play? What --

A We talked to Lois and Holly and company and asked that those things be done.

Q Okay. And they were done, to your knowledge?

A To my knowledge, they were done. And also we talked -- you know, we talked about what would happen if somebody had already sent in the donor list. And we determined that or I was told that we had the opportunity to not utilize it and either send it back or -- or destroy it if we weren't going to use it.

Q And what option did you pick?

A I think ultimately there was only one legal option. I believe I was told it could be destroyed, and I think that's what was supposedly done.

Q Okay. Now, I think you alluded to Nan Marks earlier in the conversations with her.

A Right.

Q And in reviewing your testimony before the Senate Finance Committee earlier this year, I think you indicated then that you had

grown increasingly concerned about things that were going on in EOD in terms of the processing of the cases, and you were growing concerned not only from stories like this, but also from congressional inquiries that you were receiving about that time. Is that about right?

A I'm -- I'm not going to be able to reference the testimony, but I think the -- my concern over the donor cases was both press reports and the congressionals coming in.

Q Okay. All right. And at some point in time, that concern grew to the point that you thought maybe you needed some eyes on the ground, right?

A Right, correct.

Q Okay. And I believe I think you testified that Nan -- you asked Nan Marks to go to Cincinnati and to find out what was going on regarding the processing of these cases; is that correct?

A Correct.

Q Okay. And at the point in time that you asked Ms. Marks -- and I presume that would have been what, was it March of 2012?

A March of 2012.

Q What position did she hold?

A She was the Special Assistant to Joseph Grant.

Q Okay. So the Commissioner of TEGE?

A Yes.

Q All right. Now, actually before I ask the next questions, let me go ahead and show you an exhibit. Exhibit 15.

[Miller Exhibit No. 15

was marked for identification.]

BY SFC [redacted]:

Q While you're looking at that, let me ask you a question. The position that Nan Marks held, was that considered to be a senior position?

A That was -- it wasn't SES, but it was above the GS pay grade. It was a senior level.

Q I see. Like a technical position, something like that?

A Yeah, it could be a technical position. But it really was a nonmanagement executive position more than a technical position.

Q I see. I see.

A Okay.

Q All right. So if you could kind of focus your attention on that email at the bottom there?

A Uh-huh.

Q This is an email from Nan Marks to Cindy Thomas. And you are not on this email chain, nor are you on the email above it. But in this particular email, it appears that Ms. Marks was planning to visit Cincinnati in the week of April 23rd. Would that be about correct?

A April 23rd?

Q Yeah, I believe so.

A I don't know. That's about right. I mean, whether it was earlier -- I thought it was a little earlier than that, but, yeah.

Q Okay. And was she planning to go alone --

A Hold on one second. Friday, April 13th. I hadn't really looked at the date.

Okay.

Q All right. So does April 23rd sound about right?

A It doesn't, but the email would indicate it might be.

Q Okay.

A I thought it was earlier actually, because I asked --

Q In March? Okay.

Now, did Ms. Marks perform the investigation alone, or was she accompanied by others?

A I think -- I think Joseph Urban, Rob Malone, and I'm not sure -- I thought Holly also went.

Q So a team of four folks?

A You know, I -- I knew Joe Urban, and I knew Nan. I think they told me Rob was going to go, and I'm not sure I knew that Holly was or wasn't going to go.

Q And what did Mr. Malone -- right? Is that his name?

A Yes.

Q And what position did he hold at the time?

A I think he was -- I don't know. He was in EO or in TEGE.

Q Do you know when they completed that investigation?

A I was briefed the first week of May.

Q Okay. Was there a hiatus there or --

A I don't really know whether there was or not.

Q Okay. Now, Ms. Marks states in this email that she needs

to perform the investigation in advance of Steve's testimony, date not yet scheduled, but probably early May. And the reference here to "Steve's testimony" presumably is to your testimony?

A I would be the Steve, yes.

Q And the testimony would presumably be some testimony before Congress?

A So -- it would be. So I saw this when I was looking through the stuff at the Service, or I saw something like it. I did not remember, and I still don't remember, why it was being tied to testimony.

Q Okay.

A There's two possibilities. One is at some point I think Ways and Means was considering a (c)(4) hearing. And the second one, and maybe it's related, is that rather than just have somebody come out willy-nilly and just show up, that that was the story that was being given. And, you know, if you've talked to others, you probably have the answer that I don't have. But I don't remember it being specific to the testimony. I remember we had -- we had issues with -- that were out there, and we needed somebody out there to take a look.

Q Okay. So let me ask you, was it -- did you instruct Ms. Marks to complete her investigation before any kind of testimony that you might have to give?

A No. I wanted it done quickly so that I could know. And we knew also that TIGTA was going in after that. We didn't want to be in at the same time as TIGTA. So she needed to go out and take a look.

Q And you don't know why she may have said to Cindy Thomas that

this had to be done before the -- before the testimony that she's -- I think she's projecting early May.

A I don't -- you know, it may be that there was, like I say, the testimony that was being talked about in the (c)(4) or (c)(4) hearing.

Q Okay. And how would Nan Marks have known about that?

Mr. Hauss. I don't think he can testify as to what she knew --

SFC . Well, perhaps he told her.

Mr. Miller. But again, I don't remember this, so if I did tell her, I don't remember that.

BY SFC :

Q All right. Now, if it was tied to any kind of possible testimony that you were going to give at a (c)(4) hearing here I think in Ways and Means, was it your sense that you were going to actually report out what Nan found during that -- during that testimony or during that era?

A Again, I don't remember it being tied to testimony. It was, let's find out what's happening on these cases. It was not tied to congressional interest, it was tied to what's going on in these cases.

Q Now, in reporting her findings, and presumably she did -- I think you indicated she reported the findings to you the first week of May?

A Yes.

Q All right. Did she reach any conclusions specifically regarding the propriety of the questions that had been used by the EOD

agents, you know, to the applicants for exempt status? And these would have been the -- I think you referred to them as donor questions.

A That was a part of a much larger report out.

Q Okay. So let's take it part by part. So what was -- what was her sense regarding those kinds of questions that had been reported in the press?

A I think she thought that they were the result of -- of a lack of training and a lack of guidance from others.

Q Okay. And who would the others have been?

A It would have been EO Technical, I guess.

Q Now, did she also apprise you of the number of cases that were still pending in the queue that involved advocacy issues?

A I think she did.

Q And do you recall the number of cases that were still pending?

A Two hundred fifty to three hundred, and they included both (c)(3)s, I think, and (c)(4)s.

Q And was that number alarming to you?

A No. It wasn't -- the number was not an issue for me.

Q All right. Did she tell you that some of those cases had been pending for several years, at least since 2010?

A She told me that some were 2010, and they were all -- a lot of them were older cases.

Q Did the age of those cases cause you to have any concern?

A Yes.

Q And what was the concern?

A My concern was that it looked like our folks were not trained up to deal with these cases, that they didn't have a sufficient guidance from places that they should have been getting guidance from, and that they were sitting around waiting and not getting developed.

Q Okay. Now, did she also tell you that the EOD agents had been using a list to determine what cases would be sent to full development, and that that list contained names like "Tea Party," "9/12," "Patriots"?

A First time I heard about the BOLO list, yes.

Q So she told you about that?

A Yes.

Q And did she refer to the list as the "BOLO list"?

A Maybe. Don't really know. But she did say that "Tea Party" was being used in the name. She also told me it had been fixed earlier and gave me the general changes along the way, less -- less particular in time than the TIGTA report, but generally in conformity with that. She talked about the fact that there were diversity in the cases, that at least half the cases were post the bad BOLO, and that TIGTA was in on it and taking a look at it, and that she had found that no evidence of political bias or improper actions. She viewed this as these guys were trying to do something; they were tone deaf when they did it.

Q Okay. So jump back to the BOLO. That was a long answer.

SFC [redacted]. Could I jump in here?

SFC [redacted]. Go ahead.

SFC [redacted]:

Q At that time, was it your understanding that Ms. Marks had talked to the employees of the question, had done interviews. What was your understanding of the extent of her investigation in Cincinnati?

A It was short, but she had talked to everybody, I believe, I was told, and she had looked at a goodly number of cases, case files.

Q Looked at case files.

A Yes.

SFC [redacted]. Thank you.

BY SFC [redacted]:

Q Did Ms. Marks complain that the way the BOLO was being used, in other words, the mere presence of one of these words or phrases like "Tea Party," "9/12," "Patriot," was alone sufficient to cause the EOD agent to send the case for fuller development?

A She said they were using the name. I don't think we got too much past that. But that was -- that's what I took from that.

Q Okay. And you took it that they were actually just using the name to flip the case to full development?

A I didn't know. It wasn't -- by the way, there was not a full-blown, long discussion of the BOLO list. There just wasn't. It was in there, it was obviously a problem, but it was in the past, and our focus quickly became moving the cases.

Q Okay. And at the time, I think, you said that -- a few minutes ago that she reported that the problem had been fixed?

A Yeah.

Q What was that a reference to?

A The fact that Lois had changed it the previous year, I was also told that at some point it changed again, but not in the same fashion. And it had been changed back yet again earlier before it got to me.

Q Okay. And so when it was changed back yet again, was that also a fix; in other words, to remove anything that perhaps was problematic?

A So it was not a partisan list at that point. It didn't appear partisan, but it was based on position. And we should be doing it based on the case file and not on position. So it was not as bad, but it wasn't good either.

Q Okay. Was that her conclusion, or did she give you the criteria, and you reached the conclusion on your own?

A I think both.

Q Do you recall what the criteria was?

A I don't recall what the criteria was, but it was similar to what was being talked about in the TIGTA report. So I don't know if I remember from that conversation or from the TIGTA report.

Q Did Ms. Marks give any indication that perhaps the EOD agents, notwithstanding the attempted fix, were still relying on the presence of words like "Tea Party," "9/12," and "Patriot" to make determinations regarding the disposition, ultimate disposition, of a case and how it was developed?

A It wasn't my understanding.

Q So "fix" meant fix; it got totally sorted out?

A I thought that's right.

Q Okay. Now, when you talked to Ms. Marks, did she give you any indication that she herself was aware of the existence of the BOLO criteria prior to her trip to Cincinnati?

A I don't have recollection on that.

Q Now, what else did she tell you regarding the -- her findings and --

A So she walked through the following: She said there's a group of cases, 250, 300, something like that, they're stuck. Folks are -- have not been trained, and they're not getting the guidance that they need to develop these cases, and they're old. She talked a little bit about the fact that there was a BOLO list, and, you know, that was clearly of interest. She said it had been fixed, that there was diversity in the cases. At least half the case were post the first list.

We knew TIGTA was in at that point as well. We talked a little about that. And she was going to go off and brief TIGTA on her finding. She talked about the fact that -- a little bit about the fact that the -- the progression of the BOLO, as I mentioned. And she talked a little bit about the donor letters and the fact that she thought that -- this goes to the conversation we had earlier about the guide sheet, the fact that it may have been utilized by Stephen Seok, or whatever his name was, to develop the cases. And I may be missing more, and it'll come out as you tease, I guess.

Q Okay. We'll deal with the TIGTA.

SFC . Do you have something, SFC ?

BY SFC [redacted]:

Q You had said that more than half were post list. Was that post the first BOLO list or what --

A Post the July change.

Q Post the July change?

A I believe so.

SFC [redacted]. Thanks.

BY SFC [redacted]:

Q July 2011 change?

A I believe so.

Q Now, when she apprised you of the criteria on the BOLO list, what was your reaction when you heard that cases were being sorted by political affiliation?

A I thought it was stupid and inappropriate.

Q And did you feel that it would create the impression that there was a bias against these organizations?

A I was concerned about perception, yes. But just so we're clear, those cases should have been centralized. We can argue about it, and I'm sure we will. Those cases should have been centralized. It was once they got centralized that I saw truly there was a problem because we failed miserably in moving the cases along and getting people to no or yes. But the concept of grouping cases had worked for us before, and that was not the wrong -- centralization, in my mind, was not the wrong answer. If those cases had political indicia, they would have been centralized. They were done in an inappropriate fashion because

of perception. But I think those cases should have been in there, and they should have been looked at in a consistent manner. We failed to do a good job of quality and move those cases along. But they should have been -- they were going to get fully developed, and they should have been done in a better fashion.

Q So your sense was that the criteria that was used to centralize them was inappropriate, but had different criteria been used, for example, let's say just the presence of political advocacy or political activity or political intervention, would that have been appropriate criteria to use to centralize those cases?

A Absolutely.

Q Okay. Now, I think when you testified before the Senate Finance Committee earlier this year, you indicated that you were troubled when you saw the BOLO list. And my recollection, too, of reviewing your testimony was that prior to that, you testified before the House, and I think you indicated that you were outraged that --

A I was outraged about the whole thing.

Q Okay. All right. Now, let's see. Was the outrage over the whole thing and the troublesome sense that you had, I guess, when you heard about what the BOLO list contained, was that because the -- I guess the mission of the IRS is to apply the tax laws in a way that's -- that were -- that's impartial, and that the use of terms like "Tea Party" and "Patriot" and "9/12" suggests it's something different than that, that the tax laws are being applied in a partisan sort of way with regard to politics?

A I think it didn't look good from a perception, there's no question about that.

Q And the perception being that kind of erodes the perception of what the IRS should be doing, right? It should be applying tax laws without regard to political persuasion of whatever taxpayer happens to be appearing before it, right?

A You're right. We should be nonpartisan in our application of law.

Q Okay. Now, when you received these -- this report, I guess, from Ms. Marks, did you take that, I guess the results, and move them up to Mr. Shulman? Is this one of those things that you would have shared with Mr. Shulman?

A So, yeah. I mean, yeah. I don't have a specific recollection of doing it, but I would have done it. It was troubling, and I would have wandered across the hall or through the doors that connected our offices and walked him through it. And I don't have a specific recollection of that conversation. It's odd, because I do of the conversation; and the gift tax area, I also talked to him about that one. I remember the conversation. This one, I don't remember the conversation, but I'm quite sure I did. That was the relationship that we had.

Q Would it have been fairly contemporaneous with the report that Ms. Marks gave you?

A Should have been. Again, I don't remember when it happened, but it should have been; in the ordinary course of business, it would

have been.

Q It wouldn't have been something you would have sat on, right?

A I would think not.

Q Okay. So at some point in time, when you reported to Mr. Shulman, did you give him the full report that Ms. Marks had given you? Did you give him, like, a truncated version of it?

A I don't know, I don't remember the -- I would have given him the salient points at least.

Q Okay. And that would have been the existence of a BOLO list?

A I would assume that the BOLO list would have come up.

Q Now, Ms. Marks, when she gave you this report, did she also make recommendations regarding how to improve the situation in Cincinnati?

A And I don't remember whether she did them then or a week from then or along the way. But within a short period, I asked her for her recommendations, and she made some that we adopted.

Q Okay. And do you recall what they were?

A Get the people trained up. Do a workshop where they actually would work the same case side by side and see where it went. Tie folks in the field who are doing these cases to somebody in EO Technical that could give them the kind of help they needed. That was the "success with the guide sheet" sort of approach, I guess, somebody was talking about.

And look at all the cases. Review the cases and see what state they're in and, for want of a better word because it will come up, the

buckets. We have decided we would bucket the cases.

I also -- and you haven't asked this yet, but I also out of that meeting, I believe, the first meeting, asked that Mr. Seok be taken out of his coordinator position, and I asked for the person who had changed the BOLO back to something that was not as good as the one in July, that that person be counseled. And at the time I thought it was somebody who had turned out maybe not to be. But that I found out very recently, actually before the hearings, both -- last set of hearings.

Q Okay.

A But we divided up the cases in a fashion that allowed the ones that were close to get out.

Q Okay. And that would have been the bucketing exercise.

A Yes.

Q And that happened during the middle part of 2012, May, June, July --

A That would have been May, I think.

Q Okay. Okay. So just jumping back, if we could, to your conversation with Mr. Shulman, once you apprised him of what had happened in Cincinnati regarding the BOLO list and the processing of these cases, what was his reaction?

A Don't remember the conversation.

Q Okay. Now, your sense was outrage or trouble. Did you get a sense that he may have had the same sort of reaction?

A I would -- I don't know. I would think so, but I don't know. And -- yeah, I don't know.

Q Okay. Did he possibly give any indication that he was going to notify his superior in Department of Treasury?

A I did not ever hear that, I don't believe.

Q Okay. And do you know if he ever notified anyone at Treasury about the -- the results of Ms. Marks' investigation?

A Not to my knowledge.

BY SFC [redacted]:

Q Who was it that you believed was responsible for changing the BOLO back to the objectionable terms?

A I think my notes -- I don't know. Maybe John Shafer or somebody out there who was a group manager. And later I was told by Lois and company or by Nikole or somebody that it turned out that he may not have done it. And so what Cindy Thomas did is she brought them all in, all the people who could have done it, and counseled all of them on the need to be careful. And that had -- that, by the way, by that point, the BOLO was -- was changeable only with the consent of the first-line executive.

Q So you never found out who it was that had made the change?

A Never did.

BY SFC [redacted]:

Q Does the name Steve Bowling ring a bell? Is that possibly the name?

A So -- could have been because I've seen it. But where I've seen the name is stuff that's come out subsequent that I have been tracking. But I don't know whether he did or didn't. I don't really

know who did.

Q Okay. And Mr. Seok?

A Remember that I did not know that it wasn't the guy I thought it was until I think all this blew up.

Q Okay. I think you indicated that you asked Mr. Seok to be taken out of the position he was in.

A Transferred off of the coordinator role.

Q Okay. And did he retain his grade?

A Probably.

Q So it wasn't a demotion or anything like that?

A It wasn't a demotion.

Q It was just a transfer away from this particular set of assignments or set of duties to a different set?

A So if you're asking if it was a personnel action?

Q Yes.

A I think within the HR definition it wasn't; in my mind, it was, because I was pulling him off his job.

BY SFC [redacted]:

Q If I could jump in real quick. That was because he was the one that was responsible for sending out the donor list questions?

A That, and because the general coordination of cases hadn't worked very well. And that was -- mostly it was the donor list, but also we needed just a fresh start.

SFC [redacted]. Thanks.

BY SFC [redacted]:

Q Let's just show you another document. We'll mark this one Exhibit 16.

[Miller Exhibit No. 16
was marked for identification.]

Mr. Miller. Okay.

BY SFC [redacted]:

Q Okay. This document is not dated.0. But it's a timeline related to the TIGTA audit. And this was provided to the Senate Finance Committee by TIGTA as part of a document production request that the Senate Finance Committee had submitted to TIGTA. And it appears from the timeline that TIGTA apprised IRS Legislative Affairs of the existence of the audit that it was going to perform on March 29, 2012. I think -- if you look on the first page, it's about the sixth entry down.

A Uh-huh.

Q When did you find out that TIGTA was going to be perform an audit?

A So they had done -- this is -- they had done some preaudit discussions, I think, even before this with the EO, in this timeframe, whether it was a week before; it certainly wasn't much after.

Q Okay. And at the time that you were aware that TIGTA was going to come and do an audit, what was your sense of the scope of that audit? What issues were they going to look at?

A I don't think I had any scope in mind before they showed up on -- as I say, on May 30th and walked us through.

Q Okay. So in the period of time of March and April --

A I will say I knew they were going out to spend time in Cincinnati.

Q Okay.

A Because I wanted Nan and company to be out of there by then so that they were not stepping on each other's toes.

Q We'll get to that in a second.

So you were unaware that the scope of the audit would include these issues about Tea Party and 9/12 and Patriot and other --

A No. I assumed that they would, because that was all the stuff that was going on in the press.

Q Okay. All right. Well, the use of that criteria was going on in the press?

A No. The -- the determinations of the Tea Party. So let's rewind it.

Q Okay.

A I didn't know about the BOLO until May.

Q Right.

A So there's no reason why I would have known that it would have been the subject of a TIGTA audit.

Q Okay.

A What was going on out there with the determination letters, that was what I assumed they were going to be looking at.

Q Okay. All right. I see.

A Sorry.

BY SFC [redacted]:

Q Okay. Okay. So if we look at this entry here from May 30, 2012, and it appears that the IG briefed you, and Commissioner Shulman and Beth Tucker on the criteria that was targeting the Tea Party. What other issues or -- did the IG apprise you of at that point in time? What other -- in other words, did they give you any sense for what else they might be looking at aside from the criteria?

A So, first, I don't recall them using the word "targeting." So let's just put that out there. Maybe they did, but that's not my recollection.

Q So what was your recollection regarding the --

A That they were using inappropriate -- that we were using inappropriate criteria or had been using inappropriate criteria in the past.

Q And did they reference what the criteria was?

A Yes, I think they did.

Q Okay.

A But remember, that meeting was a meeting of the top-level IRS folks with the top-level IG folks, and as a result, that had a bunch of things in it, that meeting. This was one of them. And in that meeting I think they said they were going to do a different sort of audit, that they were going to sample, do some sampling of (c)(4)s and of the grouping, that that was there, and that they would be done much sooner.

Q Did they indicate that they were going to look at the donor questions, as you indicate, as you've called them?

improper and incorrect.

Q Right. Right. And it created the perception that the laws were being applied in a way that took into account the politics of the applicant organization; isn't that correct?

A Could have.

Q Okay. It created that perception, though, didn't it?

A Could have.

Q Singling out an organization because it was a Tea Party organization?

A Perception-wise, that's possible. Reality-wise, it's hard to separate what actually happened here, which is those cases, again, should have gone into full development. And, in my mind, the BOLO list, while perception is bad, led to a result that was appropriate, and then what happened was the wrongdoing.

Q Okay. All right.

So let's recap some facts. In February and March of 2012, I think you were aware of allegations that the Tea Party applications were being, I guess, subjected to these questions, questions that perhaps were excessive, too broad in scope. And I think your awareness came from stories in the press as well as from congressional inquiries. Is that correct?

A What I knew at that time was that 20 or 30 cases, which were not all Tea Party cases, had gotten these letters that I did think were overreaching.

Q Okay. But the substance of the stories were kind of, like

the one I showed you, really centered around the Tea Party, didn't they?

A Some of the stories did.

Q Okay. All right.

And then in March, you became aware that TIGTA was going to conduct an audit into what was going on in Cincinnati, correct?

A Yeah, I think so.

Q Okay.

And in Senator Hatch's letter here, in two places he makes it, I think, pretty clear to most people that he and the other signatories to this letter had concerns about whether the IRS was applying the tax laws in a fair way, in an equal way, in a way that didn't take into account the politics of the taxpayer who was under consideration by the IRS. Is that right?

A I can't speak to what he was -- we read this as a concern about the donor letters.

Q Okay. Well, he states what his concerns are here in this document in two places. And I think it's fairly clear -- I pointed them out to you -- the concerns were about the fair and equal application of the laws in the context of the donor letters.

Mr. Hauss. I think the letter speaks for itself and Mr. Miller doesn't need to speculate on what Mr. Hatch was intending?

BY MR. CARLO:

Q Isn't that how you interpreted the letter?

A I interpreted the letter to be about the donor letters.

Q Okay. And you had no sense about what was driving this, his

Cincinnati. Is that correct?

A Don't know.

Q Do you recall, looking back at that other exhibit, I think --

A Yeah. Again, I thought it was earlier, actually. But I don't have a perfect timeline there.

Q Okay. And did it occur to you at the time that you reviewed this response back on April 26th that perhaps it might have been prudent to wait until Ms. Marks came back and reported to you on her findings of her investigation before you wrote this response back to Senator Hatch?

A Didn't think about that.

Q Never occurred to you?

A And you say I wrote this response.

Q Well --

A Obviously, I signed it --

Q You signed it.

A -- and I certainly had a hand in it.

Q Yes.

A But --

Q And you reviewed it before you signed it, right?

A One would hope, yes.

Q Okay. All right.

Okay. So while you may not have had a reliable report about the fact that applications weren't being processed in a fair way because this BOLO criteria had been used, you didn't have that information on

April 26th. You did have that information sometime at the beginning of May, right?

A I had an update on the information that I had. I didn't have all the information.

Q Okay.

So once you had that information at the beginning of May when Nan Marks told you what was going on -- and, subsequently, I think we looked at an exhibit that had a TIGTA timeline. And it appears that on May 30 that there was a briefing, and you were at the briefing, and TIGTA apprised you that they were going to investigate the use of criteria that targeted the Tea Party and used words like "Tea Party," "9/12," and "Patriots" and so forth, right? You had that information at least on May 30, correct?

A Well, they didn't use the term "targeting," is my recollection.

Q Okay. Well, they indicated --

A But, yes, we met with TIGTA May 30th.

Q Okay. You met with TIGTA, and TIGTA told you that EOD had used criteria that focused -- if you don't want to use the word "target," we can say that focused on applicant organizations based on the existence of words like "Tea Party," "9/12," and "Patriot"; is that correct?

A It was the beginning of their audit.

Q Okay.

A Not a finding. It was the beginning of their audit.

Q Yeah. And that's what they were looking at.

A I think all the letters are correct.

Q Okay. And I'm not arguing with you about your letter, okay? I don't even -- I don't care about your letter. I'm asking you about your responsibility as the Acting Commissioner to respond to an inquiry from Senator Hatch and 11 other Senators who expressed to you a very deep concern about bias in the administration of the tax laws by your organization.

And now you are in possession of information, of evidence from your own agent that demonstrates that there was at least a perception of some bias, and yet you took no steps to notify Senator Hatch or any of the other signatories. You just didn't do anything.

I mean, I don't care about your letter. Why didn't you pick the phone up? Why didn't you write an email to Senator Hatch? Why didn't you ask your staff to contact the Senate Finance Committee staff and have them come over and brief them on what Ms. Marks had found? All those things were things that could've been done and should've been done, don't you think?

A No. I didn't have all the facts. TIGTA was working on the facts. And let me just state, I wasn't the Acting Commissioner until after the election.

Q Okay. I'm focusing, Mr. Miller, on the time period after May 3rd when Nan Marks had reported to you about this information, okay? And you were in possession of this information.

And the fact that TIGTA was doing its own review, that was TIGTA's issue. You had your agent on the ground that did an investigation and

this.

SFC [redacted]. I think SFC [redacted] had a question.

BY SFC [redacted]:

Q Why isn't Lois Lerner on this email chain? She's the boss of all this.

A No. Joe Urban worked for -- I believe he worked for Joe Grant. But she should've been on --

Q Holly Paz sort of bypassed her, and all you guys are discussing this important topic, and she isn't even alerted to it. Was something going on with Lois in the summer of 2012?

A Not that I recall.

Q Were you disappointed in her performance after what you found out?

A Yeah. I think she had under-managed.

Q Did you ever consider disciplining her in any way?

A So I talked to Joseph about it at his yearend, and I've been trying to recollect, but my best recollection is that we did take her off of -- that Beth Tucker and I, the other deputy, took her of off of the retention bonus list. She had been on a retention bonus, and we took her off of that in the most recent year.

Q Is that a bonus you get so you won't --

A Stay.

Q -- leave the Service?

A So you'll stay.

Q But she was still managing EO?

actually --

A I had made the decision that I think would have made Mr. Hatch happy, which was we didn't need it. If we weren't going to use it, we weren't going to make it public, and they were going to be destroyed, because we were told by Counsel they could be.

Q Okay. Did you think about mentioning that, that they had been destroyed, in the response?

A Didn't. I don't remember thinking about that.

SFC [redacted]. Okay. Marking Exhibit 26.

[Miller Exhibit No. 26
was marked for identification.]

Mr. Miller. Should I be looking at 3-B? Is that really what I should be looking at? Is there other stuff I should be looking at it?

BY SFC [redacted]:

Q That's the crux of it. Yeah.

A Okay.

Q Sure.

A Okay. I'm --

Q Sure. Let me ask you just as a foundational question, so this Exhibit 26 is a document that the IRS produced to the Senate Finance Committee. It was -- when they produced it, they identified it as a document that was in your custody. So it didn't have an email that was with it, but it appeared to be a hard copy document that was -- would have been in your papers.

Do you recall seeing this document before today, Mr. Miller?

A I don't. But if it was in my documents, it was in my documents. I may have received a copy of it at some point. I don't know when that would have been, though.

Q Okay. Well, the -- the TIGTA timeline, which is Exhibit 16, on the second page -- I'll let you pull it up there.

A Thanks. 16. Okay. Second page.

Q Yes. The third entry down is September 26, 2012, which is also the date of the Exhibit 26.

A Uh-huh.

Q And the timeline says, "The audit team briefed the Acting Commissioner for TEGE on results to date (timeline of all the inappropriate criteria changes)."

So do you remember if you attended this meeting?

A I know I didn't attend the meeting.

Q You did not?

A I don't believe I attended the meeting. I think Commissioner for TEGE.

Q Right. And that would be Mr. Grant.

A That would be Mr. Grant.

Q Right. So do you know if Mr. Grant had perhaps briefed you on what happened at this meeting?

A He may have. I don't have a memory of it. He may have.

Q And do you know perhaps if Mr. Grant had given you a copy of the briefing notes, which are Exhibit 26?

A Again, he may have, but I don't have a memory of it.

Q Besides Mr. Grant, do you recall having any discussions about what TIGTA said at this briefing with anyone else?

A I don't.

Q Do you remember -- more generally, do you remember getting an update from TIGTA around this time, September of 2012, about what they were finding in their audit?

A I did not get an update from TIGTA. I talked to TIGTA twice on this, once -- once in late May of '12 and when they previewed the report in March of '13. I don't believe -- and I could be wrong, they could have updated me at some point, but that's my recollection. Those are the two points that TIGTA -- Russell George walked us through where they were.

Q And outside of those two points, there was nobody else in the IRS who was giving you updates on what TIGTA had told them?

A No. They might have. But direct meetings with TIGTA. For example, I knew from, I think, Lois in May of '12 that they were -- they were aware of the BOLO and were moving it up the chain even before we sat at the end of May with Russell. And there may have been periodic updates, but I don't -- nothing that I remember.

Q Okay. How about the -- Exhibit 26, it poses -- as you guessed, section III-B is the part I'm looking at.

A Yes.

Q It poses three questions. The first one is asking if any individual organization outside of the IRS influenced the creation of criteria targeting certain applications for tax exemption. Is that

something that you ever discussed with TIGTA?

A No. They did not -- they did not interview me for the -- for their -- for their study that I can recall.

Q Okay.

A Did you want the answer?

Q Yeah. They didn't interview --

A To my knowledge -- to my knowledge, that didn't happen. There was no individual organization outside the IRS influencing us. That's sort of the substantive.

Q Do you know who they posed these questions to, these three questions that are on the briefing?

A No idea, except the Acting Commissioner of TEGE.

Q Do you know if Mr. Grant provided responses to those questions?

A Don't know.

Q So if -- between the two briefings that you had with TIGTA, the one in May of 2012, and then the next one would have been in 2013; is that right, in 2013?

A Yeah, when they were ready to give us their draft final.

Q What kind of involvement did you have with how the IRS was responding to the audit?

A Very little.

Q What did you do?

A I don't remember really doing anything. I might have been briefed at some point, but I don't remember taking any action one way

or another with respect to -- they were doing their work.

Q Okay. And I'm looking --

A So there was one point at which I think somebody raised with me that they wanted us to mail everything to them, and did that make sense. And I wasn't sure that made sense as of the integrity of the files.

Q So you decided to keep the files and give them copies?

A My memory is they made copies. But, you know, the question is, okay, are we going to pack it all up and mail it to them? And that seemed crazy to me.

Q Sure.

A But that's the only time I think anybody raised anything about that with me.

Q Who was kind of in charge of responding to TIGTA's needs?

A It would have been Joseph Grant and Lois.

Q And I'm looking now again at Exhibit 16, the TIGTA timeline. There's an entry for March 27th, 2013. And it says IG and function heads brief the Acting Commissioner and Deputy Commissioner on the report findings.

A Yeah.

Q Is that when you recall getting the --

A That's the one I was talking about. The -- when they were ready to drop the report.

Q And how much detail did they go into at that briefing on what they found?

A I can't honestly remember how much detail they went into.

Q Was it a long meeting? A short meeting?

A It was -- this was not a meeting specifically on this one. It was one of these monthly meetings where they did a series of report-outs on what they were doing and what was coming out shortly. So if it was 10 minutes, that was a long period for one of these. So we waited for the report.

Q Okay. And, in fact, the TIGTA timeline, the discussion draft report was issued to the IRS the very next day, March 28th?

A Okay.

Q Is that something that you would have reviewed?

A I don't know that I got it that early. I might have, but I don't think so. I think I got it later than that in April, but maybe.

Q Okay. The next item there is the draft report was issued on April 12th. That may be around the time that you saw it?

A So I might have seen it then, or I might have seen it when they forwarded it in their proposed -- when TEGE forwarded it in their proposed response as well. But I might have seen it earlier, I probably did. I don't remember specifically, though.

Q What was your reaction the first time that you got a sense of -- of the full TIGTA findings; in other words, not just the abbreviated, but once you'd seen the report or gotten a full briefing on it, what was your initial reaction?

A So I thought it was an unfavorable report, but I'll be honest and tell you I didn't have the -- I didn't sense the toxic -- the level

A I'm okay not doing one yet.

Q Oh, you want to do another 15? Okay. Perfect.

The next thing I wanted to talk about, then, was kind of the process of disclosing the audit results. And I just wanted to get an idea of kind of what your -- what your thought process was once you had become aware of -- of this audit report, what you thought the best way was to make it known, to make the results public.

A So not my highest point of management. I've thought about that quite a bit. We had three reports that were coming out. There was some thought in our building that we might want to get ahead of one of more of them so they don't all come out exactly at the same time in a big wave. We thought that -- that going forward on this one made some sense since the report was out. And so the report was done, the findings were done, our -- you know, it was done. It hadn't come out yet, but it was done.

And we talked amongst ourselves on a couple of different aspects of how we could do it. One was to let Lois announce it during a speech at Georgetown at the very end of April, and that was decided that that wouldn't happen. And I should go into how -- who I talked to, because I talked to Treasury about this as well.

Q Okay.

A So my contact at Treasury, for the most part -- I talked to Mark Mazur, but I mostly talked to Mark Patterson on management issues. Mark was the chief of staff, and he had always been very good in terms of bouncing things off, helping me, because the Acting job was a big

job. And I bounced off him whether it made sense to go out earlier with this particular report.

RPTS BINGHAM

DCMN HOFSTAD

[5:20 p.m.]

Mr. Miller. And he sort of hemmed and hawed, and he said, maybe, okay.

And I didn't go out, so you guys are aware, I didn't go out and say, yes or no, you -- they didn't have the yes or no. But had they said no, I wouldn't have done it. I wasn't asking their permission, but I was respectful of his views.

And they came back on the potential of inserting it in a speech and said, no, we're not comfortable. And I think that we had shared the language of the speech with them and they just weren't comfortable with it. Didn't really hear why, he just wasn't -- he said, I'm just not comfortable with that. So I said, okay, won't do that.

Next bad idea was to go out at the ABA in a planted question and answer. And that was my idea. We talked about it quite a bit. We also were potentially going to do it -- if it came up in a hearing, we would have done it, as well. And we were prepared for that.

Talked to Patterson about that, and he said, well, let me think about it. Talked to Mazur to apprise him of it because he had a person on the panel. And on that one they really didn't come back to us, so we decided to do it. And the rest is sort of history.

At that time, by the way, I think there was a concern by Cathy Barre and some others that we ought to get to you guys at least at the same time. And the time got away from us and it didn't happen, and that was

another mistake. In this particular part, there is plenty of blame on me on this. I don't think I gave Cathy enough time to do it.

BY SFC [redacted]:

Q Sure.

Okay, and let me just break this down a little bit. So at this time you were talking with Mark Patterson.

A Yeah.

Q Do you know if they had reviewed a copy of the TIGTA report?

A Not from me. I think -- so let's back up a month.

Q Uh-huh.

A I think I mentioned earlier in the day we had talked to -- I had talked to somebody, and whether it was Treasury or whether it was somebody coming -- I had been aware that -- and it's not on here, I don't think -- that Wolin had been briefed on the three reports.

So in early April, I want to say, first week of April sometime, on a Friday afternoon at 6:00, late afternoon, I sat with Neal. I asked, I think, Patterson or somebody, does it make sense for me to talk through what I know about these? And he said, yeah, you should do it. And so I reached out and got time on his calendar at the end of the day on a Friday and went over there.

And he and Wale Adeyemo -- and I'm going to butcher his last name. But Wale, who is the Deputy Chief of Staff, he and Neal were there. And we did not, in fact, at the end of the day, talk about that third report. We talked about the one that was troubling me, which is 2010, the conference report, and the one that really troubled Neal, which was the

kept an eye on throughout the process?

A This was a couple weeks. So, yeah, I mean, I -- there was an issue, and SFC was meeting, I think, with EO. I actually thought Nan Marks should come in because there was communication problems.

Q And do you know who he was meeting with in EO?

A At that point, I think it was -- well, I don't know at that point. May 1? I don't know when it went through. He started talking to Lois and company because it was an expedited sort of application because it was a disaster relief app. He had gone out with something that we shook our head and said, what's that about? He then went -- and in his discussions with Lois, they didn't go well, and we added Nan to the mix. And at one point I actually met with him. He came in to chat with me.

Q Now, in your experiences at the IRS, not just when you were Acting Commissioner but before that, was this kind of a common process, to have people at the very top level of the organization involved in handling an application?

A So I wasn't involved in handling it. I did meet with him to explain why SFC didn't work for him and then to send him off to the EO folks.

Was it usual? No. It happened one time that I'm aware of. Was it uncommon for disaster relief funds to be moved quickly? Absolutely was common for that to happen. So, for example, all the Katrina stuff, we did amazing amounts of stuff on Katrina. We did amazing amounts of stuff for the BP oil spill. We did a lot for 9/11, obviously. That

Q And who did you talk to, if anybody, when you put this together?

A Probably would've bounced it off of Nan. I don't know. I don't have a good sense of that.

This is my own personal work, obviously, and I was trying to put it together so I had -- there was so much going on, so I had to, you know, put it in a fashion that in my odd mind would hold it.

Q No, I think it's actually a pretty good summary of the events. And I'm not going to ask you about everything on it, but there was one thing I wanted to pull out. It'll be on the left page. And it looks like it's number 5-B, about halfway down?

A "HQ needs to work on guidesheet or other way to facilitate movement of cases"?

Q Yes. And then right after that?

A "LOIS DID NOT ELEVATE ANYTHING." Yeah. Okay.

Q Okay. And this would've been -- I'm looking up now -- this looks like the date when this occurred was June of '11?

A Yeah, this is when she first learned of it, and that's what that is.

Q Okay. So --

A I think this probably was from the TIGTA report rather than anything else. But this was my understanding of what had happened, and I don't remember elevating it, so I put in there "LOIS DID NOT ELEVATE ANYTHING."

Q Do you think that what was going on at that point was

something that she should've brought to your attention?

A You know, I've been asked this, and I don't know. I mean, certainly, in February, when we were discussing specifically, maybe. But I'm not sure. She had fixed it and was moving on and thought she had done the right thing. And I have a strong view that she should have.

Q Do you feel that she had made you aware of it at the appropriate time, or do you feel that she should've brought some things to your attention sooner?

A I don't know what the appropriate time would be. I think in the February timeframe, when we were talking about those cases, if she remembered it -- I never thought that she had not told me intentionally. I don't know why she didn't. Certainly, before May I should've been aware that she had found this.

Q Before May of 2012?

A Yeah. But whether it was February or whether it was back here, I don't have a strong sense. I never did have a good, strong sense of that.

Q Did you ever ask her why she didn't elevate it up to your level?

A We never had that conversation. It was a package of stuff, and that's what's sort of missing here. There's a whole package of stuff on these cases.

Q Uh-huh.

A So I did not quiz her on that particular aspect.

Q The issue of elevating things up to your level, was that a

problem that you had with her on other -- actually, you didn't say it was a problem, so let me not put words in your mouth. But besides the political advocacy cases, were there perhaps other instances when you felt she should've elevated something up to you and she didn't do that?

A You know, she was pretty good about that, so this was a bit of a surprise. She was pretty good about elevating things. We had a good -- Lois and I have a good relationship.

Q Uh-huh. Do you think that perhaps Ms. Lerner's personal political views may have ever had an effect on which issues she chose to elevate and which issues she chose to deal with herself?

A No, I really don't believe that at all. She had been at the FEC, and then, coming over to the IRS, she knew that her politics couldn't influence what was going on.

Q All right.

A Sorry about making you read this.

Q It's okay. The handwriting wasn't that bad.

[Miller Exhibit No. 31
was marked for identification.]

BY SFC [redacted]:

Q Here's Exhibit 31. And here, I'm just going to ask you about the very top email.

A Okay.

Q Okay. And, actually, I'm looking at -- this is an email that you had sent to Nicole Flax on July 18th of 2012.

A Right.

RPTS BLAZEJEWSKI

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: MARK A. PATTERSON

Monday, April 7, 2014

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For DEPARTMENT OF THE TREASURY:

HANNAH STOTT-BUMSTED, SENIOR COUNSEL

For MARK A. PATTERSON:

GREGORY L. POE, ESQ.

RACHEL S. LI WAI SUEN, ESQ.

SFC [redacted]

[redacted]

[redacted]

Washington, D.C. 20005

Q And how did you come to learn about this?

A I'm not quite sure at this point. I think I learned about it either from the inspector general or from the Commissioner, the Acting Commissioner, of the IRS.

Q And was it a meeting that you had, or emails, or telephone conversation?

A I don't know at this point. I'm not sure what form it took.

Q At the time that you first heard about this practice, were you concerned that screening cases based on the word "Tea Party" could create the appearance of a political bias?

Mr. Poe. Can I just -- I'm not sure. Your question wasn't clear because I don't think the premise of it was necessarily based on his prior response.

Mr. Patterson. Could you restate the question?

SFC [redacted]. When you said "premise," what are you referring to?

Mr. Poe. Can the question be read back, and then Mr. Patterson's prior answer?

[The reporter read the record as requested.]

Mr. Poe. My only point is I don't think you had elicited an answer about what his recollection of what he learned was, and then you asked a very specific question.

SFC [redacted]. What was the next question?

[The reporter read the record as requested.]

SFC [redacted]. I mean, I can break this down a little bit. Okay, I can walk this through a little more.

SFC [redacted]:

Q Okay. So you had either the inspector general or Mr. Miller informed you -- what did they tell you? Let's start with that.

A I don't remember exact words that they told me, whichever person it was told me, but my recollection is that they told me that there was an inspector general's report that was going to come out soon, and that it was going to report that the IRS had used inappropriate criteria in the way that it screened tax-exempt applications.

Q Okay. And that inappropriate criteria, did they tell you that it was specifically the word "Tea Party" or related terms?

A Again, I don't remember exactly what they told me, but I think that they indicated that either those terms or some similar terms may have been terms that were used in the screening -- inappropriate in the screening that was deemed inappropriate.

Q Okay. And were you concerned that inappropriate screening using terms like "Tea Party" or the related terms would create or could create the appearance of a bias?

A Yes, I think that's fair to say.

Q Did you direct the IRS to take any actions after you learned about this pending report?

A No, I did not, and, again, the reason for that is that the Treasury Department does not involve itself in tax administration or tax enforcement, nor do we -- nor, I think, as a general policy take actions on inspector general's reports until they are completed and recommendations are issued, at which time I think it's regarded as

appropriate to take action and recommendations.

Q Okay. So at this point it was still, I guess, a draft report that hadn't been finalized?

A I don't know what state the report was in at that point, but my understanding was that it was close to being finalized.

Q And do you remember roughly when you first learned of this report?

A Well, I'll give you two pieces of -- two data points, I guess. I first learned that an audit into this subject was being conducted sometime, I believe, in early 2013, although I can't pinpoint the date when I learned that. And then as the report -- the issuance of the report grew near, I think it was sometime in the weeks immediately prior to the time that it was issued, I became aware either from the inspector general or from the Acting Commissioner, I'm not sure which, that the report was likely to conclude, as I've said before, that inappropriate criteria had been used in processing these applications.

EXAMINATION

BY SFC [redacted]:

Q May I jump in real quick? How often did you have meetings with the inspector general?

A Well, I attended a regular meeting with him that was a monthly bureau heads meeting, but -- you know, which was a large group, and then I met or spoke to him on the phone periodically. I did not have a regular meeting with the inspector general.

Q Would you normally hear about upcoming audit reports if it

was big enough or if it affected Treasury?

A The inspector general would post people in Treasury, and I think sometimes me -- I'm not sure about always, but he sometimes posted me about things, reports that he was either working on or that were about to come out.

SFC [redacted]. Okay. Thanks.

BY SFC [redacted]:

Q So, okay, so let's go back to when you first learned about the audit, which you said was early 2013?

A That's my recollection, yes.

Q After you learned that TIGTA was doing the review, did you talk with anybody else in the Treasury Department about the review?

A I may have, but I don't remember specifically.

Q Okay. So you're not sure if you briefed Secretary Lew on it?

A I don't think so. Well, let's put it this way: I'm not sure exactly when I learned this information. My recollection was it was early that year. I'm not sure if Secretary Lew had even arrived yet at Treasury.

Q Okay. Well, how about Secretary Geithner; did you ever discuss the pending -- or, I guess, the audit with Mr. Geithner?

A I don't remember discussing it with him, although I couldn't rule it out.

BY SFC [redacted]:

Q So you may have talked to Geithner about it; you just don't

remember talking to him about it?

A Correct.

BY SFC [redacted]:

Q Okay. And how about Deputy Secretary Wolin, did you talk with him?

A Again, it's possible I did, but I couldn't say for sure.

Q And at the time when you first learned of the review, were there any indications of what TIGTA might conclude, or was it just more the fact that they were doing a review?

A Yeah, my memory of it is that it was just the fact that he was doing an audit on this topic.

Q And when you first learned of the existence of the audit, did you raise that to anybody at the White House?

A Not to my recollection, no.

Q Okay. So after you had -- when you found out more information about what the possible holdings were, would this have been about April of 2013, in that rough -- I won't hold you to the date, but somewhere in that time frame?

A Yeah, again, I think it was sometime in the weeks just prior to when the report came out, which I think was May 14, 2013, if I remember correctly.

Q You said earlier you were concerned that it could give the appearance of a bias. Was that something that you expressed to anybody else at the Treasury Department?

A It may have been, but I don't remember specifically having

a conversation with anybody to that effect.

Q Well, more generally, once you found out what the possible holdings were, did you talk with Mr. Lew about it?

A Again, I may have, but I don't remember whether I spoke to him about it or not.

Q Okay. How about Mr. Wolin?

A I may have, but I'm not sure whether I did or not. I should say my general understanding was that the inspector general's practice was to post Mr. Wolin on things that he posted me on, so my understanding was that he typically told Mr. Wolin what he told me.

Q And those were separate briefings that you were not at?

A I wouldn't call them briefings, I would call them postings. They tended to be short.

Q Okay. So what did you do when you found out the possible outcome of this audit?

A Again, it was our policy at the Treasury that we allowed the inspector general to do their work. We have three inspectors general at the Treasury, and we had a policy of allowing them to do their work. So when we got postings from them about things that they were working on, we -- you know, we considered those to have been essentially courtesy postings, and we allowed them to do their work. We didn't take action on pending inspector general matters until they were completed.

Q Do you remember having any conversations not limited to Mr. Lew or Mr. Wolin, but do you remember having any conversations with anybody in Treasury about the audit findings?

A Well, yes, I do. At some point in that time frame I asked my Deputy Chief of Staff Wally Adeyemo if it was possible to read a copy of the report, a draft report or the final report, which I understood was either done or near to being done.

Q And was he able to get a copy for you to look at?

A Yes, he did.

Q And at that point did you go ahead and review the report yourself?

A Yes.

BY SFC :

Q And do you know where he got the copy of the report from?

A I'm not sure.

BY SFC :

Q Did you have -- so you weren't sure initially if you learned about the findings from Mr. Miller or from I guess it would be Mr. George himself, the IG?

A Yeah. At this point I can't say for sure.

Q After you did learn of the findings, did you have any conversations with Mr. Miller about the report?

A It's possible I did, but I'm not sure. Possibly I did.

Q Well, after you learned of the adverse findings, what did you think would be the best way to publicly disclose them?

A I didn't have a view on that when I learned about it.

Q Was it an issue that you felt like the IRS or possibly Treasury should try to get out in front of before the inspector general's

report came out?

A Well, in fact, Mr. Miller did suggest that to me. In late April I received a telephone call from Mr. Miller, and he suggested that he had essentially a two-part plan to make a public apology for the findings that he expected to be announced shortly thereafter in the report.

Q And what were the two parts?

A The first part was that he told me that he was going to be testifying at a hearing in Congress, and he felt certain that he was going to be asked a question about this topic, and that he was going to make a public apology as part of his testimony.

The second part was that he told me he planned to have Lois Lerner give a speech in which she would also make a public apology.

Q Okay. And did you give Mr. Miller any feedback on the two-part approach?

A My memory is that I expressed some skepticism about the idea of doing two separate apologies on this topic in 1 week.

Q What was his response?

A I don't remember exactly what he said.

Q Okay. So just so I understand what your concern was, it wasn't the -- necessarily one approach or the other, but it was the fact of doing the two in conjunction with each other?

A Yeah. Mr. Miller, as Acting Commissioner, felt that the IRS should apologize publicly for the -- for what he understood to be the findings of the about-to-be-released IG report, and I didn't feel I had

a basis to disagree with him about the need for an apology on that. But I did, I think, my memory is -- I can't give you a transcript of the conversation at this date, but my memory is that I think I expressed some skepticism about doing it twice in 1 week.

Q During your time at Treasury, had there been any other instances where either the IRS or one of the other bureaus had made a public apology for bad behavior?

A Not that I can recall.

Q But you felt like it was appropriate in this situation?

A Well, again, the Commissioner felt that it was appropriate, and he was a very experienced senior manager of the IRS, and I didn't feel I had any basis to disagree with him on that point.

Q Okay. Was that the last conversation that you had with Mr. Miller before Lois Lerner made her apology?

A No.

Q What was the next one?

A Well, subsequent to the conversation I had with him, I had a conversation with Mark Childress, who at that time was a Deputy Chief of Staff in the White House, in which I told him the IRS had a two-part plan to make a public apology for the forthcoming IG report, and in the course of that conversation, my memory is that Mr. Childress and I both agreed that two apologies in 1 week seemed unnecessary.

So I had a second conversation with Mr. Miller in which I called Mr. Miller back, and when I reached him, my memory is that he volunteered that they were no longer planning to do the speech, but they were still

planning to do the apology and public testimony in Congress.

Q Okay. And is that the last conversation you had with Mr. Miller before Miss Lerner made her apology?

A No. There was another conversation with him, because what ended up happening was that, contrary to his expectation, he was not asked a question about this topic in the hearing, and so he did not have an opportunity to make the public apology he had hoped to make. And so the next time I spoke with him about it, the best of my recollection was about a week later when he called me and said something to the effect of we still feel a public apology is warranted, and so we're going to have Lois Lerner make a public apology in an appearance that she had scheduled somewhere in Washington.

Q Okay. And what was your response to that?

A I didn't -- I didn't attempt to dissuade him from that view.

Q Did you think that Miss Lerner talking about this issue at a forum like the ABA forum, did you think that was an appropriate way to disclose the results of TIGTA's audit?

A Well, my understanding was not that it was going to disclose the results of an audit, but that it was going to describe what the IRS -- how the IRS had been functioning on this issue, and concede that it had not been done correctly and make an apology for it.

Q Did you feel that was appropriate?

A Again, what I felt was the Commissioner felt strongly that for the good of his agency that a public apology was warranted in this case, and so I think it's fair to say I ended up deferring to his judgment

on that question.

Q Okay. So during that time you had one conversation with Mark Childress in the White House?

A [Nonverbal response.]

Q Did you have any other?

A I think I had a second one in which after I spoke to Mr. Miller, prior to the intended congressional testimony in which he intended to make a public apology, during that week after I learned from Mr. Miller that he no longer planned to -- he planned only to apologize in the public hearing and not to apologize via the speech by Ms. Lerner, I believe I called Mr. Childress back and reported that to him, told him that.

Q What was his reaction?

A I don't remember. I think he -- my memory is that he didn't express a concern about that.

Q During either conversation did Mr. Childress tell you if he had talked about this issue with others in the White House?

A No, I don't know whether he did or not.

Q And so those were the only two conversations that you had with Mr. Childress before Miss Lerner made her apology?

A Yes.

Q During that same period did you talk with anybody else in the White House about this issue?

A Prior to the issuance of the public apology by Miss Lerner?

Q Correct.

A I don't recall talking to anybody else in the White House about it.

Q Okay. And after the -- after Miss Lerner had made her apology, did you then talk with others in the White House or with Mr. Childress again?

A Yes, I did.

Q Can you tell us about that?

A I had -- let's see. I attended a meeting about this topic sometime in the days after the report was issued in the White House that included several people from Treasury, the President, and a couple of White House staff.

BY SFC [redacted]:

Q If I could jump in, who were the people from Treasury?

A Secretary Lew, who attended by telephone as I recall; and myself; Mr. Wolin; Mr. Chris Meade, the General Counsel; and Mr. Chris Weideman, the Deputy General Counsel are my memory of the Treasury people who attended.

BY SFC [redacted]:

Q And who were the White House staff that were present?

A Denis McDonough and Kathy Ruemmler.

Q Okay. And was this meeting actually physically in the White House?

A Yes.

Q One of the White House buildings?

A Yes.

Q Okay. So what was discussed?

A Well, again, I can't give you a transcript of the discussion at this point, but the thrust of it was that the President wanted to ensure that the recommendations of the inspector general's report were going to be carried out, and that Treasury was going to make sure that happened.

BY SFC [redacted]:

Q If I could jump in, where did you guys meet in the White House?

A My memory is that that was in Mr. McDonough's office.

BY SFC [redacted]:

Q Okay. So at this meeting there was nobody present from the IRS?

A No.

Q And I guess -- I'm not trying to put words in your mouth, but I think as you described earlier, you said that Treasury typically tried to stay out of bureau functionings for things like TIGTA reports, at least until after the conclusions were finalized?

A Well, I would say as policy, Treasury has a history and practice of not involving itself in tax administration and tax enforcement with respect to the IRS. And with respect to inspector general work more generally, Treasury has a policy of allowing that work to be completed and not, for instance, conducting parallel investigations or inquiries that might interfere with the inspector general's work.

Q And would that also extend to Treasury's interactions with

the White House; in other words, the White House wouldn't get involved for the same reasons that you just described?

A I think that's right. I would say that's right, yes.

Q And so at this point, at the time of the meeting, was this after Miss Lerner's apology, but before the report had officially come out or --

A No. My memory of it is that it was after the report had been issued.

SFC

SFC

BY SFC

Q Okay. And during your time as chief of staff, had you been in any other meetings where the White House had directed Treasury to make sure that the Treasury Inspector General's recommendations were carried out?

A No. The best of my recollection, this is the only time that I had a meeting about that.

Q Do you know if there was anything in particular that -- any particular reason why they felt it was necessary to have a meeting on this issue where they hadn't done it in the past?

A I don't know their -- look, you're sort of calling on me to speculate about their motives for having a meeting which --

Q No, I don't want you to speculate, but if they communicated something during the meeting, that's what I'd like to know.

A No, I mean, I think that -- I think the President was concerned about the findings of the IG report, and the White House staff wanted to make sure that the recommendations for dealing with it were effectuated.

Mr. SFC . Did the President say at this meeting why he was concerned with the findings?

Mr. Patterson. Not that I recall, no.

BY SFC

Q And the President himself was not at this meeting?

A The President was -- the President himself was at the meeting.

Q Oh, he was at this meeting?

A Yes.

[redacted]. Yes.

[redacted]. Okay. Besides the IG's recommendations, was there anything else that was discussed at this meeting.

Mr. Patterson. That's my memory of the thrust of the conversation. It's possible, though I can't swear to it, that there may have also been some discussion about Mr. Miller's successor or finding a successor to Mr. Miller.

BY [redacted]

Q Is that sort of code speak for firing Miller or seeing if Miller could -- getting Miller out of there?

A Well, I can't reconstruct the timing perfectly here from where I sit, but my memory is that I think Mr. Miller -- I think Mr. Miller resigned that same day.

Q And that, at that meeting, where the President was attending, a discussion of finding Miller's successor was brought up?

A I can't say for sure that that was, but it may have been discussed there, yes.

Q And was that that President Obama said we need to get Miller to resign?

Mr. Poe. I'm sorry, is that a question? Did he say --

BY [redacted]

Q Yeah, I'm asking it. There's a question mark at the end of that sentence. That's why the tone went up.

A Again, I don't want to get wrapped around the actual on timing, which I don't want to testify to timing. It's not accurate here.

Q Sure.

A But my memory is that by the time of that meeting, Mr. Miller already planned to resign.

Q Okay.

A Because -- because it had been communicated to him by Secretary Lew that he thought it was -- that he thought at the time that it would be best if he did resign.

SFC [redacted] Beyond talking about the TIGTA audit, at that meeting, was there a discussion about Tea Parties or tax exempt organizations?

Mr. Patterson. Not that I recall, no.

SFC [redacted] Thank you.

BY SFC [redacted]

Q So, Lew was the one that asked for Miller's resignation?

A That's correct, yes.

Q And not President Obama?

A Yes. He -- Secretary Lew sent Acting Commissioner Miller a letter requesting that he resign.

SFC [redacted]. Was that done at the prompting or the urging of the President.

Mr. Patterson. No, I don't -- I don't believe so. I think it was

Secretary Lew's judgment, although I think that -- I don't think anyone disagreed with it.

BY SFC [redacted]:

Q So at this meeting that was at the White House with the President, was there any discussion about any of the specific recommendations that were in the IG's report, or was it just generally about all of the recommendations?

A I don't think there was any discussion about the specific recommendations. I think it was just, you know, impressing on the Treasury folks that implementing the recommendations promptly was desirable.

Q Was there any discussion about doing an investigation or an internal review to get to the bottom of what had happened beyond what was in TIGTA's report?

A Not that I recall.

Q About how long did that meeting last?

A It's hard for me to remember at this point. I would say it was -- it really would require me to guess, but in a very rough sense, I would say it was probably less than 30 minutes.

Q Sure. That's fine. Okay. Now, we had a -- we have the benefit of having interviewed Mr. Miller. We talked to him a couple of months ago.

A Uh-huh.

Q When we talked to him, he communicated to us that you were in fact the one who had talked to him and asked for his resignation.

He said there was a phone call, and he produced some notes to that effect. I understand it's an email. It's been a year now, and you may not remember.

A No, I do. I do.

Q Does that jog your memory at all?

A I do remember that, but I've -- I think, just to be clear, I communicated to him that he was going to be asked to resign by the Secretary of the Treasury, not by me.

Q I see. So perhaps --

A So, I could see --

Q Sorry.

A I could see how that sort of could get slightly blurry because I was the one having the conversation with him in the first instance, but the request did not come from me. It came from the Secretary, and that was in writing.

Q I see. So, you called while the letter was on its way or before it was sent?

A We talked about it before the letter was sent, yes.

SFC . That's all I have on this topic. I don't know if anybody else wants to jump in with before I move on.

BY SFC :

Q I want to jump in with one quick question. In March of 2012 or perhaps a month before that, there were press stories about Tea Party groups who had claimed that the IRS had targeted them or that the IRS had delayed their applications. Do you recall --

A It's possible I did. I don't remember how this got resolved. I assume that it got resolved in favor of granting charitable status, but I'm not sure of that.

Q And how about in the SFC City government, did you talk directly with anybody about this issue?

A I think -- so, again, my memory is not perfect here, but I may have spoken to the mayor. The mayor of SFC may have called me about it, but I can't swear to that at this point.

Q Do you remember roughly when this was? I guess you said it was after SFC, so that was in April of 2013 -- was SFC was in April?

A I've lost track of the date, but I'll take your word for that.

Q Do you remember when it was that you were talking with SF ?

A I don't know. I mean, I don't remember.

Q Do you know if Mr. Miller was in touch with anybody from the SFC government?

A I don't remember. He may have been, but I don't remember.

Q Now, you said that there had been other -- other groups that had contacted you and asked for you to help with the application for tax-exempt status?

A Again, I -- my memory is, which is kind of vague, is that from time to time, people would contact us asking for help with that, and we -- our typical response was to decline.

Q Do you remember if any -- any Tea Party groups had ever

contacted you to ask that you help them with their applications?

A Not that I can recall, no.

SFC [redacted]. That's all I have on this line of questions. Anything else?

SFC [redacted]. Yes. Who do you remember contacting you to ask for help with their applications?

Mr. Poe. Can I ask a clarifying question? I think he said "us," so I think he was referring generically to the Department and not personally, but if you could just clarify that question, I'd appreciate it.

BY SFC [redacted]:

Q Yeah, that you're aware of.

A Okay. I don't -- I don't have a specific recollection of the name of a particular applicant, but I know that -- just my memory is that from time to time, we would get pinged by somebody who was looking to get their application approved, and our response was, you know, we don't involve ourselves in that, and I -- and I -- it was the one exception that I mentioned because I thought it was such a compelling -- you know, it was a response to a national tragedy, and I thought it was a compelling case that at least they ought to be talking to the -- at least the IRS ought to be talking to the victims fund administrator.

Q But my question was, can you remember even just one of the groups that approached you?

A I don't. I'm sorry. I wish I could help you on that but I

don't --

Q Not anymore?

A I don't have that in my memory. It was just not a common occurrence, so I'd be happy to give you a name if I had it.

SFC [redacted]:

Q Okay. Well, if there is nothing further, we can wrap up the interview. We want to thank you for your time today?

A Thank you.

Q Let me ask a blanket question, though. Is there anything else that we haven't covered today that you'd like to tell us to help our investigation?

A Not that I can think of, no.

Q Well, thank you for your time?

A Thank you.

SFC [redacted] Thank you. We are off the record.

[Whereupon, at 1:47 p.m., the interview was concluded.]

RPTS JOHNSON

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: HOLLY PAZ

Friday, July 26, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:09 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For MS. PAZ:

ROEL C. CAMPOS, PARTNER

SFC [redacted]

[redacted]

Washington, D.C. 20001

would be for these kinds of cases?

A Anything. Some take years. You know, some are -- it really depends greatly, for example, on if it's an issue of first impression and legal advice has to be sought or if it's just something where additional information is needed from the taxpayer. Part of the time frame also is contingent on how quickly the taxpayer responds with that information.

Q I see. So would say 3 years or 4 years be out of the norm for an applicant organization to wait?

A There are certainly cases that take that long. That's not unheard of.

Q It's not the norm, though, is it?

A It's not the norm.

Q So for this case, this group of cases that go to full development, would it be less than 3 years generally?

A As I said, it's really all over the map. And I don't have statistics on it, a hard average based on data.

Q What's the longest one that you -- I guess the longest period of time an applicant organization had to wait in your recollection?

A Oh, in my recollection 4 or 5 years.

Q Okay. And you say you held the position until July of 2008?

A That's right.

Q Okay. And what was the position that you next held at the IRS?

A Then I moved over to Exempt Organizations. I was a group

manager in EO Guidance.

Q Okay. And is EO Guidance broken up into various little groups?

A EO Guidance is a part of Rulings and Agreements. Actually, if you turn to the second page of the handout we gave you it has a breakdown of Rulings -- of Exempt Organizations --

Q Sure.

A -- and Rulings and Agreements that might be helpful.

Q Okay. But my question relates, though, to EOG, Exempt Organizations Guidance.

A There are two groups.

Q There are two groups. So you were the manager of --

A One of the groups.

Q -- one of the groups? Group 2 was it?

A That's correct.

Q And as a manager of Guidance Group 2, what were your duties?

A I was responsible for overseeing a group of about six specialists who worked with Counsel and Treasury on developing formal guidance, such as regulations, and also worked with our customer education and outreach folks do informal guidance such as our Web pages and publications.

Q And how long were you in this position?

A I was in that position until the fall of 2009.

Q And it just occurred to me, if I can just jump you back a little bit to the prior job with TAS, in your capacity as an

attorney-adviser, if you were looking at a case that had taken an inordinate or a lengthy period of time let's say to a taxpayer, and the taxpayer was complaining about that period of time, what sort of relief could the taxpayer get from your organization, TAS?

A What TAS would do is we would contact Exempt Organizations, and it depended on where the case was in the process. But for example say the case had not yet been assigned to anybody, it was still sitting unassigned in inventory, we would issue a request that it be assigned to a specialist to be worked. We could also, for example, if a taxpayer had requested expedited handling of an application and that had been denied by Exempt Organizations, we would direct Exempt Organizations to reconsider the expedite request and grant expedited status.

Q Okay. So would you look at the merits of the matter before you made that request?

A No. It was really limited to process.

Q So what is a taxpayer assistance order?

A A taxpayer assistance order is an order, a directive issued from the National Taxpayer Advocate to a function within the IRS directing it to take some action.

Q And was your organization, TAS, was that an organization that would issue these taxpayer assistance orders?

A Yes. Yes.

Q Okay. And so as I understand it then, the TAS at some point could actually direct a component of IRS to take some action regarding an application or some issue that was pending with a taxpayer?

A Correct. TAS could direct a portion of the IRS to take some action, but it could not direct the result of that action. So, for example, with an exemption application a TAO could direct Exempt Organizations to make a decision, but TAS could not direct whether that decision would be an approval or a denial.

Q Okay. And so at what point in time would I guess TAS move from just making a recommendation or request for a component of IRS to address an issue with a taxpayer to actually issuing that taxpayer assistance order?

A Normally, TAS would first issue what's called an operational -- operations assistance request, or an OAR, O-A-R. And if the IRS function was not responsive to that, which was more in the form of a recommendation, and say for example missed several deadlines that TAS had set, or was not communicating with TAS at that point in time, then TAS would resort to issuing a taxpayer assistance order.

Q I see. Very good. And what would be the consequences if the organization failed to comply with the TAO?

A There is an appeal process for the TAOs. The function of the IRS that receives it can appeal it. And then it would work its way up through levels within the IRS -- within IRS and within TAS. Ultimately, it could go all the way up to the Commissioner if no resolution was reached before then.

Q I see. So the Commissioner is the final arbiter of any dispute between TAS and the IRS component then?

A That's correct.

Q Okay. And how long could that process take?

A Quite a while. It really depends on how many levels of appeal and how many discussions might be had along the way.

Q Is the taxpayer represented in this process?

A No. It really is a discussion between TAS and the IRS function involved.

Q Okay. Great. Thank you very much for clarifying that. Okay. So now we are at the fall of 2009. And what is the next position that you held then?

A In mid-September 2009 I was asked to serve as the manager of EO Technical on an acting basis.

Q Okay. And what were your duties as the acting manager of EO Technical?

A As manager of EO Technical, I oversaw three EO Technical groups. Each group had a group manager. And I was the senior manager of that, oversaw those three group managers.

Q Okay. And so what was the -- maybe you could explain the distinction between EOT and EOG.

A EO Technical is responsible for processing private letter ruling requests submitted by taxpayers. And EO Technical also is responsible for the working of certain exemption applications.

Q Okay. So it would work applications for tax exempt status under 501(c)?

A That's correct.

Q Okay. And like from the beginning to the end so to speak?

A That's correct.

Q Okay. And at some point in 2010 did you go on maternity leave?

A Mid-March 2010 I went on maternity leave.

Q Okay. And you returned to work?

A I returned to work at the end of June 2010, but I did not go back into the acting EO Technical manager role at that position. I returned to my regular job as the Guidance Group 2 manager.

Q Okay. And then who served as the EO Tech manager, I guess acting manager for the period of time in which you were on maternity leave?

A Steve Grodnitzky.

Q Mr. Grodnitzky is otherwise a --

A He had been a group manager in EO Technical.

Q Would that be in Group 1?

A I believe so, but I am not sure.

Q Okay. So now when you returned to duty in June of 2010, I am sorry, you said you went back to Guidance Group 2?

A That's correct.

Q Manager of Guidance Group 2? Okay. And then how long did you remain as manager of Guidance Group 2?

A I was manager of Guidance Group 2 from when I returned from maternity leave at the end of June until the end of September 2010.

Q Okay. And then what was the next position that you held at the IRS?

A At the end of September 2010, I became the EO Technical manager on a permanent basis.

Q Okay. And how long did you serve as the EO Technical manager on a permanent basis?

A Not for very long. Until January of 2011.

Q Okay. In that time you assumed another position?

A At that point I was asked to serve as the acting director of Exempt Organizations Rulings and Agreements.

Q And who was the director of Rulings and Agreements immediately before you assumed that position?

A Rob Choi.

Q And did Mr. Choi retire?

A No. He was promoted to be the head of Employee Plans.

Q Okay. And then what were your duties as the acting director of Rulings and Agreements?

A As the acting director of Rulings and Agreements, I oversaw EO Determinations, which is responsible for processing exemption applications, EO Technical, EO Guidance, and Determinations Quality.

Q And the managers of each of those respective organizations then reported to you?

A That's correct.

Q Okay. And as the director of Rulings and Agreements, who did you report to?

A I reported to Lois Lerner, who was the director of Exempt Organizations.

Q And then at some point in 2011 I think you went on maternity leave again?

A Yes. In October 2011 I went on maternity leave.

Q Okay. And what months were you on maternity leave?

A It was October 24th, 2011, until February 3, 20 -- I am sorry, until February 6, 2012.

Q Okay. And then who was the acting director for Rulings and Agreements while you were on maternity leave?

A David Fish.

Q And Mr. Fish had been in what position prior to assuming this acting role?

A He was the manager of EO Guidance.

Q So was he your direct supervisor?

A When I first started at Exempt Organizations, yes.

Q Okay. So now you returned to the office you say in February, February 6th of 2012. Is that correct?

A That's correct.

Q Okay. And then what position did you hold when you came back?

A Acting director of Exempt Organizations Rulings and Agreements.

Q Okay. And at some point in time did you become the permanent director of Rulings and Agreements?

A Yes. At the beginning of May 2012.

Q And I think you said as director of Rulings and Agreements

A That is correct.

Q Where did that emanate?

A My understanding was that Elizabeth Kastenberg had recommended that to Carter Hull.

Q Okay. And I think earlier you indicated that you had some discussions with Ms. Lerner in 2011, at the beginning of 2011 where she indicated that she wanted the cases discussed also with Ms. Kindell?

A She also said that, yes.

Q Okay. All right. But this suggestion here came from Ms. Kastenberg?

A That is my recollection of what Carter Hull had told me at that time.

Q Okay. And would it have been normal for Ms. Kindell to look at cases that were being I guess developed or prepped in EOT?

A She often -- she looked at cases that involved campaign intervention because she had a lot of expertise on that issue.

Q Okay. So it was not abnormal for her to look at these cases, right?

A No. No. It was not at all.

Q And then the last sentence says, if Judy does not believe they have a basis for denial for the egregious situations, then they will most likely recommend all cases be approved.

Is this what you told Ms. Thomas?

A I don't remember.

Q Do you have any reason to believe Ms. Thomas got it wrong?

A No.

Q Okay. Now regarding the -- I guess the meeting with Ms. Kindell. Do you know if one actually took place?

A Yes. My understanding is that a meeting was held with Ms. Kindell in April of 2012.

Q Okay. And who was --

SFC [redacted]. April of --

Ms. Paz. 2012.

No. I am sorry. 2011. I am sorry. Yeah. 2011. Too many years here. 2011. April 2011. And that is reflected in the TIGTA timeline, I believe.

BY SFC [redacted]:

Q Okay. So do you know why it would have taken 5 months, I guess, from the date of this -- roughly 5 months -- November 20, 2010 email to April of 2011, why it would have taken 5 months to get that meeting with Ms. Kindell?

A I don't.

Q Were you maintaining involvement with the Tea Party cases in 2011 as the director of Rulings and Agreements?

A Through my monthly meetings with Mike Seto on the sensitive case reports, I regularly checked the status on all the sensitive cases in the office and asked when the next actions were going to be taken.

Q Okay. So would you have had a monthly meeting with Mr. Seto in January of 2011?

A Yes, I did.

increasing.

Q And from that October list, did it strike you that there was possibly over-inclusion going on?

A From the October list, that did not occur to me at that point in time. But based on the numbers going up and the continued expression on the part of Carter Hull that the cases were just too different for a template, that led me to wonder.

Q Okay. So that was what Mr. Hull told you about, about the thing that made you worry about over-inclusion then, it was just the fact that a template wouldn't work for these cases?

A Yes. Because the cases were so different.

Q Would you expect these cases to be the same?

A Generally, you know, in situations where you are talking about using a template or -- our goal is to group things for consistency. You wouldn't want similarly situated organizations that are engaged in similar activities to get different answers. Some to get approved and some to get denied. But here, from what Carter Hull was saying, the organizations were very different. Some were represented by attorneys and appeared very sophisticated. Some were very small grassroots organizations. Some had talked about educational activities. Others talked more about candidate activity. So there was a lot of variety.

Q Okay. But the central theme in all of the cases was the presence of political activity, correct?

A That was what it was supposed to be, yes. So I was wondering at that point in time if that really was, in fact, the case. That was

Q Who oversaw the screening process?

A The screening group was one of the many EO Determinations groups. I believe John Shafer reported directly to an area manager. At that point in time, I think maybe it was Brenda Melahn. And Brenda reported to Cindy Thomas.

Q Did you believe that Ms. Thomas had any involvement in the screening process?

A Well, as she oversaw the area managers, I assumed that she had some information about what was going on in that group.

Q So that's something that she would have ultimately been responsible for?

A Yes.

BY SFC [redacted]:

Q Just to look at this, kind of, the connection between the criteria as you understand it and it was given to you by Mr. Shafer and this reference in the BOLO, it makes perfect sense, doesn't it, that the screeners were using the kind of criteria they were using if they were looking for cases involved with the Tea Party movement?

A Yeah, I mean, the language on this be-on-the-lookout list uses the name "Tea Party." So the other names appear to be an extrapolation of that.

Q Okay. I would like to show you another document, if I could. And we can have this one marked, I believe it's Exhibit 10.

A Okay.

[Paz Exhibit No. 10

was marked for identification.]

BY SFC [redacted]:

Q You know, actually, before I ask you questions about this document, let me just jump you back here. You indicated that in the prior document that we looked at, which was Exhibit 9, that the information you were gathering was for a meeting with Ms. Lerner to discuss TAG group issues. Is that correct?

A That's correct.

Q Okay. And what exactly was the TAG group?

A It was a group in EO Determinations that focused on antiterrorism cases, international activities, and abusive organizations.

Q Okay. And was that the -- with the TAG, that had a number, didn't it, a TAG?

A All the groups have numbers.

Q I see. TAG 18?

A Oh, that was a reference to a particular group of cases. That was how those cases were referred to in EO Determinations.

Q Okay. And so that I can understand this clearly, that meeting with Ms. Lerner to discuss these TAG issues, was it related or unrelated to the issue of the political advocacy cases?

A It was unrelated.

Q All right. So Ms. Thomas provided this information about the Tea Party cases just as if by way of example for you?

A Yes, I think she was just explaining more about how the

processes of EO Determinations worked.

Q Okay.

Okay. So, then, if we can take a look at Exhibit No. 10, this is identified at the bottom by saying TIGTA EMAILS 00053 through 54. And do you recognize the document?

A Yes, I do.

Q Okay. And what is this document?

A This is the briefing paper that was used when we briefed Lois Lerner about the advocacy organization applications in the beginning of July 2011.

Q And was this paper prepared by Mr. Lowe --

A Yes.

Q -- Justin Lowe?

A Yes, it was.

Q Okay. And he was a, at the time?

A He was a tax law specialist in EO Guidance at the time.

Q Okay. And did you attend the briefing with Ms. Lerner?

A Yes, I did.

Q And this briefing took place on June 29th; is that correct?

A Actually, I think the TIGTA timeline says that, but, actually, in looking back at my calendar, I think the meeting was actually held on July 5th of 2011.

Q So you have no entry for June 29th?

A No. I think, looking back at emails, it looks like it was originally scheduled but then there was a scheduling conflict and it

had to be moved to a few days later.

Q Okay. Who else was present at this meeting?

A Lois Lerner was there. Mike Seto, the acting manager of EO Technical, was there; Carter Hull; Elizabeth Kastenberg; Justin Lowe; I believe Hilary Goehausen; and then, on the phone, Cindy Thomas from Determinations, Bonnie Esrig from Determinations, I believe also Steve Bowling from Determinations.

Q Okay. And at the top of the document, I guess in the second paragraph, it reflects the screening criteria that Mr. Shafer had provided to Ms. Thomas in response to your earlier email; is that correct?

A Yes.

Q Okay. And upon, I guess, seeing this document and having this meeting, did Ms. Lerner have a reaction to the use of this criteria?

A Yes. She was very concerned about it. She expressed a concern that it would appear to people outside of Determinations that we were discriminating against a particular political leaning. And she directed that it be changed immediately.

Q She directed that the screening criteria be changed?

A Correct.

Q Did you express any views, you know, regarding the propriety of using this criteria?

A Yes, I expressed that I was very concerned about the criteria and that it needed to be tied more to the activity of campaign intervention than taxpayers' names or policy.

Q Did anyone else express any views on the use of these criteria?

A I don't recall.

Q Now, what about the other screening criteria here, aside from the use of names like "Tea Party," "Patriot," and so forth, issues including government spending, government debt or taxes, was there a concern about that one specifically? Or was that also covered by the two concerns that you mentioned?

A That's also covered by the same concerns.

Q Okay. And the same for the other bullets, education and statements in the case file --

A Correct.

Q -- criticizing?

Okay. And you say the decision Ms. Lerner reached was to cease using this criteria?

A That is correct. And then she -- we discussed in the meeting what appropriate criteria would be and provided that to EO Determinations on the call.

Q Okay. So right during that meeting, you actually worked out new criteria, new screening criteria?

A Yes.

Q Okay. And that was provided to Ms. Thomas and Ms. Esrig and Mr. Bowling?

A Yes.

Q And do you know if they changed the, I guess, the tab, the

emerging issue tab, to reflect that?

A Yes, they did.

SFC [redacted]. You know what? If you give me about another 10 minutes, I could probably finish this section, and then we could probably take a break. Is that okay with everybody? I know we're pushing it a little bit.

SFC [redacted]. And take a lunch break after that?

SFC [redacted]. That would be fine, yeah.

BY SFC [redacted]:

Q Okay. What I'd like to do is just actually walk you through some of these options also that are reflected on this briefing paper. And I think that, kind of toward the bottom of the page, there were a number of options here.

The first one is assigning cases for full development to EOD agents experienced with cases involving possible political intervention. And these were options, of course, for next steps. Was there some discussion about this option?

A I believe there was, yeah.

Q And what was decided?

A It was decided -- what was ultimately the outcome of the meeting is that, along the lines of the second bullet, that Lois Lerner's decision was that EO Technical would create a guide sheet that could be used by Determinations to assist them in developing these cases.

Q Okay. But regarding the assignment of the cases to agents experienced with these kind of political cases, wasn't there some action

taken subsequent to that in EOD that would address this option, to your recollection?

A At that point in time, my knowledge now is that they actually remained with Ron Bell. I think in December of 2011 is when Determinations formed a team of people to work the cases.

Q Okay. And was the formation of that team a consequence of this option identified in this paper?

A I don't know it is really a consequence of that option. It is just that cases have to get assigned to someone to get worked.

Q But they were already assigned to Mr. Bell, right?

A Right. But given the number, to get them moving, they were assigned to, you know, a team of people, more than one person.

Q Okay. So what I'm trying to get at is, I'm trying to wonder if -- or get, perhaps, some answers from you regarding what prompted the decision in December of 2011 to form that team of kind of like special agents in EOD to handle these cases? Was it this option in this paper?

A I don't know. I was on maternity leave when that team was formed in EO Determinations, so I don't know exactly what conversations happened at that point in time.

Q Okay. All right, and you say the second bullet, the consequence of that was a development of a guide sheet?

A That's correct.

Q All right. And looking at the third bullet, "a formal process similar to that used in healthcare screening where EOT reviews each application on TEDS and highlights issues for development," did

that happen?

A No, it did not.

Q And why was that?

A I don't recall exactly why that was not picked as an acceptable option, but it did not happen.

Q How about transferring cases to EOT?

A That did not happen either, other than the cases that had already been transferred. Additional cases were not transferred.

Q And why was that?

A It was a resource issue. EO Technical, at that point in time, had somewhere between 40 and 50 employees and, as I said before, were also tasked with implementing automatic revocation and the nonprofit hospital requirements and did not have the capacity to take on the about 100 cases that existed at that point in time.

Q Okay. And then the next-to-the-last one, "Include pattern paragraphs on the political intervention restrictions in all favorable letters," was that done?

A No, it was not.

Q Why not?

A There was, if I recall -- and I don't remember if it was at this meeting or later -- there was a sense that organizations would not want such language in their letters, that it could raise questions for the organizations and was not a good route to take.

Q Okay. And then the last bullet is "Refer the organizations that were granted exemption to the ROO for follow-up."

A That has happened in some cases, to my knowledge.

Q Okay. And these were the organizations that were granted the exempt status prior to the point in time that this matter was elevated up to EOT?

A No, later in time. This is something that -- ROO follow-up is something that gets used in a number of different Determinations cases. Sometimes when a favorable determination is issued but the specialist who worked the case had some concerns but not enough to issue a denial, at that point they can refer it to the ROO, which is part of EO Exam, to look at in a later year. And, later on, when some organizations were approved, I believe some of them were at least were recommended for ROO follow-up.

Q Okay. So were there any other options discussed or decided upon at this meeting for addressing the issue?

A The main takeaways from the meeting were the change in the criteria and also that the cases should be referred to as "advocacy" cases and that a guide sheet would be developed.

Q Okay. So, I guess at the time of this meeting, then, we're looking at sometime late June or July -- your recollection is July 5, so it's about the middle of the year. So, by this time now, cases have been sitting in EOD for a year --

A Yes.

Q -- right? A little more than a year? And the only option that was selected here at this meeting to assist in that moving of those cases, then, was just develop a guide sheet?

A And, at the same time, there were still those cases in Counsel. And, at that point in time, we had not heard back from Counsel yet as to their recommendations on those cases. That's not on the briefing paper, but that was, you know, something that was going on at the same time.

SFC . To follow up on that, was there anything decided at this meeting to try to spur Counsel on to go ahead and give you advice?

Ms. Paz. I believe at this meeting Lois indicated that she and I should meet with Counsel to talk about this so that they would have the big picture and understand the urgency. And that meeting did happen with Lois, myself, Janine Cook, and Don Spellmann at the end of July.

SFC . Thanks.

SFC . Okay. All right, next I'd like to turn to yet another document, and we can have this one marked as Exhibit 11.

[Paz Exhibit No. 11
was marked for identification.]

SFC . And for identification purposes, this document is marked TIGTA EMAILS 00055 through 00061.

Ms. Paz. Uh-huh.

Okay.

[Discussion off the record.]

BY SFC :

Q Yeah, I'm sorry, I just was speaking with my colleague, and I just wanted to clarify then that your perception or sense is that the TIGTA report was incorrect when it said there was a June 29 meeting and

then a subsequent July 5 meeting. Is that correct?

A That's correct.

Q Okay.

A Yeah.

Q Okay. So the event occurred on July 5?

A That's correct.

Q It was just the one meeting?

A That's correct.

Q Okay.

SFC [redacted]

Q If I could just follow up on that, so during the meeting with Ms. Lerner, were there specific changes that were discussed regarding the screening criteria?

A Yes, that the criteria that were currently being used by Determinations had to stop being used immediately and that the language on the be-on-the-lookout listing be changed to "organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Q And so, regarding the screening criteria, her direction was, stop using them. Was there discussion about using different criteria or did she suggest new language for screening?

A Yeah, that was the language I just read from the TIGTA report. She said to use this new language.

Q As both the -- that would both go on the BOLO list and that would also be used as screening criteria? That's what she intended?

A Yes.

Q Okay.

BY SFC [redacted]:

Q That's actually reflected on this exhibit that I've just given you. If you look at Exhibit 11, I think, if you look at page 00059, there's a tab. So the list now refers to the cases as "advocacy organizations"?

A Yes.

Q And no longer "Tea Parties." And indicates that these are just "organizations with political, lobbying, or advocacy for exemption" and no longer, you know, cases involved or affiliated or associated with the actual Tea Party movement.

A Correct.

Q Okay.

BY SFC [redacted]:

Q Were you able to discuss at the meeting, the big meeting, a timeline for wrapping up all these applications, like, say, let's get this done by the end of December 2011 --

A The --

Q -- that 2 years is enough?

A The direction regarding the guide sheet was that that was to be given top priority and prepared as soon as possible. And that was assigned to Hilary Goehausen and Justin Lowe.

Q The guide sheet's fine, but the bigger issue is making decisions, final decisions, on these applications.

A The --

Q Did anyone say, well, let's do the guide sheet for additional applications, say, in 2012, but for this pile, the 100 we have now, let's get this done by the end of 2011?

A I don't recall anyone saying that.

SFC [redacted]. But you still have, I guess, if a draft guide sheet is being prepared, which was then submitted to Cindy Thomas in Cincinnati, there is still kind of that process that needed to be done, as well as Chief Counsel still had the two test cases that they're looking at, and Cincinnati is being told, hold off on doing anything until we got info from Chief Counsel.

So I guess at that point you guys knew there was still a lot to be done before the application was going to be either approved or denied, right?

Ms. Paz. That is correct, yes.

BY SFC [redacted]:

Q And the guide sheet, one more time, gives what assistance to the Determinations Unit?

A The idea is that the guide sheet would help the Determinations Unit in developing the cases and then also analyzing what they got in response to the development letter, in figuring out, for example, whether certain pieces of information indicated campaign intervention or did not indicate campaign intervention.

Q I mean, it's just frustrating to hear that 2 years later, almost 2 years later, you guys are still defining the issues that the

pulled.

Q Unless they had "Tea Party," "Patriots," or "9/12" in their name, right? Because, looking at the list, you see the name, and if the name contained "Tea Party," "Patriots," or "9/12", you know that's how they got on the list, right?

A Yes, because that was the criteria at one point in time.

Q Okay.

BY MS. MCAFEE:

Q Although I think the Inspector General has now said that it wasn't 100 percent of the Tea Party cases that were in the list.

And when you look at the 298, you see that the Acorn successors are in there, and they also were on the BOLO. So do you think that they were pulled, could they have been pulled just based on their name and the fact that they were on the BOLO?

A Yes. What the Determinations employees said throughout the TIGTA interviews is that any of these cases that had -- any case that had campaign intervention that they saw, they sent to this Emerging Issues group to be worked as part of this coordinated look at these cases.

Q And --

A So that would include the Acorn successors and other organizations. I just don't -- it's been a while since I looked at the list. I don't know other names that might reoccur.

Q And you mentioned that, when you were talking to TIGTA, you pointed to the fact that there were other groups on there besides the Tea Party and other cases, I guess, that had been similarly treated.

A At some point in that 4-month period, August, September time frame.

Q Did you feel that the 4 months to get to this stage was a suitable or an appropriate period of time to develop a document like this?

A I thought it could have been done faster.

Q Okay. And did you express that to Mr. Seto?

A I did.

Q And what was his response?

A I don't recall exactly. I think he explained to me that there were a number of competing, you know, competing priorities and other things going on in the office. And that's why I said that this had to be a top priority.

Q Did this issue of the length of time that it was taking to develop this become the subject of more than one conversation with Mr. Seto?

A I believe it did.

Q And Mr. Seto reported to you, correct?

A Yes.

Q Okay. So at any point in time did you form any sense that maybe Mr. Seto wasn't carrying on his job?

A No. I think he was also, you know, pushing on his employees to get it to completion.

Q And ultimately then what was your understanding of the reason it took so long to develop this?

A What I was told is that even prior to this, the draft that was circulated in September, that Ms. Goehausen had difficulty getting -- she had shared it with individuals and was having difficulty getting comments and reaction from them to fold into it.

Q Okay. Was there some direction to make sure that the -- I guess the people she was looking to for input were going to respond to this?

A Yes.

Q What effort was made in that regard?

A Again, I spoke with Mike Seto and also with David Fish, who was the head of EO Guidance, who was also involved in the review, that this needed to be worked quickly.

Q And so the list of recipients of this document is kind of short. It's Judith Kindell, Thomas Miller, Carter Hull, Elizabeth Kastenberg, Mike Seto, David Fish, Steven Grodnitzky, and Justin Lowe. And I don't believe there are any additional names that float in here on the November email. So do you know who among this group was not cooperating or giving information as quickly as they should have been to assist Ms. Goehausen?

A My understanding is that a number of them were not.

Q Do you know which ones fell within that number?

A My understanding is just that she wasn't getting comments back from anyone, is what was relayed to me.

Q Okay. But the November 3rd email indicates that she did receive items from Chip?

A Yes, that was later on.

Q Chip Hull?

A Yes.

Q All right. Do you know if there was any effort to talk to these people to tell them to --

A My understanding was that I had, in conversations with Mike Seto and David Fish, urged them to talk to their employees about making this a priority. I also did talk to Judy Kindell, as we discussed, reported to Lois Lerner and talked to Lois about getting Judy to focus on this.

Q And did they in fact focus on this document?

A Not as quickly as I would have liked.

Q But they did?

A Eventually. And then it got sent out. But it took a while.

Q Okay.

SFC [redacted]. So Judy was --

SFC [redacted]. Wait a minute.

SFC [redacted]. Go ahead.

SFC [redacted]. Go ahead, SFC [redacted]

BY SFC [redacted]:

Q I was just going to say so Judy Kindell is one of them that was slow on this?

A Yes, she has a general reputation of being slow in all work.

Q And what about Steve Grodnitzky? Was he one of them that you were expecting feedback from?

A Not as much. The primary people that had the subject matter knowledge were Judy Kindell, Justin Lowe, Tom Miller, Carter Hull, Elizabeth Kastenberg. Those are the people I would have expected to be most involved.

Q Okay. And none of them were providing comments as quickly as they should in your view?

A That's what was being told to me.

BY SFC [redacted]:

Q Did you plan to provide any comments on the guidesheet yourself?

A I had not at that point seen a draft yet because it was at the working level, and was really not a finished product. Ultimately, I had planned to look at it. But it wasn't actually put in a draft form that was distributed until after I went on maternity leave.

BY SFC [redacted]:

Q Okay. We will come back to the issue of the guidesheet. But for the moment I would like to present you with yet another exhibit. I am going to have this one marked I think 13. Take your time looking at it.

[Paz Exhibit No. 13

was marked for identification.]

Ms. Paz. Okay.

BY SFC [redacted]:

Q If I could direct your attention to the email that's on page 82. I guess we can dispense with all the zeroes for formality's sake here. And it's in the center of the page. And it's an email from Cindy Thomas to Mike Seto. Again, you are not a recipient on this email, but just directing your attention to the second paragraph, Ms. Thomas is telling Mr. Seto here that she is not sure what the hold is on the documentation guidance that EOT is supposed to be providing. And then she goes on to recount here she received a phone call from an individual who was threatening to go to his congressional office. I think this is what you just referred to a few moments ago. And that is only going to create even more work for us, meaning I guess EOD or EOT or Exempt Organizations. And we need to get the letters out to these organizations ASAP. Please let me know when we can expect to get the document from EOT.

So in this email Ms. Thomas appears to be expressing a sense of urgency in getting the guidesheet so that she can resume development of the cases, the political advocacy cases. At this point in time did Mr. Seto report to you that Ms. Thomas was expressing this sense of urgency in getting this guidesheet out?

A By that point I was no longer in the office. I was on maternity leave.

Q Okay. So your maternity leave I thought was -- was it October?

A Yes.

Q Or November?

A It was October. Started October 24th.

Q Okay. So you didn't have any conversations with Mr. Seto about the content of this email?

A I did not.

Q Okay. Let's just in the same exhibit, if you can flip to page 86, and if I can direct your attention here to an email exchange that's dated September 15th. And in this email exchange I guess Ms. Thomas is asking you, I guess, or perhaps setting up the groundwork here for the triage effort that took place in the fall of 2011. Is that right?

A That's right.

Q Okay. And were you being kept informed of the results of the triage effort?

A The triage, as you can see here, started mid-September and was not finalized until I went on maternity leave. So I did not see the results of the triage.

Q Okay. So all the entire triage events took place when you were out of the office?

A The work on it started --

Q Right.

A -- before I left the office, but I did not, no one reported to me on here is how it's turning out.

Mr. Campos. Did you urge the triage get established?

Ms. Paz. I asked that the triage -- I directed the triage be done and be done quickly. And my recollection is that the triage results were sent out, you know, late October.

BY SFC [redacted]:

Q Did you ever ask, though, what the results of the triage were?

A After -- at some point after I got back from maternity leave and all of these cases sort of blew up with the media attention, you know, at that point in time I learned more about what had happened with the triage results.

BY SFC [redacted]:

Q What was the overall goal of the triage?

A It was to find some cases that could be approved based on the information that we had so that we could close some of the cases, the taxpayers wouldn't have to wait any longer.

BY SFC [redacted]

Q Were you aware of I guess the way EOD, or Ms. Thomas specifically, what her thoughts were regarding the usefulness or utility of the triage effort?

A Not until later on.

Q Okay. And looking at page 83, I think the bottom of page 83 and the top of page 84, this is an email from Ms. Thomas. And she is sending this email to Thomas Lieber and then to Mike Seto, who I believe were both employees in EOT?

A That's correct.

Q And she is stating she is unclear about what she should be doing with the results of the triage. Is that correct?

A Yes.

Q Okay. And then subsequently it appears, if you look on page 82, it appears that Ms. Goehausen attempted to explain the results of that triage, in other words to give her some guidance as to what she could do with those results and how she could employ those results. Was that your understanding of what was going on?

A That's how I viewed the emails. I was not part of this discussion at the time.

Q Yeah. And then if you look at -- and I appreciate the fact that you weren't there. But if you go to page 81, you can see at the bottom there is an email from David Fish. And David Fish was your kind of temporary successor; is that correct?

A Yes, he became acting R and A director.

Q R and A director, right. And in his email it appears that he concludes that the document won't work in its present form, meaning, I presume, the document, the triage document.

A Actually, I think that reference to the document is referring to the guidesheet at that point in time.

Q And what makes you think that?

A Later on with conversations with David he had commented that he didn't think the guidesheet was workable. But from this email it's not clear if it's the triage or the guidesheet.

Q Didn't he at some point conclude the guidesheet was too lawyerly?

A Yes.

Q Do you recall that?

A Yes, that's what I was referring to.

Q Right. Okay. So I think that was a subsequent communication --

A Okay.

Q -- referring to the guidesheet. But in looking at this email, I don't know if you agree with me that it appears that he has concluded the guidesheet won't work in its present form. If you look at the preceding email, the email is discussing the guidesheet and the difficulties that EOD and Ms. Thomas specifically is having interpreting the results of that triage.

A Uh-huh. Yes. My recollection actually is that the email -- and you can't tell it from here -- is that the November 6th

email from David Fish to Cindy and Mike, that the guidesheet was attached to it and he was referring to it. That's my recollection.

Q Okay.

A But you are correct there was also confusion expressed about the triage results.

Q Okay. So November 6th Mr. Fish, who is the acting director of Rulings and Agreements, concludes the guidesheet, it's your sense the guidesheet won't work in its present form. So now that means that all the effort that has been expended since what, July 5th, or since whenever Ms. Goehausen began working on that, to November 6th, which is a period of about 4 months, is pretty much gone. Right? That effort hasn't resulted in anything useful at this point.

A That's correct.

Q Okay. And regarding the triage efforts now that had been underway for several months by this point, in November of 2011 it appears that those triage efforts also didn't result in any kind of useful outcome. Is that correct?

A There was some confusion about I guess Ms. Goehausen had to use some descriptions like general advocacy, and it was unclear, Determinations expressed that they were not clear what that meant they were supposed to do. But that was then later clarified I think to more clearly indicate that, you know, a certain number of cases could be approved.

Q Okay. And so Ms. Goehausen took a shot at clarifying it. So then the next result or consequence of that was what, exactly? Was

EOD able to take the results of that triage effort and actually implement them?

A From what I understand, they did not. My understanding is that for the -- there were a few cases, I don't remember how many, but it was a relatively small number that Ms. Goehausen said she thought could be approved based on the information in the application. But what Ms. Goehausen was looking at through the electronic system was just a PDF of the initial application. So I believe her advice was caveated that before Determinations, you know, issued a letter they should look and see if there was anything that had come in subsequently that, you know, could perhaps change that answer.

Q Okay. So her answer was sort of an interim answer then, wasn't it, on the cases?

A It was a recommendation, but with a caveat that there was an additional piece of information she didn't have that Determinations should look at and take action accordingly. But for whatever reason, Determinations did not do that at that point in time.

Q They didn't follow up and do that additional examination is what you are saying?

A That's my understanding. Because none of those cases got approved at that point in time.

Q Okay. So would it be fair to say that the entire effort, the triage effort, at least this first triage effort in 2011 then resulted in nothing useful?

A That's correct.

be criticism of the decision for whatever reason. So she here was I think to some extent also concerned that we not be seen as blessing organizations that it turned out had engaged primarily in campaign intervention and that we had somehow signed off on that.

Q And the "she" you are mentioning is Lois Lerner, right?

A That's right.

Q Okay. Because the test is that you qualify for (c)(4) as long as you are primarily engaged in social welfare. Right?

A That is correct.

BY SFC [redacted]:

Q Okay. Next --

SFC [redacted]. Can I ask one thing?

BY SFC [redacted]:

Q Is Lerner in charge of the crowd that goes out and examines existing (c)(4)s?

A Yes. She oversees EO Determinations.

Q Did you guys ever talk about just approving all of these and then investigating them periodically to see what they were up to?

A I believe that was discussed to some extent at that July 5th, 2011, meeting that we could approve organizations and then for example refer them to the Review of Operations, the ROO, for follow-up. My recollection is Lois was concerned about that. I think she didn't think that Exam had the resources to do that. And also because if we were to -- as we discussed, if you issue a favorable determination the organization can rely on that. And if they -- if that determination

was wrong, if they were not primarily social welfare during that time period, they nonetheless would escape tax.

BY SFC [redacted]:

Q Can they rely on that letter of approval if their activities are actually different than what they have told you in their application?

A No. The standard is that if they have disclosed it on the application and the IRS, you know, just gets it wrong and issues a favorable, the organization can still rely on that because they disclosed it. There is a process that they could request relief.

Q So it sounds like there is two processes you could do if you had approved an organization to give them more review. One is to send them to the ROO, where they likely I guess wouldn't find out that they are being looked at in the future. The other is to do an actual audit of the 990 in Examinations?

A That's correct, yes.

BY SFC [redacted]:

Q How many people in the ROO? How many personnel?

A I don't know.

BY SFC [redacted]:

Q Okay. Next I would like to show you a document, I am going to have this one marked as 15.

[Paz Exhibit No. 15
was marked for identification.]

BY SFC [redacted]:

Q And it's identified at the bottom as TIGTA emails 00147 to 149.

A Okay.

Q If I can direct your attention to the very last email. It appears to be from Nikole Flax to Lois Lerner on March 8th, 2012. And the subject of this email, as well as all the other ones in this chain, appears to be the issue of donor information. And it appears that EOD was requesting or requiring many of the applicants for tax exempt status to provide donor information. Was that your understanding?

A My understanding was they had asked that question of some applicants, yes.

Q Okay. And why was, if you know, why was Ms. Flax, who was the Chief of Staff for Mr. Miller, why is she raising this issue with Ms. Lerner?

A I believe because of all of the media attention and congressional attention that was going on at that point in time about the development letters, and in particular about that question that was in some of the letters.

Q Okay. And at that time were you aware of the fact that donor

information was being requested of (c)(3) and (c)(4) applicants?

A I saw that through the complaints that taxpayers had made. That's how I became aware of that.

Q Okay. And when were those complaints made?

A I recall they came in sometime in mid-to-late February of 2012.

Q Okay. And at that point in time what was your assessment of the propriety of asking applicants for (c)(3) or (c)(4) tax exempt status to provide lists of donors?

A My reaction was that it was not a standard or a typical question. I could conceive of some scenarios where it might be relevant. But it was an unusual question.

Q Were you concerned about the reports that this was -- that this request was being made of clearly more than one applicant organization?

A I was concerned about the development letters that I had seen made public in a number of respects, one of which was the donor question. But there were a number of other issues that I thought were of concern in the development letters.

Q And what were those issues?

A Just several things. One, the length of the requests. Some of them were very lengthy, with many, many questions, with multiple sub-parts. A lot of them were burdensome on the taxpayer. For example, some of the letters that I saw made public the applicants were asked to provide a printout of their entire Web site, every single page, and

every portion of their Twitter feed if they had one, and their Facebook page. And my experience had been that Determinations or EO Technical, if EO technical was working an application, would look at a Web site, and if there were certain things on an organization's Web site that we had a question about we would mail that page of the Web site to the organization and ask, you know, is this your Web site? Is this a correct statement? That sort of thing. It was surprising to me that organizations were asked to just provide everything. That was not consistent with my past experience.

Q Okay. And so you say you saw these letters what, in February of 2012, correct?

A Yes.

Q Okay. And at that point in time you formed this concern about the length and the burden and so forth. What did you do about that concern?

A At that point in time, you know, I looked at all of the letters that had been made publicly available. I was trying to just figure out what had happened in Determinations. Had they, for example, asked the same questions of everyone? Had they generated some sort of form letter on their own and they were just, you know, using it for everyone? Or were there differences? You know, what were all the questions that had been asked? At that point I was engaged in information gathering using what was available publicly and then reaching out to Cindy Thomas to ask questions about why they had done certain things, where these things had come from.

Q Okay. So is your reference to reaching out to Cindy Thomas this email on the bottom of page 147?

A Yes. We also had some conversations at that point in time as well.

Q Okay. So when you reached out to Cindy Thomas then, were you reaching out to her as a consequence of this chain of emails that was sent to you from Ms. Lerner, the Nikole Flax email and the Lois Lerner emails, or were you reaching out to her as a result of your own independent concerns that you formed when you saw copies of these development letters?

A As a result of the concerns that I had. I had, you know, several discussions with Lois Lerner, and then proceeded to have several discussions and exchanged emails with Cindy Thomas. So my recollection is that I had discussions with Cindy even prior to this email, you know, in the, you know, perhaps the week before that that there were a number of different conversations.

Q So you saw this issue coming before Ms. Flax contacted Ms. Lerner?

A Saw it through the media, yes.

Q Did you raise this issue with Ms. Lerner?

A Everyone I think sort of became aware of it at the same time because of the press coverage. We all saw the letters through the press coverage.

Q But did you raise it with Ms. Lerner?

A Yes, I did.

Q Okay. And what was the substance of the conversations you had with her about requesting this donor information?

A You know, that I didn't know where this had come from, that I was -- you know, thought the question was somewhat unusual. I could think of some contexts where it might be relevant, but, you know, it was not a question that you would see widely used. And that I needed to get more information. Oftentimes it's hard just looking at a development letter and not the application to understand why, you know, why something might have been asked. Perhaps there was something in the application that led someone to ask it. So I said that I needed to gather information so we could understand exactly what had happened and why.

Q And this was your attempt to gather that information?

A One of, yes.

Q And these communications and conversations you had with Ms. Lerner, were they by email or were they oral or --

A No, we spoke orally.

Q And she shared your concern?

A Yes.

Q Okay. Now, if I could just direct your attention to I guess page 148, the top. And this is I think your email to Ms. Thomas. And you say that if advocacy orgs that were asked to provide the name of their donors push back in any way, we are to allow them to instead provide general info about their sources of funds at least for purposes of the response to the first development letter. The question I have here for

you is why is it that organizations were put to the task of having to push back?

A That was what I -- the directive I received from Lois. She was having conversations with Nikole Flax and Steve Miller about these letters and how to respond to them. And I think there were different options that were under consideration by them at that point in time, that we could, for example, retract the whole development letter at that point in time. There was this extension option. There was some different lengths of extensions that I heard talked about at that period of time. But the decision that was passed on to me was that this extension, this 60-day extension would be the approach, and that with regard to donors there was a sentence included in the extension letter that said something along the lines of if donors felt like they were uncomfortable with any information and felt like they could provide it in a different way to contact the specialist assigned to their case and we would handle it that way.

Q What about organizations that had already provided donor information?

A That issue was something we dealt with later. A few, not many, but some organizations did provide that information. And what we did is we reached out to the Office of Chief Counsel to the experts on disclosure. Because, you know, once an application is approved it becomes publicly available. So we reached out to Counsel to ask if there was some way that we could expunge the donor information from the file if it had been provided to us. And Counsel got back to us and told us

that if we had not -- if we did not use that donor information in making the decision on the application that we could expunge it from the file. So that is what was done.

BY SFC :

Q So Chief Counsel told you it was okay to destroy the donor lists submitted by the 501(c)(3) and (4) applicants?

A Yes. If we didn't use it in making the determination and we didn't use it in any case to make the decision.

Q Okay. So they blessed the destruction of those documents?

A Yes. Or either expunging it if it was included with other things or destroying it. And a letter was sent to the taxpayers to notify them of that.

BY SFC :

Q I just wanted to ask a follow-up question about you mentioned a couple minutes ago that you thought some of the development letters that went out were overly burdensome on the taxpayers?

A Yes.

Q What is the -- is there an IRS policy that talks about burden on the taxpayers when cases are developed?

A I think there is some general language in the Internal Revenue Manual that questions should be pertinent. But I don't think it says much more than that in the Internal Revenue Manual. So I don't think there is a lot of specific guidance on how much to ask, what to ask.

Q So when you read these letters you felt like it would just

Q Right.

A It didn't get sent until I think March of 2012 it was actually provided to Counsel to comment on.

Q Okay. But I guess my point is, though, that this effort that had been undertaken to prepare a guidesheet had commenced sometime after July 5th, and here we are now April of the following year and we are still talking about a draft document where people are commenting on. Is that correct?

A Yes.

Q And in all that intervening period of time the guidesheet hasn't been able to be used by anybody in EOD in kind of the way it was intended to be used. Is that correct?

A That's correct.

Q Okay. I would like to show you a document, if we can mark this one 17.

[Paz Exhibit No. 17
was marked for identification.]

BY SFC [redacted]:

Q And this is identified as TIGTA email 00274 through 00276.

A Okay.

Q My questions here are just short, and they really relate to this first page, 00274. As I understand it, this is the results of the second triage, or what was I think was referred to as the bucketing of cases in 2012. Is that correct?

A Yes, that's correct.

A That was in March of 2012.

Q Okay. So nothing had been approved since February 26th, when you said, bring the Tea Party case up here, until after you all learned about the TIGTA audit, right?

A Correct.

SFC [redacted]?

BY SFC [redacted]:

Q Who was in charge of the 65 approvals? Who made that decision, that these applications could be approved?

A The way we did the bucketing was we convened -- in Cincinnati, for a 3-week period, we had individuals from EO Determinations, higher-graded employees who had some experience with advocacy-type issues, and then we brought a number of experts from the Washington office and also pulled in two people from the Quality office in Determinations in Cincinnati and had that team of folks review every single application that was open at that period of time.

Each application was reviewed by two people independently. After finishing their review, each reviewer would fill out a sheet summarizing their observations about the case and making a recommendation as to what bucket the case should be placed in. Each reviewer did that.

If the two reviewers agreed on the recommendation, that is what was done. If the reviewers disagreed, if one said it was a bucket 1 and one said it was a bucket 2, the two reviewers had to have a meeting and see if they could reach agreement on a recommended bucket. If they could not reach agreement, then it was elevated to Sharon Light, who

was acting as the coordinator of this bucketing process. She would meet with the two reviewers and then make a decision as to what bucket an application should be placed in.

Q And how long did this process take?

A This was a 3-week process throughout May of 2012.

Mr. Campos. How many people were involved?

Ms. Paz. I think it was -- there were at least 10, 10 different people.

SFC . And who were the Washington, D.C. --

Ms. Paz. The Washington people were Sharon Light, who coordinated it, Judy Kindell, Hilary Goehausen, Andy Megosh, Matthew Giuliano, and Justin Lowe.

SFC . Do you know when the first cases were approved?

Ms. Paz. I don't know the exact date. I know shortly after they were bucketed, we -- the cases went to people who were not doing the bucketing so they could quickly get those letters issued.

And the bucketing focused only on qualifications for (c)(3) or (c)(4) based on the campaign intervention. If, for example, other things that were needed to close an application were not in there, like a certificate of incorporation or, you know, a signature on the application, those people who were responsible for getting the favorables out would quickly secure -- they were tasked with quickly securing that so they could issue the favorable letters.

BY SFC :

Q What role did the Washington staff fill in this process?

Were they advising Sharon Light or --

A They were part of the team, so they served as bucketers.

Q Oh, they were working on the team?

A Yeah, they were bucketers.

Q Oh, okay.

A And what we tried to do was to have every application -- the two people that reviewed every application, we tried to work it so that you'd have a Determinations person with a Washington person so you could have the two different perspectives.

And we actually, before we began the bucketing, spent the first day and a half doing a workshop for everybody who was going to be bucketing or working on the cases subsequently as far as, you know, issuing the favorables. We had done training in the past on campaign intervention issues but felt like there was obviously still a lot of confusion about what the rules were.

We tried to take a different approach. We did it in a workshop format where we used the real cases that we had and used those as a way to discuss issues that come up. We also talked a lot about, here's an issue you see on the application; how would you ask a development question about it? What would the question look like? And then worked through what would be a good question that would get at what you needed to know but not be too burdensome on the applicant.

So that was done initially before the bucketing. Also, just to get everybody on the same page about what the rules were that we would be applying so that everyone would have -- there would be consistency.

Q Was the guide sheet used at all in this process?

A No. This was actually -- the workshop was an alternative to the guide sheet. We were never able to get Counsel to sign off on the guide sheet and give a final blessing to it. So we, at that point, had abandoned the guide sheet idea.

Q Thanks.

BY SFC [redacted]:

Q How long did Chief Counsel have the guide sheet that they were reviewing?

A I think there was a lot of back-and-forth over a 2-month period. Throughout March and April, we had several meetings and exchanged several rounds of drafts with them.

Q And before that, there was a period they had it and they were looking at the guide sheet, as well, right?

A My understanding is that the guide sheet was not sent to Counsel before early in 2012.

SFC [redacted]. Whose idea was this process, the Cincinnati process?

Ms. Paz. That was something that Nan Marks and I worked together to create, based on the information gathered as part of the internal review that she led.

BY SFC [redacted]:

Q She did the internal review. She went down there to Cincinnati on April 23rd, right --

A Yes.

Q -- of 2012? And was she reporting back to Lois and Steve

Miller?

A My understanding is that, ultimately, she was supposed to give a report back to Steve Miller.

Q Okay. Do you know if she was giving him updates while she was down in Cincinnati on that trip, that she arrived --

A I don't know.

Q All right.

BY SFC [redacted]:

Q You know, I did actually neglect to ask you one set of questions. I think at some point you had indicated that, after the July 5, 2011, meeting with Ms. Lerner and before the August 10, 2011, meeting between Mr. Hull and other representatives of EOT and Mr. Spellmann, that there was a meeting that you had had with the Chief Counsel and Ms. Lerner. And I think you said Janine and Nan, as well?

A It was -- the meeting was Lois Lerner, myself, Janine Cook, Don Spellmann, and Nan Marks.

Q So, Nan Marks or Nan Downing?

A Nan Marks. Nan Downing is the head of EO Exam. I don't recall that she was there.

Q Okay. And this was in 2011, then?

A Yes.

Q And during the course of this meeting, what was discussed exactly?

A We provided Counsel with an update, basically shared the information that had been relayed during the briefing with Lois, as far

as the issue of the criteria, how many cases there were, the decision to do the guide sheet.

Q And did Counsel express any opinion regarding the propriety of using these screening criteria that was discussed at the July 5 meeting?

A I don't recall them -- we didn't ask for their opinion on it, because, at that point in time, EO had already made the decision that those criteria were not appropriate and to change them.

Q Okay. Did they provide any other guidance to you?

A Not in that meeting, no.

Q So, essentially, it was a meeting for you to inform them what was going on --

A Yes.

Q -- and bring them up to speed?

A Yes.

Q Okay.

Mr. Campos. Weren't you also trying to urge them to move?

Ms. Paz. Yes, but I don't remember timing-wise. You know, at that point in time, we talked about these cases and wanting to move all of this very quickly. So it was really us letting them know what was going on and us leaning on them to treat this as a priority because we were concerned about it.

Mr. Campos. Who leaned on them?

Ms. Paz. Lois.

SFC [redacted]. How did that work out?

Ms. Paz. Well, obviously, not very well. Things didn't move quickly.

And, you know, ultimately, everyone that was reached out to for advice on these cases, basically everyone just kept saying, we need more information, we need more information. That was what Judy Kindell said; that's what Counsel said.

BY SFC [redacted]:

Q Did Judy Kindell ever make a final decision on any application in her career?

A Well, she was part of the bucketing and, actually, through the bucketing process, made recommendations on these cases.

Q But up to that point, she had never made a decision on an application? She had never been held responsible for completing a task on a deadline?

A She had a reputation of having difficulty with deadlines and taking a lengthy period of time on cases.

Q What is Sharon Light like? Did she manage this process as sort of the final arbiter?

A Yes.

Q What's your description of Sharon Light?

A She did a very good job of moving this along. She is someone who came to the IRS with a lot of experience in the sector. She practiced as an attorney in the exempt organizations area at a law firm for many years and then was actually in-house at a 501(c)(4) organization, so had a lot of practical experience that unfortunately is missing in the

RPTS JANSEN

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JOHN SHAFER

Tuesday, September 17, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:10 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For JOHN SHAFER:

JEFFREY A. NEIMAN, ATTORNEY AT LAW

LAW OFFICES OF JEFFREY A. NEIMAN

SFC [redacted]

FORT LAUDERDALE, FL 33394

JEFFREY L. COX, ATTORNEY AT LAW

SALLAH ASTARITA & COX, LLC

SFC [redacted]

BOCA RATON, FLORIDA 33431

A 7838.

Q And what was your last position before that one?

A I was manager -- again the front-line manager for the Technical Screening Group.

Q Okay. And how long were you in that position?

A Ten years.

Q And why in March of 2013, why did you change positions?

A The program manager, Cindy Thomas, went through a realignment. And part of her realignment at that time was to dissolve my group and to move me into Programs and Support.

Q Okay. Now I'm going to go back to 2010, which is the start of the period that we're interested in for this investigation.

A Okay.

Q How many employees did you supervise in 2010?

A Well, it changed at different times, but I think the period that we're looking at at that point in time I ended up with 13 employees, which were 11 revenue agents, a secretary, and a clerk.

Q And in terms of the EO Determinations Organizational Unit, were all of the screeners within EO Determinations working within your supervision?

A Yes.

Q And can you tell us generally what a screener does, in broad terms, what are their job duties?

A The Exempt Determinations, EO Determinations unit in Cincinnati is a centralized unit. And by that, all applications for

requests for tax exempt status are received in Cincinnati. The numbers are approximately 70,000 a year. And the unit was responsible for the initial review of these applications. At this period of time they were electronically scanned and the electronic copy was reviewed by the agents in my group. And the determinations were made as to what status they were in from a standpoint of if we found an application that was complete and the law of that particular subsection was satisfied, we would close that case and approve it. The numbers that we would be -- were able to close were, historically, over the period of time that I was in that management unit, 35 percent.

The next bucket where we would look at cases ended up to be those cases that were not quite complete. There were some procedural situations that needed to be met, such as the -- we would look at an organizational test to see if their organizing document were in line with the subsection that they were needing or even if there was one existing. And there was an operational test that we would look at to see if their activities were as defined in that subsection. And these kind of things if they were missing were kind of minor adjustments that needed to be obtained from the customer. And those type of organizations numbered on historically about 50 percent.

Now, when we then looked at the remaining -- because I think I -- 85 percent, so I'm looking at 15 percent that these could be -- there was about 2 percent of the applications that were returned because they were grossly incomplete. Someone may just mail in the first page. And, therefore, we didn't have enough information that

we could make a valid determination. And also included in that 15 percent were applications that had significant situations that required significant development. And those applications then were put into a bucket for full development, as we called them at that time.

Q Okay. So I think that's a great description. So if I'm understanding you correctly the screener has the authority to approve an application. And other than that, the other options all relate to further development of a case or more information and the screener does not have the opportunity to deny an application at that stage. Is that correct?

A Correct.

BY SFC :

Q So just to be clear, the screener themselves can approve an application send it out the door to a taxpayer without further review?

A They recommend that case be approved. And ultimately, it was the manager who would sign off on that case.

Q So the screener doesn't actually have authority to approve them. Right? They can recommend approval, but they can't approve them. Right?

A Correct.

BY SFC :

Q And when you say that the manager would sign off on it, would that have been you when you were in that -- the position that you held for 10 years?

Q Did you have a certain number of days each week?

A No, I did not.

Q On average, how often did you work from home?

A Probably two.

Q And the other employees that were in the EO Determinations group in Cincinnati outside of the screening group, the rest of them, were they also covered by that union agreement?

A Yes, they were. Bargaining unit folks. Not, again, the managers.

Q So they could have worked at home up to 4 days a week?

A Yes.

Q Okay. Thanks. Thanks for helping me out with that.

[Shafer Exhibit No. 7
was marked for identification.]

BY SFC [redacted]:

Q Exhibit 7 does not have a Bates number on it, but it was produced to the Senate Finance Committee by the IRS. And they have represented to us that the date in the left-hand corner is the date of this document, which in this case would be 2010, and then the month is 8, which is August, and 12 is August 12th. So August 12th of 2010 is the date of this document.

A And what is this document?

Q This is part of a document that was called the BOLO list.

A Okay.

Q Which was -- and this is -- and I will also put this on the

issues that could indicate a case would be considered a potential Tea Party case. So my first question is this email was sent in June of 2011. Where did you get this information from?

A When Cindy Thomas sent this email, I really looked at, "Do the applications state/specify Tea Party? If not, how do you know applicant is involved in the Tea Party movement?" At that point in time, I sent an email to my three senior agents, Gary Muthert, Roger Vance and Dale Schaber. And I precisely asked them, what activities are you seeing in cases that you indicate could be necessary to consider a case as a potential Tea Party. And they responded back to me with what they were finding in cases and that is how I came up with the listing that I sent to Cindy Thomas.

SFC [redacted]. That was an email you sent?

Mr. Shafer. Yes.

BY SFC [redacted]:

Q So this list of four criteria, that's a compilation of what those three senior agents told you?

A Correct.

Q And in your email, you indicated that the case would be sent to group 7822 for secondary screening; is that right?

A Correct.

Q So is it accurate that any case that met any one of these four criteria would have been sent to group 7822?

A That's the information that was provided by these three senior agents as to what they were seeing in cases that prompted them

to send them to 7822.

Q Okay. So do you know -- let's look at the first one, Tea Party Patriots or 9/12 Project as referenced in the case file. Do you know why those specific words were used?

A I do not.

Q Were those words that you had seen when you saw the cases come through?

A I don't recall seeing that.

Q You don't recall seeing any cases that said "Tea Party"?

A You said "Tea Party Patriot." And I saw cases that said "Tea Party." Obviously because of the one email. The Albuquerque. But I don't recall seeing the composite of what we're talking about here.

Q Okay. Well, it says, Tea Party Patriots or 9/12 Project. So it would be one of presumably, you know, one or the other, one of those words.

A Well, I don't recall really seeing Patriots or 9/12 Project. I saw Tea Party.

Q But what you're saying is if these terms were used in the -- referenced anywhere in the case file, then would have been sent to group 7822; is that right?

A This is what the three senior agents were telling me they found in cases that would identify them as potential Tea Party cases and sent to 7822.

Q And you didn't have any reason to believe that they were

wrong?

A I did not.

[redacted]. And you forwarded it on to Cindy Thomas; correct?

Mr. Shafer. Correct.

[redacted]. John, why were they asking you for this information if Hofacre was in a different group? Actually, she's gone by then. There are multiple groups doing the screening; right?

Mr. Shafer. No. Hofacre never did screening.

[redacted]. You were the only group that did screening --

Mr. Shafer. Correct. Except for when we got overburdened and we did the embedded people, a couple folks out in California.

[redacted]. Liz Hofacre was the BOLO coordinator?

Mr. Shafer. I'm not sure she was the BOLO coordinator; I thought she was the Tea Party coordinator.

[redacted]. But since your team was the entry point, you surveyed your staff to see what they were looking at to send to 7822?

Mr. Shafer. Correct.

[redacted]. Why is "Tea Party" in quotes in response of found issues to be issued in potential Tea Party cases?

Mr. Shafer. I couldn't answer that because, you know -- couple things were in quotes also. I -- if I were to venture a guess, that's what was sent to me.

[redacted]. Do you think it was strange that they reported that one of the things they were looking for is activities to make America a better place to live?

Mr. Shafer. Not necessarily. But then, again, in Cindy Thomas's email, she did put "Tea Party" in quotes. And it would be my practice to provide information back to her that really referenced back to what she had asked me to do.

SFC [redacted]. Okay.

BY SFC [redacted]:

Q Going back to Ms. Paz's email on page 49, she says, "We want to think about whether those criteria are resulting in overinclusion?"

Do you know why she was asking about overinclusion?

A I do not.

Q Did you have any concern that the screeners might have been pulling out too many cases and labeling them as Tea Party cases?

A I did not.

SFC [redacted]. Did you have any idea how many Tea Party applications had been collected at this time and referred to 7822 in the summer of 2011? Do you have any --

Mr. Shafer. I did not -- I really didn't keep.

BY SFC [redacted]:

Q Didn't keep a count?

A Well, like I've indicated before, this was a minuscule part of what I was doing. I mean, you know, just a couple hundred cases, even though very important, they -- in the 70,000 that I was looking at over periods of time was not something I -- I mean, I can truthfully say my motives are production and trying to close as many cases as we could for customer service purposes. And so I kept very astute numbers

SFC [redacted]

Q Well, do you know what the problem was with labeling the cases the Tea Party cases in --

A I do not.

Q You don't know?

A I do not.

Q Now, on the second paragraph of that same email from that Cindy Thomas, she says, "Lois did want everyone to know that they were handling the cases as we should, i.e., the screening group start seeing a pattern of cases and is elevating the issue."

So did you take that to mean that the way that your group had been handling it was fine and you didn't need to make any changes?

A That's the way I took it.

Q And in the email on the second page from Ms. Thomas, she references a change to the BOLO list which was attached to her email and that's the pages that follow are the revised BOLO sheet.

And if you look at page 59, TIGTA emails 59, this is the changes she's referring to in her email is that the issue name is no longer called Tea Party, it's called advocacy works. And the issue description has also been changed. Do you see that, Mr. Shafer?

A Yes.

Q So after you received this email from Ms. Thomas, did you make any changes in how your group was screening cases?

A I did not.

Q So, in other words, we were just looking at a document that's

marked as Exhibit 8, which has a list of four criteria that were used to screen Tea Party cases, and it's an email that you'd sent on June 2nd, 2011. So is it accurate to say that you -- your group continued to use those criteria after the BOLO was changed in July of 2011?

A Well, first off, we didn't use criteria. I mean this -- the list of things in Exhibit 9 were issues that were found in cases that would prompt us to identify these cases as Tea Party/advocacy.

Q And I think you're referring to Exhibit 8, just for the record.

A Okay. 8. Okay.

Q That's fine.

A Yes.

Q I'm sorry. Continue.

A But, I mean, I -- again reiterating there was never a point where I provided criteria that my screeners should be using.

Q Okay. Okay. So Exhibit 8, whatever you want to call it, the numbers 1 through 4 that are in your Exhibit 8, that's how the cases were being screened at that time in June of 2011?

A Yes, it was.

Q And then after this meeting with Lois Lerner in July of 2011, you did not direct your screeners to make any changes in how they were screening cases?

A Not to my knowledge. I expected the same, you know, determination that they did. The only thing is is that the files within our TEDS system because it did indicate certain categories. We started

identifying advocacy cases.

Q Okay.

A Just a name change.

Q As a name change within the system?

A Yes.

Q So tell me a little more about what that -- what that means? I don't want to get bogged down in the details of the system.

A Well, the TEDS system is set up that it does have issue -- a list of issues.

Q Okay.

A That a screener, you know, can assign these issues. So if you go back to the very first document you gave me you can see things on there that would have a listing within TEDS. And they identified those and it puts it into a description. That's all.

Q So until that point in July 2011, was there an entry in TEDS that says Tea Party cases?

A I believe there was.

Q And then in July 2011, the entry in TEDS was changed to --

A I can't say that for sure, but, you know, the -- the changing just the name from one thing to another I was aware of that happening. I have -- I did not have charge of changing the TEDS file. And so I don't know exactly when or how that was accomplished.

SFC [redacted] Who did have charge of changing the TEDS file?

Mr. Shafer. I believe it was the analyst who worked for Cindy Thomas. His name was Nick Reinhart.

BY SFC [redacted]:

Q Okay. So outside of the change to the TEDS file, were there any other instructions that you gave your group in July of 2011 about how to process advocacy cases?

A No, there was not, to my knowledge.

Q And how about for the remainder of 2011, were there any changes to the screening process for Tea Party cases?

A Not to my knowledge.

Q Okay. I have one more exhibit, and I think this is the last one. There might be one more. Maybe the second to last one. That should be 10. I mislabeled it.

[Shafer Exhibit No. 10
was marked for identification.]

BY SFC [redacted]:

Q Okay. And this is -- Exhibit 10 is a document that was produced by the IRS to the Senate Finance Committee. It was labeled as a BOLO list with a date of February 8, 2012. And this is the Emerging Issues TAB, which was part of an electronic document. So you can see there under the issue name is now called current political issues, which is a little different from the document we were just looking at. And then the issue description has also been changed, compared to what we were looking at in July of 2011.

A Okay.

Q Okay. You see the differences?

A I guess.

A Correct.

SFC [redacted]. Okay. Thank you.

SFC [redacted]:

Q Okay. So now I have one more document.

I lost count.

[Shafer Exhibit No. 11

was marked for identification.]

SFC [redacted]:

Q This one will be marked as Exhibit 11. The font on this is tiny, and there's no need to read everything. This is another document that was produced to the Senate Finance Committee by the IRS. This is a BOLO list that was dated November 16, 2010. And this is a tabbed electronic document that was called TAG Historical. And I'm going to ask you about an entry on the second page, Mr. Shafer. It's the third one down. On the left side, and even though the writing's very small it says 170 Progressive. And then if you hop over two columns to the right, it says, "Common thread is the word progressive activities appear to lean toward a new political party. Activities are partisan and appears anti-Republican. You see references to code blue."

Now, do you recall seeing any -- during the time, and I'm talking about the whole time that you were the screening manager, all the way back to 10 years, I guess, to 2003, do you recall any cases that came in that met this criteria of progressive?

A Not to my knowledge. You said this was TAG History?

Q It was -- the tab in the Excel document is called TAG Historical.

A Okay.

Q So do you recall any progressive cases that were sent to Washington for processing?

A I do not.

SFC Do you know what TAG Historical list is for?

Mr. Shafer. I do not. Again, this -- the TAG group was after me. John Waddell was the longest manager I knew in that area. And so I really don't know what this would have been.

SFC :

Q Did you give your -- the revenue agents in your group, did you give them any instructions on how to handle progressive cases?

A I did not.

Q So I think we had gotten up to the beginning of 2012. We looked at a BOLO from February of 2012. This revised the language. During the rest of that year, were there any changes in how the screening group processed political advocacy or Tea Party cases?

A Not to my knowledge.

Q Okay. And how about in 2013, were there any changes in how political advocacy cases were processed?

A Not to my knowledge.

Q And what about when the groups were reorganized in March of 2013? Were there any changes to the process at that point?

A What do you mean by "changes in the process"? I'll just

SFC 000426

SFC [redacted]

From: Medina Cheryl J TIGTA
Sent: Monday, May 20, 2013 10:12 AM
To: Medina Cheryl J TIGTA
Subject: FW: TIGTA DOCUMENT REQUEST

From: Paz Holly O [mailto:SFC [redacted]]
Sent: Monday, July 23, 2012 3:05 PM
To: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA
Subject: FW: TIGTA DOCUMENT REQUEST

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 4:38 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST

From: Thomas Cindy M
Sent: Thursday, June 02, 2011 10:35 PM
To: Paz Holly O
Subject: group of cases

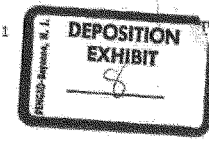
The email below from John Shafer, Screening Manager, outlines the criteria the screening group is using to identify cases as "tea party cases." This is criteria the screening group came up with based on cases they were seeing. If we don't want the screening group to include all of these type issues as "tea party cases," they would have no problem including or excluding certain cases. However, they need to be given the criteria to use. And, if we don't want certain cases included, then EOD still needs to know how the cases should be processed. I guess what I am trying to say is that it doesn't matter what the cases are called or how they are grouped, EOD needs guidance to ensure consistency.

Process: When the screening group starts seeing new type cases that have similar issues, they meet and come up with criteria to identify "emerging issue" and elevate information. "Emerging issue" cases are sent to Group 7822 (Steve Bowling's group) and we start coordinating with EOT to seek guidance.

Would you like for me to ask Bonnie Esrig, Steve Bowling, Group 7822 Manager, and Ron Bell, agent working "tea party cases" to participate in the briefing with Lois?

From: Shafer John H
Sent: Thursday, June 02, 2011 9:21 AM
To: Thomas Cindy M
Cc: Esrig Bonnie A; Bowling Steven F
Subject: RE: Tea Party Cases - NEED CRITERIA

Cindy,



SFC 000427

The following are issues that could indicate a case to be considered a potential "tea party" case and sent to Group 7822 for secondary screening.

1. "Tea Party", "Patriots" or "9/12 Project" is referenced in the case file.
2. Issues include government spending, government debt and taxes.
3. Educate the public through advocacy/legislative activities to make America a better place to live.
4. Statements in the case file that are critical of the how the country is being run.

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
Telephone: SFC
FAX: SFC

From: Thomas Cindy M
Sent: Thursday, June 02, 2011 12:46 AM
To: Shafer John H
Cc: Esrig Bonnie A; Bowling Steven F
Subject: Tea Party Cases - NEED CRITERIA
Importance: High

John,

Could you send me an email that includes the criteria screeners use to label a case as a "tea party case?" BOLO spreadsheet includes the following:

Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).

Do the applications specify/state "tea party?" If not, how do we know applicant is involved with the tea party movement?

I need to forward to Holly per her request below. Thanks.

From: Melahn Brenda
Sent: Wednesday, June 01, 2011 3:08 PM
To: Paz Holly O; Thomas Cindy M
Subject: RE: group of cases

Holly - we will UPS a copy of the case in #1 below to your attention tomorrow. It should be there Monday. I'm sure Cindy will respond to #2.

Brenda

From: Paz Holly O
Sent: Wednesday, June 01, 2011 2:21 PM
To: Thomas Cindy M
Cc: Melahn Brenda
Subject: group of cases

TIGTA EMAILS -00048

re: Tea Party cases

Two things re: these cases:

1. Can you please send me a copy of the Crossroads Grassroots Policy Strategies (EIN 27-2753378) application? Lois wants Judy to take a look at it so she can summarize the issues for Lois.

2. What criteria are being used to label a case a "Tea Party case"? We want to think about whether those criteria are resulting in over-inclusion.

Lois wants a briefing on these cases. We'll take the lead but would like you to participate. We're aiming for the week of 6/27.

Thanks!

Holly

RPTS JANSEN

DCMN HOFSTAD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: DOUG SHULMAN

Tuesday, December 3, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:10 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE FINANCE COMMITTEE:

SFC [redacted]

For DOUG SHULMAN:

C.J. MAHONEY, ESQ.

EMMET FLOOD, ESQ.

SFC [redacted]

Washington, D.C. 20005

the type -- I mean, does the IRS wait until the investigation or the audit is done to respond to it? Or do you ever take early information, you know, for action?

A I think it's a relatively fluid process, in that, you know, a lot of times what's written up in a TIGTA report is something that the staff had already found and fixed and told TIGTA about it and it gets written up in a report.

If there's something that, you know, definitively needs to be addressed, meaning either the staff for sure knows it needs to be addressed or TIGTA says, we're done, these are the facts, we know all the facts, this is our view, and there's an agreement on the view, then it can get fixed.

I mean, I think typically it's near the end of the audit because TIGTA is trying to find and gather all the facts. But, you know, I think the institution, at least aspirationally, wants to -- you know, anything that there's a conclusion needs to be fixed, try to keep fixing it as you hear about it.

Q As you hear about it. Okay.

Tell us about your working relationship with the Deputy Secretary of the Treasury.

A So, you know, I had a reporting line into the Deputy and the Secretary. If you look at the org chart, they are kind of together, and we didn't parse it. I had, you know, with both Deputy Secretaries -- I worked with Deputy Secretary Kimmitt and Wolin -- good relations.

I would try to, you know, get input. They would clearly -- you know, the main thing that the Deputy Treasury Secretary is focused on with the IRS are things like budget, you know, operations, technology, et cetera. And those are, you know, the main topics of conversation that we would have.

But we had, with both of them, a good, open relationship. If I needed to call for something, I'd call. If they needed to call me, they would call. We'd have periodic meetings.

Q Was that your main contact at Treasury? You know, was that your most common contact, the Deputy Secretary?

A You know, the Deputy Secretary, the chief of staff, and the Assistant Secretary of Tax Policy I would say were, you know, the three main contacts of at least the IRS Commissioner when I was there.

Q What was your relationship with the chief of staff? What topics would you talk to the chief of staff about versus the Deputy Secretary?

A You know, during my time there, you know, Jim Wilkinson was chief of staff for Secretary Paulson. In many ways, you know, when you need to interact with the Secretary, you know, I would try not to bother the Secretary while I was there. Most of the time I was there, you know, there was a major kind of economic crisis going on of one sort or another, and the U.S. Treasury Secretaries had a lot on their plate.

And so, you know, anything from, you know, talking about -- it's the same set of issues, right? It's, you know, this is what's

happening. If I wanted the Secretary to have a heads-up about something, if I wanted the Secretary to come speak at an event, if I was pushing on a budget issue and I wanted to make sure the Secretary weighed in, you know, in different meetings he was at. So a lot of that with the chief of staff was that kind of interaction.

Q Going kind of back down for a second to TIGTA, do you ever kind of pass on TIGTA -- if TIGTA was working on a topic or had an audit about to be published, did you ever give kind of a heads-up over at Treasury or tell Treasury about pending audits?

A I think I sometimes did, more near the point where TIGTA was going to publish it and this was going to be in the papers. So my memory is that that's the kind of thing. There were some --

Q Kind of a heads-up.

A Yeah. I mean, you know, one I can think about is First-Time Homebuyer Credit, which was part of the Recovery Act, which, you know, people had paid attention to. And our first audit, you know, we rushed to get the whole thing out. Some things happened in it. You know, TIGTA was coming out. And so we'd say, look, this is what it is, this is what TIGTA thinks, this is what we've done and how we've thought about it.

And so those would typically be the kinds of conversations I might have with the chief of staff.

Q And how often would you interact with the Secretary?

A I don't know the number. Not extensively. I mean, it wasn't -- but I would have periodic meetings, and I'd get brought in

when there's, you know, major issues, you know, tax policy issues, that were going to affect the IRS to give that view, budget issues, those kinds of things.

Q Less on kind of day-to-day issues, more on kind of policy, budget issues, long term?

A Yeah. I mean, my interactions with, again, both Secretary Paulson and Secretary Geithner were usually around kind of, you know, major strategic issues of the IRS. But, you know, they were Treasury Secretaries; they could talk to me about whatever they wanted.

Q Right.

And how much did you interact with the White House, staff at the White House?

A You know, I'd have pretty regular interactions, and not -- you know, I didn't have a lot of back-and-forth, but I went to a whole number of meetings because, you know, while I was there the Recovery Act got passed, and the IRS, you know, about a third of it, had to move through that.

Tax policy -- you know, I don't know if you include OMB as the White House complex, but there were a lot of budget discussions. You know, we had a big budget and we were the top-line revenue of the country, so a lot of budget discussions.

And then when the Affordable Care Act was passed, you know, a lot of money flows run through the IRS. It was a major tax bill. And so I had a lot of interactions and was the point, you know, kind of official from, I think, the IRS-Treasury complex on dealing with what IRS needed

to do to make sure things worked.

So I had interactions on an as-needed basis. I didn't have any regular -- you know, there was no regularly scheduled White House interaction.

Q Monthly meetings, anything like that.

A No.

Q Did you ever interact with Nancy Ann DeParle?

A Yes.

Q On what topics, if you recall?

A I mean, generally, it was on Affordable Care Act topics and the IRS's role or the tax provisions and how they were going to work, those kinds of things.

Q What were her portfolio? Was it tax policy, or was it mostly ACA?

A I can't speak to her portfolio.

Q Okay.

Did you interact with Valerie Jarrett?

A Very little. I mean, there was a Presidential appointee roundtable that she and some other people hosted that I was invited to. Everyone who was a Presidential appointee went, and since I went through -- she may have been at one or two other meetings I was at. But, you know, I did not have a lot of direct interaction.

Q It was more social, though, than --

A No. I mean --

Q -- substantive?

A -- the Presidential appointee roundtable was, you know, talking to Presidential appointees about how they're doing their job and those kinds of things.

Q I meant your interactions with her, were they --

A No, I didn't have social interactions --

Q Okay.

A -- so -- and I don't remember having, like, direct interactions.

Q It was only the roundtable?

A I remember the roundtable. And I think, you know, a couple of the meetings I went to at the White House on things like ACA, she may have been in the room.

Q Understood.

Did you ever interact with David Axelrod?

A Very similar. He may have been in a couple of the, you know, meetings I went to at the White House, but he and I did not -- you know, I don't have memories of direct interactions with him.

Q All right.

Did you ever interact with Stephanie Cutter?

A Well, so she was at the Treasury Department --

Q Yes.

A -- early on in the administration. And so I, you know, interacted with her some in passing, especially as, you know, she was doing press. And so early on in the Recovery Act, press stuff would happen with the IRS. I didn't do most of interaction, my press folks

did, but I had interactions with her.

And then during the Affordable Care Act, she was --

Q Right.

A -- you know, I think, on that team. Again, I can't speak to, you know, what people's roles were at the White House. But she was in a lot of the meetings -- you know, as I would report out on what progress IRS was doing, what resources we need, those kinds of things, you know, I think she was in the room a fair amount of the time.

Q I want to kind of talk about how the IRS interacts with the Congress and, you know, what happens when a letter comes in, you know, up to you from a Member of Congress --

A Uh-huh.

Q -- kind of how that process works. So can you kind of generally tell us about, if a letter comes in addressed to you from a Member, do you handle that? You know, who handles that? Do you see every one? Kind of, you know, describe that process for us.

A Yeah. So, you know, I guess, first, I'd say that because the Tax Code hits so many aspects of, you know, Americans' lives and a lot of Members have, you know, constituents who come on a tax issue, they have a policy issue that's going to affect a constituent, they have an administration issue that's going to affect a constituent, or they have a specific taxpayer issue, I don't really know the numbers that come in, but there's a lot, a lot, a lot of, you know, congressional correspondence that comes in.

Q Sure.

Q Tell us about your -- as the IRS Commissioner, what's your earliest memory of interaction with the issue of political activity by tax-exempt organizations?

A My earlier memory?

Q Earliest memory as Commissioner.

A Yeah, well, look, this was actually, you know, a surprise to me because this was not an area that I had spent time on.

Q Sure.

A You know, I think every election cycle, so I don't have a specific date, but there's, you know, issues around, you know, churches and preaching from the pulpit. And I think there's a staged -- I don't know what --

Q Sure.

A But, generally, during an election cycle, there's some sort of protest that happens, where people go and actually speak from the pulpit and publicize it, and the IRS, you know, looks at it, et cetera. And I remember reading that in the paper, that this was happening, and asking somebody, you know, "What is this?", which probably was in my first year as Commissioner.

Q In, I believe it was January 2010 when the Supreme Court decided Citizens United, was that a topic that came up a lot at the IRS? After that, there were media reports about money and tax-exempt organizations, and then there were -- I think the President mentioned it in his State of the Union, and talk about the issue increased.

Was that a topic that after 2010 kind of came up more at the IRS?

A It may have. With me, not necessarily. You know, I didn't necessarily think of Citizens United as -- you know, it was about -- you know, I didn't think of it as, you know, kind of, direct impact tax issues per se, because I think it was a broader, you know, set of discussions. And so, you know, not to my memory, it did not, you know, at least in my office.

Q Okay.

When did you first become aware of the Tea Party as a modern movement? Do you recall?

A I have no idea. Probably the same time everybody else in this room did.

Q Right. When, if you recall, did you first become aware that Tea Party groups had been applying for tax-exempt status at the IRS?

A Probably early 2012, when I started getting some letters from Members of Congress identifying that.

Q And so, before those letters, before the reports about delays that I think spurred those letters, is it correct that you don't recall hearing about or interacting at all with this notion of conservative-leaning applicants for tax-exempt status that were having issues at the IRS?

A You know, I -- so you had asked about kind of my first, you know, the best of my memory awareness --

Q Sure.

A -- of Tea Party, specifically. And that's kind of my recollection.

I'd had some interactions with Chairman Camp and this committee around some gift tax, you know, issues, that there were questions about some things that actually happened not in our tax-exempt group but out of --

Q Right.

A And, frankly, I don't recall what type of organizations those were.

And there may have been, before that -- you know, as that letter you showed me before, there were a lot of congressional letters, some about the specific issue that, you know, you're investigating, some about the IRS should be investigating more, some about IRS should be -- and I don't remember, some of those may have talked about conservative groups, some might not have.

But, you know, sitting here today, my best memory of, like, you know, when did I know, your question was, Tea Party groups were applying for tax-exempt status, was when I get some letters saying that, you know, this group says they don't -- you know, that these questions seem intrusive, kind of letters that I got.

Q I'd like to introduce Exhibit 3.

[Shulman Exhibit No. 3
was marked for identification.]

BY SFC [redacted]:

Q This is the transcribed interview of Steve Miller. It took place on November 13th, 2013. And you don't have to read it all unless you want to.

He's asked on page 28 -- this is a conversation about when he told you -- let me get the right point. One second.

This is asking Mr. Miller about when he told you that these applicants for (c)(4) status had received letters asking for donor names.

A Uh-huh.

Q And his recollection is it was February 2012 or it could have slipped into March. Is that your recollection?

And this is a reference to -- in the same vein as the Tea Party groups who had the complaints about delays, also had complaints that the IRS had asked for donor names inappropriately.

When on the timeline do you recall hearing about that issue?

A Do you mind if I just --

Q Of course. Yeah. Please.

A -- breeze through this?

RPTS HUMISTON

DCMN HOFSTAD

[11:08 a.m.]

Mr. Shulman. Yeah. So I don't remember the exact date, but I have no reason to think -- you know, as I told you, I think I became aware of this in early 2012, in February-March 2012. I can't tell you if those were the dates or not, but I have no reason to think they weren't.

BY SFC [redacted]:

Q In early 2012, Mr. Miller sent an IRS employee by the name of Nan Marks into the Cincinnati office to get a sense of exactly what was happening. Do you recall -- A, I guess, did you know about that? And then, B, do you recall kind of when you learned about that trip?

A So he informed me, he said, I've sent Nan Marks down, or I'm sending, I don't remember exactly, to see what's going on down there. I don't remember when, but --

Q It was while it was happening, maybe, as --

A I really don't remember. I think it was -- you know, I read the TIGTA report a long time ago.

Q Sure.

A I think it was in that timeline.

Q Right.

A So, if I remember, it was sometime in the spring of 2012, but I don't know when.

Q But your knowledge of it, you don't recall --

A I don't recall the exact date.

Q Okay.

When did you learn of the TIGTA audit, of the fact that the IG was looking into the issue of the IRS's screening of these groups?

A Yeah, so, to the best of my knowledge, I learned about it from Steve Miller and learned that they were going to be doing an inquiry. I don't know if -- I don't remember if it was going on or was going to happen, but, you know, TIGTA's on it, was kind of the impression I had. And I don't know the date of that, but it's around the date that he told me that he had learned --

Q Of Nan Marks?

A -- this thing, you know, called the BOLO list, or that there was a list out there that, you know, had been used at some point for some way, didn't know exactly how.

Q Did you learn about the BOLO list from Steve Miller?

A Yes.

Q In other words, about this -- it was -- so he --

A I think it was different timeframes.

Q Different timeframes.

A Yeah.

Q It was after --

A My memory is that some letters came in. Those letters were focused on donors and intrusive questioning.

Q Sure.

A There was a whole discussion about that. In March, I did

some testimony, which you're well aware of.

Q Right.

A That after that point, Nan Marks was down there and trying to find out, and at some point later, you know, in the spring, there was, you know, the -- learned about the BOLO list but also learned at that same time that, I don't know if TIGTA had been made aware of it or they were already aware of it, but they were looking into it.

And so that's my best memory of the sequence of timing. You know, I don't have any dates for any of this.

Q Okay.

I want to switch to the --

SFC [redacted]. Excuse me.

SFC [redacted]. Yeah, please. Yeah.

EXAMINATION

BY SFC [redacted]:

Q Commissioner Shulman, what did Mr. Miller tell you about the BOLO list?

A You know, I'm going from the best of my memory. It was a long time ago.

Q Right.

A But my understanding was he said, you know, I was told that there's a list that has been used inside of TEGE, that the word "Tea Party" was on the list. My best memory is that I, you know, left not understanding and he didn't understand what's the list, how's it used, what else is on the list, is it something that was used multiple years

ago, is it something that's, you know, still around. I said, is this list being used anymore? To my memory, the answer was, no, you know, it's been either stopped or being stopped.

And so that's what he told me about the list, and the important piece, which is that TIGTA knows about it and is, you know, looking into it and is going to chase down all these facts.

Q I'm sorry, I didn't understand your answer about your appreciation of how the list was being used. Were you aware of the use of the list and the specific purpose for which it was being used by the folks in TEGE?

A I don't believe that I was aware of that.

Q So all you knew, that there was a list that had "Tea Party" on it, essentially, is what you're telling us, right?

A Yeah. That's my memory of what I knew.

Q So you didn't bother to ask him, you know, a list, why would it have "Tea Party" on it, who was using it, what was --

A I really don't remember the conversation except for, you know, my impression was Steve didn't know exactly what the list was either and that TIGTA was going to look at this thing and figure it out.

Q Did he apprise you as to the findings by Ms. Marks? She went down to Cincinnati, correct?

A Yeah, that's my understanding.

Q Okay. And she reported back to him, presumably, about what she discovered there, right?

A I --

Q You don't know?

A I assume so. I was not in a -- I was not briefed, to my knowledge, by Ms. Marks.

Q But you're aware that he sent her down there, right?

A Yes. Yeah.

Q So you didn't bother to ask him why he sent her down there?

A You know, the sequence that I remember is he said, I'm sending Nan Marks down. Nan had come back, said, you know, these cases have been languishing and we're putting extra people on them and we're starting to move them.

I don't know if it was in that conversation or another one, he apprised me that we also found out somewhere in TEGE that there was a list, and we've asked TIGTA -- or I don't know if he asked it or TIGTA was looking into it -- is looking into it.

And so that's my memory of the, you know, conversation. Was a list, not sure how it was made, you know, or who used it. TIGTA was going to do their job and find that out. The cases that had been taking too long, more people were being put on them.

Q Did Mr. Miller explain to you why he sent Nan Marks down to Cincinnati?

A So, I think we were both aware by the time he sent her down that there were cases that seemed like they were taking too long. And so I think that was the reason, is there were complaints that tax-exempt organizations were in some sort of a backlog and to go find out what

was going on.

Q How about the notion that specific groups had been targeted by the IRS for additional scrutiny? Was that a reason that was possibly mentioned to you for sending her down there?

A Not that I remember.

EXAMINATION

BY SFC [redacted]:

Q In terms of, I think you had mentioned that there was no BOLO list -- Steve Miller had said that it wasn't being used anymore. Can you explain what you meant by that? Is it that the BOLO list in its entirety wasn't being used anymore or that certain terms weren't being used anymore?

A You know, my memory is that I left with a distinct impression, in either the conversation or right about there, is there's a list, the list isn't being used anymore, and TIGTA's looking into it.

And so, like, the valence of, you know -- I mean, you read the report now and you see, you know, kind of that there were multiple iterations, and I've read news reports over the summer that it looks like there were other ones, you know, in different parts. This is the first time I ever heard that there was an existence of anything called the BOLO list. I'm still not sure I understand exactly what all the BOLO lists are used for.

Q But, essentially, you left that with the impression that the BOLO list was not being used anymore from Mr. Miller?

A Yeah. I left with the impression that, yeah, if there was an inappropriate behavior, you know, that was happening or something that shouldn't be happening, it wasn't happening, and TIGTA was looking into it to really figure this out and get the facts.

BY SFC [redacted]:

Q Was the term "BOLO" used when you were describing this list or when Mr. Miller was discussing this list with you?

A I don't remember. I don't really remember if the term "BOLO list" was used or not.

Q When is the first time you recall hearing "BOLO"?

A It might have been then. It might have been, you know, last May, when these reports came out and became a topic of focus.

Q Did you understand what the term "BOLO" meant?

A I mean, again, I certainly didn't -- I don't remember, like, knowing there was a thing, Be On the Lookout.

Q So you knew the acronym "BOLO" meant Be On the Lookout?

A No. I mean, I guess it's a term of art that until this whole thing came up I wasn't familiar with.

Q So even when you heard the term "BOLO list," you didn't know what "BOLO" was referring to?

A Well, I told you I don't remember, you know, in spring of 2012 whether the word "BOLO" was used as a BOLO list or whether he just said there is a list. The time I can tell you for sure I knew what BOLO list was is after reading the IG report.

EXAMINATION

BY SFC [redacted]:

Q Have you ever seen a copy of the BOLO list?

A No. I mean, just the snippets, you know, in the IG report that has, you know, some of the names on it. So, no, I was never shown, at least to my memory, a BOLO list.

And, obviously, you know, since this whole thing's broke, I've been a private citizen --

Q Right.

A -- and haven't been, you know, in looking at things. You know, I haven't been doing an investigation and getting to the bottom of it.

BY SFC [redacted]:

Q Did Mr. Miller tell you who had made the list or the origin of the list or just that there had been a list?

A Not to my memory. I mean, you know, sitting here today, my memory is that, like, I didn't really know what the thing was, knew that, like, the word "Tea Party" on it --

Q Right.

A -- which is, you know, of concern, but didn't know, like, how it was being used or anything else, when it was being used.

BY SFC [redacted]:

Q Why was that term a concern to you?

A What's that?

Q Why was the term "Tea Party" a concern to you?

A You know, a list floating around the IRS with the word "Tea

Party" on it just -- I don't know, why would it be a concern to you? It seems kind of obvious.

Q I'm sorry, if you could -- even if it's obvious to you, if you could state why you were concerned about it, it would be helpful.

A Well, because I heard there was a list with "Tea Party" on it. I didn't know what else was on it, if it was a list with "progressive," if it was being used in a certain inappropriate way.

I'm not sure I was, you know, overly concerned. I'm not sure that -- you know, I certainly don't remember jumping to any sort of conclusions about that it was -- you know, the severity of the issue or anything else. You know, when you're IRS Commissioner, you hear lots of things and make sure TIGTA looks into it.

Q Did you make any inquiry of anyone as to what this list possibly could be used for?

A No. I knew what Steve Miller had told me, which is the list wasn't being used. And I knew that the investigative arm that investigates things at the IRS was looking into it, TIGTA.

Q Okay. So that I understand this, so you had a concern about a list with the word "Tea Party" on it, with the name "Tea Party" on it, because that could create some impression, presumably, of a bias or something? Is that essentially what you're telling us?

A You know, it didn't sound good, right? And I didn't know if it just was a perception issue or something else. Just like, you know, a list floating around with "Democratic Party" or "Republican Party" or "Tea Party" or anything, you know, my nose said, you know,

this is a good thing that TIGTA's looking into it, from my memory.

Q Okay. So you had a concern, and you were --

A Yeah, but I didn't have necessarily -- I didn't jump to a bias concern. I didn't know if this was just tone deaf or, you know, what it was. There's, you know, people -- so --

Q Okay. So the part I'm having a hard time reconciling is the fact that you have a concern about this but you don't make inquiry as to what the list is for, what it's being used for.

A So, whenever there was an issue that there was potential concern for at the IRS and the IG got involved in -- that's the role of the IG, is to go chase things down so that the Commissioner gets the facts. Eventually a public report, you know, happens with the facts. And so, yeah, I mean, I wasn't chasing this down. The IG was chasing it down.

Q Okay. The IG was doing a review or an investigation. But, as Commissioner, wouldn't you have some responsibility to find out why this list was circulating around, what use it was being put to, whether that was some use that might expose the IRS to some kind of criticism? Wouldn't that be your concern as Commissioner?

A And I believed that TIGTA was looking into it to address, you know, any number of those issues.

Q All right. So you felt that all those responsibilities would be handled by TIGTA, then; they weren't your responsibility anymore once the TIGTA was involved. Is that correct?

A No. I guess I'll just repeat. You know, I found out there

was a list. Might be an issue that's concerning. I was informed by the responsible deputy that the list wasn't being used anymore, so I didn't have a concern that there was some ongoing issue. And looking in to figure out what happened is TIGTA's job. And TIGTA was going to go do their job, and I had confidence that they would.

SFC [redacted] Well, but to --

SFC [redacted] S Can I just finish?

SFC [redacted] Go ahead.

BY SFC [redacted]

Q But the concern that you've just expressed was about ongoing issues, the list not being used anymore, right? So you would have no more concern about ongoing issues. But you don't -- am I correct? You're looking at me kind of puzzled. Isn't that what you just said?

A I'll let you finish here.

Q No, go ahead. I want to get it right. Is that --

A I really don't remember.

Mr. Flood. We can read back what he said, if that will help.

BY SFC [redacted]:

Q Well, my recollection was that you said that the list wasn't being used any longer, and therefore your concern was addressed, in the sense that whatever purpose it was being put to wasn't happening any longer -- something like that. Isn't that correct?

A Look, let me back up. I'm doing this from my best memory almost 2 years ago.

I remember a conversation where Steve Miller said, there's this

list, it's got the word "Tea Party" on it. I left with the impression and, you know, sitting here today, that he didn't know what else was on it, is "progressive" on it, other things, didn't know how it was used, there was a preliminary report, that the list wasn't being used, and that TIGTA was looking into it.

As IRS Commissioner, you know, people come in and say, we had a filter that was allowing, you know, refund fraud to happen because there was a coding error, and we fixed it and it's not happening anymore, and TIGTA's looking into it to figure out, you know, what happened, what went out before, you know, et cetera. And so I was following, you know, my normal procedures that I followed when someone brings me an issue.

You know, my view is, if the issue's not ongoing, that's why TIGTA was set up by Congress and that's why TIGTA has investigative authorities. And, you know, the Commissioner's Office does not have an independent arm that goes out and investigates every concern that comes to it. TIGTA actually does that job inside the IRS.

Q Okay. But just to be clear, you didn't know how the list had been used in the past, correct? So you may have known it wasn't being used any longer, but you didn't know how that list had been used up to the point that --

A Not to my memory, I didn't know how it had been used in the past.

Q Okay. So you -- all right.

BY SFC [redacted]:

Q So you had mentioned that TIGTA was kind of -- they were looking into it, so you viewed that as sort of their job at that point and not yours. But Mr. Miller was sending Nan Marks down to do, I believe, what he called a review; he didn't want to call it an investigation.

So he was kind of conducting this separate review, separate from TIGTA, within the IRS. But you weren't concerned about getting a status update on that review, as he called it, that Nan Marks was doing down in Cincinnati?

A So, to the best of my, you know, memory, Steve Miller told me that he had asked Nan Marks to go down and see why these cases were taking so long. And that was before -- you know, I mean, at least the chronology as I understand it now -- and, again, I don't remember exactly, you know, when I knew what when back then.

It was, there were questions about intrusive -- you know, there was concern about intrusive letters. And that was the subject; like, why are you asking these questions? Not, why am I in any process at all or anything else. Why are you asking these questions? And why is this taking so long?

At some point, Nan Marks went down there. She came back. Part of her report to Steve Miller, as I understood it, was, you know, we're now getting -- you know, we think these cases can move, it's taken too long, they didn't get all the guidance they needed, you know, we're putting more people on it so we can be responsive and do our job better, and there's this list, and I don't know the valence of it.

My understanding is, by the time TIGTA was looking at it, maybe Nan was still down there reviewing it, but it felt to me like there was a -- you know, there wasn't an independent review going on. You know, sitting here today, that's my memory of it.

EXAMINATION

BY SFC [redacted]:

Q Mr. Shulman, so would it be wrong if the IRS treated groups differently based upon their name?

A Would it be wrong? I mean, look, I would agree with the IG's report, that some inappropriate criteria were used in the bucketing process.

Q Would it be wrong if the IRS treated groups differently based upon their policy positions?

A You know, my belief is it wouldn't be appropriate.

Q Okay.

If you look back at Exhibit No. 3, page 26, I'll draw your attention two-thirds down the page.

"Question: Did you understand that these were filed by Tea Party-affiliated groups at that time?"

And, again, this is from Mr. Miller's transcribed interview.

He answers, "I was told that some were Tea Party-affiliated groups."

If you could turn the page to 28, please. So if you could look at the answer that starts with, "So I think, in terms of the donor letters -- and I'll call them donor letters, they were objectionable

on a few different grounds -- but in terms of the donor letters, certainly Doug Shulman was aware of it. I talked to him about that."

Do you recall that Mr. Miller said that Tea Party-affiliated groups were being asked about their donors?

A I don't recall a conversation with Steve about that, but I think that some of the Members of Congress wrote about that, is my memory.

Q So it's possible that Mr. Miller briefed you about Tea Party groups being asked for their donors, but you're not sure?

A Well, let me tell you my memory from this timeframe, right? So letters came in. This is -- my memory is letters came in. Miller and I had a conversation, and there may have been other people there, and I may have had these conversations with, you know, someone on his staff, as well, probably on his direct staff, Nikole Flax, who -- you know, those are the two people I would interact with on these issues.

And the impression I had at the time was donor letters -- questions about donors had gone out. My understanding was that it wasn't only conservative groups that were getting donor letters and that, actually, there could be legitimate reasons why it would be asked of them, but Steve made the decision, legitimate or not, he thought we could get the information other ways. And so they were going to send a letter saying, you know, that you didn't have to send the donors.

And so that's the conversation I remember. I don't remember if, you know, the word "Tea Party-affiliated" was part of that or not. But I guess I do know that I had gotten letters from Congress asking about

conservative groups, and I just don't remember if, you know, "Tea Party" was in it or not.

Q Sir, who told you that donor letters -- we'll use that term -- donor letters were sent to groups other than conservatives, that they were not exclusively sent to conservatives?

A I don't remember if it was Steve or Nikole or someone else, but I certainly remember having the impression that, you know, what was being called intrusive questioning and extensive questioning was not just happening with conservatives, that this was something that examiners were doing with cases, you know, generally. That's the impression I remember having.

Q But did someone tell you with specificity that donor letters were not exclusively sent to conservative groups?

A I don't remember the specificity, but I certainly remember at the time having the impression that, you know, letters that people viewed and, you know, would have been viewed as intrusive were going out not just to conservative groups.

Q Would it be appropriate for IRS personnel to make judgments about whether an applicant is conservative or liberal?

A I mean, I think it would be appropriate for IRS personnel to try to follow the statute, so --

Q Okay.

The TIGTA report, to which you referred, notes that 27 groups of the 298 it reviewed, the applications it reviewed, were asked for their donor lists. Would you be surprised to learn that 24 of the 27 were

right-leaning groups?

A If that's what TIGTA concluded.

Q Okay.

So to take you back to the summer, when it was that you were informed by Steve Miller about the existence of a list, what were the names of the groups that you recall being on the list? What groups did Steve Miller tell you were on the list?

A I don't remember, but the one name I remember is Tea Party.

Q Did Steve Miller ever use the word "progressive" with you?

A I don't know if he ever used the word, but, you know, my memory is that I left not knowing if, like, the list only said "Tea Party" or if the list said a bunch of different things, you know, some conservative-leaning, some more, you know, liberal- or progressive-leaning.

SFC [redacted]. Can I -- I'm sorry -- just ask if you could refresh my recollection. You gave testimony before the House of Representatives, I can't recall the committee, in which you -- I think you were quoted as saying there was absolutely no targeting.

SFC [redacted]. We're going to get to that.

SFC [redacted]. Okay, we're going to get to that?

SFC [redacted]. Yeah.

SFC [redacted]. All right.

SFC [redacted]. Can I ask one quick follow-up?

BY SFC [redacted]:

Q Going back again to the BOLO list, Mr. Shulman, were you

under the impression when you discussed it with Mr. Miller that Mr. Miller had actually reviewed the BOLO list himself?

A I just don't remember if I was under that impression or not. But, you know, sitting here today, I didn't -- you know, my best memory is no, because I remember leaving that discussion not, you know -- both of us wondering what was, you know, potentially on it, or at least I was, and knowing that TIGTA was going to go find out.

SFC [redacted]. And, I mean, we will return to the issue of the TIGTA report, but we're at that time --

Mr. Shulman. You want to take a break?

SFC [redacted]. If --

Mr. Shulman. Would you like to take a break?

SFC [redacted]. Yeah. That would be great. Thank you.

[Recess.]

SFC [redacted]. It is 11:48.

BY SFC [redacted]:

Q I'd like to kind of step back and just ask about kind of how you generally would prepare for hearings on the Hill -- what the process was, who you would interact with, and how you would actually prepare for hearings.

A Uh-huh. So, you know, part of it depended on the hearing, right?

Q Sure.

A Because some hearings were on very, you know, specific topics, and some were on, you know, general topics. And so, generally,

A Again, I don't remember this --

Q Sure.

A -- but it says "hearing prep."

Q "Hearing prep," right.

A You know, these are a bunch of people who, you know, were kind of either on my staff or Steve's staff that I relied on for all sorts of information. So this looks like a, you know, kind of -- between this group, you could probably do a catch-all on lots of issues.

Q Right. Right.

And to go back, at the time of the hearing, at the time of March 22nd, 2012, you knew that Tea Party groups had received donor letters; is that right?

A Again, I think the letters, like, mentioned Tea Party groups --

Q Right.

A -- that I had gotten from Members of Congress.

Q Right.

A But I certainly was aware that there were complaints about intrusive questioning and had had conversations with staff about, you know, what's going on, should we be sending these things, you know, is it just conservative groups that are getting these. You know, there had been a whole conversation that I'd had with staff about, you know, this is the application process, this is not an exam. And, you know, people didn't need to be engaged in an application process. They could

have actually been operating without applying to the IRS. And that was, you know, forefront in my mind.

Q And at the same week -- I'll enter into the record as Exhibit 5 a document from the IRS. The Bates number is IRS0000211290.

[Shulman Exhibit No. 5
was marked for identification.]

SFC [redacted]. SFC [redacted] can I ask just one follow-up question before you get into that document?

SFC [redacted]. Of course.

SFC [redacted]. Mr. Shulman, you have used the term now a couple times, "obtrusive questioning"? Is that what you had said?

Mr. Flood. I'm sorry. Is the question has he today used the term --

SFC [redacted]. Yeah, I --

Mr. Flood. -- "intrusive questioning"? Is that the question?

SFC [redacted]. I want to make sure I'm hearing him correctly.

BY SFC [redacted]:

Q Was the term that that you had used to describe the questions that were going out "obtrusive questioning"?

A No. I was saying that, you know, to the best of my recollection, the complaints coming to us were that questions being asked were intrusive.

Q "Intrusive." Okay, I'm sorry, I did mishear you.

Can you tell us what your understanding was of why exactly the questions were intrusive? What was it about them that was intrusive?

A So, you know, my memory is that people -- you know, the main focus and the thing that I remember having conversations about was the question about donors and, you know, who are your donors.

I also have a memory of having conversations, you know, with staff -- and I don't remember who it was; it might have been Steve, it might have been Nikole -- that said, look, there could be legitimate reasons why you'd ask about donors. If there's, you know, one donor who is an elected official who starts up a nonprofit and uses it, you know, for their private benefit, that might be, you know, something that you'd want to consider in an application process.

And so, you know, my memory is being told it's not crazy to ask about it, but can understand why people don't want to do it, and we can probably get that information other ways. And so, you know, Steve at some point informed me that he was going to -- you know, that people who got that question were going to be told they could provide the information, you know, in alternative ways.

Q Was there any discussion about the quantity of questions, number of questions that were being asked and whether the sheer number was itself intrusive?

A You know, there may have been -- that may have been the kind of allegation. You know, my understanding at the time -- and I need to step back and say, you know, I really viewed -- I did not get solved in specific cases. And I was very clear that I was not going to be directing people about what questions to ask, what questions not to ask, that that was not the role of the Commissioner to be doing. And

so I was not going, you know, deep into cases and specifics around this.

And I will tell you, you know, well outside the tax-exempt realm, nobody loves getting a letter from the IRS with questions. And so, you know, the number, et cetera, I don't remember exactly what it was, but I know that, you know, the people, I think, who had complained to Members of Congress and the Members of Congress had passed it on, you know, weren't happy with -- you know, I don't know exactly what it was, but with the questions being asked.

And then there was also a sense of -- in my memory, around fast turnaround times needed and that they had been lagging.

Q Okay.

BY SFC [redacted]:

Q So this is an email. And I'm actually looking at the lower email. It's an email from a Frank Keith to you and others. It's on March 8th, 2012, and the title is, "IRS Does Its Job." And it's an editorial from The New York Times, and it talks about Tea Party complaints about questionnaires, about harassment, and about delays.

I just wanted to ask, I mean, first off, who is Mr. Keith?

A He ran a function called Communication and Liaison, but he's basically my main press interface.

Q Okay. Was it common for him to, you know, intercept press articles about tax issues about IRS --

A Yeah. I mean, he would --

Q -- as part of his daily --

A Yeah. I mean, there were clips, but it wouldn't be uncommon

for Frank to send a major newspaper's editorial.

Q About the IRS.

A Frank got in the office early. This is 7:55 a.m.

Q 7:55.

A And probably, you know, in case something happened or someone, you know, called me or anyone else, he wanted to --

Q Sure.

A -- let people know that this was out there, would be my guess.

Q Well, this is about 2 weeks before the -- about 1 week before the hearing, a little more. So at the time of the hearing, is it correct to say, I mean, you'd seen this, had knowledge about the donor letters, had knowledge that there had been allegations, at least, of extensive questionnaires towards Tea Party groups, and that there had at least been allegations of harassment? Is that fair to say?

A So, for sure, I --

Q All these things had happened prior to the hearing?

A Yeah, I mean, I think there was a lot -- there was press about this --

Q Right.

A -- around intrusive questioning, extensive questioning --

Q Sure.

A -- donors, those kinds of things. I don't remember if the word "harassment" was there, but --

Q Fair enough. There had not yet been, to your knowledge,

the initiation of an IG investigation or an IG audit or of a trip by Nan Marks; is that correct?

Mr. Flood. I'm sorry, SFC . At what time are we talking about?

SFC . The date of the hearing, March 22nd, 2012.

BY SFC :

Q There had not been an investigation?

A Not that I remember.

Q Okay.

At the time, did that seem odd, that there was allegations, it was in the press, it was in The New York Times, but at that point no one was really looking into, you know, finding out exactly what was happening?

A Well, I think, you know, my understanding was Steve Miller was starting to ask questions about it. There was this kind of thing in the press, but there was also -- you know, there was -- I shouldn't say, "this kind of thing." There was press saying that some people were complaining about extensive questioning. There was also, if I remember correctly, press kind of in the exact opposite direction, saying IRS wasn't questioning groups, and groups were, you know, operating as nonprofits that shouldn't be that were really political. And so, you know, I think there was noise around the issue in multiple ways publicly.

There's also, though, other IRS noise --

Q Right.

A -- that was happening, whether it was, you know, the

preparer office, the international stuff that was happening and issues with FATCA that, you know, we had people complaining about, and, you know, different regs that were put out, et cetera.

Q Right.

A So, I mean, I guess I wouldn't -- back then, my memory was not that this was, you know, the most -- you know, I don't remember this being top of mind. I remember this getting, you know, appropriate attention.

Q Sure. I mean, you had mentioned, though, that Mr. Miller said he was looking into it, or he was finding out about it, you said, I think.

A Well, let me -- you know, I'll just give you my --

Q Sure.

A -- memory of kind of the pre- -- you know, from the time the letters came in to March is --

Q Right.

A -- you know, my best memory -- and I don't remember everything that happened; you know, there's lots of stuff happening -- as the IRS Commissioner, is that I was in, I don't know if it was two conversations, three, I don't know the number of conversations, but there were conversations around, okay, you know, these donor questions, you know, is it appropriate?

My memory is the answer was yes, meaning it's kind of within the right of doing this, that examiners or the people working developing these cases had discretion to get the information they thought they

needed to do these cases and that there's a normal back-and-forth when someone applies.

I also, and I don't know if I knew this before or not, but I know that in that time, you know, there were discussions of: And, by the way, they don't need to be applying. You know, these people could be out there operating and, you know, send in their 990, and they wouldn't be having this back-and-forth.

And the last one, which I mentioned before, was my understanding was that the letters were not only going to conservative groups.

And that is my memory of kind of what I knew going into the hearing and kind of what the realm of discussion was before.

RPTS JANSEN

DCMN SECKMAN

[12:11 p.m.]

SFC [redacted]. Who were -- are all these understandings based on the conversations with Mr. Miller, or were there wider discussions happening?

Mr. Shulman. I don't remember everyone I talked to. The people I remember having some conversations with -- but I don't know where information happened -- is Steve Miller and Nikole Flax, who both had worked in Exempt Organizations. Steve had run it.

SFC [redacted]. I'd like to introduce Exhibit 6, which is a partial transcript of the hearing on March 22, House Ways and Means Oversight Subcommittee. I'll give you a second to look over it.

[Shulman Exhibit No. 6
was marked for identification.]

BY SFC [redacted]:

Q I want to ask, Oversight Subcommittee Chairman, Chairman Boustany, asked -- he's asked -- asking about allegations in the press that the IRS is targeting Tea Party groups. And he asks, "Can you give us assurances that the IRS is not targeting particular groups based on political leanings?" And you respond, two lines down, "Yes, I can give you assurances."

That's a -- that's a very, very confident statement at a time you knew of allegations that were out there, so didn't actually know about what was actually happening. What was the kind of basis of your

A This would have been in me trying to figure out, you know, once we started getting letters and there were press reports, in these conversations with my staff about kind of what is happening here.

Q That would have been -- you had said before that the only statute really talked -- talked about, you know, this with were -- were Steve Miller and Nikole Flax. Is that right?

A And there may have been others. I'm just -- those are the -- you know, those are the -- those are the people that generally I would rely on around tax-exempt issues that I believe I talked to.

BY SFC [redacted]:

Q Mr. Shulman, did you -- if you look at the transcript, you start your answer to Chairman Boustany by saying, "Thanks for bringing this up." Did you anticipate that this question might be put to you?

A You know, as I said earlier, generally, in my -- in my preparation for testimony, I prepare for the topics at hand. But at some point, we talk about what are issues of interest to Members of Congress. And so, yeah, I think certainly would have been something that I don't think probably would have been the focus of the -- you know, I'm pretty sure it wouldn't have been the focus of the prep, but I would have anticipated that there could have been a question.

Q So when Mr. -- when Chairman Boustany mentioned "recent press allegations that the IRS is targeting certain Tea Party groups," did his reference to "Tea Party groups," was that a surprise to you, or is that a term you'd heard before?

A Again, I don't remember. But I believe in some of the

letters that came, people had -- had used that. So, you know, I just don't remember. But looking here at this exhibit you gave me, New York Times editorial talks about -- you know, the first line has the words "Tea Party" in there.

Q Now, as to -- you'd mentioned earlier that your state of mind in answering this question was that at least one -- one fact that informed your answer was that the (c)(4) application process was voluntary. Is that correct?

A That was my understanding.

Q Right. So were an entity to -- were an organization to apply for (c)(4) status to undertake that voluntary step, would it be okay for that group to be treated differently based upon its name or policy position?

A No, it's not what I was saying. But I had no reason to think that they were.

Q Okay. So would you answer -- would you have answered this question differently had you had the benefit of the TIGTA report, having the findings of the TIGTA audit report?

A Having the findings of it, at the end of the time? I certainly would have thought about the answer differently and would have had a whole different understanding of it.

BY SFC [redacted]:

Q I guess one of the downsides to not applying for 501(c)(4) status is that you don't know whether you're tax-exempt or not; you don't have that sort of seal of approval from the IRS saying, as long

A -- right? So, I mean, my main TIGTA interactions were these monthly meetings. And, you know, if I'm sitting there and someone from TIGTA says this is what we -- you know, this is what we're recommending and your team has the draft report.

Q Right.

A Sometimes my staff would say, yes, this is something we agree with and have already fixed or are doing something. So it's that kind of thing.

Q All right. So TIGTA launched their -- their inquiry of the audit of the criteria used to screen out tax-exempt status in April 2012.

Does that jibe with you guys? April, there was a launch of TIGTA.

SFC . That's right.

BY SFC :

Q At what point did TIGTA first mention it to you?

A You know, I don't have a clear memory of it. I think, though, you know, I've heard Russell George say that it was in a May meeting. And I'm assuming that's, you know, a monthly meeting I would have had.

Q Do you recall what he told you?

A No. Which indicates to me he said something like, you know, we're looking into this issue and the normal exchange I would have is, you know, glad you're looking at it. Let me know if we can be helpful and let me know if there's anything I need to know along the way. I -- my strong practice and my belief as head of an agency is you need

to give your inspector general full support.

Q At what point do you remember first talking about this issue in any way really with folks at Treasury Department?

A I don't remember talking about it.

Q At all?

A -- with folks at Treasury Department.

Q I want to ask about --

A When you say it, I don't remember --

Q When you say TIGTA is looking into the screening of tax-exempt status.

A I don't remember having that discussion.

Q Okay. I want to ask -- and I'll enter it into the record as Exhibit 6 -- Exhibit 7, thank you.

[Shulman Exhibit No. 7
was marked for identification.]

BY SFC [redacted]:

Q This again is -- is a series of meetings. And just to kind of get your recollection and refresh your memory if you recall the topic or substance of these meetings.

A I don't remember, you know, these are people I'd have meetings with on any number of subjects. Just to state affirmatively I certainly don't remember having any conversations about tax-exempt applications in, you know, the meetings with, you know, anybody except --

Q Geithner.

A Yeah, with Geithner, Wolin, Zients. Most of them. Miller. I don't know what it was.

Q And Russell George.

A The -- the -- the September 27th Geithner meeting was -- you know, at some point in the year, I had a spring meeting. I don't know if it's the one we've got here at 5/10. At some point, I sold Secretary Geithner I was going to leave at the end of my term in a meeting, which was probably generally --

Q Time --

A You know, it would have been around that time. But I don't know if that's what the meeting was.

Q Right.

A And the 9/27 was me, you know, going and saying, you know, I'm leaving in a couple of weeks.

Q Right.

A Thanking him for the support, et cetera.

I think the Russell George meeting, 10/29 -- so when is that. That's --

Q About 2 weeks before you left. Is that right?

A Yeah. I just don't remember that. I mean, I know Russell was getting on my calendar at some point to say goodbye.

Q Sure.

A That kind of thing. I'm not sure if it occurred or not.

And, you know, Miller was, like, near my last day.

Q Right.

A And, you know, I was turning over the reins. You know, I had tried to run an orderly transition with Miller. And, you know, starting in the summer, since he was going to end up running the IRS for a while -- nobody had been nominated -- making sure, you know, he knew the ropes, knew, you know, people had the benefit, and this was probably a, you know, some of the last exit meetings about, you know, what -- anything that was left on my plate, putting it on his plate.

Q After the initial meeting, when the inspector general told you about the existence of the audit, were there ever any updates about the audit, about what they were finding or looking at?

A Not that I remember. I mean, there could have been. But usually when, you know, when Russell George had an issue he wanted to keep me updated on. I mean, he knows there's an open --

Q Sure.

A -- door. And, you know, again, this was one that, you know, of a number of things that they were looking into and assumed it was being looked into properly.

Q Does any, you know -- from March 2012 till you left in November, there was a lot of activity under you at the IRS about this situation and about applications for tax-exempt status and the Tea Party, from everything from -- everything from the -- from the trip of Ms. Marks to Miss Lerner's changing of the -- this was after that, but of learning that the criteria had been changed again. Did any of that come up -- up toward your level? Did you know, after the March hearing and after the inspector general told you about his audit, were

there updates within the IRS you heard about of additional findings or exactly what had happened?

A No. I don't remember learning about what had happened. The thing I remember is Steve Miller periodically telling me, and not as separate conversations, but, you know, in other meetings, he and I would have, like -- and on the (c)(4) stuff, we've got people on it, we're moving cases, we're putting determinations out; and getting the impression that, you know, that the lag issue of approval was being worked on.

Q Okay.

SFC [redacted]. Commissioner, what do you recall of that conversation with Mr. George in May of 2012? And specifically do you recall Mr. George describing the scope of the review that his office was going to conduct?

Mr. Shulman. I really don't have a clear recollection of it. I -- there were, you know, plenty of other people in the room. It -- you know -- I was aware -- I was already aware that they were going to be looking into it from Mr. Miller and, you know, my best recall, but I can't tell you, you know, this is, you know, kind of -- lots of people talked about that meeting in these hearings that I was in. So it might be from that, you know, is he said, Yeah, we're looking into this matter and the allegations. And, you know, I said, Good, you know, please, you know, make sure you do a thorough job. That's the kind of interaction it would have been. But I really just don't have a strong interaction of the details of it?

BY SFC [redacted]:

Q And this is actually a few -- a few documents all put together. The first part is from -- this is -- let's see, public records from I believe -- I believe it's data.gov. And -- at least it's all the times that I think you were authorized to visit the White House or White House grounds. And then behind that is the IRS 00038548. It's your daily calendar for a period of time. We don't have all of it, although this is what we have. And I -- in highlights are instances of -- White House meetings also appear on your calendar.

A Uh-huh.

Q And then behind that is an email that you sent to Mark Patterson. Can you kind of -- you know, as a first instance, kind of tell me who has access to your calendar? Who updates your calendar? Who is able I guess to add events on your calendar?

A Could I just take one second?

Q Yes. Of course.

A Who had access to my calendar?

Q Yes.

A So, you know, my assistant. I think my chief of staff did. I don't know who else did. He -- Jonathan Davis probably would have controlled it. I think it was pretty tightly controlled, but I don't know everybody who had access to it. My deputies may have had access to it. The people I know are my chief of staff and my executive assistant?

Q So, on the first document, the highlights of sections, that

was actually added by our staff. That's where the Bates numbers, that's -- those were events where it actually shows up on your calendar.

A Where is --

Q On the right.

A Oh, a Bates number.

Q Yeah, yeah. Are those added by our staff.

A Uh-huh.

Q As for the highlights, the highlights were times that it has an arrival time.

A Uh-huh.

Q I just want to walk through each one and just have a sense of if you have any recollection of a meeting.

A Sure.

Q On that date.

It's -- on the downside, it's a bit tedious because there's a lot; on the upside, I'm coming towards the end here.

A Appreciate --

Q Appreciate you're bearing with me.

So back to February 17, 2009, at the top.

A Uh-huh.

Q Is that a date that you have any recollection of?

A So let me just tell you I'm going to do my best.

Q Understood.

A And, like, I don't know if, like, this was the date. But at some point early in the administration, Rob Nabors was the deputy

OMB director in charge of budget?

Q Right.

A And I clearly wanted my --

Q Of course.

A -- was to make sure that the new administration understood how important it was for the IRS to get budget, that there was, you know -- for every dollar invested in the IRS, there was $5 coming back, that we had been productive, that I was a manager who was in the process of cutting major costs out of the IRS. So I wasn't just somebody, you know, who was saying we need more, more, more. But we were driving efficiency while investing in the future.

And so my memory of this meeting was me just giving an overview and, you know, starting to lay the groundwork for one of the key decisionmakers on our budget.

Q March 11th?

A So, Furman, you know, was -- he had the lead on tax --

Q Okay. Right.

A -- issues I think early on in the -- you know, he was the deputy with the lead on tax issues?

Q Sure.

A And my -- a lot of my interactions with him, and I don't know if this was -- you know, I just don't know what these were -- were, you know, around tax provisions, they were thinking about around Recovery Act --

Q Right.

A -- and me giving input on what would work, what wouldn't work, and, you know, what would be impossible to administer, what would have a bunch of fraud, I think that's one.

I also just, you know, would read -- would generally apprise Furman of our priorities around budget, because, as, you know, in the NEC, as the budget started percolating up, that was --

Q Right.

A -- you know, he would have a -- you know, had no idea, but I assumed he could have a voice in that?

Q And -- but those -- at those types of meetings, I mean, would you usually bring other staff with you or was it just you?

A I don't remember. I definitely remember there were meetings that it was just me?

Q It was just you?

A You know, to go over there.

Q The next meeting on March 19th? The same?

A I just don't remember these two specific meetings.

Q All right. April 1. And that's not a meeting where there's an arrival time.

Mr. Pollack. There's no April 1 on my sheet.

Mr. Shulman. Yes, it's under date, not arrival or departure.

Mr. Pollack. Got you.

SF SFC [redacted] It's under the -- arrival is just -- the Web site actually has no arrival time.

Mr. Pollack. The Larry Summers one?

BY SFC [redacted]

Q The fourth one down. Larry Summers in the White House?

A I don't remember. This could have been -- there was one meeting I was at with Larry Summers as the President's budget was being prepared and the tax policy, you know, discussion of potential tax policy. And I was invited to weigh in on administer-ability and, you know, were there things in there. I don't remember if there were, you know, offshore things, you know, check-the-box kinds of things?

Q Sure.

A And I would have been invited to weigh in on tax policy matters?

Q Meeting on April 6.

A That doesn't ring a bell.

Q On April 29, with Austan Goolsbee?

A That doesn't ring a bell. But, you know, at some point, and I don't know if this was -- had happened by then, the President announced a tax panel that he was going to host with a bunch of outside experts, and Austan Goolsbee was the administration lead staff on that. So I know, at some point, I went over and talked to Austin about those kinds of -- you know, about what was going to be on it, you know, tax administration issues. Austan also, you know, when he was professor before he came in --

Q Right.

A -- had promoted this idea of a ready return, IRS doing the return.

Q Right.

A And so, at some point, I tried to educate Austan about all of our priorities and how, you know -- about how, well, in concept that made sense; you know, unless we got a lot of new resources and a big shift in the way we did tax returns, it would be hard. So those are the two subjects I remember.

SFC [redacted]

[redacted]

[1:51 p.m.]

SFC [redacted]

Q What would be the 4th?

A At some point, I did a press conference with Secretary Geithner and the President on offshore tax proposals that the President had put out, and that might have been that. Ben Milakofsky was the kind of staffer who would escort me sometimes.

Q That would have been in the Red Room? Does that sound right?

A It, frankly, was the Red Room that triggered that, so I just -- I don't know.

Q Okay. May the 18th?

A So David Jacobson was in White House personnel, and there were starting to be discussions about potential oversight board meeting -- members, and I, you know, was weighing in on -- maybe I -- I don't remember if I weighed in on candidates or the process, or I'm sure I weighed in on the fact it's an important thing and they should pay attention to.

Q And the timing's right for that, that --

A That's all I remember having meetings with Jacobson on.

Q What about May the 19th?

A I don't remember. I mean, it's kind of the same --

Q As before?

A -- same conversation with Austan Goolsbee.

Q How about June 11th, Rahm Emanuel in the White House?

A Yeah. So the only meeting I remember with Rahm Emanuel was with the Secretary of Education to talk about pre-filling of FAFSA forms, the financial aid forms, which IRS did a fair amount of. You know, IRS partnered with the Department of Education to allow taxpayers to allow their tax information to go into the tax -- the FAFSA form so that, you know, it could get populated, because I think, you know, at least has been reported to me, there's a bunch of research that people didn't -- you know, people got confused around the financial section and this would be very helpful --

Q Sure.

A -- to facilitate it. And Rahm Emanuel was very focused on that and at some point invited, you know, to get an update from me and the Education Secretary, so I assume that's what it is, but again, I --

Q Right.

A -- I don't remember these dates.

Q How about June 24th?

A I don't know.

Q June 29th?

A I don't -- I don't know.

Q The next one, July 23rd?

A You know, these are the same thing with Jason Furman. I mean, he was a main contact of mine in the administration that I tried to, you know, make sure he understood our need for technology and

budget, and then sometimes he'd call me and we'd talk about, you know, their newest tax policy idea, and me -- you know, I'd give input on whether or not the thing could actually work or not, you know, like, could we make it happen?

Q And you had many meetings with him --

A Yeah.

Q -- over time? Okay. And I would suppose the same applies for September 25th?

A Uh-huh.

Q September 29th?

A So Jeptha Nafziger was the -- he was the budget analyst assigned to the IRS in OMB.

Q Uh-huh.

A And the date looks around like the time that, you know, you'd be going through an OMB process and they'd want to be talking to you about budgets.

Q Sure.

A So that would have been why I'd be, you know, there with Jeptha.

Q October 15th?

A I don't know.

Q October 20th with Mr. Sunstein?

A I don't know if it's this one, but at some point Cass Sunstein invited me to lunch because he wanted to chat, but he also -- one of his big projects was paperwork reduction --

Q Right.

A -- and he wanted to get an idea, you know, there's a -- I don't need to tell the staff of the Ways and Means and Finance Committee that there's a lot of paperwork around tax issues, and so he wanted to see what we could do, asked me what the IRS could do around paperwork reduction and hitting some targets.

Q Sure.

A Or, you know, there was --

Q Right.

A I don't think we talked about, you know, specific goals --

Q Specific.

A -- but --

Q I suppose you remember October 21st. That's the PDB --

A Yeah.

Q -- isn't it?

A That was -- Secretary Geithner invited me in to give the daily economic briefing to the President about general matters of tax gap, what's been done about it, what could be done about it, those kinds of things.

Q Is that the only time you did that --

A Yeah.

Q -- be part the PDB?

A Yes. I think I would have remembered, but I --

Q Sure.

A That's my best memory.

Q Sure. November 12th?

A I don't know. I don't know what that is.

Q The 16th?

A I just -- I'm sorry. I don't know.

Q So, for December 1st, is it safe to say that all the Furman meetings were working on --

A Yeah. That's my memory --

Q -- tax policy?

A -- on Furman. You know, those are, like, the kinds of things I talked to Furman about generally.

Q And you said that was --

A You know, I'd periodically go and have those conversations, and he'd periodically reach out and talk about those kinds of things.

Q And who is Mr. Hash?

A So Mike Hash, I don't know his title, but he worked in the health policy groups. He worked in the group that was working on health reform.

Q And so, in that process, your involvement was what?

A So this is right around the time --

Q Sure.

A -- you know, if you look at December and January --

Q Yes.

A -- right around the time where things were getting finalized.

Q Right.

A Sometime near the end of the process of health reform getting crafted, I got invited in and started saying, you know, what's been written, how can we do it, how is this all going to work. And so, you know, I started, you know, getting pretty heavily involved just to make sure our views were represented and people knew what could work, what couldn't work. I think also back then, there was still talk of what could be changed to make it work better, and we wanted to get our administrative view --

Q Right.

A -- in, and so --

Q Okay. I'll skip past the January 4th and January 6th of -- those are the -- you know, same thing as before?

A 4th and 6th?

Q Yeah. That's the tax policy --

A And during this time, I'm sure I had conversations with Jason Furman about, you know, the tax --

Q Right.

A -- pieces of ACA and what we were going to need to implement it, and we're going to need some budget, and this is going to be hard, you know, all those kinds of things.

SFC [redacted] Pardon me. If I can jump in real quick.

SFC [redacted] Please.

BY SFC [redacted]

Q On the healthcare stuff, you had mentioned you were sort of raising some administrative concerns with the White House about the

Affordable Care Act. Was that simply privately with the White House, or were you publicly raising concerns as well?

A So I didn't -- you know, I'd talk about what would work, what wouldn't work. It's pretty routine, as you know, for tax bills to get done and it being hard for the IRS, you know, administration's thought of later. And we -- I attended some Hill meetings, you know, in that process with the White House. I doubt I was, you know, publicly -- you know, this was the normal process of me weighing in with a may -- you know, a bill that has tax implications that the IRS is going to have to do a lot of work. And, you know, my view's always been IRS would do whatever law the President -- the Congress passes and the President signs; just my job was to make sure people knew, you know, how the whole thing would work, and so that's the tenor of what I was trying to do.

Q So it was just the private raising of the concerns, not publicly raising them?

A I guess I wouldn't emphasize raising of concerns as much as you are. This was -- I don't remember exactly what I just said, but it was saying, you know, here's what I think will work, here's what won't work, here's the money we'll need, here's the time we'll need, and those kinds of things. And, yeah, I mean, those were conversations I would have, you know, internally.

SFC [redacted] Thanks.

BY SFC [redacted]:

Q Jumping ahead to January 20th, a meeting with Mike French.

A Yeah. I don't -- it's not familiar.

Q The next one, October 17th, Mr. Furman again.

A So --

Q It's likely.

A Let me also just say since we're going one by one --

Q Yeah.

A -- there was a standing deputies meeting where, you know, like the -- that's just what they called it, and where the health reform people with a whole set of people, and usually, it was my staff was there, you know, or Treasury was there, you know, staff that would just go through issues, right? And I think I got -- somebody decided to invite me to all of them.

Q You would be on the list --

A Yeah. And --

Q -- at the White House?

A And a lot of them, I didn't -- you know, I didn't go to very many of those, actually. But I think this was like -- you know, this is all the time where things were moving --

Q Right.

A -- and, you know, we got invited in to -- and we understood that this was -- you know, the money flows were going to be used in the tax system, and we were trying to ensure our voices were heard.

Q Is that a weekly meeting, or is that a monthly meeting?

A I don't even know.

Q You don't know?

A No.

Q Okay. Do you recall specifically the meeting on March 22nd with Alex Hornbrook?

A Huh-uh. I do not.

Q March 26th, Mr. Zients?

A I don't. You know, at some point, you know, Jeff Zients was the chief performance officer.

Q Right.

A I, you know, was running one of the largest government agencies and, you know, my whole focus was around, you know, trying to run it well, trying to provide good leadership, trying to drive the agency forward for the benefit of the U.S. tax system and the American people. Zients and I, you know, kind of agreed, I think, on a lot of general management principles --

Q Sure.

A -- and so a lot of this was me -- you know, we just developed a relationship around talking about government performance.

Q Was this the meeting -- meeting of March to, you know, attend -- this is days after the ACA passes, or is --

A I doubt --

Q -- signed the law, I should say.

A Yeah. I don't --

Q Is that one you recall specifically?

A I don't recall ever meeting or discussing ACA with --

Q Okay.

A -- Jeff Zients.

Q April 5? Is there --

A So these -- I think a lot of these DeParle and Sarah Fenns are these deputy meetings. You know, they -- I think she hosted it, and Sarah Fenn was her assistant. And so I don't recall specifically, but I -- you know, around this time, you know, sometime around this whole area when the law was getting moving is when I met Nancy Ann DeParle and started discussing, you know, kind of what it was going to take for the IRS to do the implementation with her. But a lot -- a lot of these -- it certainly doesn't -- I don't remember going in this much and meeting with Nancy Ann DeParle.

Q Right. I'll do it this way. This will be better. If you can actually point out the next meeting you specifically remember attending.

A Well, Peter Orszag, on April the 7th, was me going and telling the head of OMB that we needed a bunch of money for the ACA.

Q Sure. I understand.

A And I don't specifically remember these other ones on this page. I mean --

SFC Going back to that, I know we had asked a number of questions of the IRS over the years about the Affordable Care Act and money required for implementation, but we weren't getting really answers out of the IRS on that. So you were going and asking Orszag for, as you said, a bunch of money, but you weren't kind of telling, at least Republicans in Congress, that you were requesting a bunch of

money for the Affordable Care Act, right?

Mr. Flood. What's the question?

SFC [redacted]. She can read it back?

Mr. Flood. Would you kindly read it back.

[Reporter read back the record as requested.]

Mr. Shulman. I mean, I -- you know, if you want to know, like, how I did budget requests is I was part of the, you know, Treasury Department, I'd submit my budget to the Secretary, would submit it, you know, as a request to the President.

My memory around the Affordable Care Act is well before this time, CBO had put out an estimate of how much the IRS would need, and there was, you know, I think some coordination through the administration around that, and I think we told people that that estimate looked, you know, ballpark right to us.

SFC [redacted]. Thanks.

BY SFC [redacted]:

Q Okay. After the Orszag meeting that was on April 7, what's the next meeting on this list?

A And I want to be -- I want to be clear.

Q Sure.

A I don't think I went to Peter Orszag and said, you know, I need this much. I just think this was me, you know, as Commissioner going in and putting a marker down that, like, this is going to be something that we're going to need resources to do properly, and I hope --

Q Sure.

A -- hoped we would, you know, when the time came for us to actually do the calculations and figure out what we needed, that we'd get support.

Q Understood.

A So the rest of these, I just can't tell you. I mean, I don't know if I actually had these meetings. I don't know if these were deputy meetings, you know. I don't know if there was, you know, a meeting with Nancy Ann DeParle where we actually talked about stuff, so I just -- you know, I just don't know.

Q Does that include the one on May the 6th? There's an entry time here that shows you were at the White House for about 11 minutes, I don't know if that's anything bad, that you specifically remember?

A No. I --

Q Okay.

A I don't.

Q That's fair.

A Maybe it was a cancelled meeting.

Q Sure.

A I have no idea.

Q Turning to the next page, the one here on June 24th that's highlighted in blue is the meeting, I believe, that's in the email at the end of these documents, a reference that you're on here --

A Yes. So there was --

Q -- afterwards getting back to the White House?

A So, soon after the Affordable Care Act was passed, there were a set of principals meetings so people understood the scope.

Q Right.

A I was asked by Treasury to go to those, because I was immersed in the details. You know, not immersed in the details, but I -- the IRS had a big lift, and they were comfortable that I'd represent that. And so I went to a number of what they call principals meetings, with the primary purpose of me just saying, you know, here's -- there's tax credits, here's how the tax credits are going to work. There's, you know, a penalty if people don't sign up. Here's, you know, when that's going to have to go into play and how, you know, we're starting to think about it, here's how we're starting to organize around that. So it was -- you know, my role was to represent the IRS and inform people, you know, what was happening as this all started.

Q Was that that meeting on the 24th or --

A So I don't know --

Q -- was that multiple meetings?

A There were multiple principal meetings, but I'm calling the 24th that because I see this --

Q It looks --

A And it probably would have been me and, you know, Michael Mundaca, who was the assistant secretary --

Q Sure.

A -- of tax policy going to talk about one. And, you know, we probably were going to talk about the data we were going to be

providing into exchanges, I'm guessing, from this email.

Q You don't recall specifically any of the meetings above that?

A I really -- I don't recall the dates.

Q Okay.

A There were -- you know, these things happened, you know, especially early on, on a -- you know --

Q Sure.

A -- pretty frequently.

Q Okay. Well, then going down after the highlighted date.

A This was -- I'm just looking over at the --

Q Yeah. Of course.

A It looks like -- again, this is, you know, me deducing from your document you that gave me, but it looks like --

Q Uh-huh. Sure.

A -- you know, the 29th was -- there were these picnics that I went to in the Bush administration and the Obama administration sometimes.

Q Sure.

A You know, generally when you see Sarah Fenn and Nancy Ann DeParle, I think it had a healthcare-related meeting. Again, my guess is there's a lot of these I didn't go to, because they were these --

Q Right.

A -- deputy meetings that I just didn't go to.

Q Okay.

A 7/22, there were a couple bills that -- there was a bill signing -- if this was a bill signing that I think had something to do with improper payments to contractors and there was a tax reporting piece of that, and so I can't swear to it, but that's one that I --

Q Would have attended?

A I know I, you know, attended one of those.

Q Okay. These are all --

A Similar down the line, all healthcare related. Zeke --

Q Zeke Emanuel.

A Zeke Emanuel asked me to have lunch once, and we talked about, you know, healthcare. He -- he was the NEC guy who worked on healthcare stuff, so this was probably part of my, you know, making sure everybody knew, you know, over there what we were doing on healthcare issues.

Q Okay.

A A lot of health reform in 2010.

Q Are --

A I'm just --

Q -- any of these meetings that you specifically remember?

A I don't. The one you have highlighted, signing in with Nancy Ann DeParle, at some point, we had lunch, because, you know, we were --

Q Sure.

A -- getting to know each other, we had common backgrounds. She'd been in investment business, I had been --

Q Right.

A We had gotten to know each other as colleagues. She had run CMS, I was running IRS. You know, there's --

Q Yeah.

A You know, it's healthcare or it's --

Q Sure.

A -- Furman. Nebors is probably budget stuff. At --

Q Of these here, is it fair to say that your recollection is, with Furman at least, you probably would have attended?

A Yeah. I mean, again, unless I got -- you know, lots of times at the White House, you get cleared in -- you know, lots of times, you schedule something, and they change meetings because they get pulled in for things.

Q Right.

A And so I have no idea, but --

Q Okay.

A -- you know, like I said, I periodically would go see Jason Furman, you know, because he had the tax responsibility and he could also weigh in on our budget issues. And, you know, the Recovery Act was going on during that time and people were thinking about more recovery ideas in Congress and --

Q Sure.

A -- the administration and those kinds of things. And Zients would usually be about, you know, the -- the things -- again, I don't remember specific meetings, but the kinds of things -- you know,

Zients and I would talk generally about just management issues and performance issues and those kinds of things, because, you know, I was I think viewed as a resource to think through those things, and he and I agreed. He also would host periodic meetings with the head of GAO, I think, once a year to talk about material weaknesses, and one of the things I was focused on and knocked out is a bunch of our long-term material weaknesses.

Q Right.

A And then he also had under him the kind of -- you know, the improper payment work, and IRS got, you know, bunched in, the EITC --

Q EITC, sure.

A -- was -- you know, so payments that went out on the EITC that weren't authorized, we would talk about that sometimes. So, again, I just don't -- I don't have --

Q Sure.

A I don't know when these meetings were and exactly what happened and any of the specifics.

Q What about the Austan Goolsbee meeting on the 3rd of February?

A So the Goolsbee -- you know, I don't remember when he -- you know, he was over at the Council of Economic Advisors.

Q Right.

A At some point, he became chair. He had an interest in tax, and so we had, you know, a relationship where we'd talk about, you know -- I mean, all of these people, I would always, you know, give

people the notion that we need a budget and don't do tax stuff that we can't administer, or at least talk to us first so you know if you're doing those things that we can't administer, just like I tried to do with Congress on a regular basis, and so my guess is, it's that.

With Goolsbee -- the specific memories of meetings with Goolsbee are once to go over and talk to him about the ideas that he might have around tax administration for this Presidential advisory board, and then second is I was invited in and actually spoke to this --

Q Was the board the --

Mr. Shulman. Do you guys -- anyone in the room remember, was it the PRAB?

SFC [redacted]. Uh-huh.

Mr. Shulman. Is that what it was called?

SFC [redacted]. I remember hearing about PRAB.

Mr. Shulman. I don't know if it was the PRAB, but it was a bunch of outside folks that the administration had invited in and they had formal meetings, and I went and actually briefed them out on -- you know, because they had stated they wanted to think about tax administration as part of --

SFC [redacted]. And I believe that was the one where Goolsbee made a statement about Koch brothers that then launched a TIGTA investigation on whether Goolsbee had committed 6103 violation. Do you remember hearing about that, Mr. Shulman?

Mr. Shulman. So I don't remember hearing about it in relationship to the PRAB. That's just -- it may or may not have been,

but, yeah, I do remember hearing about that.

SFC [redacted]. Okay.

BY SFC [redacted]:

Q Okay. Going on, we've got here the -- so just after that, though, going into February 10th, 2011, who, again, was Sarah Fenn?

A She --

Q Are they healthcare meetings?

A Yeah. Sarah Fenn was the -- I don't know exactly what her role is, but I think she was --

Q Organizing --

A She was, you know, the organizer of the deputies meetings.

Q Okay.

A But she also may have organized a meeting I had with Nancy Ann DeParle separately. I think she was -- I don't know exactly what she did for the healthcare office, but she was in that complex.

Q All right. On down to April 25th, that's a West Wing meeting with Maisel, with Chad Maisel. Does that ring a bell?

A No. I don't -- the name doesn't ring a bell.

Q How about the next meeting?

A Yeah. That --

Q The Situation Room?

A Yeah. The President would -- around that time, held a series of meetings with heads of agencies to talk about how to improve government, et cetera, so his Chief of Staff came in, so it's me sitting around a table with a bunch of people who run --

Q Different agencies?

A -- different agencies around the government. Chief of Staff talked a little bit about how they think about running things. President comes in; they ask a few questions, who's got good ideas? And that was -- that was the meeting.

Q Okay. Going on after that.

A So I don't remember the specific meeting and don't even know if we had it, but Keith Fontenot was the kind of senior OMB person who had the healthcare portfolio, and so -- for budget stuff.

Q Okay.

A So would have had conversations about, you know, there -- basically, the Affordable Care Act gave a --

Q Here --

A -- chunk of money for administration broadly, and so, you know, part of that was us figuring out what we needed versus other people, and I think, you know, he had the lead on that.

Q Okay. On down?

A Sometime, and I really can't tell you when it was, there became interest in another round of us helping build an interface with tax information for Department of Ed student loan repayment system, and so they had a --

Q Right.

A And so when people had income-based repayment, you know, we kind of did that again, and it had the attention of, I think it was the domestic. I -- what made me think is it could have been Melody

Barnes, or it could have been the Cecilia Munoz meetings, so -- but I went in a few times and had these conversations around, you know, income-based repayment, you know, can we do the same thing we did for the FAFSA application, so they can get populated, so that there won't be -- you know, so people will know what the income is.

Q Right.

A So I attended a number of those meetings.

Q I'm sorry. Which one was that?

A I'm sorry. That was when I saw Melody Barnes --

Q Okay. Yeah.

A -- 6/20/11, but I don't -- you know, it also may have been -- you know, it may not have happened till 2012 with Cecilia Munoz.

Q I see. Okay.

A So I'm just going down names and times.

Q Sure.

A South Lawn event, that would have been -- looks like a summer picnic again. All appointee event.

Q That's one of the many?

A Yeah. You know, when you see Jeptha Nafziger, that's generally my OMB budget hearing, probably. You know, every year the Commissioner goes over with OMB.

Q And the timing's about right on that?

A Yeah.

Q Yeah.

A I don't know about Furman. You know -- so I just don't know

what these Melody Barnes are. She may have been the one who convened -- you know, there could have been a principals meeting on ACA scheduled and she convened that. I just -- you know, I -- I'm not that familiar with the --

Q Did you attend the meetings or --

A -- who calls the meetings. Yeah. I attended, you know, a number of them throughout the years.

The POTUS one on 12/2, my guess is that it's the Hannukah party.

Q Sure.

A And then Danny Werfel on the January 23rd was -- you know, he had the brief for Jeff Zients around improper payments and, you know, he was involved in things like -- you know, we had some very innovative data analytics --

Q Right.

A -- work we were doing, you know, around compliance and refund fraud, and I think, you know, he was interested in sharing ideas across government and would bring the team in sometimes, and so it could have been that.

Again, the Cecilia Munoz, there's a bunch of possibilities, but my guess is that's the income-based repayment.

Q ACA income-based repayment?

A No, it's not ACA. It's Department of Ed, so this had nothing to do with --

Q I'm sorry.

A Yeah.

Q This is the -- yeah.

A But I -- you know, I also think she and her predecessor, Melody Barnes, may have been the ones hosting some ACA meetings as well.

Q Got it.

A Then there's POTUS on the South Lawn.

Q Sure.

A Summer event. Same with Furman and DeParle, you know, the summer of 2012. Jeptha Nafziger, my guess is that's my budget reconcile --

Q Again.

A And Dana Hyde was our PAD, which is the -- you know, kind of Jeptha's boss on budget, so my guess is that's budget stuff again.

And then, you know, I think near the end when you get to October 12, people I had known invited me to lunch. So I think Nancy Ann invited to lunch; Alan Krueger, who I'd gotten to know when he was at Treasury doing economic stuff, invited me to lunch with his deputy, who was -- or his chief of staff, who was a former Treasury guy.

And then, on the 9th of October, which was, I think, the end of my last week in office --

Q On the 9th of November?

A I'm sorry, 9th of November.

Q Sure.

A Nancy Ann gave us a -- DeParle gave us a tour of the West Wing, gave my family.

Q Sure.

A And then I was invited to get a photo op in -- with the President after I left, so I went back on the 14th with my family to have a photo op.

Q Okay. That's helpful. Thank you. That wasn't too bad.

Mr. Flood. Speak for yourself.

SFC [redacted]. Can we take a break for --

Mr. Flood. Yeah. Yeah. You want to take a break?

SFC [redacted]. Sure. 5 minutes or so?

Mr. Shulman. Sure. That sounds great?

SFC [redacted]. Okay.

[Recess.]

SFC [redacted]. We'll just have one more exhibit I'll ask about. I'll label this Exhibit 9.

[Shulman Exhibit No. 9
was marked for identification.]

BY SFC [redacted]:

Q This is an instance in which two SFC [redacted] entities had applied for tax-exempt status and then applied to be expedited, and after not being happy with the -- after being turned down for an expedited process twice, Senator SFC [redacted] contacted the IRS, and in a short time, they were approved.

Do you recall having a conversation with Senator SFC [redacted] on March 5th, 2012?

A I don't remember it. I mean, I may have. This is, like, not -- occasionally Leg Affairs would send stuff to me. Sometimes

these calls would happen; sometimes they wouldn't. So I may have had it. I just don't have a clear recollection of it. And frankly, you know, until I saw this -- it doesn't look super familiar, but it probably came across my desk.

Q How often would you talk to a Member of Congress about a specific taxpayer?

A Not very often. You know, sometimes Leg Affairs would have someone call, I'd listen. And, you know, I certainly never directed activity, you know, as far as I can remember, regardless if someone called or not.

Q Do you recall ever speaking to Senator SFC outside of Finance hearings?

A Yes.

Q On the phone?

A Yeah.

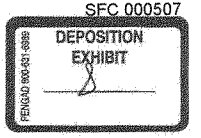
Q Do you recall if those conversations were ever about individual taxpayers?

A I don't recall. I remember conversations about, you know, service center issues --

Q Sure.

A -- and things.

Q I mean, would it strike you as unusual if, after a Member reached out and then, you know, D.C., either by Ms. Flax or Lois Lerner, talked to Cincinnati an application for tax-exempt status was approved in a very expedited -- in a very expedited process of a matter of days?



Last Name	First Name	Arrival	Departure	Date	Time	Visitee Last	Visitee First	Location	Room	Description	Bates Num.
SHULMAN	DOUGLAS	2/17/09 10:03	2/17/09 11:17	2/17/09	10:00	L	NABORS	OEOB	252		
SHULMAN	DOUGLAS	3/11/09 9:56	3/11/09 11:10	3/11/09	10:15	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS	3/19/09 13:20	3/19/09 13:26	3/19/09	13:30	FURMAN	JASON	OEOB	430A		
SHULMAN	DOUGLAS			4/1/09	14:30	SUMMERS	LARRY	WH	WW		
SHULMAN	DOUGLAS			4/6/09	18:45	GERGI	BASSAM	OEOB	269		
SHULMAN	DOUGLAS	4/29/09 10:46	4/29/09 11:50	4/29/09	11:00	GOOLSBEE	AUSTAN	OEOB	469		
SHULMAN	DOUGLAS			5/4/09	11:00	MILAKOFSKY	BENJAMIN	WH	RED ROOM		
SHULMAN	DOUGLAS	5/18/09 15:52	5/18/09 16:42	5/18/09	16:00	JACOBSON	DAVID	OEOB	192		
SHULMAN	DOUGLAS			5/19/09	13:00	GOOLSBEE	AUSTAN	OEOB	474		
SHULMAN	DOUGLAS			6/11/09	12:45	EMANUEL	RAHM	WH	WW		
SHULMAN	DOUGLAS	6/24/09 13:29		6/24/09	13:30	HOPKINS	MARISSA	WH	WW		
SHULMAN	DOUGLAS			6/29/09	14:00	KUMARAIAH	DIVYA	OEOB	269		
SHULMAN	DOUGLAS			7/23/09	11:30	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			9/25/09	16:30	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			9/29/09	15:00	NAFZIGER	JEPTHA	NEOB	9104		
SHULMAN	DOUGLAS			10/15/09	15:00	DESEVE	GERMAIN	OEOB	237		
SHULMAN	DOUGLAS	10/20/09 13:12		10/20/09	13:00	SUNSTEIN	CASS	OEOB	216		
SHULMAN	DOUGLAS	10/21/09 9:37	10/21/09 15:02	10/21/09	10:00	POTUS		WH	OVAL OFFIC	ECON PDB	
SHULMAN	DOUG			11/12/09	8:40	MILAKOFSKY	BENJAMIN	OEOB	100		
SHULMAN	DOUGLAS			11/16/09	9:00	WEISS	MARGARET	OEOB	216		
SHULMAN	DOUGLAS			12/1/09	13:00	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			12/1/09	16:00	HASH	MIKE	OEOB	279		
SHULMAN	DOUGLAS	1/4/10 15:48	1/4/10 21:25	1/4/10	16:00	HASH	MIKE	OEOB	82		385548
SHULMAN	DOUGLAS			1/6/10	14:00	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS	1/11/10 11:51		1/11/10	12:00	WEISS	MARGARET	OEOB	216		385549
SHULMAN	DOUG			1/20/10	9:50	FRENCH	MIKE	OEOB	100		
SHULMAN	DOUGLAS			2/17/10	14:30	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			3/22/10	10:00	HORNBROOK	ALEX	OEOB	430 B/C		
SHULMAN	DOUGLAS			3/26/10	10:00	ZIENTS	JEFFREY	OEOB	216		
SHULMAN	DOUGLAS			4/5/10	10:30	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/7/10	11:00	ORSZAG	PETER	OEOB	208		
SHULMAN	DOUGLAS			4/8/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/12/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/15/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/19/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/19/10	14:30	NABORS	ROBERT	OEOB	82		
SHULMAN	DOUGLAS			4/21/10	16:00	DEPARLE	NANCY	OEOB	430		
SHULMAN	DOUGLAS			4/22/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			4/28/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			4/29/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			5/3/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			5/5/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS	5/6/10 16:56	5/6/10 17:07	5/6/10	17:00	DEPARLE	NANCY	WH	WW		385566
SHULMAN	DOUGLAS			5/10/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			5/13/10	10:00	DEPARLE	NANCY	OEOB	82		

SHULMAN	DOUGLAS			5/17/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			5/20/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			5/24/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			5/27/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			5/27/10	18:00	DEPARLE	NANCY	WH	WW		
SHULMAN	DOUGLAS			6/3/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/7/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/10/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/10/10	16:00	DEPARLE	NANCY	OEOB	430BC		
SHULMAN	DOUGLAS			6/14/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/17/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/21/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/24/10	10:30	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			6/24/10	16:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			6/28/10	10:00	LEVIN	ARIEL	OEOB	82	THIS IS FOR THE BI-WEEKLY HEALTH REFORM DEPUTIES MEETING	
SHULMAN	DOUGLAS			6/29/10	14:00	ZIENTS	JEFF	OEOB	216		
SHULMAN	DOUG			6/29/10	15:00	OFFICE	VISITORS	WH	S. GROUNDS	APPOINTEE EVENT /	
SHULMAN	DOUG			6/29/10	16:00	POTUS		WH	S. GROUNDS	ALL APPOINTEE EVENT	
SHULMAN	DOUGLAS			7/1/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			7/6/10	10:00	LEVIN	ARIEL	OEOB	82	THIS IS FOR A HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			7/8/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE IMPLEMENTATION	
SHULMAN	DOUGLAS			7/9/10	13:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			7/12/10	10:00	FENN	SARAH	OEOB	82		
SHULMAN	DOUGLAS			7/15/10	10:00	DEPARLE	NANCY	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			7/15/10	10:00	FENN	SARAH	OEOB	82		
SHULMAN	DOUGLAS			7/19/10	10:00	LEVIN	ARIEL	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS	7/22/10 10:39		7/22/10	10:30	KAMMERER	CHELSEA	WH	STATE	BILL SIGNING	385577
SHULMAN	DOUGLAS			7/26/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			7/29/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			7/29/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/2/10	10:00	LEVIN	ARIEL	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/4/10	12:00	EMANUEL	EZEKIEL	OEOB	279		
SHULMAN	DOUGLAS			8/5/10	10:00	LEVIN	ARIEL	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/9/10	10:00	LEVIN	ARIEL	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/12/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/16/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			8/19/10	10:00	FENN	SARAH	OEOB	82	HOUSE REFORM INFO MTG	
SHULMAN	DOUGLAS			8/30/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			9/2/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			9/7/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	

SHULMAN	DOUGLAS			9/10/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			9/13/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			9/16/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM IMPLEMENTATION MEETING	
SHULMAN	DOUGLAS			9/20/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			9/23/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			9/27/10	10:00	FENN	SARAH	OEOB	82	HEALTH MEETING	
SHULMAN	DOUGLAS			9/29/10	16:45	DEPARLE	NANCY	WH	WW		
SHULMAN	DOUGLAS			9/30/10	10:00	FENN	SARAH	OEOB	82	HEALTH CARE MEETING	
SHULMAN	DOUGLAS			9/30/10	10:00	PAYNE	TERRI	NEOB	10103		
SHULMAN	DOUGLAS	10/1/10 12:39	10/1/10 13:51	10/1/10	12:30	DEPARLE	NANCY	WH	WW		385584
SHULMAN	DOUGLAS			10/4/10	10:00	FENN	SARAH	OEOB	82	HEALTH MEETING	
SHULMAN	DOUGLAS			10/7/10	10:00	FENN	SARAH	OEOB	82	HEALTH MEETING	
SHULMAN	DOUGLAS			10/12/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/14/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/18/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/21/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/22/10	13:00	NABORS	ROBERT	OEOB	208		
SHULMAN	DOUGLAS			10/25/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/28/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			10/29/10	17:00	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			11/1/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			11/4/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			11/8/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			11/12/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			11/15/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING/	
SHULMAN	DOUGLAS			11/16/10	15:30	FURMAN	JASON	WH	WW		
SHULMAN	DOUGLAS			11/18/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING/	
SHULMAN	DOUGLAS			11/22/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			11/29/10	10:00	LEVIN	ARIEL	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			12/2/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING/	
SHULMAN	DOUGLAS			12/6/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			12/9/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			12/14/10	16:30	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			12/16/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			12/21/10	10:00	DEPARLE	NANCY	OEOB	82		
SHULMAN	DOUGLAS			12/22/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			12/23/10	10:00	FENN	SARAH	OEOB	82	HEALTH REFORM MEETING	
SHULMAN	DOUGLAS			1/6/11	10:00	FENN	SARAH	OEOB	82	HEALTH MEETING/	
SHULMAN	DOUGLAS			1/13/11	10:00	FENN	SARAH	OEOB	279	MEETING	
SHULMAN	DOUGLAS			1/20/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			1/21/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			1/27/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS	1/27/2011 15:55		1/27/11	16:00	ZIENTS	JEFF	OEOB	216		385601
SHULMAN	DOUGLAS			2/3/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS	2/3/11 15:56	2/3/11 17:34	2/3/11	16:15	GOOLSBEE	AUSTAN	OEOB	486		385603
SHULMAN	DOUGLAS			2/10/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			2/17/11	10:00	FENN	SARAH	OEOB	82	MEETING	

SHULMAN	DOUGLAS			2/24/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			3/3/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			3/10/11	10:00	FENN	SARAH	OEOB	82	MEETING	
SHULMAN	DOUGLAS			3/17/11	10:00	LAMBREW	JEANNE	OEOB	82	MEETING	
Shulman	Douglas			4/25/11	12:00	Maisel	Chad	WH	West Wing		
Shulman	Douglas			6/6/11	15:00		POTUS	WH	SITUATION		
Shulman	Douglas			6/7/11	13:00	furman	jason	WH	ww		
Shulman	Douglas			6/7/11	17:00	Fontenot	Keith	OEOB	428		
Shulman	Douglas			6/20/11	13:45	Barnes	Melody	WH	WW		
Shulman	Douglas			7/12/11	12:00	DeParle	NancyAnn	WH	WW		
Shulman	Douglas			7/22/11	14:00	DeParle	NancyAnn	OEOB	100		
Shulman	Douglas			7/25/11	11:00	DeParle	NancyAnn	WH	Roosevelt		
Shulman	Douglas			7/29/11	17:00	DeParle	NancyAnn	OEOB	100		
Shulman	Douglas			8/18/11	16:30	OFFICE	VISITORS	WH	SOUTH LAWN		
Shulman	Douglas			8/29/11	13:00	Lu	Chris	WH	WW		
Shulman	Douglas			9/8/11	13:30	OFFICE	VISITORS	WH	SOUTH LAWN	ALL APPOINTEE EVENT	
Shulman	Douglas			9/20/11	14:00	Natziger	Jeptha	NEOB	9104		
Shulman	Douglas			10/19/11	10:00	Furman	Jason	WH	West Wing		
Shulman	Douglas			11/7/11	15:15	Barnes	Melody	WH	WW		
Shulman	Douglas			11/22/11	11:00	Barnes	Melody	WH	Roosevelt		
SHULMAN	DOUGLAS			12/2/11	18:30		POTUS	WH	State Floo		
Shulman	Douglas			12/20/11	16:00	Furman	Jason	OEOB	226		
Shulman	Douglas			12/20/11	16:00	Furman	Jason	OEOB	EEOB 226		
Shulman	Douglas			1/23/12	14:00	Werfel	Danny	OEOB	234		
Shulman	Douglas			2/6/12	10:00	Munoz	Cecilia	WH	Roosevelt		
Shulman	Douglas			3/14/12	11:00	Zients	Jeff	OEOB	252		
Shulman	Douglas			3/28/12	16:00	Munoz	Cecilia	WH	WW		
Shulman	Douglas			4/11/12	13:00	Munoz	Cecilia	WH	WW		
Shulman	Douglas			4/24/12	15:30	Zients	Jeff	OEOB	252		
Shulman	Douglas			5/8/12	13:00	Munoz	Cecilia	WH	WW		
Shulman	Douglas			5/31/12	16:00	Munoz	Cecilia	WH	WW		
Shulman	Douglas			6/5/12	16:00		POTUS	WH	SOUTH LAWN		
Shulman	Douglas			6/18/12	15:00	Furman	Jason	WH	West Wing		
Shulman	Douglas			7/13/12	10:00	DeParle	NancyAnn	WH	West Wing		
SHULMAN	DOUGLAS			8/27/12	11:00	Deparle	NancyAnn	WH	WW Ward R	TIME CHANGE AT THE REQUEST OF THE REQUESTOR KDC 8/27 @ 9:50	
Shulman	Douglas			9/19/12	10:00	Natziger	Jeptha	OEOB	238		
Shulman	Douglas			10/18/12	15:30	Hyde	Dana	OEOB	238		
Shulman	Douglas			10/16/12	12:00	DeParle	NancyAnn	WH	West Wing		
Shulman	Douglas			10/26/12	12:00	Krueger	Alan	WH	WW/Mess		
Shulman	Douglas	11/9/12 16:34		11/9/12	16:45	DeParle	NancyAnn	WH	WEST WING	WEST WING TOUR	
SHULMAN	DOUGLAS			12/13/12	17:30		POTUS/FLOTUS	WH	State Floo		
Shulman	Douglas	12/14/12 16:54	12/14/12 16:55	12/14/12	17:20		POTUS	WH	West Wing		

SFC 000511

Subject	Location	Start	End	RC
Updated: Senior Executive Team Meeting (SET)	IR 3313 - 2...	Mon 1/4/2010 9:00 AM	Mon 1/4/2010 11:00 AM	t...
Start: Monday, January 04, 2010 9:30 AM (1 item)				
Prep for Return Preparer Press	3000	Mon 1/4/2010 9:30 AM	Mon 1/4/2010 10:00 AM	
Start: Monday, January 04, 2010 10:00 AM (1 item)				
Call w/Rep. Becerra	3000	Mon 1/4/2010 10:00 AM	Mon 1/4/2010 10:30 AM	
Start: Monday, January 04, 2010 10:30 AM (1 item)				
Rosemary Marcuss Swearing In	3000	Mon 1/4/2010 10:30 AM	Mon 1/4/2010 10:45 AM	
Start: Monday, January 04, 2010 10:45 AM (1 item)				
CI Transport		Mon 1/4/2010 10:45 AM	Mon 1/4/2010 11:00 AM	
Start: Monday, January 04, 2010 12:00 PM (1 item)				
Weekly Meeting w/Commissioner, Jonathan, Ruth, Steve, Mark, Bill	3000	Mon 1/4/2010 12:00 PM	Mon 1/4/2010 1:00 PM	e...
Start: Monday, January 04, 2010 1:00 PM (1 item)				
Hold for Return Preparer Press		Mon 1/4/2010 1:00 PM	Mon 1/4/2010 2:30 PM	
Start: Monday, January 04, 2010 2:30 PM (1 item)				
Return Preparer Press	3000	Mon 1/4/2010 2:30 PM	Mon 1/4/2010 3:00 PM	
Start: Monday, January 04, 2010 3:45 PM (1 item)				
CI Transport w/Commissioner, Jonathan, Cathy		Mon 1/4/2010 3:45 PM	Mon 1/4/2010 4:00 PM	
Start: Monday, January 04, 2010 4:00 PM (1 item)				
Health Care Meeting	Room S2 E...	Mon 1/4/2010 4:00 PM	Mon 1/4/2010 5:00 PM	
Start: Tuesday, January 05, 2010 9:30 AM (1 item)				
Call w/ Congresswoman Emerson	Will call us	Tue 1/5/2010 9:30 AM	Tue 1/5/2010 10:00 AM	
Start: Tuesday, January 05, 2010 10:00 AM (1 item)				
Weekly Meeting	3000	Tue 1/5/2010 10:00 AM	Tue 1/5/2010 11:00 AM	
Start: Tuesday, January 05, 2010 11:00 AM (1 item)				
CI Transport w/Frank		Tue 1/5/2010 11:00 AM	Tue 1/5/2010 11:15 AM	
Start: Tuesday, January 05, 2010 11:15 AM (1 item)				
CNBC Interview	400 N. Capi...	Tue 1/5/2010 11:15 AM	Tue 1/5/2010 12:30 PM	
Start: Tuesday, January 05, 2010 1:00 PM (1 item)				
Return Preparer Press	7th Floor	Tue 1/5/2010 1:00 PM	Tue 1/5/2010 1:30 PM	
Start: Tuesday, January 05, 2010 1:30 PM (1 item)				
Spanish Return Preparer Press	3000	Tue 1/5/2010 1:30 PM	Tue 1/5/2010 2:00 PM	
Start: Tuesday, January 05, 2010 2:00 PM (1 item)				
Meeting w/Ambassador Beyer	3000	Tue 1/5/2010 2:00 PM	Tue 1/5/2010 2:30 PM	
Start: Tuesday, January 05, 2010 4:00 PM (1 item)				
Mike Danilak		Tue 1/5/2010 4:00 PM	Tue 1/5/2010 4:45 PM	
Start: Tuesday, January 05, 2010 4:45 PM (1 item)				
FBAR w/Commissioner, Steve, Linda, Dick, Ruth	3000	Tue 1/5/2010 4:45 PM	Tue 1/5/2010 5:15 PM	
Start: Wednesday, January 06, 2010 10:00 AM (1 item)				
NTA Annual Report w/ Commissioner, Olson, Drexler, Davis, Perez	3000	Wed 1/6/2010 10:00 AM	Wed 1/6/2010 11:00 AM	
Start: Wednesday, January 06, 2010 11:45 AM (1 item)				
Lunch w/ Beth Brooke	Central	Wed 1/6/2010 11:45 AM	Wed 1/6/2010 1:00 PM	
Start: Wednesday, January 06, 2010 1:00 PM (1 item)				
Ruth		Wed 1/6/2010 1:00 PM	Wed 1/6/2010 1:30 PM	
Start: Wednesday, January 06, 2010 1:45 PM (1 item)				
CI Transport w/Commissioner, Jonathan, Cathy		Wed 1/6/2010 1:45 PM	Wed 1/6/2010 2:00 PM	
Start: Wednesday, January 06, 2010 2:00 PM (2 items)				
FYI: Counsel New Year Open House	3026	Wed 1/6/2010 2:00 PM	Wed 1/6/2010 4:00 PM	
Health Care Meeting w/Jason Furman	West Wing ...	Wed 1/6/2010 2:00 PM	Wed 1/6/2010 3:00 PM	
Start: Wednesday, January 06, 2010 4:00 PM (1 item)				
New York State Bar Speech Prep w/ Commissioner, Wilkins, Davis,...	3000	Wed 1/6/2010 4:00 PM	Wed 1/6/2010 4:30 PM	
Start: Wednesday, January 06, 2010 4:30 PM (1 item)				
Meeting w/Commissioner and Doug O'Donnell	3000	Wed 1/6/2010 4:30 PM	Wed 1/6/2010 5:00 PM	
Start: Wednesday, January 06, 2010 5:00 PM (1 item)				
Awards Program Discussion w/ Commissioner, Perez, Davis	3000	Wed 1/6/2010 5:00 PM	Wed 1/6/2010 5:30 PM	

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SFC 000512

Subject	Location	Start	End	RC
Start: Wednesday, January 06, 2010 6:30 PM (1 item)				
CI Transport from Home		Wed 1/6/2010 6:30 PM	Wed 1/6/2010 7:00 PM	
Start: Wednesday, January 06, 2010 7:00 PM (1 item)				
Dinner at Deb Wince Smith's	1315 Merrie...	Wed 1/6/2010 7:00 PM	Wed 1/6/2010 9:00 PM	
Start: Thursday, January 07, 2010 9:30 AM (1 item)				
Eve School Appointment		Thu 1/7/2010 9:30 AM	Thu 1/7/2010 1:00 PM	
Start: Thursday, January 07, 2010 1:30 PM (1 item)				
Prep for CSPAN Interview w/Commisisoner, Jonathan, Ruth, Frank...	3000	Thu 1/7/2010 1:30 PM	Thu 1/7/2010 2:30 PM	
Start: Thursday, January 07, 2010 3:00 PM (1 item)				
FTA Joint Audits Briefing w/Commissioner, Steve, Jonathan, Heath...	3000	Thu 1/7/2010 3:00 PM	Thu 1/7/2010 3:30 PM	
Start: Thursday, January 07, 2010 4:00 PM (1 item)				
Prep for CSPAN Interview w/Commisisoner, Jonathan, Ruth, Frank	3000	Thu 1/7/2010 4:00 PM	Thu 1/7/2010 5:00 PM	
Start: Friday, January 08, 2010 9:00 AM (1 item)				
Hold		Fri 1/8/2010 9:00 AM	Fri 1/8/2010 12:00 PM	
Start: Friday, January 08, 2010 10:30 AM (1 item)				
Call w/Sandra Pinkard	202-365-0040	Fri 1/8/2010 10:30 AM	Fri 1/8/2010 11:00 AM	
Start: Friday, January 08, 2010 12:00 PM (1 item)				
CI transport w/Frank		Fri 1/8/2010 12:00 PM	Fri 1/8/2010 12:15 PM	
Start: Friday, January 08, 2010 12:15 PM (1 item)				
C-SPAN Newsmakers Interview	400 N. Capi...	Fri 1/8/2010 12:15 PM	Fri 1/8/2010 1:00 PM	
Start: Friday, January 08, 2010 1:15 PM (1 item)				
Call w/Dan Tangherlini	he will call	Fri 1/8/2010 1:15 PM	Fri 1/8/2010 1:30 PM	
Start: Friday, January 08, 2010 1:30 PM (1 item)				
Internet Strategy w/Commissioner, Mark, Steve, Jonathan, Ruth, ...	3000	Fri 1/8/2010 1:30 PM	Fri 1/8/2010 2:00 PM	
Start: Friday, January 08, 2010 2:00 PM (1 item)				
Return Preparer Task Force w/Commissioner, Jonathan, Ruth, Mar...	3000	Fri 1/8/2010 2:00 PM	Fri 1/8/2010 2:45 PM	
Start: Friday, January 08, 2010 2:45 PM (1 item)				
CI Transport - Commissioner, Jonathan, Cathy		Fri 1/8/2010 2:45 PM	Fri 1/8/2010 3:00 PM	
Start: Friday, January 08, 2010 3:00 PM (1 item)				
Health Care Meeting w/Jason Furman, Gene Sperling, Cathy Koch,...	Dirksen 210	Fri 1/8/2010 3:00 PM	Fri 1/8/2010 4:00 PM	
Start: Friday, January 08, 2010 5:00 PM (1 item)				
Hold		Fri 1/8/2010 5:00 PM	Fri 1/8/2010 6:00 PM	
Start: Saturday, January 09, 2010 10:00 AM (1 item)				
Haircut with Ben		Sat 1/9/2010 10:00 AM	Sat 1/9/2010 11:30 AM	
Start: Monday, January 11, 2010 9:30 AM (1 item)				
CI Transport from Home w/Frank		Mon 1/11/2010 9:30 AM	Mon 1/11/2010 9:45 AM	
Start: Monday, January 11, 2010 9:45 AM (1 item)				
WAMU Interview - The Diane Rehm Show	4000 Brand...	Mon 1/11/2010 9:45 AM	Mon 1/11/2010 11:00 AM	
Start: Monday, January 11, 2010 10:00 AM (1 item)				
S&E Roundtable w/Commissioner	3000	Mon 1/11/2010 10:00 AM	Mon 1/11/2010 11:00 AM	t...
Start: Monday, January 11, 2010 11:45 AM (1 item)				
CI Transport		Mon 1/11/2010 11:45 AM	Mon 1/11/2010 12:00 PM	
Start: Monday, January 11, 2010 12:00 PM (1 item)				
Lunch w/Jeff Zients & Nigel Morris	Meet in Rm ...	Mon 1/11/2010 12:00 PM	Mon 1/11/2010 1:30 PM	
Start: Monday, January 11, 2010 2:00 PM (1 item)				
Transparency w/Commissioner, Ruth, Steve and Bill	3000	Mon 1/11/2010 2:00 PM	Mon 1/11/2010 2:15 PM	
Start: Monday, January 11, 2010 3:00 PM (1 item)				
CI Transport w/Commisioner, Steve and Bill		Mon 1/11/2010 3:00 PM	Mon 1/11/2010 3:15 PM	
Start: Monday, January 11, 2010 3:15 PM (1 item)				
Meeting with Commissioner Shulman on IRS Corporate Transpare...	@ Room 3326	Mon 1/11/2010 3:15 PM	Mon 1/11/2010 4:15 PM	
Start: Tuesday, January 12, 2010 7:45 AM (1 item)				
CI Transport from Home		Tue 1/12/2010 7:45 AM	Tue 1/12/2010 8:30 AM	
Start: Tuesday, January 12, 2010 8:30 AM (1 item)				
Annual Business Meeting	Arlington W...	Tue 1/12/2010 8:30 AM	Tue 1/12/2010 5:00 PM	e...
Start: Wednesday, January 13, 2010 7:30 AM (1 item)				

Avrutine Melissa 43 9/9/2013 9:03 AM

IRS0000385549

SFC 000513

Subject	Location	Start	End	RC
CI Transport White House		Thu 5/6/2010 4:45 PM	Thu 5/6/2010 5:00 PM	
Start: Thursday, May 06, 2010 5:00 PM (1 item)				
Health Reform Principals +1 Meeting - TFG will not attend	The White ...	Thu 5/6/2010 5:00 PM	Thu 5/6/2010 6:00 PM	
Start: Thursday, May 06, 2010 6:00 PM (1 item)				
CI Transport		Thu 5/6/2010 6:00 PM	Thu 5/6/2010 6:30 PM	
Start: Thursday, May 06, 2010 6:30 PM (1 item)				
Black Tie Event: Presidential Distinguished Rank Award Banquet	Department...	Thu 5/6/2010 6:30 PM	Thu 5/6/2010 9:30 PM	
Start: Friday, May 07, 2010 11:45 AM (1 item)				
Lunch w/Fred Goldberg	Central	Fri 5/7/2010 11:45 AM	Fri 5/7/2010 12:45 PM	
Start: Friday, May 07, 2010 1:00 PM (1 item)				
Annual Refresher Training	4121 Media...	Fri 5/7/2010 1:00 PM	Fri 5/7/2010 2:30 PM	
Start: Friday, May 07, 2010 3:00 PM (1 item)				
Meeting w/Commissioner, Jonathan, Steve Baker	3000	Fri 5/7/2010 3:00 PM	Fri 5/7/2010 3:15 PM	
Start: Friday, May 07, 2010 3:30 PM (1 item)				
hold		Fri 5/7/2010 3:30 PM	Fri 5/7/2010 7:00 PM	
Start: Saturday, May 08, 2010 7:00 PM (1 item)				
7:00 Restaurant Nora: 6 people		Sat 5/8/2010 7:00 PM	Sat 5/8/2010 10:00 PM	
Start: Monday, May 10, 2010 10:00 AM (1 item)				
S&E Roundtable w/Commissioner	3000/202-9...	Mon 5/10/2010 10:00 AM	Mon 5/10/2010 11:00 AM	
Start: Monday, May 10, 2010 11:00 AM (1 item)				
Doug and Lauren	3000	Mon 5/10/2010 11:00 AM	Mon 5/10/2010 11:15 AM	
Start: Monday, May 10, 2010 11:45 AM (1 item)				
Schedule Review	3000	Mon 5/10/2010 11:45 AM	Mon 5/10/2010 12:00 PM	
Start: Monday, May 10, 2010 3:00 PM (1 item)				
NRP Briefing w/Commissioner, Jonathan, Carol, Steve, Mark, Rose...	3000	Mon 5/10/2010 3:00 PM	Mon 5/10/2010 4:00 PM	
Start: Monday, May 10, 2010 4:00 PM (1 item)				
2012 Budget Development w/Commissioner, Jonathan, Carol, Ste...	3000	Mon 5/10/2010 4:00 PM	Mon 5/10/2010 5:00 PM	
Start: Monday, May 10, 2010 5:00 PM (1 item)				
Hold		Mon 5/10/2010 5:00 PM	Mon 5/10/2010 7:00 PM	
Start: Tuesday, May 11, 2010 9:30 AM (1 item)				
Meeting w/Commissioner and North Carolina Department of Reve...	3000	Tue 5/11/2010 9:30 AM	Tue 5/11/2010 10:00 AM	
Start: Tuesday, May 11, 2010 11:30 AM (1 item)				
Prep for Policy Meeting	Secretary's ...	Tue 5/11/2010 11:30 AM	Tue 5/11/2010 11:45 AM	
Start: Tuesday, May 11, 2010 12:00 PM (1 item)				
Brown Bag Lunch w/Commissioner	Room 3000...	Tue 5/11/2010 12:00 PM	Tue 5/11/2010 1:00 PM	
Start: Tuesday, May 11, 2010 1:15 PM (1 item)				
CI Transport		Tue 5/11/2010 1:15 PM	Tue 5/11/2010 1:30 PM	
Start: Tuesday, May 11, 2010 1:30 PM (1 item)				
Fourth International Charity Regulators Conference	Mint Buildin...	Tue 5/11/2010 1:30 PM	Tue 5/11/2010 2:00 PM	
Start: Tuesday, May 11, 2010 2:30 PM (1 item)				
Prep for Leaders Magazine Interview	3000	Tue 5/11/2010 2:30 PM	Tue 5/11/2010 3:00 PM	
Start: Tuesday, May 11, 2010 5:00 PM (1 item)				
Finalize SF 278		Tue 5/11/2010 5:00 PM	Tue 5/11/2010 6:00 PM	
Start: Wednesday, May 12, 2010 10:00 AM (1 item)				
Leaders Magazine Interview	3000	Wed 5/12/2010 10:00 AM	Wed 5/12/2010 11:00 AM	
Start: Wednesday, May 12, 2010 11:15 AM (1 item)				
Commissioner, Mark Kaizen & Kirsten Witter	3000	Wed 5/12/2010 11:15 AM	Wed 5/12/2010 11:30 AM	
Start: Wednesday, May 12, 2010 11:45 AM (1 item)				
CI Transport		Wed 5/12/2010 11:45 AM	Wed 5/12/2010 12:00 PM	
Start: Wednesday, May 12, 2010 12:00 PM (1 item)				
Lunch w/Chuck Bowsher, Buck Chapoton & Charles Rossotti	Metropolita...	Wed 5/12/2010 12:00 PM	Wed 5/12/2010 1:30 PM	
Start: Wednesday, May 12, 2010 2:30 PM (1 item)				
Leave for Physical		Wed 5/12/2010 2:30 PM	Wed 5/12/2010 3:00 PM	
Start: Wednesday, May 12, 2010 3:00 PM (1 item)				

SFC 000514

Subject	Location	Start	End	RC
Meeting w/Commissioner, Bill, Frank, Carol	3000	Mon 7/19/2010 2:45 PM	Mon 7/19/2010 3:00 PM	
Start: Monday, July 19, 2010 3:00 PM (1 item)				
join miller for gulf call		Mon 7/19/2010 3:00 PM	Mon 7/19/2010 3:30 PM	
Start: Tuesday, July 20, 2010 8:45 AM (1 item)				
Oversight Board Conference Call w/Commissioner	3000/7-2255	Tue 7/20/2010 8:45 AM	Tue 7/20/2010 9:15 AM	
Start: Tuesday, July 20, 2010 11:00 AM (1 item)				
Commissioner and Steve	3000	Tue 7/20/2010 11:00 AM	Tue 7/20/2010 11:30 AM	
Start: Tuesday, July 20, 2010 12:30 PM (1 item)				
UTP w/Commissioner, Jonathan, Steve, Ron, Heather, Bill, Frank	3000	Tue 7/20/2010 12:30 PM	Tue 7/20/2010 2:00 PM	
Start: Tuesday, July 20, 2010 2:00 PM (1 item)				
NY Times Interview w/Frank	Phone Call	Tue 7/20/2010 2:00 PM	Tue 7/20/2010 2:30 PM	
Start: Tuesday, July 20, 2010 3:30 PM (1 item)				
Hill Messaging for International Reorg w/Commissioner, Jonathan,...	3000	Tue 7/20/2010 3:30 PM	Tue 7/20/2010 3:45 PM	
Start: Wednesday, July 21, 2010 12:00 AM (1 item)				
W&I Leadership Conference		Wed 7/21/2010 12:00 AM	Thu 7/22/2010 12:00 AM	
Start: Wednesday, July 21, 2010 1:00 PM (1 item)				
W&I Leadership Conference	Georgia Hot...	Wed 7/21/2010 1:00 PM	Wed 7/21/2010 2:00 PM	
Start: Thursday, July 22, 2010 9:30 AM (1 item)				
Prep for BPD Budget Meeting w/Commissioner, Mark and Jonathan	3000	Thu 7/22/2010 9:30 AM	Thu 7/22/2010 9:45 AM	
Start: Thursday, July 22, 2010 10:30 AM (1 item)				
CI Transport		Thu 7/22/2010 10:30 AM	Thu 7/22/2010 10:45 AM	
Start: Thursday, July 22, 2010 10:45 AM (1 item)				
White House Bill Signing	State Dining...	Thu 7/22/2010 10:45 AM	Thu 7/22/2010 11:45 AM	
Start: Thursday, July 22, 2010 1:00 PM (1 item)				
Budget w/Commissioner, Jonathan, Carol, Mark, Nikole, Alison, St,...	3000	Thu 7/22/2010 1:00 PM	Thu 7/22/2010 1:45 PM	
Start: Thursday, July 22, 2010 1:45 PM (1 item)				
CI Transport		Thu 7/22/2010 1:45 PM	Thu 7/22/2010 2:00 PM	
Start: Friday, July 23, 2010 12:00 AM (1 item)				
Steve - Leave		Fri 7/23/2010 12:00 AM	Sat 7/24/2010 12:00 AM	
Start: Monday, July 26, 2010 9:30 AM (1 item)				
Prep for Press Call w/Frank	3000	Mon 7/26/2010 9:30 AM	Mon 7/26/2010 10:00 AM	
Start: Monday, July 26, 2010 10:00 AM (1 item)				
990 Press Call w/Frank	3000	Mon 7/26/2010 10:00 AM	Mon 7/26/2010 10:30 AM	
Start: Monday, July 26, 2010 11:00 AM (1 item)				
ITIN/CAA and Field Assistance/Office Locations w/Commissioner, ...	3000/Rick t...	Mon 7/26/2010 11:00 AM	Mon 7/26/2010 12:00 PM	
Start: Monday, July 26, 2010 1:00 PM (1 item)				
Biweekly Security Follow Up w/Commissioner, Jonathan/Carol, Ma...	3000	Mon 7/26/2010 1:00 PM	Mon 7/26/2010 2:00 PM	
Start: Monday, July 26, 2010 2:00 PM (1 item)				
LBI w/Commissioner, Steve, Heather	3000	Mon 7/26/2010 2:00 PM	Mon 7/26/2010 2:30 PM	
Start: Monday, July 26, 2010 2:30 PM (1 item)				
Budget Discussion w/Commissioner, Jonathan/Carol, Steve, Nikole...	3000	Mon 7/26/2010 2:30 PM	Mon 7/26/2010 3:00 PM	
Start: Monday, July 26, 2010 4:00 PM (1 item)				
Call w/Tony Miller	205-3530	Mon 7/26/2010 4:00 PM	Mon 7/26/2010 4:15 PM	
Start: Tuesday, July 27, 2010 9:00 AM (1 item)				
Hold		Tue 7/27/2010 9:00 AM	Tue 7/27/2010 10:00 AM	
Start: Tuesday, July 27, 2010 10:15 AM (1 item)				
CI Transport		Tue 7/27/2010 10:15 AM	Tue 7/27/2010 10:30 AM	
Start: Tuesday, July 27, 2010 1:00 PM (1 item)				
Lunch w/Rich Brueckner	Central	Tue 7/27/2010 1:00 PM	Tue 7/27/2010 2:15 PM	
Start: Tuesday, July 27, 2010 2:30 PM (1 item)				
APA Call with Heather Maloy	She will call	Tue 7/27/2010 2:30 PM	Tue 7/27/2010 2:45 PM	
Start: Tuesday, July 27, 2010 3:00 PM (1 item)				
Update on Whistleblower Progarm w/Commissioner, Jonathan/Car...	3000	Tue 7/27/2010 3:00 PM	Tue 7/27/2010 3:30 PM	
Start: Tuesday, July 27, 2010 3:30 PM (1 item)				

SFC 000515

Subject	Location	Start	End	RC
CADE 2 Cycle Time Decision w/Commissioner, Jonathan, Steve, M...	3000	Mon 9/27/2010 3:00 PM	Mon 9/27/2010 3:45 PM	
Start: Tuesday, September 28, 2010 10:00 AM (1 item)				
Tax Division Meeting	Great Hall a...	Tue 9/28/2010 10:00 AM	Tue 9/28/2010 11:00 AM	
Start: Tuesday, September 28, 2010 11:30 AM (1 item)				
Scheduling Meeting w/Commissioner, Jonathan, Carol, Frank, Cor...	3000	Tue 9/28/2010 11:30 AM	Tue 9/28/2010 12:00 PM	
Start: Tuesday, September 28, 2010 1:00 PM (1 item)				
Fred Goldberg	3000	Tue 9/28/2010 1:00 PM	Tue 9/28/2010 1:45 PM	
Start: Tuesday, September 28, 2010 3:30 PM (1 item)				
IRS/GAO Meeting w/Commissioner, Jonathan/Carol, Steve, Mark, ...	3000	Tue 9/28/2010 3:30 PM	Tue 9/28/2010 4:30 PM	
Start: Tuesday, September 28, 2010 4:30 PM (1 item)				
Prep for Principals Meeting w/Commissioner, Jonathan, Cathy, Beth	3000	Tue 9/28/2010 4:30 PM	Tue 9/28/2010 5:15 PM	
Start: Tuesday, September 28, 2010 5:15 PM (1 item)				
Updated: Budget Debrief w/Commissioner, Jonathan Davis, Mark ...	Room 3000	Tue 9/28/2010 5:15 PM	Tue 9/28/2010 5:45 PM	
Start: Tuesday, September 28, 2010 6:30 PM (1 item)				
Kids School Event		Tue 9/28/2010 6:30 PM	Tue 9/28/2010 7:30 PM	
Start: Wednesday, September 29, 2010 10:00 AM (1 item)				
Monthly International Update w/Commissioner, Jonathan, Carol, S...	3000	Wed 9/29/2010 10:00 AM	Wed 9/29/2010 11:00 AM	
Start: Wednesday, September 29, 2010 11:00 AM (1 item)				
Lauren to call		Wed 9/29/2010 11:00 AM	Wed 9/29/2010 11:15 AM	
Start: Wednesday, September 29, 2010 11:30 AM (1 item)				
OMB Budget Hearing Prep w/Commisioner, Jonathan, Carol, Stev...	3000	Wed 9/29/2010 11:30 AM	Wed 9/29/2010 12:30 PM	
Start: Wednesday, September 29, 2010 12:30 PM (1 item)				
Call w/Senator Warner		Wed 9/29/2010 12:30 PM	Wed 9/29/2010 12:45 PM	
Start: Wednesday, September 29, 2010 1:00 PM (1 item)				
Health Care Prep Commissioner & Jonathan	3000	Wed 9/29/2010 1:00 PM	Wed 9/29/2010 1:30 PM	
Start: Wednesday, September 29, 2010 1:30 PM (1 item)				
Call w/Michael Mundaca	Corina to call	Wed 9/29/2010 1:30 PM	Wed 9/29/2010 1:45 PM	
Start: Wednesday, September 29, 2010 3:00 PM (1 item)				
Hold for Paul Cherecwich		Wed 9/29/2010 3:00 PM	Wed 9/29/2010 4:00 PM	
Start: Wednesday, September 29, 2010 4:30 PM (1 item)				
CI Transport		Wed 9/29/2010 4:30 PM	Wed 9/29/2010 4:45 PM	
Start: Wednesday, September 29, 2010 4:45 PM (1 item)				
Principals Meeting	Roosevelt R...	Wed 9/29/2010 4:45 PM	Wed 9/29/2010 5:45 PM	
Start: Thursday, September 30, 2010 9:45 AM (1 item)				
CI Transport		Thu 9/30/2010 9:45 AM	Thu 9/30/2010 10:00 AM	
Start: Thursday, September 30, 2010 10:00 AM (1 item)				
IRS-2012 Budget Hearing w/OMB	NEOB 10103	Thu 9/30/2010 10:00 AM	Thu 9/30/2010 12:00 PM	
Start: Thursday, September 30, 2010 1:00 PM (1 item)				
Commissioner and Dave Williams	3000	Thu 9/30/2010 1:00 PM	Thu 9/30/2010 1:15 PM	
Start: Thursday, September 30, 2010 1:30 PM (1 item)				
Meeting w/Commissioner, Carol and Paul Saltzman, David Wagner...	3000	Thu 9/30/2010 1:30 PM	Thu 9/30/2010 2:00 PM	
Start: Thursday, September 30, 2010 2:00 PM (1 item)				
Collection Briefing w/Commissioner, Jonathan/Carol, Steve, Nikole...	Conference ...	Thu 9/30/2010 2:00 PM	Thu 9/30/2010 4:00 PM	
Start: Thursday, September 30, 2010 4:00 PM (1 item)				
Filing Season Readiness w/Commissioner, Jonathan, Carol, Steve, ...	3000/202-9...	Thu 9/30/2010 4:00 PM	Thu 9/30/2010 5:00 PM	
Start: Friday, October 01, 2010 11:15 AM (1 item)				
Sartaj Alag	3000	Fri 10/1/2010 11:15 AM	Fri 10/1/2010 12:00 PM	
Start: Friday, October 01, 2010 12:45 PM (1 item)				
CI Transport		Fri 10/1/2010 12:45 PM	Fri 10/1/2010 1:00 PM	
Start: Friday, October 01, 2010 1:00 PM (1 item)				
Lunch w/Nancy Ann DeParle	White Hous...	Fri 10/1/2010 1:00 PM	Fri 10/1/2010 2:00 PM	
Start: Friday, October 01, 2010 2:15 PM (1 item)				
Dean Silverman		Fri 10/1/2010 2:15 PM	Fri 10/1/2010 3:00 PM	
Start: Friday, October 01, 2010 3:15 PM (1 item)				

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SFC 000516

Subject	Location	Start	End	RC
Start: Friday, January 21, 2011 3:00 PM (1 item)				
2011 Press Club speech w/Commissioner, Jonathan, Carol, Frank, ...	3000	Fri 1/21/2011 3:00 PM	Fri 1/21/2011 4:00 PM	
Start: Friday, January 21, 2011 4:00 PM (1 item)				
Customer Satisfaction w/Commissioner, Jonathan, Rosemary and ...	3000/7-225...	Fri 1/21/2011 4:00 PM	Fri 1/21/2011 4:30 PM	
Start: Monday, January 24, 2011 9:00 AM (1 item)				
Hold		Mon 1/24/2011 9:00 AM	Mon 1/24/2011 10:00 AM	
Start: Monday, January 24, 2011 10:30 AM (1 item)				
Prep for Journal of Financial Planning Interview w/Commissioner, ...	3000	Mon 1/24/2011 10:30 AM	Mon 1/24/2011 11:00 AM	
Start: Monday, January 24, 2011 11:00 AM (1 item)				
LB&I Monthly Meeting w/Commissioner, Jonathan, Steve, Heather...	3000	Mon 1/24/2011 11:00 AM	Mon 1/24/2011 12:00 PM	
Start: Monday, January 24, 2011 2:00 PM (1 item)				
Prep for Brad Sherman Call w/Commissioner, Jonathan, Steve, Flo...	3000	Mon 1/24/2011 2:00 PM	Mon 1/24/2011 2:30 PM	
Start: Monday, January 24, 2011 3:00 PM (1 item)				
Bimonthly Technology Strategy Meeting w/Commissioner, Jonatha...	3000	Mon 1/24/2011 3:00 PM	Mon 1/24/2011 4:00 PM	
Start: Tuesday, January 25, 2011 10:30 AM (1 item)				
Journal of Financial Planning Interview (Prep time 10:30-11) w/Co...	3000	Tue 1/25/2011 10:30 AM	Tue 1/25/2011 11:45 AM	
Start: Tuesday, January 25, 2011 12:30 PM (1 item)				
Nikole: 12:45		Tue 1/25/2011 12:30 PM	Tue 1/25/2011 1:00 PM	
Start: Tuesday, January 25, 2011 1:30 PM (1 item)				
Call w/Brad Sherman		Tue 1/25/2011 1:30 PM	Tue 1/25/2011 1:45 PM	
Start: Tuesday, January 25, 2011 3:30 PM (1 item)				
Hold for Ben tkd Graduation		Tue 1/25/2011 3:30 PM	Tue 1/25/2011 5:30 PM	
Start: Wednesday, January 26, 2011 9:00 AM (1 item)				
Hold		Wed 1/26/2011 9:00 AM	Wed 1/26/2011 10:00 AM	
Start: Wednesday, January 26, 2011 10:00 AM (1 item)				
Rajive Mathur		Wed 1/26/2011 10:00 AM	Wed 1/26/2011 10:30 AM	
Start: Wednesday, January 26, 2011 11:15 AM (1 item)				
Peggy Bogadi		Wed 1/26/2011 11:15 AM	Wed 1/26/2011 11:30 AM	
Start: Wednesday, January 26, 2011 11:30 AM (1 item)				
Fresh Start Initiative w/Commissioner, Jonathan, Steve, Beth, Nik...	3000	Wed 1/26/2011 11:30 AM	Wed 1/26/2011 12:30 PM	
Start: Wednesday, January 26, 2011 12:30 PM (1 item)				
Tax Time Accounts w/Commissioner Shulman, Dick Gregg, Josh ...	Room 3000 ...	Wed 1/26/2011 12:30 PM	Wed 1/26/2011 1:00 PM	
Start: Wednesday, January 26, 2011 1:30 PM (1 item)				
IRSAC/IRPAC Welcome	G-018 IR	Wed 1/26/2011 1:30 PM	Wed 1/26/2011 2:00 PM	
Start: Wednesday, January 26, 2011 2:30 PM (1 item)				
Build America Bonds w/Commissioner, Jonathan/Carol, Steve, Nik...	3000	Wed 1/26/2011 2:30 PM	Wed 1/26/2011 3:00 PM	
Start: Wednesday, January 26, 2011 3:00 PM (1 item)				
EFDS Update w/Commissioner, Jonathan, Beth, Steve,Terry, Julie,...	3000/202-9...	Wed 1/26/2011 3:00 PM	Wed 1/26/2011 3:30 PM	
Start: Thursday, January 27, 2011 12:00 PM (1 item)				
Folllow up w/Budget Team w/Commissioner, Jonathan, Beth, Stev...	3000	Thu 1/27/2011 12:00 PM	Thu 1/27/2011 12:30 PM	
Start: Thursday, January 27, 2011 1:00 PM (1 item)				
FATCA Pre-meeting w/Commissioner, Jonathan, Steve Miller, Bill, ...	3000	Thu 1/27/2011 1:00 PM	Thu 1/27/2011 2:00 PM	
Start: Thursday, January 27, 2011 2:30 PM (1 item)				
Catherine Yamamoto and Adam Falk, Williams College	3000	Thu 1/27/2011 2:30 PM	Thu 1/27/2011 3:30 PM	
Start: Thursday, January 27, 2011 3:45 PM (1 item)				
CI Transport w/Steve		Thu 1/27/2011 3:45 PM	Thu 1/27/2011 4:00 PM	
Start: Thursday, January 27, 2011 4:00 PM (1 item)				
EITC Briefing for Jeff Zients, Danny Werfel, Alex Mas and Jack Sm...	EEOB 216	Thu 1/27/2011 4:00 PM	Thu 1/27/2011 4:45 PM	
Start: Friday, January 28, 2011 12:00 AM (2 items)				
Corina - Leave		Fri 1/28/2011 12:00 AM	Sat 1/29/2011 12:00 AM	
EITC Day		Fri 1/28/2011 12:00 AM	Sat 1/29/2011 12:00 AM	
Start: Friday, January 28, 2011 9:00 AM (1 item)				
Kids School event		Fri 1/28/2011 9:00 AM	Fri 1/28/2011 11:30 AM	
Start: Friday, January 28, 2011 2:00 PM (1 item)				

SFC 000517

Subject	Location	Start	End	RC
CI Transport		Thu 2/3/2011 4:00 PM	Thu 2/3/2011 4:15 PM	
Start: Thursday, February 03, 2011 4:15 PM (1 item)				
Meeting w/Austan Goolsbee	Room 484 E...	Thu 2/3/2011 4:15 PM	Thu 2/3/2011 4:45 PM	
Start: Thursday, February 03, 2011 5:15 PM (1 item)				
VDP Meeting	3000/ 202-...	Thu 2/3/2011 5:15 PM	Thu 2/3/2011 6:15 PM	
Start: Friday, February 04, 2011 9:00 AM (1 item)				
Hold for Kids School		Fri 2/4/2011 9:00 AM	Fri 2/4/2011 10:30 AM	
Start: Friday, February 04, 2011 10:30 AM (1 item)				
Fresh Start Initiative w/Commissioner, Jonathan, Steve, Beth, Nik...	3313/20292...	Fri 2/4/2011 10:30 AM	Fri 2/4/2011 11:30 AM	
Start: Friday, February 04, 2011 11:30 AM (1 item)				
Prep for Baucus/Camp meetings w/Commissioner, Jonathan, Fran...	3000	Fri 2/4/2011 11:30 AM	Fri 2/4/2011 12:30 PM	
Start: Friday, February 04, 2011 12:30 PM (1 item)				
CI Transport		Fri 2/4/2011 12:30 PM	Fri 2/4/2011 12:30 PM	
Start: Friday, February 04, 2011 12:45 PM (1 item)				
Lunch w/Jeff Trinca	Central	Fri 2/4/2011 12:45 PM	Fri 2/4/2011 2:15 PM	
Start: Friday, February 04, 2011 2:30 PM (1 item)				
Call w/Johnnie Walters	864/246-6829	Fri 2/4/2011 2:30 PM	Fri 2/4/2011 3:00 PM	
Start: Friday, February 04, 2011 3:30 PM (1 item)				
Schedule Review w/Commissioner, Jonathan, Carol, Frank (by Pho...	3000	Fri 2/4/2011 3:30 PM	Fri 2/4/2011 3:45 PM	
Start: Friday, February 04, 2011 4:00 PM (1 item)				
Commissioner and Bill Wilkins	3000	Fri 2/4/2011 4:00 PM	Fri 2/4/2011 4:30 PM	
Start: Friday, February 04, 2011 4:30 PM (1 item)				
Hold		Fri 2/4/2011 4:30 PM	Fri 2/4/2011 6:00 PM	
Start: Monday, February 07, 2011 2:00 PM (1 item)				
Prep for Town Hall Meetings w/Commissioner, Steve, Beth and Fr...	3000	Mon 2/7/2011 2:00 PM	Mon 2/7/2011 2:30 PM	
Start: Monday, February 07, 2011 2:30 PM (1 item)				
SES Retention Incentives w/Commissioner, Beth and Steve	3000	Mon 2/7/2011 2:30 PM	Mon 2/7/2011 3:00 PM	
Start: Monday, February 07, 2011 3:15 PM (1 item)				
Colleen will call		Mon 2/7/2011 3:15 PM	Mon 2/7/2011 3:15 PM	
Start: Monday, February 07, 2011 5:00 PM (1 item)				
Commissioner and Jorge	3000	Mon 2/7/2011 5:00 PM	Mon 2/7/2011 5:30 PM	
Start: Monday, February 07, 2011 5:45 PM (1 item)				
Beth		Mon 2/7/2011 5:45 PM	Mon 2/7/2011 6:00 PM	
Start: Tuesday, February 08, 2011 10:00 AM (1 item)				
Main IR Town Hall	Auditorium	Tue 2/8/2011 10:00 AM	Tue 2/8/2011 11:30 AM	
Start: Tuesday, February 08, 2011 11:45 AM (1 item)				
VDP 12-12:30 Prep and 12:30 Interview via Conf Call		Tue 2/8/2011 11:45 AM	Tue 2/8/2011 1:00 PM	
Start: Tuesday, February 08, 2011 1:45 PM (1 item)				
Employee Survey w/Commissioner, Steve, Beth, Jim	3000	Tue 2/8/2011 1:45 PM	Tue 2/8/2011 2:00 PM	
Start: Tuesday, February 08, 2011 2:15 PM (1 item)				
CI Transport		Tue 2/8/2011 2:15 PM	Tue 2/8/2011 2:30 PM	
Start: Tuesday, February 08, 2011 2:30 PM (1 item)				
Courtesy Meeting w/Congressman Mario Diaz-Balart	436 Cannon...	Tue 2/8/2011 2:30 PM	Tue 2/8/2011 3:00 PM	
Start: Tuesday, February 08, 2011 3:30 PM (1 item)				
Hiring w/Commissioner, Steve and Beth	3000	Tue 2/8/2011 3:30 PM	Tue 2/8/2011 4:00 PM	
Start: Tuesday, February 08, 2011 4:00 PM (1 item)				
Commissioner's award w/Commissioner and Jonathan	3000	Tue 2/8/2011 4:00 PM	Tue 2/8/2011 4:10 PM	
Start: Wednesday, February 09, 2011 10:00 AM (1 item)				
CI Transport w/Beth and Steve		Wed 2/9/2011 10:00 AM	Wed 2/9/2011 10:30 AM	
Start: Wednesday, February 09, 2011 10:30 AM (1 item)				
New Carrollton Town Hall	NCFB Audit...	Wed 2/9/2011 10:30 AM	Wed 2/9/2011 12:00 PM	
Start: Wednesday, February 09, 2011 12:50 PM (1 item)				
CI Transport		Wed 2/9/2011 12:50 PM	Wed 2/9/2011 1:00 PM	
Start: Wednesday, February 09, 2011 1:00 PM (1 item)				

IRS0000385603

Melcher Glenn J

From: Shulman Doug
Sent: Thursday, June 24, 2010 4:58 AM
To: 'Mark.Patterson@do.treas.gov'
Cc: 'Michael.Mundaca@do.treas.gov'

Mark,

I'm boarding a flight now to Washington. I land in the afternoon, and go strait to the White House for a health care mtg to talk about exchanges. I don't plan to raise money issues, but since Sebelius will likely be there, I wanted to know if there have been any subsequent developments to your Friday mtg.

Thx,
Doug

RPTS JOHNSON

DCMN HOFSTAD

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: DON ROBERT SPELLMANN

Wednesday, July 10, 2013

Washington, D.C.

The interview in the above matter was held in Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

SFC [redacted]

[redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

For the INTERNAL REVENUE SERVICE:

ALAN S. KLINE, COUNSEL

file you have, it's hard for us to conclude whether certain things are political intervention or not, and it's hard for us to conclude what they are primarily doing. And since both organizations appear to be engaging in some political intervention, our advice was to develop the election year, 2010.

Q Let me --

A And then what we did, then Amy and David each went through the respective application files and just identified various things, specific items through the files that caught our attention.

Q Were these applications for (c)(3) or for (c)(4) status?

A One was for 501(c)(3), and one was for 501(c)(4). I think League of American Voters was a (c)(3) application and Albuquerque was a (c)(4), I believe. I am not positive of that, but I believe that's what they were.

Q So, in one case, political intervention would have been outright prohibited --

A That's correct.

Q -- and, in the other case, it's an issue of how much.

A That's exactly right.

Q All right. Let me, actually, pause at the -- were you going to --

A What I was going to say was, the file was difficult for us to draw conclusions about, because, for example, the samples of the publications and guides and other things the organizations were putting out, there was no information about when they were sent out --

Q Sure.

A -- or to whom they were sent. And the factors in the published guidance on whether something is political intervention or lobbying or something else, among the factors that are considered are, you know, the targeted audience, when they are distributed, do they coincide with congressional consideration of legislation, are they issued outside of a congressional session, things like that. That information was not in the file.

Q Okay.

A So we could not -- like, in the case of League of American Voters, it was like, this could be political intervention, we can't tell, you might need to look further.

Q Let me pause at the August 2011 and see if there are any other questions in terms of kind of background, in terms of for that point.

BY SFC [redacted]:

Q You said the files. My impression is the files didn't have enough information in them for you to make a determination, right?

A It was sort of --

Q Or were you inclined not to make a determination because it wasn't your job?

A Well, we don't make the determination. They just simply wanted our views on whether or not these organizations qualified. And our short answer was, it is difficult to tell with what we have here, but since both organizations appear -- based on what we have in the

record, there seems to be indication that they may engage in political intervention, you really ought to look the 2010 year, because that's a campaign year, to see what they actually did.

Now, remember, 2010 was already passed, and it would be fairly customary on applications to be sitting around. You need to look at that other year, because you are going to be ruling for all periods.

I mean, the files had all kinds of information. There was plenty of information that was not useful to us at all. But I think that the gist of the message was, you really ought to look at 2010 if you have organizations that are going to be engaged in political intervention to really get a sense of what they are primarily doing. And that is what we would recommend before you make the determination on the two cases.

Q And who did you actually give the files back to? Lois Lerner or Holly Paz or --

A I didn't do that. The docket attorneys would have returned the files. Customarily, they would go back to the group manager and the tax law specialist.

Q And who was that at this time?

A I don't know. I don't know who was assigned the cases.

Q Okay.

A I simply don't remember. I think Carter Hull was one of them, and I don't remember if he was a group manager or a TLS.

There were a lot of people in that meeting. And I don't -- other people have notes of the meeting. I just don't remember who all was

there.

Q So you are really sort of --

A The highest person at that level, I mean, just to -- Mike Seto, who was the Director of EO Technical, was the highest-level official at that meeting. And then it was generally group managers and the assigned TLSes.

Q So your office gives legal advice, pretty high-level legal advice, because there are other offices within the IRS that deal with EO, that deal with legal issues, but you guys are sort of the last stop before you go to Treasury or something.

You said you reported to Treasury, which I found interesting.

A Well, if you look at the organizational chart, the Office of Chief Counsel comes under the general counsel of the Treasury Department, so that is the chain of reporting. So Chief Counsel reports up to the general counsel. In other words, the Commissioner does not give -- the Commissioner of the IRS, you know, doesn't hire the Chief Counsel or anybody under Chief Counsel who is not involved in any of those sorts of things. They are just different management trees.

But I am not quite sure what you mean by "high-level legal advice."

Q Well, EO Technical gives legal advice to the Determinations Unit. Isn't that true?

A They give technical advice.

Q Yeah.

A I cannot tell you that -- I don't believe those positions,

the description of those positions or the requirements of those positions are that they be attorneys. There are non-attorneys in Rulings and Agreements. There are non-attorneys in EO Technical. Some are lawyers, some are not. But the legal advice would come from Chief Counsel.

Q Okay. So you're all attorneys.

A We are all attorneys.

Q Pure legal advice.

A That is correct.

Q And you're not really operational, you're not making judgments on any applications.

A No, we do not issue the determinations. Our advice is just that.

Q Taken by the Determinations Unit.

A They take it or they leave it. Of any stripe. We want information; sorry, you can't have more information.

And I guess just to sort of close the gap with these two cases, we had no further communication, to my knowledge, of what the office did. We don't know if they developed them further. We don't know if they looked at the 2010 election year.

We offered to review their development questions, that if you further develop the cases, we are happy to work with you and review the development questions you see. They did not send us a draft of any development questions.

I don't know how they ruled on the cases. I have no idea. I do

not know what happened to them. And that's not necessarily unusual. You know, they ask for our advice, we give them our advice, and they do whatever they do with it.

But there's no -- the only reporting of a general matter of Counsel's review -- and it's generally at the branch level -- I don't know if I necessarily made that clear, but we have an Associate Chief Counsel and Deputy Associate Chief Counsel -- you know, that's Victoria Judson and Janine Cook. And then under the associate and deputy, there are various branches within Tax-Exempt and Government Entities. I mean, there's Exempt Organizations branch, there's Health and Welfare, there's, you know, Qualified Plans. There are various, you know, subject matters.

So Exempt Organizations and Counsel TEGE would be the office to review the applications. And, generally, the advice and the decisions were made at the branch level. Generally, there may be some notification to Janine Cook, her deputy, that, you know, we had this application, this is the advice we gave, here's maybe a snapshot. Not always. Sometimes we do, sometimes we don't. And she may or may not have views on it.

We did not -- I don't recall discussing these two cases with her. The (c)(3) case, we probably generally would. An adverse (c)(3), we probably generally would talk to her about it.

So the legal advice, if you will, came from the branch. And there was -- I think at most we told Janine, we met with them, this is what we -- actually, I take that back. There is an email where we reported

to Vicki and Janine that we reviewed these two cases and that we couldn't tell definitively what they were, whether they qualified, and we'd advised developing the 2010 year.

SFC [redacted]. Thanks, SFC [redacted].

Mr. Spellmann. But that was our last contact. We knew nothing more about those cases.

BY SFC [redacted]:

Q The two cases?

A That's correct.

Q Okay.

A Now, we got some, we received some -- I mean, as I say, we get cases all the time.

Q Sure.

A But that was it for those two.

Q The meeting that was supposed to take place on August 4th ended up taking place on August 11, you said?

A I don't have any independent recollection of the August 4th meeting. It was on my calendar. I had written to Holly Paz and said, in light of our meeting with you and Lois and Nan, what do you want this meeting on July 4th to do? Because we thought the meeting was to report back to them on the two cases -- August 4th meeting. And she wrote back to me -- and I believe you guys have these emails.

Q I have it right here. Yeah.

A She wrote back to me and said what she thought the meeting would cover. And I think it was supposed to just be a general overview

of what we were doing.

Q I'll enter into the record Exhibit 1, which consists below of an August 2nd, 2011, email from Mr. Spellmann to Ms. Paz and then an August 3rd reply that CCes Mr. Lowe.

[Spellmann Exhibit No. 1
was marked for identification.]

BY SFC [redacted]:

Q Just, you know, does this help in recollection? And I will give everybody a minute.

This is Bates stamp W&M000117 and 118.

The email describes the guests at the meeting as Mr. Lowe, Mr. Megosh, Mr. Kastenberg, Mr. Hull, Ms. Goehausen, Mr. Griffin, Mr. Marshall, Ms. Franklin, as well as Messrs. Seto, Fish, and Shoemaker. Were these the actual attendees at the August 11th meeting?

A I don't know.

Q Okay.

A I don't recall how many of them were there. Ken Griffin was not there.

Q Uh-huh.

A David and Amy were there. Carter was there. Hilary was there. I think almost -- I believe, and I just don't have any clear recollection, I think just about everyone on here was there except maybe David Fish.

Q Okay.

A And these were the attendees -- these were the people who were invited to the meeting. And these are the people who came on the 11th. I have no recollection of who was at the August 4th meeting.

Q Okay.

A I mean, I don't remember the content of the meeting. I think it was a short phone call, to be honest with you. I think we just had a short phone call that Holly led and probably went through what's outlined here. But I --

Q Who is Mr. Fish?

A He -- what was his role. I believe the section is called Guidance and Quality Assurance or something like that.

Q What would that --

A It's like EO Guidance and Quality Assurance. And it was kind of a funny title, but generally his group, I think, is involved with the guidance.

Q Okay.

A It's not unusual for David to be --

Q Sure.

A I mean, frankly, it's not unusual for a large cast to attend these meetings and to cross the various roles.

Q Uh-huh.

A And like I said, I don't remember -- Dave is one of the people I don't -- David Fish, I do not remember if he was there. I think all these other people were there. I know Mike Seto was there, and I know that Carter and Hilary -- yeah, I don't know. I expect that

Andy and Elizabeth and Justin were all there because they were their assigned cases, but I just don't remember.

Q You wrote here and you mentioned before that the advice was actually to develop election year 2010.

A Correct.

Q Tell us more about how that advice kind of came to be, who was the origin of that and why.

A I think I need you to be more specific. I mean, that was our recommendation, that was Counsel's recommendation, that there's not enough information -- there's indications in 2009 --

Q Uh-huh.

A -- of both social welfare purposes and political intervention purposes. And we think, under those circumstances, you ought to develop the election year to see if you are going to get the same breakdown of those type of activities.

Because, I mean, just as a for-instance, I mean, we have seen -- there's nothing new about advocacy-type organizations. I mean, just to give some ancient history, Chief Counsel was involved in a review of the exemption application of SFC [redacted]. And that was one of the earlier groups to be involved to both, you know, do some political intervention and do some lobbying. And they were nationwide; they were in each area of the country. And that, by the way, was an organization that Service ultimately granted exemption. But that was typical in the development of that case. And that was a case from, you know, early 2000, late '90s, early 2000s in the Service.

And it was typical to say, you know, look at the election year. Because, like, a group like that -- I don't mean to single out a particular group; it's just an illustration -- but in an election year, you would be doing voter guides, and in a nonelection year, you would be, you know, doing magazines and things on legislation before Congress. It was very, very typical.

So it's customary advice when there is an application by an organization that's doing a mixture of activities that further exempt purposes and activities that don't that you would have them, you know, look at a campaign year. Because it's very common that the breakdown of their operations would be different.

So that was the advice we conveyed with these two cases. It was basically, you really ought to look at 2010 so you know what you are granting exemption for. If you grant based on 2009, you're doing that without having collected the information for a year that is already completed.

Q And you write --

A Oh, and just one other point. It's also very common, if an application has been -- if there's any gap in time between the submission of the application and our review, to bring it up to date.

And so it's also very customary if they send something over and -- and, particularly, you know, keep in mind, at the application stages, organizations are often at their formative stages when they file. They were just formed. It's very typical for an application to say, we were formed on January 1, and here's our application in

February of that year, and here's what we propose to do. And there is nothing at all about what they've actually done, because they haven't actually done anything.

So it's fairly typical to go back and collect some information on what an organization has actually done.

Q Is that usually done via written questionnaires? Is that done via an online search? How would that usually take place?

A Well, Counsel doesn't do that.

Q Sure.

A So I can only tell you what I've seen in files. But development is done in writing. They will get a development letter with whatever the questions are and say, here are our questions; we received your application, here are our questions, please respond by a certain date.

I have seen cases, I think it's fairly common, particularly common now, where Rulings and Agreements will look at things like the organization's Web site. Whether the organization sent them the content or not, they will go off and look at their Web site. What we have advised over the years is any information that you collect, like from a Web site, you send it to the taxpayer and say, is this your Web site, and have them confirm that those are the contents.

But it's not uncommon for them to check a -- and the organizations are requested -- on the exemption application, it asks for their Web site. So it's common to go look at them. It's common for them to print them out. And Counsel always advised them, send them to the taxpayer

for comment and to confirm that that's their Web site.

Q You wrote in your email that this advice to factually develop election year 2010 was specific to these two (c)(4) cases. You had said earlier it was one (c)(4) and one (c)(3) case that --

A I believe that's right. I don't recall -- you know, I just don't remember. They said they were going to send over a (c)(3) and a (c)(4). And maybe League of American Voters is a (c)(3). But I just don't recall.

Q Okay.

A Now, let me just sort of be clear, though. In our meeting, we were speaking -- as I think I even indicated in the email, at the meeting, we were sort of speaking in sort of broad terms in general about these cases.

Q Right.

A Because, you know, we have had these broader-level discussions with Holly and Lois about, we've got all these cases. And I think as you see in the emails, and I mentioned to you before, we talked about a model development letter. You send everybody the same development letter.

Q Uh-huh.

A But what we were saying to this group, and one of the reasons we wanted to have the meeting, was, here are the type of facts you want to be sure to develop in your cases.

And so the advice on an election year would be sort of fairly typical of any organization. I mean, you know, if you have an

organization where there is some indication of political intervention, you ought to look at the election year.

Q Do you know if this advice up was applied to others or only to these two groups?

A I do not know if the advice was applied to those two organizations, and I do not know if it was followed in any others. I do not know what they did.

Q Okay.

A They did not report back to us. Exempt Organizations did not report back to Counsel on what they did with these two cases. I don't know if they further developed them. I don't know if they sent them back to Cincinnati. I don't know what they did with them.

Q Okay.

Do you have any knowledge of an IRS employee in EO Technical objecting to the idea of a model letter, a model development letter, an objection of the sort of, you know, these are not cookie-cutter cases and that a model letter wouldn't apply?

A And that's a lot of different --

Q To your recollection.

A Yeah, no, I understand. That's a lot of different things, because you've asked if someone objected and then you asked about some of the reasons they might object.

Q Uh-huh. Well, both.

A I can really only respond in general terms. We did -- Counsel recommended a model development letter at the meeting

Q What was the nature of their comments?

A Well, understand this was a 2-month process. And so they would have reviewed -- I mean principally the review was by Janine Cook. And Vicki would be shared drafts at various stages. I don't remember exactly the when or which ones. But there was a lot of back and forth. I mean do you want to know who was involved in preparing the guide sheet for Counsel? Do you want me to go into that?

Q Principally, I am just interested if there was anybody at or above Janine's level.

A Oh, sure, sure.

Q Like --

A Janine and Victoria -- Vicki occasionally, but no, she -- we had a number of discussions, particularly toward the end, about what the guide sheet should be and what the scope of it should be, and whether it was guidance or not and whether it departed from the published guidance or not.

Q Do you know if Mr. Wilkins ever provided any comments on the guidance before it was finalized?

A I did not receive any comments on the guide sheet itself either directly from him or that were described as him. What was described to me by Vicki and Janine is that he agreed with our recommendation that the guide sheet shouldn't depart from published guidance, and if it did depart from published guidance -- and this did not come directly from him, this is what TEGE counsel was saying -- is that it should be run by Treasury.

Q And what do you mean when you say run by Treasury?

A If we are going to be issuing something that is going to be guidance, we would share it with Treasury like we would any guidance, revenue ruling or regulation or anything else.

Q Okay.

A So and that was our advice to EO was if you are going to issue something that we cannot, you know, 100 percent trace to the existing guidance, you need to run it by Treasury. And it needs to go into the business plan and be done as published guidance.

SFC . When you say Treasury, do you mean the Office of Tax Policy at Treasury.

Mr. Spellmann. Office of Tax Policy, correct. That's correct. I mean specifically it would be Ruth Madrigal. She was the tax policy person that worked with EO. That would be the level at which we would communicate.

BY SFC :

Q Yeah. She was your contact over there at Treasury Office of Tax Policy, correct?

A Correct. I mean she was the Exempt Organizations person. I did not have any contact with Ruth about the guide sheet. To the extent there was any contact, it would have been by someone else.

BY SFC :

Q Did you feel that the draft, the first draft that you had seen of the guidance that was prepared by EO Technical, did you feel like that would have been new policy that would have had to go through

Treasury?

A I am sorry, it is two different questions. But my view was that the document that EO prepared, yes, went beyond the existing published guidance and had inaccuracies. Some things were inaccurate. Some things were not contained in the published guidance.

BY SFC [redacted]:

Q So to follow that up then, your view is it should have gone to Treasury's Office of Tax Policy?

A I concurred in that view. That was not -- that was not my call. I mean my job was does this thing depart? Yes, it does. And my bosses were the ones who said if they are going do something it needs to go through Treasury. And I certainly concurred with that.

Q So if you put your conclusion that it departed from established guidance together with your bosses' that anything that departed from established guidance should go to Treasury --

A If they were going to issue it and if they were going to provide it to agents, yes, it should go through Treasury.

Q And they did end up providing it to the Cincinnati group, as we've learned.

A That is contrary to what we were told. We were told that -- and I don't recall if this came from Holly or Lois -- but what I was told was that they had decided not to issue the guide sheet, but instead would do in-person training in Cincinnati. And my understanding is they sent a group of people from EO Washington, no one from Counsel went, a group of people from EO Washington went to

RPTS MCCONNELL

DCMN BURRELL

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: LUCINDA THOMAS

Thursday, July 25, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For MS. THOMAS:

BENJAMIN G. DUSING, Attorney at Law

Adams, Stepner, Woltermann & Dusing, PLLC

SFC [redacted]

Covington, KY 41012

that is I think that there are, there is, that issue with Congressional offices being involved or because of media issues, exempt organizations is an in the media a lot and I think that that causes issues for exempt organizations.

BY SFC [redacted]:

Q And you had gotten the first application from One Fund Boston, when was that, the first one came in?

A I don't know if it was like a few weeks earlier or if it was the end of April, 2013. I don't remember when this issue, the tragedy even happened.

SFC [redacted]. According to the web site, the tragedy happened on April 15, 2013.

Ms. Thomas. So we might have gotten the initial application late that month or the very beginning of May, the initial application.

Mr. Dusing. Let me clarify for my purposes. Sorry. Did you indicate that the request from D.C. to you to forward the application came to you prior to the formal application being on the system?

Ms. Thomas. Yes. Both times.

BY SFC [redacted]:

Q So you forwarded the first -- the first application also went to D.C. for them to work?

A Yes.

Q And then the second one also went to D.C.?

A Yes.

SFC [redacted]. Do you want to take a short break? How are you

guys going?

Mr. Dusing. I'm okay.

Ms. Thomas. I'm okay.

Mr. Dusing. We're cool. Thank you though, I appreciate that.

SFC [redacted]. Just let us know when you do.

BY SFC [redacted]:

Q On the email I was referencing there, after her question about Crossroads, Ms. Paz asked you what criteria are being used to label a case a Tea Party case, and we wanted to think about whether that criteria resulted in over-inclusions. What did you take that to mean, over-inclusions?

A What I believe that meant is that the Washington office believed that we had more applications in this bucket of cases than just Tea Party cases.

Q And it was too many cases?

A Right. And that is again I believed that we were putting all of the cases that had the advocacy political activities into this bucket and to me this meant that the Washington office thought we had too many, that it wasn't just Tea Party cases.

Q So is it your opinion that Ms. Paz, Washington only wanted Tea Party cases but not advocacy cases at large?

A I don't really know what they wanted in there.

Q Sure. But this email --

A If I read, when I read this email it sounded like they are thinking that maybe it shouldn't only be Tea Party cases. That is how

I read this email.

Q Let me ask you, June 2nd here, the first page, John Shafer emails you and he describes the criteria being used to identify cases as Tea Party cases. He includes things like issues include government spending, government debt, taxes, activities to make America a better place to live, et cetera. Is this the first you had heard of these --

A Yes.

Q Of these criteria?

A Yes.

Q And you informed Ms. Paz of these on June 2nd. And is this before or after the Lois Lerner briefing?

A This is before.

Q This is before?

A Yeah, I think that briefing with her didn't happen until the end of June 2011 if I remember correctly.

Q Were you in that briefing?

A I was on the phone.

SFC . SFC , could I ask a question on this?

BY SFC :

Q At this time you said this is the first time you were aware that the screeners were using this type of criteria for the cases?

A Yes.

Q Do you know for how long they had been using the criteria?

A I don't really know.

BY SFC :

Q Wasn't this on the BOLO list?

A The Tea Party cases were on the BOLO but it had a different description. I provided John Shafer with the description that was on the BOLO but I don't really know what they were looking at. Like I didn't know how they were deciding what cases --

Q When did you know it was on the BOLO list, the Tea Party?

A Tea Party, I'm thinking like probably around August of 2010.

Q And who put that designation on the BOLOs?

A I don't know, Liz Hofacre was coordinating these cases. She was the individual from Cincinnati who had been coordinating the cases with the Washington office.

Q Did Liz put it on the BOLO list?

A I don't know.

Q You don't know?

A I believe that she -- she was the coordinator so I don't know, I believe she would have put it on because, on the BOLO because she was coordinating and that was the first BOLO went out, BOLO spreadsheet went out in August, 2010 because it was just named BOLO in like the beginning of August or after. We had a CPE sessions for our revenue agents where this spreadsheet was introduced with different tabs and we did know --

BY SFC [redacted]:

Q And when was that?

A The different CPE, for the different, there were different CPEs because we had instructors who went to different cities and then

also in Cincinnati. Those CPE sessions were held in June and also July of 2010 and this Excel workbook was shared with the determination specialists at these CPE sessions. It had, the spreadsheet had been called a TAG spreadsheet, which TAG is touch and go, and it had been called this TAG spreadsheet, but all of these different tabs were not on the Excel workbook when it was called the TAG spreadsheet. Only a couple of tabs were on the Excel workbook. But when there were more tabs, it didn't seem to make sense to call it a TAG spreadsheet anymore because it was really more than just tags. So no one really knew what to call this Excel workbook so that our specialists would know what we were talking about.

So in this CPE session we were trying to get the determination specialists to be more engaged, and so one of the things when we introduced this Excel workbook and no one really could think of a name for calling it so everyone would know what we are talking about, we decided to have -- when we introduced this we said we will have a little contest to see if anyone can name it and we will give -- whoever came up with a name we would give them 59 minutes of administrative time.

So Liz Hofacre was actually the one who came up with a name and we gave her 59 minutes of admin. And she came up with "Be on the Look Out," and that is when we started calling it Be on the Look Out, and that was in August of 2010.

BY SFC [redacted]:

Q I did want to return just to the screening criteria for a moment.

ROO. Like an organization, I don't believe, would know that they are being audited because the ROO looked at something and they had a concern or whether it is just another case being audited.

BY SFC [redacted]:

Q So it sounds like you are saying unless the ROO contacts the taxpayer, basically a request for information question, then they won't find out that the ROO is looking at them?

A That is my understanding, but I don't work in EO Exam, but that is my understanding.

Q Where is the ROO located physically?

A Well, they are headquartered out of EO Exam, and EO Exam is headquartered out of Dallas, Texas. So there is a group, the groups, the ROO groups report to EO compliance area, and the EO compliance area manager is in Ogden, Utah. But there is a group, a ROO group in Dallas, Texas. There also is a ROO group in Atlanta, and there are a couple of ROO, I think two employees that work for the ROO that are physically in Cincinnati.

BY SFC [redacted]:

Q In this briefing, who led the briefing of Lois Lerner? Do you recall?

A I don't remember.

Q Can you describe for us what was this? I mean beyond the outline here, I mean as the briefing delved into the criteria used, what was the conversation?

A I remember that Lois Lerner expressed concern with the fact

that our BOLO referenced Tea Party cases and she indicated we needed to change the label from Tea Party cases as well as the description because outside, if somebody from outside of our operation looked at this, they would get the wrong impression that we were just picking on Tea Party cases when that is not what was happening. And so she indicated that we needed to change that label and the description and, if I remember correctly, that she was maybe a bit concerned that EO Technical needed to be helping us more with getting these cases, like getting more assistance with guidance, so that we could work these cases.

And she indicated that we were doing the right thing as far as grouping these like kinds of cases together, so we were handling it correctly but incorrect in how we were labeling these cases with specifically referencing Tea Party cases.

Q Her problem, Ms. Lerner's problem was with the labeling of the cases not how you were grouping them?

A She indicated --

Q Identifying them?

A Yes, because we typically like with credit counseling supporting organizations, we want to group like kinds of cases together so that we can work, make sure that they are being worked in a consistent manner and so she, if I recall correctly, she was saying we were doing the right thing in grouping these cases together, but someone externally might get the impression that we are just picking on just Tea Party cases because that is how it was labeled on this BOLO, and

that is not what was happening.

Q After the briefing, there were changes to the BOLO, is that right?

A Yes.

Q What were those changes?

A I got into, we have this BOLO spreadsheet on a shared drive, and I got into that shared drive myself and changed it, and I think that we changed the, I don't remember if it was political advocacy cases or what we called the label or just advocacy organizations, I'm not exactly sure what the label, but also the description was changed and indicated something about advocacy organizations or I don't remember if it said lobbying, I'm not exactly sure but it was changed, because I went into that shared drive myself and made those changes. Then I emailed Ron Bell, who was coordinating these cases, and he was also responsible for making changes on the BOLO. And I let him know that I made those changes so that he can send information out because his responsibility was to send a document out to all of our specialists to let them know that changes had been made. So I wanted to make sure that he knew that I actually made those changes so that he was using the most current document when he would send future updates.

And I also emailed, I believe, Bonnie Esrig and Steve Bowling and let them know that I made these changes as well.

Q Who all had access to the shared drive?

A All of the determinations specialists and managers have access to, there is a folder we have that is called Determinations

Q So you are saying that when there was no BOLO, you approved Tea Party as an emerging issue. And then when there was a BOLO and there had to be a list of emerging issues, the Tea Party name was put on the BOLO, is that what you are telling us?

SFC [redacted]. Can we have a moment here?

SFC [redacted]. Yeah.

[Discussion off the record.]

Ms. Thomas. Okay. You are indicating that I approved information to be on the BOLO, and I did not. I did not approve for this initial information to be on an Excel workbook. These Tea Party cases or advocacy cases were being held at the direction of our Washington office. There was, this Excel workbook that was issued or out for all of our determinations specialists started in May of 2002. It just evolved. There was an Excel workbook that was started back in like 2002, 2003, and that Excel workbook was a TAG spreadsheet that eventually became known as the BOLO. It is just more tabs were put on this Excel workbook.

BY SFC [redacted]:

Q I'm only interested in one thing, the Tea Party name. I thought I heard you say that you approved the Tea Party name as part of an emerging issue list?

A I did not.

Q Okay, so you are changing --

A I'm not changing anything. I did not approve -- what I had indicated is that at a certain point in time, the direction to our staff

was that if you had an emerging issue, the emerging issue needed to be elevated to me. That was after the fact, after Tea Party was already put on there. There have been no additional emerging issues put on the Emerging Issues tab.

The only two emerging issues that have ever been on the Excel workbook were 501(c)(2) organizations and Tea Party cases. These procedures were being developed for emerging issues. Certain things were working at the same time. There was an Excel workbook, there was no Emerging Issues tab when the Tea Party issues were initially identified.

Q Now I'm totally confused. Let's go back to the beginning. When did you first see the Tea Party name on the BOLO list?

A I believe it was August of 2010 when the Excel workbook became known as the BOLO spreadsheet.

Q But it was already on the BOLO list when you saw it?

A Yes.

Q So you didn't approve it going on the BOLO list?

A That is correct.

Q That is what I thought you originally said.

A No.

Q Okay, August of 2010 you saw it on the BOLO list but you didn't approve any action that meant that it went on the BOLO list or the Excel spread sheet?

A That's correct. And even recently I actually saw an email where this Excel workbook had been sent out in July of 2010. I was

like a news article, or it was in, I believe a news article, and Occupy was added to the watch list, and also the description was changed for the political advocacy cases because the group that was coordinating the political advocacy cases, they were getting bombarded with a bunch of cases that really were more lobbying types as a result of the change to the BOLO that took place in -- at the end of June of 2011 when I had sent the email saying I made this change, but that was a result of the conference call, the briefing that was held.

The description was way too broad, and the employees in all of our groups started sending all of these different types of cases to the group that was coordinating these cases, but they weren't political activity cases. They were more lobbying issues. And so because that group was getting bombarded with those cases, we were trying to, like, how can we change this wording to get them to understand this is not what we are looking to get in this group, and also at the time added Occupy on to the watch list. And that email, when that change was made, I sent an email to Holly Paz, and let her know that this change was made and asked her to let me know if she had any concerns regarding the language that was put on the BOLO.

Q What was the language as it pertained to the Tea Party?

A I don't -- I don't remember how it -- I don't think Tea Party was -- I don't know Tea Party. I don't think Tea Party was on there.

Q Well, let me reask. What were the changes made to the BOLO in addition to Occupy?

A I think it might have been -- I don't remember what was put

on there in June.

Q In January?

A In January 2011, I know the description was changed.

Q The change was in January 2012?

A Yes.

Q You just said that -- had you alerted Holly Paz about that change?

A Yes.

Q Okay.

A After the change was made and I sent the language to Holly and indicated in an email, this is the language that -- we changed the description in the BOLO to this. If you have any concerns, let me know.

Q Okay.

BY SFC [redacted]:

Q In June of 2011, you said the BOLO was changed at the direction of D.C.?

A Yes.

Q Who in D.C. directed you to change the BOLO then?

A In June of 2011?

Q Yes.

A Lois Lerner was on that -- in that -- it was in the briefing that took place.

Q Uh-huh.

A With Lois Lerner and Holly Paz, and Mike Seto was included, and I believe Judy Kindell was involved, and I believe Lois Lerner is

the person who expressed concern regarding the labeling of Tea Party cases in the description.

Q In the BOLO?

A Yes.

Q So Lois Lerner then directed you to change the BOLO in June of 2011, correct?

A That's correct. And it -- and as a result of that, caused confusion among the groups in Cincinnati and employees because they then started believing it included many, many more types of cases than just political advocacy-type cases.

Q Have you seen -- I don't have it with me, but there was an email where Holly Paz said no, this is actually a Republican group, not a Tea Party group. Kick it out?

A I remember the email you're talking about, but I don't remember the email saying kick it out. I don't remember -- I remember --

Q Saying this is over inclusive?

A Yeah, that was the email we had discussed earlier.

Q Okay, so on that it looks pretty clear that they are actually looking for just Tea Party organizations, right? Not even all conservative, or right-leaning, but in this case, Holly Paz is just looking at Tea Party, right?

A She indicated -- I recall in the email that was one of these exhibits, that we are looking at whether this is really over inclusive.

Q Yeah, and over inclusive in the sense that you are not

2011, and I changed that wording at the direction of the Washington office in that briefing that took place.

BY SFC [redacted]:

Q But that was more to change the label, but not to change the way you guys were doing business on these cases, right?

A Again, I believe that all along that we were including all cases with political activity. So why would I believe that something needed to be changed when I believed that we were treating all cases the same and putting them all in the bucket.

Q Did you think all Tea Party cases involved political activity?

A There was actually a case that had, from my understanding, there was a case that had Tea Party in the name and it was not a political case at all, that it was like Little Suzie's Tea Party, a little kids group.

Q But other than those that involved children's tea parties, all of the ones that are associated with the Tea Party movement, did you think they were all involving political activity?

A Yes, those, as well as all cases that involved any political activity.

Q So just based on the name, you knew that the Tea Party was a political thing?

A I -- no, I wasn't doing -- I wasn't looking at these cases, and I wasn't directing the screeners to put anything in this bucket. And --

Q I'm not saying you were. What I'm asking is, your thoughts, so do you think of Tea Parties all being -- doing political activity?

A If the application said that they were political -- indicated there was some political activity, then they should have been included in this bucket. As well as --

Q That doesn't -- that's not what I asked. So if the application said Tea Party, it would get included in the bucket. We know now. So it doesn't matter what the application said, as long as the name said Tea Party, they got put into the higher scrutiny bucket; higher scrutiny specifically being full development, as you say, as opposed to the -- I believe it was called intermediate development?

A That's correct.

Q So you guys weren't looking at the application to see is there political activity here, and when I say you guys, your employees, the ones you are in charge of, the ones you supervise?

A I can't speak to what the screeners, or the screening group or any of them were putting in the bucket, or what was being reviewed. I can only tell you what I believe in. I believe all of the cases that involved all cases, not just Tea Party, not just left-leaning, not just right-leaning, all of them --

Q That's fine. I think you probably said as much as you are willing to say on this?

A I don't know what else to say. That's what I believe.

SFC [redacted]. I don't think we are going to get any more. Go ahead.

BY SFC [redacted]:

Q Going back, or actually, you had said that in January 2012, it was then changed because the July 2011 change was evolving into too many groups. What was the change that happened in 2012 on the BOLO list? Do you recall?

A The description was changed?

Q Yes.

A I don't recall what it said.

Q Do you know who wrote --

A There was discussion with -- Steve Bowling was the manager of the group that was responsible for coordinating the changes on the BOLO.

Q Sure.

A And if I remember correctly, I didn't know at the time, but at a later point in time, that Steve Bowling had a discussion with a few of the revenue agents in his group --

Q Right.

A -- to try to come up with revised wording, and I also had received information in an email about Occupy cases because of a newspaper article, and indicated that this probably needed to be included on the watch list, or the -- that this needed to be added to the BOLO. And Steve Bowling sent an email to me with suggested wording, and I indicated that we couldn't use Tea Party because people would, you know, if somebody else would look at this, they would think this we were picking on just the Tea Party cases even though that's not what's happening.

Q It was Bowling who approved, or who wrote --

A It's not necessarily approved. He wrote wording and emailed it to me based on discussion that he had with revenue agents in his group. And he was given options, you know, can we put this --

Q Sure.

A -- information on, or this information on, and I believe one of the wording might have referenced Tea Party, and I said, oh, we cannot -- we can't include reference to Tea Party because that was what Lois was trying to get at in her briefing --

Q Right.

A -- is that somebody would think we are picking on them, and that's not true because we were including all types of --

Q Did he revise it after that?

A He -- I suggested to him maybe we could use a combination of this wording and that we would have the Occupy cases would still be reviewed. They would -- Occupy would be put on a different tab. The language was revised from the June of 2011, and I said the Occupy cases could still be worked by those individuals who were working the other advocacy cases.

Q And that was Group 7822?

A Yes, at the time.

Q And so --

A I'm sorry, I'm sorry. That Group 7822 was coordinating. They were coordinating the changes --

Q Okay.

A -- to the BOLO, but there were individuals with different groups working these cases.

Q Okay. Now, so Mr. Bowling, with your input in January 2012 edited the BOLO --

A Yes.

Q -- to narrow the focus of groups, is that correct?

A Yes, we were trying to -- we were trying to have the wording clearer so that our groups all understood that we were not looking for a lobbying-type organizations.

Q Right. Right. Let me ask you about, if I can have you take a look at another email. We have lots of emails. I will enter this into the record as Exhibit 11.

[Thomas Exhibit No. 11
Was marked for identification.]

A Yes.

Q Okay.

A Prior to that, like, after May of 2012, she was the person who came to Cincinnati who was kind of overseeing the bucketing. That was in May of 2012. And then, again, the individual agent in Cincinnati was matched up with a tax law specialist or manager --

Q Right.

A -- in EO Technical, and they were sending the letters directly to those individuals except for the bucket 4 cases.

The bucket 4 cases, we were making photocopies of those cases and sending the cases to the Washington office. And the Washington office was preparing the development letters for the majority of 501(c) -- or, I'm sorry, the majority of bucket 4 cases. And those, the bucket 4s, were going through Sharon, but the other buckets were not. Those were going directly to individuals.

Q Okay.

A And the process change was going to be, the letters would be sent to Sharon for any issues, and Sharon would then be sending them as a person needed work, rather than me just sending them, for example, me sending them directly to a person and sitting in a specific person's responsibility. It would be divvied out equally.

Q Okay.

SFC [redacted] We have some questions, the Finance Committee. I don't know if you want to take a break before we get started?

Ms. Thomas. I'm okay.

Ms. Thomas. Of how -- I mean, are you talking about, like, now?

SFC [redacted]. I'd say the whole thing, really.

SFC [redacted]. The whole thing, like, what it was to begin with, how it evolved.

SFC [redacted]:

Q Yes. Give us a complete answer.

A Okay. Like, I thought that Lois was a smart person, but she didn't let other people -- she didn't listen to other people's suggestions or anything like that. It was, she made the decisions. I really believe that she was the one more running Rulings and Agreements than allowing the Rulings and Agreements director to make decisions about their operation.

Q The Ruling and Agreements director being Holly Paz at the time that we're talking about.

A It was Holly, and then it was Roy Choi before that.

I think that individuals were intimidated by her. A lot of the conference calls she was involved in, we have these auto-revocation cases, and she was very involved in meetings, and she would yell at people. But, normally, I was on the phone, and I just yelled back at her. And other people in the Washington office liked when I was on the phone because then she yelled more, but I was -- I was on the phone, and I didn't care, and I just yelled back at her.

So, I don't know. Like I said, I think that she was a smart person, but I do know think that she was a very good leader, because I don't think that she valued what employees were doing and that she,

as an executive, wouldn't accomplish what EO needed to accomplish with closing of cases because it was more of being in the limelight and more -- I look at it as power.

Like, she made the decisions and she, to me, wanted to be out there thinking -- I believe that she thought she was important because she was in this position. And more in the power, that's -- I'd refer to it as power, because she wanted to make these decisions, and she didn't really listen to what others had to say. She would cut you off and didn't allow people to express what was going on. So that the, quote, I say team -- so the team didn't understand what was going on if she just had her question, and then it was like it didn't matter if other people had questions, so to speak.

So I don't think that she was a very good leader. She was very unorganized, which is okay, to be unorganized. Don't get me wrong. Like, your staff people, if they are organized, things could carry on.

But it wasn't, to me, about so much the work as it was about, like, feeling important because she is in this job. And also used to regularly make comments that, well, you're not a lawyer. And, again, not to offend anybody here, it's just --

Mr. Dusing. Just everybody.

Ms. Thomas. Sorry. It's just, I think other people have things to bring to the table. And it, to me, doesn't matter if you're a lawyer or what you are, you have things to bring to the table. Everybody has different levels of experience and different ideas and things, and we all have things to bring to the table. And just because a person is

a lawyer doesn't make them any more important than anybody else. And that's the way I feel about it.

But I think that it was almost like a feeling like we're superior -- I'm superior because I'm in the Washington office, and you people in Determinations, you're all not lawyers and you're, like, backwater.

And even comments of referring to employees as low-level workers. I mean, that's very -- that's very demeaning, and derogatory comments like that. And, frankly, it really makes me mad. It makes me mad because the employees in Determinations are the ones pumping out this work. And to talk about employees in that way, to me, is not a very good leader. Like, you should be thankful. You're not accomplishing things because you're not respecting these employees, who are the ones pushing through the work.

Because over the years, our staffing in Determinations has significantly decreased. I mean, we right now, I believe, have, like, maybe 147 agents working, determination specialists working classes. At one point in time, I believe there were, like, 210 revenue agents working cases. So it's just slowly gotten lower and lower. Because when I was an area manager, I had 10 groups that reported to me. I had five in Cincinnati, five outside. And the same thing with Sharon Camarillo, was an area manager at the time as well, and she had, like, five groups in Cincinnati, nine outside. And now we're down to 12 groups, where we had 19. It's just dwindled down.

And I don't think that -- you know, and our employees, the

Determinations employees, have been so flexible to change what they're doing. And if we ask them to do one thing, they would switch and do whatever is asked of them. And we're trying to close as many cases as we were with fewer -- we're doing much more work with fewer employees.

And I think that an executive should be appreciative of that. And her -- she didn't seem to -- while she might say it, it's the way, by going out and referring to people in a certain way, to me, is not really valuing what employees that are working for you are really doing.

SFC [redacted]. I guess, in that speech, when she disclosed the issue regarding the TIGTA report, I think there she referred to, I believe it was two low-level Cincinnati employees. Do you know who she was --

SFC [redacted]. Rogue employees.

SFC [redacted]. Yeah, rogue.

And Steve Miller was involved in coordinating with her?

Ms. Thomas. I don't think, from what I recall from that, that -- she is not the one who referred to rogue employees in that May 10th coming-out. My understanding is, a later meeting, that he was meeting with a congressional office or something, and that there was this comment about two rogue employees. But --

SFC [redacted]. Cindy, I think two employees were disciplined. Do you know who they were?

Ms. Thomas. I know one clerical employee was disciplined because the clerical employee unintentionally disclosed applications that were still open. And for EO, our applications are not to be disclosed unless

they are approved.

But the clerical employee received, or correspondence unit, received a letter asking for applications from ProPublica. And I believe this letter had, like, 67 applications were requested, and the clerical employee in the correspondence unit was trying to go through these very quickly. And she messed up and unintentionally sent out, I think it was like, nine applications to ProPublica that were not approved. And there was disciplinary action taken against her.

SFC [redacted]. What was her name?

Ms. Thomas. Cynthia Brown.

SFC [redacted]. And what was the disciplinary action?

Ms. Thomas. Ultimately, she was given an admonishment letter. The TIGTA office -- she had to be taken off of the computer system for a period of time while the investigation could take place. And TIGTA was involved in interviewing her, and there was ultimately a report that was issued.

And, again, she's a good employee, and it was the first time that she had made a mistake and --

SFC [redacted]. Was that unrelated to the BOLO --

Ms. Thomas. She wasn't involved.

SFC [redacted]. -- Tea Party issue? Right, okay.

Ms. Thomas. She wasn't involved. The cases that were disclosed were these advocacy cases. There were nine cases.

SFC [redacted]:

Q And there were a number of conservative groups, right?

A Yes.

Q It was -- I can't remember if it was SFC [redacted]. This is public information --

A I know SFC [redacted] was one of the organizations. I don't remember the names of the other ones.

And the labor relations specialist came back and suggested to the second line manager that it just be closed without action. And I stepped in and said, we cannot close, there needs to be -- some disciplinary action needs to be taken, because this is significant.

Q But she didn't lose any pay, right?

A No. It was, an admonishment letter was issued.

Q And she doesn't have any negative job consequences, right?

A There was an admonishment letter that was issued and put in her file.

Q So, essentially, it's a slap on the wrist. It's a letter that goes in the file that does nothing to her, basically, right?

A There was --

Q There's a letter in the file if you check the file, but, I mean, it's not --

A If something else were to happen down the road, that letter -- if it's within 2 years, that letter could be used as a step in taking -- if there was a similar activity to take place down the road, there could be reference to this letter, and more severe consequences could happen because it would be considered a second incident.

Q Yeah. But one way to view it is, unless she screws up again within 2 years, she's scot-free.

A I guess, if you want to look at it that way.

BY SFC [redacted]:

Q Let me ask you this. Going back, you had said that Ms. Lerner had referred to the Cincinnati office, which does the kind of day-to-day work, as a backwater?

A Right.

Q As low-level. Did employees in Cincinnati know that?

A Oh, yes.

Q Know that Lois Lerner had said that about them?

A Oh, yes.

Q Was there, as a reaction -- but, I mean, did Lois realize that her words actually went back to employees, or did she perhaps just not?

A I know that when she referred to employees as backwater at one point in time, that I believe somebody in the Washington office -- because employees were talking about, you know, in Cincinnati. And, also, the comment was made back to individuals in the Washington office. I don't know whether they said anything to her about the reference to "backwater" or not. I don't know.

As far as "low-level," referring to employees as low-level workers, she did that on May the 10th. And I sent an email after this -- it was on TV that --

Q After the coming-out?

BY [redacted]:

Q I'm going to ask real quick because I can't wait to ask this question. The second person disciplined, Sophia Brown was the first.

[redacted]. He jumped in there.

BY [redacted]:

Q I'm sorry.

A I'm sorry. Stephen Seok was verbally counseled regarding the asking of these questions of donors, and he was also taken off of the project coordinator stuff, and he was not allowed to -- he was not then on the team of folks that met like in May of 2012, the bucket cases. He was not included in any of that stuff as well.

Q It was a verbal --

A Verbal counseling.

Q Verbal counseling. Thank you.

BY [redacted]:

Q Does a verbal counseling like that have the same year, 2-year statute of limitations?

A I don't know if anything was reduced to writing as a result of that or not.

Q And that's a lower form of discipline than the one that Sophia Brown got, right?

A That's correct.

Q So even lower than having simply a letter in the file, right?

A Yeah, I don't know whether the verbal counseling was reduced to a memo documenting the discussion. I don't know. I --

Q Yeah. And why did he get disciplined with respect to donors? What special involvement did he have with respect to requesting donor info?

A He was the agent at the time who was primarily the one who wrote that question in the majority of -- in the majority of the cases that were assigned to him. And that's when the folks from D.C. came to Cincinnati in April of 2012. The majority of cases that they had asked for were -- they asked to see all of them, but the ones that they were looking at first were all of the ones with donor questions, and the majority of them were Stephen's cases.

Q And so he did that stuff, and then after he did that stuff, he was disciplined for -- but before he was disciplined for it, he was promoted, right?

A No, he was --

Q Wasn't he an agent and then he got promoted to a manager?

A Yes, that's after the fact. He was not --

Q So when was he disciplined? When was he caught doing this, basically?

A He was -- it was -- this is in like March, April -- I'm sorry, February or March of 2012 when the Washington office started, I believe, getting congressional inquiries about these questions being asked and Holly Paz was emailing me about.

Q Yeah, we wrote one on behalf of the Hatch office asking about donor lists.

A Okay.

Q And they didn't bother to tell us that they had been destroyed, that they had disciplined somebody about it, any of that. Just silence on it. So --

A I wasn't involved in any of the congressional responses.

Q So Seok you think got disciplined around February or March of 2012?

A He was taken off of the coordinator position before -- before May of 2012, he was taken off, because he was not included in that workshop that was taking place, and he was not one of the agents working the cases, or anything. So it was -- I'm thinking it was probably around April, March, April of 2012. And --

Q And he used to be an agent --

A He was an agent then.

Q -- that just worked the case. So at some point he became a manager?

A Yeah, he -- I don't remember. That was in late 2012, I believe.

Q Because I think Chip Hull told us that Shoemaker, I believe, was his direct manager?

A Ron Shoemaker was Chip Hull's.

Q And then above Shoemaker is Seto?

A Yes.

Q I'm sorry. I have got Seok and Seto -- I'm sorry.

SFC [redacted]. That was before.

Ms. Thomas. So Stephen Seok, when the individuals from

Washington came to Cincinnati in April 2012 and they asked for these cases and they were having this meeting with all of the employees and managers who had been involved going through this timeline, and when they were sitting in -- Nan Marks and other individuals from D.C. were sitting in a conference room looking at these cases, and I don't remember what question they asked me about Stephen, and I said Stephen had worked in our group. He was the agent in the group working the credit counseling cases, and so there were template questions that were prepared for the credit counseling cases, and then he I think was using some of those template questions that were prepared and trying to apply them to the advocacy cases.

And I remember Nan Marks, she went, oh, this makes sense now. Because she understood then when I told her that he had been in the credit counseling, and now he was in -- overseeing this -- the advocacy cases, he was trying to move those cases along, and was trying to give some guidance to the agents, and so he was using questions that had been developed for credit counseling cases, and that's what Nan Marks --

BY SFC [redacted]:

Q You said the 501(c)(4) when they fill out their Form 1024, the application, that then -- the whole application, including the back and forth with the taxpayer and IRS gets made public. So if -- it's approved. So the problem with asking for the donor list is that donors which are normally kept private even on the Form 990 Schedule B, they then become public if you have a revenue agent, or you know, a person

like Seok that is asking for that. So is that your understanding of the problem as well?

A Yes, I mean, I didn't -- I didn't know anything about the donor -- I didn't know that they were asking the donor a question. But I do know that if they submit it on a 990 return, the return is made available on Guide Star but that donor information is redacted.

Q Yeah, because it's on the Schedule B and the Schedule Bs are redacted?

A Yes.

BY SFC [redacted]:

Q You said Mr. Seok was ultimately promoted to a manager?

A Ultimately promoted.

Q Was that an increase in grade at that time?

A No, he was a Grade 13 and he is still a Grade 13 manager.

BY SFC [redacted]:

Q And was that after he was disciplined?

A Yes, that was in --

SFC [redacted]. A year-and-a-half after?

Ms. Thomas. I think so, I think it was like sometime -- wait a minute, I'm sorry, it was January, or February of 2013.

BY SFC [redacted]:

Q Okay, and who made the decision to promote him?

A Ultimately, I was the selecting official. There were three employees interviewed for the Grade 13 position, and two of the three were selected.

Q Okay. Did you view his disciplinary action as a negative in making that consideration?

A No. Because I -- the way I look at it is, he made a mistake, and we all make mistakes. And he did not intentionally do this. It was a mistake that he made. And he was one of the -- out of two of the three, he was, I would say, probably the -- I'm thinking who else was -- he was one of the better, you know, best candidates. The third person who wasn't selected has been interviewed for a manager position before and we are not interested in him being a manager.

BY SFC [redacted]:

Q Can we go back just for a second? You were in Cincinnati, and then you were an executive assistant for Lois. Can you talk a little bit about what the relationship is between Cincinnati and Washington? Was there any tension there at all?

A The tension comes into play when there are issues that come up and we go to our Washington office to ask for guidance, and we don't get timely guidance back. Again, it didn't -- this is not unique to these cases. It has happened with other cases, and there gets to be the frustration in Cincinnati, because Cincinnati agents are the ones that have to deal with the customer, and it gets embarrassing when you have to keep putting a customer off, and not know what to say to them because you don't have an answer, and it is really out of your control. So that's really the frustration, is just that we don't get timely responses back from Washington.

SFC [redacted]. Okay.

BY SFC [redacted]:

Q Now, let me go back for a second to May of 2013. You were talking about your interactions with Ms. Lerner when you found out about the ABA speech. Are you aware that Ms. Lerner was called to testify before the House Oversight and Government Reform Committee?

A I knew that periodically she said she has to go to the Hill, but I don't know who that is, or what it involves.

Q Are you aware that she was called to testify in May of 2013 after -- about the TIGTA report?

A No.

Mr. Dusing. Is she aware now?

BY SFC [redacted]:

Q Yes, are you aware now?

A Yes, as some point in time, I don't know if it was on these hearings, or you know, like the Steve Miller, you know, that --

Q Uh-huh.

A I don't remember if it was there or at some point in time that she -- I became aware that she had to go because there was discussion about whether she misled Congress or not. I became aware of that after the fact.

Q And did she ever discuss her testimony with you?

A No.

Q Did she give you any idea of why she elected to invoke the Fifth Amendment?

A I haven't talked with her since May the 10th when that

day -- her coming out day and she called me twice at my house that -- I haven't talk with her since then.

Q And when was it that -- she is on administrative leave, is that correct?

A That's my understanding.

Q So when was it that she was put on administrative leave?

A It's my understanding that was -- May the 10th was a Friday, and my understanding is the following week that she was on leave, and then it was -- if May the 23rd was a Thursday, I think it was that then. We were on a furlough day on, I believe it was May the 24th, and I'm thinking that that was that Thursday if I remember correctly.

BY SFC [redacted]:

Q And that is paid administrative leave, is that right?

A That's to my knowledge, yes.

BY SFC [redacted]:

Q Do you know if any disciplinary action has been taken against Ms. Lerner?

A I don't know.

Q Okay, well, I have some other questions in some documents. It might be a good time for a break since it has been about 2 hours. Do you want to go off the record and take maybe a 5-minute break?

[Recess.]

[Thomas Exhibit No. 13
was marked for identification.]

BY SFC [redacted]:

Q Can we go back on? Okay. I am going to enter into the record Exhibit 13, which is a message actually that you had provided to TIGTA, Ms. Thomas. If you could just take a moment to review it. It is Bates numbers IRS3160, to 3161. And the second page is titled Draft EO Determinations Screening Checklist.

Have you seen this document before, Ms. Thomas?

A Yes.

Q And is this the screening checklist that the screeners do when they process an incoming case?

A They haven't always completed. Like sometimes they were completing the checklist, and other times they weren't. I actually -- what they are completing now is different from this.

Q Uh-huh.

A But there has been off and on times when they completed checklists and others times they don't.

Q Okay. Was this checklist in use between 2010 and 2013?

A I don't remember.

Q If a Tea Party case came in during that time period, which box would a screener check on this checklist?

A I would say if it were me --

Mr. Dusing. If you know.

Ms. Thomas. -- I don't know what they checked. If you're asking me what I would have checked?

BY SFC [redacted]:

Q Did you give any instructions about how to use this

checklist?

A Oh, no, no.

Q That's fine. We will move on then.

Now, earlier we were talking about, we were looking at an email from October of 2010. It was Exhibit 5. And at that point there was some discussion about getting Ms. Kindell involved with the Tea Party applications. Do you remember that discussion, Ms. Thomas?

A Yes.

Q Was it normal for EO Technical to discuss cases with Ms. Kindell?

A I don't know.

Q Do you know if she had been brought in to discuss any cases in the past before the Tea Party cases?

A I don't know.

Q And I think we had just discussed briefly, there was in the fall of 2011, there was a bucketing, or a triage exercise that was conducted by EO Technical. You recall that, Ms. Thomas?

A That was actually -- the bucketing took place in May of 2012.

Q Okay.

A That's when it started. In November -- oh, I'm sorry, I'm sorry. I remember, that was September when we initially started the triage.

Q Okay, so you called it the triage in September of 2011, is when it started?

A Yeah, when there were buckets referred to as buckets, the bucketing was in May of 2012. The triage started in September of 2011.

Q And EO Technical had come in to do that triage?

A They didn't come to Cincinnati. Holly Paz and Sharon Light came to Cincinnati and it was September the 12 and 13th, and this is when this renovation was going on in Cincinnati. I was sitting in a conference room, and Holly actually conducted a town hall meeting with the Determinations employees in Cincinnati on September the 13th, but when, I believe it was on September the 12th, after they got to Cincinnati, we were sitting in a conference room, and I raised an issue about one of the cases that was sitting in the advocacy bucket that there was an expedite request that was received on one of these cases, and it was apparently a very large organization. And I asked, what are we supposed to do with this case, because they have expedite and they have a deadline.

So they asked me the name and other information. I didn't remember, so I asked if Holly and Sharon, if they wanted me to go get this case so that they could take a look at it. And they said yes. And I went down to the group -- Ron Bell was not in that day, but I got one of the clerical employees to pull the case, and gave it to me, and I took it to Holly and Sharon, and Sharon reviewed the case file, and she went and did some Internet research, and she said, oh, this application is a good case. We can actually go ahead and approve this case. And so I said, okay. I took that case back, probably -- it was probably taken back to either John Shafer or Steve Bowling, and asked

them to go ahead and approve the case. And then I made a comment like, okay, one down, 101 to go. And I suggested -- and then when --

Q Was that case approved?

A Yes.

Q That one case was?

A Yes.

Q Okay.

A And I then made a comment when Holly had that town hall meeting that Sharon had actually approved a case and maybe we needed to get them to look at more cases so we got back in the room and said, I know I said that jokingly, but really, if -- if you were able to look at this one case and do this research and see that this case should be approved, maybe there's other cases that are sitting in this grouping that could be approved. If we could get some folks who are knowledgeable in this area to look at these cases, maybe there's other cases that could be approved.

So there was discussion about giving the Washington office, like if I sent them a list of the names and EINs that they could get some folks to look at our computer system where the cases are on the computer electronically, and that they could review the cases and decide whether some other ones could be approved or not and put them into like groupings, so to speak, triage them.

Q And so it was -- was Hilary Goehausen one of the people who worked on that?

A Yes, it was my understanding that Hilary would be the

primary person, but Justin Lowe was going to, because he had much more experience in this area, that Justin Lowe would be there to assist her.

Q And then did Ms. Goehausen and Mr. Lowe, did they make recommendations about all of the other 101 cases, if they should be put in a particular bucket?

A Yeah, I sent the Excel spreadsheet with the name of the EIN to Holly Paz, and Holly talked with Mike Seto, because Mike was -- I don't know if he was acting at the time or permanent EO Technical manager, and so Holly then explained to Mike Seto what was supposed to take place, and then Mike had discussions, I guess with Hilary and Justin. But ultimately, the spreadsheet came back to me from Mike Seto, and it was my understanding that Hilary had reviewed the cases and included comments on the Excel spreadsheet. And that was sent to me, and when I reviewed some of the comments, I didn't find it very helpful, because what I was looking to get is just tell us whether this case can be approved or not, similar to what Sharon Light did when she reviewed that one case.

But there were comments on the spreadsheet and I didn't know whether that meant approve the case, don't approve the case, or what. So I sent it back to Mike and this process happened, I believe, three times that the spreadsheet was sent back and that the review took place like about three times.

Q Okay, yeah, actually that's very helpful because we have seen some of the emails and I'm not going to pull them out, but it was a little bit unclear about -- it looked like there were some cases that

they had recommended for approval. There were other ones that they said were likely denial, and then there were ones that kind of fell in the middle. Is that more or less what they recommended?

A I didn't review every single comment for every single case on this spreadsheet. I just remember completing like a cursory review and looking and just like I just wanted them to tell us this case is okay to approve or not approve. And I didn't find the comments very helpful, and that's why I went back to them. Because I remember sending one email saying, I don't know what this means. This is the comment, what does that mean? Does that mean the case is okay to approve or not approve?

Q Right, and so you were concerned that you or the employees under you could potentially do the wrong thing for a different case?

A That's correct. I didn't give this to anybody that worked for me because I wanted it perfected in D.C. so that I could take this spreadsheet and give it out and say here, follow this direction. But I didn't do that because it was unclear to me. It was unclear to me what was being recommended by the Washington office. So that was going on like in the discussion was September the 13th, but then it went on into like October and in November. And in November of 2011, the Washington office sent this guide sheet, sent a guide sheet to Cincinnati. And then there was a comment made like, I don't know how helpful this is really going to be. So it was -- in the end, we had this draft guide sheet, and the list and it was basically given to Stephen, ask Stephen. Steve Bowling had recommended him, Stephen to

be the one to coordinate this team. Because I had talked with Steve Bowling about having -- having employees on the team, and we discussed the best approach for that and we thought it would be best to have at least one person from the different groups because we, again, this was in like September, I'm sorry, in like November, December 2011, and our thought process is this -- all of these agents in different groups were sending a lot of cases to that Group 7822 because of the revised language on the BOLO, on the spreadsheet. And so they were sending all of these cases and our thought process is, if we can get a person from each group to be on this team, they can become like the expert, and so other folks in the group would go to them, and if this -- and before they would just transfer the case to Group 7822 -- this expert, so to speak in the group would say, oh, no, that's not the type of case that is supposed to be -- that we are talking about here.

That was our reason for having somebody from each of the groups involved. That spreadsheet, the draft guide sheet was all given to Stephen, and Stephen had a meeting with the employees involved in this, along with an individual from Quality and Justin and Hilary from D.C.

Q And you understood that the guide sheet was something for the revenue agents to use when developing the cases?

A Right. But yes.

Q Do you know if it had been vetted through the Chief Counsel's office?

A I, at some point in time, understand that the R&A in the Washington office had discussions with Chief Counsel's office about.

There were only -- there was only one spreadsheet and it was potential abusive, and potential terrorism, and also consistency-type issues which consistency, progressive would have been more of a consistency because it is not a potential abusive situation. But they were all worked by the same group, and same -- at a certain point in time in July of 2005, all the cases were worked by the same group. And again, there was only one spreadsheet, and later the TAG spreadsheet got divided into two different tabs, which was historical, and current issues.

Q So does the fact that this entry is on the historical tab, does that indicate that it's no longer an issue that you were dealing with at that time?

A No, it was on the -- it was on the Historical, because it was my understanding that there were no current cases that they had seen, but they -- we didn't want to lose track of it, and that's why it stayed on the Historical tab.

Q Okay, that's helpful. Now, do you remember any cases, I guess, prior to this point in 2011, do you remember any cases that came in that were from progressive groups that met this criteria?

A I don't know.

Q You do not remember any?

A No, I mean, I don't know if there were not just -- I wasn't really involved in this looking at this tab or the cases that came in as a result of any cases on these tabs or not. This was -- a lot of these cases have been on the spreadsheet from the beginning of the

A There is, I have one analyst, and so we have to prepare, there is a, on a quarterly basis there is a business performance review process that takes place where certain data is communicated to, or certain measures are communicated to the executives and it goes -- to my knowledge went up to Steve Miller's level of certain data. And so the analyst in EO Determinations runs the reports and shares the information with me and I take the data and prepare a narrative of what, why our closures aren't where they should be or why they are above or why our receipts are more than, why we are behind on what our work plan goals are.

Q Now is there a certain point at which you would be concerned that a (c)(4) application was taking too long to be processed?

A I can't say that it is any, it is not just 501(c)(4)s, it is we have certain work plan goals that we are trying to accomplish. So if our work plan goal is that we are trying to close our cases in an average of 150 days and if our cases are over, you know, if the average is beyond 150 days, why is it over the 150 days?

Q Did you have a target for (c)(4) applications?

A It is not just for (c)(4)s, it is for all cases.

Q So what was the target that applied for the (c)(4)s and I understand it applied to others as well?

A I don't remember, it would like, I don't remember what the goal, work plan goal is. It changes. And you know those are work plan goals established for each fiscal year.

SFC [redacted]. Can you give us a ballpark range?

Ms. Thomas. For some reason I'm thinking this year it might be an average of 158 days if I remember correctly.

BY SFC [redacted]:

Q So what happens if there is a case that goes beyond the goal, that takes longer than the goal to be processed?

A There are a lot of cases beyond our goal right now.

Q Is there any consequences? What happens?

A Well for a 501(c)(3) organizations the 501(c)(3) organizations can go to court for declaratory judgments under a section 7428 of the Code.

Q Sure. (C)(4)s don't have that option though?

A Correct.

Q So is there -- and I'm talking more internally rather than externally.

A It is just we are reporting on a, actually the reports are generated on a monthly basis and shared with the Washington office, but as far as reporting up to the IRS Commissioner level that is usually on a quarterly basis.

Q Has the IRS Commissioner, either I guess Mr. Miller or Mr. Shulman, ever expressed concern that certain cases were taking too long to be processed?

A I don't know what they expressed or, I'm not involved in any of that, I don't have any conversations with them. I don't know what they might have expressed to the executives in TEGE.

Q So you just, you prepare the report but you are not at the

RPTS MCCONNELL

DCMN SECKMAN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: WILLIAM J. WILKINS

Wednesday, November 7, 2013

Washington, D.C.

The interview in the above matter was held at Room 1105, Longworth

House Office Building, commencing at 1:05 p.m.

Appearances:

For COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For INTERNAL REVENUE SERVICE

JOHN C. MCDOUGAL, Chief Counsel

JENNIFER O'CONNOR, Chief Counsel

Q Okay, now I'm going to move into the I guess really the main part of our investigation, which is related to political advocacy groups.

A Okay.

Q So let me start with this: When did the Chief Counsel's Office and when did you, particularly, first begin to be concerned with political advocacy and 501(c) organizations?

A Well, first of all, the knowledge of using names of organizations for selection was something I only learned about when I was reading the TIGTA report. So that's for starters. The only other thing I can think of is that Janine Cook and Vicki Judson did tell me that they had been asked to work on a guide sheet that people in the Determinations Unit of EO would use in reviewing organizations to see if their political activities raised questions about whether they should receive recognition of exempt status. That was, again, you know, processing of applications that were already under review.

Q Okay. Yes, and we will come to both of those things. Let me go back a little bit further, though, and let me ask this maybe a little bit different way. When did the Chief Counsel first become concerned about the amount of or the extent of political advocacy that was being done by tax-exempt organizations?

A I don't recall becoming concerned about that.

Q So you, as the Chief Counsel, you are not concerned about the extent of political activity that tax-exempt organizations are doing?

Mr. Wilkins. Should be this year. It is -- a draft exists. It is at -- it is under review.

SFC [redacted]. May I ask a question?

SFC [redacted]. Yes.

EXAMINATION

BY SFC [redacted]:

Q You said that you first, if I'm saying this right, you first had knowledge of the use of particular names to, I guess, identify applicant organizations after you read the TIGTA report, is that correct?

A That's correct.

Q Prior to that time, did you have any sense or understanding of the political leanings or the political inclination of the organizations who were under review at that time by EO and for which the, I guess, the guide sheet that you referred to was being developed to address?

A No.

Q Did anyone, or perhaps Ms. Cook, Ms. Judson, or anyone else ever refer to those, that pool of cases that were out there, the you know, pending review as Tea Party cases?

A No.

Q Thank you.

SFC [redacted]. Okay, I'm going to mark Exhibit 1?

[Wilkins Exhibit No. 1
was marked for identification.]

Q When is the first time you were aware that a Tea Party organization had applied for tax-exempt status?

A I don't recall learning about that at all, you know, other than reading the TIGTA report.

Q And let me ask you just a couple more process questions before we get back to the documents.

Does the Chief Counsel ever get involved with specific applications for tax-exempt status? In other words, beyond the general guidance that you may give on issues, does the Chief Counsel get involved with the specific application submitted by a taxpayer?

Ms. O'Connor. Just to clarify, when you say "the Chief Counsel," do you mean Mr. Wilkins personally or do you mean the office?

SFC [redacted]. The office.

Mr. Wilkins. Okay. Me personally, I don't. Each of the operating divisions are free to call in Counsel assistance on particular cases, and so it happens for each of our -- in each of our division counsels.

SFC [redacted]. And there are certain cases where it is required to go to the Office of the Chief Counsel, like a 501(c)(3). I believe some folks have told us adverse determinations -- proposed adverse determinations go to you guys because you guys will be the one to have to defend it in court if you go forward with the denial on the (c)(3) only, is my understanding. Is that your understanding, as well?

Mr. Wilkins. Yeah, I recognize that description, again, only, again, because it has been described to me that there are particular

decisions where the Internal Revenue manual calls for Office of Chief Counsel to approve before it becomes absolutely final. But it is a limited category.

BY MR. COON:

Q Okay. And if there is an application that is referred to the Chief Counsel, would the part of the organization that referred it also continue to keep working on the case?

A I am not sure what the protocols are, so I am not sure I am prepared to answer that question.

Q Well, maybe you can tell me this: Who is in charge of managing the process when there is a case that starts on the IRS Commissioner's side and is then referred to the Chief Counsel?

A My understanding is that that will go to a branch that is -- I think it is called the Exempt Organizations branch. And TEGE has a branch chief that has a group of lawyers. And so, like any matter that comes into a branch, the branch chief or another manager will decide how to assign it and open a file and the person who gets the assignment will start working it.

Q And how about in terms of coordinating the overall response to the application -- in other words, informing the taxpayer that their application is denied or granted? Is that something that is the ultimate responsibility of the Chief Counsel's Office or is that something that still resides with the IRS?

A That resides with the IRS.

Q Are there any guidelines for how long it should take to make

a final determination on an application for tax-exempt status?

A I am not aware of guidelines. There may be. I am not aware of them.

Q Is it pretty rare that you would get involved with the Chief Counsel Office's -- Office of the Chief -- let me back up, because you got me screwed up here with the name. This is tricky.

Is it rare for you as the Chief Counsel to get involved with the Office of Chief Counsel's review of an application for tax-exempt status?

A I have never been involved in the Office of Chief Counsel's review of an application during my time at IRS.

BY MR. LYONS:

Q And that includes those (c)(3) proposed adverse determinations you were talking about?

A Yeah. That would not come to my office.

Q And just to close the loop, because the terminology is getting a little confusing, but -- so you say that would not come to your office. You mean --

A I am sorry. Would not come to Bill Wilkins personally. Sorry.

Q It would come to the Office of the Chief Counsel.

Mr. Coon. Okay. I am going to mark Exhibit 2.

[Wilkins Exhibit No. 2
was marked for identification.]

BY MR. COON:

Q And I understand that you are not on this email either, but if you could just let me know when you have had a chance to review.

A Okay. This is a new document to me.

Q Okay. So Exhibit 2 is an email from David Marshall to Amy Franklin, Don Spellmann, and Kenneth Griffin. The subject is "C4 Political cases," and the date is Monday, July 18th, 2011.

A Uh-huh.

Q Is it correct that these are all attorneys within the Chief Counsel's Office?

A I recognize Spellmann and Griffin, and I only know of Amy Franklin. I just recognize the name; I don't recall meeting with her. David Marshall I don't know, but he has his title here as the sender. So it looks like -- yeah, it looks like all of them are in the Office of Chief Counsel.

Q Okay.

And in the last sentence of the first paragraph, Mr. Marshall says -- he is talking about the cases that are attached -- "These cases also are analogous to the one case Amy has, League of American Voters (I am assisting), and one case that I have, Albuquerque Tea Party. Ken is reviewing both cases."

Before I showed you this document, did you have any knowledge that the Office of Chief Counsel was reviewing either one of these cases?

A No. I learned, you know, when the TIGTA report came out that there was a review of cases. I didn't know which ones they were. In preparing for this and in looking into how much time Counsel took,

I saw a file report on when the Albuquerque Tea Party matter was opened and closed in Counsel. The other ones are new to me.

Q Okay. Do you recall when the Albuquerque Tea Party was opened and closed?

A I don't, but I remember from looking at it that the time it was open was between 2 and 3 months in Counsel.

And just to clarify, the American Campaign Academy, that is not one of the ones reviewed. That is the name of a decided case.

Q Correct.

Okay, so the Albuquerque Tea Party, that is obviously a group that is affiliated with the Tea Party, at least according to its name.

League of American Voters, are you familiar with that organization?

A No.

Q Okay. So you are not aware that that is also a Tea Party group?

A No, I don't know.

Q Now, the second paragraph, Mr. Marshall says, "I also just learned from Justin Lowe that R&A Cincinnati (and D.C.?) have over 100 similar application cases under consideration."

Did anybody bring this to your attention, that there were 100 of these cases that were pending in Rulings and Agreements?

A No.

Q And then further down in that paragraph, Mr. Marshall says, "Don," presumably referring to Mr. Spellmann, "Don informed me that

RPTS JANSEN

DCMN HOFSTAD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: NEAL WOLIN

Thursday, May 1, 2014

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 3:03 p.m.

Appearances:

For the COMMITTEE ON WAYS AND MEANS:

SFC [redacted]

For the SENATE COMMITTEE ON FINANCE:

SFC [redacted]

For the U.S. DEPARTMENT OF THE TREASURY:

HANNAH STOTT-BUMSTED, SENIOR COUNSEL

NOAH CUTTLER

Q Yeah. So nothing sort of set up, where you said, hey, we ought to get together?

A No, not that I can recall.

Q Okay.

And have you ever met President Obama?

A I have.

Q Okay. And can you tell me about your meetings with him?

A You know, they mostly related to broad issues of economic policy or national security issues, you know, in the context of either the financial crisis or the aftermath of the financial crisis or a set of national security issues on which Treasury had involvement.

Q Okay. And did you have any discussions about the tax-exempt organization issue that came up in the TIGTA report?

A In what period? Anytime?

Q Anytime.

A So, not until after the TIGTA completed his report and made it public. I was involved in two conversations in which the President -- at which the President was present.

Q Okay. And can you tell us about those?

A So the first related -- the first was a meeting that happened, I believe, the day after the TIGTA report was finalized and made public, so I think that might have been May 15th, 2013, a meeting about just -- a meeting in which the President and other

White House officials were briefed on the contents of the IG's report and on what the plan was for making sure that the IG's recommendations were fully implemented and that steps were taken to best ensure that this sort of thing did not happen again.

Q And who was at that meeting?

A I don't know -- I can't recall exactly all of the people at the meeting, but the folks that I recall were the President, his Chief of Staff, his Counsel, and then from Treasury, the Secretary of the Treasury, myself, the Chief of Staff, Mr. Patterson, and the General Counsel.

Q Okay. And what were the names of the President's -- I guess starting with the Chief of Staff?

A Denis McDonough.

Q And the Counsel?

A Kathy Ruemmler.

Q And the Treasury Secretary at the time?

A Was Jack Lew.

Q And you mentioned Patterson. And then the General Counsel?

A Chris Meade.

Q Thank you.

And was anything else discussed at that meeting other than what you've already said?

A I think there was consensus in that meeting that the facts that had been uncovered by the -- that had been described,

the factual findings that had been made by the Inspector General were deeply troubling, that we all felt like there needed to be appropriate accountability with respect to those facts, and that the recommendations that the IG put forward in that report needed to be fully implemented.

Q Okay. And do you remember what the President himself said at that meeting?

A I think everyone was of the same view that I just described, and I think, you know, there was consensus, so the President included.

Q Okay. And was he more listening or also voicing his views?

A Well, I think he, you know, made clear what he made clear in public, that this was, you know, a set of facts that were seriously troubling to him and that he wanted to make sure that the IG's recommendations were implemented and that steps would be taken to make sure that the trust and confidence of the IRS by the public was restored as quickly as possible.

Q Okay.

And that second meeting, could you tell us when that one was?

A I don't have a specific date, but it was approximately a month later. I remember that it was in connection with the 30-day report that the Secretary of the Treasury had asked then-Acting Commissioner Danny Werfel to do, to lay out the progress he had made and the steps he had taken with respect to

implementing the IG's recommendations and to take a broader look at whether other things at the IRS, either management practices or whatever, needed to be corrected in the wake of what the IG had found.

And that second meeting was an opportunity for Danny Werfel to brief the President on what was in his 30-day report and where he was in the process of doing the implementation of the IG's findings -- recommendations. Excuse me.

Q And this was just prior to the report coming out?

A Yeah, it was -- I don't remember precisely, but it was more or less contemporaneous. I mean, just before, maybe the same day, is my recollection, but I don't know for sure.

Q Okay. And who was at this meeting?

A The people I recall being at that meeting were the President, his Counsel, Kathy Ruemmler, the Secretary of the Treasury, Jack Lew, myself, and Danny Werfel. Those are people I recall being there.

Q Okay.

And did you have any other discussions with anyone at the White House about this issue of the TIGTA report?

A No, not that I recall. No.

Q Okay.

And, I guess, going back to -- it was in 2012 that Inspector General George, Russell George, came to you, I believe it was June of 2012, somewhere in there, and told you that they were doing

this audit on the issue, you know, that we're here about today. Can you tell me about that?

A So I don't know when in 2012 he came to see me, but I believe it was in 2012 that he came to tell me about an audit that he and his office had begun related to the handling by the IRS of applications for tax-exempt status. And I think it's possible that he told me that this was being done in response to some inquiries from Congress. That's what I recall him telling me.

Q And did he tell you anything else at that time?

A No. All I recall him telling me is what I just said, which is he had begun an audit on this topic of how the IRS was handling applications for tax-exempt status and that there had been congressional inquiries that had come into him on that topic.

Q Did he say anything about what they were looking at about the handling of the applications?

A All I recall him telling me is what I just said, which is that he had begun an audit on the question of the handling of the 501(c)(4) applications.

Q And what did you say at that meeting?

A So I said to him what I, you know, generally said to our inspectors general when they came to tell me that there was work that they had undertaken, which is, you know: Thank you for letting me know. You should go ahead and obviously, you know, do your work. We will stay away from it and not interfere. If for some reason you want assistance from us or want to tell us

reports, probably sometime in 2010, you know, in the run-up to the midterm elections or something, again, just, you know, reading the newspaper.

Q And when you heard about the Tea Party, were you concerned that the Citizens United ruling would allow these groups to spend money in an attempt to influence elections?

A I don't think I made any connection between Citizens United and the Tea Party. Then, I was, again, not focused on Citizens United and not on campaign finance issues. I was, you know, focused on a pretty hard job at the Treasury.

Q And when did you first learn that applicants for tax-exempt status were being scrutinized based on their affiliation with the Tea Party?

A I think I learned that on May 10th, if that's the right date, when Lois Lerner said publicly that that was the case.

Q Okay. So not during your meeting with Russell George when he informed you of the audit, but later when Lois Lerner went public with the apology?

A Correct.

Q Were you concerned that screening cases based on the term "Tea Party" created the appearance of a bias?

A You mean when I learned about it?

Q Uh-huh.

A When I learned about it, you know, I was -- I didn't fully understand exactly what the circumstance was when Lois

Lerner described it publicly, but that, you know, caused me concern, when I heard what she had to say.

And then, of course, however many days later it was, 3 or 4 or whatever, when the IG completed and made public his report and I read that, it was, you know, yes, obviously, very concerning.

Q And so, did you direct the IRS to take any actions after you learned how they were processing these cases?

A Meaning after the IG made public his --

Q Report --

A -- report?

Q -- was public.

A Well, the Secretary of the Treasury, you know, quite publicly instructed the Acting Commissioner to implement fully all of the recommendations in the IG's report. So that was our -- apart from, you know, putting in place a new Acting Commissioner and charging him with implementing the IG's recommendations, the Secretary also charged him with taking a broader look at the IRS to see whether there weren't other things that should take place or should be changed in order to best ensure that this sort of thing would not recur.

Q And did you talk with Secretary Lew about this issue once the report came out?

A Yeah, in the period immediately after the report came out, I did speak to Secretary Lew. I don't, you know, recall precisely other than, you know, obviously we were concerned. We

wanted to make sure we had an Acting Commissioner in place that was strong and, you know, credible and that could do the two things I just mentioned, the implementation of the recommendations by the IG and also just to take a broader look to see whether anything else was appropriate in terms of change. And those things, you know, the Secretary and I discussed.

Q Okay.

And did you talk to Secretary Lew before the report, the TIGTA report, came out, you know, publicly?

A I don't recall. I think it's possible that after Lois Lerner made her public pronouncement on May 10, it's possible that the Secretary and I discussed that. I don't have a specific recollection of it.

Q I guess I'm thinking of kind of when Secretary Lew took over as the Secretary, did you let him know there was this issue out there about a pending audit at the IRS on these tax-exempt organizations?

A I didn't myself, no.

Q Do you know if anyone else did?

A Well, I think there's been some -- you know, I think it's been public that the Inspector General let him know that he was working on an audit.

Q Uh-huh.

A But I don't know if -- I don't recall any other interaction with him on that question.

United States Senate Finance Committee

Orrin G. Hatch, Chairman
Ron Wyden, Ranking Member

The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations From 2010-2013

Appendix F:
Documents Cited in Report

SEC-000604

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A Section of the American Bar Association

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May 7, 2014

Mr. John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20024

Re: Comments on 501(c)(4) Exempt Organizations

Dear Commissioner Koskinen:

Enclosed are comments addressing a proposed regulation set forth in the Notice of Proposed Rulemaking, "Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities," affecting the activities of organizations exempt under section 501(c)(4). These comments represent the view of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association, and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Michael Hirschfeld
Chair

Enclosure

cc: Mark J. Mazur, Assistant Secretary (Tax Policy), Department of the Treasury
Ruth Madrigal, Attorney Advisor, Tax Legislative Counsel, Department of the Treasury
William J. Wilkins, Chief Counsel, Internal Revenue Service
Victoria A. Judson, Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service
Sunita B. Lough, Commissioner, Tax Exempt and Government Entities Division, Internal Revenue Service
Tamera Ripperda, Director, Exempt Organizations, Internal Revenue Service

ABA SECTION OF TAXATION
COMMENTS ON PROPOSED REGULATIONS REGARDING GUIDANCE FOR TAX-EXEMPT SOCIAL WELFARE ORGANIZATIONS ON CANDIDATE-RELATED POLITICAL ACTIVITIES

These comments ("Comments") are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Rosemary Fei of the Exempt Organizations Committee of the Section of Taxation. Substantive contributions were made by Ellen Aprill, Miriam Galston, Nancy McGlamery, Jennifer Reynoso, Bridget Weiss, and Patricia Zweibel. These Comments were reviewed by Robert A. Wexler, Chair of the Exempt Organizations Committee, Michael A. Clark of the Section's Committee on Government Submissions, and Stewart Weintraub, Council Director for the Exempt Organizations Committee.

Although the members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the federal tax principles addressed by these Comments, no such member or the firm or organization to which such member belongs has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

Contacts: Rosemary E. Fei
SFC [redacted]
[redacted]

Robert A. Wexler
[redacted]
SFC [redacted]

Date: May 7, 2014

EXECUTIVE SUMMARY

On November 29, 2013, the Department of the Treasury ("Treasury") and the Internal Revenue Service ("Service") issued a Notice of Proposed Rulemaking (the "NPRM")[1] containing a proposed regulation (the "Proposed Regulation") affecting the activities of organizations exempt under section 501(c)(4).[2] The purpose of these Comments is to respond to the specific questions that Treasury and the Service posed in the Preamble to the Proposed Regulation and also to provide further feedback on the Proposed Regulation.

For decades, section 501(c) exempt organizations working in public policy or civic engagement, along with their counsel, have struggled with two questions:

- What activities are prohibited – or limited (depending on the exempt status of an organization) – as "participation or intervention in any political campaign of any candidate for public office" under the "facts and circumstances" test in place under existing guidance?

- If limited rather than prohibited, how much of such activity is permitted under the "primary purpose" test in place under existing guidance?

The Tax Section of the American Bar Association has sought clarification on both questions over the years, through requests to the Service for inclusion in its annual priority guidance plans and, in 2004, through the report of the Exempt Organizations Committee's task force on section 501(c)(4) organizations and politics.[3] On the first question, in 2007, the Service provided guidance with useful examples[4]; however, many questions remained. On the second

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[1] Notice of Proposed Rulemaking, "Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities," 78 Fed. Reg. 71535 (Nov. 29, 2013).

[2] References to a "section" are to a section of the Internal Revenue Code of 1986, as amended (the "Code") unless otherwise indicated.

[3] Greg Colvin and Miriam Galston, *Comments of the Individual Members of the Exempt Organizations Committee's Task Force on Section 501(c)(4) and Politics* (ABA Tax Sec., May 25, 2004) [hereinafter *2004 ABA Task Force Report*], *available at* www.americanbar.org/content/dam/aba/migrated/tax/pubpolicy/2004/040525exo.authcheckdam.pdf.

[4] *See, e.g.*, Rev. Rul. 2007-41, 2007-1 C.B. 1421, Situations 1 and 2 (comparing scenarios in which no candidate or political party preference is displayed in voter registration, with one in which an issue screen is applied before proceeding with a "get-out-the vote" ("GOTV") message). In 2008, individual members of the tax-exempt organizations bar initiated a project to draft proposed regulations clarifying the rules, evolving into what is now The Bright Lines Project ("Project"). The Project has developed a detailed set of rules aimed at a systematic, universal definition of political intervention under the Code. Its most recent draft Summary, from December 2013, *available at* www.brightlinesproject.org, continues to evolve. Key features of its approach, mirroring recommendations in these Comments, are:

- The definition of political speech must reach more than express advocacy if the principle of limited (or in the case of section 501(c)(3), prohibited) intervention by section 501(c) organizations in candidate campaigns is to have any integrity.

- The voices of section 501(c) exempt organizations are important to the functioning of our democracy, and they need clear avenues for nonpartisan civic engagement in elections and other forms of expression in matters of public policy.

question, in the absence of specific guidance, many organizations and practitioners have concluded that perhaps anything under one-half of an organization's activities may further purposes other than those specified in section 501(c)(4), including political purposes, but how to measure the activities remained unclear.

These two key issues were brought to the forefront of public awareness after the Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*[5] (hereinafter "*Citizens United*") and subsequent cases that permitted corporations to make unlimited independent expenditures in candidate electoral contests. Section 501(c)(4) organizations quickly became favored vehicles for such expenditures by donors seeking anonymity, since no disclosure of their sources is required, and an increasing number of section 501(c)(4) exemption applications were filed in the period that followed the decision in *Citizens United*.

The stated goal of the Proposed Regulation is to provide more "definitive" rules regarding a section 501(c)(4) organization's political activities that would "provide greater certainty" and "reduce the need for detailed factual analysis" or "fact-intensive determinations."[6] The Proposed Regulation defines a new category of activity, "candidate-related political activity," that would not be considered to promote "social welfare," the exempt function of many section 501(c)(4) organizations. The Explanation of Provisions section of the preamble (the "Preamble"[7]) to the Proposed Regulation sought public comment on 12 specific issues:

- The advisability of adopting a similar approach to the Proposed Regulation for section 501(c)(3) organizations, either in lieu of facts and circumstances, or in adding presumptions or safe harbors, and what modifications would be needed in the section 501(c)(3) context.
- The advisability of adopting a similar approach to the Proposed Regulation to define section 527 exempt function activity, in lieu of facts and circumstances.
- The advisability of adopting the Proposed Regulation's approach to defining activities that do not further the exempt purposes of section 501(c)(5) and (6) organizations.
- What proportion of an organization's activities must promote social welfare to qualify for exemption under section 501(c)(4), and whether additional limits should be imposed on an organization's non-social-welfare activities.
- How to measure the activities of a section 501(c)(4) organization for purposes of applying the proportion-of-activities test.

- Political intervention should be comprehensively defined for federal tax purposes consistently across all sections of the Code that refer to political campaign activity, without tying it to federal election law in a way that imposes divergent standards upon state and local activities.
- Complete avoidance of all examinations of the facts of an organization's political intervention activities is futile; the result will be at the same time too lax and too harsh to be just or workable (as in the Proposed Regulation). At the same time, a test that looks to all the facts and circumstances is simply too vague. Good tax policy requires finding a balance.

[5] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

[6] The terms and phrases in quotes, and similar terms and phrases, appear repeatedly throughout the NPRM.

[7] By "Preamble" we mean all material in the NPRM that appears before the Proposed Regulation itself.

- Whether the length of the pre-election period during which certain public communications defined in the Proposed Regulation are automatically treated as candidate-related political activity should be shorter or longer, and whether there should be exceptions for certain communications during the window.
- Whether the pre-election-window approach in the Proposed Regulation should apply to the period before an appointment, confirmation, or other selection event other than an election.
- Whether transfers other than those defined in the Proposed Regulation, such as indirect contributions to political parties or candidates under section 276, should be treated as candidate-related political activity.
- Whether any exceptions to the definition of candidate-related political activities are needed for voter education activities.
- Whether and under what circumstances material posted by a third party on an interactive part of an organization's web site should be attributed to the organization.
- Whether an organization's responsibility for linking to a third party's web site should be the same for purposes of candidate-related political activity as for section 501(c)(3) organizations under existing guidance.
- Whether other activities should be included in, or excepted from, the definition of candidate-related political activity.

We are grateful to Treasury and the Service for giving us the opportunity to comment on the Proposed Regulation and the other issues described in the Preamble and for the attempt to bring much-needed clarity to this difficult area of tax law.

These comments respond to the questions above and include additional related recommendations based on the experience of practitioners advising exempt organizations in this area. Because questions have been raised, these comments also address the authority of Treasury and the Service to promulgate regulations of this type, and the constitutionality of such regulation. The following is a summary of our recommendations:

1. We suggest that the impact on the regulated community of regulations defining political intervention cannot be fairly assessed unless they are promulgated at the same time as regulations regarding the maximum quantity of political intervention activity permitted for section 501(c)(4) organizations: the two issues are inseparably intertwined and are best addressed at the same time.

2. It would be helpful if regulations were issued specifying the quantum of non-social-welfare (including political intervention) activity permitted for a section 501(c)(4) organization under the primary purpose test; we suggest that the amount be somewhere between insubstantial (but not zero) and 40%.

3. We recommend that regulations specify how activities are to be measured for purposes of the primary purpose test, and we suggest that activities be measured only with reference to expenditures (cash or in-kind), without taking into account time or efforts of volunteers.

4. We recommend that for purposes of clarity and consistency, the same definition of political intervention apply across all categories of section 501(c) organizations, not just section 501(c)(4) organizations, and taxable organizations, and to the extent possible section 527 organizations. Likewise, for those section 501(c) exempt organizations that are permitted to conduct some political intervention, the upper limit on such activity consistent with qualification under a primary exempt purpose test should be established in the same manner as for section 501(c)(4) organizations, described above.

5. The concept of the exempt function of a section 527 organization under existing guidance is not the ideal model for redefining political intervention outside of section 527. Therefore, we suggest that it not be used as the starting point for an improved Proposed Regulation. Instead of creating a new and different line, we recommend that the focus be on clarifying the existing rules that define political intervention, drawing the current line more clearly and reducing the need for a fact-intensive facts-and-circumstances analysis.

6. The pre-election-window approach to defining when a public communication constitutes candidate-related political activity will have the effect of being over-inclusive within the window and under-inclusive outside of the window. We recommend a less bright-line approach that allows some consideration of facts, with reasonable carve-outs for grassroots lobbying and other non-electoral activities.

7. The definition of "public communication" in the Proposed Regulation is overbroad. We recommend specifying a list of covered media channels and including a mechanism for regularly updating that list as political advertising evolves.

8. If a pre-election-window approach is retained, we suggest that the Proposed Regulation should not treat all material on an organization's web site as continuously published, regardless of when or where on the web site it was posted; limits or exceptions are needed.

9. We suggest that for purposes of clarity, the definition of who is a candidate for political intervention purposes should not include those who are only "proposed by others" and should only include candidates for *elected, public* offices. We recommend that it explicitly include candidates in foreign countries. Clarification would also be helpful as to when a candidate has been "clearly identified" by reference to a distinguishing issue or characteristic.

10. We suggest that the definition of "express advocacy" in the Proposed Regulation, and its relationship to the meaning of that term under federal election law, be clarified, and political intervention encompass communications beyond express advocacy.

11. We recommend that volunteer time and indirect contributions should not be *per se* included in candidate-related political activity.

12. We suggest that, in practice, the treatment of transfers by a section 501(c)(4) organization to a section 501(c) organization that engages in candidate-related political activity, and the safe harbor for contributions if the transferor obtains certain certification and imposes certain prohibitions, will be very burdensome and probably unnecessary; we suggest that other approaches to prevent abusive churning should be adopted. At least the required certification should be time-limited.

13. Rather than defining all voter registration and get-out-the-vote ("GOTV") drives, voter guides, and events where candidates appear as candidate-related political activity, we recommend that the Proposed Regulation extend and clarify existing guidance on how to conduct such activities in a nonpartisan manner, perhaps using safe harbors, and exclude such activities if conducted in a strictly nonpartisan manner.

14. We recommend that the distribution of materials prepared by or on behalf of a candidate should not automatically be candidate-related political activity; instead, we suggest that the Proposed Regulations exclude distribution of materials wholly unrelated to the individual's candidacy, at least during periods when the individual is or was not a candidate.

15. It would be helpful if the Proposed Regulations could address under what circumstances material posted by unrelated third parties on an organization's web site, or material posted at web sites to which an organization's web site links, will be attributed to the organization.

16. Finally, we suggest that the Proposed Regulation, if finalized, have a delayed effective date, to give organizations time to put in place administrative systems needed for compliance; transition provisions would also be helpful to allow existing organizations to address conflicts between the Proposed Regulation and charitable trust laws affecting their donated assets.

We understand that several of our recommendations will result in a less-bright line than has been drawn in the Proposed Regulation, but we suggest that some consideration of the facts is both administrable, and necessary for just and rational outcomes under the Proposed Regulation.

COMMENTS

The Preamble to the Proposed Regulation does an excellent job of describing the statute, the current Regulations thereunder, and the Proposed Regulation. In the interests of brevity, we will not repeat that here.

1. Authority to Promulgate the Proposed Regulation

As a threshold issue, we are aware of numerous commentators questioning the authority of Treasury to promulgate the Proposed Regulation regarding campaign intervention, but in our view, the Supreme Court 2011 decision in *Mayo Foundation v. United States*[8] makes clear that Treasury does have that authority. In *Mayo* the Court declared, of a Regulation promulgated with notice-and-comment under the general authority of section 7805, "We see no reason why our review of tax regulations should not be guided by agency expertise pursuant to *Chevron* to the same extent as our review of other regulations."[9] That is, *Chevron v. National Resource Defense Council*[10] applies to regulations promulgated under the general authority of section 7805(a). *Chevron* explicitly stated, in what has become known as *Chevron* step 2, that "if the statute is *silent* or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a *permissible* construction of the statute."[11]

Except for sections 501(c)(3) and 501(c)(29), the provisions of section 501(c) are silent regarding campaign intervention.[12] Yet section 501(c)(4) and other section 501(c) organizations need to know what activities constitute campaign intervention and how such activities relate to their exempt purposes. Statutory silence about political activity creates ambiguity. Regulations promulgated to resolve this ambiguity are not only permissible, but also entitled to strong judicial deference under *Chevron.*

Recently, in *Loving v. IRS*,[13] the Court of Appeals for the D.C. Circuit held that Treasury Regulations applicable to tax return preparers were invalid under *Chevron* step 1, which requires that an agency give effect to the clear intent of Congress, as inconsistent with the text, history, structure, and context of the applicable statute. *Loving* relied on *FDA v. Brown & Williamson*[14]

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[8] 131 S. Ct. 704 (2011).

[9] *Id.* at 713.

[10] 467 U.S. 837 (1984).

[11] *Id.* at 843 (emphasis added).

[12] We are keenly aware of semantic problems associated with various terms and phrases used to refer to section 501(c)(3)'s prohibition ou participating or intervening in any political campaign of any candidate for public office, a concept which also appears in various other sections in the Code and Regulations including Reg. §1.501(c)(4)-1(a)(2)(ii) (relating to political activities of social welfare organizations); I.R.C. §527 and Reg. §1.527-1 *et seq.* (relating to section 527 political organizations); I.R.C. §162 and Treas. Reg. §1.162-20 (relating to trade or business expenses); I.R.C. §2055 and Treas. Reg. §20.2055-1 (relating to deductions from the estate tax); I.R.C. §2522 and Treas. Reg. §25.2522(a)-1 (relating to deductions from the gift tax); I.R.C. §7409 and Treas. Reg. §301.7409-1 (relating to actions to enjoin flagrant political expenditures of section 501(c)(3) organizations). This Comment tries to use "campaign" or "political" "intervention" for such activities, reserving "candidate-related political activity" for activities defined as such in the Proposed Regulation.

[13] *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014).

[14] *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000).

in asserting that courts should not presume congressional intent to "implicitly delegate decisions of major economic or political significance."[15] Here, however, Congress has assigned responsibility for interpreting and administering section 501(c)(4) and other provisions of section 501(c), as well as section 527,[16] to the Service and Treasury by establishing these categories in the Code.

In *dicta, Loving* stated that the Service's interpretation would also fail *Chevron* step 2 as unreasonable in light of the statute's history, structure, and context. The court, however, acknowledged that "[t]he Service is surely free to change (or refine) its interpretation of a statute it administers."[17] As Justice Scalia observed in connection with *Chevron* step 2, "As *Chevron* itself held, the Environmental Protection Agency can interpret 'stationary source' to mean a single smokestack, can later replace that interpretation with the 'bubble concept' embracing an entire plant, and if that proves undesirable can return again to the original interpretation."[18]

Here the Service and Treasury are changing and refining their own regulations, as authorized under *Chevron.* The current Regulations state, "[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community."[19] The Regulations further specify that "promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[20] The Regulations, however, fail to define intervention in political campaigns or give guidance on what constitutes primary engagement. The Proposed Regulation is intended to fill that gap. In so doing, they carry out the recommendation of the Treasury Inspector General for Tax Administration and the National Taxpayer Advocate that Treasury develop guidance regarding social welfare activity.[21]

As noted above, *Chevron* deference also requires fidelity to Congressional intent. Under the language of the Code, section 501(c)(4) organizations must be operated "exclusively for the promotion of social welfare." Yet while the current Regulations make clear that political intervention is not a social welfare activity, they also permit some level of it for section 501(c)(4) organizations, and the Preamble asks for comments on what degree of candidate-related political activity should be permitted for section 501(c)(4) organizations.

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[15] *Loving*, 742 F.3d at 1021.

[16] I.R.C. §527 addresses the taxability of political organizations, and classifies them as organizations exempt from income taxes.

[17] *Id.*, slip opinion at 16.

[18] *United States v. Mead Corp.*, 533 U.S. 218, 247 (2000) (Scalia, J., dissenting).

[19] Reg.§ 1.501(c)(4)-1(a)(2)(i) (emphasis added).

[20] Reg. § 1.501(c)(4)-1(a)(2)(ii).

[21] Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review,* Highlights, *available at* http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf. National Taxpayer Advocate, *Special Report to Congress: Political Activity and the Rights of Applicants for Tax-Exempt Status*, 14-15, *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/FullReport/Special-Report.pdf.

There is ample support that permitting some degree of political intervention activity by section 501(c)(4) organizations does not undermine Congressional intent. For example, the same word "exclusively" appears in section 501(c)(3), but in 1945 the Supreme Court wrote in *Better Business Bureau v. United States*[22] that a "substantial" non-exempt purpose will destroy exemption under section 501(c)(3). The Court did not forbid *all* non-exempt purposes or activities; it did not interpret "exclusively" literally. Regulations promulgated in 1959 and retroactive to 1953 incorporated this interpretation, clarifying that "exclusively" means "primarily" for both section 501(c)(3) and section 501(c)(4) organizations.[23] The Regulations did so to carry out, not oppose, Congressional intent. One final example is the unrelated business income tax ("UBIT") regime, enacted by Congress in 1950. The UBIT regime recognizes that exempt organizations may conduct activities that do not carry out their exempt purposes. In enacting the UBIT, Congress itself made a legislative change that required reinterpreting "exclusively." Both *Better Business Bureau* and the UBIT regime demonstrate that "exclusively" is not to be understood literally,[24] thus leaving room for political activity by non-charitable exempt organizations. Accordingly, Treasury and the Service are not exceeding their authority in promulgating a rule that permits less-than-primary non-social welfare activities by section 501(c)(4) organizations.

2. Quantity and Measurement of Permitted Non-Social Welfare Activity

a. We recommend that Regulations regarding the maximum quantity of political intervention activity be promulgated at the same time as, and in connection with, Regulations defining political intervention activity

Current Regulations effectively define the statutory phrase "operated exclusively for the promotion of social welfare" to mean "*primarily* engaged" in such promotion,[25] but the actual quantity of social welfare required in order to be "primarily engaged" in promoting social welfare, and how to measure it, are undefined in the Regulations and are not resolved in any other authorities.[26] While the Preamble requests comments on "what proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4)," and "how to measure the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations,"[27] neither issue is addressed by the Proposed Regulation. We suggest, that for purposes of clarity, Treasury and the Service promulgate regulations on the *quantity* of non-social welfare activity permitted for a section 501(c)(4) organization at the same time as regulations defining political intervention for purposes of section 501(c)(4).

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[22] 326 U.S. 279 (1945).

[23] Reg. § 1.501(c)(4)-1(a)(2)(i).

[24] *See, e.g., People's Educational Camp Society v. Comm'r*, 331 F.2d 923, 931 (2d Cir. 1964).

[25] Reg. § 1.501(c)(4)-1(a)(2)(i) (emphasis added).

[26] Part 2(b) discusses various proposals for the level of permitted non-social welfare activity. It notes that the most common interpretation of "primarily" prior to recent attention on the issue was that it meant 51%, thus permitting up to 49% non-social welfare activity.

[27] 78 Fed. Reg. 71535, 71537.

For many long-standing section 501(c)(4) organizations, the practical workability of any changes to the definition of political intervention activities that fall outside social welfare purposes depends largely on how much of such activity will be permitted (that is, whether and by how much it will be reduced from 49%). Broader definitions that characterize more activities as political intervention will be more administrable the more room there is for such activities before exemption is lost, while the precise boundaries of narrower definitions become more critical the lower the limit. This reality makes it difficult for practitioners advising social welfare organizations to comment on the Proposed Regulation on behalf of clients, because the impact on the regulated community will be the product of the definitions and the limit, rather than the definitions alone.

Moreover, we believe it would increase compliance burdens on both the Service and the nonprofit community if new regulations were adopted on "candidate-related political activity" or any other forms of political intervention by section 501(c)(4) organizations, without at the same time clarifying *how much* non-social welfare activity such organizations may engage in and how it should be measured. The measurement would need to include not only political intervention, but other forms of activity that do not promote social welfare, such as private benefit activities, unrelated business, and purely social activities. The Proposed Regulation on candidate-related political activity would create a new and untested legal regime for only one specific category of non-social welfare activity, without more comprehensive guidance. This may become unworkable for the regulated community and the Service personnel who must enforce the new rules. We recommend that Treasury and the Service take this opportunity to resolve these longstanding uncertainties.

b. Regulations on the quantity of non-social welfare activity permitted would be very helpful

As noted above, the Preamble requests comments on "what proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4)."[28] Neither the Regulations nor other precedential or binding guidance defines exactly what "primary" (or its converse "less-than-primary") means for section 501(c)(4) exemption purposes. We are aware of four main proposals as to what "primary" social welfare purposes or activities should mean.

Option 1: **Zero** non-social welfare activities permitted. Some commentators have taken the position that, despite the "primary purpose" language of the current section 501(c)(4) Regulations, the law requires that section 501(c)(4) organizations must operate *exclusively* in furtherance of valid social welfare purposes, with *zero* non-social welfare activities (i.e., zero participation in political campaigns)[29] allowed, because that is what section 501(c)(4) of the

[28] 78 Fed. Reg. 71535, 71537.

[29] It may be possible to read the existing section 501(c)(4) Regulations, as issued in 1959, as consistent with a complete prohibition on political intervention. Reg. § 1.501(c)(4)-1(a)(2)(ii) contains a cross-reference to the "action" organization regulations for section 501(c)(3) charities, stating that an organization not qualified as a charity due to substantial legislative lobbying described in Reg. § 1.501(c)-1(c)(3)(ii) or (iv) may still qualify to be a social welfare organization under section 501(c)(4). However, it makes no reference to subparagraph (iii) of § 1.501(c)-1(c)(3), which pertains to political intervention. So, there is no direct statement in the section 501(c)(4) Regulations that political activity may be permitted at any level, "less-than-primary" or otherwise. The Service did

Code literally says. For example, litigation filed in 2013 by U.S. Representative Chris Van Hollen and a coalition of advocacy organizations in the U.S. District Court for the District of Columbia took this position, arguing that the current "primary purpose" Regulations are an impermissible misconstruction of the statute and that "exclusively" in section 501(c)(4) means, in fact, "exclusively" for the promotion of social welfare.[30]

Option 2: Only **insubstantial** non-social welfare activities permitted.[31] Another reading of section 501(c)(4) would allow organizations to be exempt under that section only if "no substantial part" of their activities was not in furtherance of social welfare. This option would construe the phrase "operated *exclusively* for the promotion of social welfare" in section 501(c)(4) similarly to how Regulations construe the phrase "organized and operated *exclusively* for charitable purposes" in section 501(c)(3). As Treasury and the Service point out in the Preamble, the section 501(c)(3) Regulations have language construing "exclusively" in section 501(c)(3) to mean "engages *primarily* in accomplishing one or more [charitable] purposes" (similar to the "primarily" language in the section 501(c)(4) Regulations), but the section 501(c)(3) Regulations then state that a section 501(c)(3) organization may not devote "more than an insubstantial part of its activities" to non-charitable purposes. The section 501(c)(4) Regulations could be amended to include a similar "no-more-than-insubstantial" restriction on non-social welfare activities, and define substantiality for this purpose.

Option 3: **No more than 40%** non-social welfare activities permitted. Another possible implementation of the requirement that section 501(c)(4) organizations be operated "primarily" for social welfare purposes would be to limit their non-social welfare activities to some level clearly below half of total activities. A task force of the ABA Tax Section's Exempt Organizations Committee recommended a 40% limit on political campaign expenditures as the bright-line or safe-harbor rule in a 2004 report on these issues.[32] The Service also used 40% as the limit on non-social welfare monetary expenditures and time expenditures for organizations

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not issue any formal interpretation allowing any section 501(c)(4) political campaign activity until 1981, in Rev. Rul. 1981-95, 1981-1 C.B. 332, when the upper limit was set at less-than-primary. By that time, Congress had enacted section 527, which implicitly recognized that a section 501(c)(4) organization may make some political expenditures subject to the section 527(f) tax on investment income.

[30] *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of the Treasury*, No. 13-CV-732 (D.D.C., complaint filed May 21, 2013). Citizens for Responsibility & Ethics in Washington ("CREW") was the plaintiff in the consolidated complaint that included Van Hollen and Public Citizen, a nonprofit consumer advocacy group. On December 6, 2013, in response to the NPRM, Van Hollen and Public Citizen withdrew their complaints. On February 27, 2014, the U.S. District Court for the District of Columbia dismissed CREW's complaint for lack of standing. *See Citizens for Responsibility and Ethics in Washington v. U.S. Dep't of the Treasury*, 2014 U.S. Dist. LEXIS 24885 (D.D.C. Feb. 27, 2014) (mem.).

[31] While the section 501(c)(4) regulations do not elaborate on the meaning of "primarily" even to the limited extent that the section 501(c)(3) regulations do, numerous courts, including five appellate courts, have nonetheless adopted the *Better Business Bureau* language and imported it into the section 501(c)(4) context. *See, e.g., Vision Serv. Plan v. United States*, 265 Fed. Appx. 650, 651 (9th Cir. Cal. 2008); *American Association of Christian Schools Voluntary Employees Beneficiary Ass'n Welfare Plan Trust v. United States*, 850 F.2d 1510, 1515-16 (11th Cir. 1988); *Police Benevolent Ass'n of Richmond, Va. v. United States*, 661 F. Supp. 765, 773 (E.D. Va.1987), *aff'd without opinion*, 836 F.2d 547 (4th Cir. 1987); *Mutual Aid Association of the Church of the Brethren v. United States*, 759 F.2d 792, 796 (10th Cir. 1985); *Contracting Plumbers Cooperative Restoration Corp. v. United States*, 488 F.2d 684, 686 (2d Cir. 1973), *cert. denied*, 419 U.S. 827 (1974).

[32] *2004 ABA Task Force Report* at 9.

that were eligible to elect expedited review of their backlogged Form 1024 applications for recognition of section 501(c)(4) exemption, under a temporary procedure initiated by the Service in September 2013.[33]

Option 4: **Less than half (up to 49%)** non-social welfare activities permitted. A final option for construing the "primary" purpose requirement of the section 501(c)(4) Regulations is essentially a literal reading of "primary": an organization is considered to be operated primarily in furtherance of social welfare purposes, and entitled to tax exemption, if *more than half* of its activities, based on whatever measurement is adopted, are in furtherance of social welfare. This "51/49" construction of the limit on non-social welfare activities and/or expenditures is probably the most common way that the "primary purpose" test currently is applied in practice. Service officials have sometimes used "49%" in internal training sessions as informal shorthand for the "less-than-primary" limit on non-social welfare activities, including political intervention, derived from interpreting "primary" as 51%.[34]

We have not reached a consensus as to the quantity of non-social welfare activity that should be permitted under the "operated exclusively for the promotion of social welfare" statutory requirement, although we agree that the quantum of non-social welfare activity allowed should be at least the insubstantial level described in Option 2 above, which (as observed in the Preamble) would make the section 501(c)(4) test generally comparable to the test for charitable purposes and activities under the section 501(c)(3) Regulations.[35] We also believe there is value in the *2004 ABA Task Force Report* recommendation of a "bright line" 40% limit on political campaign activity, measured by monetary expenditures. Factors supporting a 40%-of-monetary-expenditures limit on all non-social welfare activity (including but not limited to political intervention) include relative ease of computation and administration, while at the same time ensuring social welfare purposes and activities would remain materially above one-half of total activities. Whatever quantity is permitted for section 501(c)(4) organizations, we believe the same rationale and limits should be applied to other categories of section 501(c) organizations (other than section 501(c)(3)), to the extent possible under existing statutes.

One can reasonably view political intervention as consistent with the promotion of social welfare in a way that private member benefit or commercial activities (the other examples of non-social welfare activity in Regulations section 1.501(c)(4)-1(a)(2)(ii)) are not. "Candidate-related political activity" and other types of political intervention have a strong public policy and public education component. That view would support allowing social welfare organizations to

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[33] I.R.S. Letter 5528 "Optional Expedited Process for Certain Exemption Applications Under section 501(c)(4)," (2013), *available at* www.irs.gov/pub/irs-tege/letter5228.pdf.

[34] *See EO Materials Suggest 51 Percent Threshold for 501(c)(4) Groups*, TAX NOTES, (Jan. 27, 2014) at 394 (referring to Service training materials, released pursuant to a FOIA request, stating that "primary" is generally used to mean 51 percent); *Judy Kindell on 501(c)(4)-(6) Organizations and 527*, 11 PAUL STRECKFUS'S EO TAX J. 42,45 (2006).

[35] The *2004 ABA Task Force Report* suggesting that the line be drawn at 40% was issued at a time when nonprofit organization independent expenditures to influence candidate elections were almost completely prohibited at the federal level and in about one-half of the states. That all changed when *Citizens United* v. *FEC* declared the prohibition on such speech to be unconstitutional, and political spending by section 501(c)(4) organizations has mushroomed in subsequent campaign seasons. Recently, both of the principal authors of the *2004 ABA Task Force Report* have advocated limits lower than 40%.

conduct relatively more of such activity. On the other hand, there is ample precedent regarding attempts to assist or prevent individuals (or political parties) from acquiring elective positions of political power as private benefit.[36] Exploring the validity of these opposing views is beyond the scope of these Comments, but may be appropriate to consider in the context of promulgating regulations on the amount of such activity to be permitted under the primary purpose test.

We note that lowering the non-social-welfare-activity limit to zero as in Option 1 may in fact preclude section 501(c)(4) organizations from establishing a separate segregated fund treated as a political organization under section 527 (e.g., a PAC) through which to conduct political intervention activities, thus eliminating them as an alternate channel for charities' core political speech, which could raise constitutional issues. We believe this outcome would be inconsistent with the intent of section 527, which expressly contemplates that a section 501(c)(4) organization may create such a separate segregated fund. Moreover, the text of section 501(c)(4) does not contain the prohibition on participating or intervening in elections to public office found in section 501(c)(3), bolstering the statutory argument against identical treatment of both groups with respect to the quantum of political intervention permitted.

We are, as a group, concerned that the 49% limit in Option 4 requires a level of precision that is difficult to administer, allows no room for error by the organization or the Service, and may encourage abusive uses of section 501(c)(4) exempt status. Moreover, as discussed in Part 5(g) below, the higher the limit on less-than-primary activities, the more political intervention can be leveraged from an increment in social welfare activity. This multiplier effect presents an opportunity for manipulation that should certainly be addressed if a 49% limit is retained.

Further, we note that while setting a percentage limit somewhere between 49% (less-than-primary) and a percentage corresponding to the concept of "insubstantial," which has variously been interpreted in similar contexts between 5% and 20%, could be seen as an exercise in arbitrary line-drawing, such an intermediate limit may be justified in order to balance the competing values and address practical implications involved. Setting the limit very low may cause some section 501(c)(4) organizations to move large amounts of political intervention into affiliated section 527 PACs, but it may also cause some to move political intervention entirely out of the tax-exempt system into for-profit LLCs and other ostensibly client-based political consulting business entities.[37] As structuring such alternatives becomes increasingly burdensome for nonprofit organizations, the potential for a successful constitutional challenge on First Amendment grounds increases. Setting the upper limit at an "arbitrary" middle position, such as 33% or 25% could be a functional compromise.

There is one final concern to be noted in any discussion of the appropriate limit on less-than-primary non-social-welfare activity. That concern is the absence of any tax-exempt status for an organization all of whose activities would be exempt under either section 501(c)(4) or section 527, except that it engages in more than the permitted amount of political intervention

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[36] *See, e.g., Nationalist Movement v. Comm'r*, 102 T.C. 558 (1994) (private benefit regarding the founder's political ambitions raised by the Service, but not supported by the record); and *American Campaign Academy v. Comm'r*, 92 T.C. 1053 (1989) (Exemption denied for educational organization which conferred more than incidental private benefit by conducting activities with the partisan objective of benefiting Republican candidates and entities).

[37] Whether encouraging such a migration would be good or bad policy is beyond the scope of this Comment.

under section 501(c)(4), but less than substantially all political intervention as required by section 527. This gap will be larger the lower the limit on political intervention by 501(c) organizations is set. Should the opportunity arise for remedying this gap—perhaps through legislative proposals—we recommend the minimum level of political intervention required for section 527 exemption be adjusted to approach or mirror the maximum under section 501(c)(4): we see no public policy justification for withholding tax-exempt status from nonprofit organizations that fall in the gap.

c. Regulations on how to measure activities for the primary purpose test would also be helpful

In addition to seeking comments on the quantity of non-social welfare activity that should be permitted for section 501(c)(4) organizations, the Preamble also requests input on "how to measure the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations."[38] Aside from the lack of clarity and guidance about just what "primary" means in the Regulations as discussed above, even if we knew how much is permitted, it remains uncertain what financial and/or operational elements are taken into account in determining an organization's "primary" purpose or activities. Knowledgeable Service personnel described the situation as follows nearly 20 years ago:

> Whether an organization is "primarily engaged" in promoting social welfare is a "facts and circumstances" determination. Relevant factors include the amount of funds received from and devoted to particular activities; other resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the manner in which the organization's activities are conducted; and the purposes furthered by various activities.[39]

Factors to be considered might include revenues, or expenditures, or property and assets, or personnel time (both volunteers and employees), or the manner of operation and the purposes furthered by particular activities – but with no reliable guidance on which of these factors might be considered in any given situation, or how to weigh the factors, or how to measure some of the factors. Ten years ago, the *2004 ABA Task Force Report* concisely summed up the definitional and measurement uncertainties in the section 501(c)(4) "primary purpose" test by noting that "there is no single method for measuring whether certain activities are primary or less-than-primary," and "no percentage along any scale of measurement has been [authoritatively] set as the dividing line between primary and less-than-primary."[40] The situation has become no clearer since then, and the burden of this uncertainty on social welfare organizations has increased as options for political intervention by section 501(c)(4) organizations have become broader and more complex, especially after *Citizens United*.[41]

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[38] NPRM, "Explanation of Provisions," § 1(d), 78 Fed. Reg. 71535, 71537 (Nov. 29, 2013).

[39] Raymond Chick and Amy Henchey, *Political Organizations and IRC 501(c)(4)*, 1995 IRS EXEMPT ORG. CONTINUING PROF. EDUC. PGM., *available at* http://irs.gov/pub/irs-tege/eotopicm95.pdf.

[40] *2004 ABA Task Force Report* at 7.

[41] *Citizens United v. FEC*, 558 U.S. 310 (2010).

We agree with the Task Force in the *2004 ABA Task Force Report*, which proposed that political intervention be measured only with reference to expenditures (cash or in-kind), and not take into account the time or efforts of an organization's volunteers.[42] While the Task Force only addressed section 501(c)(4), the same logic, and therefore the same measurement approach, should apply for all other categories of section 501(c) organizations, unless the statute indicates otherwise.

We suggest that Treasury and the Service consider publishing regulations on the quantity of non-social welfare activity allowed and how to measure it, at the same time as any new regulations on "candidate-related political activity" or any other form of political intervention.

3. Consistency in Definition of Political Intervention across All Tax-Exempt Statuses

a. Overarching concerns

Before we turn to detailed technical comments, we believe it may be helpful to step back and outline some of the larger issues that we, as practitioners, have encountered. Some of these issues are raised in our technical comments as well, often in several different places; the point of discussing them here is to draw out important themes that we suggest Treasury and the Service consider.

(1) Balancing clarity with simplicity, consistency, and rationality

As practitioners who advise clients of all sizes, including providing *pro bono* advice to tax-exempt organizations too small to afford legal counsel, and as teachers of the law of tax-exempt organizations to the nonprofit sector, we cannot emphasize enough the value of *simplicity*, *consistency*, and *rationality* in tax policy and compliance, particularly where the Service has insufficient resources to present a serious enforcement presence sector-wide and must therefore rely heavily on voluntary compliance. The current facts and circumstances standard for political intervention presents serious problems in *clarity*, but we respectfully suggest that the solution is not to create an entirely new standard that is different from all existing standards and will require separate additional compliance efforts. We are concerned that the new standard in the Proposed Regulation will exponentially increase the complexity of the legal framework under which the sector in general, and section 501(c)(4) organizations in particular, operate. The effort to achieve clarity in the Proposed Regulation is commendable, but the Proposed Regulation sacrifices too much in simplicity, consistency, and rationality. These competing values must be balanced.

(2) Practical problem with section-501(c)(4)-only approach

While it may seem logical to tackle perceived abuses among section 501(c)(4) organizations through a Proposed Regulation that addresses only section 501(c)(4), a basic problem with this approach is that political operatives (of both parties) using section 501(c)(4) have choices. We are concerned that adjusting only section 501(c)(4) will cause those who want to influence elections to use instead other categories of exempt organizations that may not be

[42] A precedent for measurement of activities through expenditures only may be found in the lobbying expenditure test for public charities under section 501(h) and the accompanying Regulations at section 56.4911 *et seq.*

subject to the new Proposed Regulation. In fact, according to recent news coverage,[43] social welfare organizations may already be passé as the vehicle for such activities, and section 501(c)(6) trade associations are being used in a similar fashion now. Section 501(c)(7) social clubs could be used in the future. The common analogy is squeezing a balloon: press on it in one spot, and it just pops out in another. Any effort to stem the inappropriate use of section 501(c) tax-exempt organizations for excessive political intervention should, we believe, address all categories at the same time. Even then, a successful nonprofit-sector-wide approach may simply drive those seeking anonymity for their electoral activities into the business sector, but our hope is that a sector-wide approach that allows at least a moderate degree of political intervention to be conducted by non-charitable exempt organizations would avoid disrupting the existing functional balance among nonprofits and leave the nonprofit sector relatively undistorted.

(3) Relationship between charitable and social welfare activities

For many decades, practitioners and the nonprofit sector have understood that the essential difference between a section 501(c)(3) organization and a section 501(c)(4) social welfare organization is that the charity receives more favorable tax treatment in exchange for less freedom in its permitted activities. Conceptually, the universe of activities that qualify as charitable under section 501(c)(3) exemption is a subset of social welfare activities under section 501(c)(4). A section 501(c)(4) organization's political intervention can cross a line prohibited for section 501(c)(3) organizations, and it can engage in more lobbying activities. The logic of this relationship presumes that the same definitions of political intervention apply to both types of entities. The Proposed Regulation would change that fundamental relationship with respect to both types of activities. This is a much more significant change than would appear from considering the Proposed Regulation and its impact on section 501(c)(4) organizations in isolation. The potential for significant unintended consequences is substantial, and we respectfully suggest that Treasury and the Service proceed with extreme caution.

(4) Role of section 501(c)(4) organizations in nonprofit family structures

We are concerned that the Proposed Regulation does not reflect the role section 501(c)(4) organizations play in countless existing multiple-exempt-entity structures. Section 501(c)(4) social welfare organizations form the critical link and the essential buffer between section 501(c)(3) charitable organizations and section 527 political organizations. They allow the unique voice and perspectives of a charity to be heard in public debates, including the most important debate, about who will lead our country, while preserving the charity's section 501(c)(3) status.[44] These families of organizations of various tax-exempt classifications sharing a common nonprofit mission are vital to our society and our democracy, and provide an

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[43] *See, e.g.*, Michael Beckel, *Major U.S. Companies Quietly Funnel Dark Money to Politically Active Nonprofits*, HUFFINGTON POST (Jan. 16, 2014; accessed April 22, 2014) *available at* http://www.huffingtonpost.com/2014/01/16/dark-money_n_4604839.html; Brendan Fischer, *Kochs Form "Business League," Will Keep Political Spending in the Shadows*, THE CENTER FOR MEDIA AND DEMOCRACY'S PRWATCH (May 2, 2013; accessed April 21, 2014) *available at* http://www.prwatch.org/news/2013/05/12093/kochs-form-business-league-will-keep-political-spending-shadows.

[44] Parts 5(a) and 7 below discuss the constitutional problems raised by restricting or eliminating the ability of section 501(c)(4) organizations to serve this function. The Proposed Regulation would do just that.

important counterweight to private profit-seeking interests. Operating them requires close attention to boundaries, and the boundaries can be difficult and expensive to administer properly. In practice, structuring these families so they can function requires one standard for political intervention to apply across the family. We hope Treasury and the Service will carefully consider any new regulations on section 501(c)(4) organizations from this perspective.

We turn next to more technical and detailed arguments for a single consistent standard for political intervention in the tax-exempt sector, but not the standard in the Proposed Regulation.

b. The candidate-related political activity standard in the Proposed Regulation should not apply to section 501(c)(3) organizations; nonetheless, having a different standard for political intervention for section 501(c)(3) and section 501(c)(4) organizations is unnecessary, confusing, and harmful

Section 501(c)(3) organizations are subject to an absolute prohibition against "participat[ing] in, or interven[ing] in (including publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office."[45] Section 501(c)(3) organizations that violate this prohibition are subject to severe sanctions: in addition to potential excise taxes or injunctive action,[46] such organizations can lose their tax-exempt status for even insubstantial political activity.[47] These dire consequences cause many section 501(c)(3) organizations to be extremely cautious, steering wide of grey areas. This result is especially likely for charities too small to afford regular access to legal counsel.

Currently, the standards for political activity for section 501(c)(4) organizations are the same as for prohibited campaign intervention for section 501(c)(3) organizations. The Regulations governing section 501(c)(4) organizations provide that "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office"[48] – language that is substantially similar to the section 501(c)(3) prohibition quoted above. To date, the Service has relied on the same "facts and circumstances" analysis for determining political activity for both organization types, assuming that what constitutes prohibited political intervention for section 501(c)(3) organizations will also constitute political activity under section 501(c)(4). The Service articulated this position most clearly in Revenue Ruling 1981-95[49] and has continued to echo it

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[45] I.R.C. § 501(c)(3).

[46] *See* I.R.C. §§ 4955 (excise tax on political expenditures), 6852 (termination assessment for flagrant political expenditures), 7409 (injunction provisions for flagrant political expenditures).

[47] *See, e.g., United States v. Dykema*, 666 F.2d, 1096, 1101 (7th Cir. 1981) (noting that exemption is lost by any political intervention, even where such activities are not "substantial."). *But see* H.R. Rep. No. 100-391, 100th Cong., 1st Sess. 1623 (noting that the section 4955 excise tax alone may be appropriate where the "expenditure was unintentional and involved only a small amount and where the organization subsequently had adopted procedures to assure that similar expenditures would not be made in the future.")

[48] Reg. § 1.501(c)(4)-1(a)(2)(ii).

[49] *See* Rev. Rul. 1981-95, 1981-1 C.B. 332 (citing section 501(c)(3) examples of prohibited political intervention for what constitutes section 501(c)(4) politicalintervention). Courts have agreed. *See, e.g., Ass'n of the Bar of the City of New York v. Comm'r*, 858 F.2d 876 (2d Cir. 1988).

in non-precedential Service positions throughout the intervening years.[50] The Preamble itself acknowledges that "the IRS generally applies the same facts and circumstances analysis under section 501(c)(4) [as under section 501(c)(3)]."[51]

Although to date the Service has not clearly articulated a standard to define political intervention in general, it has provided helpful and workable guidance with respect to particular factual scenarios, with the following applications of particular significance to the Proposed Regulation:

- *Voter guides* – an organization has not engaged in political intervention where it publishes voter guides based on candidate responses to questionnaires, or compiling legislators' voting records, where such guides focus on a wide range of subjects and do not indicate organizational bias for or against any candidate based on either content or format;[52]

- *Voter registration or GOTV drives* – organizations may encourage voter registration or engage in GOTV drives, provided that such activities do not indicate a preference for any candidate or political party, such as through the application of an "issue screen" likely to indicate candidate or political party preference;[53]

- *Candidate forums and appearances* – organizations may hold candidate forums, provided that either all qualified candidates are invited, or reasonable, objective criteria are used to determine invitations, the questions are prepared by a nonpartisan panel and cover a wide range of subjects, every candidate has

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[50] A series of private letter rulings in the late 1990s includes express statements by the Service that the activities considered political activity for a section 501(c)(3) organization are the same as activities that constitute political activity for section 501(c)(4) organizations. The rulings arose in the context of taxpayers seeking a determination that certain activities were exempt function activity under section 527 (discussed elsewhere in these Comments). However, because of the way the request was framed, it was easy to conclude that the proposed activities would be political intervention for a section 501(c)(3) organization. The first of these rulings looked at Rev. Rul. 1981-95 and made explicit what was implicit in its reasoning: that prohibited section 501(c)(3) political intervention is the same thing as political intervention under section 501(c)(4). *See, e.g.*, Priv. Ltr. Rul. 9552026 (Oct. 1, 1996); Judith E. Kindell & John Francis Reilly, *Election Year Issues,* 2002 EXEMPT ORG. CONTINUING PROF. EDUC. PGM. *at 355, 433, available at* http://www.irs.gov/pub/irs-tege/eotpici02.pdf.

[51] *See* 78 Fed. Reg. at 71536 (noting similarity in section 501(c)(3) statutory prohibition against political intervention and section 501(c)(4) regulatory language that political intervention does not constitute promotion of social welfare).

[52] *See, e.g.,* Rev. Rul. 1978-248, 1978-1 C.B. 154 (comparing several scenarios in which compilation of candidate voting records or positions is or is not political intervention, based on whether bias is shown); Rev. Rul. 1980-282 later permitted a somewhat narrower focus for legislative scorecards under certain conditions.

[53] *See* Rev. Rul. 2007-41, 2007-1 C.B. 1421, Situations 1 and 2 (comparing scenarios in which no candidate or political party preference is displayed in voter registration, with one in which an issue screen is applied before proceeding with GOTV message).

an equal opportunity to present, and the moderator or hosting organization does not indicate approval or disapproval for the candidates;[54] and

- *Issue advocacy not constituting political intervention* – a variety of factors are considered in determining whether an organization's advocacy communication shows bias for or against any particular candidate or political party, such as whether the timing of the communication is based on a non-electoral event, whether the issue raised in the communication has been raised as a distinguishing factor in the election, and whether the communication is part of an ongoing series independent of the election.[55]

These scenarios, most recently reiterated in Rev. Rul. 2007-41,[56] have given both section 501(c)(3) and 501(c)(4) organizations a better roadmap to help define activities that educate the voting public and enhance the functioning of our democracy without intervening in an election. We encourage Treasury and the Service to retain and build upon such guidance for both types of entities, as part of a comprehensive program of line-drawing that is sorely needed. In the meantime, however, it is hard to see how any of these educational activities, long engaged in by charities, would not also further "social welfare."

While the lack of clear guidance for what constitutes political intervention outside of these specific scenarios presents challenges for the many organizations which engage in civic engagement activities, we suggest that the line drawn in the Proposed Regulation in defining candidate-related political activity is worse than the facts and circumstances approach that currently prevails throughout the Service's treatment of political intervention cases. Imposing the standards in the Proposed Regulation on section 501(c)(3) organizations would be especially inappropriate, since these standards would treat many of the above-described section 501(c)(3)-permissible activities as "political" – thus outlawing their conduct by section 501(c)(3) organizations, and virtually eliminating many nonprofit voter education and civic engagement programs. Our concern about the rule is not that it is drawn in the wrong place, but that it is not clear. We recommend that Treasury and the Service develop clearer standards, extending existing guidance, perhaps with safe harbors, which would permit continued legitimate nonpartisan civic engagement programs – and further, for the reasons set forth below, apply these standards equally to section 501(c)(3) and section 501(c)(4) organizations.

Applying different standards for what constitutes political activity to section 501(c)(3) and section 501(c)(4) organizations will have unintended consequences in several areas.

(1) Reduction in section 501(c)(3) conduct of nonpartisan civic engagement activities

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[54] *See id.*, Situations 7-9; Rev. Rul. 1986-95, 1986-2 C.B. 73. Rev. Rul. 2007-41 may have loosened the criteria for candidate debates by describing various elements as "factors" rather than requirements, but by treating the standards as open-ended facts and circumstances, more uncertainty may result.

[55] *See* Rev. Rul. 2007-41 (applying these factors to section 501(c)(3) organizations); Rev. Rul. 2004-6, 2004-1 C.B. 328 (applying similar factors to section 527(f) tax that may be levied upon section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations, but not specifically to their qualification for exemption).

[56] Except voter guides, for which formal guidance has not been updated since 1980.

Having different standards for section 501(c)(4) organizations can be expected to discourage many section 501(c)(3) organizations from engaging in nonpartisan civic engagement activities (including voter education programs and voter registration or GOTV drives) even though such activities are clearly lawful for them. The Proposed Regulation would effectively label many such activities *per se* political, simply because they are being conducted by a section 501(c)(4) organization, rather than a section 501(c)(3) organization. Inevitably, some section 501(c)(3) organizations will avoid such lawful nonpartisan activities either because they mistakenly believe such activities are now deemed political intervention (a logical outgrowth of the longstanding Service guidance that the standard is the same for section 501(c)(3) and section 501(c)(4) organizations), or because they fear a misperception by donors or the general public that such activities are inherently political.

(2) Complication of section 501(c)(3)/(4) organizations' relationships

Having different standards may have adverse impacts on the operation of section 501(c)(3) organizations affiliated with, or engaging in coalition activities with, section 501(c)(4) organizations. As recognized by the Supreme Court, a section 501(c)(3) organization may be affiliated with a section 501(c)(4) organization, provided that the organizations respect corporate formalities and the section 501(c)(3) organization does not subsidize non-section-501(c)(3)-permissible activities conducted by the affiliated section 501(c)(4) organization.[57] Many such section 501(c)(3)/section 501(c)(4) tandems share staff, office space, equipment and other assets, with shared staff typically maintaining time records to ensure correct allocation of salaries and benefits between the two organization, as well as allocation of overhead and direct costs, to ensure that the section 501(c)(4) organization bears the full cost of its operations. If the standards for section 501(c)(3) and section 501(c)(4) political intervention are no longer congruent, then not only would the administration of such tandems become excessively burdensome, but it also may increase the likelihood of error in application of these rules by joint staff and management, potentially increasing audit risk or resulting in loss of the section 501(c)(3) organization's exemption.

Moreover, many section 501(c)(3) organizations join coalitions with section 501(c)(4) members to conduct section-501(c)(3)-permissible educational activities, nonpartisan civic engagement programs, and advocacy activities. Section 501(c)(3) organizations may make grants to section 501(c)(4) organizations, and vice versa, to conduct such activities. As with tandems, applying different standards to unrelated section 501(c)(3) and section 501(c)(4) organizations would make the operations of such coalitions difficult, if not impossible. Pooling of scarce charitable resources for civic engagement activities can be efficient and cost-effective, yet it appears this may be precluded under the Proposed Regulation. If a section 501(c)(3) organization makes a grant to a section 501(c)(4) organization to conduct a nonpartisan voter registration drive, has the section 501(c)(3) organization engaged in an activity that is prohibited for it? Even if not, this would lead to the strange result that while a section 501(c)(3)

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[57] *See Regan v. Taxation With Representation*, 461 U.S. 540, 544 n.6 (1983) (discussing the permissibility of operating an section 501(c)(3) with an affiliated section 501(c)(4) organization, and noting that "[t]he Service apparently requires only that the two groups be separately incorporated and keep records adequate to show that tax deductible contributions are not used to pay for lobbying."); *see also Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321, 2329 (2013).

organization could conduct this activity directly in furtherance of charitable purposes, if it instead contributes to a section 501(c)(4) organization for this activity, it would not be in furtherance of the section 501(c)(4) organization's social welfare purposes. Conversely, how could a section 501(c)(4) organization's grant to a section 501(c)(3) organization for its charitable civic engagement activities be deemed candidate-related political activity?

(3) Effect on donors to section 501(c)(3) organizations conducting civic engagement programs

Different standards for section 501(c)(3) and 501(c)(4) organizations would likely distort grantmaking and other donations from third parties to section 501(c)(3) organizations engaging in nonpartisan civic engagement programs. Just as having different standards could discourage section 501(c)(3) organizations from engaging in nonpartisan civic engagement activities out of an excess of caution, a similar effect could discourage private foundations and other charitably-motivated donors from making grants to section 501(c)(3) organizations engaging in activities which, though lawful, could be perceived as having a political taint. Conversely, and ironically, the different standards could cause donors who are no longer able to fund nonpartisan civic engagement programs in section 501(c)(4) organizations to turn to section 501(c)(3) organizations and pressure them to take aggressive or questionable legal stances in their civic engagement programs, putting their tax-exempt status at risk.

c. Similarly, a different standard for political intervention for section 501(c)(5) or (6) organizations from section 501(c)(4) organizations is inappropriate, but the standard in the Proposed Regulation should be much improved before it is extended to other exempt categories

Treasury and the Service have requested comments on whether the proposed definition of candidate-related political activity should be extended to section 501(c)(5) and (6) organizations.[58] We strongly support having the same rules regarding what constitutes political intervention for such organizations (as well as other categories of section 501(c)) as for section 501(c)(4) organizations. We do not, however, support applying the proposed candidate-related political activity definition to section 501(c)(4) organizations, or extending it to any other category of section 501(c) organization.

As discussed above, the current section 501(c)(4) Regulations specifically provide that participating or intervening in a political campaign does not qualify as the promotion of social welfare.[59] In contrast, the statutory language and Regulations governing section 501(c)(5) labor unions and section 501(c)(6) trade associations and business leagues do not mention political intervention and are silent as to the impact on tax-exempt status of such activities by those types of organizations. The relevant paragraphs of section 501(c) and the accompanying Regulations are similarly silent about the impact of political intervention on the tax-exempt status of other types of exempt organizations that could potentially be involved in election campaigns, such as section 501(c)(7) social clubs and section 501(c)(19) veterans organizations. Nonetheless, the IRS National Office has acknowledged in non-precedential memoranda that "[i]f...the primary

[58] *See* 78 Fed. Reg. 71535, 71537.

[59] *See* Reg. § 1.501(c)(4)-1(a)(2)(ii).

purpose and activities of an organization qualify [for exemption] under Code § 501(c)(5), then some participation in political activities in support of or opposition to candidates for nomination or election to public office will not disqualify the organization from exemption under that section."[60] This formulation applies the language of the section 501(c)(4) Regulations to describe permissible political intervention activities of section 501(c)(5) labor unions. The Service has also recognized in general terms that the same standards for political intervention should apply to both section 501(c)(5) and section 501(c)(6) organizations,[61] and there is no reason to believe it would not extend generally to other section 501(c) organizations, absent specific contrary authority.

These generally congruent standards for defining what is political intervention by different categories of exempt organizations, as well as the "less than primary" limit on the quantity of such activity generally understood to apply also across these categories, serve an important purpose in the realm of public policy advocacy. Section 501(c)(4) social welfare organizations, section 501(c)(5) labor unions, and section 501(c)(6) trade associations are all, consistent with their respective tax-exempt purposes, allowed to be advocates in the marketplace of ideas for policy positions in the interest of their respective missions and members. Social welfare organizations advocate publicly for policy positions in accordance with their stated social missions, often with a particular liberal or conservative bent. Labor unions have traditionally been vocal and active in favoring or opposing public policy positions based on what they see as their members' interests. Trade associations have long done the same thing in furtherance of the perceived interests of the industry or other business group to which their members belong. In short, section 501(c)(4), section 501(c)(5) and section 501(c)(6) organizations are often prominent and competing players in the same advocacy space, often taking opposing positions on issues in the public debate.[62] Under current law, within the limits allowed by tax-exemption requirements and other laws, and subject to potential tax liability under section 527(f), if such public policy advocacy involves *political intervention*, these types of exempt organizations understand that they are all subject to the same general rules for tax and tax-exemption purposes.

The Proposed Regulation would change this level "political" playing field for only one category of advocacy organizations – section 501(c)(4) social welfare organizations. Section 501(c)(4) organizations alone would have to follow the peculiar "candidate-related political activity" definition of the Proposed Regulation in determining whether their tax-exempt purposes remain primarily in furtherance of social welfare, while other types of 501(c) advocacy-oriented organizations such as labor unions and trade associations would remain subject to the current political intervention standards (with all their uncertainties). This outcome is particularly difficult to rationalize from a public policy perspective when the significant private benefits appropriate in section 501(c)(5) unions and section 501(c)(6) trade associations are compared to the more restricted private benefits and greater social benefits required of section 501(c)(4)

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[60] G.C.M. 36286 (May 22, 1975).

[61] *See generally* G.C.M. 34233 (Dec. 30, 1969).

[62] Vigorous public advocacy on policy issues, specifically including active legislative lobbying, has long been recognized as fully consistent with the tax-exempt purposes of section 501(c)(4) social welfare organizations, *see* Rev. Rul. 1968-656, 1968-2 C.B. 216, section 501(c)(5) labor unions, *see* G.C.M. 34233 (Dec. 30, 1969), and section 501(c)(6) trade associations. *See* Rev. Rul. 1961-177, 1961-2 C.B. 117.

social welfare organizations. All three types of organizations engage the public, and often compete, on the same public policy issues, and therefore should be subject to the same rules, but not the rules in the Proposed Regulation.

Having different rules for different types of section 501(c) organizations would also open the door to potential gamesmanship, especially with respect to issue ads. Political operatives could use a section 501(c)(4) organization for aggressive issue ads before the 30/60 day pre-election window begins, when under the Proposed Regulation a message is not deemed candidate-related political activity unless it contains express advocacy. Once the window has opened on candidate-related political activity for the section 501(c)(4) organization, such issue ads could be moved to a section 501(c)(5), (6), (7), etc., organization, allowing operatives to argue they are not less-than-primary political intervention by using an aggressive interpretation of facts and circumstances under current law, as some section 501(c)(4) organizations are alleged to have done in recent election cycles.

While the contours of an appropriate definition of political intervention for all section 501(c) organizations are beyond the scope of the comments requested by the NPRM, we urge Treasury and the Service to re-examine the candidate-related political activity standard in the Proposed Regulation. We recommend development and implementation of a more rational and workable formulation that can be applied across multiple section 501(c) classifications, rather than creating a new and substantial inconsistency between the definitions of less-than-primary political intervention applicable to section 501(c)(4) organizations and other section 501(c) organizations.

d. The same standard for political intervention for section 501(c) organizations (but not the standard in the Proposed Regulation) should apply to non-exempt organizations under sections 162(e) and 6033

Federal tax law does not allow taxpayers to claim business deductions for amounts spent on lobbying or certain political activity.[63] "Political activity" for section 162(e)(1) purposes means "participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office," using virtually identical language to that describing the section 501(c)(3) political intervention prohibition. To prevent taxpayers from circumventing the rule that disallows business deductions for lobbying and political intervention, section 6033 imposes a special set of tax rules on organizations that are exempt from federal income tax under sections 501(c)(4), 501(c)(5), and 501(c)(6), to prevent their members from obtaining tax-favored treatment for the portion of their dues spent by the 501(c) organization on lobbying or political intervention activities. The tax on a section 501(c) organization's lobbying and political intervention activities is sometimes referred to as the "Proxy Tax," since it recoups from the section 501(c) organization the tax revenue lost when dues payments allocable to political intervention and lobbying expenditures are deducted by the organizations' members.[64]

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[63] I.R.C. § 162(e)(1).

[64] Broadly speaking, an organization that is exempt under section 501(c)(4) and subject to the Proxy Tax has two choices regarding its lobbying and political expenditures. First, the organization can notify each person paying dues how much of the dues payment will be spent on such activities. I.R.C. § 6033(e)(1)(A)(ii). If the exempt organization provides such a notice to its dues-paying members, the members cannot claim business deductions for

Since the Proxy Tax is designed to prevent taxpayers from circumventing section 162(e)(1), political intervention and lobbying expenses that count for Proxy Tax purposes are determined under the section 162(e)(1) rules for business deductions. A section 501(c)(4) organization that is subject to the Proxy Tax would thus have to track its expenditures for political activities under three different regimes: the Proposed Regulation's candidate-related political activity definitions for the primary purpose test; section 527's exempt function rules for calculation of the section 527(f) tax; and the definitions of political intervention under sections 162(e) and 6033. This substantial burden would be reduced if the Proposed Regulation adopted a consistent test for political intervention that could then be applied across all of section 501(c) and to businesses under section 162.

For reasons of fairness, and to limit opportunities for arbitrage, we strongly recommend that the same definition of political intervention should be applied to all section 501(c) exempt organizations and to non-exempt organizations, for all relevant purposes.

4. Section 527's "Exempt Function" Is the Wrong Model for the Definition of Political Intervention for section 501(c) Organizations

a. The Proposed Regulation's definition of candidate-related political activity for section 501(c)(4) organizations inappropriately invokes section 527, which was enacted to serve an unrelated and different statutory purpose

As acknowledged in the Preamble, the definition of "candidate-related political activity" draws "key concepts from the federal election campaign laws" and "existing definitions of political campaign activity, both in the Code and in federal election law." Unfortunately, the Proposed Regulation demonstrates what practitioners in this area have long known: federal election and tax laws are uneasy fellow travelers. Congress has historically avoided interweaving these two regimes, which were wholly separate until the introduction of section 527 in 1975,[65] and aside from section 527 have remained so for nearly 40 years. Section 527 itself reflects Congressional restraint and compromise, minimally invoking election law even in defining the then-new category of "political organization."[66] Treasury and the Service should be wary about proposing to increase their interconnectedness.

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the portion of their dues payments which are allocable to those activities. I.R.C. § 162(e)(3). Second, if the organization fails to provide this notice to members, or chooses not to provide the notice, its members may claim an unlimited business deduction for the dues they pay (assuming the dues otherwise qualify as a business deduction), but the exempt organization itself must pay an income tax at the highest corporate rate on the amount it spends on those activities. I.R.C. § 6033(e)(2)(A).

[65] *See* 93 S. Rep. 1357, 93d Cong., 2d Sess. 27 (1974), 1975-1 C.B. 517 (enacting provision of *Act to Amend the Tariff Schedules to Permit the Importation of Upholstery Regulators, Upholsterer's Regulating Needles, and Upholsterer's Pins Free of Duty*, also known as "Pins and Needles Act of 1974," Pub. L. No. 93-625, 1975-C.B. 510).

[66] "Political organizations" are commonly referred to as "527s" after this section of the Code, much like section 501(c)(4) social welfare organizations are commonly referred to as "(c)(4)s." A section 527 organization must have its own bank account and Federal employer identification number, but no application to the Service for recognition of exemption is required, only notice to the Service of its creation by filing a Form 8871.

Section 527 codifies the exemption of political organizations from tax on their income from traditionally political sources (i.e., political contributions, dues, political fundraising events or sales, and similar revenue), provided the income is used only for the political organization's "exempt function."[67] Section 527(e)(2) defines the "exempt function" of a political organization as "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." The core definitions of Proposed Regulation section 1.501(c)(4)-1(a)(2)(iii)(A) borrow heavily from the section 527(e)(2) definition. The first category of candidate-related political activity described in Proposed Regulation section 1.501(c)(4)-1(a)(2)(iii)(A)(*1*) is "[a]ny communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section) expressing a view on, whether for or against, the *selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party*"[68] that is express advocacy or is susceptible of no other reasonable interpretation than a call to vote for or against a candidate. Proposed Regulation section 1.501(c)(4)-1(a)(2)(iii)(B)(*1*) defines "candidate" as "an individual who publicly offers himself, or is proposed by another, for *selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed.*"[69]

Congress's broad definition of section 527's exempt function was intentional; its breadth was necessary in order to track and accommodate the wide range of income and activities that had previously been characterized as non-taxable by the Service and that the Service was then threatening to tax through administrative action.[70] The challenge was to define tax-free political activity generally enough to accommodate then-existing law without inviting abuse. The resulting provision effectively (if imperfectly) protects First Amendment rights and avoids chilling political activity, which Congress acknowledged to be the "heart of the democratic process,"[71] by encouraging candidates, political parties, and their supporters and opponents to pool resources in order to participate in the political process without entity-level taxation. However, under sections 527(b) and (c), if a political organization generates net income from sources other than its exempt function (such as investment or commercial activity), that net income will be taxable. Thus section 527 encourages political organizations' contributions to the political process while dissuading them from accumulating investment assets tax-free. Notably, section 527(e)(2)'s broad exempt function definition applies narrowly: it defines activity that is tax-free only for political organizations without applying that definition to permitted or prohibited activity of any other type of entity.

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[67] *See* I.R.C. § 527(c)(3).

[68] Emphasis added.

[69] Emphasis added.

[70] For an excellent summary of the statutory background, see Milton Cerny and Frances R. Hill, *The Tax Treatment of Political Organizations*, 71 TAX NOTES 651 (1996).

[71] 93 S. Rep. 1357, 93d Cong., 2d Sess. 27 (1974), 1975-1 C.B. 517.

b. Congress's application of section 527 to section 501(c) organizations through the section 527(f) tax was narrowly constructed to avoid abuse and was not intended to define proscribed or less-than-primary purpose social welfare activity

In addition to creating a tax status for political organizations, section 527, through subsection (f), reaches beyond section 527 organizations to tax section 501(c) organizations (including section 501(c)(4) social welfare organizations), and this tax is the basis cited by Treasury and the Service for looking to section 527 to define the scope of less-than-primary political intervention for a section 501(c)(4) organization. But this position misconstrues the purpose of the section 527(f) tax on section 501(c) organizations: the application of section 527(f) to section 501(c) organizations is a statutory stop-gap to prevent section 501(c) organizations from conducting section 527 exempt function activities while avoiding the tax on section 527 organizations.

Section 527(f) taxes the net investment income of section 501(c) organizations that may otherwise accumulate investment assets tax-free.[72] To avoid the tax, section 501(c) organizations can isolate their section 527 exempt function activities by creating a section 527 separate segregated fund (as discussed in greater detail in Part 4(d) below). The point of section 527(f) is to encourage that separation as a matter of tax policy. It has nothing to do with prescribing (or proscribing) any level or type of political activity by section 501(c) organizations. By tracking the taxing provisions of section 527 (sections 527(b) and (c)), including their definition of "exempt function," the role of section 527(f) is to prevent a section 501(c) organization from avoiding the section 527(b) tax, and nothing more. If a section 501(c) organization has 527-type expenditures in excess of its investment income, it will be taxed on all of its investment income (just as a section 527 organization is taxed on its investment income). In other words, section 527(f) uses the broad definition of exempt function because it tracks section 527(b), not because Congress was making a pronouncement about what is and is not appropriate section 501(c) behavior. Because section 527(f) was designed as an anti-abuse provision for section 527 (not section 501(c)(4)), it is fundamentally unsuited for the purpose of defining section 501(c) activity. We should look to section 501(c)(4) itself, not section 527,[73] to define what is proper social welfare activity.

Moreover, when the Preamble states that the "[P]roposed Regulation instead would apply a definition that reflects the broader scope of section 527 and that is already applied to a section 501(c)(4) organization engaged in section 527 exempt function activity through section 527(f)," Treasury and the Service greatly exaggerate the extent to which section 527 currently applies to a section 501(c)(4) organization. Section 527(f) is "already applied" only to section 501(c)(4) organizations to the extent, and only to the extent, that such organizations act like *taxable* political organizations (i.e., to the extent they both make 527-type exempt function expenditures, and have investment income in excess of those expenditures), and the application of

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[72] Exceptions, such as unrelated business income taxation of certain debt-financed income and the tax imposed on the net investment income of social clubs, are beyond the scope of these Comments.

[73] As stated in Part 4(c), while we do not support extending §527's definitions to §501(c)(4) organizations, we do support re-examining the purpose and functioning of §527 in light of current circumstances and legal developments since its enactment, to determine whether and how §527 should be amended to bring it into better congruity with the definitions applicable to political intervention activities of other tax-exempt organizations.

section 527(f) will at most result in additional tax on the section 501(c)(4) organization, not in the revocation of its exemption.

c. Section 4955, and not section 527, is the most recent congressional pronouncement on political activity of exempt organizations and is a more suitable standard

The Preamble accurately states that section 501(c)(4) has not been amended since 1959.[74] However, the Preamble erroneously suggests that section 527(f) was Congress's last attempt to define political activity for section 501(c) organizations;[75] in fact, section 4955, which imposes an excise tax on political expenditures by section 501(c)(3) organizations, was added to the Code in 1987, well after the section 501(c)(3) political intervention prohibition had been equated with the section 501(c) less-than-primary threshold. In section 4955 Congress intentionally defined "political expenditure" as "participation in, or intervention in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." In other words, when Congress last considered the political intervention restriction on section 501(c)(3) organizations, at a time when that restriction also defined political intervention for other categories of section 501(c), Congress limited "political intervention" to the support of or opposition to candidates for *elected* office.

d. Far from being "consistent with section 527," application of the Proposed Regulation to section 501(c)(4) organizations along with the section 527(f) tax will produce unintended inconsistent results under existing section 527 Regulations

The Preamble suggests that the Proposed Regulation is "consistent with" section 527 and that the broader standard of candidate-related political activity set forth in the Proposed Regulation is "already applied" to section 501(c)(4) organizations through section 527(f),[76] but the Preamble fails to acknowledge or account for significant *inconsistencies* between the Proposed Regulation and existing Regulations implementing section 527(f).

For example, the Preamble is silent on the creation of separate segregated funds by section 501(c) organizations. As an alternative to paying the section 527(f) tax, a section 501(c) organization can form a separate segregated fund ("SSF") with as little formality as opening a bank account and notifying the Service and perhaps the Federal Election Commission ("FEC") or the applicable State agency, and make its 527-type expenditures strictly through the SSF. The SSF will be treated as a separate section 527 political organization and taxed accordingly, instead of taxing the affiliated section 501(c) organization.[77] Section 1.501(c)(4)-1(a)(2)(iii)(*6*) of the Proposed Regulation includes SSFs in the definition of "section 527 organization," but otherwise

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[74] 78 Fed. Reg. 71535.

[75] *Id.*

[76] *Id.*

[77] *See* I.R.C. § 527(f)(3). However, note that any transfers from the section 501(c) organization to its SSF will themselves trigger the section 527(f) tax to the section 501(c) organization, except where the section 501(c) organization acts as a mere conduit for dues or contributions raised from its members or donors for section 527 purposes and passes them promptly through to its SSF.

does not address the impact of the Proposed Regulation on section 501(c) organizations with SSFs.

Perhaps more importantly, the Preamble and Proposed Regulation are also silent on the treatment under the Proposed Regulation of a section 501(c) organization's 527-type expenditures that are expressly excepted from the section 527(f) tax. Specifically, section 501(c) organizations are generally not taxable under section 527(f) for (1) payments of certain "indirect expenses" of a political organization[78] and (2) expenditures that are "allowable" under the Federal Election Campaign Act ("FECA")[79] or "similar state statute."[80]

These categories of otherwise nontaxable expenditures *are* taxable under section 527(f) *only to the extent* provided by two other subsections of the Regulations. However, those two provisions, Regulations sections 1.527-6(b)(2) and (3) respectively, have been "reserved" by the Treasury since first promulgated in 1980 (and are therefore often called the "Reserved Regulations"). Because the Reserved Regulations are missing, the two exceptions to the section 527(f) tax are defined only by the language on the face of the Regulations, unconstrained by whatever limits final, not-yet-promulgated section 527(f) Regulations might impose.

Before the Supreme Court decided *Citizens United v. Federal Election Commission*[81] in January 2010, and aside from a limited number of "qualified nonprofit organizations" under *Massachusetts Citizens for Life*,[82] independent federal political expenditures by corporations were not "allowable under the FECA"; the fact that any such expenditures would be taxable under section 527(f) was practically irrelevant since they were prohibited by federal election law. After the *Citizens United* Court lifted the ban on corporate independent expenditures, it also (arguably, and certainly unintentionally) rendered such independent federal political expenditures non-taxable under section 527(f) by virtue of the "allowable under the FECA" exception. In other words, although the section 527(f) Regulations have long provided section 501(c) organizations with narrow categories of 527-type expenditures that are not taxable, the breadth of these exceptions expanded dramatically in January 2010.

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[78] *See* Reg. § 1.527-6(b)(1)(i) (cross-referencing Regulations section 1.527-6(b)(2), which is "Reserved").

[79] 11 CFR § 100.29.

[80] *See* Reg. § 1.527-6(b)(1)(i) (cross-referencing Regulations section 1.527-6(b)(3), which is "Reserved").

[81] 558 U.S. 310 (2010). Although ostensibly an election law decision, the significance of the *Citizens United* opinion to application of the Reserved Regulations has not gone unnoticed by the national tax bar; as part of its annual list of recommendations for the Treasury-IRS Guidance Priority List, the American Bar Association's Section of Taxation has specifically requested clarification of the decision's impact. *See* Amer. Bar Ass'n Sec. of Tax'n, Letter to Emily S. McMahon (Ass't Sec'y, Dept. of the Treas.) and William J. Wilkins (Chief Counsel, IRS) Regarding Recommendations for 2012-2013 Guidance Priority List (May 16, 2012), (February 16, 2014, 10:52 PM), http://meetings.abanet.org/webupload/commupload/TX319000/relatedresources/Recommendations_for_2012-2013_Guidance_Priority_List.pdf (requesting "[g]uidance concerning the application of [R]eserved Regulation [s]ection 1.527-6(b)(3), 'Expenditures allowed by Federal Election Campaign Act' in light of *Citizens United* decision, which broadens the scope of activity that must be constitutionally permitted under existing law"); Amer. Bar Ass'n Sec. of Tax'n, Letter to Internal Revenue Service Commissioner Shulman Regarding Recommendations for 2011-2012 Guidance Priority List (Doc 2011-16135, 2011 TNT 143-25 (July 26, 2011)) (same).

[82] *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986).

The Proposed Regulation neither acknowledges nor accommodates the existing exceptions to the section 527(f) tax, and their silence is particularly glaring in light of the apparent breadth of the exceptions post-*Citizens United*. Adoption of the current Proposed Regulation in the absence of final section 527(f) Regulations would create unintended inconsistencies between what is defined as candidate-related political activity for a section 501(c)(4) organization and which income of a section 501(c)(4) is taxed by section 527(f). We encourage Treasury and the Service to reexamine the section 527(f) Regulations; in the meantime, the Proposed Regulation should take into account these exceptions to the section 527(f) tax, discussed in more detail below.

(1) Indirect expenses

Under the current section 527 Regulations, in determining which of their expenditures are nontaxable (i.e., are not 527-type "exempt function" activities) "indirect expenses," section 501(c) organizations may rely upon the definition of "indirect expenses" applicable to section 527 organizations.[83] This definition includes any expenses "necessary to support the directly related activities of [a] political organization," and activities that "must be engaged in to allow [a] political organization to carry out the activity of influencing or attempting to influence the selection process." Specifically, section 501(c) organizations do not have to count as section 527(f) taxable expenditures any resources they expend for the benefit of a section 527 political organization's overhead, recordkeeping, or fundraising.[84]

By contrast, the Proposed Regulation would include as candidate-related political activity – and therefore as non-primary purpose activity – "a contribution (including a gift, grant, subscription, loan, advance, or deposit) [by a section 501(c)(4) organization] of money or anything of value to or the solicitation of contributions on behalf of" any section 527 political organization.[85] In other words, under the Proposed Regulation, if a section 501(c)(4) organization makes a payment on behalf of a section 527 organization for anything that falls within the definition of "indirect expenses" of a section 527 organization, those expenditures would not count as primary purpose activity of the section 501(c)(4) organization, *even though they would be exempt from section 527(f) tax*. For example, the Proposed Regulation calls out fundraising expenditures specifically ("the solicitation of contributions on behalf of…any [S]ection 527 organization"), even though the current section 527 Regulations expressly *exclude* such expenses from taxation under section 527(f) if paid by a section 501(c) organization on behalf of a section 527 political organization. Under the Proposed Regulation, a section 501(c)(4) organization could actually lose its exemption for making political activity expenditures that escape tax under section 527(f).

(2) Expenses allowable under FECA or similar state statute

In the absence of the Reserved Regulations, current Regulations permit a section 501(c) organization to carve out from section 527(f) taxation expenditures that "are otherwise allowable

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[83] *See* Reg. § 1.527-6(b)(1)(i).

[84] *See* Reg. § 1.527-2(c)(2).

[85] Prop. Reg. § 1.501(c)(4)-1(a)(2)(iii)(A)(*4*)(*ii*).

under [FECA] or similar state statute."[86] Setting aside for the moment the enormous difficulties of interpreting the terms "allowable" and "similar" in this context,[87] it is at least clear that communications by a section 501(c) organization with its members about candidates for public office are allowed by FECA and will not be taxable as a section 527(f) exempt function expenditure. By contrast, such communications fall squarely within the definition of candidate-related political activity in the Proposed Regulation. As with indirect expenses, a section 501(c)(4) organization's member communications could cause it to fail the primary purpose test and lose its exempt status entirely for excessive candidate-related political activity, without the associated expenditures ever being taxable as political intervention under section 527(f).

While the incongruity of the treatment of expenditures for member communications under section 527(f) and the Proposed Regulation is clear, it is likely that many other categories of 501(c) expenditures allowable under the FECA or similar state statute (thanks to *Citizens United*) and therefore not taxable under section 527(f) as exempt function expenditures would fall within the scope of candidate-related political activity under the Proposed Regulation and thus could cost a section 501(c)(4) organization its exemption for excessive candidate-related political activity if they became primary. This anomalous result could be mitigated by promulgating appropriate Reserved Regulations, or by rethinking the definition of candidate-related political activity.

We certainly support the values of simplicity and consistency in tax policy. We believe, as we argue in Part 5(c), that section 527's coverage of who is a candidate is a poor fit for purposes of section 501(c)(4) political intervention. Even if it were appropriate, however, the justification that the Proposed Regulation is consistent with section 527 in other ways does not hold up. The differences described above demonstrate that the Proposed Regulation's relationship to section 527 is neither consistent, nor simple, and we recommend Treasury and the Service move away entirely from using section 527 as a reference or analogy for defining political intervention by section 501(c) entities. Instead, we suggest that Treasury and the Service sharpen and focus existing guidance defining political intervention which has heretofore applied across categories of section 501(c) organizations, to reduce the need for detailed factual analysis and fact-intensive determinations.

e. Section 527's exempt function should be brought into line with the definition of political intervention for section 501(c) and non-exempt organizations

We strongly support using the same standard consistently to determine whether advocacy is treated as for (or against) a candidate rather than something else such as lobbying or policy advocacy, whether for all types of 501(c) organizations and non-exempt organizations, as discussed above in Part 3 above, or for section 527 political organizations and the section 527(f) tax, discussed above in this Part. We appreciate that, for a section 527 political organization, it would require a statutory change to allow the definition of the exempt function to conform, or at least dovetail, with the definition of political intervention for section 501(c) organizations and businesses under section 162(e) and section 6033, but we believe that developments since the

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[86] *See* Reg. § 1.527-6(b)(1)(i).

[87] *See* Nancy E. McGlamery and Rosemary E. Fei, *Taxation with Reservations: Taxing Nonprofit Political Expenditures After* Citizens United, 10 ELECTION L.J. 449 (2011).

enactment of section 527 warrant such a re-examination now. This suggestion is well beyond the scope of the Proposed Regulation, but we recommend Treasury and Service support such legislative changes if the opportunity arises.

5. Comments and Recommendations on the Definition of Candidate-Related Political Activity in the Proposed Regulation

While, as discussed in Part 2(b) above, the drafters of these Comments did not reach a consensus on the specific amount of non-social welfare activity that section 501(c)(4) organizations should be allowed to undertake, for purposes of the following discussion in these Comments only, it is assumed that 40% non-social welfare activity would be permitted. If "primary" were defined at a lower level, the recommendations in this section of these Comments regarding the definition of candidate-related political activity would be affected. In particular, potential concerns about overbreadth of the definitions increase as the allowable amount of that activity is reduced.

a. Using specified time periods prior to an election (and prior to an appointment event) creates an inflexible definition that is both over-inclusive and under-inclusive

The Proposed Regulation creates an absolute rule that treats any "public communication" made within a stated pre-election window as "candidate-related political activity" if it refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election. This rule applies to a communication in any medium whatsoever, including material previously posted on a web site that remains available during the pre-election period. It covers any communication that reaches or is intended to reach more than 500 people that refers to a clearly identified candidate. This Part 5(a) is limited to addressing problems created by using a time window bright line to define candidate-related political activity; our concerns with other aspects of the definition are covered in the remainder of this Part 5.

While this rule is highly problematic (as discussed below), we do support the decision to measure the time window to which it applies only by reference to an election, rather than also by reference to any other type of selection event. While the Proposed Regulation would treat advocacy with respect to appointive office as "candidate-related political activity," applying a pre-decision blackout period to events related to appointive office would create a logistical nightmare. Whether the office is filled merely by appointment or by nomination and legislative confirmation, it will often be impossible for an organization to know in advance when the relevant action will occur and thus when the pre-decision time period applies to its communications. To treat pre-appointment or pre-confirmation communications as "candidate-related political activity" would create unmanageable uncertainty for organizations attempting to track and limit that activity.

More generally, the treatment of any public communication referring to a candidate made within the pre-election period as "candidate-related political activity" creates a rule that may provide clarity, but at the expense of capturing both far more and potentially far less activity than is appropriate. By capturing any mere reference to a candidate and not providing exceptions for

bona fide non-electoral advocacy, the Proposed Regulation would re-classify massive amounts of legitimate social welfare activity as "candidate-related political activity." The breadth of this rule coupled with the lack of any exceptions means that it is likely that a section 501(c)(4) organization's legitimate grassroots lobbying activity that has nothing to do with an election will be treated as candidate-related political activity. We question this outcome as a matter both of policy and of authority. Section 501(c)(4) organizations may engage in unlimited lobbying consistent with their tax-exempt status, yet under the Proposed Regulation an organization's otherwise permitted lobbying may put the section 501(c)(4) organization's exemption at risk. Given the lack of any evidence that Congress seeks to limit lobbying by section 501(c)(4) organizations, a rule such as the Proposed Regulation that would constrain substantial amounts of grassroots lobbying is arguably in excess of the Service's authority to distinguish qualifying social welfare activity from section-501(c)(4)-disqualifying political intervention. Further, by constraining the ability of a section 501(c)(3) organization to carry out lobbying through an affiliated section 501(c)(4) organization using non-deductible funds, this over-broad definition raises constitutional concerns.[88]

The absolute rule for candidate references in the pre-election window also creates pressure to use other vehicles for genuinely non-electoral communications during that window. An organization that wants to urge members of the public to communicate with "your Senators" regarding pending legislation has an additional incentive to send that message from a section 501(c)(3) organization (subject to the limited amount of lobbying it is permitted to engage in) rather than have the same message be treated as "candidate-related political activity" if sent by a section 501(c)(4) organization that as a policy matter is generally the preferred vehicle for lobbying. By applying a strict time-based test with no safe harbor for non-electoral lobbying messages, the Proposed Regulation encourages the use of section 501(c)(3) tax-deductible funds for lobbying close to an election. Under current rules, organizations often opt to use a section 501(c)(4) vehicle to convey these messages to avoid any possibility of the communication being deemed "campaign intervention" by the section 501(c)(3) organization. Yet, when a section 501(c)(3) organization can defend itself using a facts and circumstances argument and a section 501(c)(4) organization faces an absolute rule treating its communication as "candidate-related political activity," it is inevitable that we would see more section 501(c)(3) charitable dollars being spent on lobbying messages during the section-501(c)(4)-only window of pre-election coverage.

Further, the absolute line for communications within a the pre-election window paradoxically creates a safe harbor for almost all activity outside that window. Up until the pre-election cutoff, only express advocacy for or against candidates or specific election-related activity would be considered "candidate-related political activity." (The problems with treating all voter registration, GOTV, and voter guides as "candidate-related political activity" are discussed elsewhere in these Comments.) The absolute exemption for almost all communications about candidates outside the pre-election window creates a problem that is the converse of the strict treatment of communications referencing a candidate within that window.

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[88] *See generally Regan v. Taxation With Representation*, 461 U.S. 540 (1983); *Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc.*, 133 S. Ct. 2321 (2013).

As advisors to political operatives know, it is easy to construct a communication that on its face is not a call to vote for or against a candidate, yet which by any measure of common sense would be understood as an effort to influence an election. Any non-electoral call to action will suffice, even if the attempt to influence an election is obvious. For example, directing an audience to ask an incumbent to disavow her or his signature legislative accomplishment can be made susceptible of *some* reasonable interpretation other than a call to vote against that candidate, even though the electoral intent will be transparent to everyone.

In other words, this approach leaves open a huge opportunity – it can hardly be called a loophole – for section 501(c)(4) organizations to spend massive amounts of funds on electoral messages up through day 31 (before a primary) or 61 (before a general election). For sophisticated organizations seeking to influence elections, a section 501(c)(4) organization will be the vehicle of choice for messages supporting or opposing (but not expressly) a candidate outside the time window, while another organization (section 501(c)(5), section 501(c)(6), non-exempt, etc.) would be used within the window.

Applying the same definitions to all exempt organizations, as we suggest elsewhere, would eliminate the ability to manipulate the system by using organizations with different section 501(c) classifications during different windows, but a bright time-based rule would still leave untouched broad swathes of campaign advocacy outside the window.

We appreciate that the Service sees the benefit of replacing the old approach that relied on review of all the "facts and circumstances" without any standard to apply to those facts. Creating a legal standard to employ in this analysis is commendable, and long overdue. However, in its move away from the standardless "facts and circumstances" approach, the Proposed Regulation goes too far in its aversion to any reference to facts. A fair rule cannot describe speech outside the pre-election window that should be captured as "candidate-related political activity" without any reference to facts, just as reasonable exceptions for speech within that window will necessarily require assessment of facts. This is not a novel situation; existing Regulations defining lobbying for purposes of sections 501(h) and 4911 have worked well for years. They set out rules that are to be applied to facts in clearly stated ways that organizations and their advisors have been able to apply, and the Service has been able to administer.

We submit that to draw a clear but fair rule defining political activity by exempt organizations, there must be a standard that is applied to the facts of a specific communication together with reasonable exceptions. There is room between the current wide-ranging, open-ended inquiry into all the facts and circumstances, and the Proposed Regulation, which draws a bright line that ignores relevant, even critical, facts. The choice is not between "we know it when we see it" and an absolute time cut-off that treats all speech in a pre-election window as political and almost all speech outside the window as not. We recommend that the definition of candidate-related political activity should not rely solely on a time period within which any mention of a candidate is treated as not social welfare (although we believe timing is relevant, and a time period could be a useful element of the definition). The final definition should be more finely tuned, with reasonable carve-outs for lobbying and otherwise non-electoral activity.

b. The definition of covered "public communications" is overbroad and, coupled with the strict time window approach, would create massive administrative problems for organizations seeking to comply with the Proposed Regulation

In addition to problems created by application of a rule based strictly on timing, the scope of communications covered by the proposed definition of "candidate-related political activity" could create significant problems. Under the Proposed Regulation a covered "public communication" means any communication that is made through any of the following channels: broadcast on network television, cable, or satellite; on an Internet web site; in a newspaper, magazine, or other periodical; in the form of paid advertising; or any other channel that reaches, or is intended to reach, more than 500 persons. The Preamble notes that the Treasury and the Service intend that any content that refers to a clearly identified candidate that is on the section 501(c)(4) organization's web site prior to the covered period will become a covered public communication if it remains on the web site during the applicable pre-election window.

The proposed rule uses the same pre-election timeframes as the definition of an "electioneering communication" under FECA. The Preamble notes that this rule is based on federal campaign finance laws regarding disclosure of certain "electioneering" communications, and modified in order to incorporate tax law. However, the types of communication covered are far broader than those covered by FECA. As a result, the approach taken in the Proposed Regulation extends too far and will impose significant burdens on covered organizations.

It is also important to understand that any regulations interpreting political intervention under the Code must be workable not only for federal elections, but also state and local elections, where the campaign and election laws may differ greatly from the FEC rules. The time periods for enhanced donor disclosure, dollar reporting thresholds, the forms of media communications affected, and the recognition of exceptions, may vary widely and will be nonexistent in many jurisdictions.[89] Extending federal election law standards through federal tax law to political intervention in state and local jurisdictions will create confusing, divergent, and multiple compliance burdens on nonprofits operating at the state and local levels.

Under FECA, an electioneering communication is any broadcast, cable or satellite communication that fulfills each of the following conditions:

- The communication refers to a clearly identified candidate for federal office;
- the communication is publicly distributed shortly before an election for the office that the candidate is seeking (30 days before a primary, and 60 days before a general election); and
- the communication is targeted to the relevant electorate (U.S. House and Senate candidates only).

[89] For instance, the requirements for donor disclosure in the case of issue advocacy messages that name candidates in California involve a 45-day period in advance of all elections, a dollar threshold of $50,000, and a set of communications media that varies from the FECA provisions. California Government Code § 85310.

Newspaper communications, Internet communications, direct mail, and email are among the categories of communications that are expressly exempt.[90] Moreover, editorials are generally exempt.[91]

The election law definition can be and has been criticized as overbroad because it treats as "electioneering" any reference to a candidate with no exception for genuine lobbying or other non-electoral speech. However, the term "electioneering communication" under federal election law is narrowly tailored by comparison to the Proposed Regulation. The "electioneering communication" definition stems from the Bi-Partisan Campaign Reform Act of 2002 ("BCRA),[92] which imposed a ban on all such communications funded by corporations or unions. The rationale behind the ban was to end the use of "sham issue advocacy" advertisements that were run close in time to an election and, while purporting to discuss an issue associated with a candidate, in fact operated in many cases as campaign advertisements promoting or opposing a specific candidate. An electioneering communication under federal election law is limited to communications in broadcast media that were deemed by the legislative drafters to be particularly susceptible to use for electoral advocacy. Further, an electioneering communication must be "targeted" to the relevant electorate.[93] In contrast, the Proposed Regulation would capture as "candidate-related political activity" a lobbying message sent, for example, only to residents of Maryland that referred to the "Smith-Jones bill" where Representative Jones is a candidate for re-election in California.[94]

As discussed above in Part 5(a), we believe it is ill-advised to use a strict calendar-based cut-off for pre-election speech that will be automatically treated as "candidate-related political activity." However, should this approach be retained, it should at a minimum be limited in its coverage of media and cover only messages for which the audience includes the relevant electorate.

A reasonable starting point for the definition of covered media may be found in the FEC's definition of "public communication":

> Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.[95]

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[90] 11 CFR 100.29(c); e.g., FEC Advisory Opinion 2011-19 ("GivingSphere").

[91] *Id.*

[92] Pub.L. 107–155, 116 Stat. 81, enacted March 27, 2002, H.R. 2356.

[93] This use of the term "targeted" may seem counter-intuitive, as it lacks the element of selectively directing the message at an audience, but at least it will not capture a communication that is not viewable by the relevant electorate.

[94] Indeed, it would apparently cover communications directed to audiences composed solely of non-U.S. citizens, such as remarks made at a conference overseas.

[95] 11 CFR § 100.26.

By focusing on media generally availed of by political campaigns seeking to persuade voters, this definition leaves space for issue discussion and other activities not likely to affect electoral behavior. (Note that many of these terms, such as "mass mailing" and "telephone bank" are clearly defined elsewhere in the applicable election law regulations.) For the Proposed Regulation, we would suggest modifying the list of covered media by removing the reference to "any other form of general public political advertising" as it introduces a large element of uncertainty. Rather, the Proposed Regulation should specify covered media channels as of its promulgation date and then create a mechanism for adding new forms of media being used for political advertising to the list as practices and technology evolve.

Aside from questions of over-inclusion and under-inclusion, the Proposed Regulation would create administrative difficulties by treating all material on an organization's web site as continuously published without regard to the time or location of posting. The Preamble makes explicit that the absolute rule treating pre-election communications as "candidate-related political activity" is affirmatively intended to cover material posted by an organization on its web site that is not taken down during the window. In effect, this requires organizations to constantly (as pre-election windows open) scrub all material archived deep in their web sites to ensure they have not inadvertently engaged in "candidate-related political activity."[96] This requirement not only imposes significant burdens on these organizations, but also threatens to reduce the availability of information useful to the public. Archives of previous lobbying messages and policy discussions may disappear to avoid the risk of leaving a candidate reference available to public view during the pre-election window. An organization that is (or has been) involved in litigation that names a public official who later decides to run for elected office will be discouraged from making court filings available on its web site. The public interest in such an outcome is difficult to discern. We recommend that Treasury and the Service find an approach that balances the ease and clarity of a rule that all posted materials are treated as continuously published for as long as they remain somewhere on an organization's web site, with the likely heavy administrative burden on organizations and the serious harm to public information and debate on the Internet that such a rule would generate.

The Proposed Regulation creates a further challenge by failing to indicate how organizations should account for the cost of previously-posted web content that remains online during the pre-election window. How far back must it look to capture the costs of creating content as "candidate-related political activity" which may not even have qualified as candidate related political activity at the time of posting? Or must it look back at all? Perhaps the intent is to capture only the costs of hosting the content during the covered period. The Proposed Regulation is silent, leaving organizations that must track and report "candidate-related political activity" expenditures in a difficult position.

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[96] Of course, the Proposed Regulation does not prohibit a social welfare organization from engaging in "candidate-related political activity." However, as noted in Part 2(b), the NPRM has opened the door to re-examining the amount of political intervention activity these organizations are permitted, with some advocates urging that no more than an insubstantial amount of political activity should be allowed. Were the limit to be reduced that dramatically, the overbreadth of this definition would have wider effect, and the concerns raised here about monitoring web site content in order to avoid "candidate-related political activity" would become more urgent.

Further complications arise from the Proposed Regulation's coverage of communications posted without a fee on third-party web sites (or other communications channels). This covers comments added to a third-party blog as well as postings on social media such as Facebook or Twitter. In some cases, the organization may not have control of the message once posted, so it would not be able to prevent it appearing during the pre-election window. If the organization did not know at the time the comment was posted that a person mentioned would later become a candidate, it may find itself inadvertently and inescapably engaging in "candidate-related political activity."

Similarly, while an organization's presence on sites such as Facebook is not completely out of its control, it can be at the very least challenging to go back far into prior posts to delete references to persons who have become candidates. Further, once deleted it will be impractical and burdensome to restore such references after the pre-election window has passed. As a result, interesting and thoughtful conversations provoked by a months-old or even years-old post may be entirely lost through an organization's need to avoid or minimize its "candidate-related political activity." An organization faces a daunting, if not impossible task, if a third party has archived its communications so that they remain available to be viewed by the public during the pre-election window.[97]

The FEC wisely decided not to treat all Internet communications as "public communications," a term that triggers various regulatory rules. We urge the Treasury and Service to adopt a similar rule. Experience has demonstrated that excluding from coverage unpaid Internet communications or an organization's own web site does not create loopholes that will be exploited to direct large sums of money to influence elections, but rather avoids creating a vast number of difficulties for organizations seeking to comply with these rules.

We recommend that, if a *per se* time rule defining political advocacy is retained, its reach should be limited to media likely to be used for campaigning. Treasury and the Service should follow the FEC's lead in creating an exception for content other than express advocacy on an organization's own web site, and for content on third-party sites other than that placed for a fee.

c. Problems with the proposed definition of "candidate"

The Proposed Regulation defines a "candidate" as follows:

> [A]n individual who publicly offers himself [*sic*], or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected,

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[97] For instance, the Internet Archive at www.archive.org maintains snapshots of web sites through time. The Library of Congress is archiving all content from Twitter. *See* http://archive.org/about/ ("The Internet Archive is a 501(c)(3) non-profit that was founded to build an Internet library. Its purposes include offering permanent access for researchers, historians, scholars, people with disabilities, and the general public to historical collections that exist in digital format."); *see also Library of Congress Is Archiving All of America's Tweets*, BUSINESS INSIDER (January 22, 2013; accessed March 2, 2014) *available at* http://www.businessinsider.com/library-of-congress-is-archiving-all-of-americas-tweets-2013-1.

nominated, elected, or appointed. Any officeholder who is the subject of a recall election shall be treated as a candidate in the recall election.[98]

We see four issues here: (1) employing the "proposed by another" standard to define candidacy, (2) expanding the types of offices beyond elected public office, (3) including officeholders who are the subject of a recall election, and (4) an implicit focus on U.S. elections. We discuss these in turn.

(1) "Proposed by others" is neither a workable nor a necessary standard

The standard "is proposed by others" is based on the section 501(c)(3) "action organization" regulations defining disqualifying political activity.[99] It is problematic even in that context, because it puts a key factor in determining whether an organization's communication is treated as prohibited campaign intervention in the hands of third parties, whose advocacy may not even be known to the organization. But in the section 501(c)(3) context this result is mitigated somewhat by the broad "facts and circumstances" approach employed in the analysis.[100] That is, the inquiry can consider whether the reference is to the person as a candidate, and whether speaker or audience are likely to be aware that "others" may be proposing her as a candidate.

The "proposed by others" standard makes little sense as applied in the Proposed Regulation. "Candidate-related political activity" would include any public communication that refers to a clearly identified candidate and is made within 30 days before a primary or 60 days before a general election. Within such a close time period before an election, anyone who is in any serious sense a candidate will have qualified for the ballot, and/or have registered a campaign committee with the relevant campaign finance authority. Outside that window, the Proposed Regulation would only capture as "candidate-related political activity" communications that constitute express advocacy or its functional equivalent,[101] or for which the expenditures are reported to the FEC. Neither of these situations requires the "is proposed by others" standard. If the organization is expressly advocating for or against someone's election, then proposals of "others" are not in question. Furthermore, expenditures for communications by a section 501(c)(4) exempt organization are only reported to the FEC if they meet that agency's standard of referring to a candidate (among other criteria), which employs its own clear standards and is not triggered by what third parties may propose.[102]

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[98] Prop. Reg. § 501(c)(4)-1(a)(2)(iii)(B)(1).

[99] Reg. § 1. 501(c)(3)-1(c)(3)(ii)(iii).

[100] This is not to suggest that we support a vague, standardless "facts and circumstances" rule to determine whether activity qualifies as campaign intervention in the section 501(c)(3) context or elsewhere.

[101] This is a short-hand description. The problems with the Proposed Regulation's modified version of express advocacy are addressed elsewhere in Part 5(d) below.

[102] Specifically, a candidate is "an individual who seeks nomination for election, or election, to Federal office" 2 USC § 431(2). The statute further defines seeking election as having received contributions or made expenditures in furtherance of such candidacy in excess of $5,000, or having given consent to another person to receive contributions or make expenditures in that amount. *Id.*

The "proposed by others" standard is also problematic with respect to the fact that the Proposed Regulation would treat any event at which a candidate appears (within the 30/60 day pre-election window) as "candidate-related political activity." If a person is not actively campaigning and is not ballot-qualified, there is no basis for treating her appearance as political activity merely because someone, somewhere can be shown to have said that she should be elected to a specified public office – especially where this may plainly be a wishful and not a practical statement.

Thus, adopting the "proposed by others" definition of a candidate does not meaningfully define or circumscribe the applicability of the proposed definitions of "candidate-related political activity." It does, however, add an element of uncertainty to the entire exercise by forcing an organization to examine its own speech in light of what third parties may or may not be saying. We believe that a better definition of "candidate" would include someone who has registered a campaign committee and is thus a "candidate" under applicable campaign finance law, someone who has qualified to appear on the ballot for the relevant election, someone who has expressly declared an intent to seek the office in question, or someone whose candidacy the organization expressly promotes or opposes. This approach would capture substantially all candidate advocacy, without being overbroad or unduly vague.

(2) Expanding the definition of "candidate" to overlap with offices covered by section 527 exempt function creates needless complexity

The current Regulations for section 501(c)(4) organizations state that "promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[103] This language tracks the prohibition on campaign intervention applicable to section 501(c)(3) organizations, which in turn applies only to elected and not appointed office.[104]

The Proposed Regulation would broaden this definition to include not only candidates for elective office, but also nomination or appointments[105] to any federal, state or local office, or office in a political organization. These positions are not covered by the current rule defining campaign intervention to not qualify as social welfare activity. Rather, this definition echoes the statutory language defining the section 527 "exempt function."

We recognize that there is a benefit to harmonizing the definitions of covered political activity applicable to section 501(c) and section 527 organizations. As a policy matter, it would be desirable to have one single rule that describes "political intervention" for purposes of section 527 qualification, section 501(c)(4)[106] disqualification, and application of the

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[103] Reg. § 1.501(c)(4)(2)(ii).

[104] *See* Notice 1988-76, 1988-2 C.B. 392.

[105] The Service has never seriously tried to capture and tax section 501(c) organization spending to influence appointments to public office, despite the phrasing of section 527(e). Reg § 1.527-6(b)(4) allows an organization to appear before a legislative confirmation hearing on written request without incurring the section 527(f) tax. See also Announcement 1988-114, 1998-37 I.R.B. and GCM 36694 (Feb. 3, 1988), effectively suspending any application of the 527(f) tax on 501(c) expenditures influencing appointments.

[106] And, as discussed in Part 3 above, other subsections of section 501(c).

section 527(f) tax. However, the expanded definition in the Proposed Regulation does not accomplish this goal. It is a small and inappropriate step towards that harmonization that will still require the affected organizations to track "political" activity using multiple definitions.

This result stems from the limited applicability of the Proposed Regulation's definition. The draft rule only puts forward a description of activities that will be considered not to constitute the promotion of social welfare for purposes of qualifying for exemption under section 501(c)(4). Its definitions and line-drawing do not apply to the application of the section 527(f) tax on investment income. Rather, that section, as well as the fundamental question of whether an organization is described in section 527 because it primarily engages in a section 527(e)(2) exempt function, will apparently continue to be determined by resort to the existing facts and circumstances analysis.[107] Thus, if the Proposed Regulation is adopted as written, a section 501(c)(4) organization will be required to analyze each of its activities under two standards: using facts and circumstances to determine whether the activity triggers the section 527(f) tax, and using the rule in the Proposed Regulation to determine whether the activity must be considered not in furtherance of social welfare.

Further, a section 501(c)(4) organization that is affiliated with a section 501(c)(3) organization that does very little lobbying could avoid taking such expenditures into account as candidate-related activity by having the activity performed by the section 501(c)(3) organization, leaving the section 501(c)(4) organization to engage in other candidate-related activities. This possibility would place section 501(c)(4) organizations that are affiliated with other entities on a different footing than those that are unaffiliated. We see no policy rationale for expanding the types of offices with respect to which advocacy is treated as not social welfare activity, especially when other section 501(c) organizations are free to advocate for or against candidates for appointed office (limited only by the restrictions on section 501(c)(3) organizations' lobbying, where such offices are subject to legislative confirmation).

Section 527 seeks to give political organizations the greatest leeway in expenditures they could undertake without having to include in income amounts such as spending in connection with appointments or office in a political organization. The same rules should not be used to implicitly chill the legitimate activities of a section 501(c)(4) organization.

(3) "Subject of a recall election"

The Proposed Regulation would also treat as a candidate any officeholder who is the subject of a recall election. We believe this treatment makes sense as a policy matter; it is a reasonable position for the Proposed Regulation to adopt. Further, it is helpful to have a clear statement that such recalls are covered.

It begs the question, however, of how to determine when an officeholder is the "subject" of a recall election, and guidance on that point should be incorporated into the Proposed Regulation. As discussed above, we recommend replacing the "proposed by others" standard to define a candidate, and would argue at least as strongly that an officeholder whose recall is

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[107] *See* Rev. Rul. 2004-6 ("Whether an expenditure is for an exempt function [under § 527(e)] depends on all the facts and circumstances.").

proposed by some, or even one, disgruntled constituent should not be *ipso facto* treated as a candidate for purposes of the application of these rules.

If it is the case that every state which has the possibility for recall elections makes provision for them to be triggered by circulation of citizen petitions, then a reasonable line could be drawn similarly to that in the section 4911 Regulations with respect to ballot measures: when the petition is first circulated among voters for signature.[108] If there are other mechanisms to trigger a recall, then a rule of more general applicability could be that an officeholder is the subject of a recall only when the measure is certified for the ballot, whether by administrative or judicial action. Given the relative rarity of recall elections, drawing the line at this stage would not be opening the doors to significant amounts of mischief. Alternatively, policymakers could draw a bright line based on state law ballot qualification and also capture advocacy with respect to a person whose recall the organization explicitly supports or opposes.

(4) Implicit limitation to U.S. elections

By defining "candidate" to include one who seeks federal, state, or local public office, the Proposed Regulation creates an implication that their scope is limited to public office in the United States. This limitation is inconsistent with current practice, and there seems to be no policy reason to allow advocacy with respect to foreign elections to be treated differently from advocacy regarding domestic candidates. We recommend that the definition of candidate be amended to include a clear statement that it covers public office sought in the United States or any other country, and that the covered offices are national, federal, state, regional, local or any other public office, however designated by that country.[109]

(5) "Clearly identified" candidate

The Proposed Regulation further defines a "clearly identified" candidate to mean that:

> the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by reference, such as by use of the candidate's recorded voice or of terms such as "the Mayor," "your Congressman," "the incumbent," "the Democratic nominee," or "the Republican candidate for County Supervisor." In addition, a candidate may be "clearly identified" by reference to an issue or characteristic used to distinguish the candidate from other candidates.[110]

The initial portion of the quoted text is a workable definition that organizations can reasonably be expected to apply. However, the last sentence is not clear. It greatly expands the idea of "clearly identified candidate." While we find the meaning of this last sentence difficult to understand, presumably it would apply when the first part of the definition does not –

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[108] Reg. § 56.4911-2(d)(1)(ii).

[109] This is not simply a theoretical problem. The Service has found occasions to revoke the section 501(c)(4) status of U.S. nonprofit organizations having the principal purpose of supporting candidates for election in other nations. *See, e.g.*, PLR 201214035 (Apr. 6, 2012) (involving support of candidates in South Korea).

[110] Prop. Reg. § 1.501(c)(4)-1(a)(2)(iii)(B)(*2*).

otherwise the sentence adds nothing. In other words, this applies to a communication that does not include the name, likeness, or title of a specific candidate, or any of the other stated mechanisms for referring to a specific person without stating her name.

We do not know when the Proposed Regulation contemplates that reference to an issue or characteristic would be used to distinguish a candidate from other candidates. Is this intended to capture general statements urging a vote for a candidate holding a position that is likely to distinguish candidates in many races, such as "vote pro-choice" or "vote for the pro-life candidate"? Would it be necessary to show that there is at least one race in which that issue does distinguish the candidates? Would such a race have to be occurring within the geographic reach of the communication in question? Or is the intention that the relevant communication in some way identifies the candidate that it seeks to distinguish, such as urging a vote for the pro-life or pro-choice candidate for governor? Without further clarification, the added standard in the Proposed Regulation reintroduces the very facts and circumstances approach that the Preamble claims the Proposed Regulation is designed to avoid.

Without better understanding the intent of this provision, we cannot suggest how the language might be modified to achieve that intent. If the intent is to capture references to issues and voting without more narrowly specifying the office in question, such as "vote pro-life," it would be at best a very un-intuitive definition of "clearly identified candidate."

We recommend deleting this entire sentence. Alternatively, it should be narrowed to apply only in situations where a specific race or office has been identified, and where the characteristic is a purely factual one that unquestionably distinguishes one candidate from all the others. "The woman who is running for governor," or "the Presidential candidate who has served in the military," may well clearly refer only to one specific candidate, just as "the Republican candidate for County Supervisor" may. But beyond that, organizations would quickly enter a quagmire trying to determine whether the positions of opposing candidates on an issue are clearly enough delineated that there can be no doubt who qualifies as the pro-issue X candidate.

d. Difficulties with importing a modified express advocacy standard from federal election law

The Preamble notes that the Proposed Regulation draws from the FEC regulations in defining what it means to "expressly advocate" for or against a candidate for federal elective office.[111] While it is widely agreed that communications that expressly advocate for or against a candidate's election may be treated as political for both campaign finance and tax purposes, using this standard in the tax law context, as modified in the Proposed Regulation, generates additional confusion. It is deceptively similar to the standard applied under FECA, yet incorporates subtle differences that may lead to differing interpretations by the two agencies.

In construing FECA, the Supreme Court initially restricted its reach to communications only to the extent they used "words of express advocacy" such as "vote for [Name of candidate]"

[111] The standard is, of course, expanded to apply to communications advocating for or against the selection, nomination, or appointment of individuals to public office, or any state or local elective office.

(i.e., the "magic words" test).[112] The Court subsequently ruled that the definition of communications regulated under the campaign finance laws may also include, in addition to use of the "magic words," certain communications that are the "functional equivalent" of express advocacy.[113] Later again, it refined this to state that a communication is the functional equivalent of express advocacy "only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[114] This standard has been incorporated in the FEC's regulations as a communication that "could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s)."[115]

The Proposed Regulation, in contrast, sets out an initial definition that would capture "any communication . . . expressing a view on, whether for or against, the selection, nomination, election or appointment of one or more clearly identified candidates or of candidates of a political party." However, it then narrows its reach to a communication that "(i) Contains words that expressly advocate, such as "vote," "oppose," "support," "elect," "defeat," or "reject;" or (ii) Is susceptible of no reasonable interpretation other than a call for or against the selection, nomination, election, or appointment of one or more candidates or of candidates of a political party."

By opening with the very broad "expressing a view" language, the Proposed Regulation invites misinterpretation. Further, by presenting the "magic words" portion of its definition differently from the corresponding FEC definition (11 CFR § 100.22(a)), the Proposed Regulation introduces uncertainty whether it should be applied consistently with the FECA understanding of express advocacy or not. For example, assuming an incumbent President is seeking reelection, "Oppose the President's extremist agenda" would not be express advocacy against a clearly identified candidate under FECA, but apparently could meet the definition in the Proposed Regulation as drafted: it refers to a clearly identified candidate, and contains the word "oppose."

Express advocacy has a long history of interpretation under FECA, and there continue to be disagreements over its meaning.[116] The Proposed Regulation is unclear whether or to what extent FEC or case law interpretations of express advocacy will be persuasive or binding. It is not clear in the Preamble whether Treasury and the Service expect FEC case law and interpretations to control. While we support treating express advocacy communications as political for tax purposes, we worry about the implications of diverging interpretations under these two bodies of law.

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[112] *See Buckley v. Valeo*, 424 U.S. 1 (1976). Strictly speaking, this limiting construction only applies to organizations whose major purpose is not supporting or opposing federal candidates.

[113] *See McConnell v. FEC*, 540 U.S. at 193 (2003); *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (hereinafter "*WRTL*") 551 U.S. 449 (2007).

[114] *WRTL*, 551 U.S. at 460-470.

[115] 11 CFR 100.22.

[116] For example, *Free Speech v. FEC*, *Summary available at* http://www fec.gov/law/litigation/FreeSpeech.shtml.

We recommend:

- The definition in Proposed Regulation section 1.501(c)(4)-1(a)(2)(iii)(A)(*1*) should be revised to align better with the language employed in FEC regulations and corresponding case law.[117]

- The Proposed Regulation or at the very least the Preamble should clearly indicate the degree of deference to be given to agency determinations and case law interpreting express advocacy (and its functional equivalent) under FECA and corresponding state laws.

- Alternatively, rather than requiring Service staff to understand the entire scope of the nation's federal, state, and local campaign finance laws, the regulation could limit its coverage to express advocacy communications that are either (a) coordinated activity with a federal or state or local candidate that is reported as a contribution by either or both the donor or donee under a campaign finance law or, in the case of a section 527 organization that is not registered as a political committee, on a Form 8872; or (b) independent expenditures that are reported to the Federal Elections Commission (as already reflected in the Proposed Regulation), or any state election commission.[118]

Finally, while we certainly agree that express advocacy or its functional equivalent should be treated as candidate-related political activity, we believe the scope of political intervention for section 501(c) organizations should reach further. Long-standing guidance issued by the Service in training materials and Revenue Rulings has captured a far wider range of messages. We believe this more expansive approach is crucial to protect section 501(c) organizations from becoming embroiled in political campaigns, to their detriment and the detriment of the myriad other purposes for which our society looks to the nonprofit sector. Relying on the express-advocacy-or-its-functional-equivalent standard, the Proposed Regulation would draw a bright line that leaves out far too much speech favoring or opposing candidates for public office, thereby allowing section 501(c) organizations to be too easily used for political ends. For the health of the sector, a broader definition is needed, even if some brightness must be sacrificed.

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[117] We recognize it might make sense to eliminate the increasingly dated references to 40-year old campaign slogans, but the major portion of the FEC regulation defining express advocacy, 11 CFR § 100.22(a), could be imported into a revised tax regulation.

[118] An anti-abuse rule could be included to ensure that a section 501(c)(4) organization that violates applicable law and does not report contributions or independent expenditures (or gives to a committee that violates the law) would not get the benefit of such violation in the calculation of candidate-related political activity. This rule would have the drawback of requiring Service staff to determine when an entity should have reported an expenditure under applicable campaign finance law, but at least this problem will arise far less often than if those same staff are required to make independent determinations whether a communication expressly advocates in all instances.

e. Difficulties with importing the concept of contributions from federal election law

The Proposed Regulation includes in the definition of candidate-related political activity "a contribution . . . of money or anything of value" if the transfer would be a reportable contribution to a candidate for public office under applicable campaign finance laws, or is made to a section 527 organization. The Preamble states that Treasury and the Service intend that "anything of value" would include in-kind donations and other support, "for example, volunteer hours and free or discounted rentals of facilities or mailing lists." Unfortunately, this intent is incompatible with harmonizing the definition of a contribution for tax law purposes with applicable campaign finance laws, under which treating volunteer time as a reportable contribution is without precedent. Under all campaign finance laws, an individual's volunteer work on behalf of a political organization or a campaign is never treated as a political contribution except to the extent (1) the volunteer incurs expenses in the course of providing the volunteer services, or (2) the volunteer provides the services during paid working hours or uses his or her employer's resources, either of which will cause the employer to make an inadvertent in-kind contribution. How does an individual volunteer's time become something that the organization can give away to another organization or a political committee? An individual may volunteer with multiple organizations: how will the IRS decide to which one the volunteer's time should be imputed? How would a volunteer's time be valued? An employee's time that causes the employer to make an in-kind contribution is valued based on the salary paid to the employee for work the employer will not receive to the extent the employer directs the employee to spend that time working for a political campaign, but a section 501(c)(4) organization does not, by definition, pay its volunteers.

Moreover, given that a volunteer is free to donate hours to one section 501(c)(4) organization as easily as to another, it is not clear what type of activity Treasury and the Service hope to capture by this rule. Even if a section 501(c)(4) organization were to ask one of its volunteers to help a section 527 organization, it is still the volunteer's choice to do so (assuming the relationship between the section 501(c)(4) organization and the volunteer is truly voluntary), and the section 501(c)(4) organization's only activity was to make the request. We concur that costs incurred by a section 501(c)(4) organization to make such a request of its volunteers, and the opportunity cost to the section 501(c)(4) organization of requiring its employees to work for another person where a share of the employees' salary would be deemed a reportable contribution under applicable campaign finance laws, should be considered candidate-related political activity, but otherwise, treating the value of individual volunteers' hours worked for a candidate campaign or political committee as candidate-related political activity of a section 501(c)(4) organization, as the Preamble contemplates, is inappropriate.

The Preamble requests comments on whether "indirect contributions" for which a business expense deduction is denied by section 276, which would include for example payments for advertising in a political party convention brochure, political party or candidate fundraising dinners or programs, or payments to attend an inaugural parade or ball, should be treated as candidate-related political activity. The Preamble does not elucidate, but perhaps the hypothesis is that since a business is specifically disallowed a deduction for such indirect contributions, a nonprofit organization exempt under section 501(c)(4) should also be disadvantaged vis á vis its exemption.

We do not believe it is necessary for this type of payment to be specifically enumerated as candidate-related political activity. A section 501(c)(4) organization that advertises in a party convention brochure will not get a deduction, and so will get no advantage over a business in this respect. Moreover, the section 501(c)(4) organization will have to treat the payment as a contribution to the party in any event if it is reportable under campaign finance laws as a contribution, as is likely. The same rationale holds for payments for fundraising dinners or events, most of which are reportable under campaign finance laws as contributions. Lastly, inaugural payments have nothing to do with influencing an election, appointment or other activity that is covered activity under section 527. The Service has issued non-precedential guidance stating that inaugural expenses are not exempt function expenses under section 527 because they are not related to and do not support the process of influencing or attempting to influence the selection, nomination, election or appointment of any individual to public office.[119]

f. Problems with the proposed treatment of contributions to section 501(c) organizations as candidate-related political activity

Section 1.501(c)(4)-1(a)(2)(iii)(A)(*4*)(*iii*) of the Proposed Regulation characterizes as candidate-related political activity contributions of money or anything of value to a section 501(c) organization that itself engages in candidate-related political activity. However, the Proposed Regulation then carves out from candidate-related political activity a contribution that meets the requirements in section 1.501(c)(4)-1(a)(2)(iii)(D). That safe harbor requires the contributing section 501(c)(4) organization to (1) obtain a "written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in [candidate-related political] activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable)," *and* (2) impose on the contribution "a written restriction that [the contribution] not be used for candidate-related political activity."

The Preamble does not discuss what necessitates the strong presumption that a contribution to a section 501(c) organization that engages in any candidate-related political activity will be used for that activity, given that such activity cannot be the section 501(c) organization's primary activity. The Proposed Regulation applies this presumption even where the recipient organization's expenditures for candidate-related activity have been funded from other sources, or are less than the amount of the contribution. For example, the approach taken in the Proposed Regulation would mean that if a section 501(c)(4) organization wished to contribute to a section 501(c)(3) organization that had conducted a nonpartisan voter registration drive, the safe harbor would be unavailable, even if the recipient were prohibited from using the contribution to register voters. The section 501(c)(4) organization would still have to count the grant as candidate-related political activity. Such a draconian result is unwarranted in a situation with low potential for abuse.

Nonetheless, we are concerned by allegations in the press that some putative section 501(c)(4) organizations have used multiple series of grants to other section 501(c)(4) organizations to artificially inflate their social welfare activities in order to increase the levels of

[119] TAM 9320002 (Jan. 14, 1993).

political intervention activity permitted under the primary purpose test.[120] This "multiplier effect" can occur when one section 501(c)(4) organization makes a grant to another, treated by both as primary purpose activity, but effectively raising their combined ability to engage in non-primary purpose political activity. We support having provisions in the Proposed Regulation to address that abuse. However, we believe the presumption in the Proposed Regulation as currently drafted goes too far, and the abuse can be addressed using approaches common in the grantmaking context that are less onerous than the safe harbor.

One model, from the private foundation grantmaking world, is expenditure responsibility as required for grants to non-charities,[121] which has already been extended to certain grants by public charities from donor-advised funds,[122] where abuse was also a concern. While the details would need to be adapted for a section 501(c)(4) grantor, the protective measures required seem appropriate without being excessive. Another model is the approach taken with controlled grants in the charitable lobbying context,[123] yet another situation where abuse was anticipated. A final alternative would be to exclude such amounts from being counted as primary social welfare activity, either entirely or until they are eventually spent by the ultimate grantee on social welfare activities, something like the imposition of the out-of-corpus rules on treating grants by one private foundation to another as qualifying distributions for purposes of meeting the minimum payout requirement.[124]

If the current grantee certification approach in the safe harbor is retained, it should be clarified. As currently drafted, the Proposed Regulation casts far too wide a net, disqualifying far too many legitimate grantees from the safe harbor. The phrase "engages in candidate-related political activity" is not defined with reference to a time period, nor tied to the specific contribution, so that, on the face of the Proposed Regulation, a section 501(c)(4) organization's grant to a section 501(c) organization could be treated as candidate-related political activity if the recipient organization had ever engaged in candidate-related political activity in the past, or were ever to do so in the future.

The lack of any timeframe creates difficulties not only for grantor section 501(c)(4) organizations, but for grantees who must provide the required certification to obtain a grant. Must a grantee certify that it "does not engage" in candidate-related political activity in the current tax year? That it has never done so? Never done so since these rules took effect? The problem is even worse when the Proposed Regulation's approach to web sites is taken into account. To certify that it does not engage in candidate-related political activity, a potential grantee would have to examine every element of its web site, including its deepest archives, to consider whether any mention ever existed anywhere on it during any pre-election window of any person who was ever a candidate.

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[120] *See* Julie Patel, *Transfers allow nonprofits to spend more money on campaigns, experts say*, THE CENTER FOR PUBLIC INTEGRITY (Feb. 27, 2014), *available at* http://www.publicintegrity.org/2014/02/27/14294/transfers-allow-nonprofits-spend-more-money-campaigns-experts-say.

[121] Reg. § 53.4945-5(b).

[122] I.R.C. § 4966(c).

[123] Reg. § 53.4945-2(a)(6).

[124] I.R.C. § 4942(g)(3).

If the safe harbor's certification approach is retained, Treasury and the Service should specify the relevant timeframe. We suggest a limited look-back period of no more than two years (the current and prior tax year) would be reasonable.

The safe harbor requires a contributor to obtain both a written representation from the grantee, and, separately, a written grant agreement. The estimate in the Preamble of the burden this places on grantor and grantee, as required by the Paperwork Reduction Act, is unrealistically low, based on our experience as practitioners who work regularly with grantors and grantees to document their relationships. Moreover the two pieces of paperwork are largely duplicative. If the safe harbor certification approach is continued, we at least recommend that the two prongs be disjunctive (i.e., (D)(*1*) "*or*" (D)(*2*)) instead of the currently-proposed conjunctive ("and") test.

g. Concerns with redefining specific election-related activities as candidate-related political activity

The Proposed Regulation's automatic classification of the following activities as candidate-related political activity is particularly troubling:

(1) Conduct of a voter registration drive or "get-out-the vote" drive;

(2) Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties (including material accompanying the voter guide); and

(3) Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program.

Decades-old precedential guidance (discussed in more detail in Part 3(b) above) explains how each of these activities can be conducted in a strictly nonpartisan manner, and each of these activities may be conducted for legitimate public education, rather than political, purposes. When properly conducted, these activities are currently permissible for section 501(c)(3) organizations, and may even be funded by private foundations.[125] It is difficult to see why these activities would be considered legitimate educational activities for section 501(c)(3) charitable purposes, but not legitimate educational activities for section 501(c)(4) social welfare purposes. Including these activities as *per se* candidate-related political activities for purposes of section 501(c)(4) will likely have a chilling effect on section 501(c)(3) organizations' conduct of these activities and private foundation funding of such activity. It would certainly discourage section 501(c)(3) organizations from funding section 501(c)(4) organizations to conduct them, even where there may be substantial public educational benefits or advantages to the charity from pooling its funds with others through a social welfare organization. While there are certainly abusive scenarios that need to be addressed, the Proposed Regulation will seriously distort and destroy longstanding legitimate activities and relationships among charities and social

[125] Section 4945(f) expressly allows private foundations to fund certain voter registration drives conducted by section 501(c)(3) organizations.

welfare organizations. We urge Treasury and the IRS to develop an alternative to the Proposed Regulation that extends and focuses existing guidance on these activities and that, even if less bright, can be defended as reasonable. In particular, strictly nonpartisan voter education and enfranchisement activities and genuine grass roots lobbying however defined, should continue to be encompassed as social welfare activities.

h. Clarification needed regarding distribution of candidate materials

The Proposed Regulation also automatically classifies as candidate-related political activity the "[d]istribution of any material prepared by or on behalf of a candidate." We certainly concur that disseminating a candidate's materials should be treated as a political activity. Our concern is with the phrasing "prepared by or on behalf of a candidate," since candidates may also be incumbents in public office or experts in any number of fields relevant to public policy and public debate, either at the same time as they are candidates, or before or after their candidacies. We recommend revising the Proposed Regulation either to clarify that distributing materials prepared by or on behalf of someone in a capacity other than as a candidate for public office is not candidate-related political activity, or at least to impose a time limit, such as stating that only distributions that occur while the individual is a candidate are covered.

6. Comments on Proposed Regulation Aside from Candidate-Related Political Activity Definitions

a. Attribution rules

The Proposed Regulation helpfully set out what activities and communications will be attributed to a section 501(c)(4) organization, based on who conducts the activity or makes the communication (officers, directors, and employees of the organization acting in those capacities, and volunteers or authorized representatives acting under the organization's direction or supervision), whether it is paid for by the organization, and whether it occurs at an official function or in an official publication of the organization. The Proposed Regulation specifies that statements or material posted by an organization on its web site, which is considered an official publication of the organization, will be attributed to the organization. Our concern relates to clarifying how the Proposed Regulation may be applied to an organization's web site.

We certainly agree that posts made by an organization should be attributed to it. However, the Proposed Regulation does not address whether or under what circumstances statements or materials posted by unrelated third parties on an organization's web site in response to an organization's invitation for public comment, may be attributed to the organization. In such cases, the organization is paying for the speaker's platform, and the statement or materials will appear in the organization's official publication, yet it is generally understood that such statements or materials are not necessarily attributable to a web site and its owner. We ask that Treasury and the Service take this opportunity to provide some precedential guidance on how an organization may foster public comment and debate in the public interest, without having the politics of every member of the public who chooses to contribute attributed to it. Would some sort of disclaimer notice suffice? May the organization exercise some control over the content of public comment posted, such as to avoid copyright violations, defamation,

obscenity, or hate speech, without exposing itself to attribution? Must the organization screen for and refuse to allow posting of express advocacy or its equivalent?

The Proposed Regulation also does not address hyperlinks allowing a user to move from an organization's web site to unrelated third-party information or resources available outside the organization's control elsewhere on the Internet. Such links can be extremely valuable, even essential, to furthering an organization's social welfare purposes, and have become an expected part of any educational resource on the Internet. Certainly an organization has the power to decide what links will be included on its web site, so some responsibility for those decisions is appropriate, but it would be helpful for Treasury and the Service to address the limits of that responsibility, such as where valuable educational materials may co-exist on a linked web site with express advocacy, or the linked web site may in turn link to numerous other web sites, and where the content at the linked web site may be extensive and constantly changing.

b. Effective date and transition provisions

As drafted, the Proposed Regulation's definition of candidate-related political activity would take effect immediately on publication of final regulations. We suggest that Treasury and the Service reconsider this effective date. Immediate effectiveness would work an undue hardship on affected organizations by implementing a radical change in the definition of activities that could disqualify them from continued exemption in the middle of their tax year. Since there is no requirement for advance notice before a final regulation is published, effectiveness could happen without warning. At a minimum, final rules should apply only to tax years beginning after their publication. Ideally since publication could occur just days or weeks before an organization's next tax year will begin, we believe it would be appropriate to include provisions that would ensure that all organizations will have at least several months before a final regulation applies to them, regardless of when their next tax year begins relative to the publication of the final regulation. Otherwise, affected organizations simply will not have the capacity to implement the necessary changes to their administrative systems to monitor compliance.

We are also concerned that fundamental changes in the nature of activities appropriate to exemption under section 501(c)(4) will defeat long-standing and reasonable expectations of donors to such organizations, effectively prohibiting or seriously restricting use of donated assets for the purposes for which they were given. This change could create irreconcilable problems under state charitable trust laws that would force some organizations to either breach their charitable trust obligations or give up their exempt status entirely. While many section 501(c)(4) organizations raise and spend money in the same year and have largely unrestricted funds, some may be holding substantial restricted funds earmarked for activities that would no longer be consistent with their tax-exempt status. Some section 501(c)(4) organizations are even endowed, and could have purpose restrictions on their endowment funds requiring them to spend the funds on activities that no longer qualify for tax exemption. In fairness to them and their donors, we recommend that Treasury and the Service include transition provisions in any final regulation, under which such organizations would be able to continue operating for some period under the existing activity rules as to funds raised prior to the effective date (or perhaps prior to the date on which the Proposed Regulation was published), and would be allowed to transfer restricted funds

to organizations that could carry out the required activities without having to count the transfers against their less-than-primary limit.

7. Constitutional Concerns

Numerous commentators on the Proposed Regulation have questioned its constitutionality.[126] While we have many serious concerns with the content and approach taken by the Proposed Regulation, we believe the endeavor by the government is constitutional. Neither excluding candidate-related political activity from the category of activities that further the exempt purposes of section 501(c)(4) organizations and other non-charitable tax-exempt entities, nor limiting the amount of candidate-related political activity these organizations can undertake, violates the First Amendment. As the Supreme Court explained in *Regan v. Taxation with Representation*,[127] and reiterated last term in *Agency for International Development v. Alliance for Open Society International* (hereinafter, "*AID*"),[128] Congress has no obligation to subsidize First Amendment activity. Tax-exempt status, the Court has explained, "has much the same effect as a cash grant to the organization."[129] By limiting section 501(c)(3) status to organizations that did not attempt to influence legislation, as the Court stated in *Regan,* Congress had merely "chose[n] not to subsidize lobbying,"[130] which is clearly one type of activity protected by the First Amendment.

For constitutional purposes, exemption of contributions to non-charitable section 501(c) organizations represents a subsidy permitting restriction on First Amendment activity. The Supreme Court in *Regan* treated tax exemption for a section 501(c)(3) organization as a subsidy without asking whether the organization had any investment income or whether, in the absence of tax exemption, contributions would be treated as gifts excluded from income. That is, in both *Regan* and *AID,* the Court appeared to assume that section 501(c)(3) organizations would have taxable income in the absence of the exemption. Such an understanding is all the more compelling in the case of contributions to non-charitable section 501(c) organizations, since it is far more doubtful that, in the absence of exemption, such transfers would be motivated by the "detached and disinterested generosity" required for gifts to be excluded from income, on one hand, and whether expenses would be deductible, on the other. Moreover, Congress surely has the power to tax such amounts, should it choose to do so. Thus, under *Regan* and *AID,* the decision not to tax contributions to these groups under a blanket income tax exemption represents a subsidy.

Income tax exemption also protects any investment income from taxation. As noted above in Part 4, however, to the extent that noncharitable section 501(c) organizations engage directly in candidate-related political activity, they are subject to tax under section 527(f) on the

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[126] *See e.g.* letter from South Carolinians for Responsible Government to Commissioner Koskinen, dated February 24, 2014; letter from Webster, Chamberlain & Bean, LLP on behalf of Tradition, Family, Property, Inc., (and other clients) dated February 27, 2014.

[127] 461 U.S. at 544.

[128] 133 S. Ct. at 2329.

[129] 461 U.S. at 544.

[130] *Id.*

lesser of the amount of the organization's net investment income or the amount spent on such activity. While the definition of candidate-related political activity and "exempt function" under section 527 are not identical, they overlap considerably.[131] For constitutional purposes, the possibility of tax under section 527(f) tax, however, does not eliminate the subsidy of tax exemption for investment income. An organization's net investment income may well be less than the amount spent on candidate-related political activity, and, as discussed above, *Regan* and *AID* find the mere possibility of subsidy from tax exemption sufficient. *Regan* looked to the availability of tax subsidies to the organization Taxation with Representation, not to whether they in fact benefitted the organization. That is, neither case called for demonstration of an actual subsidy.

Ysursa v. Pocatello Educational Association,[132] moreover, holds that the government need not facilitate First Amendment activity even when the cost to the government is negligible. The case involved the decision by the State of Idaho not to permit payroll deductions for local-government-employees'-union political activities of local government employees, although it did permit payroll deductions for union dues and for charitable contributions. A group of unions argued that this limitation violated their First Amendment rights. The Supreme Court disagreed. Chief Justice Roberts observed that government is "not required to assist others in funding the expression of particular ideas, including political ones."[133] He then, by quoting *Regan,* equated the decision not to supply such assistance, however little the burden or cost,[134] with a decision not to subsidize. Next, he reasoned that because a decision not to subsidize a right does not infringe it under the Court's opinion in *Regan,* the State need demonstrate only a rational basis for its decision.[135] Justice Roberts found the State's asserted rationale, "avoiding in reality or appearance of government favoritism or entanglement with partisan politics,"[136] sufficient to pass the rational basis test. There was no need to compare benefit and burden. Moreover, the case permitted the government to refuse to assist – that is, to burden – political speech that is at the heart of the First Amendment, even when it was assisting other kinds of speech, such as that conducted by charitable organizations by permitting payroll deductions for charitable contributions. In the case of section 501(c)(4) and other section 501(c) organizations, the government may similarly limit its entanglement with partisan politics.

In the recent *AID* case, the Court made note of the so-called "alternative channel" argument of *Regan:* "In rejecting the nonprofit's First Amendment claim, the Court highlighted . . . the fact that the condition did not prohibit that organization from lobbying Congress

[131] As discussed above in Parts 4 and 5, there are significant and problematic differences between the definitions. Nonetheless, to avoid complexity that is immaterial to questions of constitutionality, we treat "exempt function" activities, as defined under section 527(e), as functionally equivalent for purposes of this Part to "candidate-related political activity" as defined in the Proposed Regulation.

[132] 555 U.S. 353 (2009).

[133] *Id.* at 358.

[134] Both the District Court and the Court of Appeals found that "there is no subsidy by the State of Idaho for the payroll deduction systems of local governments." *Id.* at 357. The Chief Justice's opinion found that immaterial because the question "is whether the State must affirmatively assist political speech by allowing public employers to administer payroll deductions for political activities." *Id.* at 364.

[135] *Id.* at 353.

[136] *Id.*

altogether. By returning to a 'dual structure' it had used in the past – separately incorporating as a section 501(c)(3) organization and section 501(c)(4) organization – the nonprofit could continue to claim *section 501(c)(3)* status for its nonlobbying activities, while attempting to influence legislation in its section 501(c)(4) capacity with separate funds."[137] *AID* also quoted from *Regan* that a dual section 501(c)(3)/(4) structure was not "unduly burdensome."[138] A dual structure is available as well to noncharitable section 501(c) organizations that wish to engage in candidate-related political activity. They can form an affiliated political organization, such as a PAC, under section 527. Section 527, which requires no more than setting up an SSF, exempts from income tax amounts contributed for political intervention activities.[139] Thus, should the dual structure aspect of *Regan*, on which Justice Blackmun's concurrence turned, be deemed essential to the understanding of the case, limits on candidate-related political activity also pass constitutional muster.

Yet *Citizens United*, which held certain prohibitions on political donations from the general treasury funds of corporations unconstitutional on First Amendment grounds, decreed that "[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations " and admonished that "[e]ven if a PAC could somehow allow a corporation to speak – and it does not – the option to form PACs does not alleviate the First Amendment problems . . . . PACS are burdensome alternatives; they are expensive to administer and subject to extensive regulations."[140] These assertions seem difficult to reconcile with the statements not only in *Regan*, which predated *Citizens United*, but also with the Court's very recent endorsement of *Regan* in *AID* regarding dual tax structures.

The quotation from *Citizens United*, however, must be understood to mean that the government in the case had not supplied an interest sufficient to meet the strict scrutiny test that the Court applied there, as it has in other campaign finance cases.[141] A government interest insufficiently compelling to justify limits on the political speech of corporations in *Citizens United* could nevertheless easily suffice to justify a tax provision under the rational relation test employed in *Regan* and other tax cases. Tax law and campaign finance jurisprudence embody distinct and generally inconsistent principles regarding the form of judicial scrutiny required to test the constitutionality of restrictions on speech. In the First Amendment tax cases, the courts gravitate toward the rational relation test because of the presumption of constitutionality,[142] and heightened scrutiny is the exception. In contrast, in campaign finance cases, the presumption is that strict scrutiny applies, and a lesser form of heightened scrutiny is the exception. In the tax cases, it is permissible to discriminate on the basis of the identity of the speaker, whereas in campaign finance law it is not. *Citizens United* did not involve Congressional requirements to qualify for a beneficial tax status, but an absolute prohibition.

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[137] *AID*, 133 S.Ct. at 2329.

[138] *Id., quoting* 461 U.S. at 545, n.6.

[139] *See* part 4(d), *supra*.

[140] *Citizens United*, 558 U.S. 310, 365 and 337.

[141] *See, e.g., FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986); *WRTL*, 551 U.S. 449 (2007), *Buckley v. Valeo*, 424 U.S. 1 (1976).

[142] *See Madden v. Kentucky*, 309 U.S. 83, 88 (1940). *Madden* stated that tax classifications have a "presumption of constitutionality" that is particularly strong *Id.* at 87-88.

Tellingly, in describing the burdens of operating a PAC under the campaign finance laws, *Citizens United* quoted from *Massachusetts Citizens for Life ("MCFL")*,[143] and that case helps to answer these questions. *MCFL* involved some of provisions at issue in *Citizens United,* in particular the provisions in the FECA prohibiting corporations from using treasury funds to expressly advocate for candidates in a federal election and requiring that any expenditures for such purpose be financed by voluntary contributions to a separate segregated fund. The Court in *MCFL* held that the provision could not apply constitutionally to an organization, such as MCFL, that 1) is formed for the express purpose of promoting political ideas and prohibited from engaging in business activities; 2) has no shareholders or others with a claim to its assets or earnings; and 3) was not established by a business corporation or labor union and does not accept contributions from such entities.[144] According to the *MCFL* Court, the concerns that prompted the statutory prohibition, such as potential for corruption and protecting minority interests, were not present in regard to such organizations.[145]

Nonetheless, for the *MCFL* Court, the practical effect of the burden of speaking through a PAC even if organized as no more than a SSF, made "engaging in protected speech a severely demanding task."[146] The government in *MCFL* looked to *TWR* to argue that the requirement that independent spending be conducted through a SSF did not burden MCFL's First Amendment rights.[147] The Court's opinion in *MCFL* rejected the government's argument and distinguished *TWR*.[148] A result such as the one in *TWR,* it explained, "would infringe no protected activity, for there is no right to have speech subsidized by the Government. By contrast, the activity that may be discouraged in this case, independent spending, is core political speech under the First Amendment."[149] Thus, the alternate channel available under section 527 for noncharitable section 501(c) organizations continues to pass muster after *Citizens United* not only because of recent language in *AID,* but also because of *Citizens United's* endorsement of *MCFL. MCFL* expressed First Amendment concerns like those in *Citizens United,* but nonetheless confirmed the continuing viability of *TWR.*

The Supreme Court has also distinguished between constitutional and unconstitutional conditions on government benefits. In *AID,* the Court stated that "the relevant distinction that has emerged from our cases is between conditions that define the limits of the government spending program–those that specify the activities Congress wants to subsidize–and conditions that seek to leverage funding to regulate speech outside the contours off the program itself."[150] The *AID* Court's post-*Citizens United* endorsement of *Regan* makes clear that restrictions on political activity tied to tax exemption fall on the permissible side of this line.

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[143] *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986).

[144] *Id.* at 264.

[145] *Id.* at 262.

[146] *Id.* at 256.

[147] *Id.* at 256 n. 9.

[148] *Id.*

[149] *Id.* at 256 n. 9 (citation omitted).

[150] *AID*, 133 S. Ct. at 2328.

Tax-based restrictions on candidate-related political activity for section 501(c)(4) and other section 501(c) organizations do not entail a direct restriction on First Amendment protected speech because the groups affected are free to engage in campaign activities to whatever extent they desire by locating that activity in a taxable entity or a different exempt entity for which campaign activity is permitted. As noted earlier, section 527 provides a tax-favored entity specifically created to house campaign activities and ensure their uniform treatment. Moreover, restrictions on candidate-related political activity applicable to section 501(c) organizations are not designed to suppress or discriminate on the basis of the content of First Amendment protected speech. The Supreme Court made this distinction explicit in *Cammarano v. U.S*, when it rejected plaintiffs' claim that the Code's denial of business expense deductions for the cost of campaign speech was "aimed at the suppression of ideas."[151]

The Court in *Citizens United,* however, also objected to the FEC's attempt to give guidance regarding prohibited speech. To the Court, these efforts to provide guidance, which included a two-part 11-factor balancing test, represented "onerous restrictions" that "function[ed] as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and 17th-century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit."[152] Instead of eschewing "the open-ended rough-and-tumble of factors," the opinion continued, the FEC had embraced them, creating "an unprecedented governmental intervention into the realm of speech."[153]

While, as explained above in this Part, the analysis of *Citizens United* does not apply to tax-based restrictions, this language reminds us that current Service guidance regarding political intervention embraces facts and circumstances[154] and that vague tests, such as a set of facts and circumstances test, have at times been held unconstitutional for chilling First Amendment speech.[155]

Promulgating regulations with clear rules regarding political intervention or candidate-related political activity could help the government to avoid constitutional attacks on the grounds of vagueness. Thus, again, while we have suggestions intended to improve the Proposed Regulation, in part based on the First Amendment values that they implicate, we support the government's effort to establish a set of rules promulgated as regulations. Such regulations are not unconstitutional. Quite the contrary, they help remove doubts as to the constitutionality of Service guidance in this important area.

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[151] 358 U.S. 498, 512-513 (1959) (*quoting Speiser v. Randall*, 357 &.S. 513, 519 (1958)).

[152] 558 U.S. at 335.

[153] *Id.*

[154] *See United Cancer Council, Inc. v. Comm'r,* 165 F.3d 1173, 1179 (7th Cir. 1999), regarding the definition of political intervention for section 501(c)(3), which is currently the same as political intervention for section 501(c)(4) (noting that "'facts and circumstances' … is no standard at all, and makes the tax status of charitable organizations and their donors a matter of the whim of the IRS").

[155] *See Big Mama Rag v. United States*, 631 F.2d 1030 (D.C. Cir. 1980); Miriam Galston, *When Statutory Regimes Collide: Will Citizens United and Wisconsin Right to Life Make Federal Tax Regulation of Campaign Activity Unconstitutional?*, 13 U. PA. J. CONST. L. 867, 918-928 (2011).

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Transcript of the May 10, 2013, ABA Tax Section's Exempt Organizations Committee Meeting

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News From the IRS and Department of Treasury

Ms. Bjorklund: I'm Victoria Bjorklund from New York, and I'm delighted to be moderating this panel on News from the IRS and Treasury.

And we have today Ruth Madrigal, who is attorney-adviser in the Office of Tax Policy at Treasury. Then we have Victoria Judson, who is Division Counsel/Associate Chief Counsel, TE/GE, IRS, Washington. And I have to tell you I'm so thrilled to do a panel with another Victoria.

[laughter]

Ms. Bjorklund: And then we have Lois Lerner, director of the EO Division, TE/GE. And although none of you needs any introduction, you are now introduced, and I'm going to leave it to you to decide what order you speak in.

Ms. Madrigal: I understand there was a breakfast this morning that talked about [section] 501(r), our new regs that we just released, so I will abbreviate comments on those so that we can leave time for questions.

Good morning, it's good to be here. I'm going to talk a little bit about the guidance that we've put out since the last time we met. There was one nice big chunky package of regulations relating to 501(r), and I recognize that most of you are not hospital attorneys and you're not mostly advising hospitals, so I'm not going to talk to you about all of the details there.

But I did want to point out that these regulations are of interest to a lot of exempt organizations that are not hospitals. And in fact this project has been very different from other projects that we have worked on in that in most projects the IRS has a view and the taxpayers have a view, and we look at both of those views and write guidance taking those into consideration.

Here, it's not really that simple. I don't think any of us on the government side had big views about hospital policies and financial assistance. But there were a lot of you that had opinions about financial assistance and community health needs assessments, particularly in this area of community health needs assessments, which was the topic of the Notice of Proposed Rulemaking that we issued on April 5. There were a lot of folks in the community very interested in this.

And so when we went out with a notice in 2011 — Notice 2011-52 — proposing a structure for the community health needs requirement, we not only got comments from hospitals, but we got a lot of comments from community activists and from public health officials and departments, and a lot of folks that are very interested in knowing about the health needs in their communities.

And so the exercise of putting together this regulation was really about interpreting the statute faithful to congressional intent but also keeping in mind the practicalities of running a major hospital that's serving the needs of the community and the realities and difficulties of access to healthcare that communities are facing, and bringing all this together and trying to have a balanced, reasonable approach to this statute.

And so as you know, last year we issued a notice of proposed rulemaking on three of the four substantive areas that were covered by the 501(r) requirement in the Affordable Care Act. And those dealt mainly with the financial thing: adopting a financial assistance policy, limiting amounts that are billed to folks that qualify for financial assistance, and limiting certain collection actions.

This new notice of proposed rulemaking dealt with the fourth substantive area of requirement, and that has to do with conducting a community health needs assessment — or CHNA — and adoption of an implementation strategy, which talks about what the hospital facility will do based on that community health needs assessment; which needs they will be addressing, which ones they won't.

The requirements basically break down along those two lines: the community health needs assessment and the implementation strategy. The assessment — there's a physical result that I think most organizations in the community will be interested in. It's the CHNA report. It has to be done once every three years, and it has to be made widely available: put up on the hospital's website, available in the hospital facility for folks to look at.

And it gives you information. This report has to contain — and this is similar to the Notice 2011-52 requirements — it needs to contain a description of the community that the hospital facility serves and how the community was identified; a description of the process that was used to identify the needs; and a description of how the hospital took into account input from the community.

And that's a really important one, that's right in the statute, that not only must this community health needs assessment be done and made widely available as a community resource, but it has to take into account input from a community. It has to include a prioritized description of the significant health needs in the community and how they were prioritized. And then it has to also

describe the existing healthcare facilities and resources that were identified in this process that can meet those needs.

So if the hospital facilities are working on these, coming up with these CHNAs, they're out there as a community resource.

And I wanted to note that while it builds largely on the Notice 2011-52 structure, we made some significant modifications in the proposed regs because of the comments that we received from you all. We received a lot of comments, we took those into consideration.

And we've asked again for comments on the notice of proposed rulemaking. I want to flag that those comments are requested by July 5 — happy Fourth of July weekend. But we'd like you to get those in quickly. We intend to work on finalizing these regs and the other proposed regs very quickly, and so to the extent that you can, ABA, get those in as quickly as you can.

I wanted to note just one area of change in response to comments that really affects communities. I think that's where you'll get a large interest from organizations that are not necessarily hospitals but are drawing on this resource. The new NPRM requires input from at least one regional, state, tribal, or local health or public health department; requires input from members of medically underserved, low-income, and minority populations and/or persons who are representing those populations.

And the third area [that] was new in the proposed reg is that it requires a hospital to take into account any written comments that they've received on a prior CHNA. And you'll recall a CHNA talks about what the needs are, and then there's an implementation strategy that a hospital does and attaches to its 990 that identifies what needs it's going to meet.

When they do the next CHNA, they need to take into account the comments that they've received from the public about the whole process. This is intended to respond to comments from community groups that wanted the ability to comment on the prioritization of the health needs, including such things as providing input on financial and other barriers to care.

So this is a really big opportunity not just for hospitals to demonstrate what they're doing in their communities but also for communities to get involved in identifying the needs of their communities and communicating with hospitals on how to address those.

So that's the piece of guidance I wanted to flag for you. Many of you have commented on things you want us to address in the coming months as we're going through the priority guidance planning process now, and we appreciate the comments that you've sent in.

I think the next things we're working on, we've got a number of things on our current priority guidance plan that we're working on. There are a number of revenue procedures that we've been wanting to update, and in between big reg projects we hope to get some of those out.

We also promised at the end of last year some more guidance on supporting organizations. And there's a little thing called DAFs [donor-advised funds] that are still hanging around and still on our current priority guidance plan. I anticipate that that would be rolled over because we know you are still interested in that. But no, we won't have those next month.

The other thing I wanted to mention to you in the few minutes I have remaining is I wanted to talk a little bit about the president's budget that was released in between last [ABA] meeting and this meeting. And on there, there are a number of things that you'll find familiar. But there are a couple of new things, so I wanted to just touch on those briefly.

One of the things we've seen before is the proposal to simplify the private foundation excise tax, taking it from the current two-tier system that gives people headaches when trying to figure out what exactly they're going to pay and how to manage that to a flat, 1.35 percent tax for everybody that would be roughly revenue neutral.

Another area that you saw before was the proposal last year regarding conservation easements. Last year we proposed that the deduction for a contribution of an easement on a golf course be denied, and this year we have added it to our interest in the conservation easement area with a new proposal to deny a portion of the deduction for contributions of historic preservation easements. And with this new proposal, it would basically deny the portion of the value that is associated with the forgone, upward development.

As many of you know, in the PPA [Pension Protection Act], in order to take a historic preservation easement on a building that's in a historic district, you have to protect all of the sides, the back, the front, the top; you have to protect the whole thing, not just the front. And what I think the IRS has found in its enforcement activities is that there is a lot of playing around with the value of the claimed loss of their upward building potential.

So if there was a brownstone in Brooklyn and they're going to protect it in this historic district and forego the potential to build a 50-story skyscraper on top of the brownstone, I think the IRS — there are a couple of concerns here for both the golf courses and the historic preservation easement upward value.

One is concern about rampant overvaluation. These are not publicly traded types of interest, there's not a strong market. There's a lot of play in the difference between the possible best and highest use and then the use that you're stuck with when you slap a restriction on it and get this conservation easement.

In a recent case — *Scheidelman* — the court said "a logical inference from the testimony is that the preservation of historic facades is a benefit, not a detriment, to the value of the Fort Greene property. On review of all the evidence, we conclude that the preponderance supports respondent's position that the easement had no value for charitable contribution purposes."

And I've seen in a number of places as well, real estate professionals trying to get their buildings labeled as historic because they feel it increases the value. And then there are the concerns about whether or not you really could build upward all that you could fantasize about building if the structure — the foundations — could even support it.

So I think there are a lot of concerns about this whole valuation process similar to those that were involved in the golf courses as well as concerns about private benefit.

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In addition to that, these are hard to administer and very expensive to administer. So there are a lot of resources being spent, both in the deduction itself and in the IRS time to do these things.

And if you step back a minute and look at it from a policy perspective, how much charitable benefit are we really getting out of those easements that are put on golf courses anyway? Some would argue that there's not a lot of conservation once you put all the chemicals on; there's a lot of debate around that.

And so from a policy perspective I think we're interested in identifying places where you may not be getting the best charitable bang for the buck. There seems to be slippage there, and that I think accounts for both of these proposals.

And I think on a broader note, I think it's tempting to maybe say "don't touch the [section] 170 deduction." It's certainly something that everyone can rally around and agree on. But I would urge you to think a little bit deeply as we are heading into an era where we're all recognizing the need to balance budgets.

We realize exempt organizations really depend on government funding to accomplish real charitable purposes that are very important. And the government funding for it depends on revenues, and the revenues are sort of linked to deductions because they're decreased when we have deductions.

So it's important to look at everything when we're looking at the whole tax picture. And when I'm sitting at my desk, the EO section is a really, really small piece of this whole economy and this whole tax world. We don't want to damage the charitable sector because we recognize the value of what the sector is doing. But I think these two budget proposals demonstrate that there may be ways that we can change even our little, tiny corner of the world and not damage the sector irreparably, because a million here and a million there might really add up to some real money.

And the surprising thing about these two proposals is that they are forecasted to save on the 10-year budget window a billion dollars in round terms. And that to me is real money.

So I just mention that to you and would love to hear other ideas that you have for ways we could get more bang out of our buck.

The last thing I wanted to mention, very quickly, the last budget proposal. I call it e-filing for all. The proposal is that all of the 990 series returns would be e-filed, and then the IRS would be able to make that e-filed information available in electronic form. So it would be more useful for charity managers, for folks that are developing applications for charities to manage their businesses, for funders who are looking to try to evaluate grant proposals and loan proposals, especially trying to draw in commercial capital into the sector. I think there's been a real need for information and tools to be able to compare across organizations.

And so the most efficient way to get that data out to the public to use — and donors, for that matter — the most efficient way to get that out there in an electronic format to use is for it to come in in an electronic format to begin with, because currently, with roughly 60-plus percent coming in on paper, in order to get that data into an electronic format, it would have to be keyed in, which would be expensive and time consuming.

So the e-filing proposal is really to set in place a foundation so that the information coming in can be made widely available to the sector and could be useful for all kinds of purposes.

Ms. Judson: Good morning. It's interesting that even though Ruth and I and Lois have been so busy recently we haven't had an opportunity to coordinate with respect to this particular panel, I find that some of the things she's discussed are related to some of our litigation activity, which is the main thing I'm going to speak about here, because that's usually the structure that we use.

But before we do that I did just want to mention that [Chief] Counsel is involved in all different aspects relating to EO. The legislation is really more Treasury's role, although we have input on what administrative implications can arise.

On regulations, we play a key role in interpreting the law and doing the technical work. And I did want to mention, because I see some of our fantastic staff in the audience, that — I see Amy Giuliano, Amber Mackenzie, if you want to wave. And Courtney Jones. Amy and Amber did extensive work on the 501(r) regulations and will continue to do so. Preston Quesenberry also did but I don't see him right now. Courtney Jones has played a key role in program-related investments.

And I wanted to mention that to you because one of the good opportunities of this May meeting is for you to intermingle with the folks who are really actively working on these projects. And they have great technical expertise but also really benefit from hearing from people about what can be improved, what's clear, and what isn't. Obviously the public comment is a key part of that and we appreciate the comments you provide but we also appreciate the input you provide. And I see Janine Cook is here too, who many of you have heard from and has done a great job running our shop.

So we have been quite active in doing guidance, as I mentioned when I started. That is a high priority and we continue to work very hard to get things out and we hope to continue to do so.

We also view a key role for us is providing assistance and legal advice and support to Lois, who's doing also an excellent job; we appreciate the opportunity to work with her.

We're also quite actively involved in litigation, and you only see the results of that often many years down the line. So just because you're not seeing things doesn't mean we're not actively working on them.

And that's sort of a segue into what Ruth had discussed in her thoughts and the budget recommendations with respect to conservation easements. When I looked back to talk to you folks about what kind of litigation activity we've had, the first case I noted also was *Scheidelman*. And a key component for us was that people were using appraisals and claiming there was a material value on property when really the easement wasn't adding any additional value because the property was already subject to the New York City Landmark Preservation Commission.

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But similarly, we've also seen it in golf courses, we've seen it in various cases we have where people are making donations and taking big deductions and in fact there is really no charitable benefit.

We've also seen situations where you have repeat inappropriate appraisals. We want to note that in the Northern District of Ohio the court entered a consent injunction permanently barring a real estate appraiser, Michael Ehrmann, and his firm from preparing property appraisals for federal tax purposes because he consistently overstated value.

Another case we have where the appeal period is still open is *Belk v. Commissioner*, which granted a conservation easement with respect to a golf course but also allowed the taxpayer to substitute the project subject to easement with an area of contingent land. And the Tax Court upheld the denial, finding that the property was not subject to the easement's use restriction in perpetuity.

But I think all these easement cases, what we are finding is that people are doing inappropriate appraisals, and it does reflect badly on the goals that I think people in this room have, which is for charitable deductions to really be used for a charitable purpose. And we look to you to try to make sure that people are not being overly aggressive and are acting appropriately. And if they continue to not do so, you may well expect suggestions for legislation or other remedies. And we've certainly seen problems with respect to conservation easements and golf courses.

Other cases I wanted to mention that I thought would be of interest to you. One of them relates to the ABA retirement funds, the American Bar Retirement Association. We had a case in federal district court where they granted summary judgment that it was not a 501(c)(6) because they failed to satisfy most of the required criteria for the 501(c)(6) section. And so you folks may want to be looking at that litigation.

There are several cases we've had that — I think *Zagfly* is a good example — where you had an entity that set up a website enabling users to purchase flowers and designate a charity from a list approved by Zagfly, and that charity would receive the profits from the transaction.

And the court upheld the IRS's denial, finding that Zagfly was not engaged primarily in activities that accomplished exempt purposes because the primary activity was commercial activity that amounts to an unrelated trade or business.

We also have a case in the District Court in D.C., *Family Trust of Massachusetts*, where an attorney set up a special needs trust, a type of entity created by Congress to provide an exception to those individuals who might normally be ineligible for Medicaid and similar programs. And assets placed in special needs trusts are not counted against them for Medicaid eligibility purposes and may be used by the beneficiary to cover expenses that public assistance programs do not cover.

The founder and administrator of the Family Trust of Massachusetts [FTM] was an attorney with an elder law practice. And he began referring his own clients to the FTM.

And it started as a group of 20 clients in 2005 and then soon ballooned to [more than] 300 clients. And while the IRS has previously granted tax-exempt status to organizations creating and managing special needs trusts, this one seemed to be established for the benefit of the founder. And its fee schedule also contained a back-end fee of 20 percent of the assets on the death of the beneficiary.

The district court entered summary judgment for the United States, finding that the compensation to the FTM's founder was so unreasonable [that] if the court granted exemption it might be sanctioning abuse of the Internal Revenue laws. And they found that the organization operated more like a commercial business and not like a charitable organization.

They filed a notice of appeal. Oral argument is scheduled in D.C. Circuit on May 15. [**Editor's Note:** On June 28 the D.C. Circuit affirmed the district court decision; turn to p. 203 for the opinion.]

But I think that gives you also a sense of the flavor of what we're trying to do to make sure that you don't have entities or individuals inappropriately using the tax exemption for personal benefit. And I think it behooves all of us to try to ensure that people are following the rules and the spirit as well as the letter of the law so that we can ensure that the tax advantage of the charitable deduction is used for the appropriate purposes.

I will then turn it over to Lois to talk about [indecipherable].

Ms. Lerner: Thank you.

First I want to make a comment on what Ruth was talking about with regard to electronic filing. I've probably said this before, but from our perspective we would like everything electronically filed, not only the 990s but ultimately the 1023s and 1024s.

When we see the 990s come in in paper, there's usually about a 30 percent — excuse me, I'm going to use the right number, because that was last year — 20 percent error rate on paper-filed forms and about a 1 percent error rate on the electronically filed forms, because obviously the electronic program stops folks from being able to push the button and send it in if it's not correctly figured out.

And it also helps with math errors, which, while the accountants do pretty well with math, I find that lawyers don't really know how to add or subtract.

[laughter]

Ms. Lerner: I'm one of them, so I get it. But anyway, I think that's another thing you should think about in the context of electronic filing.

My theme for this year's workplan was trying to get folks to understand that many of our projects take a long time and that we're going to try and provide you with interim information as we go on on those projects as much as we can.

So a couple of things I'm going to talk about I've talked about before, but I'm just bringing you up to speed about where we are now.

Last year I think we went out and spoke a lot about the fact that we were seeing personal information on 990s and that the IRS doesn't have the authority to redact anything from those 990s except the Schedule B information, and cautioned folks not to put Social Security

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numbers on those 990s. We said we would take some steps as well to help you out, and I just wanted to let you know what we've done.

We put a reminder in the instructions for our disclosable forms for 2012: the 990, 990-EZ, 990-PF, 5227, 990-T, Forms 1023 and 1024. And in 2013, because all of this takes much longer than you would imagine, we'll be adding a warning to the heading section of the forms themselves. It's easier for us to change instructions quickly than it is for forms.

But we are following up on that and want to remind you again to tell your clients we don't want their Social Security numbers, so please don't provide them.

Automatic revocation update. This is the never-ending story. But I always think it's interesting to let you know what's going on there because it's not just a matter of the numbers; it's a matter of what we're doing and what we're seeing.

As of April we had about 500,000 organizations that had been automatically revoked and put up on the list. Nearly 40,000 have come back in, so the numbers on the organizations coming back in are coming up. But still a far cry from the auto-revoked organizations. We still believe that many of them just don't exist anymore.

Surprising to me, we had 44,600 private foundations that were automatically revoked for failing to file, and we had about 400 of them come back in and apply to be reinstated.

When we first started down this road we wanted to be extra, extra cautious. So although an organization might have been auto-revoked as of May, we weren't posting on our list for about six months because we wanted to make sure everything had gone through the system and that we weren't mistakenly putting folks up that weren't really auto revoked because they had an extension or they were having a communication back and forth.

We're now comfortable with the system, and in March we started posting names a month after the auto-revocation. So there was a big number in March, I think about 25,000 more than we've been seeing in previous months. But that was really just to catch up. So I think going forward we're not going to see those kinds of numbers.

But it is, I think, better for the organizations and for contributors to know more timely what the status of the organization is.

With regard to auto-revocation, we have seen some folks trying to skirt the rules. If an organization has been automatically revoked for failure to file, the only way to get your status back is to come in and apply and pay your user fee. Lots of organizations can be tax exempt without doing that initially; if you're not a (c)(3), you don't have to do it, if you're a member of a group ruling you don't have to do it. But once you're revoked, you do have to come in and apply.

So I was out in — I think it was Texas — and this lovely woman came up to talk to me about an organization that she wanted to provide some grant money to. She said "but it's part of a group ruling and they haven't sent in their updated group ruling list to the IRS yet. So how do I find out what the foundation status is? And am I going to have a problem with that?" And in the discussion I was asking her questions because it wasn't really making any sense to me. And she said to me, "oh no, they used to have their own exemption." So I said "oh, well, they can't be brought into the group exem" — at first I thought the organization had been part of the group exemption, had been auto-revoked, and the parent to the group ruling was trying to bring the organization back in. And I explained that when those records go to the IRS, we would know and they wouldn't allow it.

But no, that wasn't the story. It had had its own exemption, it had been automatically revoked, and rather than coming in and applying it had cozied up to a parent and said "I'd like to be part of your group ruling." I don't think the parent was aware of the facts.

It had also changed its EIN, thus thinking that the IRS wouldn't know who they were. But I will warn you all, we do know and we do look very, very carefully. And if we see two EINs for an organization, that is a big red flag. It doesn't mean we don't have organizations with two EINs, because you do have volunteers that leave and they don't know. But if we see it we're going to look very closely at it.

So that was something that we saw that was on the unsavory side of the auto-revocations.

There's another thing and I'm trying to see whether I put it somewhere else. Oh, hijacking of EINs. What we've also seen in the new regime of everybody having to file is, you have a big organization, oftentimes a college or university. Big, sophisticated organization. They know what the rules are.

So along comes automatic revocation if you don't file for three years, and sororities, fraternities, other smaller, volunteer-run organizations without real staffs: They've got to file a 990-N. And they get on to file their 990-N, and it asks for an EIN, and they're freaking out.

So instead of actually asking the question, they notice that on the university's stationery there's this EIN. So they use the university's EIN. And the way our systems work, we assume that if you have the EIN that it's you. And so if you have changed your address or you've slightly changed your name or you've gone from being a 990-EZ filer to a 990-N filer, we assume you know what you're talking about, the system does.

So they file their 990-N. According to the system, that EIN has already filed for the year. The college or university tries to file and it gets bumped because we already have your return and it's a 990-N, and you can't file an amended 990-N.

So you can imagine the stress that this creates, and of course we've worked through this with a bunch of schools. But it's another situation where we have some issues in our sector because we have very large, sophisticated folks with advisers like you and some smaller people who really don't know the rules and don't even know where to turn. We continue to try to provide them with information, that these are the things that are going on.

So keep tabs on that.

Another thing that I know you've all been frustrated with is the exemption process and how long it takes. And when we first put out the page that says "Where is My Exemption?," that was our effort to try and give you a

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sense of what applications were sitting in our unassigned inventory and how long it would take for those applications to be assigned.

Many of our applications are worked through screening, they don't have to be assigned, and that's a very quick process. But if they have to be assigned, it's not so quick because we only have limited staff and we also have to go back and forth and ask you questions.

So the "Where's My Application?" page was a stroke of genius at the time to give you a heads-up about where things are. However, we've moved on from our process as it existed at that time.

And so that page doesn't really match with the process, and we know you're frustrated. And what the date is on that page shows you the absolute oldest application, which may not be the order that we're working on them because we're doing things differently.

So watch for a new page, we're working on a new page that will give you a better sense of where we actually are on those applications. And I hope that will be helpful.

One thing I don't want to miss talking about, because I'm looking at time and I do want to leave time for questions —

You've heard me talk about my advisory committee [Advisory Committee on Tax-Exempt and Government Entities, or ACT]. I have been extraordinarily fortunate to have some great people on the advisory committee, some of whom are here today. Victoria [Bjorklund] is one, and Celia Roady and Suzy McDowell, and I can't see the rest of you because these glasses are really only for computers or reading, so you're all a big blur. If I've missed anybody —

Anyone who's been on the ACT has been extraordinarily helpful. And one of the things that they worked on last year was —

Well actually many years ago the ACT suggested what they called Cyberassistant, which would be a 1023 form that would help applicants understand rules as they went through filling out the form. And we thought it was a great idea and we tried to develop it and we worked on it, and we went out and we told you about it. And then it didn't work.

So this ACT was talking about electronically filing the 1023 to make that faster, quicker, and more visible when the applications are approved. And we said great ideas, but things move slowly in the IRS and it takes resources, so can you give us some sort of interim steps that we could take before we can get that done.

And one of the suggestions was, "well you've developed all that education for Cyberassistant; perhaps you could put that educational material up on the website, and when somebody is filling out the 1023 they can go and look at it."

So we thought we'll look into that. And we actually went one better, because the IT world moves very quickly, and what used to be expensive is much more reasonable now. And we've contracted with a vendor that is taking that information and actually incorporating it into a form that you can look at on the website, you can get information while you're filling it out. You still have to print it out and send us the paper.

We think this is going to be a very useful form for folks to use. Most of you probably don't need the kind of help that is offered on this form. But we do want you to take a look at it because we're going to put a non-printable version of the form up on the web so people can look at it and give us their comments.

The ACT's already looked at it. But we always like to get a broader set of comments before we roll something out so we don't have to pull it back and say "oh, just kidding." So look for that in the next couple of months and please give us your comments.

And speaking of comments, how many of you love the new IRS web design?

[laughter]

Ms. Lerner: Gee, I'm so surprised.

We've had this conversation before.

We in EO don't really own the IRS web; that is a much bigger thing. We own our web page but only to some degree. So we know that you're frustrated with some of the changes; we're also frustrated.

But I have to tell you the good side of it. The good side is, when we get down to our page, it gives us much more flexibility to do the kinds of things that we like to do to make it more useful to you.

For example — I have a picture here — we now have a space up on the right-hand side that says "News" and that's where the most updated stuff is. We used to only have about three or four lines on that whole page where we could tell you important things. That was frustrating to us because we had more than three or four important things, and if we had a new thing, something else had to drop off even if it was very current.

So this really is a better page. Don't worry about how to get there; just go to Google and look for charities and nonprofits and you'll get there.

[laughter]

Ms. Lerner: But I do think that it is a much better page.

And we have heard some comments, again from our ACT. We knew there was frustration about the changeover and how do you get to us. We've also heard that there's some frustration because you have bookmark pages, and when they did the transition your bookmarks are gone. And we, the IRS, didn't crosswalk that. So I apologize for that, I can't do anything about that.

But just in general we were discussing some of these issues, and it became apparent to me that each of you has your own problem when you're looking for something but I don't know about it because I don't have any way to know about it unless you raise your hand at one of these meetings and tell me.

So what the ACT suggested — and it's going to be in this year's report, so I'll give you a preview — was that we would put up an e-mailbox, so that if you're working on the webpage and something really squirrelly happens, send us an email right away, because then we can fix it.

I know a couple of days ago we were looking for something on there and it had totally disappeared. I wouldn't know that it disappeared unless I was looking for it.

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So please use the eo.web.comments@irs.gov to let us know what kinds of things are happening, we would appreciate that.

I think, very, very quickly — and most of you already know this because you've either been at another conference or you've read my workplan. Two projects that we're working on right now that we have questionnaires out on.

One is the group rulings questionnaire. Two years ago our ACT did a report on group rulings and made some recommendations and comments. And we really haven't looked at that area for a very long time, so we decided to send a questionnaire out to parents of group rulings to find out how they communicate with their subordinates, how they select subordinates, how they keep up with information.

And we did send that out to about 2,000 parents of group rulings and non-church group rulings. And the questionnaire response time is now over and we still have about 400 parents to these group rulings who did not respond to the questionnaire.

So, as we tell people when we send them a questionnaire, it's voluntary, you don't have to respond. But if you don't respond we might refer you for exams. We will start rolling these exams out sometime at the end of this fiscal year.

What we really want is the information that we asked for on the questionnaires. So stay tuned.

We do have all of the questionnaires in now and so we're working on putting together some analysis. And I think it's going to take some time to do the full analysis but if we can we'll give you some highlights more quickly than that.

The other questionnaire is the (c)(4), (5), and (6) self-declarer project. There's been a lot of noise over the last couple of years about self-declarers. We've seen some things on their 990s that lead us to believe they don't always self declare under the right subsection. So we've gone out to self-declarers who've filed with us as self-declarers in 2010 or 2011, asking lots and lots of questions about demographics, decisions to be a self-declarer versus coming in for an application, how long they've been around, how big are they, those kinds of things.

There is also a major section in there about their political activity for calendar year 2012. Ordinarily we probably wouldn't see that information until the end of this year or next year because of the cycling on 990s, so we thought we'd take the opportunity to get the information a little bit earlier through these questionnaires.

They're still out there; the deadlines for filling these out have not yet come and gone, so I don't know what kind of response we'll get on those.

And I think I will shush because I've already used up more than my time.

Ms. Bjorklund: Thank you. It's time for questions, and I would ask that you go to the microphone if you'd like to ask a question because we are being recorded.

And we have people lining up.

Ms. Borenstein: Eve Borenstein, Minneapolis. Regarding the [Form] 1023 determination process for (c)(3)s that have been subject to automatic revocation under 6033(j). Groups seeking retroactive reinstatement have been told by letter for approximately a year now — it started last spring, 2012 — that they can take the postmarked date of their application as the effective date of reinstatement, pro forma that is the date accorded them under the code, or wait for Determinations to rule on the request for retroactive reinstatement, which may take 12 months or even more.

For many applicants such a wait would be untenable because it forestalls reinstatement and continues their present ineligibilities since they're subject to taxation and not holding a (c)(3) ruling by which they qualify for 170(c) contributions and many government contracts.

As a result, regardless of the reasonable cause basis that they've spent time and effort asserting in line with Notice 2011-44, they feel they have no choice but to drop the request and accept reinstatement at the postmark date.

Bifurcation of these applications' ruling process, providing a postmark date of application (c)(3) ruling letter now, and noting that ruling of (c)(3) status retroactive back to the date of original automatic revocation remains open and pending, would fix that problem.

Can EO entertain implementing such a dualdetermination process/result for those taxpayers seekingreinstatement in line with Notice 2011-44 requirements for those asserting reasonable cause basis for failure to file?

Ms. Lerner: We already have it, so if they haven't told you about it you need to get a hold of them.

What Eve is saying is, if you've sent in your application and you want retroactive reinstatement, we've told them, you know if you want reinstatement as of the date of the application we can do that right away, but if you need the retroactive there's some time involved, and these were generally for the smaller one.

But I saw exactly the same problem that she saw; these folks are sitting around waiting.

Many organizations don't need retroactive reinstatement and they don't really care. So that was the quick offer; if you don't care, we can just do this.

But for those who do care, we didn't want to say, you know, "we're intimidating you into not doing this." So we do have a bifurcated process; we look at the application and we can give you exemption from the date of the application going forward. You'll get that right away, and we will still entertain the retroactive reinstatement request, but it will take longer. But meanwhile you've got your recognition.

So if they haven't talked to you about that, I apologize. Go back to them.

Ms. Borenstein: That is great news. I have not seen one letter saying that. Indeed, in the last two months I haven't seen any letters or movement at all on these many files.

Ms. Lerner: I'm not surprised, thank you.

Mr. Hackney: Phil Hackney from LSU Law Center.

Ms. Lerner: I know you.

[laughter]

Ms. Lerner: Phil used to work with Vicki's shop.

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MR. HACKNEY: With all the organizations that were auto-revoked, I'm wondering what's happening to those organizations that were auto-revoked. Are they being flipped to some sort of taxable status? Is anybody following up with them in terms of what happens to those assets?

MS. LERNER: One of the reasons that we put the automatic revocation list up for all to see — and that it is a historic record, so once you're on it they don't take you off — is to help our friends in the states who have oversight over the charitable assets. So that's one piece.

As far as what happens from the IRS perspective, in our wonderful systems you're all coded; we know who all of you are and you have many codes. So the same thing happens with an exempt organization; if it's coded as exempt, then there will be an expectation for a 990 series. If the 990 series doesn't come in, we'll send you a notice on that. But once you're automatically revoked, you get coded as a taxable organization and the taxable side of the IRS starts sending those notices, and that process kicks in.

MS. BJORKLUND: I think we have time for one more question.

MS. ROADY: Lois, a few months ago there was some concern about IRS review of 501(c)(4) organizations, 501(c)(4) applications by Tea Party organizations. And I'm just wondering if you can provide any update on any of that.

MS. LERNER: Sure. We get about 60,000 applications for tax exemption every year, and most of those are 501(c)(3) organizations. But between 2010 and 2012, we started seeing a very big uptick in the number of 501(c)(4) applications we were receiving. In fact, I think it more than doubled. It was about 1,500 in 2010 and about over 3,400 in 2012 in that period.

UNIDENTIFIED SPEAKER: [indecipherable]

MS. LERNER: Did I say 15,000?

UNIDENTIFIED SPEAKER: You said 1,500.

MS. LERNER: 1,500 and 3,400, okay? I want to get my numbers.

In any event, it doesn't really matter. What matters was that we saw the big increase in these kinds of applications, many of which indicated that they were going to be involved in advocacy work.

So our line people in Cincinnati that handle the applications did what we call centralization of these cases. They centralized work on these in one particular group.

And they do that for efficiency and consistency sake. It's something that we do when we see an uptick in a new kind of application or something that we just haven't seen before. You folks might remember back a couple of years ago we had credit counseling; we centralized those cases. We had mortgage foreclosure; we centralized those cases. It helps with the learning curve, it helps with consistency.

So they went ahead and they did that. And how they do centralization is they have a list in their office that they give out to folks who are screening cases that says if it's one of these kind of cases and it can't be screened, it needs to go to group X.

So centralization was perfectly fine. However, in this case the way they did the centralization was not so fine. Instead of referring to the cases as advocacy cases, they actually used case names on this list. They used names like Tea Party, or Patriots. They selected cases simply because the application had those names in the title.

That was wrong, that was absolutely incorrect, it was insensitive, and it was inappropriate. That's not how we go about selecting cases for further review. We select them for further review because they need further review, not because they have a particular name.

The other thing that happened was they also, in some cases, cases sat around for awhile. They also sent some letters out that were far too broad; they were asking questions of these organizations that weren't really necessary in the type of application.

In some cases you probably read that they asked for contributor names. That's not appropriate, it's not usual. There are some very limited times when we might need that, but in most of these cases where they were asked they didn't do it correctly and they didn't do it with a high-level review of this.

As I said, some of them also sat around too long.

What have we done to take care of this? Oh, let me back up.

They didn't do this because there was any political bias going on. They did it because they were working together, this was a streamlined way for them to refer to the cases. They didn't have the appropriate level of sensitivity about how this might appear to others. And it was just wrong.

So when we found out about it, we did a couple of things. First, we said that list that goes around amongst them for centralizing cases, any changes on that list have to be reviewed and approved at the director of Rulings and Agreements level. So line staff can no longer change or add to that list without Holly Paz taking a look at it.

We also went back and looked at the questions that had been sent out to folks, because some of them were extensive, and where the questions weren't necessary we gave the organizations flexibility about which questions they needed to answer and gave them more time to answer them.

In some cases we told them just ignore the letter we already sent you, we're going to send you a new list of questions. And in some cases we said we don't need those questions answered; we can deal with your application without responses to those questions.

We also sorted the cases to try and figure out which cases really needed a further look and which cases could be handled through almost a screening-plus process, we might need a little more information.

The problem in the (c)(4) area is the kind of activity that organizations were doing is okay for (c)(4)s but can't be their primary activity. So that laying and balancing is a little bit different than when you have a (c)(3) that says you can't do any political advocacy at all; that's a pretty easy question.

So I guess my bottom line here is, we, I think the IRS, would like to apologize for that. It was not intentional. As

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soon as we found out what was going on we took steps to make it better, and I don't expect those things to reoccur.

As long as we're on the topic of potential political activity, though, I think it's a good time to remind all of you, as you're looking at filing for 2012, there was a lot of political activity in organizations this past year. And so we'll be looking at 527(f) tax as we see the 2012 990s coming in, and make sure that your clients are appropriately filing the 527(f) tax if it's appropriate in that organization.

Ms. Bjorklund: Thank you to the panelists, and Lois, I believe you're staying up for the next panel.

[applause]

Update on Colleges and Universities

Mr. Spitzer: Welcome to the next session. This is the session on "Update on College and University Rules and Issues."

When Suzy McDowell had asked us to do this panel, the final report on the college and university audits had not yet been released. So we had other issues to speak about, as well, but we were delighted when the report came out in time for us to address it at today's meeting.

So on the panel with me is, of course, Lois Lerner, who you heard in the previous session, and Bonnie Brier, the general counsel of New York University.

Our primary focus will be the final report. It was just two days ago [that] Lois testified before the Ways and Means Oversight Subcommittee on the report. As part of my preparation for today, I thought I should go and watch Lois deliver her testimony. I thought you did a very nice job. I think it'd be fair to say that the report was well received by the members of Congress. I think they were appreciative of all the work that had gone into it.

They had some concerns on certain issues. I thought Lois was very evenhanded in terms of delivering the findings of the report. Some members gave her some opportunities to say oh, there's real trouble in Dodge here, but Lois played it quite straight and said no, these are the specific findings for specific audits, cannot generalize across the sector as a whole.

So our plan for today is for Lois to speak initially, to give an overview on the report. Bonnie has some questions and comments, as well, and I will interweave a few comments. We will also try to leave time for questions and answers at the end.

So, Lois, if you want to lead off.

Ms. Lerner: Thank you. Boy, I've just got so many notes here and getting ready for that hearing that it was difficult for me to figure out which ones should I use. So I'll just start.

I think that the point that Lorry made is a very important one and I tried to make it several times during the testimony and I think we've also done it in the report. These examinations were not a statistically valid sample, so you can't extrapolate out to the rest of colleges and universities or to the rest of the sector. That's not what we were trying to do.

But I'll take this back awhile. Traditionally, we have not been able to open very many examinations of colleges and universities in any particular year because they're big organizations, they're very complicated, and we usually use a team approach when we do those kinds of audits. The other piece of that, which is always frustrating to me, is if we learn something, we can't share that information on a onesie and twosie basis with you because we can't talk about the specific taxpayer.

So those questionnaires that I mentioned in the previous panel that allow us to go out and gather information from large numbers of organizations have been a turning point for EO. We first used the questionnaires a couple years before the colleges and universities, we used it with the hospitals to gather broad information on a bunch of topics, and then we narrowed down the topics and did some exams.

We did the same thing here. We put out the questionnaire to a statistically valid sample of 400 colleges and universities, public and private, all of whom offered up four-year degrees or more. We didn't go with the junior colleges or community colleges. And when we developed this questionnaire, because we learned some lessons when we did the hospital questionnaire, that the words we were using to describe things were not necessarily the words that the community would use.

So we partnered with NACUBO [National Association of College and University Business Officers] and asked them to come in and help us draft the questionnaire, think about the kinds of things that we should be asking that we hadn't thought of. And they were extremely, extremely helpful in putting together this questionnaire and made some recommendations for changes that I think were very useful.

After we put the questionnaire out, there were still some concerns by the folks who received the questionnaire about understanding what we were looking for. And we actually held a phone forum — NACUBO actually held a phone forum and brought people together so that we could let them know what we were talking about. And this had to do with situations where we had sent the questionnaire to a particular college but it was part of a larger university, and were they supposed to be answering for the university or for the particular college, those kinds of things.

Anyway, in 2010 we put out the interim report explaining the responses to the questionnaires — oh, and I will point out, unlike the group ruling parents, where we had a large number of non-responders, we had about a 97 percent response rate, which is what we expected. This is generally a compliant sector and wants to do the right thing, that's what our experience has been. So that high response rate was not surprising to us.

Nor were the main things we saw in those responses, which were that there were a lot of good governance practices in the colleges and the universities. For the most part, organizations indicated that they were trying to use the rebuttable presumption of reasonableness when they set their compensation, and not surprising, we saw a lot of unrelated business activity.

So what did we do after that? We look at the responses, we look at 990s, we look at 990-Ts, and we select

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a much smaller number of organizations for exam because we can only do that with our resources. And when we select those organizations, whether it be in this particular project or in the hospital project, we select for folks who we think might have a potential for noncompliance.

That's really important to understand. This just wasn't "well, let's take one from that, one from that, one from that." We're actually looking at "gee, this looks like there might be a problem, we should go in and take a look."

So again, I want to stress this was not a random sample; it was a sample selected on risk-based criteria, and you cannot take the results of this and attribute it to anybody but these 34 organizations.

So that's the one side of it. The other side, however, I think is, when we talk about the results, we do think that they're pretty significant and that we ought to do some more looking to see if this is a problem more generally, to see if it's more of a problem across the sector.

And part of our reason for doing these questionnaires and putting out these reports is to help you better understand, A, your responsibilities, and, B, how the IRS looks at things. We don't always agree with you; you don't always agree with us. But we try to work together to get to a place where we understand each other. And in situations — not even about this thing — where the IRS speaks loudly and pretty strongly tells you how it thinks about something, what we see is that's a game-changer for practitioners and organizations, because you don't really want us knocking on your door if you don't have to have us there. Obviously there are some areas where we will continue to discuss things and we will look for ways to provide better guidance.

But let me go back to the actual results.

We found significant underreporting of unrelated business income tax; there was underreporting in 90 percent of the schools that we audited. The underreported amounts were about $90 million. These underreported amounts resulted from about 30 different types of unrelated activities, but most of the issues occurred in only five.

And, see, this is where I'm telling you I'm using my wrong paper. I'm going to go back to this. Excuse me.

Those were fitness and recreation centers and sports camps, advertising, facility rentals, arenas, and golf courses. And I would point out to you those 30 activities that people talked about in the questionnaire, more organizations were conducting these five types of activities than any other activities. So it wasn't a surprise for us to see issues in these activities because more people were doing them. So chances are if you've got more people doing it, you may have more problems.

In total, after looking at all this, the IRS disallowed more than $170 million in losses and net operating losses, which could result in more than $60 million in tax liability for these impacted organizations going forward.

These underreportings stemmed from four major practices.

First, organizations were claiming losses from activities that didn't qualify as a trade or business. To qualify for a trade or business, among other things, the taxpayer has to be engaging in the activity with the intent to make a profit. So nearly 70 percent of these colleges and universities reported losses over and over again in successive years with the activity that they were undertaking, and they were just loving those losses because they were attributing against the gains and other activities. This wasn't a matter of a couple of years; this was a matter of very protracted timeframes.

We not only looked at the timeframe, we also looked at: Was there a reason for this? Was it a startup endeavor? Was there an economic crisis that occurred? So they were doing fine, looking like they were doing a business, and then all of a sudden something happened and there was a slump? We also looked to see if it was part of their business plan to take a risk, which could also cause a downturn in the income coming in. The cases that I'm talking about, the 70 percent of these cases were situations where we didn't find any of those other variables; it was just continuing to throw money into a hole without any efforts or very small efforts to do anything about changing this over very long time periods.

So in that case, this resulted in about $150 million in losses and change in losses and net operating losses that were reclassified.

Second, nearly 60 percent of the Form 990-Ts that we examined, we found that colleges and universities had misallocated expenses to offset unrelated business income for specific activities. And organizations can allocate expenses that are used to carry out both exempt and nonexempt activity, but there has to be some kind of reasonable basis and relation between the expenses. And what we saw was not really any kind of relationship between those expenses.

Just under 40 percent of the schools examined incorrectly treated certain income-producing activities as exempt when the activities were unrelated. Most of the misclassified activities were producing income with less of them producing losses. So you have income-related activities being called related because then there's no tax, and what we found was that that wasn't really the case, and we made adjustments for about $40 million in income that was reclassified as unrelated and therefore subject to tax.

I've got a little note over here. I want to be careful.

And finally, we saw in about one-third of the schools reporting either erroneously calculated — that's the math errors — or unsubstantiated net operating losses on their Forms 990-T, which resulted in a disallowance of about $19 million in net operating losses.

The unsubstantiated piece, I don't want to make this bigger than it sounds. This didn't mean that they were making it up out of whole cloth. What we saw was they had net operating losses; they may have used them the previous year. They didn't fix the paperwork, so when the accountant came in the next year, they tried to use them again. That's what was going on.

We also looked at compensation. Mostly, we looked at [section] 4958. The private schools, individuals that worked for the private schools are covered by 4958; individuals in the public colleges and universities are not. And so 4958 imposes a tax on officers, directors, trustees, and key employees if they receive unreasonable comp, and it also imposes a tax on the organizational managers who would approve that comp.

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As most of you know, the way to sort of take the safe route here is to try and use the rebuttable presumption of reasonableness when you're doing your compensation setting because if you do use the three prongs — which are having independent folks do the compensation setting, use appropriate comparables for other similarly situated positions, and document the process — you move the responsibility from the organization — to prove to the IRS that it's reasonable — over to the IRS — to prove that it's unreasonable, and that's the position you want to be in and that's what the rebuttable presumption is all about, and most of the organizations indicated on the questionnaire, that's exactly what they were doing.

We've had lots and lots of compensation activity in the IRS over the last probably eight years, looking at organizations and how they do their executive compensation setting. And almost everybody, particularly since we've gotten into this governance view, does use the rebuttable presumption. We hadn't really looked behind the comparables; we just looked to see if they used comparables. So here was a place where we decided we were going to look behind the comparables and see whether they were really comparable.

And we found in about 20 percent of the schools we looked at — not the big majority, but about 20 percent of the schools we looked at — there were significant problems with the compensation data, and those fell into a couple of categories.

They were using information from supposedly comparable schools that weren't similarly situated to the school using the data. They were getting compensation studies that didn't specify the selection criteria for the supposedly comparable schools or explain how those schools were comparable. They also, in cases, used compensation surveys that didn't specify whether the amounts that we were looking at were simply salary or total compensation as required by 4958.

So their comparables were not appropriate, so that took them out of the rebuttable presumption establishment. That doesn't mean you don't have reasonable compensation; it just means you now have the burden of showing the IRS that it is reasonable.

I mention this because I think what's happened is there's a cottage industry out there — and I hope I'm not offending anybody in the audience — that does this for a living. And so folks say "Well gee, we've got so-and-so, we must be good to go." This is a board governance issue. Board members ought to be asking about that compensation report, ought to be talking to the expert who provided the report, and asking questions about it. If you just say "Yeah, good, we paid the biggest guy out there for this compensation report so we must be good," you might find yourself in a problem. That's kind of what happened here.

I'm almost done, I'm almost done. We also looked at — so what did the compensation look like? That was the rebuttable presumption piece of it.

We also looked at actual compensation data for both the publics and the privates, and what we found out was that the top management official in both the publics and privates was usually either the president or the chancellor, and the average total compensation for that individual was a little over $600,000 and the median compensation was about $500,000. We looked at compensation for the six most highly compensated non-officers, directors, trustees, and key employees, and you already know that the sports coaches and the investment managers had the highest average compensation and it was close to $900,000.

I think there was also some confusion in the chart in the executive summary. If you take a look at that, you will see we went down to administrators and line people and we had two sections in that chart.

One was average compensation for those who did not have a medical degree and average compensation for those who did have a medical degree. That goes to the comparable piece. If you have an individual who you've selected for this position who has a medical degree, it's perfectly reasonable and appropriate for you to look in your comparables at someone who's like-situated, someone else who has that degree, who has that kind of responsibility. You can't go and take somebody who's using a medical doctor to oversee this particular area and say, "Well, that guy's getting $700,000 and we've got a guy who oversees a similar area," but he's not the medical doctor, he doesn't have the same experience, he doesn't bring the same thing to the table. So that wouldn't be appropriate reasonable compensation comparables.

And a couple other just little things. My office doesn't really have responsibility for overseeing the public colleges and universities; that's our government entities office in TE/GE. But those guys came and helped us with these audits on the issues that related to the government entities that we don't have primary responsibility for.

We also had some valuation experts from Large Business, their IRS valuation experts for these reasonable compensation, looking at the compensation. So they helped us look at that, too. It wasn't just EO.

We also looked at employment tax issues, and we only looked at those in about one-third of the colleges and universities, but it was kind of upsetting because there were problems in all of the ones we looked at. The big bugaboo — is it an employee or an independent contractor — came up. There were some issues about resident aliens and how they were figuring out their salary. There were also some issues with regard to graduate students who do not have the same exception from the monies they're receiving in terms of going into their income.

So we saw areas of problems there. And that resulted in about $36 million in increased wages and over $7 million in taxes and penalties. So they'll get you every time on the employment tax stuff. The IRS really cares about that a lot, so you guys really need to pay attention.

Retirement plan front. We also had our friends from Employee Plans come and look at a small number of these. We looked at about a quarter of the colleges and universities examined, and they found problems in about half of the ones they looked at. These resulted in increases in wages of more than $1 million and assessment of more than $200,000 in taxes and penalties.

So that's kind of the big overview and I will turn it over to my cohorts.

MR. SPITZER: Thank you.

MS. LERNER: Sure.

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MR. SPITZER: I might just make one comment, that just a little bit of information in the report that's relevant to everybody in this room is the observation that when trying to decide whether an activity was unrelated business income or not that only 20 percent of the schools consulted with outside counsel and then the other 80 percent presumably figured it out on their own. And for those that did consult with outside counsel, the IRS felt that counsel was wrong 40 percent of the time.

[laughter]

MS. LERNER: And I think that's really important because one of the questions I got asked when I was testifying had to do with another piece of that particular part of the report. About 50 percent of the 990-Ts were looked at by accountants and about 50 percent of them were looked at by the board before they submitted them. I think accountants and lawyers do something very different, and if you're representing an organization and you're only having the accountant look at it — although this isn't a good advertisement for lawyers, either, that particular statement — but it's a good idea to have both sets of eyes looking for different things.

The other piece of this that I would say is all of this information I just gave you, those are all agreed cases. No one is fighting us on this stuff I've told you. We still have some open exams, but these are all agreed cases. So when the IRS came in, the organization made its argument, the IRS made its argument, and at the end of the day, this was the result.

MR. SPITZER: So Lois, you separated me too far from my setup and my punch lines —

[laughter]

MS. LERNER: Sorry. Go ahead. I didn't say any of that. Go ahead.

MR. SPITZER: — which was to simply suggest that those of us in private practice are even worse at marketing than we are at practicing law.

[laughter]

MS. LERNER: That was something that the folks on the committee seemed very interested in, that somehow you should have some personal responsibility in signing off on that. So watch out for that.

MS. BRIER: It isn't easy to look at a 990 or a 990-T without spending a huge amount of time if you want to do something meaningful. So just having your lawyers or accountants look at it doesn't get you very far, I don't think.

First, Lois, I really do want to congratulate you in getting the final report out — I'm sure that was a huge relief — and on your very successful appearance before the House Oversight Subcommittee on Wednesday. That's great.

MS. LERNER: Thanks.

MS. BRIER: Is that the first time you testified?

MS. LERNER: The first time I testified for IRS. I testified when I was at the FEC.

MS. BRIER: One aspect, though, of the College and University Compliance Project that is not mentioned in the final report is governance. The agents that audited the 34 colleges and universities were required to submit a governance checklist, which the IRS has released for each of the entities, and then the 2010 interim report gave a synopsis of the data that was collected in those governance checklists.

Last year at Georgetown, you spoke about governance and its relationship to tax compliance. You noted several times that because this was not a statistically representative survey, the findings couldn't be generalized to the exempt organizations community as a whole, but you still said that you thought there were four governance practices that had a statistically significant correlation to tax compliance: First, a written mission statement; second, use of comparability data in setting comp; third, procedures in place for proper use of charitable assets; and fourth, 990 review by the entire board. And you also concluded that three governance practices didn't correlate to tax compliance: conflict-of-interest policies; little or no use of compensation data to set compensation; and family and business relationships among directors, officers, key employees, and trustees.

Now at that time, you said, well, you thought the evidence that good governance and tax compliance go hand in hand was supported by these governance checklists, you said it would be better to verify this in the general EO population, and you were working with TE/GE research to develop such a project. And as you know, the ACT did a major report on governance, and people commonly want to believe because it seems so intuitive that good governance correlates positively with good tax compliance. But the problem is that the studies — and there aren't a lot of them — in the for-profit world don't suggest that's true and it's an open question about whether it's true.

A number of us discussed after your Georgetown speech that we didn't think any conclusions really could be drawn from these checklists on governance, not just because it wasn't a representative study, which was certainly acknowledged by you and acknowledged in your presentation today and in the report itself, but also because the survey wasn't validated in any way. The agent asked the exempt organizations a series of questions and put down whatever response was given and there was no attempt to verify it.

MS. LERNER: That's not true. But I'll tell you —

MS. BRIER: OK.

MS. LERNER: When you let me, I'll tell you.

MS. BRIER: OK. So I have two questions. The first is: Would you make the same presentation that you made at Georgetown today? And the second is will we be seeing a statistically valid governance survey?

MS. LERNER: Well, can I talk about some more stuff that you said?

MS. BRIER: Sure, anything you want.

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Ms. Lerner: Or only those questions?

Ms. Brier: Anything you want.

Ms. Lerner: OK. What Bonnie said that I didn't agree with was that the agents didn't attempt to verify the information. While the agents had to use the check sheet to provide the information, they did look back at minutes of the organization and had meaningful conversations and looked at other pieces of information in the organization's records that would verify or not verify those answers.

So it was not just "let me sit down with you when we're done and check off these things." It wasn't like the questionnaire, where we just accepted their answers. We were in there doing an audit and we did look for information to verify those answers. That's how they got them, which included their minutes. So that's one piece.

It's not just that it was not a representative sample of the sector; that's why I made the comment at Georgetown. The issue was, as with these exams in the colleges and universities study, the exams in the governance check sheet study — the initial government's check sheet study — those organizations had been preselected because they looked like they had a potential for noncompliance; that's why we were looking at them.

So it was not the general population, which is why I said I think we need to look at the general population, organizations that aren't being selected for exam, because we're seeing some potential noncompliance. What do they look like?

So I stick with what I said at Georgetown. And we have two projects right now where we've selected a random sample of 501(c)(3) organizations and (c)(4) organizations, not selected because we see any potential of noncompliance — just because we want to test the governance theory on the sector.

From Bonnie's perspective, I agree with her. We would all like to think that that's right. If it turns out I'm totally wrong, egg on my face, but we'll accept that. Right now, we think that it's not wrong based on what we're seeing.

Ms. Brier: OK. Let me ask one more question and I'm going to turn it over, and then we certainly want to hear from you all.

Ms. Lerner: Maybe I'll retire before those results come out.

[laughter]

Ms. Brier: Did you just want to follow up and say what you think the time frame is for that governance study?

Ms. Lerner: If you've read, and I know you all have, this year's work plan, we're trying not to do that because we raise your expectations, and then real life comes in and impacts us and we don't meet your expectations. So we're trying to chunk it out and say, yep, we've developed the statistical sample and we'll start rolling the exams out. When I get a sense of when I'll have enough of them so I can say something, I'll make the next step. But I'm not going to do it now because I just don't know until we get in there and do the exams.

And again, it's —

Ms. Brier: Statistically valid.

Ms. Lerner: — statistically valid samples, so it will include some complex organizations, some not-so-complex organizations, and I want to be careful because the not-so-complex ones will get done first and it's not a good idea to speak about those results before you see the more complex ones. So we just want to be fair to everybody.

Ms. Brier: So in the report and in your congressional testimony, you talked about two next steps. The first was looking at unrelated business income reporting more broadly and the second was ensuring that exempt organizations are aware of the importance of using appropriate comparability data.

With respect to UBI, I believe that you've sent compliance checks to about 400 organizations that show that they have UBI on their 990 but haven't filed a 990-T, and that you plan to look at organizations that show substantial UBI on their 990-Ts but then show no tax liability.

So the first part of the question is could you speak to really what's going on in that follow-up? The second part of the question is what actions you think you can take to effectively help the exempt community understand what's appropriate comparability data?

Ms. Lerner: What I said to Congress — and I don't know if you guys know this, but when you go up to speak to Congress, somebody from their staff has already spoken to your folks. It's not cold. We had a conversation with them when the report came out.

One of the things in the conversation with staff and that was also raised in the hearing was you got these 34; shouldn't we do something now? What I tried to explain in both instances was we saw stuff here that we thought was troubling; these were self-selected because we thought there might be problems; these results don't expand out to the rest of the community, not even to the rest of the colleges and universities community.

So as we're thinking about how to help the exempt community understand what the rules are and better follow the rules, I think it would be incumbent on us to expand the lookout beyond 34 organizations and do a random sample across the sector. There are other organizations in the sector that have lots of unrelated business activity. That doesn't mean they're doing it wrong, but we don't know that yet. So that's one project that we are developing not for this year's work plan — we're already talking about it for next year's work plan — doing similar examinations to those we did here, but a random sample across the sector.

And when I say random, we may decide to do it based on revenue rates or asset rates because they tend to be the ones that are doing this type of activity. That might be a first look. But it would be a random sample in the context of that level of organization.

And then we can speak more broadly about the results, and then we can also see what the truth is. As Bonnie very nicely pointed out in the context of governance, you say things, but you don't know until you look. I can say all of this about these 34 organizations, but until I look more broadly, I can't tell you this is a major problem and nobody understands it. I also need it

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because if it is a major problem, we need to figure out how better to educate you. And if I don't know exactly the breadth of the problem or where the real issues lie, that makes it hard for you; it makes it hard for us.

So we're in this together on this one. This report, this study, I would call it a first step into the unrelated business income area. I think we'll be doing more. As she said, we already have one where we see an awful lot of organizations that are reporting more than $1,000 of unrelated income on their 990s, and yet they're not filing a T. What's going on there? That's another piece we might need to do some education on, and as soon as we have results that we can talk about with regard to that, we will share those with you.

Does that help?

Ms. Brier: Yes, and education on [indecipherable] comparability?

Ms. Lerner: Oh, yes, yes. Well, the comparability piece, as I said, we've been looking at it for a long time and continue to try educating folks. I think this was the first time we looked at that. My sense is that it's a larger issue because — I can't say why but I can tell you that my sense is it's a larger issue. So we're going to do some work on trying to remind folks.

I know my ACT members always tell me that it is helpful to practitioners when the IRS says something very clearly so that they can say, "it's not just me, look what the IRS said." So we will try to say something very clearly on that and continue to provide that kind of information so that the sector, which for the most part is very, very compliant, will continue along that road.

Mr. Spitzer: I have a couple of questions and one overall comment that the questions actually suggest, which is I think this report is very valuable reading and I think that any tax compliance officer at a college or university or really at any exempt organization would benefit from reading this report. So it's positive in that sense.

I think one needs to be very careful not to view this report as actual guidance on the law from the IRS because there's a couple of places that my question will suggest that I think it states "look, this is what we feel about things or this is where we think people will want," but doesn't have the nuance of a carefully stated regulation.

One example, you raised the question of comparability. The report notes that we didn't really think a lot of schools did very well with comparability data because at least with respect to one or more of the following points, the data wasn't perfectly comparable. And the report recites the location of the school, the size of the endowment, the revenues of the school, the net assets of the school, the number of students, and selectivity. And I know a lot of people have read this and said "whoa, is it expected that each of these elements is going to be satisfied? And how would these elements even be determinative in terms of comparability? Why would the size of the endowment dictate the value of the person that's being hired? Why would the selectivity of the school suggest appropriate compensation levels?"

So that's kind of my first question, which is that it's quite specific in saying that these factors all need to be considered, and that strikes me as a bit of an overstatement.

Ms. Lerner: I would say this, again, is these cases and what we saw, but if you think comparability is "yes, there's a school down the street and they've got the same size building we have," that's not what we're looking at. We're going to look at everything.

So if you have someone in New York City who is at an institution with a similar student body size as an institution in — I'm trying to think of a very small town in the Midwest, somebody give me one — Salem, Ohio — that's where my husband's family is from and there's no college there — but that's going to be — we're going to look at that. We're going to say that's not really comparable. You can't compare a school in a very high area of cost of living with one in a very low area of cost of living. We are going to look at how many students there are, what are the responsibilities of the individual? Different schools have different responsibilities for the same title. So you can't just say "Oh, that guy's got my title so it must be the same." So I think I would caution you to look pretty closely at this.

Mr. Spitzer: Well you have suggested, I think, an important step that is part of the kind of write-up, as to why compensation is found to be reasonable by the board or the committee of the board would be to include a discussion of the comparability data specifically as to why it was thought that those schools were comparable.

Ms. Lerner: I think that's absolutely right because that's the only piece that the board actually gets involved in. You have to have the independent committee doing this, so that needs to be independent folks. It might be a board member depending upon what the position is, and you have to document. Those aren't really the things that the board's involved in.

In terms of governance and oversight of the organization, I would highly recommend that the board ask a lot of questions. Do not assume because somebody's a compensation expert that everything they did is right. Don't ever assume because *anybody* who's an expert did it that it's right. You can ask your lawyers questions, and your lawyers can help you sort of walk through this and say, you know, you see something, "Well, yeah, I think this is comparable." So there wasn't anything in here that told me why it was comparable.

That would be the second one: compensation studies didn't document the selection criteria, didn't explain to the board why these schools were similar at all. And yet it was just accepted as given.

So I think more board activity on this would be really useful. And interestingly enough, I got a question from one of the congressmen saying well, gee, I was on a board and I always wondered how that compensation got decided.

[laughter]

Mr. Spitzer: A couple of questions about unrelated business income.

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One is that your comments about the examples of activities that were generating losses on a continuing basis were helpful because you suggested that the cases where you readjusted things on exam were really pretty black and white, that the many kinds of countervailing factors in terms of being a startup or going through the recession or whatnot might really make a difference in terms of why an organization might have continuing losses. But to the extent that it just like goes on for years and years with no foreseeable end in sight, you kind of wonder why is the school wasting its money like that.

Ms. Lerner: Oh no, we know why they are.

Mr. Spitzer: Why?

Ms. Lerner: Because they have losses and they have gains and they want to offset the gains with the losses.

Mr. Spitzer: So that suggests that the schools might be taking a related activity that they really want to do anyway, calling it unrelated, and producing the losses.

Ms. Lerner: No, I think in most of these cases it might have been a mixed activity — that is, related and unrelated, mixed single activity. But they had other reasons for wanting to do this.

One of the things that was raised in my testimony was golf courses. Well, this is what I was asked about. So, well, yes, the school wants to have golf courses so the alums can come in and use the golf courses because the alums come to the golf courses and then they contribute greatly to the school. We like that. That's all fine and good. It's just not unrelated business income if you're not making a profit and with all the reasons that Lorry pointed out. And it's also not related activity because providing free access to your alums is not related to your educational mandate.

It doesn't mean you can't do it; you can do it. You can have a golf course that loses money day in and day out forever. It's just not losses that you can use to offset your gains in the circumstances that Lorry had just laid out.

Mr. Spitzer: Then a question of allocation of expenses against unrelated business income. This is sort of in the category of issues that never go away. Pretty strong statements in the report that [say] "Look, you only can deduct expenses that are directly related to this unrelated activity," and it includes the statement on page 13 of the report that "expenses attributable to accomplishing an organization's exempt purposes may not be deducted because the organization is already exempt from paying tax on related income." That suggests that overhead-type expenses, expenses of the administration, of the general counsel's office, and the like could not be properly allocated against unrelated business activity when, in fact, I think the regulations are pretty clear that appropriate allocations not only include true marginal costs of conducting the activity but also an appropriate allocation of other costs that are deemed to be or that are directly related, but are of a more general nature.

Are you trying to sort of create new rules in this area? Are you rethinking the *Rensselaer* decision, making one more run at that or —

Ms. Lerner: No. Unfortunately, in this particular area, it's kind of difficult for me to talk about this generally and I can't talk about taxpayer-specific stuff. But there does have to be a relationship in that overhead. So if you've got something you're throwing into that overhead that has no relationship whatsoever to the activity that you want to allocate those expenses to, you're going to have a problem. If you have some relationship, even though it's overhead, between what goes into that overhead and the particular activity, then I think you're going to be in better stead.

But as I said, unfortunately I can't talk about details here, but I think that it was quite clear with the organizations that we talked about when we had the discussion that, yeah, maybe there was no relationship between that piece of what they had thrown into overhead and the unrelated activity. So that was where the agreement came out.

Mr. Spitzer: So let's open this up to questions, and, Bonnie, maybe you can start with one question. But if you'd just come to the microphone, we'd love to hear your thoughts.

Ms. Brier: In his opening statement Wednesday, Congressman Boustany said your report "found that many institutions were unreasonably compensating top officials." In fact, you made no 4958 assessments against private universities and you made no findings of unreasonable compensation with respect to public universities, although you did collect over $7 million in taxes and penalties relating to a variety of unreporting issues or excess 403(b) issues.

So do you have any comment to make on the issue of high compensation and these kinds of studies?

Ms. Lerner: You know that I know what the rules are. Compensation needs to be reasonable and you determine whether it's reasonable by looking at comparables — which is why I continue to circle back [to] — that is the place you need to be looking at. You need to be comfortable that the comparables you're using are truly comparable.

There are lots of other ways to prove to the IRS that this is reasonable, but it's the quickest, easiest, and most direct step because the 4958 rebuttable presumption process lays it out and in the context of doing this, it's probably your best way.

But again, I'm going to hammer on the board members and the representatives of these organizations to look at the comparability information and make sure that you're comfortable that the study or the report was done correctly and ask questions about it. And if not, make your consultant go back and do some more work. You're paying them.

Mr. Spitzer: Please state your name.

Mr. Lion: Ofer Lion, Los Angeles.

A question on both sides of the reports — so a UBIT and a comparison data question.

On the UBIT, this is sort of a follow-up to the allocation of overhead issue.

Ms. Lerner: OK.

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MR. LION: Do you have any thoughts you could share with us as to how the Service views those types of allocations of overhead — so employees, cost of facilities, depreciation, et cetera — between UBIT and exempt activities, and what does it really take to be a reasonable allocation? Do you have to see time tracking of employees? What do we need to show you?

And then let me throw both in. On the compensation data side —

MS. LERNER: Do you mind if I answer that one first?

MR. LION: Oh, yes.

MS. LERNER: Because I'm old and I don't remember questions.

[laughter]

MS. LERNER: It's going to be a pretty quick answer because I really can't dive deeply because I'd have to talk about the facts here. But I'm hearing you and I think, again, one of our views when we do these kinds of things is to try and bring you better information. So I think this is the beginning of a conversation. We're going to go back and see if there's anything we can say in this area now or whether we need to do something more formally, but I think we'll all be talking about this for a while.

So, go ahead. What's your second one?

MR. LION: So on the compensation data side, I've now heard from quite a few compensation consultants, and these are in comp committee meetings where they basically say "we do not include noncash compensation in our studies" because in their view, the reporting and the calculation of those benefits are wildly inconsistently done, and so they basically carve them out and say "no, we can't look at that because we can't even sign off on a study that'll make any sense," because, you know, NYU might calculate something totally differently from the small-town Ohio school. But one or the other, they basically drop all those other aspects, all the fringe benefits —

MS. LERNER: Well, I think you need to talk to them about that because we're not going to drop them. It has to be the total compensation. I get it, I hear you, but this started out several years ago, there was no data, there was no information. These are firms that do this for a living, and I'm pretty sure if the IRS is looking at that, they can figure out a way to get some information — maybe not as precise as this one, that one — but some information needs to be included there because you have to be looking at the total compensation.

MR. LION: OK. That's what I told them. Thanks.

[laughter]

MS. LERNER: Well, now you've heard it from me, so you can tell them again.

MR. SPITZER: Also, just so the record is perfectly clear, Lois had referred to a New York university, not —

[laughter]

MS. LERNER: No —

MR. SPITZER: — New York University.

[laughter]

MS. LERNER: Absolutely right. And I only use New York because it's a very large city. I could use Boston, I could use Chicago, I could use any of them.

I do want before the next question to comment on something Bonnie said. Neither the congressman nor Bonnie got it exactly right about compensation and reasonableness. We have not found unreasonable comp in the exams that are closed, but we do still have some open exams.

Yes, sir?

MR. DEJONG: Ralph DeJong, Chicago.

MS. LERNER: See that? Bad city.

[laughter]

MR. DEJONG: Many compensation committees start with a hierarchy of comparability factors, usually starting with revenue size, and not equally weighting a wide variety of factors in the way the report suggests.

Are you suggesting that committees would be well served to look at more factors than simply revenue? Or are you suggesting that getting behind it, asking questions, articulating the reasons why and perhaps the reasons why revenue is such an important factor is more important than simply taking it at face value?

MS. LERNER: I think they're both important. This is always a discussion. The IRS comes in and they talk to you. You provide them with information about why you thought it was comparable and we look at it and say yes or no. So the more information you have, the more discussion there's been, the more pieces to that that you can talk to us about, the better off you're going to be.

Does that help?

MR. DEJONG: It does. And in that process, did you give deference to perhaps a more extended discussion by the consultant in the report, or by the committee, or did you note an absence of discussion of comparables and why that was used by either?

MS. LERNER: Well, in what I was talking about, the three big things that we saw, I'm guessing there was very little conversation because nobody knew why they were comparable. Reports didn't show it and they said "look, we did it, we have an independent group, we have comparables, and we wrote a note afterwards saying we did that." So the discussion I think is incredibly important.

MR. DEJONG: That's very helpful, thank you.

MS. MCDOWELL: Suzanne McDowell, Washington, D.C.

I have a question about comparables for benefits, following up on what Ofer was asking about. So the cash compensation, I think consultants feel like they have very good data on.

When you try to put a dollar value on many benefits, there will sometimes be spikes, like if a SERP pays out one year, or if you try to put a dollar value on, say, a university president's housing; presidents of colleges and universities generally take the housing that's on the

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campus, and sometimes it's a beautiful antebellum mansion, sometimes it's a nice four-bedroom family residence.

I think a lot of consultants look at this and they'd look at the benefits and ask: Are they competitive for this position? Are they within a range that's considered competitive? And if they are, they feel like that is adequate, and they don't try to find dollar data because it's so difficult to get good data. Is that an acceptable approach?

Ms. Lerner: I'm going to answer that slightly differently because you hit the right word. You talked about range. These studies don't say you must pay the guy $225,432 because that's comparable. What they do is they try to get around it.

So you're right, you've got an antebellum mansion, which in that area might go rent for a certain amount, but then you've got little Bonnie in New York City, I'm sorry, where that —

[laughter]

Ms. Lerner: — the two-bedroom apartment with rats and roaches would cost the same.

So yeah, we're not one-size-fits-all, but you do have to think about it.

And the range piece is also disturbing to us. What we find is — and this is not just in these exams, it's in every single exam that we conduct; I won't say "every single," but in many exams that we conduct — the comparability study that the vendor or consultant provides says "here's a range of folks who seem to be similarly situated, they don't have the exact same house that this one, but it's really all of the considerations, and we think that in this range, you could be comfortable saying it was comparable."

So the range goes from 0 to 100 percent. No one ever sets the compensation at 50 percent because everybody is from Lake Wobegon and all the people we have are better than usual, better than average. They go directly to 75 percent or 90 percent. That's what we see.

So when you are thinking about that range that your comp consultant gave you and you're thinking of going higher than the middle of that range, you want to think about the "why" and you want to think about how you can argue that to the IRS that was appropriate for your case, and all the rest of you ought to be thinking about it because 75 percent now becomes the bottom of the range. And when you have to tell me why your compensation is appropriate — and you won't be telling me because I don't do audits — but when you're telling my auditors and you're saying "gee, that first range we got from 0 to 100 seemed really reasonable for this particular position and this particular person," you set it at the 75 percent point, the consultant goes out for the next guy that looks very similar, he's starting at 75 percent. It might not be the same reasonableness.

So it's a piece that I don't know how we deal with other than through education, but that is why you've got the public and Congress and folks talking about why are these people getting paid so much money? It's not only a matter of reasonableness; it's a matter of perception. That's your advice piece that you give to your clients, but it is out there and it's an issue. Whether the IRS thinks it's reasonable isn't the last question you need to ask when you're setting in that range.

Ms. McDowell: If I could just follow up. There's the range question where you have a dollar amount, and so you say the range for this job is $200,000 to $300,000 or whatever, and then you decide where in that range. And I actually think the trend might be reversing there.

But then there is the more difficult — what I find anyway in dealing with compensation consultants, and maybe others can speak to their own experience — the more difficult question of looking at benefits, where as I understand it from compensation consultants, there is difficulty putting dollar values on them. And that's where they'll say providing retirement benefits that are based on number of years of service, average pay for the last three to five years in the job, and paying a certain percentage of that, that that is competitive within the industry. And so they'll look at it that way as opposed to looking at: What is a dollar value of particular retirement benefits paid out in a particular year? So it's trying to assess whether that sort of nonnumerical or semi-numerical approach is acceptable.

Ms. Lerner: What I'm — [indecipherable] because, again, I can't talk about specific organizations, but I would tell you that what I think one of the problems is is that a couple schools use it and the consultant then comes to tell you and says that's the industry practice, and, so, you all start doing it and it's a self-fulfilling prophecy, but maybe not.

So my last piece of advice is, we're not out there to get you; we're out there to see if you really thought about it, if you took a look at it, if you had reasons why you felt this was appropriate. And then we'll have the conversation.

Mr. Spitzer: OK, well, thank you, all, very much. Lois, this has been wonderful.

Ms. Lerner: Thank you.

[applause]

Mr. Spitzer: And I think we're going to take a 10-minute break.

(Recess)

News From Capitol Hill

Mr. Reid: All right, thanks, everybody. All right, we're here for News from the Hill, and we have an all government panel, and I'd like to introduce each of them sort of in an interactive way. So we're going to talk about what their role is because many of you may not know.

So to my right is Lily Batchelder, who's official title is chief tax counsel from the Senate Finance Committee, and she's with the majority staff. And Lily, I guess, why don't we talk about what you do in the capacity of tax chief counsel.

Ms. Batchelder: Well, we work for Chairman Baucus, and we also help with the committee as a whole and with the Senate as a whole. We basically work on developing

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policy ideas, drafting them with great assistance from the Joint Committee on Taxation and legislative counsel in the Senate.

We have a team that fluctuates between maybe 10 and 15 people. There's around seven counsels who each have a portfolio and typically back up each other on other issues. And then we have some research assistants, often some fellows, the law clerks, and interns, and really work on all aspects of legislation, trying to sort of guide them through the Senate in conjunction with our minority counterparts; there's both a majority and minority staff for the Finance Committee.

The Finance Committee as a whole has jurisdiction over quite an array of issues. So we have a tax team and then we also have a trade team, a health team, a budget and Social Security team. So we work together with all of them on these issues.

MR. REID: OK, great, thank you. And to her right is Ray Beeman. Ray is tax counsel and special adviser for the [House] Ways and Means Committee majority staff.

So, what can you tell us about that?

MR. BEEMAN: Sure. Thanks, Alex. I was brought in in January, February of 2011 in the new Congress with a new chairman of the Ways and Means Committee, Dave Camp, who made it his number one priority from the get-go comprehensive tax reform. And so it works a little bit differently on the House side, whereas in the Senate side the majority and the minority kind of have a roughly 50-50 split, or they have for several years in terms of staffing and budgeting. It's much more tilted on the House side, where the majority gets the vast majority of the budget — I think it's a two to one ratio or something — and staff. So obviously, when Chairman Camp became chairman, he had to staff up quite a bit. And so, when Chairman Camp became chairman, he kind of casted out for staff that he thought would be useful in a tax reform effort.

Previously, I had been at the Joint Committee on Taxation, and so the view of the staff director at that time who I had known for a while was that he wanted to bring in some more senior folks who kind of have been around the blocks, know where the bodies are buried, that kind of thing, and build the staff that way.

And so we have about seven tax staff, and as with Senate Finance, we have kind of similar jurisdiction over trade and Social Security and health and human resources, and each of those have their own staff. We actually have jurisdiction over the debt ceiling, as well. So we pretty much right now have jurisdiction over everything that's relevant in Washington.

[laughter]

MR. BEEMAN: And actually, when the Ways and Means was first commenced, it created — it's the oldest committee in Congress, so we're talking pretty much the beginning of the country — Ways and Means also had jurisdiction over appropriations. So pretty much everything was Ways and Means jurisdiction, and a poor decision along the way by some chairmen to relinquish appropriations; that went over to the Appropriations Committee.

So even without appropriations though, since the government's not spending money, they're not as important anymore. So we on our staff obviously focus on tax. We have people who have different specialties. We have somebody who does international, somebody who focuses on corporate. With a staff of seven, you're doing a lot of different things.

My role as special adviser to tax reform means I've got my fingers more or less into everything we're doing on tax reform, some more so than others, and [am] heavily involved in things like the discussion drafts that we've put out, putting the hearings together. And that's pretty much our sole focus on the tax staff right now, comprehensive tax reform.

We also have an oversight staff, as Senate Finance does, and they actually spend a lot of time in [the] tax area, just like Senate Finance staff does. And so there is some symmetry, I think, or synergy between Oversight and Tax because a lot of what we're trying to flesh out in tax reform requires Oversight staff to dig into what's happening at the IRS and what's going on out there and having some of those hearings, as well.

So we've been very busy, as people have seen. We've just finished the working group reports, which even though it was a Joint Tax product, we all were working very hard to kind of pull that together and help Joint Tax get that out the door. Hopefully that's another step in what the chairman believes is necessarily a transparent tax reform process.

And in fact, just this week, last week created tax reform.gov. So I've got to put a plug in for that, the Max and Dave public Website. This is really a beyond-the-beltway exercise for people to weigh in on tax reform. I call it tax reform by crowd sourcing. And so we will get a lot of input there.

So we've been very busy. When you do a transparent process, you obviously have a lot of people meeting with you. I probably have at least 10 to 15 meetings a week with stakeholders, and while those can be time consuming, they're very helpful.

So we are moving forward, and earlier this year, Speaker Boehner — I guess one of the other unique things in the House, at beginning of every Congress, the majority party basically reserves the first 10 bill numbers, H.R. 1 through 10, as their kind of political priorities. These are the 10 most important things we do.

So if you go back in time, all of the major pieces of legislation probably were H.R. 1 through 10. Probably healthcare was the same way. And the speaker gave us H.R. 1 to do tax reform, and I think that really is a message that you should expect to see some movement on the actual legislative product for tax reform as early as this year.

I know the chairman has said publicly many, many times, including yesterday on NPR, that it's his intention to move a tax reform bill at least through the Ways and Means committee this year, not even this Congress, but this year, and so while I can't really handicap where the finish line is or when we'll get there, I'm pretty sure I know that the starting line will be going off fairly soon.

So with that, I'll turn it back to Alex and have Gordon tell you what he does.

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MR. REID: Gordon, what is the Joint Committee on Tax?

MR. CLAY: Well, I think you know, having been there.

[laughter]

MR. CLAY: But the Joint Committee on Taxation is actually a committee that's made up of a subgroup of the members of the Ways and Means and Finance committees. There is a staff that is a nonpartisan staff, unlike the Ways and Means and Finance Committee staffs, which each have a Republican and then Democratic staff; we have one nonpartisan staff. We serve as a technical resource really to the partisan staffs of the Ways and Means and Finance Committees and all the different members of Congress.

So at all stages of the tax legislative process, really, from sitting down to think about ideas for how to address a problem, sitting in drafting sessions with the Office of House Legislative Counsel or Senate Legislative Counsel to think about how bills should be drafted. We draft markup documents for committee consideration of bills, we work with the committees on drafting committee reports, we are really involved at all stages. We also, in addition to having a staff of about 15 attorneys and a couple of accountants, we have about 20 PhD economists, most of whom are involved in revenue estimating and produce the official revenue estimates for any piece of tax legislation.

MR. REID: Great, thank you. OK, I want to give all of you an opportunity to say your caveats.

MS. BATCHELDER: Everything I say today is off the record. I'm not authorized to speak on behalf of the chairman. And everything I say is on my own behalf, so I'm not authorized to speak on behalf of the chairman.

MR. BEEMAN: Yes, and I'll say that I'm here on my own behalf, not speaking on behalf of the chairman, the committee, its members, and so my views are my own personal views. Hopefully, they're more or less in line with the views of the committee, but they are my own personal views.

MR. CLAY: And we at the Joint Committee staff don't speak on behalf of any member of Congress or any other committee.

MR. REID: Formalities aside. So the main topic that we're all excited about is tax reform, and for those of us on the outside of the Hill, we feel a bit like maybe the ancients must have felt when there was weather coming through or the gods or the rumbling in the skies and we're not sure what to make of it. We hear a lot of rumblings and there's a lot of hearings, there's a lot of paper.

I tried to give you all access to some of the reports. I excerpted the 55 or 58 relevant pages of the 568-page report that just came out. There it is. And so there's a lot of thunder and lightning and we're sort of trying to figure out what it all means.

I guess this has been going on for a few years. We had the Super Committee exercise and then rumors of grand bargains, and that kind of culminated with the New Year's Eve negotiations, which resulted in a deal of sorts. But there's a lot of stuff left over, including what we tax practitioners would think of as tax reform.

So my question — and just kind of want to have this as an open conversation — is: What should we expect? Each chamber seems to be going it alone or [indeciperhable] coordinating. How should we look at this?

MS. BATCHELDER: All right. Well, I think we're very much hoping that all this thunder and lightning becomes tax reform. The chairman is very committed to doing tax reform and has been for several years. We've had, I think, [more than] 30 tax reform hearings over the past couple years, have begun putting out options papers for public feedback; we've put out five so far, they're all on our website. We just launched taxreform.gov, as Ray mentioned, to also solicit public feedback.

MR. REID: So that's what you two are going to be doing together.

MS. BATCHELDER: Yes, and I would say we worked very closely with the minority staff. All of the options papers we've put out have been bipartisan joint products of the minority and majority staff for the Finance Committee. Our bosses also meet weekly.

MR. REID: Do they have a joint Twitter handle?

MS. BATCHELDER: They do. It's called "Simpler Taxes." Thank you for asking.

MR. REID: You're welcome.

[laughter]

MS. BATCHELDER: So, encourage tweets as well. So we view this as a real opportunity and probably the best opportunity we've had in a very long time to do tax reform. And so we are moving full speed ahead in conjunction with these options papers.

We've been having weekly members' meetings to sort of go through them, have the members discuss what their views are, are trying to get as much feedback as possible. We have an open door policy and meet with anyone who requests a meeting. So, [we] would really encourage people, now is the time if you have suggestions for us for tax reform. Please let us know.

We read a lot of stuff that everybody here publishes and the tax press and beyond, but would love to talk that through and would also encourage people to bring ideas large and small. A lot of people talk about tax reform as sort of more fundamental issues, but we also view it as an opportunity to really clean up the code in a lot of areas. So whether your ideas are very big picture fundamental or smallish tweaks that would really make life for taxpayers easier, we would love to hear them as soon as possible.

MR. REID: Sure. So just focusing on tax reform can have different theories for why you would do it. You could do it for simplification purposes, you could do it to achieve some policy result, you could do it to lower the rates and broaden the base, you could do it to make it more progressive. And I guess my question is: Are those sort of very big picture questions? Because those might inform the way that it's actually conducted.

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MS. BATCHELDER: Yes. Well I think in terms of big picture things, there's a couple documents that I think set out my boss's vision. One is a speech he gave at the Bipartisan Policy Center about a year ago. Another is an op-ed he did in the *Wall Street Journal* with Chairman Camp. They have both said that they think tax reform should be at least as progressive as current law.

I think he's really focused on simplification and concerned about, you know, there have been 15,000 changes to the tax code since 1986 and it's gotten quite large, and how can we make it a lot simpler? There's in many areas a whole raft of different tax expenditures that overlap, and to the extent we're going to have tax expenditures, we should try to consolidate them, make them simpler, make sure we're getting as much bang for the buck as we can.

And then I think he also really views this through the prism of growth and jobs, and as someone who's very empirically minded he wants to see sort of the proof in the pudding and is looking at all aspects of the code through that lens of: Do they promote growth?

MR. REID: Great. Ray, I'll give you a chance to answer the same question. And I'm also interested to know more about sort of the coordination between the two chambers.

MR. BEEMAN: Well Chairman Camp has I think believed that the principles that were adhered to in 1986 are relevant today, and those are simplicity, fairness, sufficiency. Those sometimes are in tension with each other, but you try to adhere to those principles and I think they remain true today.

And I think there's now a fourth principle that probably just didn't exist in 1986, which is certainty. If you look at all of the expiring provisions that exist now, I believe going back to 1997, the late '90s, we had maybe 40 or something and now we've got over, what, 200-plus provisions that expire, need to be renewed, maybe they're not going to be renewed. And that creates a lot of uncertainty out there, people can't plan. So I would add that to the list of principles that I know we're adhering to. And that's kind of what is governing kind of everything we're doing in tax reform: Does it contribute to one or more of those policies?

In terms of coordination, I think all you have to do is look at in the last Congress, the Senate Finance Committee and House Ways and Means Committee held three joint hearings, which, at least on taxes, had not occurred in 70 years. And those hearings I think were a success both in covering the substantive topics but also creating a more conducive environment where we work together, reach not only across the aisle but across the Capitol.

There are things where everybody is not in complete agreement on tax reform, but there's a lot that people do agree on, and if you kind of start there and build the momentum so that when we have to address some of the other issues, we can do so in a way that achieves an outcome that everybody can live with.

So we've coordinated in a very public fashion with regard to the three joint hearings.

Obviously the two chairmen, as Lily mentioned, meet on a weekly basis, usually to talk about tax reform. They've obviously gone through a lot of experiences in the last Congress, whether it was the debt ceiling negotiations or Super Committee, so they're very familiar with each other, the staffs are very familiar with each other, we enjoy working with Lily's staff and hope that as this process unfolds, there'll be more of that. And obviously, with Joint Tax kind of keeping us all in line.

So I think the coordination is really one of the things that will make this possible and obviously in this political environment, it's kind of refreshing when you see folks reaching across and at least having the discussion about what we might be able to achieve.

MR. REID: I found it quite interesting the optimism and sort of cooperation because it's so in contrast to what the press generally leads to believe about relations on the Hill. And the other exercise that we're all engaged in on the outside is [indecipherable] of actual legislation and enactment. And so actually getting legislation that is agreed on between the two chambers is a huge hurdle.

So I guess my question is: Is each chamber going it alone in terms of developing a draft, or would a draft of actual legislation be a joint product?

MS. BATCHELDER: I would say that the House and the Senate are pretty different bodies. We have a history of having bipartisan markups in the Finance Committee. So right now we're I think primarily focused in finding out what would be a consensus bill among our committee.

We certainly, as Ray mentioned, have had a lot of interaction over the years and have very good relationships, so there's sort of constant tossing around of ideas and trying to educate each other and learn from each other. But I think as the normal, regular process works, each committee would pass a bill and then hopefully it would go to the floor and pass the floor and hopefully it would go to conference. And so conference would be really the point to work out differences between those two products.

MR. REID: I guess the question is, coming from the lessons of the 1986 reform, which was kind of a "let's all hold hands and jump together"-type of exercise, where tax reform inevitably disappoints lots of people, right? Because they're used to getting a benefit and then they no longer get it. And so politically, there's an advantage in having general agreement for something [that] is introduced or in general, which is why [in] 1986, there was more kind of a collaboration at the outset in the working groups. So that's sort of what's motivating that question.

MR. BEEMAN: Yes, there may be limits on our ability, institutional limits on our ability to actually create a joint product for some of the reasons Lily outlined, and it may very well be the case that one of us moves first and the other one kind of picks up the process at some point along the way.

As Lily mentioned, I mean, the way the Senate Finance Committee operates with members, all members kind of having a lot of input on the final product, means that the Senate Finance Committee could end up with a bill that Chairman Baucus left to his own may not draft because it's a consensus product and so much less something that we would at least start out with.

Having said that, though, I think there's, again, a big comfort zone where I think if we went forward with what

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will be H.R. 1 — because the speaker has given that bill number, as I said earlier — that it's something that the Senate Finance Committee could at least start with potentially or draw from, even if not all the particulars would be exactly where you guys would end up.

So I don't know if joint product is — and in that way 1986 is a lot different. I often say there's a lot of lessons from 1986, and one of them is it's not 1986 anymore —

[laughter]

MR. BEEMAN: — in a whole host of ways. So I think people try to kind of sort of say you have to have, X, Y, and Z for tax reform to happen because they did it in 1986. Maybe that's true, maybe not. We only have a sample size of one.

But I think this is an area where the process could unfold differently where we don't necessarily do something, we don't necessarily hold hands together, as you said, but it doesn't mean the process can't unfold where we have two products that are so vastly different they can never be reconciled. In a way, that's kind of the beauty of tax policy, is for the most part everything can be adjusted and moved to one direction or another, tightened, loosened, and so it makes it much easier for people to meet in the middle if they have the will to do that.

MR. REID: All right. I want to turn to politics in a minute, but before we do that, Gordon, Joint Tax just released the 568-page report, which was for the Ways and Means Committee and represents carefully going through all of the comments that were submitted in every area for all the working groups.

Would you sort of describe that, the purpose of the report and what were some of the lessons, for example, in tax reform?

MR. CLAY: I think you forgot to count the appendix pages. A couple more pages.

So as has been mentioned already, the Ways and Means Committee, as part of its tax reform process, established 11 working groups in different topic areas. And one of those groups was the Charitable and Exempt Organizations Working Group, which was chaired by Congressman Reichert from Washington state and co-chaired by Congressman Lewis from Georgia, who held a series of meetings with stakeholders and academics and practitioners to ask questions and learn, and a number of additional meetings back in their home districts. So that was part of the process. It was an opportunity for the members of the various working groups, including the Exempt Orgs Working Group, to learn about the law and learn about the issues that are affecting the sector.

And also, as part of this process, the Ways and Means Committee solicited comments from the public on ideas for tax reform across the topics covered by the 11 working groups. So the cutoff date for comments was April 15, and there were 1,300 or so comments submitted in total. There were a number of comments submitted specifically for the Charitable Exempt Orgs Working Group. There were comments that related to issues covered by the Charitable Exempt Orgs Working Group that actually were submitted to other working groups, like the Small Business Working Group. So on our staff, we spent a lot of time trying to study the comments and dig through them and try to determine which comments related to the subject matter of the different groups and then to summarize them.

And one comment I saw within the last couple of days specifically about the Exempt Org's comment summaries said "well, they included a description of this particular submitted comment, which must mean that they viewed that as really important or elevated it to a certain level." And that's really not what we did; we summarized all the comments. So if there's a bullet point in the summary of the public comments, it just means that there was a comment submitted. We didn't try to assign some sort of value or weight to the public comments.

So the comments were pretty wide ranging that related to charity and exempt orgs topics. A lot of the topics were along the lines of asking to retain a current benefit or expand the current benefit, but there were other comments that may have gone the other way.

And just to run through a few of them to give you a flavor. I'm sure some of you have already read this portion of the report.

On the charitable deduction, there were a large or a significant number of comments that suggested not making a change to the charitable deduction, or at least not changing it in any way that would reduce the amount of charitable contributions. There were a number of comments that specifically opposed a lot of the different broad-based reform proposals that have been put forth in the last couple of years, including the administration's budget proposal that would limit the value of certain deductions and other benefits to 28 percent.

The idea of having a bucket or a certain dollar amount of deductions that you're allowed, converting the charitable deduction to a credit, putting a floor under the charitable deduction — all those broad-based proposals, there were comments that opposed them.

There were a number of comments about the Pease limitation, either suggesting that it should be repealed or that the charitable deduction should be pulled out and not included within the Pease limitation. There were comments suggesting that non-itemizers should be allowed to take charitable deductions.

My next category here, there were a number of comments that related to charitable contributions of property or contributions of property other than money. There were comments, for example, that said we need to keep the fair market value deduction for appreciated property. Going the other way, there were comments that said we should limit the deduction to basis for appreciated property, contributions of appreciated property. There was one comment that suggested that we needed a new intermediate sanction for substantiation footfaults because people were losing deductions over minor technical misses on substantiation.

There were comments related to specific types of contributions like contributions of art by artists, suggesting that we need a fair market value deduction; about the automobile rules that were enacted several years back; and about qualified conservation contributions, specifically there were a number of comments about the extender that gives more generous percentage limits and

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extended carry-forwards for qualified conservation contributions, generally wanting that expanded and extended.

Looking down the list, there were a couple other technical comments like suggesting allowing contributions to be made through April 15 and deductible on the prior year tax return.

One other general comment is that there were submissions made that didn't actually include proposals and to the extent possible, I tried to include them in this part of the document. There was a submission that talked a lot, for example, about donor-advised funds. Didn't have a specific proposal, but I tried to work it in nonetheless.

Off of the charitable deduction and on to tax exemption and issues related to tax exemption. There were a number of comments about the section 4940 private foundation excise tax on investment income that either suggested repealing it or simplifying it. There was a proposal to create a new per se non-private foundation status for agricultural research organizations based on the medical research organization rules. There were a number of comments related to the UBIT rules, including several that want the 512(b)(13) extender extended and expanded or made permanent. There was a comment that suggested retaining the corporate sponsorship rules and not messing with those.

There were a couple related to the debt-financed income rules, generally seeking new exceptions. One, for example, would have sought an exception that would have done away with the need for using blocker entities for investing in certain types of securities and commodities.

There were some other comments that related to specific types of tax-exempt organizations. There were a few comments, for example, that said we need to retain the 501(c) tax exemption for this kind of organization or that kind of organization, including electric cooperatives, 501(c)(8) fraternals, and credit unions. There may have been a couple others.

There were several submissions related to the community benefit standard for hospitals, urging the retention of a broad community benefit standard and opposing any attempt to impose some sort of a specific charity care requirement.

There were a couple of other proposals that go to reporting and disclosure types of issues, like one that advocated a general six-month extension for all Form 990 series returns, a uniform extension. There was another that called for repeal of all of the special exceptions for churches, like the 1023 exception and the 990 exception and the special rules for church tax inquiries.

There were a number of comments related to the IRA charitable distribution extender, wanting it both made permanent and loosened, expanded.

And then, finally, there were a number of comments submitted by Indian tribal governments that were on a whole range of issues, some of which really touched on the subject matter of other working groups besides the Exempt Orgs Working Group but were submitted to this group because they were submitted by tribal governments.

So that's a quick summary to give you a flavor of the types of public comments.

MR. REID: Thank you. So in general, a lot of Oliver Twist-type comments. Please, sir, can I have some more?

[laughter]

MR. REID: I guess the question is: What does it all mean? Now that we have this report and Finance has various reports that we've done over the past few years on tax reform, we've had a lot of hearings, a lot of public statements. We're getting feedback from the field. How do you decide what that means for tax reform? And how do you decide, okay, we've received 100 comments saying we really ought to keep this and no comments saying we ought to keep that. Does that mean we should not keep the thing that nobody talked to you about or what? How do you —

MR. BEEMAN: I think the way you might want to interpret all of that [indecipherable] happened not only this Congress, the last Congress, last couple of years on tax reform; the hearings, both the number of the hearings and the wide scope of topics that have been covered, the joint hearings; the discussion drafts that we've put out, the options papers Senate Finance has put out; the working groups. I think the takeaway from all of that is that at the end of the day, if tax reform does get across that finish line, you know, true tax reform is going to have winners and losers, as you mentioned earlier. Not everybody's going to be happy with every outcome. But day to day, you want people to feel like "you know what? I had my say, I had my opportunity to weigh in."

And I think you get more public buy-in if you've gone through that process than through a very nontransparent process, so that at the end, people feel like they've been treated fairly by the process because, you know, we all live in the beltway, but this is mainly about folks who live outside of the beltway who currently have to confront a tax code that nobody can understand, people feel as if it's treating people very unfairly and a lot of the circumstances that led to the 1986 act. And so if we can get to that finish line and have a product that I think treats the American people better, then even if not every little decision point kind of went your way, overall it's a better product and, again, people felt like they had input.

And really, it's also the members of Congress, too. I mean, we're the committees of jurisdiction, but we have such a small sliver of members that sit on our committee, but at the end of the day, all 535 are going to vote on tax reform, and so you can't just unveil something from the committee that not only the committee members but the members of Congress in general haven't seen coming and didn't have an opportunity to weigh in on.

And so I think a lot of what we're doing, while the specific comments and feedback and submissions are important and actually help us learn what the issues are, it's also overall the kind of transparent process I think we all wish Congress would engage in all the time on everything.

MS. BATCHELDER: I would just echo a lot of what Ray said. I think both of our bosses, it's very important to them to have this via a transparent process, and that's part of why we've had so many hearings, we've put out so many documents for public review and advice, and I think

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that's both important for buy-in and honestly, we learn a lot. If you look at our options paper, a very large number of the citations come from our hearings or come from conversations we've had and articles we've read. So we're really trying to gather as much knowledge as we can from everyone here in the room and elsewhere in order to come up with a really solid bill that improves the tax code.

MR. REID: The bill. You mentioned the bill. So, when will we have one and what will it contain?

[laughter]

MS. BATCHELDER: Well, I think our options papers are a good reflection of a lot of the pillars that we are actively thinking about for putting in a bill. And there are no deadlines, you can't be sure of anything in Congress. But we really hope to have a bill by the end of the year.

MR. BEEMAN: Well, we do know our bill will be H.R. 1. Did I say that already?

[laughter]

MR. REID: You did.

MR. BEEMAN: From a timing standpoint, we also know that the chairman has said many times that he wants to move a bill, at least through the committee, in 2013. And now we're in May of 2013. So that answer is kind of getting more and more precise as we go along.

Beyond the committee process, it's really hard to say where the process goes. I think once you get beyond the committee, there are a lot of external forces. Obviously, we don't do tax reform in a vacuum, and as we've seen over the last few years, it often is getting brought up in discussions involving the debt ceiling or the budget or those kind of issues. And so at some point, those — you talked of thunder and lightning; there's also winds that kind of blow around and affect the trajectory of the process as well, and so it's hard to say kind of where that's all going to happen.

As some of you may have read this morning, the debt ceiling expiration of the extraordinary measures, which I guess the end of the year people kind of thought it'd have to be addressed. Debt ceiling is re-imposed, I guess May 19 or something? But that with the extraordinary measures it might get you out to the beginning of August, which is when Congress goes on the recess. It now keeps getting pushed out potentially even until October, and so that's obviously a moving target out there that often gets brought up with tax reform.

How that plays out, it's hard to say. And obviously, as you go through the process, as I said earlier, the remaining 535 members of Congress become bigger players in that process, and so it's harder to kind of envision where this goes relative to when the chairmen through your committees have more control over how that plays out.

I suspect it'll be — a tax reform bill will involve several hundred pages. The thing I always point out is when we did our international draft, which not only proposes to take our international tax rules to an exemption system, but also it contains the reduction to the corporate tax rate to 25. I think just reducing the corporate tax rate takes like nine pages of legislative tax. So you can get to several hundred pages very easily in a bill like that.

And obviously, what it'll contain, we've already put out discussion drafts that should tell people something about what it could contain, not that those drafts will word-for-word be the same necessarily in a tax reform bill.

So I think you'll start to see the process probably start to unfold fairly quickly. I know there's been a lot of people who have been anticipating some action and we've tried to provide a lot of these different things and for people to weigh in. But when that starting gun, as I talked about, goes off, I mean, then you obviously will see there'll be a very visible part of the process that people will be able to react to.

MR. REID: So it's been challenging for all the staff here on the Exempt [indecipherable] just to know how we fit into the overall picture. We represent a large portion of the economy and potentially a revenue source if you needed revenue for tax reform. But beyond that kind of general observation, it's not clear how we would fit into tax reform.

Have there been any decisions made about whether a tax reform bill would include exempt orgs provisions? Are we in the clear, or are we still in the crosshairs of it?

MS. BATCHELDER: I would say, as has been the case for the last couple of years, everything is on the table. The chairman has not taken a single area of tax off the table. We do expect to do an options paper on charitable and tax-exempt issues, and so your suggestions and thoughts would be especially appreciated in the near future. And then once that comes out, your reactions to that. But I'm guessing that for every person in the room, some experience of why on earth is the tax code written that way in some area and that's really what we would like to hear.

MR. BEEMAN: I'd just repeat what Lily said. Chairman Camp said it, as well. Everything is on the table. In fact, he often likes to tell different groups that he speaks with that you need to be involved in the process, we're trying to make it as easy as possible for people to be involved in the process because, as he says, if you're not at the table, you could very well end up on the menu.

[laughter]

MR. BEEMAN: This area has been kind of interesting. I'm not an exempt orgs expert the way Gordon is and we have a couple of other people on the staff who know a lot more about this area. And obviously it's kind of two related areas because you have sort of the EO side and the charitable side, which have completely different issues and rules and it's not something you really tackle as one subject.

We've had a couple of hearings — I don't think we've had like an exempt orgs hearing — but we've had a couple of hearings that get into specific issues, including earlier this week with the colleges and universities. And so it's such a vast area, even in just looking at one side or the other, that it's kind of hard to really figure out how to break it up and find out what the real sort of big issues are and themes are, because I think when you're doing tax reform, you're kind of looking across the code.

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Certainly to some extent, you go through provisions and you kind of put a list of things together that you might tweak or change, but I think real tax reform tries to develop some big themes in different areas and everything that you do kind of revolves around those themes. So I mean, our discussion drafts, I think, reflect this, where the big theme — and our international draft is going from a worldwide system to an exemption system, and then there's all kinds of things that go around that centerpiece.

Financial products, you know, the big theme was going to a market-to-market system for derivatives. Small business drafts, the big theme, we kind of did two different options. So there's kind of maybe two big themes, but we spent a lot of time figuring out how you can kind of take Subchapter K and Subchapter S and put them together so that if you're past a regime, you just have one set of rules, regardless of what your state law entity status is.

And so as you go in these different areas, what are the big issues here that you want to kind of address primarily, and then obviously you do the nipping and tucking around that.

And I think from my standpoint, in the EO world, I think it's kind of things that get talked about on the panels, I think that Gordon has kind of flagged in the working group. I'm not sure how you might address some of those issues or whether to.

And that's really why we need to kind of continue to have the dialogue so that we have a better understanding as to what the pressure points are in the tax code, because this is a rare opportunity — speaking definitely from the staff perspective — but I just think generally for the public, for the country to try to get the policy right, because so often [in] the tax world recently, which has kind of led us to having to do tax reform, is we're doing tax legislation for reasons that aren't solely about trying to get the right tax policy answer.

And so it's a special moment, at least for those of us who care about tax policy. We're really trying to identify what should this area look like when we're done and what problems can we address without having to necessarily worry about time deadlines like extenders or trying to deal with rates that are expiring and things like that.

MR. REID: All right, so, if we're not on the table, we're going to be on the menu. Gordon, would you care to describe the menu? And what I mean by that is —

MR. CLAY: No.

[laughter]

MR. REID: I guess legislative proposals in this area.

MR. CLAY: I mean, in my job, it's very dangerous for me to try to predict what's going to be included in a tax reform bill, and I don't know what's going to be included in a tax reform bill. When I'm asked this question, what I typically do is I will say that there are a few different issue areas that I hear about repeatedly and seem to come up all the time. I've been on the Hill now for about eight years and there are some issues that just come up repeatedly, and those could be places where the committees might look when they're thinking about tax reform, so, just some very big issue areas. You know, what types of activities are deserving of tax-exempt status?

We had hearings back shortly after I joined the staff, probably in 2005, so long ago that Ray may have been on the staff then, that where then-Chairman Thomas of the Ways and Means Committee looked at a couple of different types of organizations like credit unions and hospitals that have direct taxable counterparts in the commercial sector, and try to look at them and say what are the differences and do we need to think about the rules for tax exemption here and why do we have organizations that look very much alike but have a very different tax status?

So you have those kinds of questions and general questions about commerciality that might fall under the same umbrella. Was it the Oversight subcommittee [that] had a hearing on AARP within the last couple of years, where they asked a lot of questions about the structure of AARP and the activities and looked at the commercial types of activities. So that's one general category, what kinds of activities should be exempt activities or within the context of an exempt organization should be tax-related or unrelated?

Another big category is charitable contributions of property. There we've seen valuation concerns arise with different types of charitable contributions of property. There have been a number of pieces of legislation over the last several years that deal with contributions of cars and other types of vehicles, contributions of intellectual property, contributions of clothing and household items, the appraisal and appraiser rules, conservation easements, and we have now two administration's budgets proposals on conservation easements, which arised from the same sorts of concerns about valuation of property other than cash and what do to about it. So that's a place where there's always a lot of discussion.

Public charity versus private foundation status. We've seen pressure on that distinction over the last several years. We saw the donor-advised fund and supporting organizations rules that were enacted as part of the Pension Protection Act, because donor-advised funds and supporting organizations, while public charities, there's donor involvement, and there was concern or at least there was anecdotal concern at the time that led to legislation that imposed some new requirements that look a little bit like some of the private foundation requirements.

Senator Grassley over the last few years talked about endowments and whether like private foundations, which have distribution requirements, when you have organizations that have large amounts of assets, do we need to be looking at that and thinking about that in relation to the level of their charitable activities?

Another issue that's come up a lot in recent years is political campaign activity of 501(c) organizations. We have had questions raised about disclosure, we've seen a couple of bills introduced in the Congress that are not exempt org-specific bills but would apply to exempt orgs, new sorts of disclosure regimes. We just saw another one introduced in the last couple of weeks by Senators Wyden and Murkowski that had some special penalties for exempt orgs that violate the rules of that bill.

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We've had questions raised about what is political campaign activity and how do we define it? How do we better define it? And if we can define it, what's the appropriate level? Where should we draw the line? And then we've had more specific questions like the questions raised about whether transfers to section 501(c) organizations are subject to gift tax. But there are a lot of questions that have come up under the umbrella of political campaign activities.

So those are just a few very broad topics. I can't say whether any tax reform bill in the Senate or the House will touch on any of those topics. They may, they may not. They may be addressing more specific problems. But those are just things that come up repeatedly and might inform the process.

MR. REID: Well, we're running out of time. I did want to give you all an opportunity to ask any questions you might have.

I'd like to ask my political question because both of your bosses are interested in [indecipherable]. Camp is term-limited as the chairman of the Ways and Means and Senator Baucus has decided not to seek reelection, which puts pressure on them both to do something now or never. So I'll leave that observation. I don't know if you care to comment more than that, but is that true? That'll be my question. Is that true that there's more pressure to do tax reform now?

MS. BATCHELDER: I mean, I would say it really frees my boss up to devote himself 100 percent to this, and that's something that he's really excited about. I think he felt a great deal of pressure prior to that decision, that he really wanted to do tax reform but was being pulled in a lot of directions and is excited to be able to have even more time on his schedule to be focused on this and working on it.

MR. BEEMAN: And maybe for the benefit of folks who don't necessarily memorize House rules, I'll give you a little bit of the background on Chairman Camp's situation. When the Republicans took over Congress in 1994 — I believe this is when this happened — they added a new rule to the House rules that term-limited chairmen and ranking members on — I believe it's a House rule, I should maybe back up a little bit. I don't think it's a House rule, I think it's like a Republican rule because I don't think the Democrats are bound by this rule.

So on the Republican side we have term limits for chairmen and ranking members, which is six years, and you count both your time as chairman and ranking member. So what that meant when Chairman Camp became chairman in 2011, he had already been ranking member so he really only had four years to be chairman.

Now there are opportunities to get waivers, but I think the only one granted was to Paul Ryan this year to continue on as Budget chairman. So it's not something that's frequently given, and frankly we don't spend any time speculating on whether the chairman might seek or obtain a waiver. But when you read people talking about Chairman Camp's term limit, it's from that. It doesn't necessarily mean he has to leave Congress, it's not that kind of a term limit. He would stay on the committee. In fact, I think we've seen that a little on the Senate side. They have the same rule.

So in theory, the chairman, this is his last Congress as chairman, and I certainly have read some of the speculation about what that means for his timing on tax reform, and obviously that's been now coupled with Chairman Baucus' announcement.

Frankly I don't feel we're running any harder than we were. I mean, in our case, we've known about the term limit since I joined the staff. So, I mean, it's not like this was new information. And so I think as much as the term limit, I think the chairman believes that this is the time we need to do tax reform whether he's going to be here two more years as chairman or 10 more years.

And so we have been obviously talking about so many fiscal and economic matters for the last several years, I think in his mind it's as much to do with trying to kind of get our fiscal house in order not only with spending but having a tax code that doesn't kind of put us at such a disadvantage economically. It's a self-imposed penalty, almost, to have a tax code like we have. And try to fix that and clean that up because that's the area of the whole larger picture fiscal debate that we have control over. And so I think it has a lot to do with that as much as the whole term limit issue.

MR. REID: OK, thanks very much. Any questions from the audience?

Or shall we get ready for lunch? All right. Let's thank our speakers.

[applause]

Audits, Appeals, and Litigation: Trends and Tactics

MS. MCDOWELL: We're going to get started with our afternoon session. So I encourage you to take your seats, and I would really encourage people to move up to the front half of the room. I know that there were some problems with hearing in the back half of the room and that's because the back part of the room is really set up for lunch. I know people like to sit there because they have the advantage of tables, but it can be hard to hear. So anyone who would like to take a seat in one of the front pews, we would be most grateful.

So let me now turn it over to Marc, who is the moderator of this panel.

MR. OWENS: Great, thank you, Suzy. We're going to have a bit of a change of pace here. The morning's panels were about presenting new information and apparently making instant headlines around the world. This one is going to be a little different.

What we're going to do is talk about trends and tactics and tips on how to deal with the IRS and in various confrontational phases. We're going to start out with the audit phase, move into appeals, and then into litigation. And to lead us through that we have two excellent panelists.

On my right is Miriam Fisher with Latham & Watkins. She is an experienced litigator, she has litigated in both

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the exempt organizations arena and in the for-profit arena and should have considerable expertise to share with us.

And on my left is Doug Mancino who, as you all know, has a great deal of experience in tax-exempt organizations and in dealing with the IRS. In fact, I almost considered it a good day when I was at the IRS when I could make the beads of sweat pop out on Doug's forehead.

[laughter]

MR. OWENS: So with that, why don't we get started, and we'll start off with audits, I think, and it'll be sort of a back and forth discussion. We'll leave time for questions at the end.

MS. FISHER: I'm very grateful to be here on this esteemed panel. As Marc noted, I don't spend an enormous amount of time in the EO area, but I spend an awful lot of time face to face with the IRS in audits, appeals, and litigation. And I thought I'd start out in our discussion of audits noting some similarities and differences in approaching and living in the for-profit and the not-for-profit world.

I think in terms of an audit, the first thing you want to do as you get started is set the tone. When you sit down to meet with your examiner or your IRS team, we always advise any taxpayer — nonprofit or for-profit — to set a cooperative tone. But I think in the EO area, the obligation is stronger than any to set a cooperative tone. I think the exempt organization comes at it with a little bit of different drivers in the audit.

First of all, the tendency to get dug in ultimately on an issue in dispute and fight about it, I think, is a more natural tendency in the for-profit arena than the nonprofit arena. There are more mechanisms in the nonprofit arena for reaching some kind of agreed resolution short of litigation, and I think everyone tries to take advantage of those, and the way to get off on the best foot, I think, is to set a tone of cooperation and willing information-sharing in the course of your audit.

That said, I think it's also important to keep in mind that there may be an issue that has to be litigated down the road. If it's something as severe as a declaratory judgment issue, then from day one of the audit you are making the record for your litigation. And so it takes a lot of thought and planning to keep in mind that the information you're providing and exchanging not only may be your litigation record but hopefully will help you resolve the matter short of litigation.

I also think that if a nonprofit identifies an area where it has been out of compliance or that may be an issue that may be challenged by the IRS, that a normal for-profit taxpayer who discovers an error in a prior tax return or something has really no legal obligation to correct that error. The IRS can come in and say 'you made a mistake and we'll fight with you about it,' or they may never show up and say you made a mistake, and you get away with it. But there's no affirmative obligation to correct an error if you just wake up one day and said we did this wrong.

I think in the nonprofit context, the ability to make corrections and take remedial measures as you discover something either in advance of an audit or during the audit is going to facilitate resolution ultimately in a way that is more pronounced than in the for-profit area.

MR. MANCINO: And I think that's especially true if you're dealing with an intermediate sanctions issue because with the regulations dealing with the relationship between exemption and [section] 4958 intermediate sanctions taxes, there are five factors that get taken into consideration.

I just concluded about a two-and-a-half-year audit that began as a result of some newspaper articles, which is not atypical. In fact, the IRS exam team specifically said that the exam was initiated because of some articles in *The Los Angeles Times* that were planted with the SEIU, I might add, as part of a corporate campaign. And basically it was clear that the article, which had focused on alleged excessive compensation and benefits as well as leasing transactions between the exempt organizations and disqualified persons, that this would be an intermediate sanctions focus eventually.

The IRS didn't open up the individual examinations until after — I will use the term the eighth IDR [information document request], but that's a misnomer because every IDR had like multiple subcategories and called for volumes of information. And I would describe this process — and this is not atypical in my experience — I think our clients are well-meaning, but they also aren't going to voluntarily disclose that they screwed up.

And so what was happening with each IDR was it was like the unpeeling of the onion. There'd be an issue: Well, they looked at the general ledger and saw these quote/unquote marketing payments, what were those? Oh, those weren't reported as compensation or wages. Accountable plan violation, potentially.

But what we did, interestingly, and importantly to your point, Miriam, was that every time something came to our attention — for example, personal use of credit cards, which is, I think, a big issue — that weren't accounted for, they had a policy that they'd adopted in 2002 but they weren't enforcing it. So what we did is we went to the board and had them adopt a formal accountable plan resolution. And we did a lot of things early on, well before even the opening of individual examinations, to anticipate a closing where the IRS would say no change with advisories. And the advisories related to the compliance with various criteria in the 501(c)(3) regulations that said that if these looked good, then there'd be no revocation of exemption, notwithstanding the fact that there ultimately were excise taxes imposed on the individuals.

MS. FISHER: And obviously, if an issue is serious enough that it may implicate discussions about revocation, then remedial measures can rein in the time period over which you may ultimately be either resolving that or litigating it or whatever.

And so, you know, it's not uncommon in a for-profit audit to say to the client we ought to fix this or we ought to change the process or the procedures or the policies because the IRS doesn't like it, but it's also common to say we think we're right and we're just going to fight with you. And I think in the nonprofit context, there's more of a tendency to try to get to, yes, try to get to a place that makes everybody feel more comfortable.

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There are different drivers in the dispute. And certainly for most taxpayers litigation is a last resort; that's not what you want to contemplate when you're starting off on an audit. And I think even more so in the tax-exempt arena that you have to be aware of building a record for that possibility. But obviously your goal is to find some agreed resolution far in advance of having to engage in litigation.

MR. MANCINO: One thing I wanted to comment on also during the process of an examination is the issue of taking advantage of Fast Track mediation. That's a relatively new process that came in in 2002 as part of the IRS's focus on alternative dispute resolutions with the view of getting these issues resolved more quickly. And one of the predicates of doing that is you have to have a 5701 Notice of Proposed Adjustment, and you also have to have a fairly well-baked set of arguments and positions.

But I think that is an affirmative tool that practitioners should exploit during the course of an examination for a couple of reasons. I've had two situations where the IRS has agreed to do that and one where they declined, and that was in that excess benefit transaction context. But the reason why we agreed in the one case was because the manager and us agreed on the substance of what the resolution of the case should be, but it was a settlement rather than resolution, and the audit team can only resolve examinations and issues, but they can't settle because they can't take into consideration hazards of litigation.

So what we agreed on was essentially a final product, and this dealt with some complex accounting issues. And ultimately we went to Fast Track mediation because the first thing that the appeals officer said when he came in was that I can agree to a closing agreement without having to go through the normal processes through Dallas, through the National Closing Agreement coordinator there and the like. And so we viewed that as an opportunity to resolve the issue short of litigation in a way that probably was mutually unacceptable to all parties.

[laughter]

MS. FISHER: That's the definition of a good compromise.

[laughter]

MR. MANCINO: Exactly.

Now on the other hand, the second one we had involved an alumni association who primarily derived its income from a street fair where it would essentially lease blocks of space for vendors on the weekends. And the issue was whether that was rents from real property, because if it wasn't, then the Service was taking the position that it had a substantial nonexempt purpose and its exempt status should be revoked and become taxable.

And that was an interesting issue because it was a technical legal issue. And we essentially agreed to disagree and could not mediate it successfully. And that says to me some of the shortcomings of the process relate to the fact that when you're dealing with technical legal issues, that process isn't necessarily going to work. And as a matter of fact, we are now submitting that to the [IRS] national office for technical advice, because we need an independent arbiter on a technical legal issue.

MR. OWENS: Doug's comments raised two things in my mind, Miriam, and I'm wondering what your perspective is on it from the for-profit side, and that is: In the tax-exempt world, particularly with charities exempt under section 501(c)(3), whether they're public charities or private foundations, there are a series of excise taxes that can be triggered by behavior of the organization, but they fall on the individual. So it's not uncommon for an audit of a private foundation or a large charity to at some point veer off to the individuals in charge of the organization, and they may actually be the ones who end up —

MS. FISHER: Holding the bag.

MR. OWENS: — bearing the brunt of any tax. And then there's the issue of technical advice that Doug just mentioned. Technical advice in the exempt organizations area seems to have died on the vine, we see very few of them these days. And I'm wondering if you have a perspective on that from the for-profit.

MS. FISHER: I do. I think that we've talked about some of the distinctions that we've noted between for-profit and nonprofit audits. There are also some real similarities in terms of trends.

One of them is that you have mechanisms to facilitate a resolution; like, you've talked about technical advice and Fast Track mediation, all very well-intentioned procedures that we have. In both contexts, the nonprofit and for-profit, it's great to have these, it's great to think about using them, it's great sometimes to use them and when they work, it's wonderful. But they don't always work, as you've noted. It may not be the right issue for resolution or you may have a stalling from the IRS — and I don't mean an intentional stalling, but the effect is that there's a sort of guidance vacuum and you can go a long time without a resolution of your issue when you've asked for one. That is certainly common, I think, all across the board right now.

And it's particularly an acute problem for a nonprofit because if there's a question holding up the way they operate, they have to operate every day as a nonprofit, and I think it's less common in an income tax audit, for example. Sometimes taxpayers welcome the fact that their issues aren't resolved for a long time, or it's not as much of an obstruction of the way they do the business every day. So I think those characteristics are common.

It is less common in the for-profit area to have individuals become responsible for an organization's tax issues, but it's certainly not unheard of. It comes up, as well. For practical reasons, I think those people probably need to be independently represented in the process and brought into the fold to make sure that things get resolved in a way that is unsatisfactory to everybody [laughter] or mutually unsatisfactory or mutually satisfactory.

Another thing I think is common to both kinds of audits is that the Service is continually getting smarter about identifying issues, about finding issues, about teaming to address issues. And so on both sides, the for-profit and the nonprofit, you see increased coordination by technical experts, by counsel being more involved

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from the very beginning, maybe drafting IDRs, directing what's going on, particularly if an issue for your organization has become an issue that the IRS is interested in, whether it's because it's been identified through other audits or it's been on the front page of the *L.A. Times* or whatever it is. You're going to see increased coordination, and as good of a policy that is for the IRS, it tends to slow things down even further and I think often makes it more difficult to get a resolution.

And so you're faced with: Strategically, can you differentiate yourself or tell a better story or whatever it is you have to do to get yourself out of the bucket of what is causing the delays and the hang-up and the inability to get guidance in connection with such an issue?

MR. MANCINO: Well, a lot of the things that we're seeing now in the exempt organizations world, we're seeing this in the private foundation context as well as in the public charity context as well as 501(c)(4)s with intermediate sanctions being applicable to them, and pretty soon 501(c)(29)s — co-op health insurers, which are also subject to 4958 —is the issue of multiple audits going on at the same time involving the same issue, whether compensation is excessive, benefits should have been reported as wages and subject to withholding, and the like. And there are a couple of issues that I thought were worth mentioning here.

The first is attorney-client privilege. One of the things that is an important practice to do — and you don't think about it because most of us are not commercial litigators, most of our exempt organizations we think wear white hats, so we don't think of these [as] issues that are going to involve potential litigation, but they sometimes do.

And so one of the first things that we believe is important is that if it appears that an exam is going to be morphing into an excess benefit or self-dealing-type examination of disqualified persons and organization or foundation managers, then the first thing you need to do is put in place a joint defense agreement. Technically, you don't need that in writing, but it's incredibly important to do so in writing to make sure that everybody knows what the game rules are.

Secondly, as you mentioned, Miriam, the issue of separate representation. I don't believe that separate representation is called for initially, but if you take a look at a case called *United States v. Rutherford*. [It] was a Michigan case where there were articles in one of the newspapers there that caused the IRS to begin an examination. And as they further got into the examination, it morphed from a civil case to a criminal fraud case against the two principals. And ultimately [the case] went up to the Sixth Circuit at least once, if not twice, where the Sixth Circuit ultimately said that the IRS did not pursue the examination on the civil side so far as to impair the Fifth Amendment rights of the individuals.

Ultimately, these individuals were convicted on the basis of, among other things, falsely signing Forms 990 and the like. But it's little known that there is now a Tax Court petition that ultimately was settled by Mr. Rutherford, where following the conclusion of the criminal examination, the IRS appropriately went after this individual for intermediate sanctions. And it's a petition that was filed in the Tax Court and it ultimately, as best I can tell through our librarian, it was settled. But it's one of those cases that was settled for the full amount rather than settled down, as many of the petitions have been when they've gotten to the Tax Court. And that's important because you got the interests of the organization that may conflict.

The other thing in terms of privileges, you also need to think about other disclosures. In the UBI context, for example, there's the case involving the Massachusetts Institute of Technology, where the issue got litigated as to whether the attorney-client privilege was waived as a result of some public filings that the university had to make to governmental agencies that were providing research funding, or something along those lines. And basically the court concluded that the privilege with regard to those documents was waived because this was a governmental filing and therefore it eliminated the ability of the organization to claim privilege for the information that was contained in those reports.

MS. FISHER: A note about privilege that I want to make. I've noticed in being involved in exempt org audits [that] often there's in-house counsel. Obviously, many e-mails go around having discussions about things that are going on.

One thing I've noted in particular in a large audit that I have previously been involved in is that because of the way even a substantial exempt org functions, I don't think there's a lot of thought given to whether internal communications are privileged or not. And I know sometimes that when you're in an audit, the attitude that seems to be coming from the government is that privilege is dirty and you must be hiding something. And so when you claim privilege, that seems like a bad thing.

But privilege is an excellent tool, it's existed forever in the common law, and it is a mechanism for having private internal discussions with the advice of a lawyer about not anything bad, but things that are sensitive that you need to address, that you need to be able to talk about freely without fear of disclosure.

And I think it is worthwhile in your day-to-day operations, in thinking about the kind of scrutiny that a nonprofit will get from the IRS and anybody else, that if there are sensitive conversations; if you think you need to maybe change your policies or procedures; if you just want to evaluate your policies and procedures to see if they need to be tweaked, to see if they need to be changed; if you suddenly become concerned about an issue; if you read the newspaper article and say "ooh, are we doing that?" That should be a privileged conversation, and you should take the steps you need to with your internal counsel, with your external counsel, whoever it is, to make sure that you can freely have that kind of discussion.

And certainly I think it's incumbent upon exempt orgs, because of the nature of what they are, to examine the way that they do business all the time, to make sure that they're in compliance with the special rules for exempt orgs. And I would not hesitate to take advantage of the context of privilege in doing that and to be more cognizant of it in your day-to-day operations.

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MR. MANCINO: Well, one of the issues in this exam that I was alluding to earlier involving excess benefit transactions — allegations, I should say — was that one of the principals was also a lawyer and had a law firm that performed legal services for the organization.

So in the context of providing and responding to document requests, the issue came up about what access the IRS could or should have to the general ledger of the professional corporation as well as the detail concerning bills. And we basically asserted the privilege that you could not get unlimited access to the general ledger on the basis of the fact that that would disclose other potential attorney-client issues for other clients there. And similarly, we would only provide them with redacted copies of law firm bills on the theory that you didn't want to appropriately disclose and therefore lose the privilege with regard to a lot of other issues for which the law firm in a separate capacity was providing legal advice to the exempt organization.

MS. FISHER: It's a good illustration, Doug, of if you don't think about segregating your privileged conversations in some way when you're doing it or in advance, you can get into some pretty sticky discussions later about what is and isn't privilege and what's been waived and what hasn't.

Another area, I think, the sensitivity of privilege comes up is, if your organization happens to — or your client's organization happens to be one of those ones that gets caught up in the newspaper phenomenon and there's some exciting story about them on the Internet or on the front page of the paper and that goes on and on, we all know that we believe everything we read in the paper unless we happen to have some personal knowledge, and then we know it's all a mess.

And so I think in conjunction with managing relationships with the IRS [and] managing the ultimate resolution of tax issues, you often have to think about whether the organization needs to be saying something itself externally to counter or correct what is otherwise being publicly said or passed around. And those are difficult decisions, they're sensitive discussions, and should always, I think, involve counsel and be done in a privileged context until you decide what it is you're going to say.

MR. OWENS: Why don't we slide over to the appeals part of the process of confrontation here. Doug, you mentioned Fast Track appeals, which as I understand it is more of a mediation with a revenue agent present in the room. And that brings up the issue of the ban on ex parte communications. And I'm wondering if you had any particular experiences in that area, and the same for you, Miriam.

MR. MANCINO: Well, one of the things that in the Fast Track guidance that's out there is that the normal ban on ex parte communications is not applicable because you've already talked to Appeals, there's already been communications between the exam team and Appeals.

But that is different. Basically, regular appeals happens when the Service issues a 30-day letter and you have 30 days within which to protest and appeal that. In that particular instance, the IRS Restructuring Act was very explicit with regard to prohibiting ex parte communications with the appeals officer, and there have been several litigated cases actually challenging situations where the IRS had allegedly had inappropriate ex parte communications with Appeals.

But that's a separate, more formal process. Ultimately, it's binding on the exam team, assuming that they rule, for example, against the taxpayer.

In the Fast Track situation that I had, we essentially concluded mutually that there was no point in going to formal appeals after the issuance of a 30-day letter. That's why we opted instead for the tactic of getting technical advice prior to having a 30-day letter issued.

MS. FISHER: Interesting thing about Fast Track, in addition to no ex parte, it makes sense because Exam's participating, that's who you're mediating with. So if you haven't been able to resolve the issue with those people, you still might not be able to, although it's Appeals' job to help you to try to reach some resolution there. They can't really reach it for you, but they can help you to do that. And if it doesn't work, you have not forgone your chance to have a normal appeals process with real ex parte rules.

I am sensitive about ex parte in all audits. If you've gotten to Appeals, it's because you've got issues you could not resolve with Exam. I like the idea of having Appeals to myself so I can tell my side of the story in my way. And increasingly I think the procedures in Appeals allow Exam to have a greater voice and I think [IRS Area] Counsel is much more involved with Appeals than they once were.

Appeals makes heavy use of technical advisers, so if an issue is being coordinated in some way by the Service, you're going to have somebody who has some knowledge about the other cases and you're stuck with that problem, again, about distinguishing yourself. And I think sometimes [with] the influence of Counsel and technical advisers, you start to feel like it compromises the independence of Appeals a little bit.

So I once thought Appeals was absolutely the best place in the world to get everything resolved, and over the last 10 years, my attitude about Appeals has changed a little bit, although there are all kinds of laudatory processes that have been added to facilitate resolution, make it faster, get you to Appeals sooner. There's early referral and there's Fast Track, and then even if you don't settle with Appeals, there's post-Appeals mediation.

I have similar sort of neutral feelings about post-Appeals mediation. I feel that if you haven't been able to settle with Appeals, that having a mediator in the room with the same people is not necessarily going to lead to a result. But again, it's sort of — there's no downside to trying if you think you can get your issue resolved in post-Appeals mediation.

So some of the same coordination and delay issues and perhaps a little lack of independence on top of it. The same issues arising in for-profit appeals cases, I think, cause the same kind of delays and frustration that we may have on the nonprofit side. And particularly where the Service has identified an issue and you know they don't like it and they want to fight about it, I'm not sure you're going to get much further at Appeals.

Now in a declaratory judgment setting, of course, you have to exhaust administrative remedies. So the ability to

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just say 'I'm not going to Appeals' is not there because, obviously, you'll deprive yourself of jurisdiction, I think, if you can't prove that you exhausted your administrative remedies.

MR. MANCINO: You mentioned timing, and that's important. The Fast Track process explicitly says that it's designed to resolve cases within 90 days. I think the [IRS] Large and Mid-Size Business [Division] is 120 days, and they're dealing with returns that are several phone books thick typically, but it does appear to work. The biggest delay is getting the Service to agree to it and process it internally, which may take 30 to 60 days. But once you get the agreement, then, at least in my experience, the Appeals folks are very cognizant of the expectation that this is to be resolved promptly. They work, I think, very diligently in the experience I've had to do that.

But the other thing you mentioned is the fact that increasingly the IRS agents are lawyering up at an early stage with Area Counsel. And particularly when you're getting more complicated issues or more legally oriented issues outside of, like, my 512(b)(3) issue; the Exam team lawyered up very quickly with Area Counsel. They were actively involved with the Fast Track mediation process. They weren't involved to my knowledge in terms of briefing the issue because that was in the 5701 that was prepared by the agent.

But it was clear to me that the normal reluctance — and Marc, you might want to comment on how it used to be. There used to be a normal reluctance to involve the lawyers within the Service in the process, and I think it's increasingly more common to get the Area Counsel involved at an earlier stage rather than at a later stage.

MR. OWENS: That's my impression as well, Doug. It does seem that more often than not these days, you're seeing Area Counsel show up either in the first meeting with the revenue agent or in a second meeting, long before things have come to rest on legal issues where you would normally expect to see them.

MS. FISHER: You can't blame the IRS for using Counsel earlier and more. And it's funny, you would say the NoPA [Notice of Proposed Adjustment], the [Form] 5701 would be drafted by the agent. I've seen some NoPAs clearly drafted by Counsel, I've seen rebuttals to protests clearly drafted by Counsel.

And in the for-profit context, in the large case context, there's a procedure now — I don't know if any of you have seen it in the EO context — at Appeals called the pre-conference. And the pre-conference has been used for several years now. The Exam team is invited in in advance of the Appeals conference, usually for a day, to make a full presentation of their position with PowerPoint, et cetera. It's typically done by Counsel who have advised the Exam team, or with their deep involvement, and they come and make presentations and PowerPoint slides, et cetera. And because of the ex parte rules, the taxpayer's, of course, allowed to be present.

And that is a very interesting process, but really different from the Appeals process that we all grew up with, where you really were in a new place when you got to Appeals and Exam was sort of finished and not in the room anymore.

And some interesting issues have evolved. There were new ex parte rules released in the last, I don't know, year-and-a-half or so. I think I had something to do with some of those rules being changed because an issue developed in a case where a Field Counsel had been involved with the Exam team for years and years and years and really had directed most of the argument, the argument had sort of been Counsel's baby. And it became apparent that when the case did not get resolved in Appeals that the Field Counsel was involved in drafting the stat notice, which seemed inappropriate to me. It's now permitted, by the way, they changed the rule.

[laughter]

MS. FISHER: But I don't think it was permitted before.

But when you have the ex parte rule and the Exam team is — you know, when the taxpayer's allowed to be present for whatever the Exam team says or turns over and you get to see it, that does still include any Counsel who has advised the Exam team; they are within the ex parte group. And if Appeals wants advice from Counsel, they are supposed to get it from separate counsel.

MR. OWENS: Well, let's assume that all the silver tongued talking did not work with Appeals, things have gone south, and you're now holding a 90-day letter addressed to your client. What now? Obviously, the next stop would be the courts, and you have a number to choose from, among other things.

MR. MANCINO: Choice of forum is something that I remember learning about in civil procedure in law school. I did get a 100 on that exam. But I never had to use that until the last couple of years, in terms of trying to figure out where is the optimal place to position your case.

And in normal denials of applications for exemption, you're dealing strictly with the administrative record and you have your choice of going to the Tax Court or to the district courts or the District of Columbia or the Court of Federal Claims.

My own experience suggests that probably the Tax Court is the favored. Rich Schmalbeck, I think, did a study for the National Center for Philanthropy and Law a couple of years ago that I think looked at — he put his law students to work and I think that the bulk of the cases in the declaratory judgment area were filed in the Tax Court.

The concern I have with the Tax Court is the fact that, with all due respect, most of them are former government employees of some fashion or another. They either worked on the Hill, they worked at Treasury, at the IRS. And so, you know, you've got almost the deck sort of stacked against you unless you've got a good case.

On the other hand, in revocation cases, you have the same choices. But I had a case recently, Marc, that you were peripherally involved with, as well, and I don't think we talked about this, where it involved an organization that was one of these down payment assistance organizations. And I suggested that where they should go is to the U.S. District Court for the District of Columbia and ask for a jury trial, because it was a predominantly African-American organization, and you look at

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the jury pool that's the District of Columbia here. And not so much that you'd actually take the case to trial, but take the case in a matter to settle it without having to turn the keys over.

Ms. Fisher: It's really the same kind of analysis you go through, whether it's a nonprofit case or a for-profit case. You look at the precedent in the court, in the appellate court. Is there anything favorable? Is there anything terrible? You think about your audience, and sometimes you have an issue that you actually want a tax expert to be the judge. You want somebody who understands the unique world of nonprofits and the special rules that apply there. And sometimes you want a jury of your peers because it's the kind of issue that they might find sympathetic and you may have a chance of getting a different result than you would if it was just a judge.

Mr. Mancino: Well, the other thing in the Tax Court that actually works to your favor is [that] if you believe the IRS is disregarding a revenue ruling — and we've had a couple of cases recently where in my view the IRS has taken positions that — I do a lot of managed care work, and these were involving HMOs and there's some HMO rulings going back to the 1960s. And they still are being cited by the National Office in private letter rulings and tech advice today. And our view would be to take that to the Tax Court, because the Tax Court in the *Rauenhorst* decision several years ago basically said that a published revenue ruling is an admission. And so from the standpoint of forcing the IRS to be in a position not to disavow published guidance, especially in longstanding published guidance, that's a very important tool in your tool chest.

Ms. Fisher: I also want to mention in the context of the declaratory judgment proceeding, which [is] not unique to the tax-exempt world but it is a more prominent tool in tax litigation for tax-exempts than otherwise. And I want to drive home the point that I will tell you as a litigator, first of all, we typically get called into a case late. We're not there the day the audit starts. And so in a declaratory judgment case, your ability to influence the record diminishes as the administrative process moves on. That really needs to be done during the audit to some extent. If you go to Appeals, [indecipherable] still do it, but once you get to court, you're getting close to being finished with the record.

In a normal, non-declaratory judgment context, I will just tell you the dirty, little secret. A lot of cases get completely formulated after they're docketed, and that's when decisions are made about exactly how you're going to tell your story, what you're going to emphasize, et cetera, and so as a practitioner, the dynamic of resolving an issue in a declaratory judgment as opposed to a trial is wildly different and requires a completely different kind of preparation.

In a normal, non-tax-exempt trial setting, it is irrelevant what happened during the audit and appeal and you get to start over essentially the day you file your case in court and build your case from there. And it's almost the opposite in a declaratory judgment proceeding; the record is made by the time you walk in. And that is, from a litigator's perspective, a dramatic difference.

Mr. Mancino: I would echo that with two case studies in point. The *Redlands Surgical Services* case, which is something that we handled both in the Tax Court and the Ninth Circuit, was a case that was handled exclusively by the public accounting firm up through and including the denial letter, and as a result there was no ability to shape anything.

And when you look at that record, part of the reason why I think that case was decided adversely, both in the Tax Court and the Ninth Circuit — it almost didn't make any difference. You lose at the Tax Court, the chances of overcoming it at the Ninth Circuit were probably less than 20 percent.

But in the Tax Court, part of the problem there was that it was the administrative record, and you're stuck with a plain, vanilla limited partnership agreement that would not pass the quality test of any law firm today. But it was acceptable back then and nobody even thought to raise any questions about it when they were negotiating the deal.

On the other hand, in the *IHC Health Plans* cases — those were two denials and one revocation. And there we were able to work with Area Counsel in coming up with a very detailed, stipulated record rather than go to a trial, which we could have done. But the stipulated record got into evidence a lot of external factual data that seven years or eight years after the fact — it's probably even longer — we didn't even know about.

And so to your point is that in the revocation context, you've got the ability to either agree on a record or take it to a trial, which is different.

Ms. Fisher: And I think, not to put too fine a point on it, but if you were headed in this direction, if you've got a highly sensitive audit, if your client's one of those front-page-of-the-paper people, you need all that exempt org expertise and all that dealing with the IRS and the administrative context expertise, but you ought to have a litigator on the team checking in every now and then to make sure that the right record is being built in case it can't be resolved.

Mr. Mancino: Yes, and I think that your notion of teamwork is extremely critical. I can remember a number of years ago with a church audit, and the issue being focused on in federal district court was the Service's authority under section 7611. And Marc, you were the director of Exams then and you denied my request to have this be reconsidered, if you may recall. And I do have a long memory.

[laughter]

Mr. Mancino: But that's where the pairing of the litigation expertise with the exempt organization expertise becomes critical.

I'd like to comment and maybe shift a little bit to nonexemption cases. Again, sort of like exemption cases, if you have a proposed self-dealing transaction or a proposed excess benefit transaction, you have the option of going to Tax Court. And statistics suggest that that is the overwhelming choice because it's a deficiency action rather than a refund action.

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On the other hand, the only case out there that I'm aware of is the *Dzina* case in Cleveland, Ohio. That's why I paid so much attention to it, I grew up not far from where the place was located that was the subject of that case. And there, interestingly enough, they actually elected to pay the tax and file a claim for refund and sue in District Court for the Northern District of Ohio. So you do have options that are different and procedures that are different in non-exemption-related cases.

Ms. Fisher: And I think that would include, obviously, a procedure that's somewhat new — last decade or so — to litigate employment tax issues over worker classification. I know that's kind of an issue that comes up regularly for exempt organizations and allows you after you get the particular kind of stat notice that is issued for that kind of tax to litigate those issues. And that's very different from the exemption-type case.

Mr. Mancino: Well actually, you know, 7436 is a new statute that was specifically designed to authorize the Tax Court to get involved with employee reclassification issues, which historically they wouldn't have had the authority to deal with, and do it essentially on a deficiency basis like a declaratory judgment action.

Ms. Fisher: And those kinds of cases will be heavily, heavily factual, whereas an exemption case will have a lot of law and a lot of process involved in it and a lot of facts. An employee/independent contractor dispute, it is so heavily factual and so case-specific, and that requires a different skill set in terms of how you go about litigating an issue like that.

Mr. Owens: Well, why don't we pause for a moment and see if there are any questions out in the audience while we have a few minutes left in the session?

Audience Member: Hello.

Ms. Fisher: Hi.

Mr. Owens: Yes.

Ms. Fisher: We can hear you.

Audience Member: The panelists discussed the importance of protecting privilege while also communicating strategically with the media when appropriate. So bringing those two things together, I'm hoping you could advise the non-litigators among us what tips you'd have when advising a client in crisis about when to engage PR consultants and how to manage and sequence those conversations. And I guess a similar issue applies to accountants or other third-party, non-attorney advisers.

Mr. Mancino: Well, a couple of things. First of all, non-attorneys that are tax professionals have the 7525 privilege in civil matters.

Ms. Fisher: Civil tax.

Mr. Mancino: Civil tax matters. So you have that ability to engage with your public accounting firm that is involved and, generally speaking, preserve the privilege.

The issues about communications are important because, first of all, in larger organizations when you're having like a TEP examination of a healthcare system or university, there's no surprise that the IRS is onsite, because they're camping out there, they've asked for offices and access to a protected copy machine and protected files. So they're encamped. So you want to communicate internally that this is taking place rather than play the sort of rope-a-dope approach by waiting until somebody blows the whistle to the media as a disgruntled employee.

On the other hand, I always believe — well, it depends, but in cases where there are reputational risk issues in play, I do believe that you need to get a crisis-oriented adviser and use their guidance in terms of communication strategy and whether and to what extent you should be going public concerning issues that might arise. But that's a very difficult issue to deal with.

Ms. Fisher: It is, and I agree that these issues can be so sensitive. It's an excellent question, and I do think in a crisis situation, a serious reputational situation, you need both good PR advice as early as possible, with your lawyers in the room, actually, because of the unique structure and world and rules of exempt organizations. I know they're intuitive to you but they're not to the general public and to the rest of us. And you want to make sure you're not running afoul of those particular rules. And whether you do that through your accounting firm, a PR firm, you should have lawyers involved.

There are differences between attorney-client privilege and 7525, and attorney work product privilege and just general confidentiality. And the amount of protection those various things provide varies, the way they can be waived varies. That's really a topic broad enough for a whole other panel someday. But you do want to be able to get the right advice early and upfront with lawyers involved who understand the world in which you operate so that you don't run afoul of those rules.

Mr. Mancino: Two collateral issues really briefly. One is tax-exempt financing. Many of your colleges and universities and hospitals have tax-exempt bonds out there, and you're going to have separate independent disclosure obligations on a recurring basis that you have to be sensitive to in terms of describing the nature of the issue that's taking place.

The other thing is the issue of self-disclosure to state charities regulators. Under the Pension Protection Act, the IRS was given enhanced ability to communicate much earlier than after revocation or imposition of Chapter 42 penalties. They can do it when these are proposed. And as of now — and I don't know whether Lois spoke to that this morning, I couldn't be here — but only seven states — in California, both the Franchise Tax Board and the attorney general have signed agreements. But we had the issue concerning the sensitivity of agreeing to resolve a Chapter 42 intermediate sanctions case even though we disagreed with the Service because we were sensitive to not wanting to throw the organization under the bus reputationally. And so we were concerned about what would happen when and how the IRS discloses these Chapter 42 things to the states.

And it's a fascinating story. I talked with Belinda Johns, who's the California charities regulator, and she basically said that they have the federal state coordinator. Once these cases are resolved, they put this material in an

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envelope, hermetically sealed, and they deliver it almost by hand. Can't even be opened in the mailroom at the California Attorney General's office because of the agreement that they've had to execute with the IRS.

And what was stunning was the fact that the state charities regulators cannot use that information to initiate an exam. What they've got to do is they have to write a letter to the organization to request the same information that formed the basis of it and then if they choose to do it. But the point of this is that in a couple of instances now, not just in California but Minnesota and elsewhere, where there's been an IRS examination, we've initiated contact with the state charities regulator to preempt the issue rather than to let it percolate into another examination.

MS. FISHER: You had a question?

AUDIENCE MEMBER: Doug, you mentioned Fast Track at the beginning. You've got a NoPA to go to Fast Track, and you also got in the second chapter of that you've got tech advice. And I've heard others — and it's been my experience, too — it seems to be more difficult these days to get tech advice. And I'm wondering first of all just what you think is going on there. But secondly, did you have any trouble getting a NoPA issued, where you're essentially asking for it, you're essentially saying —

MS. FISHER: We're ready.

AUDIENCE MEMBER: — give me a NoPA on this so we can get a Fast Track.

Is there any reluctance to do that in the same sense that there's a reluctance to do a request for tech advice?

MR. MANCINO: I'll throw in my two cents worth. I haven't encountered problems with getting a NoPA, a Notice of Proposed Adjustment. In fact, the [IRS] field teams have done that regularly.

I do experience reluctance to seek technical advice, and I think, Marc, this goes back to the old field versus national office reluctance to let somebody else in.

Now in the one alumni association case, we went through Fast Track, and I think that cleared the way for going for technical advice because I said that at the close of the mediation that that's the only way we're going to get this resolved. We had the pre-filing conference and had National Office representatives involved, as is called for by the regular procedure.

But I think there's a normal reluctance to have the National Office interfere with field office activities.

MR. OWENS: Yes, I would agree, as a sort of loss of control. I think revenue agents and the managers and Area Counsel begin to take a sort of personal view of the case; it's their case, it's going to be theirs to drive home, and they believe they have the right answer and they don't believe they really need someone else to advise them.

So it becomes somewhat difficult sometimes to break that and move it to the National Office, where you certainly wouldn't have that frontline mentality to deal with, with somebody who's in the foxhole there. You've got somebody who's a bit removed from the sort of gripping aspect of the audit. I think that can make for a better resolution, and I think it's unfortunate that the system seems to be turning away from technical advice and into more informal coordination.

MR. MANCINO: Well, to Miriam's point that you made early in terms of setting the tone of the exam, I think part of it — it dictates the tenor of approaching it. If you're engaging in trench warfare from day one — fighting for every document, fighting for every position, taking unreasonable positions that, shockingly, I think lawyers do on occasion — then I think you're going to get less willingness on the part of the Exam team to cooperate and give you ways of alternatively resolving the dispute.

MS. FISHER: Also, just as a final point, I think coming back full circle to the beginning of the audit. If there are issues going on, you need to find a way to ascertain who's driving your audit. Is it the examiner's case? Is the examiner just doing their job and they know what they're doing and it's their issue and they own it? Or is it the Wizard of Oz and there's a man behind the curtain? Because until you figure that out, you won't be able to figure out what mechanisms to use to get to yes, to resolution.

MR. OWENS: OK, well, thank you both very much.

[applause]

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THE AMERICAN SPECTATOR

Special Report

ACORN Housing Boom

The great rebranding continues – as do plans to put our tax dollars to work for ACORN come election time.

By Matthew Vadum – 3.2.10

As ACORN gears up to use your tax dollars to influence future elections, the U.S. Department of Housing and Urban Development is conducting a "massive" probe of ACORN Housing Corp., a source familiar with the ongoing investigation says.

A spokesman for HUD's inspector general refused to confirm or deny whether ACORN Housing was being investigated.

ACORN Housing is essential to ACORN's member recruitment program. The housing affiliate strongly encourages its clients to pay ACORN $120 a year to be part of the class struggle. Many of the ACORN employees Americans saw on the undercover prostitution sting videos last fall are actually ACORN Housing employees. ACORN Housing's website boasts that from 1986 to 2008 it counseled 338,025 clients, and originated 104,867 mortgages worth $15.5 billion.

The HUD probe comes as ACORN Housing, the best-funded of ACORN's affiliates, participates in the ACORN network-wide rebranding aimed at duping funders and the public and allowing ACORN to continue to devour government grants.

Although ACORN is now converting state chapters into new shell corporations operated out of the same old ACORN offices and staffed by many of the same people, ACORN Housing opted simply to change its name.

ACORN's latest public relations ruse may give it an opportunity to take in untold millions of taxpayer dollars under cover of darkness just in time to cause trouble during the 2012 election cycle.

The ruse consists of ACORN's effort to pass off various state chapters as "new" groups supposedly independent of ACORN. In this rebranding charade state chapters are pretending to break away from the national ACORN group and reincorporate themselves as independent organizations.

But ACORN Housing is rebranding itself a little differently. In a marketing-savvy move, ACORN Housing has been rechristened Affordable Housing Centers of America Inc., which allows the entity to continue using AHC as an acronym.

ACORN Housing is a key component of the far-flung ACORN empire of activism which has long used its housing affiliate as a piggy bank -- so it's too important to be allowed to collapse.

Although the congressionally chartered nonprofit NeighborWorks, which serves as a weigh station for HUD grants, is reportedly not setting aside any 2009 funds for ACORN Housing, in 2008 alone it

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awarded ACORN Housing $25,050,939 in federal funding.(The 2008 grant documents are here, here, and here.)

The $25 million-plus figure for 2008 is more than ACORN Housing took in from the federal government in a 10-year span ending in 2007. In its tax returns ACORN Housing reported taking in $23,965,756 in government funding from 1997 through 2007.

This federal funding is a problem because ACORN Housing funnels funds -- possibly including government funds -- to ACORN and other affiliates in the ACORN network. The network is notorious for its commingling of funds and it has used government resources previously for partisan political activity.

During the Clinton administration ACORN and ACORN Housing used AmeriCorps resources to give partisan speeches and assist the Clinton White House in preparing a press conference in support of legislation.

In 2007, when ACORN Housing reported taking in $5,205,527 from the government, it also made a $119,509 loan to ACORN. The same year it also paid out $496,615 to the shadowy ACORN affiliate Citizens Consulting Inc. (CCI) for "administrative services."

CCI is an essential part of the Louisiana attorney general's current investigation into ACORN. CCI is also where Dale Rathke, brother of ACORN founder Wade Rathke, worked while he embezzled $948,000 from ACORN.

Former ACORN officials describe CCI as a vortex into which money disappears never to be seen again. According to Michael McCray, former ACORN member, CCI "is basically the financial nerve center for ACORN and all its entities."

From 2000 to 2006, ACORN Housing also gave $3,803,948 in grants to the American Institute for Social Justice (AISJ), which trains budding young community organizers to go forth and agitate the proletariat. If AISJ used the money for partisan activities, federal law may have been violated.

Meanwhile, ACORN's rebranding effort will make it even more difficult than it is now to hold the left's favorite organized crime syndicate accountable.

Initially it will be a challenge to track the flow of tax dollars to the new ACORN satellites because government grants and grants distributed to sub-grantees are often difficult to trace. It may take up to two years before the newly created entities' IRS form 990s (tax returns), which disclose revenue sources and expenditures, begin to appear in publicly accessible databases such as guidestar.org.

Of course members of the public are legally entitled to appear at the offices of any nonprofit and demand copies of its 990, but brand new nonprofits don't even have to put together the tax return until they have completed their first year in operation. Moreover, many nonprofits are lax in complying with the law and short of organizing an ACORN-style sit-in in their offices to demand to see the 990 forms, the new nonprofits will be able to take their time making the required public disclosures and there will be very little anyone can do about it.

In other words, the fraudsters at ACORN may have a two-year window of opportunity to take in government money before the public finds out about it. It's probably too late for the newborn spawn of ACORN to take in much government money before this year's congressional elections, but it will have plenty of time to seek out grants before the 2012 presidential election.

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ACORN is engaging in the current rebranding subterfuge because it needs the money. ACORN feels rebranding, which allows ACORN to keep tax dollars and foundation grants flowing into its coffers, is necessary because adverse publicity has dried up its revenue streams. Much of the bad ink ACORN got came as a result of the hidden camera videos last fall that showed ACORN employees helping activists who claimed they were planning to set up a brothel staffed by underage illegal aliens. The public backlash forced Congress to cut off funding to ACORN and its affiliates and scared away many high-dollar donors.

ACORN is now manufacturing new nonprofits that it falsely claims are not connected to it. Four dummy nonprofit corporations have emerged from the rebranding process so far this year.

They are Alliance of Californians for Community Empowerment, New York Communities for Change, New England United for Justice (Massachusetts), and Arkansas Community Organizations. All four groups operate out of ACORN offices and are run by ACORN staffers. The president of New England United for Justice, Maude Hurd, just happens to be the 20-year national president of ACORN, as the new group's articles of incorporation show.

For decades ACORN has maintained tight control over its supposedly independent network of affiliates through interlocking directorates and massive intra-network financial transfers. There is every indication it plans to use the same top-down management techniques under the new organizational arrangement.

ACORN veteran Marcel Reid, who also heads a reform group called ACORN 8, told me in an interview that she doesn't believe ACORN's recent claims that the breakaway groups aren't being controlled by ACORN.

"The folding of ACORN isn't happening because it's simply going to restructure," she said. "In the meantime they'll give all of these new community organizations in the states an opportunity to flourish without ACORN's legal baggage."

Reid is a whistleblower who was expelled from ACORN's national board in 2008 for asking too many uncomfortable questions about a million-dollar embezzlement perpetrated around 2000 by the brother of ACORN's founder and covered up by management for eight years.

A leaked email now posted at BigGovernment.com from ACORN's online director confirms Reid's fears. It indicates the national group will probably run out of money and shut down by year's end.

In coming days a dozen ACORN state chapters will change their names in an effort to trick the public into believing ACORN has dissolved, writes Nathan Henderson-James, director of ACORN's online campaigns.

In the email Henderson-James explains the sleight-of-hand ACORN will use to lead Americans to believe ACORN is breaking apart.

"It is definitely true that over the next week or so we should see a dozen or more organizations launched on the state level by staff who used to work for ACORN and leaders who developed their skills as ACORN members. These are not just simple name changes, but reimaginings of how best to organize low and moderate income constituencies [sic] without any of the legal problems and funding issues dogging ACORN, not to mention the brand damage."

It is a "tactically smart…reaction to the global situation that helps the work of building power for poor people to continue," writes Henderson-James, an ACORN employee since 1997.

"The truth is that it is hard for us to forsee [sic] any scenario where ACORN continues beyond the end of

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2010 and some of us think it might not last that long," he writes in an apparently authentic Feb. 22 message. "Last one to leave turn out the lights and wipe the server," he writes at the end of the message.

The message from Henderson-James was forwarded to me by various sources who obtained it from the Google listserv "Townhouse." According to Salon.com, Townhouse is an invitation-only discussion forum run by Matt Stoller, senior policy advisor to progressive hero Rep. Alan Grayson (D-Fla.).

My sources advise me that the hundreds of high-level Democratic operatives, liberal activists, and journalists who subscribe to the listserv are furious that the Henderson-James email was leaked to a conservative media outlet. Listserv members are said to be angrily accusing each other of being the leakers.

This breach of security could be the end for Townhouse, one of the members reportedly said.

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THE AMERICAN SPECTATOR

Special Report

Obama and the IRS: The Smoking Gun?

President met with anti-Tea Party IRS union chief the day before agency targeted Tea Party.

By Jeffrey Lord – 5.20.13

"For me, it's about collaboration." – **National Treasury Employees Union President Colleen Kelley on the relationship between the anti-Tea Party IRS union and the Obama White House**

Is President Obama directly implicated in the IRS scandal?

Is the White House Visitors Log the trail to the smoking gun?

The stunning questions are raised by the following set of new facts.

March 31, 2010.

According to the White House Visitors Log, provided here in searchable form by *U.S. News and World Report*, the president of the anti-Tea Party National Treasury Employees Union, Colleen Kelley, visited the White House at 12:30pm that Wednesday noon time of March 31st.

The White House lists the IRS union leader's visit this way:

> **Kelley, Colleen Potus 03/31/2010 12:30**

In White House language, "POTUS" stands for "President of the United States."

The very next day after her White House meeting with the President, according to the Treasury Department's Inspector General's Report, IRS employees -- the same employees who belong to the NTEU -- set to work in earnest targeting the Tea Party and conservative groups around America. The IG report wrote it up this way:

> April 1-2, 2010: The new Acting Manager, Technical Unit, suggested the need for a Sensitive Case Report on the Tea Party cases. The Determinations Unit Program Manager Agreed.

In short: the very day after the president of the quite publicly anti-Tea Party labor union -- the union for IRS employees -- met with President Obama, the manager of the IRS "Determinations Unit Program agreed" to open a "Sensitive Case report on the Tea party cases." As stated by the IG report.

The NTEU is the 150,000 member union that represents IRS employees along with 30 other separate

government agencies. Kelley herself is a 14-year IRS veteran agent. The union's PAC endorsed President Obama in both 2008 and 2012, and gave hundreds of thousands of dollars in the 2010 and 2012 election cycles to anti-Tea Party candidates.

Putting IRS employees in the position of actively financing anti-Tea Party candidates themselves, while in their official positions in the IRS blocking, auditing, or intimidating Tea Party and conservative groups around the country.

The IG report contained a timeline prepared by examining internal IRS e-mails. The IG report did not examine White House Visitor Logs, e-mails, or phone records relating to the relationship between the IRS union, the IRS, and the White House.

In fact, this record in the White House Visitors Log of a 12:30 Wednesday, March 31, 2010 meeting between President Obama and the IRS union's Kelley was not unusual.

On yet another occasion, Kelley's presence at the White House was followed shortly afterwards by the President issuing Executive Order 13522. A presidential directive that gave the anti-Tea Party NTEU -- the IRS union -- a greater role in the day-to-day operation of the IRS than it had already -- which was considerable.

Kelley is recorded as visiting the White House over a year earlier, listed in this fashion:

> **Kelley, Colleen Potus/Flotus 12/03/2009 18:30**

The inclusion of "FLOTUS" -- First Lady Michelle Obama -- and the 6:30 pm time of the December event on this entry in the Visitors Log indicates this was the White House Christmas Party held that evening and written up here in the *Chicago Sun-Times*. The *Sun-Times* focused on party guests from the President's home state of Illinois and did not mention Kelley. Notably, the Illinois guests, who are reported to have attended the same party as Kelley, included what the paper described as four labor "activists": Dennis Gannon of the Chicago Federation of Labor, Tom Balanoff of the Service Employees International Union, Henry Tamarin of UNITE, and Ron Powell of the United Food and Commercial Workers.

Six days following Kelley's attendance at the White House Christmas party with labor activists like herself, the President issued Executive Order 13522 (text found here, with an explanation here). The Executive Order, titled: "Creating Labor-Management Forums To Improve Delivery of Government Services" applied across the federal government and included the IRS. The directive was designed to:

> **Allow employees and unions to have pre-decisional involvement in all workplace matters....**

However else this December 2009 Executive Order can be described, the directive was a serious grant of authority within the IRS to the powerful anti-Tea Party union. A union that by this time already had the clout to determine the rules for IRS employees, right down to who would be allowed a Blackberry or what size office the employee was entitled to. The same union that would shortly be doling out serious 2010 (and later 2012) campaign contributions to anti-Tea Party candidates with money supplied from IRS employees. The union, as noted last week here in this space, already has the authority to decide all manner of IRS matters, right down to who does and does not get a Blackberry.

It is the same union whose IRS employee-members were being urged in 2012 by Senate Democrats (Chuck Schumer, Al Franken, Max Baucus, and others) to target Tea Party and other conservative groups.

Which, as the IG records, they did.

Both Mr. Obama and the NTEU's Kelley have been by turns evasive and tight-lipped about their roles in the blossoming IRS scandal.

Kelley refused to open up to the *Washington Post*. In an article titled **"IRS, union mum on employees held accountable in 'sin' of political targeting,"** the *Post* quoted the following:

> "NTEU is working to get the facts but does not have any specifics at this time. Moreover, IRS employees are not permitted to discuss taxpayer cases. We cannot comment further at this time," NTEU President Colleen M. Kelley said via e-mail.
>
> A call to the NTEU office in Cincinnati resulted in a similar response: "We've been directed by national office. We have no comment."

The President approached things in a more evasive manner.

Last Thursday at the President's press conference with the Turkish prime minister, Julianna Goldman of Bloomberg News asked the following question, bold print for emphasis:

> "Mr. President, **I want to ask you about the IRS. Can you assure the American people that nobody in the White House knew about the agency's actions before your Counsel's Office found out on April 22nd?** And when they did find out, do you think that you should have learned about it before you learned about it from news reports as you said last Friday? And also, are you opposed to there being a special counsel appointed to lead the Justice Department investigation?"

The President's response? (Again bold print emphasis.)

> "But let me make sure that I answer your specific question. **I can assure you that I certainly did not know anything about the IG report** before the IG report had been leaked through the press."

Take note: Goldman's question was:

> **"Can you assure the American people that nobody in the White House knew about the agency's actions before your Counsel's Office found out on April 22nd?"**

The President evaded by answering:

> **"I can assure you that I certainly did not know anything about the IG report….."**

The question was not whether he knew about the IG report ahead of time. The question was whether he could "assure the American people **that nobody in the White House knew about the agency's actions."**

In response, the President ducked.

In other words, the IRS union chief went to the White House to meet personally with the president on March 31. The union already had Executive Order 13522 behind it, issued by the President barely three months earlier. An Executive Order directing that the IRS must *"allow employees and unions to have pre-decisional involvement in all workplace matters…."*.

The very next day after that March 31 meeting at the White House, the IRS, with the union involved in its decision-making, was setting up its "Sensitive Case Report on the Tea Party."

Which raises the famous question from Watergate: What did the President know and when did he know it?

While potentially explosive now, in fact the Obama Administration hadn't been in office a month before Kelley was boasting of the IRS union's influence in the White House.

In a February 15, 2009 interview given to the *Pittsburgh Post-Gazette* (Pittsburgh is Kelley's home town), there was this question from the PG reporter, with the now Washington-based Kelley boasting as below, key point in bold print:

> **Q:** Has the Obama staff been receptive?
>
> **A:** Yes. **We have worked with the transition team,** given them suggestions; and throughout the campaign, President Obama talked about working with the federal employees and unions. He's recognized the contributions federal employees make. **I was just at the White House** (Jan. 30) while he was signing some executive orders to undo some things the prior administration did.

Catch that?

The boast?

"I was just at the White House…"

Which is to say, the election of 2008, in which the union had endorsed Obama, was no sooner over than the head of the IRS union had "worked with the transition team" and "given them suggestions." Literally ten days after the Obama January 20 inaugural in 2009 -- January 30 the article notes -- Kelley was boasting that "I was just at the White House while he (the President) was signing some executive orders to undo some things the prior administration did."

And what did Kelley see as the IRS union's relationship with the White House she had already visited ten days into the President's first term?

Kelley responded candidly, again with the bold print added for emphasis:

> "**We are looking** for a return to what we used to call **partnership**. I don't really care what it's called. For me, it's about **collaboration**."

Catch those words?

Collaboration. Partnership.

In addition to Kelley's three visits to see the President -- in January of 2009, December of 2009, and March of 2010 -- she is listed for three other visits, the contact names those of presidential aides:

"Kelley, Colleen Weiss, Margaret 11/04/2009 10:00"

"Kelley, Colleen Weiss, Margaret 12/01/2009 12:00"

"Kelley, Colleen Nelson, Greg 01/14/2010 13:40"

The obvious question instantly arises with the revelation that Kelley was meeting with the President personally -- the day before the IRS kicked into high gear with its "Sensitive Case Report on the Tea Party".

Were the President of the United States and the President of the NTEU meeting in the White House at 12:30 on Wednesday, March 31, 2010 -- and engaged in "collaboration" and "partnership"? A "collaboration" and "partnership" that was all about targeting the Tea Party?

And did that collaboration and partnership result in the IRS letting loose the hounds on the Tea Party and conservative groups -- the very next day after the Obama-Kelley meeting?

To add to the administration's IRS-NTEU woes is the fact that beyond the Inspector General, there is another IRS-connected agency in the Treasury Department: the IRS Oversight Board.

And on that board sits a presidential appointee named Robert M. Tobias. Tobias, oddly, was a Clinton appointee in 2005, confirmed by the Senate for a five-year term. He is still there. He is the longtime NTEU general counsel and Kelley's predecessor as the union president. Here's the statement, from the IRS Oversight Board, on all of this. It is headed:

> **IRS Oversight Board Deeply Troubled by Breakdown in IRS Process in Reviewing Tax-Exempt Applications.**

There was no reference to the influence of the anti-Tea Party NTEU in the statement. Why would there be when the union's ex-president sits on the Oversight Board itself?

Obama's problem here is considerable.

By not forthrightly answering Goldman's question, he seems to be evading the issue in the manner that brought so much trouble in the form of congressional investigations, special prosecutors, and impeachment threats to Presidents Nixon and Clinton, with Nixon being forced to resign the presidency and Clinton brought to a Senate trial.

The President's too-clever-by half evasion added to Kelley's silence leaves open the question of whether the union and the White House, not to mention the IRS Oversight Board, are collaborating -- collaborating right now -- on a cover-up.

Nixon looked the American people in the television eye and flatly lied about his personal involvement in the Watergate scandal, lies that came from a frantic attempt to conduct a cover-up.

Clinton looked the American people in the eye and famously wagged his finger as he lied that he "did not have sex with that woman, Ms. Lewinsky." In Clinton's case this extended to lying to a federal grand jury.

For a good long while, the American people in fact believed both Nixon and Clinton. The stories are now legion of Nixon cabinet and staff believing their man, and Clinton's cabinet and staff believing their man's protestations of innocence as well.

Finally, in both cases, the truth was out.

As Washington and the country have long since twice-learned the hard way, the parsing of presidential

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words in cases like this, not to mention looking into the cameras and boldly lying on the prayer of getting away with the lie, always bodes ill for presidents. It leads inevitably to that simple question famously uttered by then-Tennessee GOP Senator Howard Baker and posed of Nixon at the Senate Watergate hearings: "What did the President know and when did he know it?"

Twice in recent American history the answer to this question, once for Nixon and once for Clinton, has landed popular, powerful presidents in impeachment hot water. Ending Republican Nixon's presidency altogether and coming close to doing the same with Democrat Clinton. Leaving the legacy of each permanently scarred.

The notion that the players in the IRS scandal did what they did to get past the 2012 election will only add to an Obama presidential reputation as borrowing the Nixon playbook on skirting scandal in a presidential election year.

Ironically re-casting the image of America's first black president as the black Nixon.

With the examples of how Nixon and Clinton dodged, evaded, and lied, Obama's non-answer to Juliana Goldman's question at last week's press conference comes in for much more scrutiny. Matched to the silence of Kelley it begins raising obvious questions. Such as:

• Did the President himself ever discuss the Tea Party with Kelley?

• Did the President ever communicate his thoughts on the Tea Party to Kelley -- in any fashion other than a face-to-face conversation such as e-mail, text, or by phone?

• What was the subject of the Obama-Kelley March 31, 2010 meeting?

• Who was present at the Obama-Kelley March 31 meeting?

• Was the Tea Party or any other group opposing the President's agenda discussed at the March 31 meeting, or before or after that meeting?

• Is the White House going to release any e-mails, text, or phone records that detail Kelley's contacts with not only Mr. Obama but his staff?

• Will the IRS release all e-mail, text, or phone records between Kelley or any other leader of the NTEU with IRS employees?

• What role did Executive Order 13522 play in the IRS investigations of the Tea Party and all these other conservative groups?

Doubtless there are others, considerable others and the list of questions will grow.

Not to be lost sight of here is the role of the NTEU in raising money for Democrats in the 2010 and 2012 election cycles -- the exact period when the IRS was busy going after the Tea Party and the others to curb any possible influence the groups could have in the elections of 2010 and 2012.

The NTEU, through its political action committee, raised $613,633 in the 2010 cycle, giving 98% of its contributions to anti-Tea Party Democrats. In 2012 the figure was $729,708, with 94% going to anti-Tea Party candidates. One NTEU candidate after another, as discussed last week in this space, campaigned vigorously against the Tea Party.

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So the motivations here -- defeating the Tea Party in 2010, and failing at that, making sure that the news of the metastasizing cancer in the IRS was kept quiet until after the 2012 presidential election was over -- are clear.

What is particularly interesting here are the automatic assumptions of the mainstream media in all of this.

Like this "given" from the *Washington Post*'s Dan Balz, bold print added for emphasis.

> The most corrosive of the controversies is what happened at the IRS, which singled out tea party and other conservative groups for special scrutiny in their applications for tax-exempt status. **That Obama knew nothing about it** does little to quell concerns that one of the most-feared units in government was operating out of control.

But if in fact the President did know about it?

Here's the *Washington Post*'s "Journolist" Ezra Klein:

> The crucial ingredient for a scandal is the prospect of high-level White House involvement and wide political repercussions....
>
> If new information emerges showing a connection between the Determination Unit's decisions and the Obama campaign, or the Obama administration, it would crack this White House wide open. That would be a genuine scandal. But the IG report says that there's no evidence of that. And so it's hard to see where this one goes from here.

Exactly.

Which is why it will be a curious sight indeed to see the efforts the media will go to ignore/dismiss the tight, on-the-record connection between the President personally and a vociferously anti-Tea Party union. A union that has the literal run of the IRS -- and whose union chief is recorded as having met with the President in the White House the day before the IRS launched "a Sensitive Case Report on the Tea Party cases." A decision with which, according to the IG report: "The Determinations Unit Program Manager Agreed." Check those words from Mr. Klein again:

> **If new information emerges showing a connection between the Determination Unit's decisions and the Obama campaign, or the Obama administration,** it would crack this White House wide open. That would be a genuine scandal.

The question now is a simple one.

In 1974, "the smoking gun" was a tape recording that ended the Nixon presidency.

In 1998, the smoking gun was a blue dress -- and it almost undid Bill Clinton's White House.

Now the all-too-familiar pattern of scandal and its day-by-day drip-drip-drip nature has begun to set in. *Newsmax* is now quoting Washington attorney and conservative activist Cleta Mitchell as saying:

> "There were nearly 100 groups across the country that got the very egregious set of letters from the IRS that were almost identical and they came from offices all over the country, so I know of at least 85 to 90, maybe more, organizations."

Regular American all over the country are coming forward with their stories. Understanding the relationship between the Obama White House and the IRS union will be a must for congressional investigators.

President Obama is coming perilously closer to becoming the new Nixon. The next Bill Clinton.

And once again, as news of exactly what a president was doing in the Oval Office on a particular day and time goes public, yet again the old question becomes new.

What did the President know? And when did he know it?

Photo: UPI

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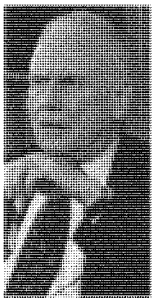

"We already pay for congressional campaigns, we just label it 'the national debt.' Interests that donate to campaigns often get what they want from legislation, and we all pay for that; by comparison, public financing seems like a bargain."

- Lee Hamilton
Former Congressman from Indiana
ACR Advisory Board Member

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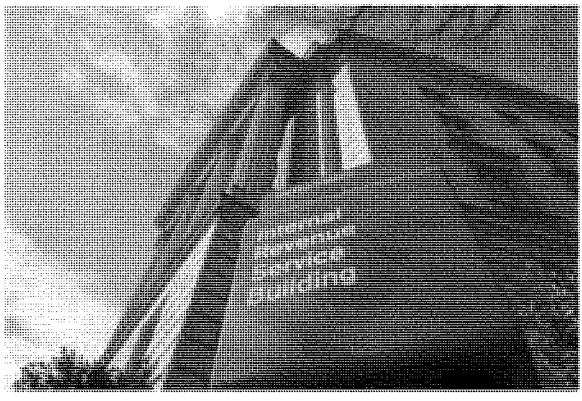
The Big Story

INSIDE WASHINGTON: Conflicting laws, IRS confusion

By ALAN FRAM
— Jun. 5, 2013 3:04 PM EDT
Home » Internal Revenue Service » INSIDE WASHINGTON: Conflicting laws, IRS confusion



FILE - This March 22, 2103 file photo shows the exterior of the Internal Revenue Service building in Washington. Experts say the Internal Revenue Service's improper treatment of conservative groups seeking tax-exempt status stems partly from its having to enforce conflicting laws vaguely describing the activities that such organizations may conduct. (AP Photo/Susan Walsh, File)

WASHINGTON (AP) — A century of laws and rules curbing political activity by tax-exempt organizations has left us with this: One statute says to qualify, groups must engage "exclusively" in social welfare projects while a regulation eases the threshold to "primarily."

Confused? So are President Barack Obama, the Internal Revenue Service and members of the very Congress that has been enacting contradictory laws on the subject for decades.

"We have not done a good job, I think, of putting out guidance on even how to figure out what 'primarily' means," Steven Miller, IRS acting director until Obama recently replaced him, told the Senate Finance Committee last month.

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The puzzlement over the requirements, which Obama recently called "a bunch of ambiguity," is one sub-plot in the outcry over the IRS' heavy-handed treatment of tea party and other conservative groups that sought tax-exempt status from 2010 to 2012.

No one defends how the IRS purposely looked for conservative groups and demanded details about donors, website postings and other queries that the agency has conceded were inappropriately intrusive. Yet tax experts, former IRS officials and others agree that the rules governing political activities by tax-exempt groups — including a welter of vague government regulations — are maddeningly hard to follow.

"It's good for lawyers, it's hard for organizations" trying to qualify for tax-exempt designation, said Abby Levine, who advises scores of liberal groups as legal director of the Alliance for Justice.

Part of the confusion stems from Congress' reaction to New York University Law School's entry into the noodle business — but more on that later.

In the spotlight is a revenue code section that has become increasingly attractive to many organizations, 501(c)(4), which grants tax-exempt status to so-called social welfare groups. Many organizations targeted recently by the IRS sought that designation.

Over the years, such groups have been allowed to participate in overt election campaign activity as long as they focus mostly on social welfare — one of many broadly defined terms in this arena. While many groups engage seldom or never in politics, those who do, enjoy a valuable benefit: Donors can remain anonymous.

After the Supreme Court's 2010 Citizens United decision allowing unfettered political spending by companies and unions, campaign expenditures by social welfare groups mushroomed. Between the 2008 and 2012 elections, it tripled to $254 million, according to the nonpartisan Center for Responsive Politics.

The IRS received 3,357 applications for Section 501(c)(4) status last year, nearly double the number in 2010, according to the Treasury Department.

Yet even as interest in the designation has grown, uncertainty over its requirements has remained.

The story behind the confusion began in 1913, when Congress enacted legislation laying the groundwork for the modern income tax.

Exempted from the corporate income tax were nonprofit organizations, including those "operated exclusively for the promotion of social welfare." An IRS history says it is assumed that provision was requested by the U.S. Chamber of Commerce.

Fast forward to 1947, when wealthy graduates donated the C.F. Mueller Co., a pasta maker, to the NYU law school. That transaction, and a court ruling letting NYU keep its Mueller profits tax-free, helped call attention to the tax treatment of nonprofits.

NYU and other nonprofits had been fattening their coffers through ownership of factories, department store chains, cattle ranches, the Encyclopedia Britannica and other profitable businesses on which they were not paying taxes. One congressional estimate put the lost tax revenue at $173 million a year, a large sum at the time.

Urged on by President Harry Truman, Congress passed a law in 1950 allowing some nonprofits to keep unrelated businesses if they paid income tax on them.

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But that left a contradiction: a 1913 statute saying groups must operate "exclusively" for social welfare purposes and the 1950 law saying they could do unrelated things, as long as they paid taxes on the profits.

"So 'exclusively' couldn't mean 'exclusively,' because later law acknowledged these organizations could engage in other activities" if you tax them, said Ellen Aprill, a tax law professor and expert on tax-exempt organizations at Loyola Law School in Los Angeles.

The government soon faced another issue — a 1954 revamping of the entire federal tax code. Feeling a need to overhaul tax regulations, the Treasury Department issued new ones in 1959.

The new regulations addressed the two laws defining nonprofits by, for the first time, saying groups need only be "primarily engaged in promoting in some way the common good and general welfare." The rules permit "direct or indirect participation or intervention in political campaigns" for or against candidates, as long as that isn't the group's principal activity.

"Congress made no effort to harmonize those statutes," said Marcus S. Owens, a Washington tax attorney who spent the last decade of his 25-year IRS career heading its tax-exempt organizations division. So the government adopted the "primarily" approach "as the only methodology they could think of to harmonize the statutes," Owens said.

Despite decades of IRS rulings and court cases refining the rules, definitions remain hazy for terms like "primarily," "social welfare" and "intervention in political campaigns." Many lawyers, for example, say "primarily" means such groups can devote up to 49 percent of their resources to campaign activity, while others are more cautious.

"Social welfare" can include political issues if the work doesn't clearly support or oppose the election of a candidate. That is a blurry distinction in an age when sophisticated political ads tie politicians to specific viewpoints without explicitly calling for their defeat or re-election.

Mark W. Everson, IRS commissioner from 2003 to 2007, said there's a "virtue to vagueness," a view shared by many. "It's difficult to say you should write regulations or statutes that can contemplate all possible events."

The ambiguous wording serves another purpose too.

The IRS has removed tax-exempt status for groups supporting each major political party, including the conservative Christian Coalition and the Democratic Leadership Council. But the imprecision of the regulations makes that hard to do and makes it easier for groups to wade into politics, benefiting Democrats and Republicans alike, analysts say.

"Congress was pretty happy leaving it up to the IRS to enforce this case-by-case," Owens said. Because the IRS had dealt with groups that clearly overstep the boundaries, "there's been no incentive for Congress to dabble there" with additional fine-tuning, he added.

Owens said he's unaware of any congressional efforts to clarify the rules over the decades.

To this day the IRS investigates each group to see whether it is engaging in political activity, using tests such as whether an election is approaching or whether the group gives opposing candidates equal opportunities to participate in events. If it is, the agency determines whether politics is the group's primary activity — a difficult judgment that can involve measuring money, time spent by workers and other factors.

"Congress put the IRS in the position of being the gatekeeper," said Gregory Colvin, a San Francisco attorney who has helped advise numerous nonprofit groups. He said that forces the agency to do "a huge job with an inadequate staff."

Colvin said he would prefer to see political activity restricted to an "insubstantial" part of their work, perhaps 15 percent.

MAY-14-2013 15:13 IRS TEGE DIO SFC SFC
SFC 000710

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: MAY 14 2013

SFC

Employer Identification Number:
SFC
Person to Contact and ID Number:
SFC
Contact Number:
SFC
Accounting Period Ending:
December 31
Public Charity Status:
509(a)(1) & 170(b)(1)(A)(vi)
Form 990/990-EZ/990-N Required:
Yes
Effective Date of Exemption:
April 17, 2013
Contribution Deductibility:
Yes

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. **Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.**

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

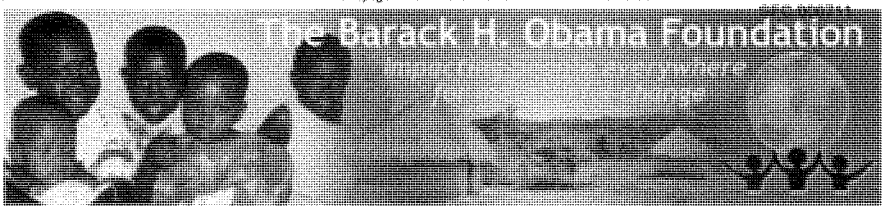
Please see enclosed *Compliance Guide for 501(c)(3) Public Charities* for some helpful information about your responsibilities as an exempt organization.

Sincerely,

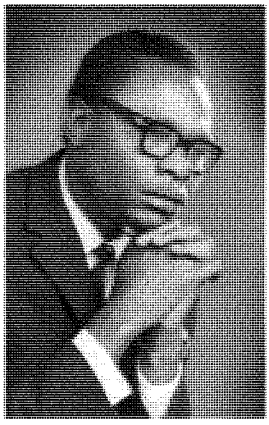
for Holly O. Paz
Director, Rulings and Agreements

Enclosure: *Pub. 4221-PC, Compliance Guide for 501(c)(3) Public Charities*

SFC



Welcome to the Barack H. Obama Foundation website.



Home

Barack H. Obama

About the Foundation

Our Mission

Abon'go Malik Obama, Founder

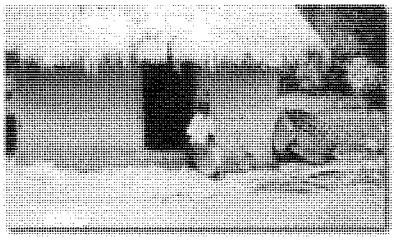
Projects

Partner Organizations

Donate

Contact Us

Fighting poverty surrounding us...



The Foundation's guiding principle:

The common denominator in all that the Foundation undertakes is the inherent belief that no man can truly enjoy the riches he has reaped if his neighbor suffers. The Foundation will seek to help those – worldwide – who still do not have the basic necessities of life such as food, water and shelter. In short, we seek to elevate the human condition so that everyone can live in dignity and truly enjoy having one another as neighbors. The foundation is entirely the idea of Abon'go Malik Obama, in memory of their father, and is not dependent on the endorsement of his brother, President Barack Obama.

Abon'go Malik Obama
Founder

Donate

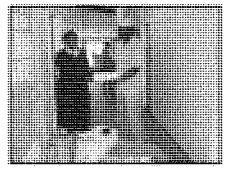
The Barack H.Obama Foundation is a fully tax-exempt (501(c)3) charitable organization.

ANNOUNCEMENTS

The Foundation congratulates Barack Obama on his inauguration as the 44th President of the United States of America, and first African-American President.

The Foundation pays tribute to Auntie Abon'go Zeituni Polly Onyango daughter of Onyango Hussein Obama who passed away on April 7, 2014 for her dedication to family and heritage. She was the spirit and heart of the Obama family and we will miss her dearly

Abon'go Malik Obama (right), brother of President Barack Obama, founded The Barack H. Obama Foundation in memory of their father, Barack H. Obama.



Current Project

Siaya Community Self-Help Group

SFC 000712

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Bloomberg

White House Adviser Goolsbee's Comment on Koch Taxes Reviewed by Treasury

By Ryan J. Donmoyer - Oct 7, 2010

The Treasury Department is reviewing complaints by Republicans that White House adviser Austan Goolsbee may have broken confidentiality laws by commenting on the tax structure of Koch Industries Inc., a political foe of President Barack Obama.

Russell George, the Treasury inspector general for tax administration, told Iowa Senator Charles Grassley, the top Republican on the tax-writing Finance Committee, in a Sept. 28 letter that he has begun a review at the senator's request. The panel's six other Republicans also sought the probe.

During a conference call with reporters in August, Goolsbee, chairman of Obama's Council of Economic Advisers, identified Koch Industries as an example of a "multibillion- dollar business" that uses a tax structure originally intended to benefit small businesses.

Those structures, including partnerships and S- corporations, don't pay corporate-level tax and are at the heart of a broader debate over whether tax rates scheduled to increase in January will hurt "small business."

Senate Minority Leader Mitch McConnell of Kentucky and other Republicans oppose Obama's proposal to let the top two marginal tax rates rise, saying that the increase would hurt half of all small-business profits because their owners pay taxes at individual rather than corporate rates.

Tax experts say that figure is exaggerated because it counts so-called "pass-through" businesses that are popular because they allow profits and losses to be reported on owners' personal tax returns without a layer of corporate tax.

"I think" Koch Industries is one of those types of businesses, Goolsbee told reporters on Aug. 27.

Obama Critic

Koch Industries' political action committee is a reliable donor to Republican candidates. The Koch family also is tied to Americans for Prosperity, a Republican-leaning group that has spent millions on ads criticizing the government's $814 billion stimulus program and "wasteful government spending."

SFC 000714

David Koch, executive vice president of closely held Koch Industries, of Wichita, Kansas, is chairman of the Americans for Prosperity Foundation.

Obama has singled out Americans for Prosperity by name while criticizing the influx of special-interest money into this year's elections.

Koch Industries, in a Sept. 22 statement, said the White House comment appears "politically motivated."

'Deeply Concerned'

Mark Holden, a company senior vice president, in a statement three days later said he was "deeply concerned about what, if any, access the administration has had to Koch Industries' confidential tax information." The statement said the company "does pay corporate income taxes and complies with all its tax obligations."

It is a felony for government officials to disclose tax- return information. Grassley and his Republican colleagues in their complaint to George said "it appears to be a violation" of the confidentiality law.

White House spokesman Robert Gibbs today said Goolsbee's statement "was not in any way based on any review of tax filings." A White House official yesterday said the administration won't use Koch as an example in the future.

David Barnes, a spokesman for George, said he couldn't comment on specific cases. The inspector general "works to be responsive, however, to all requests concerning issues within" the office's "statutory jurisdiction," Barnes said.

IRS Procedures

Christopher Bergin, chief executive of Tax Analysts, a Falls Church, Virginia, publisher of tax information, said it's "incredibly unlikely" that top White House officials would violate confidentiality laws. Even if they tried, IRS procedures put in place after President Richard Nixon tried to use the agency for political purposes would stop them, Bergin said.

"Alleging that any White House would go into your tax information because you're their enemy?" said Bergin, whose group frequently sues the IRS to disclose tax information.

"You're alleging that not only the administration did this, but that the IRS had to be complicit," he said. "This is from Mars right now."

IRS spokesman Dean Patterson declined to comment.

To contact the reporter on this story: Ryan J. Donmoyer in Washington at rdonmoyer@bloomberg.net

To contact the editor responsible for this story: Mark Silva at msilva34@bloomberg.net

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BOLO Spreadsheet 02 02 11
"TAG" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

20110202

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ID	Transaction Name	Issue	Issue1
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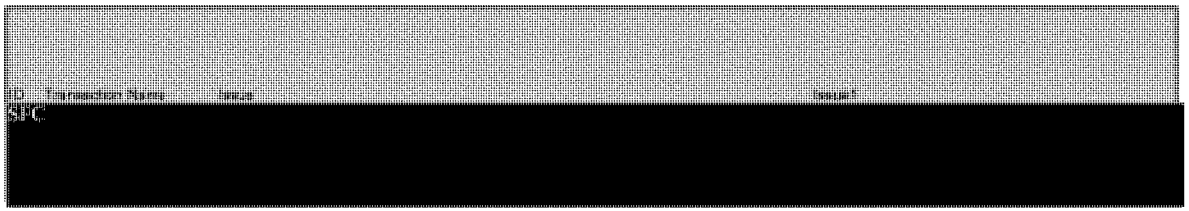

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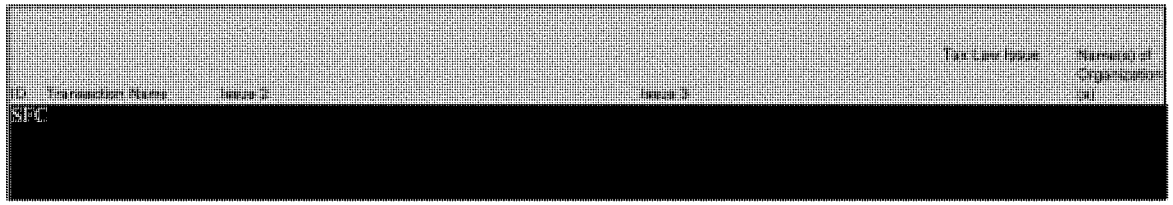
ID
Transaction Name
Issue 2
Issue 3
Tax Case Issue
Number of Organizations
SFC

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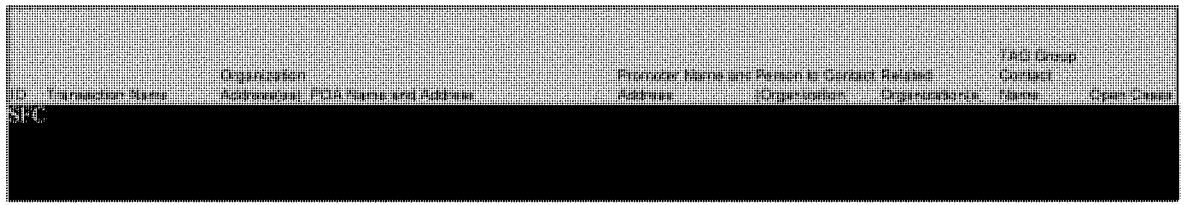

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ID	Transaction Name	Tag Category ID	Disposition
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"TAG Historical" Tab of Microsoft Excel Document

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ID	Transaction Name	Issue	Issue1	Issue 2
SFC				

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ID	Transaction Name	Issue	Issue1	Issue 2
SFC	[redacted]			
170	Progressive		Political activities	Common thread is the word "progressive". Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to "blue" as being "progressive".

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ID	Transaction Name	Issue	Issue1	Issue 2
SFC	[redacted]			

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ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						

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ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						

20110202

ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						
170	Progressive			Applicants submit Form 1023. Their "progressive " activities appear to show that (c)(3) may not be appropriate.			

1200

20110202

ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						

20110202

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

20110202

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

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ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

20110202

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

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"Emerging Issues" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

SFC 000743

Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
Tea Party	Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell (coordinator). Cases are being coordinated with EO Tech- Chip Hull.	Open

BOLO Spreadsheet 02 02 11

"Coordinated Processing" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

Issue Name	Brief Issue Description	Issue Number	Coordinated Actions Taken	Current Status (Opened or closed)
SFC [redacted]				

BOLO Spreadsheet 02 02 11
"Watch List" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

Issue Name	Watch Issue Description	Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or closed)
SFC [redacted]					
ACORN successors	Local chapters of the former ACORN organization have reformed under new names and are requesting exemption under section 501(c)(3). Succession indicators include ACORN and Communities for Change in the name and/or throughout the application.	2	x	Elevate case to your manager for contact with EO Tech - Chip Hull.	Open
SFC [redacted]					

Boston Bar Journal

A Peer Reviewed Publication of the Boston Bar Association

Disaster Relief: The One Fund Boston Model

Posted: April 1, 2014 | **Author:** bbabarjournal | **Filed under:** Special Feature, Spring 2014 Vol. 58 #2 | **Tags:** 501(c)(3), Boston Bar Journal, Boston Marathon bombings, disaster relief, Goodwin Procter, legal, One Fund, tax-exempt charitable organization |Leave a comment

by Susan L. Abbott and Lisa A.H. McChesney

Viewpoint

The authors express their appreciation to the many others at Goodwin Procter who were part of the One Fund team, and in particular for the invaluable assistance of Stuart Cable, Mary-Kathleen O'Connell, and Alyssa Fitzgerald.

In the wake of the Boston Marathon bombings on April 15, 2013, Boston Mayor Menino and Massachusetts Governor Patrick proposed creating a charity to benefit the survivors and families of those killed in the attack. On April 16, Mayor Menino reached out to local businesses Hill Holliday and John Hancock to assist with the creation of the One Fund Boston. Later that day, before the fund was even incorporated and before Ken Feinberg was brought on as administrator, the One Fund received its first $1 million commitment from John Hancock.

As the One Fund's attorneys, we at Goodwin Procter had to seek quick incorporation of the fund and apply on an expedited basis for 501(c)(3) tax-exempt status with the IRS. However, applications for 501(c)(3) status often take up to eighteen months to process, and in addition, obtaining the necessary approval was challenging, due to IRS limitations on the types of distributions that charitable organizations can make to individuals in the context of disaster relief.

SFC 000749

Generally, to qualify for tax-exempt status, an organization must show that it will assist a large enough or sufficiently indefinite charitable class so that it is providing a public rather than a private benefit. In addition, in IRS Publication 3833, the IRS takes the position that an organization cannot distribute funds to individuals merely because they are victims of a disaster, but generally must determine that a recipient lacks adequate financial resources of his or her own. The IRS therefore had questions about the One Fund's plans to make distributions without financial needs testing.

The One Fund team worked closely with the IRS to overcome these issues and to show that the One Fund instead met the criteria for a 501(c)(3) tax-exempt charitable organization as an organization that lessens the burdens of government, focusing on the organization's relationship with the City of Boston and the City's role in approving distributions. "Lessening the burdens of government" is an alternative method of qualifying as a 501(c)(3) organization. As far as we know, this method has not been used before in the disaster relief context. This approach to the formation of a relief organization allowed the One Fund Boston to accomplish its immediate and ongoing goals for distributions.

On May 14, just one month after the bombings, the IRS granted the One Fund Boston 501(c)(3) tax-exempt status. The One Fund's attorneys were able to use procedures for expedited approval and effective dialogue with the IRS to obtain this unusually quick and favorable result.

The One Fund has been a huge success and an important contribution to Boston's recovery. All of the $60 million in funds donated to the One Fund Boston through June 26, 2013 were distributed to those who were most affected by the bombings, in accordance with a protocol developed by Mr. Feinberg. In addition, the One Fund Boston will continue to provide support for those affected and has announced that it will make a second distribution.

Public response to the swift action taken by the One Fund Boston has been favorable, and Mayor Menino noted that in his 20 years as mayor of Boston, he had never seen the business community come together so quickly on behalf of the citizens of Boston.

While the One Fund Boston model will not work in all circumstances, it may be an alternative to more traditional charitable models when there is significant government involvement. In such cases, it provides an opportunity for the public and private sectors to work together to deliver expedited, direct benefits to those in need as a result of disasters.

Susan L. Abbott is a partner at Goodwin Procter LLP and Chair of the firm's Tax-Exempt Organizations Group. She led the pro bono team that incorporated, obtained 501(c)(3) status for, and advised the One Fund Boston.

Lisa A.H. McChesney is an associate in the firm's Trusts and Estate Planning Group and assisted with the One Fund Boston application for 501(c)(3) status.

OBAMA MET WITH IRS UNION BOSS DAY BEFORE TEA PARTY TARGETING BEGAN

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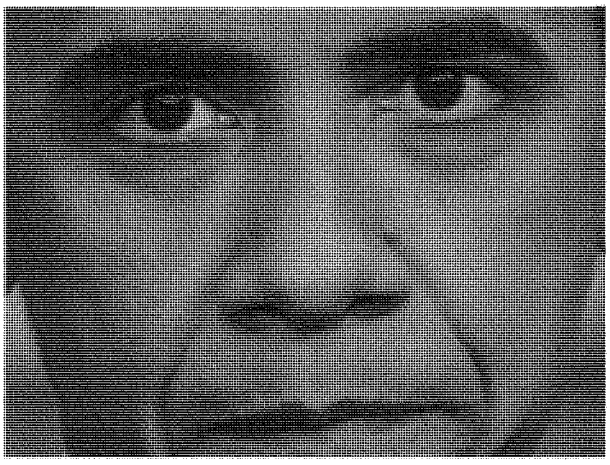
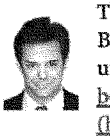


by WYNTON HALL (/COLUMNISTS/WYNTON-HALL) | 20 May 2013 | 434 | POST A COMMENT (/BIG-GOVERNMENT/2013/05/20/OBAMA-MET-WITH-IRS-UNION-BOSS-DAY-BEFORE-TEA-PARTY-TARGETING-BEGAN#COMMENTS)

MORE: IRS SCANDAL (HTTP://WWW.BREITBART.COM/TOPICS/%E1%DA%D1%EE%DA%EE%EC%EA%E2%DA%E1-SCANDAL)



The White House Visitors Log reveals that President Barack Obama met with Internal Revenue Service (IRS) union boss Colleen Kelley on March 31, 2010—the day before (http://spectator.org/archives/2013/05/20/obama-and-the-irs-the-smoking) the Inspector General's report says the IRS began its scheme to target tea party and conservative groups.

Furthermore, Obama appointed (http://www.breitbart.com/Big-Government/2013/05/17/Obama-Appointed-IRS-Union-President-To-Group-In-Charge-of-Federal-Raises-In-2010) Colleen Kelley, president of the National Treasury Employees Union (NTEU), to the Federal Salary Council whose job is to recommend pay raises for IRS and other federal employees one week after Obama and Democrats suffered historic midterm losses in 2010. Two years later, Kelley's 150,000-member union had raised $580,412, 94% of which went to Democratic federal candidates. The group also strongly backed Obama's reelection.

American Spectator reporter Jeffrey Lord, who uncovered (http://spectator.org/archives/2013/05/20/obama-and-the-irs-the-smoking/1) the visitor log connection, says the March 31st meeting between Obama and Kelley was not the only time Kelley met.

> In fact, this record in the White House Visitors Log of a 12:30 Wednesday, March 31, 2010 meeting between President Obama and the IRS union's Kelley was not unusual.

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> On yet another occasion, Kelley's presence at the White House was followed shortly afterwards by the President issuing Executive Order 13522. A presidential directive that gave the anti-Tea Party NTEU — the IRS union — a greater role in the day-to-day operation of the IRS than it had already — which was considerable.

SFC 000751

Since the IRS tea party targeting scandal erupted, Kelley has gone quiet.

"NTEU is working to get the facts but does not have any specifics at this time," Kelley told (http://www.washingtonpost.com/politics/federal_government/irs-union-mum-on-employees-held-accountable-in-sin-of-political-targeting/2013/05/13/aa330f60a-bbfe-11e2-97d4-a479289a31f9_story_1.html) the *Washington Post* in an email. "Moreover, IRS employees are not permitted to discuss taxpayer cases. We cannot comment further at this time."

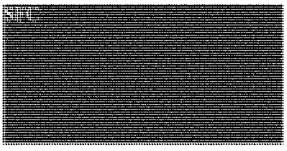
SFC 000752

Politics

Campaign cash: The independent fundraising gold rush since 'Citizens United' ruling

By Peter H. Stone 12:59 pm, October 4, 2010 Updated: 12:19 pm, May 19, 2014

2 likes Comment E-mail Print



For many powerful GOP operatives and allied fundraisers, the luncheon last April felt like one part reunion and one part strategy summit for the fall. In reality, the get-together at Karl Rove's house and office on Weaver Terrace in Washington, D.C., was a bit of both.

The crowd of about two dozen had assembled at the behest of Rove and former Republican National Committee chairman Ed Gillespie. The powerful pair had teamed up earlier in the year to help launch American Crossroads, a non-profit group with separate political advocacy and grassroots lobbying arms that together plan to spend $52 million this year to help a few dozen GOP Senate and House candidates with television ads and get-out-the-vote drives.

Gillespie's invitation to the April 21 luncheon had a casual tone, asking old political comrades to attend an "informal discussion of the 2010 political landscape."

But as the crew of old GOP friends munched on chicken pot pies, Rove and Gillespie had another, larger agenda: expanding cooperation. And they found an altogether receptive audience. Among those in attendance: Bill Miller, the political director of the U.S. Chamber of Commerce which has announced a record election budget of $75 million; former Sen. Norm Coleman of Minnesota, the CEO of the American Action Network, a fledgling group that's hoping to spend about $25 million to help Senate and House candidates; Steven Law, a former general counsel at the Chamber and the president of American Crossroads; and Greg Casey, the president of the Business Industry Political Action Committee which aims to spend $6 million this year to boost the pro-business vote.

Altogether, the groups represented at the lunch — and a few others, some of whom have attended subsequent sessions — plan to pour some $300 million into ads and get out the vote efforts to help scores of GOP Congressional candidates in battleground states such as Colorado, Nevada, Ohio, and Pennsylvania. Some have likened their effort to a shadow GOP.

For Gillespie, Rove and other attendees the rationale to expand their coordination was simple: Democratic allied groups in recent elections had considerable success using cooperative tactics and GOP strategists wanted to match and even one up them. "I'm glad we're taking a page out of their playbook," Gillespie told the Center.

Former RNC chairman Gillespie has been running a fundraising marathon for much of the year, having raised millions of dollars to jumpstart the fledgling 527 American Crossroads and its 501(c)(4) affiliate, Crossroads GPS.

These independent GOP allies represent the leading edge of the new world of campaign finance, 2010 edition. Sensing a possible takeover on Capitol Hill, they have aggressively tapped a network of angry corporate and conservative donors, a task made easier by the Supreme Court's famously controversial January ruling in *Citizens United v. Federal Election Commission*. That decision overturned decades of campaign finance law and gave the green light to corporations and unions to spend unlimited amounts on ads and other campaign activities that can urge voters to directly oppose or support individual candidates. Some companies in sectors hit hard by new regulations — including financial, energy and health care interests — are grabbing for their checkbooks, and they are actively seeking the anonymity provided by new and older independent groups in the post-*Citizens United* world.

The tens of millions being plowed into these groups are also partly attributable to another phenomenon: management and fundraising problems at the Republican National Committee under Chairman Michael Steele. Those woes have given major donors and fundraisers heartburn and prompted many to put their political and financial chips elsewhere.

And now Democratic constituencies are responding. Jittery about a potential avalanche of corporate money flowing to GOP allies, several unions, led by the American Federation of State, County and Municipal Employees, the AFL-CIO, and the Service Employees International Union, have begun plotting a counter-strategy — hiking their budgets, polishing their famous "ground game" tactics, and expanding cooperative efforts of their own to avoid a debacle in November.

Notwithstanding labor's defensive efforts, based on budget and spending projections from many big groups on both sides it's expected that GOP-allied entities are likely to outspend their Democratic foes by a three to two margin and perhaps even two to one.

In recent weeks, GOP allies have built a huge lead of almost five to one in ad spending compared to their Democratic counterparts, according to the

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Campaign Media Analysis Group. CMAG data says that GOP-affiliated groups spent $24.8 million on Senate and House ads from Aug.1 to Sept. 20 while their Democratic rivals spent just $4.9 million in the same period.

What this amounts to, say veteran money and politics watchers, is a virtual Wild West, with fewer rules and more cash than ever. Republicans and Democrats each now boast ten or so deep-pocketed independent groups with plans to spend $10 million plus helping Senate and House candidates by running expensive ads and/or conducting get out the vote efforts. And they're on track to spend, collectively, some $500 million dollars or more. With little oversight.

"The financial flows into this election cycle," says Marcus Owens, a partner at Caplin & Drysdale and a former IRS director of exempt organizations, "are beyond regulation and beyond the existing mechanisms of the Federal Election Commission and the IRS,"

The *Citizens United* decision: A game changer

The high court's ruling, which initial polls showed was opposed by 80 percent of the public, has helped to open the floodgates for potentially record spending by outside groups this year while creating a new fundraising landscape.

A sharply split Supreme Court in its 5 to 4 *Citizens United* decision overruled two key precedents about the free-speech rights of corporations and affirmed on First Amendment grounds the idea that the government should not regulate political speech.

Justice Anthony Kennedy, writing for the majority, said that "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech."

President Obama attacked the decision as "a major victory for big oil, Wall Street banks, health insurance companies, and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans."

While the decision didn't directly address labor unions, the ruling also gives them new freedom to spend without limit certain funds on campaign ads and other election activities.

The case itself arose from an unusual venue: It centered on a ninety-minute documentary, *Hillary: The Movie* — a biting look at Hillary Rodham Clinton — that was the handiwork of a conservative nonprofit group: Citizens United.

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Longtime campaign finance watchdogs reacted angrily to the decision. "The 2010 Congressional elections are being flooded by influence-buying spending as a result of *Citizens United*," said Fred Wertheimer, the president of campaign finance reform advocacy group Democracy 21. "I think the 2010 spending will be dwarfed by what will come."

Most leaders of the GOP's allied groups disagreed about the decision's influence, but a few acknowledged its potential to change the fundraising game.

"*Citizens United* opened the door for the unparalleled participation by corporations at the financial level," says veteran GOP operative Scott Reed, who this summer launched a group called the Commission on Hope, Growth and Opportunity with an eye to raising $25 million to help about two dozen GOP candidates. "But it took the combination of the RNC being inept and the Obama administration's political agenda to bring it all together."

Corporations flying under the radar with millions in donations

A look at both the older and newer GOP-leaning groups that are planning the most expensive drives this year makes this much clear: Many corporations seem inclined to give to groups that are allowed by tax laws to keep their donations anonymous.

The desire for anonymity is attributable to several factors, say campaign finance lawyers and fundraisers, but arguably the most important is that the Supreme Court decision was controversial and unpopular. Some experts say the situation has prompted companies to fear reprisals from liberal groups for making large donations publicly.

Most of the independent groups raking in big bucks are set up under IRS rules as so-called 501(c) organizations, named after a section of the tax code that covers a range of non-profit tax exempt organizations. They can accept unlimited donations and are not required to make their donors' names public.

Quite a few of the new GOP-allied groups this year have obtained 501(c)(4) social welfare status, providing their donors anonymity but requiring them to spend more than half their funds on nonpolitical activities such as legislative matters, a rule that still allows them wiggle room since the IRS regulations are often vague. For instance, some outfits are running issue ads attacking the stands of incumbents on legislative matters such as health care reform. "These advertisements clearly have a political edge, but they also have a grassroots lobbying message," said Marcus Owens, the former IRS official. Further, business trade groups such as the Chamber of Commerce have long enjoyed IRS status as 501(c)(6) operations, which also are not required to

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disclose their donors' names.

"The major impact [of the decision] is that more money is going to 501(c)(4) groups, trade groups and others that don't disclose their donors," former FEC counsel and election lawyer Larry Noble told the Center. "Those groups that don't disclose are getting more money and getting more aggressive with their ads."

The "501cs are the keys to the political kingdom," says lobbyist Scott Reed, "because they allow anonymity."

The increasing popularity of under-the-radar 501(c) groups is underscored by contrasting this year's public disclosures with past election seasons. A recent study from Public Citizen shows that in 2004 and 2006, the large majority of outside groups revealed their donors. By contrast in 2008 only about half disclosed their donors and this year, to date, a scant 32 percent have made such disclosures.

Many of the GOP groups have aggressively tapped into what looks like a growing corporate backlash among financial service, energy, and health insurance companies against the Obama administration and Congress for expanding government regulation and taxation of some business sectors.

The Chamber of Commerce

The Chamber of Commerce is expected to have the deepest pockets of the independent conservative and business groups when this year's fundraising marathon concludes.

Bill Miller, the national political director of the Chamber, told the Center that its political program is "an outgrowth of the frustrations of the business community." Miller said the "continued assault on industry by the policies put forth in this Congress has caused a recognition that the composition of this Congress has to change." Although the Chamber bills itself as bipartisan, historically, the lion's share of its issue ads and contributions has benefited GOP candidates.

Miller said corporate frustration is especially acute over four big issues that "have had, could have, or will have very negative consequences for the business community." They are: financial services reform, health care reform, and the specter of both cap and trade and "card check" legislation that would make it easier for unions to organize. One mega-corporate donor has been identified: News Corp., whose CEO is billionaire Rupert Murdoch, reportedly has given $1 million to the Chamber for its political drive

Early this summer, the Chamber's feisty chieftain, silver-haired Tom

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Donohue, told a gathering of about 100 trade group leaders at a posh resort in Rancho Palos Verdes, Calif., that the organization was going to spend $75 million on its election program — more than double the $36 million it spent on the 2008 campaign.

As of mid-September, the Chamber had spent about $20 million on issue ads other political activities including mail and phone with many millions more to come, Miller says. Further, the business lobby group is also planning to pour millions of dollars into online voter mobilization and other activities this year using an assembled list of six million "Friends of the Chamber."

The organization will be active in nine or ten Senate races and about three dozen House races in such key states as California, Florida, New Hampshire, Ohio, and Pennsylvania. The strategy, Miller says, is to focus on "cluster states" where there are multiple Senate and House contests that the Chamber wants to sway.

Additionally, the Chamber will also pour millions of dollars into online advertising and other media activities focusing on its key economic issues — job creation and regulation — through a separate but complementary Chamber program called the Campaign for Free Enterprise, a multi-year $100 million effort that launched last year.

Rove and Gillespie lead money charge for American Crossroads

An affiliate group of American Crossroads is perhaps the most prominent and aggressive of the new organizations that can take in anonymous donations. American Crossroads opened its doors in March as a section 527 group. Under IRS rules the group can accept unlimited donations and can spend all its monies on political advocacy, but must disclose its large donations and donors monthly.

In early June — about the time that reports showed it had banked less than $1.3 million through May — a second money front was opened with the founding of Crossroads GPS, a 501(c)(4) which can also accept unlimited donations but doesn't have to disclose its donors at all.

Steven Law, the president of both groups and a former chief of staff to Senate Minority Leader Mitch McConnell, said that as of Sept. 20 the two had pulled in just over $32 million. That cash has been corralled with lots of help from Rove and Gillespie, whom the group calls "informal advisers." Early this year the duo made a successful fundraising foray into Texas and this summer they also scored big with Wall Street donors.

Two companies in which Dallas-based billionaire Harold Simmons boasts major holdings — Southwest Louisiana Land LLC and Dixie Rice Agricultural

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Corp. — have plowed a total of almost $2 million into the 527. That makes the veteran conservative donors' firms, one of the three biggest financial angels with Texas ties. Two other Lone Star moguls, Trevor Rees-Jones, who runs Dallas-based Chief Oil and Gas, and Robert Rowling, together with his company TRT Holdings, which owns Omni Hotels and Gold's Gym, have each given $2 million to the group (and to a recently formed successor PAC).

Paul Singer, the New York-based founder and CEO of the $17 billion hedge fund Elliott Management Corp. has also written a seven-figure check to Crossroads GPS, say sources familiar with the group. Singer has also been a hefty donor and fundraiser for several GOP candidates and campaign committees this election season.

Dallas billionaire Simmons wrote checks for $1 million apiece to the newly founded group American Crossroads, among the first checks the fledgling 527 group received.

Both entities combined have will have spent close to $13 million by the end of September on hard hitting ads with a major focus on Senate contests in Colorado, Missouri, Nevada, and Ohio, Law says. Further, both groups will also run ads to assist a dozen to two dozen House races this fall, and will focus partly on states where there are multiple candidates to their liking, he adds. At least one of the group's ads in Nevada attacking Senate Majority Leader Harry Reid has been criticized on factual grounds by nonpartisan ad watchers.

American Crossroads has run a few direct advocacy ads in support of candidates, including one for former Rep. Rob Portman, who is making a bid for the Senate in Ohio, and it "will be doing more express advocacy going forward," says Law, who besides his Hill background was deputy secretary at the Labor Department under McConnell's wife, Labor Secretary Elaine Chao. Looking further ahead, Law and other leaders of the two groups stress that they expect to stay very active with issue advocacy and grassroots lobbying post-November and will also be a force in the 2012 elections.

Other new conservative groups are pulling in big money

While most of the big spending so far has been on Senate contests, Americans for Prosperity — which has announced plans to spend $45 million this year — has concentrated on helping House candidates. The organization was the largest spender on House races in a one-month period during late summer, according to CMAG.

AFP is a 501(c)(4) that's closely linked to David Koch, the co-chairman of the Kansas-based energy giant Koch Industries. David Koch, who earlier this year gave a $1 million check to the Republican Governors Association and is a long

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time backer of conservative causes, heads the board of Americans for Prosperity Foundation, a sister 501(c)(3) group.

Other groups are stepping up to help House candidates too and tapping donors in sectors hit hard by new regulations.

Lobbyist Reed's fledgling Commission on Hope, Growth and Opportunity is seeking to raise $25 million (and he says had pulled in about half of that in mid-September) to run ads in 20 House districts and a few Senate contests. In late September, the group ran its first ads boosting some House candidates in New York and South Carolina.

Where's all that dough coming from? "The big three stepping into the batter's box are the financial services industry, the energy industry, and the health insurance industry," Reed said.

Other older groups that can protect donors' identities, such as the American Future Fund and BIPAC, also have seen spikes in their funding this year. Nick Ryan, an Iowa based lawyer who founded AFF, a 501(c)(4), says that he expects his group will spend close to $25 million on ads this year, or more than triple the $8 million it poured into issue ads in the 2008 elections.

The fundraising landscape "is the best I've ever seen on the conservative GOP side," says Ryan, a former top aide to ex-Iowa Rep. Jim Nussle.

The fund spent almost $1 million early in the year to help elect Republican Scott Brown Senator in Massachusetts and more recently has been pouring big money into states such as California and New Hampshire in some primary contests.

Looking ahead, Ryan says his group is going to be doing more House races and plans to do a "blend of issue ads and direct advocacy."

The Washington-based Business Industry Political Action Committee, or BIPAC, doesn't have as much cash as its allies, but still plans to almost double its spending this cycle to $6 million, says its president Greg Casey. BIPAC, a business group that tilts heavily to the GOP, uses a sophisticated computerized database to track voting records of candidates which it provides to its 400 or so corporate members to help them educate their workers. The goal is simple: spur employees to pull the right levers at the polls.

Sources familiar with BIPAC tell the Center it has long depended heavily on large energy interests such as the American Petroleum Institute, ExxonMobil, and mining and gas companies for a hefty chunk of its election budget. For

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the last several election cycles, API was the leading donor to the group, pumping in about $400,000 every two years, say sources familiar with the outfit's fundraising.

BIPAC's board boasts several heavy hitting Washington lobbyists such as ex-Rep. Steve Bartlett of Texas, who runs the Financial Services Roundtable, a group comprised of some 100 leading integrated financial firms, and Rick Shelby, the top lobbyist with the American Gas Association.

GOP groups mimic liberals by expanding cooperation

The money and the energy on the GOP side have been spurred by a new spirit of cooperation and coordination among allied groups. There are more cooperative fundraising initiatives, shared offices, regular meetings of key leaders like the April 21 session at Rove's, and a division of labor in terms of which states and races different groups are spearheading. Coordination among independent groups is legal under campaign finance laws, but the organizations are strictly barred from conducting any joint activities with party committees or the candidates themselves.

GOP politicos say that their new approach has been inspired by what Democratic groups have accomplished in recent campaigns. "The left has been very successful," at this kind of cooperation, ex-Sen Coleman, the CEO of the American Action Network told the Center

One example of the new cooperation: the shared office suites on the 12th floor of an office building on New York Avenue in Washington, which are home to both American Crossroads and the American Action Network. And Coleman's office is just down the hall from Law's.

The two organizations have also "done a few joint fundraising events," Coleman says, "We're all going after folks who care about government-run health care, higher taxes and more government stifling economic growth." Coleman's network boasts two separate arms one of which is a 501(c)(4) that conducts a mix of political and legislative advocacy.

Early on, the network received some fundraising help from Gillespie and Rove, Coleman says. On March 8, Gillespie went to New York on a joint fundraising mission with Coleman and Fred Malek, a veteran GOP fundraiser who founded the American Action Network The trio met with potential Wall Street donors.

Fred Malek Early this year, Malek founded the American Action Network, which has a 501(c)(4) advocacy arm that is trying to raise $20 million to $25 million to help elect dozens of GOP Senate and House candidates in such key states as New Hampshire, Washington, and Wisconsin.

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"Minimum duplication of effort makes donors happy," Coleman says. The Network, for instance, through its 501(c)(4) arm has run big ad drives attacking Democratic incumbents in states such as Washington and Wisconsin, places where Law's group has not been active.

Miller of the Chamber notes that "having an understanding of other people's priorities allows us to make smarter and more informed decisions about what we do."

Law adds that a recently launched $10 million get-out-the-vote drive by American Crossroads that's focused on eight key states including Colorado, Florida and Kentucky will be conducted in tandem with several other conservative groups and the Republican Governors Association. Conservative donors "are increasingly interested in getting out the vote this year," Law says. One reason for that: the financial woes of the RNC have made it less able to take the lead on get-out-the-vote efforts.

Big unions, liberal groups play defense

Karen AckermanDemocrats worried about an enthusiasm and money gap are looking to their traditional union allies for help — and they'll get it. But unions are worried about the influx of corporate monies this year to GOP boosters in the wake of *Citizens United*. "We'll see how it plays out in the next six weeks," says Karen Ackerman, the political director of the AFL-CIO, "and we may not know the full impact for a few elections."

For now, unions say they expect to be outspent heavily on the ad wars — and in fact they already have been, according to the Campaign Media Analysis Group. A CMAG analysis says GOP-allied independent groups spent $18.1 million on Senate ads from Aug. 1 to Sept. 20, while their Democratic counterparts spent $2.6 million in the same period. On House races, GOP groups spent $6.7 million compared to $2.3 million doled out by Democratic groups.

The big advantage that labor banks on is its ability to mount a heftier and more aggressive get-out-the vote drive — the so-called ground game. Some unions have responded by boosting their spending and trying to do more in concert as well.

In late August, the AFL-CIO announced it would mount a joint national political operation this year with the SEIU and the United Food and Commercial Workers. The three union giants, who for the last couple of election cycles have worked separately, have plans for a combined political drive that could cost at least $94 million with each organization

Of that total, the SEIU is slated to spend $44 million, a jump of about 25

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percent from what it spent in 2006. AFL-CIO sources that its budget this year will be roughly equal to the $50 million it spent in the last elections.

"The stakes are enormous for working families, which is driving the unions to seek a high level of cooperation and coordination," Ackerman said.

The collaboration will focus on 26 states, among them Illinois, Ohio, Pennsylvania and Nevada, and will be aimed at reaching more than 17 million voters including active union members, their families and union retirees.

One veteran liberal activist stresses that having the AFL-CIO and SEIU mount joint operations will "promote greater efficiency and a common strategy that's especially important in mega states such as California and Illinois," where there are many union members. Other unions are boosting their budgets, as well.

AFSCME capitalizing on *Citizens United*

AFSCME president McEntee's 1.6 million member union has boosted its spending by 25 percent from 2006, to a hefty $50 million this time around.

Gerry McEntee, the long time president of AFSCME — which belongs to the AFL-CIO — told the Center that his union will spend at least $50 million, a 25 percent jump over the 2006 cycle. And McEntee says that AFSCME will do direct advocacy ads now that the Supreme Court has given the green light in *Citizens United*.

McEntee says his union will spend its funds on a mix of ads and get-out-the vote work to help Democrats in some 60 to 65 House races and 18 of the 37 Senate contests. Overall, he estimates that about a quarter of the funds will go for ads and the bulk for voter mobilization efforts.

"We're in the race of our lives," McEntee said. And while labor may be outspent, it should have a big advantage in voter mobilization drives. He said earlier this year that AFSCME knows how to do "boots on the ground," adding, "I don't think Karl Rove will be knocking on doors."

But he acknowledged that the labor movement may be challenged in its efforts by the recession and disappointment on the part of some union members that Congress hasn't done more to help them, especially on card check legislation. "It's hard to get your people juiced up," McEntee added.

Other liberal groups scramble to raise cash

A few other liberal groups which get some labor funding are also trying to ratchet up their political game. Greg Speed, the executive director of America

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Votes, a coalition of about 400 groups (including such big names as the SEIU and the AFL-CIO) says that its budget this year will be $8.5 million. That's about $3 million less than what it spent in 2008, primarily because it has cut the number of states it is focusing on, from 14 to 10 this year.

The group's priority is voter mobilization of the liberal base: that means phone, mail, online communications, and other tools to reach potential allies, Speed says. It will focus on such battleground states as Colorado, Nevada, Ohio, and Pennsylvania. "We're going for the multiple bang states where mobilizing our voters can have the maximum impact up and down the ballot" — including where redistricting issues hang in the balance.

Late last year, Varoga says that he decided to expand the fundraising and political muscle of the 527 he established, Patriot Majority, by creating an allied PAC, Patriot Majority PAC.

The 527 group Patriot Majority, which started in 2005, and the newer allied Patriot Majority PAC, are expecting to spend a bit more than $12 million this year in a handful of key states, a slight drop from the $14 million spent in the 2008 elections, says founder Craig Varoga. The climate for fundraising "has been significantly harder this year," he says, citing the poor economy's impact on donors, the greater number of races in play, and the generally healthy state of the Democratic campaign committees, compared to their GOP counterparts.

The bulk of the Patriot Majority's efforts have been in Nevada where Patriot Majority and its PAC have spent about $4.5 million on ads so far: that's likely to double before the November elections. Senator Harry Reid "is the number one target [of independent groups] in the Senate," Varoga says, "and we've been focused on that since the end of last year."

Can *Citizens United* impact be muted by Congress?

Almost as soon as the high court ruled in January, campaign finance watchdogs began to push for greater disclosure of the firms that were poised to funnel millions of dollars anonymously to independent groups.

One result of that push: the Disclose Act, which would require corporations, unions and other interest groups to identify themselves explicitly in campaign advertisements that they finance. Large donors funding these ads would also have to be named. The bill passed the House earlier this year with just two Republicans backing it; and has been blocked in the Senate twice on cloture votes with unanimous GOP opposition. The bill's lead sponsors are Rep. Chris Van Hollen, D-Md., who chairs his party's House campaign committee, and Democratic Sen. Charles Schumer of New York who formerly chaired the Senate counterpart.

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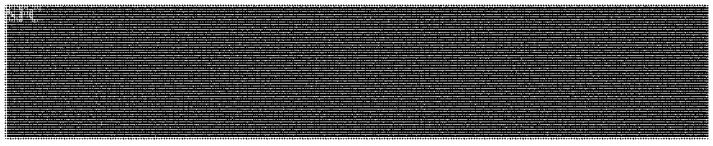
The debate has a familiar ring. Republicans have charged that the bill is politically motivated and prompted by a desire of Democrats to maintain their majorities. President Obama, meanwhile, has repeatedly championed the measure, most recently in his Saturday morning address on Sept. 18. "What's at stake is not just an election," he said. "It's our democracy itself."

More stories about

USD, Republican Party, Politics, Politics of the United States, Karl Rove, Fundraising, 527 groups, Political action committee, United States Chamber of Commerce, 527 Organization, American Crossroads, Citizens United v. Federal Election Commission, Campaign finance reform in the United States, Issue advocacy ads



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IRS 'outs' handful of donors to Republican group [1]

HCA, Healthsouth among donors to GOP nonprofit

By Paul Abowd [2]

April 4, 2013

A handful of donors to the nonprofit Republican Governors Association Public Policy Committee got a rude surprise when the Internal Revenue Service mistakenly outed them by making available part of a tax form that is supposed to be kept private.

The Center obtained a copy of the group's Form 990 [3] from a website that displays tax returns online. The return included one page of the "Schedule B" list of donors which the IRS does not require to be made public.

The total donations on the page make up a small percentage of the $5 million the nonprofit took in for calendar 2011, but also provide a rare if limited glimpse at who — or what — funds political nonprofits.

Among the donors:

- HCA Inc., the largest operator of private hospitals in the country, which donated $89,000.
- Healthsouth Corp., one of the largest operators of rehabilitation services in the country gave $10,500. A 2003 investigation by the Securities and Exchange Commission charged the company with systematically overstating its earnings. Two years later, the firm agreed to pay $100 million to settle the charges.
- Boyden Gray, former U.S. ambassador to the European Union in the George W. Bush administration and White House counsel to President George H.W. Bush, gave $15,000. Gray is currently a board member of the conservative organization American Action Network.
- David Humphreys, CEO of Missouri-based TAMKO Building Products, which manufactures materials for residential and commercial construction, gave $50,000. Humphreys is reportedly the second-largest donor to candidates in his home state since 2008, and is on the board of the Koch family-funded Institute for Humane Studies, a free-market economics center at George Mason University.
- Robert Harris, president of a New Jersey consulting firm that advises drug and medical

device companies, gave $50,000. Harris was selected to be on New Jersey Gov. Chris Christie's transition team as an economic development adviser in 2010.

- James Haslam, chairman and chief executive of Pilot Flying J, the largest truck stop chain in North America, gave $10,000. Haslam's brother Bill is the Republican governor of Tennessee.

HCA Inc.'s donations helped the RGA nonprofit oppose the implementation of the 2010 health care reform law even though the company supported the bill's passage in March 2010 [4]. This year it has backed states that have accepted the Medicaid [5] expansion funds that the law provides.

The Tennessee-based corporation has also given $300,000 to the RGA's 527 group since 2010.

The company, through spokesman Ed Fishbough, said it supports the RGA while "understanding we will not always have consensus" on "issues of concern."

RGA spokesman Michael Schrimpf says that donor information is confidential, and "its partial disclosure by the IRS was erroneous and unauthorized. In fact, it is a felony to disclose the information."

In an email to the Center, Grant Williams, a spokesman for the IRS wrote: "Federal privacy laws don't allow the IRS to comment on specific situations or cases."

The Center's publication of the material is protected by the First Amendment.

Last year, the IRS also inadvertently released documents for a prolific nonprofit group Crossroads GPS, which the investigative outlet *ProPublica* [6] published.

Source URL (modified on 05/19/2014 - 12:19): http://www.publicintegrity.org/2013/04/04/12426/irs-outs-handful-donors-republican-group

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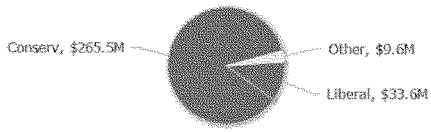
[5] https://www.votervoice.net/HCA/Campaigns/31182/Respond
[6] http://www.propublica.org/article/what-karl-roves-dark-money-nonprofit-told-the-irs

2012 Outside Spending, by Group

These groups are 501c non-profits that are not required to disclose their donors. The groups are spending money on independent expenditures and electioneering communications by using funds from their undisclosed donors.

Spending by viewpoint for Non-Disclosing Groups

- by Group Viewpoint
- by Recipient Party
- by Disclosure of Group



select CYCLE:

2012

select FILTER:

All types
Independent Expenditures
– Super PACs
Electioneering Communications
Non-Party Committees
Non-Disclosing Groups
Single-Candidate Super PACs

View: C = Conservative, L = Liberal, X = Bi-Partisan, U = Unknown

○ = No disclosure of donors ◔ = Partial disclosure of donors ● = Full disclosure of donors = Ad available

Group	Total	View*	Independent Expenditures	Elec Comm	Comm Costs	Super PAC	527s†	501c
American Crossroads/Crossroads GPS ○	$71,181,940	C	$70,968,744	$213,196	$0			501c
Americans for Prosperity ○	$36,637,579	C	$33,542,051	$3,095,528	$0			501c
US Chamber of Commerce ○	$35,657,029	C	$32,255,439	$3,401,590	$0			501c
American Future Fund ○	$25,415,969	C	$24,499,533	$916,436	$0			501c
Americans for Job Security	$15,872,864	C	$15,872,864	$0	$0			501c

Americans for Tax Reform	$15,794,552	C	$15,794,552	$0	$0	501c
American Action Network	$11,689,399	C	$11,689,399	$0	$0	501c
League of Conservation Voters	$11,229,498	L	$10,915,729	$0	$313,769	501c
Americans for Responsible Leadership	$9,793,014	C	$9,793,014	$0	$0	501c
National Rifle Assn	$8,607,876	C	$7,448,189	$0	$1,159,687	501c
Patriot Majority USA	$7,013,886	L	$7,013,886	$0	$0	501c
Planned Parenthood	$6,757,616	L	$6,721,448	$36,168	$0	501c
60 Plus Assn	$4,615,892	C	$4,615,892	$0	$0	501c
National Assn of Realtors	$4,606,898		$3,163,667	$0	$1,443,231	501c
Republican Jewish Coalition	$4,595,666	C	$4,595,666	$0	$0	501c
YG Network	$2,874,481	C	$2,874,481	$0	$0	501c
Focus on the Family	$2,574,666	C	$2,574,666	$0	$0	501c
National Fedn of Independent Business	$2,168,004	C	$1,983,385	$0	$184,619	501c
VoteVets.org	$2,119,985	L	$2,119,985	$0	$0	501c
Center Forward	$2,057,089		$2,057,089	$0	$0	501c
Center for Individual Freedom	$1,864,735	C	$1,864,735	$0	$0	501c
American Commitment	$1,858,765	C	$1,858,765	$0	$0	501c
NARAL Pro-Choice America	$1,710,358	L	$1,512,581	$0	$197,777	501c
Citizens for a Working America	$1,555,051	C	$1,555,051	$0	$0	501c
Humane Society Legislative Fund	$1,490,762		$1,490,762	$0	$0	501c
American Energy Alliance	$1,361,500	C	$0	$1,361,500	$0	501c
Citizen Awareness Project	$1,003,409	C	$1,003,409	$0	$0	501c

Michigan League of Conservation Voters	$860,237	L	$860,237	$0	$0	501c
Emergency Cmte for Israel	$855,660	C	$356,095	$499,565	$0	501c
Hispanic Leadership Fund	$838,417	C	$838,417	$0	$0	501c
ARDA-Resort Owners' Coalition	$812,800		$812,800	$0	$0	501c
Veterans for a Strong America	$762,122	C	$762,122	$0	$0	501c
Fair Share Alliance	$706,220	L	$706,220	$0	$0	501c
SecureAmericaNow.org	$670,660	c	$670,660	$0	$0	501c
Club for Growth	$660,220	C	$660,220	$0	$0	501c
American Chemistry Council	$648,600	C	$648,600	$0	$0	501c
Right to Life	$603,471	C	$0	$0	$603,471	501c
Faith & Freedom Coalition	$570,744	C	$570,744	$0	$0	501c
Special Operations OPSEC Education Fund	$485,000	C	$0	$485,000	$0	501c
Freedom Path	$457,076	C	$300,676	$156,400	$0	501c
National Wildlife Federation Action Fund	$450,419	L	$450,419	$0	$0	501c
National Organization for Marriage	$425,087	C	$425,087	$0	$0	501c
Susan B Anthony List	$415,628	C	$0	$0	$415,628	501c
Concerned Women for America	$405,350	C	$405,350	$0	$0	501c
Defenders of Wildlife Action Cmte	$342,827	L	$342,827	$0	$0	[illegible]
Catholic Assn	$332,172	C	$332,172	$0	$0	501c
NRDC Action Fund	$286,750	L	$286,750	$0	$0	501c
USAction	$272,380	L	$272,380	$0	$0	501c

Heritage Action for America	$236,346	C	$236,346	$0	$0	501c
Credit Union National Assn	$225,160		$0	$0	$225,160	501c
Let Freedom Ring	$224,084	C	$224,084	$0	$0	501c
American Majority	$221,312	C	$221,312	$0	$0	501c
American Medical Assn	$211,324		$0	$0	$211,324	501c
Environment America	$190,871	L	$178,727	$0	$12,144	501c
United Against Illegal Guns Support Fund	$178,660	L	$0	$178,660	$0	501c
Health Coalition on Liability & Access	$143,709	C	$0	$143,709	$0	501c
CatholicVote.org	$133,519	C	$133,519	$0	$0	501c
Working for Michigan	$132,584	L	$132,584	$0	$0	501c
Progressive Leadership Alliance/Nevada Action Fund	$129,992	L	$129,992	$0	$0	501c
American Principles in Action	$115,699	C	$115,699	$0	$0	501c
Marylanders for Marriage Equality	$110,000	C	$0	$110,000	$0	501c
Sierra Club	$106,711	L	$20,677	$0	$86,034	501c
Our Community Votes	$105,795	L	$105,795	$0	$0	501c
Save Hetch Hetchy No On F	$99,339	L	$0	$99,339	$0	501c
Truman National Security Project	$92,396	L	$92,396	$0	$0	501c
America's Voice	$91,190	L	$91,190	$0	$0	501c
Patriotic Veterans	$86,700	C	$0	$86,700	$0	501c
Human Rights Campaign	$84,054	L	$57,812	$0	$26,242	501c
Common Sense Issues	$79,907	C	$79,907	$0	$0	501c
Colorado Family Action	$78,045	C	$78,045	$0	$0	501c
Wisconsin Family Action	$75,853	C	$75,853	$0	$0	501c

Gun Owners of America	$70,731	C	$70,731	$0	$0	SFC 000771	501c
A Better America Now	$65,664	C	$65,664	$0	$0		501c
American Conservative Union	$64,713	C	$30,549	$34,164	$0		501c
Americans United 4 Life Action	$61,810	C	$61,810	$0	$0		501c
America is not Stupid	$60,725	C	$60,725	$0	$0		501c
Montana Hunters & Anglers Action	$60,000	L	$60,000	$0	$0		501c
Enterprise Freedom Action Cmte	$58,065	C	$58,065	$0	$0		501c
Iowa Credit Union League	$56,600		$56,600	$0	$0		501c
Voter Participation Center	$52,000	L	$52,000	$0	$0		527c
Direct Selling Assn	$50,649	C	$50,649	$0	$0		501c
Montana Credit Unions League	$49,233		$0	$0	$49,233		501c
America Votes	$46,666	L	$46,666	$0	$0		501c
Citizen Action of New York	$46,102	L	$46,102	$0	$0		501c
Montana Native Vote	$42,878	L	$42,878	$0	$0		501c
Pennsylvania Family Council	$40,862	C	$40,862	$0	$0		501c
Citizen Engagement Laboratory	$35,500		$0	$35,500	$0		501c
We Are Wisconsin	$33,260	L	$33,260	$0	$0		501c
Freedom Born	$32,833	C	$32,833	$0	$0		501c
Concerned American Voters	$32,794	C	$32,794	$0	$0	[redacted]	
Planned Parenthood Advocates of Montana	$32,291	L	$32,291	$0	$0		501c
J Street	$31,051	L	$31,051	$0	$0		501c
National Cmte to Preserve Social Security	$31,007	L	$31,007	$0	$0		501c

SFC 000772

Florida Watch Action	$30,053	L	$30,053	$0	$0		501c
Common Sense Movement	$29,760	L	$29,760	$0	$0		501c
National Shooting Sports Foundation	$25,620	C	$0	$25,620	$0		501c
Voto Latino Action Fund	$25,003	L	$25,003	$0	$0		501c
African Am Voter Regis/Edu/Participation Project	$25,000	L	$0	$25,000	$0	527i	
Public Advocate of the US	$22,988	C	$22,988	$0	$0		501c
Arizona Public Integrity Alliance Charitable Trust	$21,405	C	$21,405	$0	$0		501c
Rightchange.com	$20,000	C	$20,000	$0	$0		501c
Family Foundation Action	$18,936	C	$18,936	$0	$0		501c
AFL-CIO	$18,750	L	$0	$0	$18,750		501c
Life & Marriage Movement	$18,536	C	$18,536	$0	$0		501c
Faith & Freedom Coalition Delaware	$18,354	C	$0	$18,354	$0		501c
Main Street Advocacy	$18,303	C	$18,303	$0	$0		501c
Planned Parenthood Votes Northwest	$18,000	L	$18,000	$0	$0		501c
Immigrant's List Civic Action	$17,391	L	$17,391	$0	$0		501c
America Continues	$17,172	C	$0	$17,172	$0	527i	
Bull Moose Sportsmen's Alliance	$17,000	L	$17,000	$0	$0		501c
Illinois Immigrant Action	$16,400	L	$16,400	$0	$0		501c
Campaign for Community Change	$15,188	L	$15,188	$0	$0		501c
American Values Action	$14,761	C	$14,761	$0	$0		501c

California Vote By Mail Voter Guide	$12,500	L	$12,500	$0	$0	SFC 000773	501c
Cops Voter Guide	$12,500	L	$12,500	$0	$0		501c
Stand for Children	$11,487	L	$11,487	$0	$0		501c
StudentsFirst	$10,168	L	$10,168	$0	$0		501c
Project Mobilize	$9,110	L	$9,110	$0	$0		501c
Iowa Citizens for Community Improvement Action	$7,706	L	$7,706	$0	$0		501c
Ohio Organizing Campaign	$5,163		$5,163	$0	$0		501c
Planned Parenthood Shasta Pacific Action Fund	$5,107	L	$5,107	$0	$0		501c
American Bridge	$5,089	L	$5,089	$0	$0		501c
Indiana Chamber of Commerce	$5,000	C	$5,000	$0	$0		501c
Working Washington	$4,865	L	$4,865	$0	$0		501c
Community Voices Heard Power	$4,805		$4,805	$0	$0		501c
Public Interest Forum	$4,034		$4,034	$0	$0		501c
America's Opportunity Fund	$2,460	L	$2,460	$0	$0	527c	
Texas Alliance for Life	$2,425	C	$2,425	$0	$0		501c
North Carolina Values Coalition	$1,365	C	$1,365	$0	$0		501c
New Power PAC	$919	L	$919	$0	$0	[redacted]	
New Era Colorado	$789	L	$789	$0	$0		501c
Ohio Revolution	$740	C	$740	$0	$0		501c
Plan Boulder County	$304		$304	$0	$0		501c
NH Citizens Alliance for Action	$111	L	$111	$0	$0		501c
American Assn for Justice	$102	L	$0	$0	$102		501c

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Citizens United v. Federal Election Commission

Docket No.	Op. Below	Argument	Opinion	Vote	Author	Term
08-205	Dist. Ct. for D.C.	Sep 9, 2009 Tr.	Jan 21, 2010	5-4	Kennedy	OT 2008

Holding: Political spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual candidates in elections. While corporations or unions may not give money directly to campaigns, they may seek to persuade the voting public through other means, including ads, especially where these ads were not broadcast.

Judgment: Reversed, 5-4, in an opinion by Justice Anthony Kennedy on January 21, 2010, in a 5-4 decision with an opinion written by Justice Kennedy. Justice Stevens dissented, joined by Justices Ginsburg, Breyer, and Sotomayor.

SCOTUSblog Coverage

- Senate Judiciary Committee holds hearing on proposed campaign finance amendment
- The Roberts Court and the First Amendment
- SCOTUS for law students: A campaign finance face-off (sponsored by Bloomberg Law)
- Academic round-up
- What Should Congress Do About *Citizens United*?
- Analysis: The personhood of corporations
- Analysis: A new law to offset *Citizens United*?
- Analysis: A few open, or not so open, questions
- Argument preview: Corporations in politics
- Briefing set on *Citizens United* rehearing
- Analysis: Campaign films may get OK
- Preview: Movies as political messages
- Court to rule on campaign films, judge recusal

Briefs and Documents

Supplemental Merits Briefs

- Supplemental brief of appellant Citizens United, Appellant
- Supplemental brief of appellee Federal Election Commission
- Supplemental reply brief of appellee Federal Election Commission
- Supplemental reply brief of appellant Citizens United

Supplemental Amicus Briefs

Neither party

- Supplemental Brief of Former Officials of the American Civil Liberties Union as *Amici Curiae* on Behalf of Neither Party
- Brief *Amici Curiae* of Hachette Book Group, Inc. and HarperCollins Publishers L.L.C. in Support of Neither Party on Supplemental Question
- Brief of Independent Sector in Support of Neither Party
- Brief of the States of Montana, Arizona, Connecticut, Florida, Hawaii, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia as *Amici Curiae*Addressing June 29, 2009 Order for Supplemental Briefing and Supporting Neither Party

Appellant

- Brief of *Amicus Curiae* Alliance Defense Fund
- Brief of *Amicus Curiae* American Civil Liberties Union
- Brief of *Amicus Curiae* American Civil Rights Union
- Brief of *Amicus Curiae* AFL-CIO
- Brief of *Amicus Curiae* American Justice Partnership
- Brief of *Amici Curiae* California Broadcasters Association
- Brief *Amicus Curiae* of California First Amendment Coalition
- Brief of *Amici Curiae* Campaign Finance Scholars

- Brief of *Amici Curiae* Cato Institute
- Brief of *Amici Curiae* Center for Competitive Politics
- Brief of *Amici Curiae* Center for Constitutional Jurisprudence
- Brief of *Amici Curiae* Fidelis Center
- Brief of *Amici Curiae* Former FEC Commissioners
- Brief of *Amicus Curiae* Free Speech Defense & Education Fund
- Brief of *Amicus Curiae* Institute for Justice
- Brief of *Amicus Curiae* Judicial Watch
- Brief for the Michigan Chamber of Commerce in Support of Appellant and Reversal of Austin V. Michigan Chamber of Commerce in Support of Appellant on Supplemental Question
- Brief of *Amicus Curiae* NRA
- Brief of *Amicus Curiae* Pacific Legal Foundation
- Brief of *Amicus Curiae* Reporters Committee
- Brief *Amicus Curiae* for Senator Mitch McConnell in Support of Appellant
- Brief *Amici Curiae* of Seven Former Chairmen and One Former Commissioner of the Federal Election Commission
- Brief of *Amicus Curiae* US Chamber of Commerce
- Brief of *Amici Curiae* Wyoming Liberty Group, et al.

Appellee

- Brief *Amicus Curiae* of American Independent Business Alliance
- Brief *Amici Curiae* of Campaign Legal Center, Democracy 21, Common Cause, U.S. PIRG, Americans for Campaign Reform, League of United Latin American Citizens and Asian American Legal Defense and Education Fund in Support of Appellee
- Brief *Amici Curiae* of the Center for Independent Media, Calitics.com, Eyebeam, Zak Exley, Laura McGann, and Brennan Center for Justice at NYU School of Law
- Brief *Amici Curiae* of Center for Political Accountability and the Carol and Lawrence Zicklin Center for Business Ethics Research at the Wharton School
- Brief *Amicus Curiae* of Committee for Economic Development
- Brief *Amicus Curiae* of DNC
- Brief *Amicus Curiae* of Justice at Stake
- Brief *Amicus Curiae* of League of Women Voters
- Brief *Amici Curiae* of Program on Corporations, Law & Democracy; Women's International League for Peace & Democracy; Democracy Unlimited of Humboldt County, Shayss: The Western Massachusetts Committee on Corporations & Democracy; and the Clements Foundation
- Brief of Public Good in Support of Appellee on Supplemental Question
- Brief *Amici Curiae* of Norman Ornstein
- Brief *Amici Curiae* of Rep. Chris Van Hollen, David Price, Michael Castle, and John Lewis
- Brief *Amici Curiae* of Senator John McCain
- Brief *Amici Curiae* of The Sunlight Foundation

Merits Briefs

- Brief for Appellant Citizens United
- Brief for Appellee United States of America
- Reply Brief for Appellant Citizens United

Amicus Briefs

- Brief for the Foundation for Free Expression in Support of Appellant
- Brief for the CATO Institute in Support of Appellant
- Brief for the Committee for Truth in Politics in Support of Appellant
- Brief for the Center for Competitive Politics in Support of Appellant
- Brief for the Alliance Defense Fund in Support of Appellant
- Brief for the Wyoming Liberty Group and the Goldwater Institute in Support of Appellant
- Brief for the United States Chamber of Commerce in Support of Appellant
- Brief for the Reporters Committee for Freedom of the Press in Support of Appellant
- Brief for the Institute for Justice in Support of Appellant
- Brief for the American Civil Rights Union in Support of Appellant
- Brief for the Center for Political Accountability and the Carol and Lawrence Zicklin Center for Business Ethics Research in Support of Appellee
- Brief for Senator John McCain, Senator Russell Feingold, former Representative Christopher Shays, and former Representative Martin Meehan in Support of Appellee

Certiorari-stage documents

- Opinion below (Dist. Ct. for D.C.)
- Statement as to jurisdiction
- Motion to dismiss or affirm
- Reply of appellant
- Brief amicus curiae of American Civil Rights Union (in support of petitioner)

Links and Further Information

Pre-Argument

From the Blogosphere

- Election Law Blog: *Who Should Argue* Citizens United? (July 10, 2009)
- American Constitution Society Blog: *Five Reasons Why* Citizens United *is a Truly Momentous Case* (Sep. 1, 2009)
- American Constitution Society Blog: *The Perils of Free Corporate Spending* (Sep. 9, 2009)

Post-Argument

Media Links

- New York Times: *The Trial of John Roberts* (Sep. 12, 2009)
- Washington Post: *Taking On the Book Banners* (Sep. 13, 2009)
- Wall Street Journal: *Free Speech, Now that Speech Is Free* (Sep. 13, 2009)
- Los Angeles Times: *Changing Political Money* (Sep. 14, 2009)
- Hartford Business Journal: *Corporate Free Speech* (Sep. 14, 2009)
- Slate: *How Liberals Can Win by Losing at the Roberts Court* (Sep. 14, 2009)
- Wall Street Journal: *Sotomayor Issues Challenge to a Century of Corporate Law* (Sep. 17, 2009)
- New York Times: *The Rights of Corporations* (Sep. 21, 2009)
- Boston Globe: *Corporations Aren't People Yet* (Sep. 22, 2009)
- Yale Law Journal Online: *Citizens Not United: The Lack of Stockholder Voluntariness in Corporate Political Speech* (Oct. 15, 2009)
- National Law Journal: *Flags of Convenience* (Oct. 19, 2009)
- USA Today: *Supreme Court Ruling Could Play Role in 2010 Governor's Races* (Nov. 16, 2009)
- Wall Street Journal: *Campaign Finance Ruling Looms* (Dec. 8, 2009)
- Los Angeles Times: *Still No Decision on Bombshell Supreme Court Campaign Finance Case* (Dec. 8, 2009)
- National Public Radio: *No Court Ruling Today on Campaign Finance* (Dec. 8, 2009)
- New York Times: *Court Keeps Campaigns in Suspense* (Dec. 14, 2009)
- New York Times: *Hurry Up and Wait* (Dec. 17, 2009)
- USA Today: *'Why the Delay' on Supreme Court's Campaign Finance Case?* (Dec. 29, 2009)
- National Public Radio: *First Up For High Court In 2010: Campaign Finance* (Dec. 31, 2009)
- New York Times: *Courts Roll Back Limits on Election Spending* (Jan. 8, 2010)
- ABC News: *Super Bowl-Style Corporate Ads for Candidates?* (Jan. 11, 2010)

From the Blogosphere

- Election Law Blog: *Justice Scalia, Faux Judicial Restraint, and Real Judicial Restraint in* Citizens United (Sep. 13, 2009)
- Huffington Post: *Colbert: Corporations Are People, Too* (Sep. 17, 2009)
- Just on Justice: *Sotomayor Shows Restraint; Roberts, Not So Much* (Sep. 25, 2009)
- American Constitution Society Blog: *Paul M. Smith on* Citizens United *and Court "Activism"* (Sep. 29, 2009)
- PrawfsBlawg: *Campaign Finance, Shareholders' Rights and the Chamber of Commerce* (Nov. 20, 2009)
- Election Law Blog: *When Will We See an Opinion in Citizens United?* (Nov. 29, 2009)
- American Constitution Society Blog: *Previewing the Decision: Citizens United v. FEC*, by Laurence Gold (Nov. 30, 2009)
- Balkinization: *Citizens United, Corporate Personhood and the Constitution: CAC Releases Discussion Draft of New Report in Advance of Major Supreme Court Rulin* (Dec. 3, 2009)
- Election Law Blog: *Is Citizens United Drafting Sapping the Justices' Energies and Affecting Their Work Product? And What Does it Mean for a Citizens United Opinion?*(Dec. 8, 2009)
- The Volokh Conspiracy: *So...Where are the (Argued) Supreme Court Opinions? Part III* (Dec. 8, 2009)
- Blog of Legal Times: *The Long Vigil for Citizens United* (Dec. 14, 2009)
- Politico: *The Supreme Court Leaves Washington in the Lurch* (Dec. 14, 2009)
- The Volokh Conspiracy: *Where is Citizens United?* (Dec. 14, 2009)
- WSJ Law Blog: *On Text Messages and . . . Waiting for Citizens'* (Dec. 14, 2009)
- Huffington Post: *Supreme Court about to Gut Campaign Finance Laws...and Democracy?* (Dec. 15, 2009)
- Huffington Post: *Supreme Court to Hand Government to Republicans, Again: This Time, Forever* (Dec. 17, 2009)

Post-Decision

Media Links

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- CBS News: *Justice Stevens Stumbles: A Step to Retirement?* (January 22, 2010)
- CNN: *Supreme Court eases restrictions on corporate campaign spending* (January 22, 2010)
- National Public Radio: *The Supreme Court Scrambles Politics -- Again* (January 22, 2010)
- The New Yorker: *Bad Judgment* (Jan. 22, 2010)
- New York Post: *High Court rules for free speech* (January 22, 2010)
- New York Times: *Justices Turn Minor Movie Case Into a Blockbuster* (Jan. 22, 2010)
- Seattle Times: *Supreme Court's momentous decision will derail any financial reform* (January 22, 2010)
- Time: Is the Campaign-Finance Ruling Good for Democracy? *(Jan. 22, 2010)*
- The Wall Street Journal: *Court Kills Limits on Corporate Politicking* (January 22, 2010)
- Washington Post: *High court shows it might be willing to act boldly* (January 22, 2010)
- Christian Science Monitor: *'Fighting' Obama Hits Supreme Court Over Campaign Finance* (Jan. 23, 2010)

- Los Angeles Times: *A Bold Conservative Step by Supreme Court* (Jan. 24, 2010)
- New York Sun: *ACLU May Reverse Course On Campaign Finance Limits After Supreme Court Ruling* (Jan. 24, 2010)
- New York Times: *A Quest to End Spending Rules for Campaigns* (Jan. 24, 2010)
- New York Times: *Court Ruling Invites a Boom in Political Ads* (Jan. 24, 2010)
- Washington Post: *Justice Kennedy was Key to Conservatives' Win in Campaign Finance Decision* (Jan. 24, 2010)
- Washington Post: *McCain Skeptical Supreme Court Decision Can Be Countered* (Jan. 24, 2010)
- The Daily Show: *Supreme Corp* (Jan. 25, 2010)
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- National Public Radio: *Supreme Court Ruling Could Prove Harsh For Minority Politicians* (Jan. 26, 2010)
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- Orlando Sentinel: *Will Companies Go Wild on Campaign Spending?* (Jan. 26, 2010)
- Wall Street Journal: *How to Counter Corporate Speech* (Jan. 26, 2010)
- Washington Post: *Despite Court Ruling, Congress Can Still Limit Campaign Finance* (Jan. 26, 2010)
- Washington Post: *O'Connor: Corporate Campaign Funds Could Affect Judiciary* (Jan. 26, 2010)
- ABC News: *Appeals Court Skeptical of Campaign Finance Rules* (Jan. 27, 2010)
- Atlanta Journal Constitution: *Pro & Con: Is the Supreme Court's Ruling on Campaigns Bad for Democracy?* (Jan. 27, 2010)
- The New Republic: *Obama's War With the Court Just Escalated* (Jan. 27, 2010)
- New York Times Opinionator Blog: *Justice Alito's Reaction* (Jan. 27, 2010)
- USA Today: *Campaign Finance Fights Not Over* (Jan. 27, 2010)
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- ABC News: *Supreme Court Historian: After President's "Insult," Won't Be Surprised If Supreme Court Doesn't Attend Next Year's State of the Union Address* (Jan. 28, 2010)
- The Atlantic Monthly: *SOTU: Anatomy of a 'Slam' that Wasn't* (Jan. 28, 2010)
- CBS News: *Obama Skewers Court – and Signals Change Ahead* (Jan. 28, 2010)
- CNN: Alito's Reaction to Obama Was Fair *(Jan. 28, 2010)*
- Los Angeles Times: *Campaign Finance Ruling's Likely Impact Overblown* (Jan. 28, 2010)
- New York Times: *Supreme Court Gets a Rare Rebuke, In Front of a Nation* (Jan. 28, 2010)
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- New York Times: *White House v. the Supreme Court* (Jan. 28, 2010)
- Reuters: *Supreme Court Moves Right, Focus on Social Issues* (Jan. 28, 2010)
- Wall Street Journal: *Obama Owes the High Court an Apology* (Jan. 28, 2010)
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- Washington Post: *Campaign Finance: A 'Reform' Wisely Struck Down* (Jan. 28, 2010)
- Los Angeles Times: *Obama-Alito Tensions Surface at State of the Union Address* (Jan. 29, 2010)
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- Wall Street Journal: *Obama v. the Supremes* (Jan. 29, 2010)
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- Christian Science Monitor: *Obama vs. Alito: Political dust-up during State of the Union* (Jan. 30, 2010)
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- Washington Post: *Congress Prepares for a Battle Over Campaign Finance* (Jan. 31, 2010)
- Washington Post: *Idea of Company-as-Person Originated in Late 19th Century* (Jan. 31, 2010)
- Newsweek: *High Court Hypocrisy* (Feb. 1, 2010)
- Seattle Times: *Corporate Free Speech Is Not Un-American* (Feb. 1, 2010)
- Washington Post: *Justice Alito's Candid Response to Obama's Rebuke* (Feb. 1, 2010)
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- National Law Journal: *High Court Campaign Finance Opinion Roils Dozens of Cases* (Feb. 2, 2010)
- Philadelphia Inquirer: *Reagan Defter in Dealing with Court* (Feb. 2, 2010)
- The Texas Tribune: *Guest Column: The End of Judicial Elections?* (Feb. 2, 2010)
- Washington Post: *Lawmakers Pledge Action to Limit Election Spending* (Feb. 2, 2010)
- National Public Radio: *Democrats Plan Counterattack to Corporate Spending* (Feb. 3, 2010)
- National Public Radio: *Democrats Revisit Campaign Plans In Wake Of Ruling* (Feb. 4, 2010)
- New York Times: *What Price Politics?* (Feb. 4, 2010)
- Chicago Tribune: *Alito's Gripe: Obama Said High Court Reversed 100 Years of Law* (Feb. 6, 2010)
- USA Today: *Campaign Case May Have Set Course For Supreme Court* (Feb. 8, 2010)
- Los Angeles Times: *Corporate Free-Speech Ruling Speaks of Shift in Supreme Court* (Feb. 9, 2010)
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- Wall Street Journal: *The Case Against Corporate Speech* (Feb. 9, 2010)
- The Atlantic: *Citizens United: The Democrats Strike Back* (Feb. 11, 2010)
- CNN: *Democrats Move to Counter Campaign-Finance Ruling* (Feb. 11, 2010)
- Los Angeles Times: *Real Political Reform Should Go Beyond Campaign Finance* (Feb. 11, 2010)

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"TAG" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

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20100812

20100812

ID	Transaction Name	Issue	Issue1
SFC	[redacted]		

20100812

ID	Transaction Name	Issue 2	Issue 3	Tax Law Issue	Name(s) of Organization (s)
SFC					

20100812

ID	Transaction Name	Issue 2	Issue 3	Tax Law Issue	Name(s) of Organization (s)
SFC	[redacted]				

20100812

ID	Transaction Name	Organization Address(es)	POA Name and Address	Promoter Name and Address	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases
SFC								

20100812

ID	Transaction Name	Organization Address(es)	POA Name and Address	Promoter Name and Address	Person to Contact (Organization	Related Organization(s	TAG Group Contact Name	Open Cases
SFC								

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ID	Transaction Name	Tag Category ID	Disposition
SFC			

20100812

ID	Transaction Name	Tag Category ID	Disposition
SFC	[redacted]		

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"TAG Historical" Tab of Microsoft Excel Document

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ID	Transaction Name	Issue	Issue1	Issue 2
SFC	[redacted]			

20100812

ID	Transaction Name	Issue	Issue1	Issue 2
SFC	[redacted]			

20100812

ID	Transaction Name	Issue	Issue1	Issue 2
170	Progressive		Political activities	Common thread is the word "progressive". Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to "blue" as being "progressive".

SFC [redacted]

20100812

ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						

20100812

ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
SFC	[redacted]						

20100812

ID	Transaction Name	Issue 3	Tax Law Issue	Name(s) of Organization(s)	Organization Address(es)	POA Name and Address	Promoter Name and Address
170	Progressive SFC			Applicants submit Form 1023. Their "progressive" activities appear to show that (c)(3) may not be appropriate.			

20100812

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

20100812

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC	[redacted]						

20100812

ID	Transaction Name	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
170	Progressive					2	

Combined Spreadsheet TAG 8 12 10
"Emerging Issues" Tab of Microsoft Excel Document

* This page added by Senate Finance Committee Staff

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Issue Name	Issue Description		Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)	
SFC							
Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).		EI-1	x	Any cases should be sent to Group 7822. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open	

Combined Spreadsheet TAG 8 12 10

"Coordinated Processing" Tab of Microsoft Excel Document

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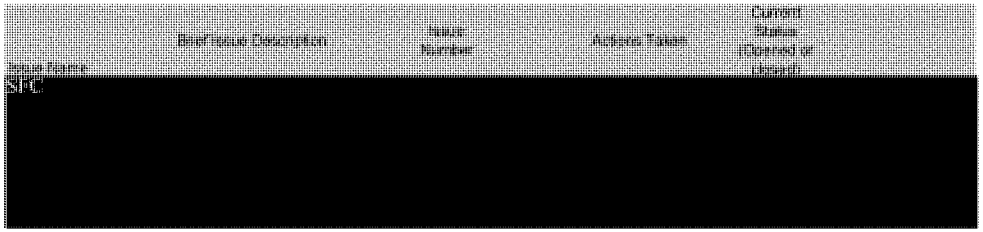
Brief Issue Description
Issue Number
Action Taken
Current Status (Opened or Closed)
SFC

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"BOLO List" Tab of Microsoft Excel Document

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Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue
SFC [redacted]					
ACORN successors	Following the breakup of ACORN, local chapters have been reforming under new names and resubmitting applications.		3	x	If you see these cases, they should be sent to the TAG Group.
SFC [redacted]					

20100812

Issue Name	Watch Issue Description	Issue Number	Alerts (Year and number)	Disposition of Watch Issue
SFC	[redacted]			

20100812

Issue Name	Current Status (Opened or closed)	
SFC [redacted]		
ACORN successors	Open	
SFC [redacted]		

20100812

Issue Name	Current Status (Opened or closed)
SFC	[redacted]

- The Daily Caller - http://dailycaller.com -

IRS official Lerner speedily approved exemption for Obama brother's 'charity'

Posted By Charles C. Johnson On 5:06 PM 05/14/2013 In | No Comments

Lois Lerner, the senior IRS official at the center of the decision to target tea party groups for burdensome tax scrutiny, signed paperwork granting tax-exempt status to the Barack H. Obama Foundation, a shady charity headed by the president's half-brother that operated illegally for years.

According to the organization's filings, Lerner approved the foundation's tax status within a month of filing, an unprecedented timeline that stands in stark contrast to conservative organizations that have been waiting for more than three years, in some cases, for approval.

Lerner also appears to have broken with the norms of tax-exemption approval by granting retroactive tax-exempt status to Malik Obama's organization.

The National Legal and Policy Center filed an official complaint with the IRS in May 2011 asking why the foundation was being allowed to solicit tax-deductible contributions when it had not even applied for an IRS determination. In a New York Post article dated May 8, 2011, an officer of the foundation admitted, "We haven't been able to find someone with the expertise" to apply for tax-exempt status.

Nevertheless, a month later, the Barack H. Obama Foundation had flown through the grueling application process. Lerner granted the organization a 501(c) determination and even gave it a retroactive tax exemption dating back to December 2008.

The group's available paperwork suggests an extremely hurried application and approval process. For example, the group's 990 filings for 2008 and 2009 were submitted to the IRS on May 30, 2011, and its 2010 filing was submitted on May 23, 2011.

Lerner signed the group's approval [pdf] on June 26, 2011.

It is illegal to operate for longer than 27 months without an IRS determination and solicit tax-deductible contributions.

The ostensibly Arlington, Va.-based charity was not even registered in Virginia despite the foundation's website including a donation button that claimed tax-exempt status.

Its president and founder, Abon'go "Roy' Malik Obama, is Barack Obama's half-brother and was the best man at his wedding, but he has a checkered past. In addition to running his charity, Malik Obama ran unsuccessfully to be the governor of Siaya County in Kenya. He was accused of being a wife beater and seducing the newest of his twelve wives while she was a 17-year-old school girl.

Sensing something wrong when he and a group of Missouri State students visited Kenya in 2009, Ken Rutherford, winner of the 1997 Nobel Peace Prize for his work on banning landmines, determined that Malik Obama was an "operator" and elected to give a donation of 400 pounds of medical supplies to a local clinic instead.

"We didn't know what he was going to do with them," Rutherford told the New York Post in 2011.

It is also not clear what the Barack H. Obama Foundation actually does. Its website claims the organization has built a madrassa and was building a imam's house but there is no other evidence that the nonprofit was actually helping poor Kenyan children.

"The Obama Foundation raised money on its web page by falsely claiming to be a tax deductible. This bogus charity run by Malik had not even applied and yet subsequently got retroactive tax-deductible status," Ken Boehm, chairman of the National Legal and Policy Center, told The Daily Caller. Boehm described Malik Obama's attempt to raise money as

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constituting "common law fraud and potentially even federal mail fraud."

Boehm doubted that the charity is doing what it says it's doing and wondered why the charity was given tax-exempt status so quickly after the evidence of wrongdoing came to light.

"How do you get retroactive tax-exempt status when you haven't even applied to get it in the first place?" Boehm said.

Lerner continues to draw fire for her handling of the IRS targeting of conservative and citizen groups, but her colleagues have started to defend her, alleging that she behaves "apolitically."

Larry Noble, who served as general counsel at the FEC from 1987 to 2000, hired and promoted Lerner. "I worked with Lois for a number of years and she is really one of the more apolitical people I've met," Noble told The Daily Beast. "That doesn't mean she doesn't have political views, but she really focuses on the job and what the rules are. She doesn't have an agenda."

Lerner could not be reached for comment. Calls to the Barack H. Obama Foundation went directly to the organization's voicemail and were not returned.

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Article printed from The Daily Caller: **http://dailycaller.com**

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DECLARATION OF JOHN ANDREW KOSKINEN

I, John Andrew Koskinen, do hereby declare as follows:

1. I am the Commissioner of the Internal Revenue Service (IRS), a position that I have held since December 23, 2013. In my capacity as Commissioner, I serve as the chief executive officer for the IRS. I am responsible for overseeing the administration of federal tax laws and for managing the operations of the IRS. I also oversee the planning, direction, and evaluation of IRS policies, programs, and performance.

2. By letter dated May 20, 2013, the United States Senate Committee of Finance (Committee) requested of then-Acting IRS Commissioner Steven Miller certain records and information in the possession of the IRS that are relevant to an investigation being conducted by the Committee relating to the use by the IRS of improper criteria to identify possible political activity by certain applicants for tax-exempt status.

3. Since May 20, 2013, the IRS, under the executive leadership of my predecessors as well as myself, has fully cooperated with the Committee's investigation. In response to the May 20, 2013 letter, as well as subsequent requests for documents and information made to the IRS by Committee investigators, the IRS conducted a broad and deliberate search for relevant records. Throughout the course of this search, the IRS discussed with the Committee various aspects of our document collection, review, and production, including the set of employees from whom records were collected, as well as the search terms used to identify potentially responsive electronic records. As a result of this search, the IRS identified and produced to the Committee approximately 1.3 million pages of documents responsive to the Committee's requests.

4. This document production consists of the following records: every document the IRS has identified for the time period from January 2009 through May 2013 (the "investigations period") pertaining to Internal Revenue Code Section 501(c)(4) determinations; every email the IRS has identified for the investigations period to which Lois Lerner was a party, regardless of subject matter; and every email the IRS has identified for the investigations period to which Holly Paz was a party, regardless of subject matter. There is one exception: The IRS has not produced to the Committee certain documents that it received from the Treasury Inspector General for Tax Administration (TIGTA), which TIGTA had forensically recovered from IRS disaster recovery tapes and other electronic equipment, as I understand that TIGTA has provided these documents directly to the Committee.

5. Should the IRS identify or locate any additional documents in its possession that are responsive to any of the Committee's requests for information related to its investigation, I will cause the IRS to promptly produce those documents to the Committee. Furthermore, the IRS will continue to provide the Committee with copies of all relevant documents that it produces to other committees of Congress conducting investigations into the same matter, including the House Ways and Means Committee, the House Oversight and Government Reform Committee, and the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations.

6. I declare, under penalties of perjury, that the foregoing is true and accurate to the best of my knowledge and belief.

Executed the 17th day of July, 2015.

John A. Koskinen

SFC 000813

Democracy 21
2000 Massachusetts Avenue, NW
Washington, DC 20036
p: 202.355.9600 f: 202.355.9606
www.democracy21.org

Fred Wertheimer
President

July 27, 2011

The Honorable Douglas H. Shulman
Commissioner, Internal Revenue Service
1111 Constitution Avenue Northwest
Washington, DC 20224

Dear Commissioner Shulman,

Enclosed is a petition for IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center.

Sincerely,

Fred Wertheimer
President, Democracy 21

Before the Internal Revenue Service
U.S. Department of the Treasury

Petition for Rulemaking On Campaign Activities by Section 501(c)(4) Organizations

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Introduction

1. This petition for rulemaking, filed by Democracy 21 and the Campaign Legal Center, calls on the IRS to revise its existing regulations relating to the determination of whether an organization that intervenes or participates in elections is entitled to obtain or maintain an exemption from taxation under 26 U.S.C. § 501(c)(4). The existing IRS regulations do not conform with the statutory language of section 501(c)(4) of the Internal Revenue Code (IRC) nor with the judicial decisions that have interpreted this IRC provision and are, accordingly, contrary to law.

2. Following the Supreme Court's ruling last year in *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010), which struck down the ban on corporate spending in federal campaigns, non-profit corporations organized as "social welfare" organizations under section 501(c)(4) of the IRC engaged in an unprecedented amount of campaign spending to influence the 2010 congressional elections. According to the Center for Responsive Politics, spending by all section 501(c) groups in the 2010 election is estimated to have totaled as much as

$135 million.[1] Virtually all of the money used for these campaign expenditures came from sources kept secret from the American people. The 2010 campaign thus witnessed the return of huge amounts of secret money to federal elections not seen since the era of the Watergate scandals.

3. Section 501(c)(4) of the IRC establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. . . ." 26 U.S.C. § 501(c)(4) (emphasis added). IRS regulations make clear that spending to intervene or participate in political campaigns does not constitute "promotion of social welfare." 26 C.F.R. § 1.501(c)(4)-l(a)(2)(ii).

4. Current IRS regulations, nevertheless, authorize section 501(c)(4) organizations to intervene and participate in campaigns as long as such campaign activities do not constitute the "primary" activity of the organization, which must be the promotion of social welfare. 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i). The "primary" activity standard established by the IRS regulation is not further defined by the IRS. Instead, a revenue ruling explains that "all facts and circumstances are taken into account in determining a § 501(c)(4) organization's primary activity." Practitioners, however, have interpreted this "primary" activity requirement to mean that section 501(c)(4) organizations can spend up to 49 percent of their total expenditures in a tax year on campaign activities, without such campaign activities constituting the "primary" activity of the organization.

5. These regulations and interpretations are in direct conflict with the statutory language of the IRC that requires section 501(c)(4) organizations to engage *exclusively* in the promotion of social welfare and with court decisions that have held that section 501(c)(4)

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[1] *See* http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&disp=O&type=U&chrt=D.

organizations cannot engage in a substantial amount of "nonexempt activity," such as campaign activity. Contrary to the IRC language and court decisions, the regulations permit 501(c)(4) organizations to engage in *substantial* campaign activity, as long as this nonexempt activity falls just short of being the organization's "primary" activity. Thus the regulations permit far more campaign activity by a 501(c)(4) organization than the limited amount allowed by the statute and court decisions. The IRS's regulations conflict with the IRC and court decisions interpreting the IRC, and are contrary to law.

6. This petition calls on the IRS to expeditiously adopt new regulations to provide that an organization that intervenes or participates in elections is not entitled to obtain or maintain tax- exempt status under section 501(c)(4) if the organization spends *more than an insubstantial amount* of its total expenditures in a tax year on campaign activity. The new regulations should include a bright-line standard to make clear that an "insubstantial amount" of campaign activities means a minimal amount, not 49 percent, of its activities. The bright-line standard should place a ceiling on campaign expenditures of no more than 5 or 10 percent of total annual expenditures in order to comply with the standard used by the courts that a section 501(c)(4) organization may engage in no more than an insubstantial amount of non-exempt activity.

7. Such a bright-line standard is necessary to ensure that the public and the regulated community have clear and proper guidance on the total amount of campaign activity that a section 501(c)(4) organization can conduct and to assist the IRS in obtaining compliance with, and in properly enforcing, the IRC.

8. If a section 501(c)(4) organization wants to engage in more than the insubstantial amount of campaign activities permitted by the IRC and court decisions, the organization can

establish an affiliated section 527 organization to do so. The IRS regulations, however, must make clear that a section 527 organization (or any other person) cannot be used by a section 501(c)(4) organization to circumvent the limit on how much a 501(c)(4) organization can spend on campaign activities. Accordingly, the new regulations should provide that a section 501(c)(4) organization may not obtain or maintain tax-exempt status if the section 501(c)(4) organization transfers funds to a section 527 organization or to any other person during its taxable year with the intention or reasonable expectation that the funds will be used to intervene or participate in campaigns, and if the transferred funds, when added to the amount directly spent by the section 501(c)(4) organization on campaign activities during the same taxable year exceeds the insubstantial amount restriction imposed by the IRC and the courts.

9. The petition calls on the IRS to act promptly to ensure that new regulations are put in place and made effective on a timely basis for the 2012 elections. The IRS must recognize the urgent need to prevent section 501(c)(4) organizations from being improperly used to spend hundreds of millions of dollars in secret contributions to influence the 2012 presidential and congressional elections.

Petitioners

10. Democracy 21 is a nonpartisan, nonprofit organization that works to strengthen our democracy, protect the integrity of our political system against corruption and provide for honest and accountable elected officeholders and public officials. The organization promotes campaign finance reform, lobbying and ethics reforms, transparency and other government integrity measures, conducts public education efforts to accomplish these goals, participates in litigation involving the constitutionality and interpretation of campaign finance laws and engages in efforts to help ensure that campaign finance laws are properly enforced and implemented.

11. The Campaign Legal Center is a nonpartisan, nonprofit organization that works in the areas of campaign finance and elections, political communication and government ethics. The Campaign Legal Center offers nonpartisan analyses of issues and represents the public interest in administrative, legislative and legal proceedings. The Campaign Legal Center also participates in generating and shaping our nation's policy debate about money in politics, disclosure, political advertising, and enforcement issues before the Congress, the Federal Communications Commission, FEC and the IRS.

Factual Background

12. The *Citizens United* decision was issued by the Supreme Court on January 21, 2010. According to one published report, "[O]utside groups were able to adapt quickly and take advantage of the *Citizens United* decision in early 2010 to spend enough to impact congressional elections just nine months later."[2] Much of this outside spending was done by section 501(c)(4) organizations that made campaign expenditures without disclosing the sources of these funds.

13. Section 501(c)(4) organizations played an important overall role in the 2010 campaign. A recent article in *Roll Call* states:

> Republican political operatives bestow immense credit for their party's competitiveness in 2010 on organizations such as Crossroads GPS and the American Action Network, both 501(c)(4) organizations. These groups can accept large donations they do not have to disclose, and Republicans believe their participation in the campaign brought the party to parity with Democrats, who typically benefit from the largesse of organized labor.[3]

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[2] K. Doyle, "2010 Battle Over Citizens United Ruling Still Unresolved as 2012 Campaign Looms," *BNA Money & Politics Report* (Jan. 12, 2011)

[3] A. Becker and D. Drucker, "Members Weigh in on Draft Disclosure Order," *Roll Call* (May 24, 2011).

14. The role of secret money in the 2010 congressional races is illustrated by the activities of Crossroads GPS ("GPS" stands for "Grassroots Policy Strategies"), which was organized in July 2010 under section 501(c)(4) and was one of the organizations that engaged in the greatest amount of independent spending to influence the 2010 congressional races.[4] Crossroads GPS is affiliated with American Crossroads, a non-profit political organization registered under 26 U.S.C. §527. American Crossroads is registered with the Federal Election Commission as a political committee under the Federal Election Campaign Act.

15. According to a report in *Time*, "American Crossroads was the brainchild of a group of top Republican insiders, including two of George W. Bush's closest White House political advisers, Karl Rove and Ed Gillespie, both of whom remain informal advisers."[5] Another published report referred to American Crossroads and Crossroads GPS as "a political outfit conceived by Republican operatives Karl Rove and Ed Gillespie."[6] According to the *Los Angeles Times*, both groups "receive advice and fundraising support from Rove."[7]

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[4] Democracy 21 and the Campaign Legal Center filed an IRS complaint against Crossroads GPS on October 5, 2010, requesting the IRS to investigate whether Crossroads GPS was operating in violation of the current requirements for obtaining or maintaining section 501(c)(4) tax status. Even under the existing, overly permissive IRS regulations, the complaint said the IRS "should investigate whether Crossroads GPS has a primary purpose of 'participation or intervention in political campaigns on behalf of or in opposition to' candidates for public office, which is not a permissible primary purpose for a section 501(c)(4) organization." Complaint at 15.

[5] M. Crowley, "The New GOP Money Stampede," *Time* (Sept. 16, 2010).

[6] K. Vogel, "Rove-tied group raises $2 million," *Politico* (Aug. 21, 2010).

[7] M. Reston and A. York, "Karl Rove-linked group launches new hit against Boxer," *The Los Angeles Times* (Aug. 25, 2010).

16. According to the Center for Responsive Politics, Crossroads GPS spent a total of $17.1 million on campaign activity, including both independent expenditures and electioneering communications, in the 2010 federal elections.[8]

17. According to published reports, Crossroads GPS was created as a section 501(c)(4) group to receive contributions to pay for campaign expenditures from donors who wanted to secretly influence federal elections and did not want their names disclosed, as they would have been if the contributions had gone instead to its section 527 affiliate, American Crossroads, which is required to disclose its donors.

18. As one published report states:

> A new political organization conceived by Republican operatives Karl Rove and Ed Gillespie formed a spin-off group last month that – thanks in part to its ability to promise donors anonymity – has brought in more money in its first month than the parent organization has raised since it started in March.[9]

The same article quotes Steven Law, the head of both American Crossroads and Crossroads GPS as saying that "the anonymity of the new 501(c)(4) GPS group was appealing for some donors." *Id.* The article also states:

> [A] veteran GOP operative familiar with the group's fundraising activities said the spin-off was formed largely because donors were reluctant to see their names publicly associated with giving to a 527 group, least of all one associated with Rove, who Democrats still revile for his role in running former President George W. Bush's political operation.

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[8] *See* http://www.opensecrets.org/outsidespending/detail.php?cmte=Crossroads+ Grassroots+ Policy+Strategies&cycle=2010.

[9] K. Vogel, "Rove-linked group uses secret donors to fund attacks," *Politico* (July 21, 2010) (emphasis added).

Id. In another article, Law is quoted as saying, "I wouldn't want to discount the value of confidentiality to some donors."[10]

19. Another published report calls Crossroads GPS a "spinoff of American Crossroads" and states that "this 501-c-4 group can keep its donor list private – a major selling point for individuals and corporations who want to anonymously influence elections."[11] At a public appearance, Carl Forti, the political director for Crossroads GPS and its affiliate, American Crossroads, made clear that campaign spending was directed through a 501(c)(4) arm precisely because American Crossroads is seeking to provide donors with the opportunity to secretly finance these campaign expenditures:

> Forti acknowledged that his group relied heavily on its nonprofit arm, which isn't required to name the sources of its funding, simply because "some donors didn't want to be disclosed. . . .I know they weren't comfortable."[12]

In another article, Forti is quoted as saying, "You know, disclosure was very important to us, which is why the 527 was created. But some donors didn't want to be disclosed, and, therefore, the (c)(4) was created."[13]

20. According to press reports, Crossroads GPS will remain very active in the 2012 elections. One report states that American Crossroads, the section 527 arm, engaged in heavy

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[10] K. Vogel, "Crossroads hauls in $8.5M in June," *Politico* (June 30, 2010).

[11] H. Bailey, "A guide to the 'shadow GOP': the groups that may define the 2010 and 2012 elections," *The Upshot-Yahoo News* (Aug. 5, 2010).

[12] S. Peoples, "Groups Target Democrats Using Nancy Pelosi," *Roll Call* (Dec. 14, 2010).

[13] P. Overby, "Group Behind Election Ads Weighs In On Tax Deal," *National Public Radio* (Dec. 14, 2010).

spending in a special congressional election in New York State held in May, 2011. According to this report:

> Crossroads and its nonprofit affiliate, Crossroads GPS, have vowed to raise $120 million for the 2012 cycle.
>
> Crossroads spokesman Jonathan Collegio said. . .Crossroads will continue to spend heavily in many competitive races through next November.
>
> "The Crossroads groups have stated that we'll be involved heavily in 2012, both in congressional races and the presidential side as well," Collegio said.[14]

The statement by the Crossroads spokesman makes clear that Crossroads GPS, the section 501(c)(4) arm, will be "heavily" involved in spending to influence the 2012 federal elections. According to another recent report, "American Crossroads and Crossroads GPS, two groups that have relied heavily on fundraising help from political guru Karl Rove, have said they're aiming to raise $120 million for the next election, versus the $71 million they raised in 2010. . . .In an early sign of its financial strength, Crossroads GPS announced Friday that it was launching a two-month, $20 million television ad blitz attacking Obama's record on jobs, the deficit and the overall economy. The first ads will start June 27 and run in key battleground states such as Colorado, Florida, Missouri, Nevada and Virginia."[15]

21. Section 501(c)(4) groups will be used by both Democratic and Republican groups in 2012 as vehicles to allow anonymous donors to secretly finance campaign expenditures. (In the 2010 congressional races, the section 501(c)(4) groups were primarily pro-Republican groups.) According to an article in the *Los Angeles Times* (April 29, 2011), former Obama

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[14] D. Eggen, "Political groups, now free of limits, spending heavily ahead of 2012," *The Washington Post* (May 21, 2011) (emphasis added).

[15] P. Stone, "Obama groups raise $4-5 million in first two months," *iWatch News – The Center for Public Integrity* (June 24, 2011) (http://www.iwatchnews.org/2011/06/24/5025/obama-groups-raise-4-5-million-first-two-months).

White House officials and Democratic political operatives Bill Burton and Sean Sweeney have formed a new section 501(c)(4) group to participate in the 2012 presidential election:

> Priorities USA has been formed as a 501(c)(4) organization – a nonprofit social welfare group that can raise unlimited amounts of money without disclosing the identity of its donors. It putatively is designed to focus on issues – in this case, "to preserve, protect and promote the middle class" – but can spend up to half its money on political activities.[16]

An article in the *New York Times* states:

> The groups are to be called Priorities USA and Priorities USA Action, and, as such, are modeled after the Republican groups American Crossroads and Crossroads GPS that were started with the help from the strategist Karl Rove and were credited with helping greatly in the party's takeover of the House of Representatives this year – and, it happens, with facilitating a waterfall of anonymous donations from moneyed interests in the November elections.
>
> Like Crossroads GPS, Democrats connected to the groups – including a close onetime aide to Mr. Obama, the former deputy White House spokesman Bill Burton, and Sean Sweeney, a former aide to the former White House chief of staff Rahm Emanuel – said that Priorities USA would be set up under a section of the tax code that allows its donors to remain anonymous if they so choose (as most usually do).[17]

22. According to information compiled by the Center for Responsive Politics, there were 45 groups organized under section 501(c) of the Internal Revenue Code that reported making "independent expenditures" of $100,000 or more in the 2010 congressional elections, and which in aggregate totaled more than $50 million. These groups, with minor exceptions, did not disclose their donors.[18] "Independent expenditures" are defined as expenditures for

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[16] M. Gold, "Former Obama aides launch independent fundraising groups," *Los Angeles Times,* April 29, 2011.

[17] J. Rutenberg, "Democrats Form Fund-Raising Groups," *The New York Times* (April 29, 2011) (emphasis added).

[18] *See* http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&chrt=D&disp=O&type=I.

communications that contain "express advocacy" or the "functional equivalent" of express advocacy. 2 U.S.C. § 431(17)(a). The top section 501(c)(4) groups in this category included:

501(c)(4) Corporation	Amount Spent on Independent Expenditures in 2010 Elections	Disclosure of Contributors Funding Independent Expenditures in 2010
Crossroads GPS	$16 Million	None
American Future Fund	$7.4 Million	None
60 Plus Association	$6.7 Million	None
American Action Network	$5.6 Million	None
Americans for Tax Reform	$4.1 Million	None
Revere America	$2.5 Million	None

23. According to the Center for Responsive Politics, there were 20 section 501(c) groups that reported spending $100,000 or more for "electioneering communications" in the 2010 congressional elections, expenditures that in aggregate totaled more than $70 million. These groups, with minor exceptions, did not disclose their donors.[19] "Electioneering communications" are defined as expenditures for broadcast ads that refer to federal candidates and are aired in the period 60 days before a general election or 30 days before a primary election. 2 U.S.C. § 434(f)(3). The top section 501(c)(4) groups in this category included:

501(c)(4) Corporation	Amount Spent on Electioneering Communications in 2010 Elections	Disclosure of Contributors Funding Electioneering Communications in 2010
American Action Network	$20.4 Million	None
Center for Individual Freedom	$2.5 Million	None
American Future Fund	$2.2 Million	None
CSS Action Fund	$1.4 Million	None
Americans for Prosperity	$1.3 Million	None
Crossroads GPS	$1.1 Million	None

[19] *See* http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&chrt=V&disp=O&type=E.

24. The Center for Responsive Politics reports that, in aggregate, section 501(c) groups that disclosed none of their donors spent a total of more than $137 million on independent expenditures and electioneering communications to influence the 2010 elections.[20]

25. Campaign spending by section 501(c)(4) organizations is expected to greatly increase in the 2012 presidential and congressional races. As one published report states,

> [W]ith a full two years instead of a few months to adapt to the changed legal landscape, such outside groups may be poised to have even bigger impact, experts say. Additionally, Democratic-leaning groups were somewhat subdued in 2010, due at least partly to the public stance of Obama and top congressional Democrats in opposition to the *Citizens United* ruling and its impact on campaign spending. This may not be the case in 2012, as many observers predict that Democratic-leaning groups will gear up to compete more effectively.[21]

Since 2012 involves a presidential election as well as congressional races, and since it is expected that Democratic and Republican groups will use section 501(c)(4) organizations to make campaign expenditures in 2012, section 501(c)(4) organizations are expected to spend far greater amounts of secret contributions in the 2012 elections than they did in 2010, absent the IRS adopting new regulations on a timely basis to ensure that section 501(c)(4) organizations can engage in no more than an "insubstantial" amount of campaign activities, in compliance with the IRC and court decisions.

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[20] *See* http://www.opensecrets.org/outsidespending/summ.php?cycle=2010&chrt= D&disp =O&type=U.

[21] Doyle , *BNA Report, supra.*

Basis for New Rulemaking

26. Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. . . ." 26 U.S.C. § 501(c)(4) (emphasis added).

27. IRS regulations state that spending to intervene or participate in campaigns does not constitute promotion of social welfare. Section 1.501(c)(4)-l(a)(2)(ii) of the IRS regulations states, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii).

28. Contrary to the statutory language of the IRC, IRS regulations construe the requirement that a 501(c)(4) organization be "operated exclusively" for the promotion of social welfare to be met if the organization is "primarily engaged" in social welfare activities. This is a highly unusual interpretation of the word "exclusively." According to the IRS regulations, "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about social betterments and civic improvements." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (emphasis added).

29. In a revenue ruling, the IRS has stated, "Although the promotion of social welfare within the meaning of section 501(c)(4)-1 of the regulations does not include political campaign activities, the regulations do not impose a complete ban on such activities for section 501(c)(4) organizations. Thus, an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is engaged primarily in activities that promote social

welfare." Rev. Rul. 81–95, 1981–1 C.B. 332 (emphasis added). The "primarily engaged" standard established by the IRS regulation is not further defined by the IRS. Instead, a revenue ruling explains that "all facts and circumstances are taken into account in determining a § 501(c)(4) organization's primary activity." Rev. Rul. 68-45, 1968-1 C.B. 259.

30. In the absence of guidance from the IRS, practitioners have interpreted the "primarily engaged" standard to mean that a section 501(c)(4) organization can spend as much as 49 percent of its total expenditures in a taxable year on campaign activities and still be in compliance with the IRC. A report by the Congressional Research Service (CRS), for instance, states with regard to the "primarily engaged" standard, "some have suggested that primary simply means more than 50%. . . ."[22] The report notes that "others have called for a more stringent standard," but explains that even this "more stringent" standard would still permit substantial campaign expenditures of up to 40% of total program expenditures. *Id.*

31. Under the IRS "primarily engaged" standard, section 501(c)(4) groups have engaged in substantial campaign activity. This is contrary to the language of the IRC, which requires (c)(4) organizations to be "operated exclusively" for social welfare purposes and contrary to court rulings interpreting the IRC to mean that section 501(c)(4) organizations are not allowed to engage in a substantial amount of an activity that does not further their exempt purposes. As IRS regulations have made clear, intervention or participation in campaigns does not further the "social welfare" purposes of section 501(c)(4) organizations, and so the court rulings mean that section 501(c)(4) organizations cannot engage in more than an insubstantial amount of campaign activities.

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[22] Congressional Research Service, "501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Law," R40183 (January 29, 2009) at 2.

32. The courts have interpreted the section 501(c)(4) standard that requires an organization to be "operated exclusively" for social welfare purposes the same way they have interpreted a parallel provision of section 501(c)(3) that requires an organization that is tax exempt under that provision to be "organized and operated exclusively" for charitable, education or similar purposes. In *Better Business Bureau v. U.S.*, 326 U.S. 279, 283 (1945), the Supreme Court construed a requirement that a non-profit organization be "organized and operated exclusively" for educational purposes to mean that "the presence of a single non-educational purpose, *if substantial in nature*, will destroy the exemption regardless of the number or importance of truly educational purposes." (emphasis added).

33. Based on the *Better Business Bureau* decision, the courts have concluded that the word "exclusively" in the context of sections 501(c)(3) and 501(c)(4) is "a term of art" that does not mean "exclusive" as that term is normally understood and used. The courts instead have said that, in the context of section 501(c)(4) of the IRC, this term means "that the presence of a single substantial non-exempt purpose precludes tax-exempt status regardless of the number or importance of the exempt purposes." *Contracting Plumbers Coop. Restor. Corp. v. U.S.*, 488 F.2d 684, 686 (2d. Cir. 1973) (section 501(c)(4)); *American Ass'n of Christian Sch. Vol. Emp. v. U.S.*, 850 F.2d 1510, 1516 (11th Cir. 1988) ("the presence of a substantial non-exempt purpose precludes exemption under Section 501(c)(4)"); *Mutual Aid Association v. United States,* 759 F.2d 792, 796 (10th Cir. 1985) (same; section 501(c)(4)). The courts have similarly held, in the context of section 501(c)(3) organizations, that "operated exclusively" test means that "not more than an insubstantial part of an organization's activities are in furtherance of a non-exempt purpose." *Easter House v. United States,* 12 Ct. Cl. 476, 483 (1987) (group not organized exclusively for a tax exempt purpose under section 501(c)(3)); *New Dynamics Foundation v.*

United States; 70 Fed. Cl. 782, 799 (Fed. Cl. Ct. 2006) (same); *Nonprofits Ins. Alliance of California v. U.S.*, 32 Fed. Cl. 277, 282 (Fed. Cl. Ct. 1994) (same).

34. Under these court rulings, a section 501(c)(4) organization cannot engage in more than an insubstantial amount of campaign activity and remain in compliance with the statutory requirements for tax-exempt status under section 501(c)(4). Any "substantial, non-exempt purpose" (such as campaign activity) will defeat an organization's tax-exempt status under section 501(c)(4). *Christian Sch. Vol. Emp., supra* at 1516.

35. Given that a number of section 501(c)(4) organizations have spent millions of dollars on campaign activities, and that it is reasonable to anticipate more will do so in 2012, it is clear that the current regulations are not preventing section 501(c)(4) organizations from impermissibly engaging in "substantial" campaign activities.

36. Accordingly, this petition calls on the IRS to promptly issue new regulations that properly define the statutory requirement for section 501(c)(4) organizations to be "operated exclusively" for social welfare purposes to mean that campaign activity may not constitute more than an insubstantial amount of the activities of a group organized under section 501(c)(4). These regulations are necessary to bring IRS rules into compliance with the IRC and with court rulings interpreting the IRC. The regulations also would have the effect of greatly diminishing the practice of section 501(c)(4) groups being improperly used to spend large amounts of secret contributions in federal elections.

37. In order to provide a clear definition of what constitutes an insubstantial amount of campaign activity, the IRS regulations should include a bright-line standard that specifies a cap on the amount that a section 501(c)(4) organization can spend on campaign activities. *See, e.g.*, 26 U.S.C. §501(h) (providing specific dollar limits on spending for lobbying activities by

section 501(c)(3) organizations). In order to comply with court decisions that limit spending for non-exempt purposes to an insubstantial amount, the bright line standard in the regulations should limit campaign expenditures to no more than 5 or 10 percent of the expenditures in a taxable year by a section 501(c)(4) organization.

38. The new regulations should ensure that a section 501(c)(4) organization cannot do indirectly through transfers what it is not permitted to do directly through its own spending. In order to accomplish this, the new regulations should provide that a section 501(c)(4) organization may not obtain or maintain its tax-exempt status if the it transfers funds to a section 527 organization or to any other person with the intention or reasonable expectation that the recipient will use those funds to intervene or participate in campaigns if, during the same taxable year, the amount of funds so transferred, when added to the amount spent directly for campaign activity by the section 501(c)(4) organization, exceeds an insubstantial amount of the total spending for the taxable year by the section 501(c)(4) organization.

Conclusion

39. Political operatives have established, and are continuing to establish, section 501(c)(4) organizations for the explicit purpose of providing a vehicle for donors to secretly finance campaign expenditures by these organizations. The overriding purpose of a number of these 501(c)(4) organizations is to conduct full-scale campaign activities in the guise of conducting "social welfare" activities.

40. IRS regulations that are contrary to law are enabling section 501(c)(4) organizations to conduct impermissible amounts of campaign activities and in doing so to keep secret from the American people the sources of tens of millions of dollars being spent by the

section 501(c)(4) organizations to influence federal elections. In so doing, the IRS regulations are serving to deny citizens essential campaign finance information that the Supreme Court in *Citizens United* said "permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." 130 S.Ct. at 916.

41. The Supreme Court in *Citizens United* explained the importance to citizens of this disclosure, stating:

> With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.
>
> Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests."

Id. By an 8-1 vote, the Supreme Court in *Citizens United* held that disclosure of campaign activities by corporations, including tax-exempt corporations, is constitutional and serves important public purposes. Such disclosure, however, is being widely circumvented and evaded by section 501(c)(4) organizations as a result of improper IRS regulations and the failure of the IRS to properly interpret and enforce the IRC to prohibit section 501(c)(4) organizations from making substantial expenditures to influence political campaigns. This failure comes at great expense to the American people who have a right to know who is providing the money that is being spent to influence their votes.

42. The large scale spending of secret contributions in federal elections by section 501(c)(4) organizations is doing serious damage to the integrity and health of our democracy and political system. The IRS needs to act promptly to address this problem by issuing new regulations to stop section 501(c)(4) organizations from being improperly used to inject tens of

millions of dollars in secret contributions into federal elections. The new regulations must conform with the IRC and with court rulings interpreting the IRC. The regulations should provide a bright-line standard that implements the insubstantial expenditures standard set forth by the courts and specifies a limit on the amount of campaign activity that a section 501(c)(4) organization may undertake consistent with its tax-exempt status. The IRS needs to act expeditiously to ensure that the new regulations are in effect in time for the 2012 elections.

Respectfully submitted,

/s/ Fred Wertheimer

Fred Wertheimer
DEMOCRACY 21
SFC [redacted]

Donald J. Simon
SONOSKY CHAMBERS SACHSE
ENDRESON & PERRY, LLP
SFC [redacted]

Counsel for Democracy 21

J. Gerald Hebert
Paul S. Ryan
Tara Malloy
CAMPAIGN LEGAL CENTER
SFC [redacted]

Counsel for the Campaign Legal Center

July 27, 2011

September 28, 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for IRS investigation into whether certain organizations are ineligible for tax exempt status under section 501(c)(4).

Dear Commissioner Shulman and Director Lerner:

Democracy 21 and the Campaign Legal Center call on the Internal Revenue Service (IRS) to conduct an investigation into whether Crossroads GPS, Priorities USA, American Action Network and Americans Elect, all of which claim to be tax exempt groups organized under section 501(c)(4) of the Internal Revenue Code (IRC), 26 U.S.C. § 501(c)(4), are ineligible for the tax exempt status provided to section 501(c)(4) organizations.[1]

Under the IRC, IRS regulations and court decisions interpreting the IRC, section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare in order to obtain tax exempt status. Court decisions have established that in order to meet this requirement, section 501(c)(4) organizations cannot engage in more than an insubstantial amount of any non-social welfare activity, such as directly or indirectly participating or intervening in elections.

Thus, the claim made by some political operatives and their lawyers that section 501(c)(4) organizations can spend up to 49 percent of their total expenditures on campaign activity and maintain their tax exempt status has no legal basis in the IRC and is contrary to court decisions regarding eligibility for tax-exempt status under section 501(c)(4). An expenditure of 49 percent of a group's total spending on campaign activity is obviously far more than an insubstantial amount of non-social welfare activity.

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[1] Last October, we asked for an investigation of Crossroads GPS on similar grounds. By this letter we re-state and supplement our earlier request for an investigation of Crossroads GPS.

The IRS applies the "primarily engaged" test on the basis of the "facts and circumstances" of an organization's formation and operations. Here, we believe, the "facts and circumstances" show that each organization has engaged in far more than an insubstantial amount of participation or intervention in elections and that the overriding purpose of each organization is to influence elections.

Thus, under the IRC and court decisions interpreting the IRC, these organizations are not eligible to receive section 501(c)(4) tax exempt status.

In a 2008 Letter Ruling, the IRS stated that a group is not eligible for tax exempt status under section 501(c)(4) where the facts and circumstances show that the group's "first and primary emphasis" is to get candidates elected to public office.

This standard is different than, and in conflict with, the standard applied by the courts. But even under this standard, we believe the "facts and circumstances" relating to the formation and activities of the four organizations discussed in this letter show that each group was organized and is operated for the overriding purpose of participating or intervening in elections.

Therefore, none of the four groups meets the standard for tax exempt status under section 501(c)(4) because they are not primarily engaged in "the promotion of social welfare."

By claiming tax-exempt status under section 501(c)(4), these groups allow their donors to evade the public disclosure requirements that would apply if the organizations were registered under section 527 as "political organizations." In fact, it appears that avoiding disclosure of their donors is the basic reason that these groups organized under section 501(c)(4).

Absent timely and appropriate action by the IRS, widespread abuses of the tax code by groups organized under section 501(c)(4) are likely to become commonplace in the 2012 presidential and congressional races. These abuses will come at the expense of the integrity and credibility of the tax laws and of the right of the American people to know the identity of the donors providing money to influence elections.

Accordingly, we request that the IRS promptly investigate the groups discussed in this letter and take appropriate enforcement action and impose appropriate penalties for any violations of section 501(c)(4) that the agency may find.

I. Crossroads GPS

On October 5, 2010, Democracy 21 and the Campaign Legal Center filed a letter with the IRS requesting an investigation into whether Crossroads GPS was operating in violation of the requirements for obtaining tax-exempt status under section 501(c)(4). Here, we supplement the information set forth in that earlier letter and continue our request for an investigation.

Crossroads GPS was organized in June, 2010 under section 501(c)(4) of the IRC "as an organization for the promotion of social welfare." ("GPS" stands for "Grassroots Policy Strategies.")

Crossroads GPS is affiliated with American Crossroads, a non-profit political organization registered under section 527 of the IRC. American Crossroads is registered with the Federal Election Commission (FEC) as a political committee under the Federal Election Campaign Act. As such, the major purpose of American Crossroads is to raise and spend money to influence federal campaigns. As a registered political committee, American Crossroads must report all of its contributions and expenditures to the FEC under federal campaign finance laws. As a section 501(c)(4) organization, Crossroads GPS does not publicly disclose its donors.

An article in *Politico*, dated April 29, 2011, notes that Crossroads GPS was "founded under the guidance of GOP strategists [Karl] Rove and Ed Gillespie. . . ." and that it "accepts unlimited contributions from donors whose identities can be kept secret."[2] The article notes:

> In response to [the *Citizens United*] ruling, Rove and Gillespie helped form American Crossroads, which did disclose donors, and Crossroads GPS, which didn't. During last year's midterms, they raised a combined $70 million, of which the donors of about $43 million are still secret. The vast majority of that money was spent attacking Democratic candidates for the House and the Senate.

Id. According to another report:

> Crossroads GPS took advantage of elements of the tax code to collect unlimited donations from individuals and corporations to spend tens of millions of dollars against Democratic candidates in the 2010 election.[3]

Another report noted that Crossroads GPS was formed for the very purpose of avoiding donor disclosure:

> Meanwhile, section 501(c)(4) of the code, under which Crossroads GPS is incorporated, allows groups to shield their donors' identities, but requires them to spend a majority of their cash on apolitical purposes – an obligation Democratic critics say Crossroads GPS and other right-leaning groups flaunted during the campaign, when they bombarded Democratic candidates with bitingly critical ads.
>
> "Disclosure was very important to us, which is why the 527 was created," Forti said. "But some donors didn't want to be disclosed and, therefore, a (c)(4) was created," Forti explained, referring to Crossroads GPS.

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[2] J. Cummings, "New Dem money group takes on GOP," *Politico* (April 29, 2011) (emphasis added).

[3] M. O'Brien, "Obama alumni launch new outside group to boost reelection," *The Hill* (April 29, 2011).

> Forti's frank explanation differs from that previously offered by the Crossroads team, which had asserted that they always intended to create a 501(c)(4) because it was better suited to facilitate issue-based advocacy.[4]

A report in *The Wall Street Journal* discussed the plans of Crossroads GPS (and American Crossroads) to play a significant role in the 2012 elections:

> Two conservative groups founded last year with the help of Republicans Karl Rove and Ed Gillespie have set a goal of raising $120 million in the effort to defeat President Barack Obama, win a GOP majority in the Senate and protect the party's grip on the House in the 2012 election. . . .
>
> If the conservative groups meet the target disclosed to *The Wall Street Journal*, they would establish their organizations – American Crossroads and Crossroads GPS – as possibly the largest force in the 2012 campaign, aside from the presidential candidates themselves and the political parties.[5]

According to another report, " '2010 was only Crossroads' opening act,' Steven Law, the group's president, told the Center for Public Integrity. These two groups hope to rake in $120 million for 2012 compared to $71 million last year."[6]

In February, 2011, Crossroads GPS launched a radio ad campaign that was specifically designed to counter ads run by the Democratic Congressional Campaign Committee. According to one report:

> Crossroads GPS, a 501(c)(4) group associated with GOP heavyweights Karl Rove and Ed Gillespie, is spending $90,000 on radio ads in 19 districts where the Democratic Congressional Campaign Committee (DCCC) launched ads this week.
>
> The group launched the ads to hit back against the DCCC ads, which accused the Republicans, many of whom are freshmen from swing districts, of wanting to slash spending for education and research and investment.[7]

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[4] K. Vogel, "SEIU, American Crossroads look back at 2010 spending," *Politico* (Dec. 13, 2010) (emphasis added).

[5] B. Mullins, "2012 Election Spending Race Heats Up," *The Wall Street Journal* (March 1, 2011) (emphasis added).

[6] P. Stone, "Democrats desperately seeking their own Rove," *Center for Public Integrity –iWatch News* (March 14, 2011).

[7] M. O'Brien, "Rove-backed group spends to bolster 19 targeted Republicans," *The Hill* (Feb. 3, 2011).

Crossroads GPS also started to run ads attacking President Obama in key electoral battleground states:

> In an early sign of its financial strength, Crossroads GPS announced Friday that it was launching a two-month, $20 million television ad blitz attacking Obama's record on jobs, the deficit and the overall economy. The first ads will start June 27 and run in key battleground states such as Colorado, Florida, Missouri, Nevada and Virginia.[8]

A subsequent report stated that Crossroads GPS "is about midway through a two-month advertising binge attacking President Barack Obama and congressional Democrats that is expected to cost more than $20 million, alone."[9]

President Obama announced his candidacy for re-election in the 2012 presidential race on April 4, 2011, well before the Crossroads GPS ads were run.

One report notes that Crossroads GPS is already spending money in Missouri as part of an effort to defeat Senator Claire McCaskill, who is up for reelection in 2012:

> With nearly a year and a half to go before Election Day 2012, conservative-leaning national advocacy groups already have spent more than $500,000 on advertising in Missouri in hopes of unseating incumbent Democratic Senator Claire McCaskill. . . .
>
> The conservative groups, American Crossroads political action committee and its nonprofit affiliate, Crossroads GPS, already have hired southwest Missouri political operative Paul Mouton to help research and manage their efforts against McCaskill. Missouri is the only state with such an on-the-ground presence.
>
> "As long as the race remains competitive, we will remain highly involved," said Jonathan Collegio, communications director for both groups. "Having someone on the ground in Missouri is a testament to how important we view this race."
>
> When all is said and done, American Crossroads and Crossroads GPS expect to spend far and away more in Missouri than they did in 2010, when they spent around $2.4 million opposing Democrat Robin Carnahan during her unsuccessful campaign for the U.S. Senate.[10]

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[8] P. Stone, "Obama groups raise $4-5 million in first two months," *Center for Public Integrity-iWatch News* (June 24, 2011).

[9] K. Vogel, "Both sides now in dash for anonymous cash," *Politico* (Aug. 9, 2011).

[10] J. Hancock, "Both sides spending big to win Missouri Senate seat," *St. Louis Post-Dispatch* (Aug. 15, 2011).

Jonathan Collegio, the spokesman for Crossroads GPS and American Crossroads, said "Crossroads will continue to spend heavily in many competitive races through next November."[11] According to this story, "'The Crossroads groups have stated that we'll be involved heavily in 2012, both in congressional races and the presidential side as well,' Collegio said." *Id.* (emphasis added).

Karl Rove, one of the founders of the Crossroads groups, was recently quoted at an appearance in Ohio as discussing their plans for campaign spending in Ohio in 2012:

> Speaking with reporters before addressing an audience last night at Cedarville University, Rove said American Crossroads and its sister group, Crossroads GPS, view Ohio as the battleground where President Barack Obama must be stopped and where it is crucial to defeat incumbent Democratic Sen. Sherrod Brown to help Republicans take control of the Senate.
>
> "Our objective is to be a strong presence in Ohio on the presidential contest, the Senate contest and wherever we might be needed in the House," Rove said. "We raised $72 million last time (in 2010); our goal is to raise $250 million this time."[12]

Another report indicates that the Crossroads groups may be shifting to emphasize spending through the section 501(c)(4) arm, Crossroads GPS. According to this report, "Crossroads Spokesman Jonathan Collegio said the group's nonprofit arm, registered as a 501(c)(4) social-welfare organization by the IRS would be 'more active' than Crossroad's main 527 group."[13]

This may reflect the fact that Crossroads has been more successful in its fundraising of undisclosed contributions through the section 501(c)(4) arm. According to one report, the section 527 arm "has seen its fundraising lag behind its non-disclosing sister group. In the first six months of 2011, . . .it raised only $3.9 million."[14]

The same report described the evolution of the Crossroads groups as moving toward reliance on the section 501(c)(4) arm as a way to shield donors from disclosure:

> [B]ack when Crossroads started out last year, it, too, shunned secret donations and extolled disclosure. Its chairman, Mike Duncan, described himself in May 2010

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[11] D. Eggen, "Political groups, now free of limits, spending heavily ahead of 2012," *The Washington Post* (May 21, 2011).

[12] J. Hallett, "Rove-affiliated PACs to spend big in Ohio," *The Columbus Dispatch* (Sept. 21, 2011).

[13] J. Gillum, "Priorities USA Raises $5 Million to Counter Attack Ads From Karl Rove-Backed Crossroads GPS," *Associated Press* (July 31, 2011).

[14] K. Vogel, "Both sides now dash for anonymous cash," *Politico* (Aug. 9, 2011).

> as "a proponent of lots of money in politics and full disclosure in politics," and said Crossroads intended to "be ahead of the curve on" transparency.
>
> Less than one month later, with American Crossroads struggling to raise money from donors leery of having their names disclosed, operatives spun off Crossroads GPS, and its fundraising team, led by Rove, began emphasizing to prospective donors the ability to give anonymous contributions.
>
> Fundraising took off, and together, the groups ended up raising more than $70 in 2010, with the majority of it -- $43 million – going to Crossroads GPS.

Id.

On September 9, 2011, a published report stated that American Crossroads and Crossroads GPS have set a new fundraising goal that is at least twice the $120 million announced earlier this year.[15] According to the published report:

> We see a pathway to at least doubling our earlier projected goal," Steven Law, the president of Crossroads, told *iWatch News*. "Everyone is going to stretch as far as they can here because we all feel this is the most important election we have ever been involved with."
>
> To help achieve its new goal, the two groups have been talking to some prominent GOP figures, notably Mississippi Gov. Haley Barbour. The former Republican National Committee chairman has agreed to lend his Midas like rolodex to the Crossroads efforts.
>
> "Gov. Barbour's involvement with us gives us the capacity to focus on the presidential race, the Senate and the House at the same time," Law said.

Id. (emphasis added).

II. Priorities USA.

Priorities USA announced its formation as a social welfare organization under section 501(c)(4) of the tax code by a memorandum distributed "to interested parties" on April 29, 2011. The memorandum makes clear that Priorities USA (and its companion section 527 political organization, Priorities USA Action), are intended to work for the reelection of President Obama by mimicking the structure and function of Crossroads GPS (and American Crossroads). According to the Priorities USA memorandum:

> Our groups were formed to answer the hundreds of millions of dollars Karl Rove and the Koch brothers have dedicated to spending in the 2012 election. In 2010, Republicans spent millions distorting the debate on important issues and running

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[15] P. Stone, "Karl Rove-linked Crossroads has more than doubled its earlier fundraising goal of $120 million," *Center for Public Integrity- iWatch News* (Sept. 8, 2011).

> vicious, dishonest attack ads. This is an effort to level the playing field and not allow right-wing activists to hijack the political system.[16]

One published report described Priorities USA as follows:

> A group of Democrats aligned with the Obama administration today announced that they are starting an outside spending group similar to the conservative groups that President Obama has decried.
>
> The new group has two arms: Priorities USA and Priorities USA Action. While one of the Priorities groups will disclose its donors, the other will not. The model is similar to that used by American Crossroads and Crossroads GPS, the conservative outside groups that raised more than $70 million in the midterm election cycle to spend on behalf of candidates with a "conservative free-market legislative agenda."[17]

Another report noted:

> A group of leading Democrats, including some with close connections to the White House, have officially formed what are expected to be the major outside groups to combat Republicans – and support President Obama – in the 2012 elections with help from huge donations from big money donors and corporations who will have the legal ability to stay in the shadows that Mr. Obama has previously so vocally criticized.
>
> The groups are to be called Priorities USA and Priorities USA Action, and, as such, are modeled after the Republican groups American Crossroads and Crossroads GPS that were started with help from the strategist Karl Rove and were credited with helping greatly in the party's takeover of the House of Representatives this year – and, it happens, with facilitating a waterfall of anonymous donations from moneyed interests in the November elections.[18]

As another report noted:

> Bill Burton and Sean Sweeney, two recently departed officials from the Obama White House, are forming Priorities USA, an organization that will seek to raise as much as $100 million in the 2012 cycle. The group will consist of two branches: a 501(c)(4) nonprofit and a 527 political action committee. The

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16 B. Smith, "In memo, Priorities USA defends secret-money shift," *Politico* (April 29, 2011).

17 B. Montopoli, "Democrats launch outside spending group; conservatives charge hypocrisy," *CBS News* (April 29, 2011).

18 J. Rutenberg, "Democrats Form Fund-Raising Groups," *New York Times* (April 29, 2011).

> structure will allow the organization to keep some of its donors secret, a practice that Democrats previously deplored when it was used by Republicans.[19]

The money raised by Priorities USA and its sister organization, Priorities USA Action, is described as intended to assist President Obama's reelection:

> Two Democratic groups seeking big bucks to boost President Obama's re-election have tapped several high-powered fundraisers to help rope in $4 million to $5 million in the first two months. They've also snagged pledges for two to three times those sums towards their joint goal of raising at least $100 million.
>
> The two groups, Priorities USA Action and Priorities USA, are benefiting from the help of leading Democratic fundraisers and donors. . . .
>
> Priorities USA Action is a 527 Super PAC which must disclose its donors and file quarterly reports, but Priorities USA, is a 501(c)(4) group that doesn't have to reveal its donors or file regular reports. Both groups can accept unlimited checks and under law must operate separately from the Obama campaign.[20]

In discussing the spending plans of the Priorities USA organizations, Burton is quoted as emphasizing the impact on the election that the groups seek to have:

> In response to "Rove's negative ads on the economy," Burton said, "we choose to invest in only swing states and, within those states, the most efficient television markets. Dollar for dollar, our spending is having a much greater impact on the voters who will decide the 2012 race."[21]

Another article about Priorities USA highlighted the fact that the group is expressly intended to counter the campaign activities of the Crossroads groups:

> To fight his rivals, Burton has chosen to emulate them. His groups may take unlimited amounts, often from anonymous donors and will solicit money from political action committees, corporations and lobbyists that Obama's official election committee disavowed in 2008 and still shuns in the name of good government. . . .

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[19] A. Kornblut, "Democrats gear up to match GOP fundraising effort," *The Washington Post* (April 29, 2011).

[20] P. Stone, "Obama groups raise $4-5 million in first two months," *Center for Public Integrity-iWatch News* (June 24, 2011) (emphasis added).

[21] J. Gillum, "Priorities USA Raises $5 Million to Counter Attack Ads From Karl Rove-Backed Crossroads GPS," *Associated Press* (July 31, 2011).

> "The pool of money available to Karl Rove and the Koch brothers is bottomless and limitless," said Paul Begala, a Democratic strategist who is advising Burton. [Pollster Geoff] Garin said Priorities USA "represents a way to level the playing field against Karl Rove and the Koch brothers". . . .
>
> Priorities USA and Priorities USA Action will focus on pointing to the weaknesses of Obama's opponents, Burton said. The first advertisement criticized former Massachusetts Governor Mitt Romney, the Republican frontrunner in early polling, for supporting a Republican plan to convert Medicare into a system of vouchers to buy health insurance.[22]

The same article makes clear that Priorities USA is part of a larger, coordinated campaign operation to support Democrats in the 2012 election:

> The Priorities USA organizations, which will focus on the presidential race, will coordinate with three other newly formed Democratic groups: House Majority PAC will focus on House races, Majority PAC will concentrate on the Senate, and American Bridge 21st Century, will conduct opposition research on Republican candidates that other groups can use in advertising or direct mail literature.

Id. Press reports also indicate that the use of section 501(c)(4) organizations for spending is because of the anonymity offered to donors:

> The three main anonymously funded Democratic outside groups – Priorities USA, American Bridge 21st Century Foundation and Patriot Majority – collected at least $3.7 million in untraceable contributions, and probably much more, in the first half of the year, according to voluntary disclosures and anecdotal information on ad buys.
>
> While that's not as much as the $5.8 million in fundraising reported in that same period by the sister organizations of those groups, which do disclose donors – Priorities USA Action, American Bridge 21st Century and Majority PAC – the feeling among some in Democratic fundraising circles is that the balance will likely tilt towards undisclosed donations as the groups seek to expand their donor bases. . . .
>
> Many such donors "feel more comfortable donating to groups that don't disclose," [a strategist] said, because some are publicity adverse and also because "as soon as their name appears in the paper as having contributed, their phone number goes on the speed dial of every congressman, committee and party that wants to raise money."[23]

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[22] A Fitzgerald, "Rove Tops President Obama as Drawing Card in Democrat Burton's Fundraising," *Bloomberg News* (June 29, 2011).

[23] K. Vogel, "Both sides now in dash for anonymous cash," *Politico* (Aug. 9, 2011).

III. American Action Network.

American Action Network (AAN) was founded in 2010 by Fred Malek, a leading national Republican fundraiser, and is chaired by former Republican Senator Norm Coleman. According to published reports, AAN shares offices with Crossroads GPS and other related groups.[24] AAN made numerous independent expenditures in the 2010 elections. For instance, according to one report:

> [A] so-called Section 501(c)(4) group called American Action Network filed an independent expenditure report with the FEC Aug. 5 [2010] indicating that it is spending nearly $435,000 for cable television and radio ads in the New Hampshire campaign for an open U.S. Senate seat. . . .
>
> The new ad campaign attacks the Democratic Senate candidate, Rep. Paul Hodes (D-N.H.), and supports Republican Senate candidate Kelly Ayotte, New Hampshire's former attorney general.
>
> The American Action Network has indicated on its website that it also sponsored ad campaigns focused on Senate races in Washington state and Florida; however, it filed no reports with the FEC on its spending in those states. The group indicated in press releases that it considered its efforts in these races to be "issue advocacy" not subject to any FEC reporting rules.
>
> The ads that the American Action Network sponsored in Washington included an image of tennis shoes purportedly worn by Sen. Patty Murray (D-Wash.) stepping on the backs of business owners, taxpayers and children. The ad ends by telling Murray that "it's time you got off our backs."[25]

Another report states:

> While the group was intended to serve largely as a policy shop to rival the liberal Center for American Progress, it has mainly just been cutting ads attacking Democrats (including Feingold) who are currently engaged in tight races.
>
> In addition to infusing hundreds of thousands of dollars in outside cash into Feingold's Wisconsin race, Coleman's group has also spent $750,000 targeting Sen. Patty Murray (D-Wash.) in her tight contest against Republican Dino Rossi and $450,000 attacking Senate candidate Rep. Paul Hodes (D) in New Hampshire. And because it is incorporated as a 501(c)(4) "social welfare" nonprofit, the D.C.-

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[24] H. Bailey, "A guide to the shadow GOP": the groups that may define the 2010 and 2012 elections," *Yahoo News-The Uphot* (August 5, 2010).

[25] K. Doyle, "Campaign Spending Reports Filed with FEC," *BNA Money in Politics Report* (Aug. 12, 2010).

> based AAN does not publicly disclose its donors and has not listed any contributors on the independent expenditure forms it is obliged to file with the FEC.[26]

In addition to spending on Senate races, in 2010, American Action Network also spent on "really tight" House races:

> The [Wall Street] Journal reported that American Action Network will air $1.7 million in ads boosting the cash-strapped bids of Republicans Ryan Frazier, who is taking on Democratic Rep. Ed Perlmutter (D-Colo), and Jackie Walorski, who is challenging Democratic Rep. Joe Donnelly (D-Ind.). . . .
>
> "The American Action Network has carefully calibrated really tight house races where there are candidates who strongly support our views of limited government and reduced deficits or on the other side candidates who really oppose our views," said the group's chairman, veteran GOP fundraiser Fred Malek.[27]

American Action Network shares space with American Crossroads and Crossroads GPS, and according to press reports, the groups coordinate their political activities:

> Sometimes that coordination is as easy as walking across the hall. Sharing office space with American Crossroads is the American Action Network (AAN), a group led by former Minnesota Senator Norm Coleman, a Republican, which may spend up to $25 million this year. Originally billed as a conservative think tank, the AAN has increasingly turned to raw politics, having spent more than $1 million on ad buys targeting Democrats such as Senators Patty Murray in Washington and Russ Feingold in Wisconsin. ("We definitely can't afford him," an AAN ad says of Feingold and his alleged free-spending record).[28]

The coordinated focus that American Action Network had on influencing the 2010 elections is illustrated by this quote from Rob Collins, the president of the organization, shortly before the 2010 election:

> Many of the conservative groups say they have been trading information through weekly strategy sessions and regular conference calls. They have divided up races to avoid duplication, the groups say, and to ensure that their money is spread around to put Democrats on the defensive in as many districts and states as possible – and more important, lock in whatever grains they have delivered for the Republicans so far.

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[26] J. Zwick, "Coleman's American Action Network Infuses Cash into Close Senate Races," *Washington Independent* (Oct. 4, 2010).

[27] K. Vogel, "Rove: Obama's attacks are helping," *Politico* (Oct. 13, 2010).

[28] M. Crowley, "The New GOP Monday Stampede," *Time* (Sept. 16, 2010).

> "We carpet-bombed for two months in 82 races, now it's sniper time," said Rob Collins, president of American Action Network, which is one of the leading Republican groups this campaign season and whose chief executive is Norm Coleman, the former Senator from Minnesota. "You're looking at the battle field and saying, 'Where can we marginally push – where can we close a few places out?'"[29]

According to one report published after the 2010 election, American Action Network "ended up with Republican victories in about 56 percent of the contests it invested in."[30]

As one report notes, "Republican political operatives bestow immense credit for their party's competitiveness in 2010 on organizations such as Crossroads GPS and the American Action Network, both 501(c)(4) organizations. These groups can accept large donations that they do not have to disclose. . . ."[31]

American Action Network, like Crossroads GPS, also spent to influence a special congressional election in May, 2011. According to a published report, American Action Network spent $94,694 on an election in the New York 26th congressional district.[32]

In other spending in 2011, American Action Network has undertaken a $1 million direct mail and newspaper campaign that "charges Democrats with attempting to 'balance the budget on the backs of seniors'. . ."[33] The mail campaign "will reach 22 congressional districts in 14 states, all of them represented in Congress by Republicans. . . . Most of the 22 are freshmen first elected in November 2010." *Id.* According to another news report, the group subsequently "added 10 vulnerable freshmen House Republicans to its advocacy campaign defending Republicans on Medicare."[34] According to this report, the mailing sent to one Florida congressional district reads, "Florida seniors can count on Congressman Allen West to stand up against the Obama Medicare plan." *Id.*

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[29] J. Rutenberg, "Pro-Republican Groups Prepare Big Push at End of Races," *New York Times* (Oct. 25, 2010).

[30] M. Luo and G. Palmer, "Who Got the Most Bang for their Bucks?" *New York Times* (Nov. 4, 2010).

[31] A. Becker and D. Drucker, "Members Weigh In on Draft Disclosure Order," *Roll Call* (May 24, 2011).

[32] P. Overby, "Outside Groups Spend Big in N.Y. Special Election," *NPR* (May 25, 2011).

[33] A. Burns, "Ads to back GOPers on Medicare," *Politico* (July 27, 2011).

[34] C. Joseph, "Conservative group defending 10 more House Republicans on Medicare," *The Hill* (Aug. 3, 2011).

IV. Americans Elect

Americans Elect was initially organized as a "political organization" under section 527 of the tax code, but in October, 2010 changed its designation to a "social welfare" organization under section 501(c)(4) of the tax code.[35] It is seeking to gain a place on the 2012 ballot in all 50 states for a presidential candidate it intends to nominate.

According to one article, "Its mission is to upend the traditional party primary process by selecting an alternate presidential ticket through an online, open nominating convention." *Id.* This report also notes that the manner in which the group is pursuing its aims:

> . . . is highly unorthodox. Although it is attempting to qualify as a new party in California and other states, the group's legal designation is that of a nonpolitical, tax exempt social welfare organization.
>
> Under that designation, Americans Elect has been able to keep private its financiers, raising questions about what forces are driving the massive undertaking. The group has labored largely under the radar for the last 16 months, raising $20 million while successfully gaining ballot access in Arizona, Alaska, Kansas and Nevada. It is seeking certification in Michigan, Hawaii, Missouri and Florida besides California, with an additional 18 states in the pipeline before the end of the year.

Id. According to the same article, Americans Elect has raised $20 million, with no contribution exceeding $5 million. The report noted, "Elliot Ackerman said Americans Elect does not take any money from special interests or political action committees, adding that it is up to donors to determine whether they want to be identified." *Id.*

The same article notes that the organization plans to nominate a candidate for president:

> Americans Elect now plans to hold an online convention in June 2012 that will be open to any registered voters who sign up. They will select a presidential ticket from a slate of candidates, all of whom will have been required to pick a running mate from a different political party.

Id. Another article described Americans Elect as follows:

> Funded with at least $20 million, the majority from large, mostly unnamed donors, Americans Elect is vying to become the most serious third-party insurgency since industrialist H. Ross Perot nearly upended the 1992 presidential campaign.[36]

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[35] M. Gold, "Americans Elect seeks to upend primary system," *Los Angeles Times* (July 28, 2011).

[36] P. Jonsson, "Americans Elect launches centrist third-party bid amid Washington dysfunction," *Christian Science Monitor* (July 29, 2011).

In an opinion piece published by *Politico,* Elliot Ackerman, the group's chief operating officer, described the group's purposes as follows:

> We have set up a non-partisan nominating process for the presidency. We plan to hold a secure online convention in June 2012, where any registered voter can participate as a delegate. At this national convention, party functions will become delegate functions. The delegates will draft candidates; develop a platform of questions the candidates must answer, and discuss and debate the convention rules.
>
> We are on our way, with our ballot access initiative, to ensure that our presidential ticket can be on the ballot in all 50 states... .
>
> The Americans Elect nominating convention will be the first time that American voters have gained direct access to the ballot to nominate and elect a presidential candidate.[37]

According to *The Arizona Daily Star* on July 30, 2011, "Americans Elect was recognized last week as a new political party by the state of Arizona and is eligible to have its presidential nominee on the ballot in the 2012 elections." [38]

According to *The Detroit Free Press* on September 9, 2011, "Bureau of Elections spokesman Fred Woodhams said American Elect submitted nearly 68,000 petition signatures in May, more than double the 32,261 needed to qualify for the Michigan ballot as a minor party."[39]

According to *The Oregonian* on September 19, 2011, Americans Elect "has already qualified for the ballot in six states and appears to have turned in enough signatures -- more than 1.6 million -- to make the 2012 ballot in California."[40]

As these examples show, American Elect is not only devoted to intervening in the 2012 elections, it is actually qualifying itself as a political party for purposes of state ballot access laws. A political party is not eligible to qualify as a section 501(c)(4) tax exempt organization.

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37 E. Ackerman, "An online political convention," *Politico* (Aug. 10, 2011).

38 M. Casey, "Americans Elect party to appear on '12 ballot," *Arizona Daily Star* (July 30, 2011).

38 D. Bell, "State to vote on certifying new group with 2012 presidential hopes," *The Detroit Free Press* (Sept. 9, 2011) (emphasis added).

40 J Mapes, "New effort to establish centrist presidential campaign seeks to qualify for Oregon ballot," *The Oregonian* (September 19, 2011)

V. The IRS Should Investigate Whether Each Organization Is Ineligible for Section 501(c)(4) Tax Status Because Each Is Engaged In More Than An Insubstantial Amount of Campaign Activity.

A. General rule.

Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare...." 26 U.S.C. § 501(c)(4) (emphasis added).

According to IRS regulations, "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (emphasis added).

Political activity – spending to influence campaigns – does not constitute promoting social welfare. Section 1.501(c)(4)-l(a)(2)(ii) of the regulations provides that political campaign activities do not promote social welfare as defined in section 501(c)(4). The regulation states, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii) (emphasis added).

Although the promotion of social welfare does not include political campaign activities, IRS regulations do not impose a complete ban on such activities for section 501(c)(4) organizations. Thus, "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare." Rev. Rul. 81–95, 1981–1 C.B. 332 (emphasis added).

B. Section 501(c)(4), as construed by the courts, does not permit a "social welfare" organization to engage in more than an insubstantial amount of campaign activity.

Section 501(c)(4), as construed by the courts, does not permit a group organized under that section to engage in more than an insubstantial amount of campaign activity and still qualify for tax exempt status.

According to court decisions, the statutory requirement for a section 501(c)(4) organization to be "operated exclusively" for "the promotion of social welfare" means that the organization cannot engage in more than an insubstantial amount of activity that is not in furtherance of its social welfare function. This means that section 501(c)(4) organizations cannot engage in more than an insubstantial amount of campaign activities.

The "insubstantial" standard established by the courts certainly does not allow a section 501(c)(4) organization to spend up to 49 percent of its total expenditures in a tax year to participate or intervene in elections and still maintain its tax-exempt status, as some practitioners believe.

Under the statutory language of section 501(c)(4), a social welfare organization must be "operated exclusively" for social welfare purposes. The courts have interpreted this "operated exclusively" standard the same way they have interpreted a parallel provision of section 501(c)(3) that requires an organization that is tax exempt under that provision to be "organized and operated exclusively" for charitable, education or similar purposes.

In *Better Business Bureau v. U.S.*, 326 U.S. 279, 283 (1945), the Supreme Court construed a requirement that a non-profit organization be "organized and operated exclusively" for educational purposes to mean that "the presence of a single non-educational purpose, *if substantial in nature*, will destroy the exemption regardless of the number or importance of truly educational purposes." (emphasis added).

Based on the *Better Business Bureau* decision, the courts have concluded that the word "exclusively" in the context of sections 501(c)(3) and 501(c)(4) is "a term of art" that does not mean "exclusive" as that term is normally understood and used.

The courts instead have said that, in the context of section 501(c)(4) of the IRC, this term means "that the presence of a single substantial non-exempt purpose precludes tax-exempt status regardless of the number or importance of the exempt purposes." *Contracting Plumbers Coop. Restor. Corp. v. U.S.*, 488 F.2d 684, 686 (2d. Cir. 1973) (section 501(c)(4)); *American Ass'n of Christian Sch. Vol. Emp. v. U.S.*, 850 F.2d 1510, 1516 (11th Cir. 1988) ("the presence of a substantial non-exempt purpose precludes exemption under Section 501(c)(4)"); *Mutual Aid Association v. United States,* 759 F.2d 792, 796 (10th Cir. 1985) (same; section 501(c)(4)).

The courts have similarly held, in the context of section 501(c)(3) organizations, that the "operated exclusively" test means that "not more than an insubstantial part of an organization's activities are in furtherance of a non-exempt purpose." *Easter House v. United States,* 12 Ct. Cl. 476, 483 (1987) (group not organized exclusively for a tax exempt purpose under section 501(c)(3)); *New Dynamics Foundation v. United States;* 70 Fed. Cl. 782, 799 (Fed. Cl. Ct. 2006) (same); *Nonprofits Ins. Alliance of California v. U.S.*, 32 Fed. Cl. 277, 282 (Fed. Cl. Ct. 1994) (same).

Under these court rulings, a section 501(c)(4) organization cannot engage in more than an insubstantial amount of campaign activity and remain in compliance with the statutory requirements for tax-exempt status under section 501(c)(4). Any "substantial, non-exempt purpose" (such as campaign activity) will defeat an organization's tax-exempt status under section 501(c)(4). *Christian Sch. Vol. Emp., supra* at 1516.

There is nothing, furthermore, in these rulings, in IRS regulations or in other IRS actions to support the proposition that spending 49 percent of total expenditures on campaign activities constitutes an insubstantial amount of non-exempt activity.[41]

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[40] On July 27, 2011, Democracy 21 and the Campaign Legal Center filed a petition for rulemaking with the IRS which seeks revisions in the regulations implementing section 501(c)(4). In particular, the petition contends that the "primarily engaged" standard in section 1.501(c)(4)-1(a)(2)(i) does not correctly

C. Political campaign activity not limited to "express advocacy" communications under the Internal Revenue Code.

IRS regulations make clear that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" is not limited to activities or communications which contain express advocacy or the functional equivalent of express advocacy. Thus, so-called "issue ads" that promote, attack, support or oppose a candidate fall with the meaning of direct or indirect participation or intervention in political campaigns.

Section 527(e)(2) of the Internal Revenue Code describes what constitutes political campaign (*i.e.*, "exempt function") activity for purposes of the tax code:

> The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed.

26 U.S.C. § 527(e)(2).

Revenue Ruling 2004–6, 2004–4 I.R.B. 328, provides a detailed explanation of what constitutes "exempt function" political campaign activity—illuminating the line between political activities and activities to promote social welfare. The IRS Revenue Ruling states:

> Section 1.527-2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Id. (emphasis added)

Revenue Ruling 2004-6 explains that, because section 501(c)(4) public policy advocacy "may involve discussion of the positions of public officials who are candidates for public office, a public policy advocacy communication may constitute an exempt function (a political activity) within the meaning of § 527(e)(2)." Rev. Rul. 2004-6 at 1. The Ruling states:

> All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly

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implement the statutory "operated exclusively" standard in section 501(c)(4) of the IRC, as interpreted by the courts.

> advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

Id. (emphasis added)

Thus, even if an ad discussing an issue does not express advocacy, it may nonetheless be treated as "exempt function" electioneering activity under IRS regulations, depending on the "facts and circumstances." Therefore, even where an ad discusses an "issue," and where the ad does not contain express advocacy or the functional equivalent of express advocacy, it can still be treated as "direct or indirect participation or intervention in political campaigns" under IRS standards for purposes of determining whether a 501(c)(4) organization is "primarily engaged" in the promotion of social welfare.

Rev. Rul. 2004-6 lists six factors that "tend to show" that an advertisement is "exempt function" political campaign activity, and five competing factors that "tend to show" that an advertisement is not. Rev. Rul. 2004-6 at 3-4. These factors are not in themselves dispositive. In the end, the regulations require a determination to be made based on "the facts and circumstances" of each advertisement.

The "factors that tend to show that an advocacy communication on a public policy issue is for an exempt function (political activity) under § 527(e)(2)" include the following:

a) The communication identifies a candidate for public office;

b) The timing of the communication coincides with an electoral campaign;

c) The communication targets voters in a particular election;

d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Rev. Rul. 2004-6 at 3.

The "factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2)" include the following:

a) The absence of any one or more of the factors listed in a) through f) above;

b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Id.

Under this "facts and circumstances" test, each of the organizations discussed in the letter is engaged more than an insubstantial amount of campaign activity and, in fact, is primarily engaged in activities for the purpose of participating and intervening in political campaigns.

In the case of Crossroads GPS and American Action Network, both organizations were created just months before the 2010 congressional elections, and were conceived, organized and staffed by leading political party strategists and operatives. Both organizations defined their activities as spending money to influence the 2010 House and Senate races, and both were closely affiliated with other organizations similarly spending large sums to influence the 2010 elections.

The activities of both groups were targeted to battleground states involving key congressional races, and to supporting Republican candidates or opposing Democratic candidates in those elections.

The ads run by both organizations identified candidates by name, discussed their position on issues in the midst of a campaign, and did so in ways that supported those candidates or criticized their opponents.

Finally, the timing of the groups' activities did not correspond with external events outside the control of the groups, such as a legislative vote on an issue, but rather corresponded with congressional election campaigns.

With regard to Priorities USA, statements by the founders of the organization make clear that it is modeled on Crossroads GPS, and is to play a similar function with the overriding purpose of conducting campaign activities to support the re-election of President Obama.

Finally, with regard to Americans Elect, the sole thrust of the organization is to obtain

ballot access to use to nominate candidates for president and vice president. The organization is qualifying on ballots as a political party. These activities are *per se* campaign activities in connection with an election.

Accordingly, each of the section 501(c)(4) organizations discussed above has engaged in more than an insubstantial amount of campaign activity, has a "substantial, non-exempt purpose" of participating or intervening in elections and is not entitled to tax-exempt status under section 501(c)(4).

VI. The IRS Also Should Investigate Whether Each Organization Is Ineligible for Section 501(c)(4) Tax Status Because the Organization Is "Primarily Engaged" in Campaign Activity

In a 2008 Letter Ruling, the IRS applied the "primarily engaged" standard to mean that a section 501(c)(4) organization's primary activities cannot constitute direct or indirect political intervention.

This interpretation of the statutory standard is in conflict with the court rulings interpreting section 501(c)(4), discussed above, that require an exempt organization to engage in no more than an insubstantial amount of campaign activity.

Nevertheless, the organizations discussed in this letter also fail to comply with the standard set forth in this Revenue Ruling. In the 2008 Ruling, the IRS found an organization did not qualify for tax exempt status under section 501(c)(4) because it was not primarily engaged in promoting "social welfare." The IRS said:

> Whether an organization is "primarily engaged" in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.

2008 TNT 160-33 (May 20, 2008) (emphasis added). The Letter Ruling continued:

> In Rev. Rul. 81-95, 1981-1 C.B. 332, we concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) of the Code as long as it is primarily engaged in activities that promote social welfare." The corollary to this is that if an organization's primary activities do not promote social welfare but are direct or indirect political intervention, the organization is not exempt under section 501(c)(4). The key is to determine the character of the organization's primary activities by looking at all of the facts and circumstances.

Id. (emphasis added).

In the Letter Ruling, the IRS considered the organization's claim that it was primarily engaged in lobbying, not campaign intervention. The Letter Ruling states:

> A facts and circumstances test is to be used in determining whether an organization's activities primarily constitute political intervention or whether those activities constitute lobbying or educational activities. After reviewing all of the facts and circumstances presented in the administrative file as discussed above, we have concluded that your primary emphasis and primary activities constituted direct and indirect political intervention. While you engage in extensive lobbying activities, they are by no means your primary activity. Your first and primary emphasis is on getting people elected to public office.

Id. The IRS thus concluded:

> The emphasis throughout your materials is on electing to office * * * people in order to impact legislation and policy as insiders. The overwhelming majority of the evidence in the administrative record, and thus the facts and circumstances in this case, denotes an organization that is intent upon intervening in political campaigns. . . .While lobbying is usually mentioned, and we recognize that lobbying activities are being pursued, those activities are not your primary activity. An analysis of all of the facts and circumstances contained in the administrative file leads us to the conclusion that your primary activity constitutes political intervention.

Id. (emphasis added).

Therefore, the organization did not qualify for tax exemption under section 501(c)(4):

> Based upon the materials submitted in connection with your application, we have concluded that your activities primarily constitute direct and indirect participation or intervention in political campaigns on behalf of or in opposition to candidates for public office. Therefore, you are not primarily engaged in activities that promote social welfare and do not qualify for recognition of exemption under section 501(c)(4) of the Code.

Id.

Here, we believe that an IRS investigation will show that the "first and primary emphasis" of each of the four organizations discussed above is "on getting people elected to public office." In particular, the IRS should investigate whether the "facts and circumstances" show that each of the organizations discussed in the letter is primarily engaged in activities which constitute direct or indirect participation or intervention in political campaigns under IRS regulations. For reasons discussed above, we believe each organization has overriding purpose to engage in campaign activities, and thus is operating contrary to the requirements of section 501(c)(4).

VII. Conclusion.

In the 2010 congressional races, section 501(c) organizations spent more than $135 million on campaign activities that were financed by secret contributions. The bulk of these expenditures were made by section 501(c)(4) organizations. The amount of secret contributions funding campaign expenditures by section 501(c)(4) organizations is expected to grow dramatically in the 2012 presidential and congressional races.

Crossroads GPS, Priorities USA, American Action Network and Americans Elect are each organized under section 501(c)(4) of the Internal Revenue Code. Based on the information about each organization set forth above, the IRS should conduct an investigation of whether each such organization has engaged in more than an insubstantial amount of non-exempt activity by participating or intervening in political campaigns and accordingly is not primarily engaged in the promotion of social welfare. The IRS should also conduct an investigation of whether each organization's primary activity is campaign activity and is accordingly not primarily engaged in the promotion of social welfare.

If the IRS investigation determines that the facts and circumstances show that the organizations discussed above are not primarily engaged in "the promotion of social welfare," because they have engaged in more than an insubstantial amount of campaign activity or because the organization's primary activity is campaign activity, the organizations should be denied or should lose tax-exempt status. In addition, appropriate penalties should be imposed by the IRS for violations the agency finds. The penalties should take into account the need for strong deterrence to stop similar violations from occurring in the future.

Sincerely,

/s/ Gerald Hebert	/s/ Fred Wertheimer
J. Gerald Hebert Executive Director Campaign Legal Center	Fred Wertheimer President Democracy 21

October 5, 2010

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for IRS investigation to determine whether "Crossroads GPS" is operating in violation of tax status

Dear Commissioner Shulman and Director Lerner:

Democracy 21 and the Campaign Legal Center call on the IRS to conduct an investigation into whether Crossroads GPS, a tax exempt group organized under section 501(c)(4) of the Internal Revenue Code, 26 U.S.C. § 501(c)(4), is operating in violation of its tax status because it has a primary purpose of participating in political campaigns in support of, or in opposition to, candidates for public office.

We urge the IRS to conduct its investigation and make its determination about whether the tax laws are being violated as expeditiously as possible, consistent with IRS procedures.

The status of Crossroads GPS as a section 501(c)(4) entity allows its donors to evade the public disclosure requirements that would apply if the organization was registered as a section 527 political organization. Section 527 groups are organizations that are "primarily organized and operated" to engage in political activities. By contrast, Section 501(c)(4) organizations are not permitted to be "primarily engaged" in activities to influence elections. They are not required to disclose their donors.

If, in fact, Crossroads GPS is impermissibly operating as a section 501(c)(4) organization in order to conceal its donors from the American people, the IRS has an obligation to take steps to protect the integrity of our tax laws and to make clear that such abuses will not be permitted in future elections.

Absent timely and appropriate action by the IRS, such abuses will become common place in the 2012 presidential and congressional races, at the expense of the credibility of the tax laws

and of the right of the American people to know the identity of the donors who are providing the money to influence their votes and the amounts they are giving.

The IRS applies a "facts and circumstances" test to determine whether a group like Crossroads GPS is in compliance with the requirements of its tax status under section 501(c)(4).

The known facts and circumstances surrounding the creation, operations and activities of Crossroads GPS in 2010 strongly warrant an IRS investigation to determine whether it is in violation of its tax status.

According to published reports, Crossroads GPS is the brainchild of leading Republican Party political operatives and is operated by former Republican Party operatives. Published reports indicate that Crossroads GPS was formed in order to support Republican candidates in the 2010 congressional races and that it is engaged primarily, if not exclusively, in activities to promote and support Republican candidates and to oppose and attack Democratic candidates in the 2010 congressional elections.

Under applicable IRS standards, there is no requirement that an organization's activities and communications contain express advocacy or the functional equivalent of express advocacy in order to determine that the organization is engaged in "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."

If, in fact, Crossroads GPS is primarily engaged in political campaign activity under applicable IRS standards, it does not qualify for section 501(c)(4) status. By cloaking itself in the status of a section 501(c)(4) social welfare organization, Crossroads GPS is avoiding the public disclosure obligations that the law imposes on nonprofit entities organized and operated primarily for the purpose of influencing elections.

The New York Times recently quoted Marcus S. Owens, former head of the IRS division that oversees section 501(c)(4) groups, as saying with regard to the new 501(c)(4)s being formed this year:

> "These groups are popping up like mushrooms after a rain right now, and many of them will be out of business by late November," Mr. Owens said. "Technically, they would have until January, 2012 at the earliest to file anything with the I.R.S. It's a farce."[1]

This "farce" harms both the American people's right to transparency regarding the financing of federal elections, and the integrity and credibility of the nation's tax law.

Past experience shows that such groups often organize during an election year and claim tax status under section 501(c)(4). During the election year, the groups raise huge amounts in unlimited contributions from corporations, wealthy individuals and labor unions that are spent on

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[1] M. Luo and S. Strom, "Donors' Names Kept Secret as They Influence the Midterms," *The New York Times* (Sept. 21, 2010).

election activities, with no disclosure of the names of their donors and the amounts they gave. Thus, under cover of their section 501(c)(4) tax status, these groups spend millions or tens of millions of dollars on ads to influence the election, while at the same time hiding from the public information about the sources of the funds being used for these expenditures.

After the election, such 501(c)(4) groups either disband, lay dormant or shift to other activities. This practice is contrary to the letter, spirit and intent of the tax laws, which requires non-profit entities "organized and operated primarily" for election-influencing activities to operate as a 527 group and, thereby, to be subject to a comprehensive public disclosure regime. 26 U.S.C. § 527(j).

The IRS needs to determine whether Crossroads GPS has violated its section 501(c)(4) status by failing to comply with the requirements applicable to such groups, and whether the organization should instead be registered as a section 527 political organization subject to disclosure of its donations and disbursements, or whether it should be treated as a for-profit entity subject to the tax laws that apply to for-profit corporations.

More generally, the IRS needs to address the problem of whether section 501(c)(4) groups are being improperly used as vehicles for groups to spend money to influence federal elections while hiding the identities of the funders of these activities. This matter must be resolved on a timely basis because it will have a direct bearing on whether continuing widespread abuse of the tax laws will allow secret contributions to influence the 2012 elections.

The IRS has a responsibility and obligation to the public to protect the integrity and credibility of the nation's tax laws. It is the job of the IRS to ensure that the nation's tax laws are not being improperly used by political operatives and political activists to hide campaign finance information which citizens and voters have a right to know, as the Supreme Court affirmed in its decision in *Citizens United v.* FEC, 130 S.Ct. 876 (2010).

I. Crossroads GPS

Crossroads GPS was organized in July, 2010 as a "non-profit social action organization" under section 501(c)(4) of the IRC. ("GPS" stands for "Grassroots Policy Strategies.")

Crossroads GPS is affiliated with American Crossroads, a non-profit political organization registered under section 527 of the IRC. American Crossroads is registered with the Federal Election Commission as a political committee under the Federal Election Campaign Act. As such, the major purpose of American Crossroads is to raise and spend money to influence federal campaigns. As a registered political committee, American Crossroads must report all of its contributions and expenditures to the FEC under federal campaign finance laws.

According to a report in *Time*, "American Crossroads was the brainchild of a group of top Republican insiders, including two of George W. Bush's closest White House political advisers, Karl Rove and Ed Gillespie, both of whom remain informal advisers."[2] Another published

[2] M. Crowley, "The New GOP Money Stampede," *Time* (Sept. 16, 2010).

report referred to American Crossroads and Crossroads GPS as "a political outfit conceived by Republican operatives Karl Rove and Ed Gillespie."[3] According to the *Los Angeles Times,* both groups "receive advice and fundraising support from Rove."[4]

American Crossroads and Crossroads GPS are, in turn, part of a larger network of Republican-groups that are working together to influence the 2010 congressional elections. According to one published report, four separate groups, including American Crossroads and Crossroads GPS "are collectively planning to spend at least $70 million to help Republicans win back control of Congress this November."[5]

According to this report:

> While dozens of former GOP lawmakers and seasoned Republican strategists are involved, the effort largely springs from the work of two former Bush aides: Ed Gillespie, the former Republican National Committee chairman who later served as White House counselor, and Karl Rove, the man Bush once described as the "architect" of his presidency.

Id. The article notes that "[a]ll of the organizations were founded separately and organized as individual groups. But each is working closely in concert – they share the same office space with the New York Ave. building. . . .They identify each other as 'sister' groups, even though officials involved in the effort are cagey about exactly how closely they are coordinating their efforts and message." *Id.*

According to one published report, the organizers of American Crossroads and Crossroads GPS intend "to raise a combined total of 'approximately $50 million' to attack Democrats and boost Republicans heading into the 2010 midterm elections."[6]

According to another published report, "Mike Duncan, chairman of American Crossroads, told *The Washington Times* that his group and [American] Crossroads Grassroots Policy Strategies (sic) plan to plow more than $49 million of it into 11 Senate races in anticipation that the Republican Party is within reach of a Senate majority."[7]

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[3] K. Vogel, "Rove-tied group raises $2 million," *Politico* (Aug. 21, 2010).

[4] M. Reston and A. York, "Karl Rove-linked group launches new hit against Boxer," *The Los Angeles Times* (Aug. 25, 2010).

[5] H. Bailey, "A guide to the 'shadow GOP': the groups that may defined the 2010 and 2012 elections," *Yahoo News* (Aug. 5, 2010).

[6] K. Vogel, *supra.*

[7] R. Hallow, "Pro-GOP Nonprofits Kick in Millions; Cash to target 11 Senate races," *The Washington Times* (Aug. 19, 2010).

We note that former RNC Chairman Duncan is not quoted as saying the two groups plan to spend more than $49 million to promote lower taxes or reduced government spending, but rather to plow into 11 Senate races.

American Crossroads, functioning as a 527 political organization and registered as a federal political committee, is running broadcast ads that promote Republican candidates or attack Democratic candidates. According to a press report, for example, American Crossroads in late August, 2010 began running ads in Nevada and Missouri that "are designed to defeat Senate Majority Leader Harry Reid in Nevada and Democratic Senate candidate Robin Carnahan in Missouri. American Crossroads has already spent some $600,000 on ads in Nevada attacking Reid on different issues. . . ."[8] According to this same press report:

> The group will be stepping up its ad spending in other states this month to boost GOP Senate candidates, [spokesman Steven] Law said, and it expects to begin running ads to help a dozen or two House candidates in September. In coming weeks American Crossroads will also finalize plans for an ambitious get-out-the-vote effort aimed at bringing Republicans and conservative-leaning independents to the polls in November.

Id.

Just as American Crossroads is spending large sums for campaign ads to influence the 2010 congressional elections, so also is Crossroads GPS, its 501(c)(4) affiliate. According to a story in *USA Today* published on August 25, 2010:

> Crossroads GPS, a Republican nonprofit group that does not have to publicly disclose its donors, has pumped more than $2 million into another round of TV ads targeting Democrats.
>
> This brings to roughly $5 million the amount Crossroads GPS and an affiliated organization, American Crossroads, announced spending in the last week alone to influence November's midterm elections.
>
> This round of spending goes after Sen. Barbara Boxer of California; Rep. Joe Sestak, running for the Senate in Pennsylvania and Jack Conway, the party's Senate nominee in Kentucky.[9]

One published report describes a "concept paper" distributed to potential donors prior to the formation of Crossroads GPS as stating that Crossroads GPS intends "to deploy advertising and other issue information in August/September in key markets," right before the 2010

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[8] P. Stone, "American Crossroads Spin-off Launches New Ads in Missouri, Nevada," *The Center for Public Integrity* (Aug. 20, 2010).

[9] F. Schouten, "Karl Rove-affiliated nonprofit unleashes more ads in three races," *USA Today* (Aug. 25, 2010).

congressional elections. *Id.* According to this concept paper, a "micro-targeting effort" also to be conducted by the group "is focused on seven states – Colorado, Florida, Missouri, New Hampshire, Nevada, Ohio and Washington," all states that have key contested Senate races in 2010.[10]

The ads themselves that have been run by Crossroads GPS leave little doubt that they are intended to influence the 2010 congressional elections and will have the effect of doing so. The organization is sponsoring ads in the weeks prior to the 2010 election which are highly critical of Democratic Senatorial candidates and attack those candidates on their positions. For instance, Crossroad GPS reports that the follow advertisement began running in California in the last week of August 2010:

> California seniors are worried. Barbara Boxer voted to cut spending on Medicare benefits by $500 billion. Cuts so costly to hospitals and nursing homes that they could stop taking Medicare altogether. Boxer's cuts would sharply reduce benefits for some and could jeopardize access to care for millions of others. And millions of Americans won't be able keep the plan or doctor they already have. Check the facts and take action. Call Boxer. Stop the Medicare cuts.[11]

Another ad run in Pennsylvania which started in the last week of August, 2010 attacks Democratic Senatorial candidate Joe Sestak:

> We're hurting, but what are they doing in Washington? Congressman Joe Sestak voted for Obama's big government health care scheme, billions in job-killing taxes, and higher insurance premiums for hard-hit families. Even worse, Sestak voted to gut Medicare, a $500 billion cut. Reduced benefits for 850,000 Pennsylvania seniors. Higher taxes and premiums, fewer jobs, Medicare cuts. The Sestak-Obama plan costs us too much. Tell Congressman Sestak stop the Medicare cuts.[12]

A second ad attacking Joe Sestak states:

> Over half a million Pennsylvanians unemployed. And what's Congressman Joe Sestak done? He voted to gut Medicare, slashing benefits for Pennsylvania seniors. The Obama-Sestak scheme could jeopardize access to care for millions. Sestak even voted to raise taxes over $525 billion, devastating small businesses, killing jobs, gutting Medicare, hurting seniors, killing jobs. Pennsylvania can't

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[10] K. Vogel, *supra.*

[11] *See Crossroads GPS launches new issue ads in Pennsylvania, California and Kentucky,* Crossroads GPS (Aug. 25, 2010) at http://www.crossroadsgps.org/news/crossroads-gps-launches-new-issue-ads-pennsylvania-california-and-kentucky (last visited Sept. 30, 2010); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/worried.

[12] *See Crossroads GPS launches new issue ads in Pennsylvania, California and Kentucky, supra.*

> afford Joe Sestak. Crossroads GPS is responsible for the contents of this advertising.[13]

According to published reports, Crossroad GPS began running the following ad in Kentucky beginning on August 31, 2010:

> Obamacare is the wrong way for Kentucky. And Jack Conway is going the wrong way too. Obamacare means $525 billion in job killing taxes. It means higher insurance premiums. $500 billion cut from Medicare. Reduced benefits for 113,000 Kentucky seniors. And intrusive big-government government mandates. It's the wrong way, Conway. Crossroads GPS is responsible for the contents of this advertising.[14]

With regard to the Colorado Senate race, it was reported on August 17, 2010 that Crossroads GPS was broadcasting the following ad attacking Democratic candidate Michael Bennet:

> Michael Bennet's spending spree. Since his appointment, Bennett has voted to spend $2.5 billion every single day. Spending billions of your tax dollars on everything – from the failed stimulus, billions in government pork, even cash-for-clunkers. And to pay for some of it, Bennet voted twice in 35 days to increase the national debt. Bennet's way? Spend more, borrow more, and then raise our taxes. Michael Bennett's spending spree. Call Senator Bennet, stop the spending.[15]

With regard to the Missouri Senate race, Crossroads GPS began running the following ad in mid-August 2010 attacking Democratic candidate Robin Carnahan:

> Male announcer: The message is clear. Seventy-one percent of Missouri voters don't want government mandated health care. We want to make our own health care decisions.
>
> Female announcer: But Robin Carnahan disagrees, while seventy-one percent of us voted no, Carnahan sided with lobbyists, big unions, and Washington insiders to force Obamacare on us.
>
> Male announcer: Missouri's Lieutenant Governor is suing the federal government so we can keep our health care.

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[13] Crossroads GPS website, *at* http://www.crossroadsgps.org/ (left sidebar) (last visited Sept. 30, 2010).

[14] Jeremy P. Jacobs, *Crossroads GPS Targets Obama in KY*, Hotline on Call (Aug. 31, 2010) *at* http://hotlineoncall.nationaljournal.com/archives/2010/08/american_crossr_1.php.

[15] Jeremy P. Jacobs, *American Crossroads Airs Ads in OH, CO*, Hotline on Call, (August 17, 2010), at http://hotlineoncall.nationaljournal.com/archives/2010/08/american_crossr.php; *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/bennet-calendar (last visited Sept. 30, 2010).

> Female announcer: Tell Carnahan to get in touch with Missourians and support the health care challenge.[16]

And in another closely contested Senate race, Crossroads GPS began running an ad attacking Democratic candidate Senator Harry Reid beginning in mid-August 2010:

> Obamacare is bad for healthcare in America. And worse for Nevada. Because when Senator Harry Reid needed votes to push Obamacare, he cut sweet deals across the country – to help Nebraska, to help Louisiana, to even help Florida. What has Nevada gotten from Senator Reid? Record foreclosures and the highest unemployment rate in the nation. And Reid's still pushing for even more government control of your healthcare. Really, Harry? How 'bout some help for Nevada.[17]

Although both American Crossroads and Crossroads GPS are closely affiliated organizations headed by the same person and both are the brainchild of Rove and Gillespie, and although both organizations are running ads promoting Republican candidates or attacking Democratic candidates in the 2010 congressional races, there is one very important difference between the two groups when it comes to the American people's right to know basic campaign finance information.

As a federal registered political committee, American Crossroads is required to make timely disclosure of its contributors to the Federal Election Commission. 2 U.S.C. § 434. But as a group claiming section 501(c)(4) status, Crossroads GPS has no obligation to disclose its donors to the public and is not doing so. Indeed, on its website, Crossroads GPS touts the fact that its "policy" is to shield its donors from public disclosure:

> Any person or entity that contributes more than $5,000 to a 501(c)(4) organization must be disclosed to the Internal Revenue Service on Form 990. However, the IRS does not make these donor disclosures available to the general public. Crossroads GPS's policy is to not provide the names of its donors to the general public.[18]

Indeed, it appears that the Crossroads GPS 501(c)(4) group was created in order to provide anonymity for donors providing money for campaign expenditures who otherwise might

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[16] *See* Peter H. Stone, *American Crossroads Spin-off Launches New Ads in Missouri, Nevada* Center for Public Integrity (August 20, 2010), at http://www.publicintegrity.org/blog/entry/2359/ (last visited Sept. 30, 2010); *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/issue-ad-robin-carnahan (last visited Sept. 30, 2010).

[17] *See American Crossroads Spin-off Launches New Ads in Missouri, Nevada, supra*; *see also* Crossroads GPS website, *at* http://www.crossroadsgps.org/video/thanks-harry (last visited Sept. 30, 2010).

[18] https://www.icontribute.us/crossroadsgps.

resist making donations to the American Crossroads 527 group because donations to the 527 group would be subject to public disclosure.

As one published report states:

> A new political organization conceived by Republican operatives Karl Rove and Ed Gillespie formed a spin-off group last month that – thanks in part to its ability to promise donors anonymity – has brought in more money in its first month than the parent organization has raised since it started in March.[19]

The same article quotes Steven Law, the head of both American Crossroads and Crossroads GPS as saying that "the anonymity of the new 501(c)(4) GPS group was appealing for some donors." *Id.* Law said, "We're not inclined to get into much detail about the 501(c)(4) on the financial side given its different report status." *Id.* The article also states:

> [A] veteran GOP operative familiar with the group's fundraising activities said the spin-off was formed largely because donors were reluctant to see their names publicly associated with giving to a 527 group, least of all one associate with Rove, who Democrats still revile for his role in running former President George W. Bush's political operation.

In another article, Law stated, "I wouldn't want to discount the value of confidentiality to some donors."[20]

Another published report calls Crossroads GPS a "spinoff of American Crossroads" and states that "this 501-c-4 group can keep its donor list private – a major selling point for individuals and corporations who want to anonymously influence elections."[21]

II. An Organization Which Primarily Engages in Political Campaign Activity Does Not Qualify for Section 501(c)(4) Tax-Exempt Status

A. General rule.

Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare...." 26 U.S.C. § 501(c)(4) (emphasis added).

According to IRS regulations, "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (emphasis added).

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19 K. Vogel, *supra.*

20 K. Vogel, "Crossroads hauls in $8.5M in June," *Politico* (June 30, 2010).

21 H. Bailey, *supra.*

Political activity – spending to influence campaigns – does not constitute promoting the social welfare. Section 1.501(c)(4)-l(a)(2)(ii) of the regulations provides that political campaign activities do not promote social welfare as defined in section 501(c)(4). The regulation states, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii) (emphasis added).

In other words, an organization primarily engaged in political campaign activity is not primarily engaged in the promotion of the social welfare of the community and, therefore, is not eligible for tax-exempt status under section 501(c)(4). For example, "[a]n organization whose primary activity is rating candidates for public office is not exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code of 1954 because such activity does not constitute 'promotion of the social welfare.'" Rev. Rul. 67–368, 1967–2 C.B. 194.

Although the promotion of social welfare does not include political campaign activities, IRS regulations do not impose a complete ban on such activities for section 501(c)(4) organizations. Thus, "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare[,]" in other words, as long as it is not primarily engaged in political activities. Rev. Rul. 81–95, 1981–1 C.B. 332 (emphasis added).

B. Political campaign activity under the Internal Revenue Code.

IRS rules make clear that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" is not limited to activities or communications which contain express advocacy or the functional equivalent of express advocacy.

Section 527(e)(2) of the Internal Revenue Code describes what constitutes political campaign (*i.e.*, "exempt function") activity for purposes of the tax code:

> The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed.

26 U.S.C. § 527(e)(2).

Revenue Ruling 2004–6, 2004–4 I.R.B. 328, provides a detailed explanation of what constitutes "exempt function" political campaign activity—illuminating the line between the political activities that may not be the primary activities of 501(c)(4) organizations, and those which may. The IRS there states:

> Section 1.527-2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Id. (emphasis added)

Revenue Ruling 2004-6 explains that, because section 501(c)(4) public policy advocacy "may involve discussion of the positions of public officials who are candidates for public office, a public policy advocacy communication may constitute an exempt function (a political activity) within the meaning of § 527(e)(2)." Rev. Rul. 2004-6 at 1. The Ruling further states:

> All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

Id. (emphasis added)

Thus, regardless of whether an "issue ad" contains express advocacy, it may nonetheless be treated as "exempt function" electioneering activity under IRS regulations, depending on the "facts and circumstances."

Even if an ad discusses an "issue," and even if the ad does not contain express advocacy or the functional equivalent of express advocacy, it can still be treated as "direct or indirect participation or intervention in political campaigns" under IRS standards for purposes of determining whether a 501(c)(4) organization is "primarily engaged" in activities to influence elections.

Rev. Rul. 2004-6 lists six factors that "tend to show" that an advertisement is "exempt function" political campaign activity, and five competing factors that "tend to show" that an advertisement is not. Rev. Rul. 2004-6 at 3-4. The "factors that tend to show that an advocacy communication on a public policy issue is for an exempt function (political activity) under § 527(e)(2)" include the following:

a) The communication identifies a candidate for public office;

b) The timing of the communication coincides with an electoral campaign;

c) The communication targets voters in a particular election;

d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Rev. Rul. 2004-6 at 3.

The "factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2)" include the following:

a) The absence of any one or more of the factors listed in a) through f) above;

b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Id.

Under this multi-part test, the "facts and circumstances" here certainly indicate that the ads and activities of Crossroads GPS involve "exempt function" activity that constitutes "participation or intervention in political campaigns."

First, the organization was created just months before the 2010 congressional elections, was conceived, organized and staffed by leading political party strategists and operatives, self-defined its activities as spending money in Senate races and is closely affiliated with other organizations similarly committed to spending large sums to influence the 2010 congressional races.

Second, the activities of the organization are targeted to battleground states involving key Senate races, and to supporting Republican candidates in those elections.

Third, the ads run by the organization identify candidates by name, discuss the candidates' position on issues in the midst of a campaign and do so in ways that criticize the positions of the Democratic candidates opposed by Crossroads GPS.

Fourth, the timing of the group's activities do not correspond with external events outside the group's control, such as a legislative vote on an issue, but rather correspond with congressional election campaigns.

C. Primary purpose. There is little question that Crossroads GPS is engaged in activities which constitute "exempt function" political intervention under the IRS standards. Although the organization can engage in some political participation or intervention under IRS regulations, it cannot be primarily engaged in such activity, consistent with its tax status under section 501(c)(4).

In a 2008 Letter Ruling, the IRS found an organization did not qualify for tax exempt status under section 501(c)(4) because it was primarily engaged in political intervention. The IRS said:

> Whether an organization is "primarily engaged" in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.

2008 TNT 160-33 (May 20, 2008) (emphasis added). The Letter Ruling continued:

> In Rev. Rul. 81-95, 1981-1 C.B. 332, we concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) of the Code as long as it is primarily engaged in activities that promote social welfare." The corollary to this is that if an organization's primary activities do not promote social welfare but are direct or indirect political intervention, the organization is not exempt under section 501(c)(4). The key is to determine the character of the organization's primary activities by looking at all of the facts and circumstances.

Id. (emphasis added).

In the Letter Ruling, the IRS considered the organization's claim that it was primarily engaged in lobbying, not campaign intervention. The Letter Ruling states:

> A facts and circumstances test is to be used in determining whether an organization's activities primarily constitute political intervention or whether

> those activities constitute lobbying or educational activities. After reviewing all of the facts and circumstances presented in the administrative file as discussed above, we have concluded that your primary emphasis and primary activities constituted direct and indirect political intervention. While you engage in extensive lobbying activities, they are by no means your primary activity. Your first and primary emphasis is on getting people elected to public office.

Id. (emphasis added). The IRS thus concluded:

> The emphasis throughout your materials is on electing to office * * * people in order to impact legislation and policy as insiders. The overwhelming majority of the evidence in the administrative record, and thus the facts and circumstances in this case, denotes an organization that is intent upon intervening in political campaigns. . . .While lobbying is usually mentioned, and we recognize that lobbying activities are being pursued, those activities are not your primary activity. An analysis of all of the facts and circumstances contained in the administrative file leads us to the conclusion that your primary activity constitutes political intervention.

Id. (emphasis added).

Therefore, the organization did not qualify for tax exemption under section 501(c)(4):

> Based upon the materials submitted in connection with your application, we have concluded that your activities primarily constitute direct and indirect participation or intervention in political campaigns on behalf of or in opposition to candidates for public office. Therefore, you are not primarily engaged in activities that promote social welfare and do not qualify for recognition of exemption under section 501(c)(4) of the Code.

Similarly, the IRS needs to investigate in this case whether the "facts and circumstances" show that Crossroads GPS is primarily engaged in activities which constitute political participation or intervention in political campaigns under IRS regulations, and if it is, to find that the organization is a violation of its section 501(c)(4) status.

The "primarily engaged" test should be applied on the basis of the activities undertaken by Crossroads GPS during calendar year 2010. If a section 501(c)(4) group is found to have primarily engaged in campaign-related activities during an election year, it should not be permitted to dilute that finding by engaging in non-election related activities in subsequent years.[22]

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[22] For example, the IRC uses a "taxable year" analysis – in other words, a calendar year analysis – to determine whether a section 501(c)(3) charitable group has complied with the limit on the amount of lobbying expenditures the group is permitted to engage in, consistent with its charitable status. 26 U.S.C. § 501(h).

Although we do not have access to the contribution and expenditure data that Crossroads GPS is required to file with the IRS, published reports indicate that the organization is primarily engaged in activities to influence the 2010 congressional elections. As part of its investigation, the IRS needs to examine the organization's financial data.

If the IRS examination of the facts and circumstances surrounding Crossroads GPS's formation and activities confirm that the organization is primarily engaged in section 527 "exempt function" political campaign activity in 2010, the IRS should find that Crossroads GPS is in violation of its tax status under section 501(c)(4).

III. Conclusion.

Crossroads GPS was organized under section 501(c)(4) of the Internal Revenue Code. Based on the discussion of the published reports set forth above, the facts and circumstances surrounding the formation and activities of Crossroads GPS show that the group was organized to participate and intervene in the 2010 congressional races while providing donors to the organization with a safe haven for hiding their role in funding expenditures to influence the 2010 congressional races.

For the reasons set forth above, the IRS should investigate whether Crossroads GPS has a primary purpose of "participation or intervention in political campaigns on behalf of or in opposition to" candidates for public office, which is not a permissible primary purpose for a section 501(c)(4) organization. *See* 26 C.F.R. § 1.501(c)(4)–1(a)(2).

If the IRS investigation establishes that the facts and circumstances show that Crossroads GPS is primarily engaged in participating or intervening in political campaigns, appropriate penalties should be imposed on the organization, including penalties that take into account the need to deter similar widespread violations from occurring in future elections. The penalties should apply to the organization's misuse of the nonprofit tax laws to improperly claim section 501(c)(4) tax status and its failure to operate as a nonprofit 527 group required to disclose its contributions and expenditures.

Sincerely,

/s/ Gerald Hebert	/s/ Fred Wertheimer
J. Gerald Hebert Executive Director Campaign Legal Center	Fred Wertheimer President Democracy 21

September 28, 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for IRS investigation into whether certain organizations are ineligible for tax exempt status under section 501(c)(4).

Dear Commissioner Shulman and Director Lerner:

Democracy 21 and the Campaign Legal Center call on the Internal Revenue Service (IRS) to conduct an investigation into whether Crossroads GPS, Priorities USA, American Action Network and Americans Elect, all of which claim to be tax exempt groups organized under section 501(c)(4) of the Internal Revenue Code (IRC), 26 U.S.C. § 501(c)(4), are ineligible for the tax exempt status provided to section 501(c)(4) organizations.[1]

Under the IRC, IRS regulations and court decisions interpreting the IRC, section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare in order to obtain tax exempt status. Court decisions have established that in order to meet this requirement, section 501(c)(4) organizations cannot engage in more than an insubstantial amount of any non-social welfare activity, such as directly or indirectly participating or intervening in elections.

Thus, the claim made by some political operatives and their lawyers that section 501(c)(4) organizations can spend up to 49 percent of their total expenditures on campaign activity and maintain their tax exempt status has no legal basis in the IRC and is contrary to court decisions regarding eligibility for tax-exempt status under section 501(c)(4). An expenditure of 49 percent of a group's total spending on campaign activity is obviously far more than an insubstantial amount of non-social welfare activity.

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[1] Last October, we asked for an investigation of Crossroads GPS on similar grounds. By this letter we re-state and supplement our earlier request for an investigation of Crossroads GPS.

The IRS applies the "primarily engaged" test on the basis of the "facts and circumstances" of an organization's formation and operations. Here, we believe, the "facts and circumstances" show that each organization has engaged in far more than an insubstantial amount of participation or intervention in elections and that the overriding purpose of each organization is to influence elections.

Thus, under the IRC and court decisions interpreting the IRC, these organizations are not eligible to receive section 501(c)(4) tax exempt status.

In a 2008 Letter Ruling, the IRS stated that a group is not eligible for tax exempt status under section 501(c)(4) where the facts and circumstances show that the group's "first and primary emphasis" is to get candidates elected to public office.

This standard is different than, and in conflict with, the standard applied by the courts. But even under this standard, we believe the "facts and circumstances" relating to the formation and activities of the four organizations discussed in this letter show that each group was organized and is operated for the overriding purpose of participating or intervening in elections.

Therefore, none of the four groups meets the standard for tax exempt status under section 501(c)(4) because they are not primarily engaged in "the promotion of social welfare."

By claiming tax-exempt status under section 501(c)(4), these groups allow their donors to evade the public disclosure requirements that would apply if the organizations were registered under section 527 as "political organizations." In fact, it appears that avoiding disclosure of their donors is the basic reason that these groups organized under section 501(c)(4).

Absent timely and appropriate action by the IRS, widespread abuses of the tax code by groups organized under section 501(c)(4) are likely to become commonplace in the 2012 presidential and congressional races. These abuses will come at the expense of the integrity and credibility of the tax laws and of the right of the American people to know the identity of the donors providing money to influence elections.

Accordingly, we request that the IRS promptly investigate the groups discussed in this letter and take appropriate enforcement action and impose appropriate penalties for any violations of section 501(c)(4) that the agency may find.

I. Crossroads GPS

On October 5, 2010, Democracy 21 and the Campaign Legal Center filed a letter with the IRS requesting an investigation into whether Crossroads GPS was operating in violation of the requirements for obtaining tax-exempt status under section 501(c)(4). Here, we supplement the information set forth in that earlier letter and continue our request for an investigation.

Crossroads GPS was organized in June, 2010 under section 501(c)(4) of the IRC "as an organization for the promotion of social welfare." ("GPS" stands for "Grassroots Policy Strategies.")

Crossroads GPS is affiliated with American Crossroads, a non-profit political organization registered under section 527 of the IRC. American Crossroads is registered with the Federal Election Commission (FEC) as a political committee under the Federal Election Campaign Act. As such, the major purpose of American Crossroads is to raise and spend money to influence federal campaigns. As a registered political committee, American Crossroads must report all of its contributions and expenditures to the FEC under federal campaign finance laws. As a section 501(c)(4) organization, Crossroads GPS does not publicly disclose its donors.

An article in *Politico*, dated April 29, 2011, notes that Crossroads GPS was "founded under the guidance of GOP strategists [Karl] Rove and Ed Gillespie. . . ." and that it "accepts unlimited contributions from donors whose identities can be kept secret."[2] The article notes:

> In response to [the *Citizens United*] ruling, Rove and Gillespie helped form American Crossroads, which did disclose donors, and Crossroads GPS, which didn't. During last year's midterms, they raised a combined $70 million, of which the donors of about $43 million are still secret. The vast majority of that money was spent attacking Democratic candidates for the House and the Senate.

Id. According to another report:

> Crossroads GPS took advantage of elements of the tax code to collect unlimited donations from individuals and corporations to spend tens of millions of dollars against Democratic candidates in the 2010 election.[3]

Another report noted that Crossroads GPS was formed for the very purpose of avoiding donor disclosure:

> Meanwhile, section 501(c)(4) of the code, under which Crossroads GPS is incorporated, allows groups to shield their donors' identities, but requires them to spend a majority of their cash on apolitical purposes – an obligation Democratic critics say Crossroads GPS and other right-leaning groups flaunted during the campaign, when they bombarded Democratic candidates with bitingly critical ads.
>
> "Disclosure was very important to us, which is why the 527 was created," Forti said. "But some donors didn't want to be disclosed and, therefore, a (c)(4) was created," Forti explained, referring to Crossroads GPS.

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[2] J. Cummings, "New Dem money group takes on GOP," *Politico* (April 29, 2011) (emphasis added).

[3] M. O'Brien, "Obama alumni launch new outside group to boost reelection," *The Hill* (April 29, 2011).

> Forti's frank explanation differs from that previously offered by the Crossroads team, which had asserted that they always intended to create a 501(c)(4) because it was better suited to facilitate issue-based advocacy.[4]

A report in *The Wall Street Journal* discussed the plans of Crossroads GPS (and American Crossroads) to play a significant role in the 2012 elections:

> Two conservative groups founded last year with the help of Republicans Karl Rove and Ed Gillespie have set a goal of raising $120 million in the effort to defeat President Barack Obama, win a GOP majority in the Senate and protect the party's grip on the House in the 2012 election. . . .
>
> If the conservative groups meet the target disclosed to *The Wall Street Journal*, they would establish their organizations – American Crossroads and Crossroads GPS – as possibly the largest force in the 2012 campaign, aside from the presidential candidates themselves and the political parties.[5]

According to another report, " '2010 was only Crossroads' opening act,' Steven Law, the group's president, told the Center for Public Integrity. These two groups hope to rake in $120 million for 2012 compared to $71 million last year."[6]

In February, 2011, Crossroads GPS launched a radio ad campaign that was specifically designed to counter ads run by the Democratic Congressional Campaign Committee. According to one report:

> Crossroads GPS, a 501(c)(4) group associated with GOP heavyweights Karl Rove and Ed Gillespie, is spending $90,000 on radio ads in 19 districts where the Democratic Congressional Campaign Committee (DCCC) launched ads this week.
>
> The group launched the ads to hit back against the DCCC ads, which accused the Republicans, many of whom are freshmen from swing districts, of wanting to slash spending for education and research and investment.[7]

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[4] K. Vogel, "SEIU, American Crossroads look back at 2010 spending," *Politico* (Dec. 13, 2010) (emphasis added).

[5] B. Mullins, "2012 Election Spending Race Heats Up," *The Wall Street Journal* (March 1, 2011) (emphasis added).

[6] P. Stone, "Democrats desperately seeking their own Rove," *Center for Public Integrity –iWatch News* (March 14, 2011).

[7] M. O'Brien, "Rove-backed group spends to bolster 19 targeted Republicans," *The Hill* (Feb. 3, 2011).

Crossroads GPS also started to run ads attacking President Obama in key electoral battleground states:

> In an early sign of its financial strength, Crossroads GPS announced Friday that it was launching a two-month, $20 million television ad blitz attacking Obama's record on jobs, the deficit and the overall economy. The first ads will start June 27 and run in key battleground states such as Colorado, Florida, Missouri, Nevada and Virginia.[8]

A subsequent report stated that Crossroads GPS "is about midway through a two-month advertising binge attacking President Barack Obama and congressional Democrats that is expected to cost more than $20 million, alone."[9]

President Obama announced his candidacy for re-election in the 2012 presidential race on April 4, 2011, well before the Crossroads GPS ads were run.

One report notes that Crossroads GPS is already spending money in Missouri as part of an effort to defeat Senator Claire McCaskill, who is up for reelection in 2012:

> With nearly a year and a half to go before Election Day 2012, conservative-leaning national advocacy groups already have spent more than $500,000 on advertising in Missouri in hopes of unseating incumbent Democratic Senator Claire McCaskill. . . .
>
> The conservative groups, American Crossroads political action committee and its nonprofit affiliate, Crossroads GPS, already have hired southwest Missouri political operative Paul Mouton to help research and manage their efforts against McCaskill. Missouri is the only state with such an on-the-ground presence.
>
> "As long as the race remains competitive, we will remain highly involved," said Jonathan Collegio, communications director for both groups. "Having someone on the ground in Missouri is a testament to how important we view this race."
>
> When all is said and done, American Crossroads and Crossroads GPS expect to spend far and away more in Missouri than they did in 2010, when they spent around $2.4 million opposing Democrat Robin Carnahan during her unsuccessful campaign for the U.S. Senate.[10]

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[8] P. Stone, "Obama groups raise $4-5 million in first two months," *Center for Public Integrity-iWatch News* (June 24, 2011).

[9] K. Vogel, "Both sides now in dash for anonymous cash," *Politico* (Aug. 9, 2011).

[10] J. Hancock, "Both sides spending big to win Missouri Senate seat," *St. Louis Post-Dispatch* (Aug. 15, 2011).

Jonathan Collegio, the spokesman for Crossroads GPS and American Crossroads, said "Crossroads will continue to spend heavily in many competitive races through next November."[11] According to this story, "'The Crossroads groups have stated that we'll be involved heavily in 2012, both in congressional races and the presidential side as well,' Collegio said." *Id.* (emphasis added).

Karl Rove, one of the founders of the Crossroads groups, was recently quoted at an appearance in Ohio as discussing their plans for campaign spending in Ohio in 2012:

> Speaking with reporters before addressing an audience last night at Cedarville University, Rove said American Crossroads and its sister group, Crossroads GPS, view Ohio as the battleground where President Barack Obama must be stopped and where it is crucial to defeat incumbent Democratic Sen. Sherrod Brown to help Republicans take control of the Senate.
>
> "Our objective is to be a strong presence in Ohio on the presidential contest, the Senate contest and wherever we might be needed in the House," Rove said. "We raised $72 million last time (in 2010); our goal is to raise $250 million this time."[12]

Another report indicates that the Crossroads groups may be shifting to emphasize spending through the section 501(c)(4) arm, Crossroads GPS. According to this report, "Crossroads Spokesman Jonathan Collegio said the group's nonprofit arm, registered as a 501(c)(4) social-welfare organization by the IRS would be 'more active' than Crossroad's main 527 group."[13]

This may reflect the fact that Crossroads has been more successful in its fundraising of undisclosed contributions through the section 501(c)(4) arm. According to one report, the section 527 arm "has seen its fundraising lag behind its non-disclosing sister group. In the first six months of 2011, . . .it raised only $3.9 million."[14]

The same report described the evolution of the Crossroads groups as moving toward reliance on the section 501(c)(4) arm as a way to shield donors from disclosure:

> [B]ack when Crossroads started out last year, it, too, shunned secret donations and extolled disclosure. Its chairman, Mike Duncan, described himself in May 2010

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[11] D. Eggen, "Political groups, now free of limits, spending heavily ahead of 2012," *The Washington Post* (May 21, 2011).

[12] J. Hallett, "Rove-affiliated PACs to spend big in Ohio," *The Columbus Dispatch* (Sept. 21, 2011).

[13] J. Gillum, "Priorities USA Raises $5 Million to Counter Attack Ads From Karl Rove-Backed Crossroads GPS," *Associated Press* (July 31, 2011).

[14] K. Vogel, "Both sides now dash for anonymous cash," *Politico* (Aug. 9, 2011).

> as "a proponent of lots of money in politics and full disclosure in politics," and said Crossroads intended to "be ahead of the curve on" transparency.
>
> Less than one month later, with American Crossroads struggling to raise money from donors leery of having their names disclosed, operatives spun off Crossroads GPS, and its fundraising team, led by Rove, began emphasizing to prospective donors the ability to give anonymous contributions.
>
> Fundraising took off, and together, the groups ended up raising more than $70 in 2010, with the majority of it -- $43 million – going to Crossroads GPS.

Id.

On September 9, 2011, a published report stated that American Crossroads and Crossroads GPS have set a new fundraising goal that is at least twice the $120 million announced earlier this year.[15] According to the published report:

> We see a pathway to at least doubling our earlier projected goal," Steven Law, the president of Crossroads, told *iWatch News*. "Everyone is going to stretch as far as they can here because we all feel this is the most important election we have ever been involved with."
>
> To help achieve its new goal, the two groups have been talking to some prominent GOP figures, notably Mississippi Gov. Haley Barbour. The former Republican National Committee chairman has agreed to lend his Midas like rolodex to the Crossroads efforts.
>
> "Gov. Barbour's involvement with us gives us the capacity to focus on the presidential race, the Senate and the House at the same time," Law said.

Id. (emphasis added).

II. Priorities USA.

Priorities USA announced its formation as a social welfare organization under section 501(c)(4) of the tax code by a memorandum distributed "to interested parties" on April 29, 2011. The memorandum makes clear that Priorities USA (and its companion section 527 political organization, Priorities USA Action), are intended to work for the reelection of President Obama by mimicking the structure and function of Crossroads GPS (and American Crossroads). According to the Priorities USA memorandum:

> Our groups were formed to answer the hundreds of millions of dollars Karl Rove and the Koch brothers have dedicated to spending in the 2012 election. In 2010, Republicans spent millions distorting the debate on important issues and running

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[15] P. Stone, "Karl Rove-linked Crossroads has more than doubled its earlier fundraising goal of $120 million," *Center for Public Integrity- iWatch News* (Sept. 8, 2011).

> vicious, dishonest attack ads. This is an effort to level the playing field and not allow right-wing activists to hijack the political system.[16]

One published report described Priorities USA as follows:

> A group of Democrats aligned with the Obama administration today announced that they are starting an outside spending group similar to the conservative groups that President Obama has decried.
>
> The new group has two arms: Priorities USA and Priorities USA Action. While one of the Priorities groups will disclose its donors, the other will not. The model is similar to that used by American Crossroads and Crossroads GPS, the conservative outside groups that raised more than $70 million in the midterm election cycle to spend on behalf of candidates with a "conservative free-market legislative agenda."[17]

Another report noted:

> A group of leading Democrats, including some with close connections to the White House, have officially formed what are expected to be the major outside groups to combat Republicans – and support President Obama – in the 2012 elections with help from huge donations from big money donors and corporations who will have the legal ability to stay in the shadows that Mr. Obama has previously so vocally criticized.
>
> The groups are to be called Priorities USA and Priorities USA Action, and, as such, are modeled after the Republican groups American Crossroads and Crossroads GPS that were started with help from the strategist Karl Rove and were credited with helping greatly in the party's takeover of the House of Representatives this year – and, it happens, with facilitating a waterfall of anonymous donations from moneyed interests in the November elections.[18]

As another report noted:

> Bill Burton and Sean Sweeney, two recently departed officials from the Obama White House, are forming Priorities USA, an organization that will seek to raise as much as $100 million in the 2012 cycle. The group will consist of two branches: a 501(c)(4) nonprofit and a 527 political action committee. The

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16 B. Smith, "In memo, Priorities USA defends secret-money shift," *Politico* (April 29, 2011).

17 B. Montopoli, "Democrats launch outside spending group; conservatives charge hypocrisy," *CBS News* (April 29, 2011).

18 J. Rutenberg, "Democrats Form Fund-Raising Groups," *New York Times* (April 29, 2011).

> structure will allow the organization to keep some of its donors secret, a practice that Democrats previously deplored when it was used by Republicans.[19]

The money raised by Priorities USA and its sister organization, Priorities USA Action, is described as intended to assist President Obama's reelection:

> Two Democratic groups seeking big bucks to boost President Obama's re-election have tapped several high-powered fundraisers to help rope in $4 million to $5 million in the first two months. They've also snagged pledges for two to three times those sums towards their joint goal of raising at least $100 million.
>
> The two groups, Priorities USA Action and Priorities USA, are benefiting from the help of leading Democratic fundraisers and donors. . . .
>
> Priorities USA Action is a 527 Super PAC which must disclose its donors and file quarterly reports, but Priorities USA, is a 501(c)(4) group that doesn't have to reveal its donors or file regular reports. Both groups can accept unlimited checks and under law must operate separately from the Obama campaign.[20]

In discussing the spending plans of the Priorities USA organizations, Burton is quoted as emphasizing the impact on the election that the groups seek to have:

> In response to "Rove's negative ads on the economy," Burton said, "we choose to invest in only swing states and, within those states, the most efficient television markets. Dollar for dollar, our spending is having a much greater impact on the voters who will decide the 2012 race."[21]

Another article about Priorities USA highlighted the fact that the group is expressly intended to counter the campaign activities of the Crossroads groups:

> To fight his rivals, Burton has chosen to emulate them. His groups may take unlimited amounts, often from anonymous donors and will solicit money from political action committees, corporations and lobbyists that Obama's official election committee disavowed in 2008 and still shuns in the name of good government. . . .

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[19] A. Kornblut, "Democrats gear up to match GOP fundraising effort," *The Washington Post* (April 29, 2011).

[20] P. Stone, "Obama groups raise $4-5 million in first two months," *Center for Public Integrity-iWatch News* (June 24, 2011) (emphasis added).

[21] J. Gillum, "Priorities USA Raises $5 Million to Counter Attack Ads From Karl Rove-Backed Crossroads GPS," *Associated Press* (July 31, 2011).

> "The pool of money available to Karl Rove and the Koch brothers is bottomless and limitless," said Paul Begala, a Democratic strategist who is advising Burton. [Pollster Geoff] Garin said Priorities USA "represents a way to level the playing field against Karl Rove and the Koch brothers". . . .
>
> Priorities USA and Priorities USA Action will focus on pointing to the weaknesses of Obama's opponents, Burton said. The first advertisement criticized former Massachusetts Governor Mitt Romney, the Republican frontrunner in early polling, for supporting a Republican plan to convert Medicare into a system of vouchers to buy health insurance.[22]

The same article makes clear that Priorities USA is part of a larger, coordinated campaign operation to support Democrats in the 2012 election:

> The Priorities USA organizations, which will focus on the presidential race, will coordinate with three other newly formed Democratic groups: House Majority PAC will focus on House races, Majority PAC will concentrate on the Senate, and American Bridge 21st Century, will conduct opposition research on Republican candidates that other groups can use in advertising or direct mail literature.

Id. Press reports also indicate that the use of section 501(c)(4) organizations for spending is because of the anonymity offered to donors:

> The three main anonymously funded Democratic outside groups – Priorities USA, American Bridge 21st Century Foundation and Patriot Majority – collected at least $3.7 million in untraceable contributions, and probably much more, in the first half of the year, according to voluntary disclosures and anecdotal information on ad buys.
>
> While that's not as much as the $5.8 million in fundraising reported in that same period by the sister organizations of those groups, which do disclose donors – Priorities USA Action, American Bridge 21st Century and Majority PAC – the feeling among some in Democratic fundraising circles is that the balance will likely tilt towards undisclosed donations as the groups seek to expand their donor bases. . . .
>
> Many such donors "feel more comfortable donating to groups that don't disclose," [a strategist] said, because some are publicity adverse and also because "as soon as their name appears in the paper as having contributed, their phone number goes on the speed dial of every congressman, committee and party that wants to raise money."[23]

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[22] A Fitzgerald, "Rove Tops President Obama as Drawing Card in Democrat Burton's Fundraising," *Bloomberg News* (June 29, 2011).

[23] K. Vogel, "Both sides now in dash for anonymous cash," *Politico* (Aug. 9, 2011).

III. American Action Network.

American Action Network (AAN) was founded in 2010 by Fred Malek, a leading national Republican fundraiser, and is chaired by former Republican Senator Norm Coleman. According to published reports, AAN shares offices with Crossroads GPS and other related groups.[24] AAN made numerous independent expenditures in the 2010 elections. For instance, according to one report:

> [A] so-called Section 501(c)(4) group called American Action Network filed an independent expenditure report with the FEC Aug. 5 [2010] indicating that it is spending nearly $435,000 for cable television and radio ads in the New Hampshire campaign for an open U.S. Senate seat. . . .
>
> The new ad campaign attacks the Democratic Senate candidate, Rep. Paul Hodes (D-N.H.), and supports Republican Senate candidate Kelly Ayotte, New Hampshire's former attorney general.
>
> The American Action Network has indicated on its website that it also sponsored ad campaigns focused on Senate races in Washington state and Florida; however, it filed no reports with the FEC on its spending in those states. The group indicated in press releases that it considered its efforts in these races to be "issue advocacy" not subject to any FEC reporting rules.
>
> The ads that the American Action Network sponsored in Washington included an image of tennis shoes purportedly worn by Sen. Patty Murray (D-Wash.) stepping on the backs of business owners, taxpayers and children. The ad ends by telling Murray that "it's time you got off our backs."[25]

Another report states:

> While the group was intended to serve largely as a policy shop to rival the liberal Center for American Progress, it has mainly just been cutting ads attacking Democrats (including Feingold) who are currently engaged in tight races.
>
> In addition to infusing hundreds of thousands of dollars in outside cash into Feingold's Wisconsin race, Coleman's group has also spent $750,000 targeting Sen. Patty Murray (D-Wash.) in her tight contest against Republican Dino Rossi and $450,000 attacking Senate candidate Rep. Paul Hodes (D) in New Hampshire. And because it is incorporated as a 501(c)(4) "social welfare" nonprofit, the D.C.-

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[24] H. Bailey, "A guide to the shadow GOP": the groups that may define the 2010 and 2012 elections," *Yahoo News-The Uphot* (August 5, 2010).

[25] K. Doyle, "Campaign Spending Reports Filed with FEC," *BNA Money in Politics Report* (Aug. 12, 2010).

> based AAN does not publicly disclose its donors and has not listed any contributors on the independent expenditure forms it is obliged to file with the FEC.[26]

In addition to spending on Senate races, in 2010, American Action Network also spent on "really tight" House races:

> The [Wall Street] Journal reported that American Action Network will air $1.7 million in ads boosting the cash-strapped bids of Republicans Ryan Frazier, who is taking on Democratic Rep. Ed Perlmutter (D-Colo), and Jackie Walorski, who is challenging Democratic Rep. Joe Donnelly (D-Ind.). . . .
>
> "The American Action Network has carefully calibrated really tight house races where there are candidates who strongly support our views of limited government and reduced deficits or on the other side candidates who really oppose our views," said the group's chairman, veteran GOP fundraiser Fred Malek.[27]

American Action Network shares space with American Crossroads and Crossroads GPS, and according to press reports, the groups coordinate their political activities:

> Sometimes that coordination is as easy as walking across the hall. Sharing office space with American Crossroads is the American Action Network (AAN), a group led by former Minnesota Senator Norm Coleman, a Republican, which may spend up to $25 million this year. Originally billed as a conservative think tank, the AAN has increasingly turned to raw politics, having spent more than $1 million on ad buys targeting Democrats such as Senators Patty Murray in Washington and Russ Feingold in Wisconsin. ("We definitely can't afford him," an AAN ad says of Feingold and his alleged free-spending record).[28]

The coordinated focus that American Action Network had on influencing the 2010 elections is illustrated by this quote from Rob Collins, the president of the organization, shortly before the 2010 election:

> Many of the conservative groups say they have been trading information through weekly strategy sessions and regular conference calls. They have divided up races to avoid duplication, the groups say, and to ensure that their money is spread around to put Democrats on the defensive in as many districts and states as possible – and more important, lock in whatever grains they have delivered for the Republicans so far.

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26 J. Zwick, "Coleman's American Action Network Infuses Cash into Close Senate Races," *Washington Independent* (Oct. 4, 2010).

27 K. Vogel, "Rove: Obama's attacks are helping," *Politico* (Oct. 13, 2010).

28 M. Crowley, "The New GOP Monday Stampede," *Time* (Sept. 16, 2010).

> "We carpet-bombed for two months in 82 races, now it's sniper time," said Rob Collins, president of American Action Network, which is one of the leading Republican groups this campaign season and whose chief executive is Norm Coleman, the former Senator from Minnesota. "You're looking at the battle field and saying, 'Where can we marginally push – where can we close a few places out?'"[29]

According to one report published after the 2010 election, American Action Network "ended up with Republican victories in about 56 percent of the contests it invested in."[30]

As one report notes, "Republican political operatives bestow immense credit for their party's competitiveness in 2010 on organizations such as Crossroads GPS and the American Action Network, both 501(c)(4) organizations. These groups can accept large donations that they do not have to disclose. . . ."[31]

American Action Network, like Crossroads GPS, also spent to influence a special congressional election in May, 2011. According to a published report, American Action Network spent $94,694 on an election in the New York 26th congressional district.[32]

In other spending in 2011, American Action Network has undertaken a $1 million direct mail and newspaper campaign that "charges Democrats with attempting to 'balance the budget on the backs of seniors'. . ."[33] The mail campaign "will reach 22 congressional districts in 14 states, all of them represented in Congress by Republicans. . . . Most of the 22 are freshmen first elected in November 2010." *Id.* According to another news report, the group subsequently "added 10 vulnerable freshmen House Republicans to its advocacy campaign defending Republicans on Medicare."[34] According to this report, the mailing sent to one Florida congressional district reads, "Florida seniors can count on Congressman Allen West to stand up against the Obama Medicare plan." *Id.*

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[29] J. Rutenberg, "Pro-Republican Groups Prepare Big Push at End of Races," *New York Times* (Oct. 25, 2010).

[30] M. Luo and G. Palmer, "Who Got the Most Bang for their Bucks?" *New York Times* (Nov. 4, 2010).

[31] A. Becker and D. Drucker, "Members Weigh In on Draft Disclosure Order," *Roll Call* (May 24, 2011).

[32] P. Overby, "Outside Groups Spend Big in N.Y. Special Election," *NPR* (May 25, 2011).

[33] A. Burns, "Ads to back GOPers on Medicare," *Politico* (July 27, 2011).

[34] C. Joseph, "Conservative group defending 10 more House Republicans on Medicare," *The Hill* (Aug. 3, 2011).

IV. Americans Elect

Americans Elect was initially organized as a "political organization" under section 527 of the tax code, but in October, 2010 changed its designation to a "social welfare" organization under section 501(c)(4) of the tax code.[35] It is seeking to gain a place on the 2012 ballot in all 50 states for a presidential candidate it intends to nominate.

According to one article, "Its mission is to upend the traditional party primary process by selecting an alternate presidential ticket through an online, open nominating convention." *Id.* This report also notes that the manner in which the group is pursuing its aims:

> . . . is highly unorthodox. Although it is attempting to qualify as a new party in California and other states, the group's legal designation is that of a nonpolitical, tax exempt social welfare organization.
>
> Under that designation, Americans Elect has been able to keep private its financiers, raising questions about what forces are driving the massive undertaking. The group has labored largely under the radar for the last 16 months, raising $20 million while successfully gaining ballot access in Arizona, Alaska, Kansas and Nevada. It is seeking certification in Michigan, Hawaii, Missouri and Florida besides California, with an additional 18 states in the pipeline before the end of the year.

Id. According to the same article, Americans Elect has raised $20 million, with no contribution exceeding $5 million. The report noted, "Elliot Ackerman said Americans Elect does not take any money from special interests or political action committees, adding that it is up to donors to determine whether they want to be identified." *Id.*

The same article notes that the organization plans to nominate a candidate for president:

> Americans Elect now plans to hold an online convention in June 2012 that will be open to any registered voters who sign up. They will select a presidential ticket from a slate of candidates, all of whom will have been required to pick a running mate from a different political party.

Id. Another article described Americans Elect as follows:

> Funded with at least $20 million, the majority from large, mostly unnamed donors, Americans Elect is vying to become the most serious third-party insurgency since industrialist H. Ross Perot nearly upended the 1992 presidential campaign.[36]

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[35] M. Gold, "Americans Elect seeks to upend primary system," *Los Angeles Times* (July 28, 2011).

[36] P. Jonsson, "Americans Elect launches centrist third-party bid amid Washington dysfunction," *Christian Science Monitor* (July 29, 2011).

In an opinion piece published by *Politico,* Elliot Ackerman, the group's chief operating officer, described the group's purposes as follows:

> We have set up a non-partisan nominating process for the presidency. We plan to hold a secure online convention in June 2012, where any registered voter can participate as a delegate. At this national convention, party functions will become delegate functions. The delegates will draft candidates; develop a platform of questions the candidates must answer, and discuss and debate the convention rules.
>
> We are on our way, with our ballot access initiative, to ensure that our presidential ticket can be on the ballot in all 50 states... .
>
> The Americans Elect nominating convention will be the first time that American voters have gained direct access to the ballot to nominate and elect a presidential candidate.[37]

According to *The Arizona Daily Star* on July 30, 2011, "Americans Elect was recognized last week as a new political party by the state of Arizona and is eligible to have its presidential nominee on the ballot in the 2012 elections." [38]

According to *The Detroit Free Press* on September 9, 2011, "Bureau of Elections spokesman Fred Woodhams said American Elect submitted nearly 68,000 petition signatures in May, more than double the 32,261 needed to qualify for the Michigan ballot as a minor party."[39]

According to *The Oregonian* on September 19, 2011, Americans Elect "has already qualified for the ballot in six states and appears to have turned in enough signatures -- more than 1.6 million -- to make the 2012 ballot in California."[40]

As these examples show, American Elect is not only devoted to intervening in the 2012 elections, it is actually qualifying itself as a political party for purposes of state ballot access laws. A political party is not eligible to qualify as a section 501(c)(4) tax exempt organization.

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37 E. Ackerman, "An online political convention," *Politico* (Aug. 10, 2011).

38 M. Casey, "Americans Elect party to appear on '12 ballot," *Arizona Daily Star* (July 30, 2011).

38 D. Bell, "State to vote on certifying new group with 2012 presidential hopes," *The Detroit Free Press* (Sept. 9, 2011) (emphasis added).

40 J Mapes, "New effort to establish centrist presidential campaign seeks to qualify for Oregon ballot," *The Oregonian* (September 19, 2011)

V. The IRS Should Investigate Whether Each Organization Is Ineligible for Section 501(c)(4) Tax Status Because Each Is Engaged In More Than An Insubstantial Amount of Campaign Activity.

A. General rule.

Section 501(c)(4) of the Internal Revenue Code establishes tax-exempt status for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare...." 26 U.S.C. § 501(c)(4) (emphasis added).

According to IRS regulations, "An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(i) (emphasis added).

Political activity – spending to influence campaigns – does not constitute promoting social welfare. Section 1.501(c)(4)-l(a)(2)(ii) of the regulations provides that political campaign activities do not promote social welfare as defined in section 501(c)(4). The regulation states, "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." 26 C.F.R. § 1.501(c)(4)–1(a)(2)(ii) (emphasis added).

Although the promotion of social welfare does not include political campaign activities, IRS regulations do not impose a complete ban on such activities for section 501(c)(4) organizations. Thus, "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare." Rev. Rul. 81–95, 1981–1 C.B. 332 (emphasis added).

B. Section 501(c)(4), as construed by the courts, does not permit a "social welfare" organization to engage in more than an insubstantial amount of campaign activity.

Section 501(c)(4), as construed by the courts, does not permit a group organized under that section to engage in more than an insubstantial amount of campaign activity and still qualify for tax exempt status.

According to court decisions, the statutory requirement for a section 501(c)(4) organization to be "operated exclusively" for "the promotion of social welfare" means that the organization cannot engage in more than an insubstantial amount of activity that is not in furtherance of its social welfare function. This means that section 501(c)(4) organizations cannot engage in more than an insubstantial amount of campaign activities.

The "insubstantial" standard established by the courts certainly does not allow a section 501(c)(4) organization to spend up to 49 percent of its total expenditures in a tax year to participate or intervene in elections and still maintain its tax-exempt status, as some practitioners believe.

Under the statutory language of section 501(c)(4), a social welfare organization must be "operated exclusively" for social welfare purposes. The courts have interpreted this "operated exclusively" standard the same way they have interpreted a parallel provision of section 501(c)(3) that requires an organization that is tax exempt under that provision to be "organized and operated exclusively" for charitable, education or similar purposes.

In *Better Business Bureau v. U.S.*, 326 U.S. 279, 283 (1945), the Supreme Court construed a requirement that a non-profit organization be "organized and operated exclusively" for educational purposes to mean that "the presence of a single non-educational purpose, *if substantial in nature*, will destroy the exemption regardless of the number or importance of truly educational purposes." (emphasis added).

Based on the *Better Business Bureau* decision, the courts have concluded that the word "exclusively" in the context of sections 501(c)(3) and 501(c)(4) is "a term of art" that does not mean "exclusive" as that term is normally understood and used.

The courts instead have said that, in the context of section 501(c)(4) of the IRC, this term means "that the presence of a single substantial non-exempt purpose precludes tax-exempt status regardless of the number or importance of the exempt purposes." *Contracting Plumbers Coop. Restor. Corp. v. U.S.*, 488 F.2d 684, 686 (2d. Cir. 1973) (section 501(c)(4)); *American Ass'n of Christian Sch. Vol. Emp. v. U.S.*, 850 F.2d 1510, 1516 (11th Cir. 1988) ("the presence of a substantial non-exempt purpose precludes exemption under Section 501(c)(4)"); *Mutual Aid Association v. United States,* 759 F.2d 792, 796 (10th Cir. 1985) (same; section 501(c)(4)).

The courts have similarly held, in the context of section 501(c)(3) organizations, that the "operated exclusively" test means that "not more than an insubstantial part of an organization's activities are in furtherance of a non-exempt purpose." *Easter House v. United States,* 12 Ct. Cl. 476, 483 (1987) (group not organized exclusively for a tax exempt purpose under section 501(c)(3)); *New Dynamics Foundation v. United States;* 70 Fed. Cl. 782, 799 (Fed. Cl. Ct. 2006) (same); *Nonprofits Ins. Alliance of California v. U.S.*, 32 Fed. Cl. 277, 282 (Fed. Cl. Ct. 1994) (same).

Under these court rulings, a section 501(c)(4) organization cannot engage in more than an insubstantial amount of campaign activity and remain in compliance with the statutory requirements for tax-exempt status under section 501(c)(4). Any "substantial, non-exempt purpose" (such as campaign activity) will defeat an organization's tax-exempt status under section 501(c)(4). *Christian Sch. Vol. Emp., supra* at 1516.

There is nothing, furthermore, in these rulings, in IRS regulations or in other IRS actions to support the proposition that spending 49 percent of total expenditures on campaign activities constitutes an insubstantial amount of non-exempt activity.[41]

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[40] On July 27, 2011, Democracy 21 and the Campaign Legal Center filed a petition for rulemaking with the IRS which seeks revisions in the regulations implementing section 501(c)(4). In particular, the petition contends that the "primarily engaged" standard in section 1.501(c)(4)-1(a)(2)(i) does not correctly

C. Political campaign activity not limited to "express advocacy" communications under the Internal Revenue Code.

IRS regulations make clear that "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office" is not limited to activities or communications which contain express advocacy or the functional equivalent of express advocacy. Thus, so-called "issue ads" that promote, attack, support or oppose a candidate fall with the meaning of direct or indirect participation or intervention in political campaigns.

Section 527(e)(2) of the Internal Revenue Code describes what constitutes political campaign (*i.e.*, "exempt function") activity for purposes of the tax code:

> The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed.

26 U.S.C. § 527(e)(2).

Revenue Ruling 2004–6, 2004–4 I.R.B. 328, provides a detailed explanation of what constitutes "exempt function" political campaign activity—illuminating the line between political activities and activities to promote social welfare. The IRS Revenue Ruling states:

> Section 1.527-2(c)(1) provides that the term "exempt function" includes all activities that are directly related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to public office or office in a political organization. Whether an expenditure is for an exempt function depends on all the facts and circumstances.

Id. (emphasis added)

Revenue Ruling 2004-6 explains that, because section 501(c)(4) public policy advocacy "may involve discussion of the positions of public officials who are candidates for public office, a public policy advocacy communication may constitute an exempt function (a political activity) within the meaning of § 527(e)(2)." Rev. Rul. 2004-6 at 1. The Ruling states:

> All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly

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implement the statutory "operated exclusively" standard in section 501(c)(4) of the IRC, as interpreted by the courts.

> advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).

Id. (emphasis added)

Thus, even if an ad discussing an issue does not express advocacy, it may nonetheless be treated as "exempt function" electioneering activity under IRS regulations, depending on the "facts and circumstances." Therefore, even where an ad discusses an "issue," and where the ad does not contain express advocacy or the functional equivalent of express advocacy, it can still be treated as "direct or indirect participation or intervention in political campaigns" under IRS standards for purposes of determining whether a 501(c)(4) organization is "primarily engaged" in the promotion of social welfare.

Rev. Rul. 2004-6 lists six factors that "tend to show" that an advertisement is "exempt function" political campaign activity, and five competing factors that "tend to show" that an advertisement is not. Rev. Rul. 2004-6 at 3-4. These factors are not in themselves dispositive. In the end, the regulations require a determination to be made based on "the facts and circumstances" of each advertisement.

The "factors that tend to show that an advocacy communication on a public policy issue is for an exempt function (political activity) under § 527(e)(2)" include the following:

a) The communication identifies a candidate for public office;

b) The timing of the communication coincides with an electoral campaign;

c) The communication targets voters in a particular election;

d) The communication identifies that candidate's position on the public policy issue that is the subject of the communication;

e) The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and

f) The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Rev. Rul. 2004-6 at 3.

The "factors that tend to show that an advocacy communication on a public policy issue is not for an exempt function under § 527(e)(2)" include the following:

a) The absence of any one or more of the factors listed in a) through f) above;

b) The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;

c) The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);

d) The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and

e) The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Id.

Under this "facts and circumstances" test, each of the organizations discussed in the letter is engaged more than an insubstantial amount of campaign activity and, in fact, is primarily engaged in activities for the purpose of participating and intervening in political campaigns.

In the case of Crossroads GPS and American Action Network, both organizations were created just months before the 2010 congressional elections, and were conceived, organized and staffed by leading political party strategists and operatives. Both organizations defined their activities as spending money to influence the 2010 House and Senate races, and both were closely affiliated with other organizations similarly spending large sums to influence the 2010 elections.

The activities of both groups were targeted to battleground states involving key congressional races, and to supporting Republican candidates or opposing Democratic candidates in those elections.

The ads run by both organizations identified candidates by name, discussed their position on issues in the midst of a campaign, and did so in ways that supported those candidates or criticized their opponents.

Finally, the timing of the groups' activities did not correspond with external events outside the control of the groups, such as a legislative vote on an issue, but rather corresponded with congressional election campaigns.

With regard to Priorities USA, statements by the founders of the organization make clear that it is modeled on Crossroads GPS, and is to play a similar function with the overriding purpose of conducting campaign activities to support the re-election of President Obama.

Finally, with regard to Americans Elect, the sole thrust of the organization is to obtain

ballot access to use to nominate candidates for president and vice president. The organization is qualifying on ballots as a political party. These activities are *per se* campaign activities in connection with an election.

Accordingly, each of the section 501(c)(4) organizations discussed above has engaged in more than an insubstantial amount of campaign activity, has a "substantial, non-exempt purpose" of participating or intervening in elections and is not entitled to tax-exempt status under section 501(c)(4).

VI. The IRS Also Should Investigate Whether Each Organization Is Ineligible for Section 501(c)(4) Tax Status Because the Organization Is "Primarily Engaged" in Campaign Activity

In a 2008 Letter Ruling, the IRS applied the "primarily engaged" standard to mean that a section 501(c)(4) organization's primary activities cannot constitute direct or indirect political intervention.

This interpretation of the statutory standard is in conflict with the court rulings interpreting section 501(c)(4), discussed above, that require an exempt organization to engage in no more than an insubstantial amount of campaign activity.

Nevertheless, the organizations discussed in this letter also fail to comply with the standard set forth in this Revenue Ruling. In the 2008 Ruling, the IRS found an organization did not qualify for tax exempt status under section 501(c)(4) because it was not primarily engaged in promoting "social welfare." The IRS said:

> Whether an organization is "primarily engaged" in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization's activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.

2008 TNT 160-33 (May 20, 2008) (emphasis added). The Letter Ruling continued:

> In Rev. Rul. 81-95, 1981-1 C.B. 332, we concluded that "an organization may carry on lawful political activities and remain exempt under section 501(c)(4) of the Code as long as it is primarily engaged in activities that promote social welfare." The corollary to this is that if an organization's primary activities do not promote social welfare but are direct or indirect political intervention, the organization is not exempt under section 501(c)(4). The key is to determine the character of the organization's primary activities by looking at all of the facts and circumstances.

Id. (emphasis added).

In the Letter Ruling, the IRS considered the organization's claim that it was primarily engaged in lobbying, not campaign intervention. The Letter Ruling states:

> A facts and circumstances test is to be used in determining whether an organization's activities primarily constitute political intervention or whether those activities constitute lobbying or educational activities. After reviewing all of the facts and circumstances presented in the administrative file as discussed above, we have concluded that your primary emphasis and primary activities constituted direct and indirect political intervention. While you engage in extensive lobbying activities, they are by no means your primary activity. Your first and primary emphasis is on getting people elected to public office.

Id. The IRS thus concluded:

> The emphasis throughout your materials is on electing to office * * * people in order to impact legislation and policy as insiders. The overwhelming majority of the evidence in the administrative record, and thus the facts and circumstances in this case, denotes an organization that is intent upon intervening in political campaigns. . . .While lobbying is usually mentioned, and we recognize that lobbying activities are being pursued, those activities are not your primary activity. An analysis of all of the facts and circumstances contained in the administrative file leads us to the conclusion that your primary activity constitutes political intervention.

Id. (emphasis added).

Therefore, the organization did not qualify for tax exemption under section 501(c)(4):

> Based upon the materials submitted in connection with your application, we have concluded that your activities primarily constitute direct and indirect participation or intervention in political campaigns on behalf of or in opposition to candidates for public office. Therefore, you are not primarily engaged in activities that promote social welfare and do not qualify for recognition of exemption under section 501(c)(4) of the Code.

Id.

Here, we believe that an IRS investigation will show that the "first and primary emphasis" of each of the four organizations discussed above is "on getting people elected to public office." In particular, the IRS should investigate whether the "facts and circumstances" show that each of the organizations discussed in the letter is primarily engaged in activities which constitute direct or indirect participation or intervention in political campaigns under IRS regulations. For reasons discussed above, we believe each organization has overriding purpose to engage in campaign activities, and thus is operating contrary to the requirements of section 501(c)(4).

VII. Conclusion.

In the 2010 congressional races, section 501(c) organizations spent more than $135 million on campaign activities that were financed by secret contributions. The bulk of these expenditures were made by section 501(c)(4) organizations. The amount of secret contributions funding campaign expenditures by section 501(c)(4) organizations is expected to grow dramatically in the 2012 presidential and congressional races.

Crossroads GPS, Priorities USA, American Action Network and Americans Elect are each organized under section 501(c)(4) of the Internal Revenue Code. Based on the information about each organization set forth above, the IRS should conduct an investigation of whether each such organization has engaged in more than an insubstantial amount of non-exempt activity by participating or intervening in political campaigns and accordingly is not primarily engaged in the promotion of social welfare. The IRS should also conduct an investigation of whether each organization's primary activity is campaign activity and is accordingly not primarily engaged in the promotion of social welfare.

If the IRS investigation determines that the facts and circumstances show that the organizations discussed above are not primarily engaged in "the promotion of social welfare," because they have engaged in more than an insubstantial amount of campaign activity or because the organization's primary activity is campaign activity, the organizations should be denied or should lose tax-exempt status. In addition, appropriate penalties should be imposed by the IRS for violations the agency finds. The penalties should take into account the need for strong deterrence to stop similar violations from occurring in the future.

Sincerely,

/s/ Gerald Hebert

J. Gerald Hebert
Executive Director
Campaign Legal Center

/s/ Fred Wertheimer

Fred Wertheimer
President
Democracy 21

December 14, 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for IRS investigation into whether certain section 501(c)(4) organizations are operating in violation of tax exempt status

Dear Commissioner Shulman and Director Lerner:

We are writing to supplement our letter to the Internal Revenue Service of September 28, 2011.

In the September 28th letter, Democracy 21 and the Campaign Legal Center called on the IRS to investigate whether four organizations – Crossroads GPS, the American Action Network, Americans Elect and Priorities USA – are operating in violation of their claimed tax-exempt status under section 501(c)(4) of the Internal Revenue Code because each organization is engaging in far more political activity than the Code allows for "social welfare" organizations.

These groups are claiming section 501(c)(4) tax status in order to keep secret from the American people the donors financing their expenditures to influence federal elections

We previously wrote to the IRS on October 5, 2010 asking for an investigation of Crossroads GPS and its eligibility to receive section 501(c)(4) tax status. We also wrote to the IRS on July 27, 2011 challenging the IRS regulations on eligibility for section 501(c)(4) tax status as not properly implementing the law.

We are writing today to provide additional information on the political activities of three of the four groups addressed in our September 28th letter, the American Action Network, Americans Elect and Crossroads GPS that further demonstrates that these groups are not entitled to section 501(c)(4) tax-exempt status.

As you are aware, section 501(c)(4) "social welfare" organizations are not required to disclose their donors to the public. If the four organizations discussed in our September 28th letter are not eligible for the tax status they claim under section 501(c)(4), then they are improperly shielding their donors from public disclosure and improperly using secret contributions to influence the 2012 national elections.

We are deeply concerned about the failure of the IRS to take any public steps to show that the agency is prepared to enforce the tax laws applicable to section 501(c)(4) tax-exempt groups.

Since bringing these abuses of the tax laws to your attention, beginning more than a year ago, we have seen no evidence that the IRS is prepared to address what appear to be blatant abuses in order to keep secret from the American people the sources of money being spent to influence federal elections.

The failure of the IRS to carry out its statutory enforcement responsibilities to prevent the abuse of the tax laws could have a major impact on the 2012 elections, as we have stated in our previous letters to the IRS.

We urge the IRS in the strongest possible terms to expeditiously examine the matters we have brought to its attention and to address any possible abuses and violations of the tax laws before it is too late.

As our prior letters state, section 501(c)(4) "social welfare" organizations are required to primarily engage in the promotion of social welfare in order to obtain tax exempt status. Federal court decisions have established that in order to meet this requirement, section 501(c)(4) organizations cannot engage in more than an *insubstantial* amount of any non-social welfare activity, such as directly or indirectly participating or intervening in elections.

In our letter of September 28, 2011, we provided voluminous information demonstrating that each of the four organizations discussed in the letter are engaging in *substantial* campaign-related activity. Indeed, the facts relating to the formation and activities of the four organizations show that each group was organized and is operated for the overriding purpose of participating or intervening in elections.

By claiming tax-exempt status under section 501(c)(4), these groups allow their donors to evade public disclosure requirements that would apply if the organizations were registered under section 527 as "political organizations." In fact, it appears that avoiding disclosure of their donors is the reason that these groups have claimed section 501(c)(4) tax status.

American Action Network

An article from the Center for Public Integrity's *iWatch News* (October 31, 2011) reported that American Action Network spent $30 million in 2010. According to the article and federal campaign finance reports, $26 million of the $30 million spent by American Action

Network in 2010 was spent for "independent expenditures" and "electioneering communications," as defined by federal campaign finance laws. The article states:

> The conservative American Action Network, a leading independent player in last year's election, poured $26 million – out of some $30 million in spending – from secret donors into political ads and activities to help Republican candidates. . . .
>
> As required by law, the network reported the $26 million it spent on political activities to the Federal Election Commission before Election Day.[1]

This means that *87 percent* of American Action Network's expenditures in 2010 were made for campaign-related activities reported to the FEC under the nation's campaign finance laws. The article states:

> "If over 80 percent of a group's expenditures are for political purposes that require reporting to the FEC, then that organization will not qualify for tax-exempt status under section 501(c)(4)," Marc Owens, who was director of the IRS exempt organizations division for a decade, told *iWatch News*.

Under no one's understanding of the tax laws is an organization eligible for section 501(c)(4) tax-exempt status if *87 percent* of its expenditures are made for campaign-related activities reported under the nation's campaign finance laws.

Based on these facts, the IRS must move promptly in order to stop American Action Network from again abusing the tax laws in the 2012 elections.

According to the *iWatch News* article, former Senator Norm Coleman, the chairman of American Action Network, is quoted as stating that the group will be heavily involved in spending to influence the 2012 congressional campaign. If the IRS does not take action, it could be responsible for allowing campaign-related expenditures by American Action Network that are improperly financed with secret contributions to influence and possibly decide the outcome of targeted House and Senate races.

Americans Elect

Americans Elect, which we also addressed in our September 28th letter, continues to qualify for ballot access as a political party in states throughout the nation in order to run a presidential/vice-presidential candidate ticket in 2012. The organization is claiming section 501(c)(4) status in order to keep its donors secret from the American people.

A recent news story stated that Americans Elect "has raised $22 million and is likely to place a third presidential candidate on the ballot in every state next year."[2] According to this

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[1] P. Stone, "Fine line between politics and issues spending by secretive 501(c)(4) groups," *iWatch News* (Oct. 31, 2011).

article, Americans Elect "has ballot slots in Florida, Michigan, Nevada, Ohio and five other states, with certifications pending in several others."

According to a recent *POLITICO* article, "Americans Elect this week announced that it qualified for the ballot in Colorado and Mississippi, bringing the total number of states in which it has access to 11 – including Alaska, Arkansas, Arizona, Kansas, Nevada, Michigan, Florida, Ohio and Utah. Certification is pending in California and Hawaii."[3]

The notion that this group qualifies as a section 501(c)(4) "social welfare" organization is absurd.

A group legally qualified in states as a political party in order to obtain ballot access to run a candidate for president cannot simultaneously be a tax-exempt "social welfare" organization under section 501(c)(4).

In this particular case, the failure of the IRS to act could have enormous consequences.

Just as third party candidates decided the 2000 presidential race, a third party candidate representing Americans Elect could decide the outcome of the 2012 presidential election. If that were to happen and the IRS has failed to take action here, the agency would be responsible for allowing secret money and a secretly financed organization to decide who is elected to be our next president.

The IRS must not allow this to happen. The agency must move immediately to address the apparent abuses of the tax laws.

Crossroads GPS

As we demonstrated in our September 28th letter, the overriding purpose of Crossroads GPS is to influence elections. In engaging in its campaign-related activities, Crossroads GPS works in tandem with American Crossroads, a so-called Super PAC, to elect Republicans and defeat Democrats running for federal office. That is the organization's purpose and that is what the organization is spending its money to do.

According to published reports, American Crossroads and its affiliated organization Crossroads GPS plan to spend a combined $240 million to influence the 2012 presidential and congressional elections.

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2 K. Thompson, "Moderate Americans Elect group hoping to add third candidate to 2012 election ballot," *The Washington Post* (November 24, 2011).

3 T. Mak, "Christine Todd Whitman to Jon Huntsman: Run third party," *POLITICO* (December 2, 2011)

Based on the Internal Revenue Code, court decisions and even the flawed IRS regulations, Crossroads GPS is not entitled to the section 501(c)(4) tax-exempt status it has claimed in order to hide its donors. This is another clear case that demands prompt action.

A recent article in *The New York Times* shows that Crossroads GPS is continuing to spend substantial amounts of money to influence federal elections. According to the article:

> Crossroads GPS, a conservative advocacy group founded by Mr. Rove and other Republican strategists, has placed the biggest bet so far on negative messages. By its own count, it has spent about $20 million this year on political advertising. Much of its was broadcast during the debt-ceiling debate this summer, when it singled out members of Congress with advertisements that portrayed Democrats and Mr. Obama as fiscally irresponsible and unable to fix the economy.
>
> In recent weeks, the group has taken on Mr. Obama and his economic agenda, spending $2.6 million on a commercial that criticizes his support for an upper-income tax increase and suggests a split on the issue between Mr. Obama and former President Bill Clinton. . . .
>
> Many of the Crossroads advertisements have been running in swing states like Colorado, Florida, Ohio and Pennsylvania and have been timed to coincide with presidential trips.
>
> "It creates a scenario where the president's visit is greeted with a strong counterpoint to the argument he's making," said Jonathan Collegio, communications director for Crossroads GPS.
>
> "And in battleground states where the issue framing is going to impact 2012, it's critical to be making your point there early and often," Mr. Collegio said. "There may be some value in advertising now that will be impossible to achieve toward the end of the campaign, when virtually all of the advertising on television and radio is political."[4]

Similarly, a recent article in *National Journal* reported that Crossroad GPS has recently "reserved more than $500,000 on air time in Nebraska's two largest media markets," to run ads that are for the purpose of dissuading Senator Ben Nelson (D-NE) from running for reelection.[5] According to the article:

> "We want Ben Nelson to recognize that 2012 will be an extraordinarily grueling proposition in the case he decides to run," said Jonathan Collegio, a Crossroads spokesman, in confirming the buy.

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[4] J. Peters, "TV Attack Ads Aim at Obama Early and Often," *The New York Times* (November 26, 2011) (emphasis added).

[5] R. Wilson, "Crossroads Will Drop Half Million Against Nelson," *National Journal* (Dec. 12, 2011).

Crossroads began the two-week blitz last week with a spot blasting Nelson's vote in favor of health care reform legislation. *Id.*

The statement by the spokesman for Crossroads GPS makes clear that it is intending to make Senator Nelson's year "grueling," should he decide to run for re-election. The campaign focus of Crossroads GPS's activities could not be more overt.

In failing to properly enforce the tax laws that apply to section 501(c)(4) groups, the IRS is failing the American people.

The IRS is also creating the potential for this illegal activity to play a major role in influencing and possibly determining the outcome of the 2012 presidential election and individual congressional races.

We reiterate our request that the IRS move promptly to address whether the organizations detailed in our September 28th letter are improperly claiming tax-exempt status under section 501(c)(4) and are improperly using that status to keep secret the donors to these groups whose contributions are being spent to influence federal elections.

The IRS has an obligation to the American people to properly enforce the tax laws and thereby to protect the integrity of our elections. Democracy 21 and the Campaign Legal Center strongly urge the IRS to meet its obligation.

Sincerely,

/s/ Gerald Hebert

J. Gerald Hebert
Executive Director
Campaign Legal Center

/s/ Fred Wertheimer

Fred Wertheimer
President
Democracy 21

March 9, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Request for IRS investigation into whether certain section 501(c)(4) organizations are operating in violation of tax-exempt status

Dear Commissioner Shulman and Director Lerner:

On September 28, 2011, Democracy 21 and the Campaign Legal Center called on the IRS to conduct an investigation into whether four groups claiming tax-exempt status under section 501(c)(4) of the Internal Revenue Code are ineligible for exemption under that provision because they are substantially engaged in campaign activities, not social welfare activities. The groups discussed in our letter are Crossroads GPS, Priorities USA, American Action Network and Americans Elect.

On December 14, 2011, we supplemented our request by providing additional information about the campaign activities conducted by three of these groups.

According to an article in *The New York Times* on March 6, 2012:

> In recent weeks, the I.R.S has sent dozens of detailed questionnaires to Tea Party organizations applying for nonprofit tax status, demanding to know their political leanings and activities. The agency plans this year to press existing nonprofits like American Crossroads, on the Republican side, and Priorities USA, on the Democratic side, to justify their tax-protected status as "social welfare" organizations, a status that many tax professionals believe is being badly abused. [1]

[1] J. Weisman, "Scrutiny of Political Nonprofits Sets Off Claim of Harassment," *The New York Times* (March 6, 2012). We believe the reference in the article to American Crossroads, which is a

The *Times* article also stated that there is "pushback" against any investigation by the IRS of whether groups that may be engaged in campaign-related activities are entitled to 501(c)(4) tax-exempt status, and that such resistance is likely to be "fierce." According to one attorney quoted in the article, the IRS is engaged in "'McCarthyism' tactics" and its investigation is "a coordinated effort by the I.R.S. . . . to stifle free speech activities."

We strongly urge the IRS not to succumb to such arguments, or to any public or political pressure to back away from carrying out the agency's statutory responsibilities to enforce the tax laws.

The IRS must enforce the law fairly and without partisan bias. The agency also must not shrink from enforcing the law against violations of the tax code by political groups. The stakes here – namely the integrity of our elections and of our tax laws – are much too high for the IRS to walk away from its responsibility to ensure that the tax laws are not being abused for political purposes.

The investigations we have urged the IRS to conduct involve organizations conducting substantial campaign activities that we believe are misusing the tax laws to keep secret from the American people the donors financing their campaign activities. We presented compelling evidence in our letters to show that these groups are primarily involved in campaign-related activities and, as such, do not qualify for exempt status under section 501(c)(4).

As we explained in our earlier letters, the law provides that section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare in order to obtain tax-exempt status under section 501(c)(4). Court decisions have established that in order to meet this requirement, section 501(c)(4) organizations cannot engage in more than an insubstantial amount of any non-social welfare activity, including direct or indirect participation or intervention in elections.

The facts outlined in our earlier letters clearly demonstrate, we believe, that the four organizations we requested the IRS to investigate are engaged in far more than an "insubstantial" amount of campaign-related activities that do not qualify as "social welfare" activities. One of these organizations supports Democratic candidates, two of them support Republican candidates, and one of them is seeking to nominate and run its own candidate for President.

By claiming tax-exempt status under section 501(c)(4), these groups allow their donors to evade the public disclosure requirements that would apply if the organizations were registered under section 527 as "political organizations." In fact, as our previous letters demonstrated, it appears that avoiding disclosure of their donors is the basic reason that these groups chose to claim section 501(c)(4) tax status.

Absent enforcement of the law, the IRS will be countenancing an improper scheme that allows organizations engaged substantially in campaign activities to hide the sources of money being used to influence elections by claiming exempt status under section 501(c)(4). This is

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section 527 group, is instead intended to be a reference to Crossroads GPS, an affiliated section 501(c)(4) organization.

contrary to the long established principle that citizens are entitled to know who is giving and spending money to influence their votes in order to protect the integrity of our elections and to safeguard against corruption. This principle is embodied in the Internal Revenue Code through the requirement that "political organizations" – those groups primarily organized and operated to influence elections – are subject to full disclosure of the sources of their funding. 26 U.S.C. § 527.

To the extent these organizations are operating improperly as section 501(c)(4) groups, the interests of the American people are being seriously harmed. The IRS has an obligation to enforce the tax laws as written and interpreted by the courts, and to ensure that tax-exempt groups substantially engaged in campaign activities are not allowed to misuse section 501(c)(4) to hide their donors from the public.

Such enforcement is not partisan, nor is it contrary to First Amendment values. Groups are free to obtain tax-exempt status and to engage in as much campaign activity as they wish – so long as they operate under section 527 and comply with its disclosure requirements.

We urge the IRS to move forward expeditiously to investigate the groups we have identified in our earlier letters and to conduct all other appropriate investigations to ensure proper compliance with the eligibility requirements of section 501(c)(4).

Sincerely,

/s/ Gerald Hebert	*/s/ Fred Wertheimer*
J. Gerald Hebert	Fred Wertheimer
Executive Director	President
Campaign Legal Center	Democracy 21

FOR CONTINUATION OF SENATE REPORT 114-119

THE INTERNAL REVENUE SERVICE'S PROCESSING OF 501(c)(3) AND 501(c)(4) APPLICATIONS FOR TAX-EXEMPT STATUS SUBMITTED BY "POLITICAL ADVOCACY" ORGANIZATIONS FROM 2010 - 2013

SEE PART 2