114TH CONGRESS
1st Session

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

COMMITTEE ON FINANCE
UNITED STATES SENATE

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

PART 3 OF 4

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SFC 002251

From: Light Sharon P
Sent: Friday, April 19, 2013 1:35 PM
To: Lerner Lois G; Marks Nancy J; Paz Holly O
Subject: for your review: counsel-approved version
Attachments: Denial.FINAL.changes.saved.doc

Lois, Nan and Holly we sent our final draft of the first advocacy denial to counsel several weeks ago. They got back to us with comments. We sent them a revised version early this week. They had a few minor comments today. I have incorporated them in the attached document.

Please let me know if you have questions or concerns.

Sharon

IRS0000195712

SFC 002252

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: **Draft 4/19/13**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
SFC [redacted]

UIL:
[redacted]

[redacted]

Legend

SFC
[redacted]

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided in connection with your application and in your Form 990 for Year1 , we have concluded that you do not qualify for exemption under section 501(c)(4). The basis for our conclusion is set forth below.

Facts

You incorporated on Date in State. Your Articles of Incorporat ion and Bylaws state that you are organized and operated exclusively for section 501(c)(4) purposes . They also state that your specific purposes are to "educate the general public on issues of pub lic concern, including climate change, health care, food po licy, and other such issues."

Your activities consist of producing and disseminating radio, television and print advertisements, polling and public opinion research, producing and disseminating white papers, and meeting with interested business and civic leaders in State. You posted many of your advertisements and white papers on your website.

You provided a "complete list of media buys" with the dates you ran the advertisements, a

DRAFT

description of the advertisements and the cost of each one. You ran all advertisements statewide in Year1, including three television, one radio and one print in the period leading up to the primary election. You also ran one television and two radio advertisements in the period leading up to the general election. Furthermore, following the general election, you ran two print advertisements. About 85 percent of the expenses for these media buys were incurred for advertisements run during the periods leading up to the primary and general elections.

You submitted the content of 11 advertisements.

- Four of these advertisements (two radio and two print) include express statements to vote for Candidate, e.g., "vote for Candidate" and the "State needs to...re-elect Candidate."
- Two advertisements (one television and one radio) identified the Candidate, expressed approval for the Candidate's actions (e.g., "the Candidate who...protects our way of life"), and indicated that outsiders who controlled the Candidate's primary opponent were trying to defeat the Candidate. You ran the advertisements before the general election.
- One television advertisement identified one of the candidates for public office and his position on an issue. The advertisement also told viewers to call that candidate and express opposition to his position on that issue; however, the candidate was not a government official in a position to vote on that issue. You aired the advertisement shortly before the primary election.
- Two print advertisements addressed public policy issues. One discussed the impact of federal regulatory actions on the State's industries. The other discussed the impact of tax cuts on the State's economy. Both advertisements instructed readers to call their congressman about these issues. You ran the advertisements after the general election.
- We were unable to view two of the television advertisements. You aired one of the advertisements before the primary election, and you aired the other before the general election. You identified the advertisement you aired before the general election as an "independent expenditure" on your "complete list of media buys." You described your "independent expenditures" as expenditures for "direct and indirect political activities" on Schedule C of Form 990.

In response to our question about your expenses for radio and television time to educate residents on key issues facing State, you responded that you spent more than $x on media buys and media production in Year1. You reported a nearly identical amount on your Form 990 for Year1 for "Education-Media" and "Education-Production," which comprised 85 percent of your total Program Service Expenses for Year1. According to Form 990 instructions, "Program services are mainly those activities that further the organization's exempt purposes." They do not include Management and General Expenses or Fundraising Expenses.

In Part IV of Form 990 for Year1, you indicated that you had engaged in direct or indirect campaign activities on behalf or in opposition to candidates for public office. On Schedule C, *Political and Campaign Lobbying Activities*, your reported that you spent $y on these activities in Year1, which you described as "independent expenditures in support of Candidate. These independent expenditures included radio, television, and print advertisements which were designed to educate the citizens of State on where Candidate stood on important social welfare issues." These "independent expenditures" of $y comprised more than half of your total

SFC [redacted]

Program Service Expenses for Year1.

You stated that you intend to conduct polling and public opinion research and have conducted one poll. You contracted with a polling firm to survey registered likely Political Party primary voters about issues pertinent to State voters, such as agriculture policy, unions and social security issues. You provided the telephone script used for the survey. The script includes questions as to whether the respondent is a registered voter, which primary the respondent is planning to vote in, and how likely the respondent is to vote in the upcoming Political Party primary. According to the script, you will terminate the survey if the respondent is not a registered voter or if the respondent does not plan to vote in the Political Party primary.

The survey asked the respondent to rate the performance of the United States, Congress, the President and the current Political Party Officeholder for State. It asks whether the respondent is likely to vote to re-elect the current Officeholder or to vote for one of the primary challengers.

The survey asks the respondent to rate statements "some people have given for supporting a candidate in the Political Party Primary." The survey included one statement about the primary challenger without any opinion expressed. The survey included two statements about the Candidate, e.g., "Candidate...voted against...the cap and trade bill ..." and each included a favorable opinion, i.e., "we need Candidate in Washington in order to protect State," and "Candidate had the courage to put the people of State before Political Party."

The survey also asks the respondent to rate statements "some people have given for opposing a candidate in the Political Primary." It includes seven statements about the challenger and two statements about the Candidate. Statements about the challenger explain that elected officials who have worked with the challenger are supporting Candidate, that special interests are funding the challenger's campaign, and that the challenger has been involved in sending U.S. jobs overseas. Statements about the Candidate explain that the Candidate is against reform and unions, and does not support the President.

You held meetings in Year1 through Year3 where your directors met with agriculture and business leaders to discuss issues, such as gaming legislation, climate change, tax reform, immigration policy and health care implementation. You did not devote any monetary resources to these discussions that your board members conducted.

Finally, you produced four white papers on the following topics: climate change, tax policy, agriculture policy and regulatory policy. None of the white papers is more than one page. Each describes an issue and states your position. The white paper on agricultural policy states that you oppose policies that will drive agricultural production overseas. The white paper on climate change describes criticisms of the cap and trade legislation. You posted these documents on your website and e-mailed them to a distribution list drawn from your directors' personal and professional contact lists. Such lists include members of the State legislature, civic leaders, business executives and federal elected officials.

Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in pro moting 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 civic betterments and social improvements. In addition, the regulations provide that the promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of or in opposition to any candidate for public office.

Rev. Rul. 68-45, 1968-1 C.B. 259, explains that all facts and circumstances are taken into account in determining an organization's primary activity under section 501(c)(4). The organization's activities included the following: veteran's programs; assistance to needy veterans, widows and orphans; patriotic programs; and community welfare programs, such as providing and furnishing playgrounds for children and sports programs for teenagers The organization also conducted bingo games for the general public, and the resulting income was its principal source of revenue. The IRS held that the fact that the bingo games generated its principal source of income did not mean that the games were its primary activity. Taking into account all facts and circumstances, the IRS found that the organization's social welfare activities were its primary activities.

In Rev. Rul. 67-368, 1967-2 C.B. 194, the IRS held that an organization, which was formed to promote an enlightened electorate and whose primary activity was rating candidates for pu blic office, was not exempt under section 501(c)(4) because it did not promote social welfare. The ruling stated that the comparative rating of candidates, even on a non-partisan basis, constitutes the participation or intervention on behalf of candidates favorably rated and in oppos ition to those less favorably rated.

In Rev. Rul. 81-95, 1981-1 C.B. 332, the IRS considered the effect of engaging in political campaign activities on a section 501(c)(4) organization. The ruling refers to five revenue rulings for other examples of what cons titutes participation or intervention in political campaigns. Each of those rulings involves a section 501(c)(3) organization. The organization was primarily engaged in activities designed to promote social welfare. In addition, it conducted activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. The ruling concluded that, because the organization's primary activities promoted social welfare, its lawful participation or intervention in political campaigns on behalf of or in opposition to candidates for public office would not adversely affect its exempt status under section 501(c)(4).

Rev. Rul. 2004-6, 2004-1 C.B. 328, analyzes six situations to determine whether the organization described in each has expended funds for a section 527(e)(2) exempt function as a result of an advocacy communication on a public policy issue. A section 527(e)(2) exempt

function means "the function of influencing or at tempting 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. " All the facts and circumstances must be considered when making this determination. Factors that tend to show that an advocacy communication on a public policy issue is for a section 527(e)(2) exempt function include, but are not limited to, the following:

- The communication identifies a candidate for public office ;
- The timing of the communication coincides with an electoral campaign ;
- The communication targets voters in a particula r election;
- The communication identifies that candidate's position on the public policy issue that is the subject of the communication ;
- 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
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances , such as those described in the six situations, f actors that tend to show that an advocacy communication on a public policy issue is not for a section 527(e)(2) exempt function include, but are not limited to, the following:

- The absence of any one or more of the factors listed above ;
- The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence ;
- 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) ;
- 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
- The communication identifie s the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

Each of the situations assumes that:

- All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under section 527(f)(3);
- The organization would continue to be exempt under section 501(a), even if the described activity is not a section 501(c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of section 501(c); and
- All advocacy communications described also include a solicitation of contributions to the organization.

Rev. Rul. 2007-41, 2007-1 C.B. 1421, analyzes 21 situations to det ermine whether the

section 501(c)(3) organization described in each has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public office. All facts and circumstances are considered when making this determination. When determining whether a communication results in political campaign intervention, key factors include:

- Whether the statement identifies one or more candidates for a given public office ;
- Whether the statement expresses approval or disap proval for one or more candidates' positions and/or actions ;
- Whether the statement is delivered close in time to the election ;
- Whether the statement makes reference to voting or an election ;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office ;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election ; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office .

A communication is particularly at risk of po litical campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Additionally, the ruling states that se ction 501(c)(3) organizations are permitted to conduct certain voter education activities if they are carried out in a non -partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is political campaign intervention .

Finally, the ruling states that a web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

Analysis

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. Treas. Reg. §1.501(c)(4)-1(a)(2)(i). Whether an organization's primary activities are social welfare activities is determined based on all of the facts and circumstances. Rev. Rul. 68-45. The promotion of social welfare does not include direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office. Treas. Reg. §1.501(c)(4)-1(a)(2)(ii). All the facts and circumstances (including the specific factors described in Revenue Rulings 2004 -6 and 2007-41) are considered when determining whether an organization claiming exemption under section 501(c)(4) has engaged in direct or indirect participation or interven tion in a political campaign on behalf of or in

opposition to any candidate for public office. *See* Rev. Rul. 81-95 (citing section 501(c)(3) rulings as examples of political campaign intervention for section 501(c)(4) purposes)

You produced and disseminated advertisements, conducted polling, met with interested business and civic leaders, and disseminated white papers.

Advertisements

According to your reporting on Form 990 and representations on your application for exemption, your advertisement expenses comprised a majority of your Program Services Expenses. You described your expenditures for political campaign activities reported on Form 990 Schedule C, *Political and Campaign Lobbying Activities*, as expenses for "radio, television and print advertisements." You aired most of your advertisements, which you produced and distributed through television, radio, print, and the Internet, during an election campaign. The advertisements that we viewed identified candidates and made positive or negative statements about candidates for public office. These advertisements were not part of an ongoing series of substantially similar advocacy communications on the same issue. Some advertisements contained express statements to vote for a specific candidate. All of these advertisements constitute direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office.

You aired the two television advertisements we were unable to view in the periods leading up to the primary and general elections. You identified one of these advertisement as an "independent expenditure" in your application materials and you reported your independent expenditures as expenditures for "direct and indirect political activities" and "independent expenditures in support of Candidate" on Schedule C of Form 990. We cannot conclude that these two advertisements promoted social welfare within the meaning of section 501(c)(4).

Polling

You stated that you were conducting public opinion polling about issues pertinent to State voters, such as agriculture policy, unions and social security issues. Your poll included questions on these and other issues. You framed many questions in terms of statements that support or oppose a candidate. The poll included more statements to support the Candidate than to support the Candidate's challenger and many more reasons to oppose the challenger than to oppose the Candidate. The balance of positive and negative messages resulted in a poll that was biased in favor of the Candidate. Considering all the facts and circumstances, we have concluded that your polling activities support or oppose the election of a candidate for public office.

Meetings

The limited information you submitted regarding your meetings with various agriculture and business leaders does not establish that these activities promoted social welfare. By your description, these activities constituted a small portion of your time and resources.

White papers

The white papers you provided are no more than one page . Of those four white papers, your paper on cap and trade policy corresponds to one of the statements given for supporting Candidate in your public opinion poll . Your paper against driving agricultural product ion overseas corresponds to one of the reasons given for opposing Candidate's challenger in your public opinion poll. You did not provide information as to when you disseminated the se papers to your limited distribution list or when you posted them on you r website. We cannot conclude that producing these white papers and posting them on your website promoted social welfare within the meaning of section 501(c)(4) .

Conclusion

Based on our analysis of the information you provided in connection with your application and in your Form 990 for Year1 , we have determined that you are not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4). Accordingly, you are not exempt under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find mor e information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Reg ional Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appe al and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the

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appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 892

DRAFT

From: Light Sharon P
Sent: Friday, April 19, 2013 2:47 PM
To: Lerner Lois G; Marks Nancy J; Paz Holly O
Subject: RE: for your review: counsel-approved version

The agent noted it in an email to Justin, cc'g me and Daniel W. Berry. It was sent on 8/20/12, by which time we already had our copy of the file. So I don't know how that information is noted in the official file.

From: Lerner Lois G
Sent: Friday, April 19, 2013 3:22 PM
To: Light Sharon P; Marks Nancy J; Paz Holly O
Subject: RE: for your review: counsel approved version

Hmm--we need to be consistent. I believe the rule we decided on was if they sent it in without us asking, it stayed in the file. If we asked and didn't use it, we destroyed it--is that correct? Once we know the facts, I think we need to ask David if we have the authority to put it on the non-disc losable side. One more question--where did the agent note this?

Lois G. Lerner
Director of Exempt Organizations

From: Light Sharon P
Sent: Friday, April 19, 2013 3:06 PM
To: Lerner Lois G; Marks Nancy J; Paz Holly O
Subject: RE: for your review: counsel approved version

I want to add one thing this org got one of the letters asking for donor names, and they sent a donor list. The Determs agent noted this and put the donor info in the non -disclosable side of the file in August, 2012.

We expunged this info from files that were bucketed as approvals so the donor info would not be made public.

Do we need to do anything other than put the donor info on the non -disclosable side of the file with this denial? As long as it's a denial, nothing goes public.

Sharon

From: Light Sharon P
Sent: Friday, April 19, 2013 2:35 PM
To: Lerner Lois SEC [redacted]; Marks Nancy J; Paz Holly O
Subject: for your review: counsel approved version

Lois, Nan and Holly we sent our final draft of the first advocacy denial to counsel several weeks ago. They got back to us with comments. We sent them a revised version early this week. They had a few minor comments today. I have incorporated them in the attached document.

Please let me know if you have questions or concerns.

SFC 002262

Sharon

IRS0000195725

SFC 002263

From: Light Sharon P
Sent: Tuesday, May 14, 2013 12:11 PM
To: Marks Nancy J; Paz Holly O
Subject: RE: What is the third bolo change?

Here is holly's email:

6/2012-present Current Political Issues - 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.

01/2012-6/2012 Current Political Issues - Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, $oci al 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.

7/2011-1/2012 Advocacy Orgs - Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).

2/2011-7/2011 Tea Party - Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) or 501(c)(4). [EO Determinations specialists indicated that they interpreted this as including organizations meeting any of the following criteria: 1. 'Tea Party', 'Patriots' or '9/12 Projec t' is referenced in the case file. 2. Issues include government spending, governmen t 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.]

08/2010-2/2011 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). [EO Determinations specialists indicated that they interpreted this as including organizations meeting any of the following criteria: 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.]

-----Original Message-----
From: Marks Nancy J
Sent: Tuesday, May 14, 2013 1:10 PM
To: Paz Holly O; Light Sharon P
Subject: Re: What is the third bolo change?

I was using tigta report which has two problem change points

Sent using BlackBerry

------Original Message------

SFC 002264

To: Holly Paz
Subject: What is the third bolo change?
Sent: May 14, 2013 1:08 PM

Sent using BlackBerry

IRS0000195831

SFC 002265

From: Lerner Lois G
Sent: Thursday, May 26, 2011 5:18 PM
To: Paz Holly O; Fish David L
Subject: FW: C 4

Importance: High

I'm told Chip Hull is heading up the up--scaring me--can I get a briefing?

Lois G. Lerner
Director, Exempt Organizations

From: Lerner Lois G
Sent: Thursday, May 26, 2011 5:45 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Paz Holly O
Subject: RE: C 4

Looks to me like Crossroads GPS is simply an acronym for Cr ossroads Grassroots Policy Strategies--(-: Joseph, Cindy also believes there is an application in Cincy on this as part of a larger look--it is being coordinated with EO Tech.

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was called Crossroads GPS and the other Crossroads Grassroots Policy Strategies. They could not determine that these were the same entities. Crossroads GPS was not an entity but Crossroads Grassroots Policy Strategies is a 501 C 4. This referral has been sent to committee for review.

Nan

SFC 002266

From: Lerner Lois G
Sent: Friday, May 27, 2011 11:09 AM
To: Paz Holly O
Cc: Letourneau Diane L; Seto Michael C; Grant Joseph H
Subject: RE: C 4

OK, but Cindy tells me there is a whole passel of "tea Party related" cases being working in Cincy that Chip is overseeing/coordinating? I need to be briefed on that please

Lois G. Lerner
Director, Exempt Organizations

From: Paz Holly O
Sent: Friday, May 27, 2011 11:47 AM
To: Lerner Lois G
Cc: Letourneau Diane L; Seto Michael C
Subject: RE: C 4

Lois,

This case just arrived up here from Cincy. It has not yet been assigned. Mike and I talked and plan to assign it to Siri, not Chip, and will make sure that Siri's work is closely overseen by a c4 specialist. We will set up a briefing for you once Siri ahs had time to familiarize herself with the file.

Holly

From: Lerner Lois G
Sent: Thursday, May 26, 2011 5:45 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Paz Holly O
Subject: RE: C 4

Looks to me like Crossroads GPS is simply an acronym for Crossroads Grassroots Policy Strategies--(-: Joseph, Cindy also believes there is an application in Cincy on this as part of a larger look--it is being coordinated with EO Tech.

Lois G. Lerner
Director, Exempt Organizations

SFC 002267

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was called Crossroads GPS and the other Crossroads Grassroots Policy Strategies. They could not determine that these were the same entities. Crossroads GPS was not an entity but Crossroads Grassroots Policy Strategies is a 501 C 4. This referral has been sent to committee for review.

Nan

SFC 002268

From: Lerner Lois G
Sent: Friday, May 27, 2011 5:27 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Seto Michael C; Fish David L; Kindell Judith E
Subject: RE: C 4

There are several moving pieces here. Referrals in Dallas, applications in Cincy and I just learned--a request for 1023 and 990 to Cincy. I have set a meeting on Tuesday with Holly, Mike, Judy and David to parse through this and see what really is happen ing. Nan--we may not need you for the first part, but will want to talk to you also at some point

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was called Crossroads GPS and the other Crossroads Grassroots Policy Strategies. They could not determine that these were the same entities. Crossroads GPS was not an entity but Crossroads Grassroots Policy Strategies is a 501 C 4. This referral has been sent to committee for review.

Nan

SFC 002269

From: Lerner Lois G
Sent: Tuesday, May 31, 2011 4:03 PM
To: Downing Nanette M
Cc: Grant Joseph H
Subject: RE: C 4

But in this case, they have an application pending and they aren't due to file a 990 yet

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Tuesday, May 31, 2011 4:50 PM
To: Lerner Lois G
Cc: Grant Joseph H
Subject: RE: C 4

If they are not exempt we send over to SBSE as they would be an 1120 filer.

From: Lerner Lois G
Sent: Tuesday, May 31, 2011 2:33 PM
To: Downing Nanette M
Cc: Grant Joseph H
Subject: RE: C 4

Sorry-- I was just trying to figure out what is where. Apparently, the application hasn't been decided yet and there are no 990s filed yet--none due. I've asked for a briefing on the application and the bucket of cases in the same posture. What happens when you get a referral on an org that hasn't been approved or filed?

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Monday, May 30, 2011 7:26 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Seto Michael C; Fish David L; Kindell Judith E
Subject: RE: C 4

shoot me an email if you want me to join the last bit of the conversation. Otherwise I will just wait to hear from you about this.

From: Lerner Lois G
Sent: Friday, May 27, 2011 5:27 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Seto Michael C; Fish David L; Kindell Judith E
Subject: RE: C 4

There are several moving pieces here. Referrals in Dallas, applications in Cincy and I just learned--a request for 1023 and 990 to Cincy. I have set a meeting on Tuesday with Holly, Mike, Judy and David to parse through this and see what really is happening. Nan--we may not need you for the first part, but will want to talk to you also at some point

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was called Crossroads GPS and the other Crossroads Grassroots Policy Strategies. They could not determine that these were the same entities. Crossroads GPS was not an entity but Crossroads Grassroots Policy Strategies is a 501 C 4. This referral has been sent to committee for review.

Nan

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4:24 PM
To: Paz Holly O; Kindell Judith E; Downing Nanette M
Subject: Cases

This is a list of the Emerge cases we know about. I need your help in determining why some were approved and what, if anything has occurred with them since approval --Roo referral? Also need to know where Emerge Oregon is --Cincy? DC? Dallas?

Apparent Cincinnati Approvals

Emerge AZ--2004 March--referred to Exam by outside source.
Emerge CA--2004 Sept
Emerge America--2006 March
Emerge NM--2007 March
Emerge WI--2008 March
Emerge Ky--2011 April

DC Denials

Emerge Maine--2011 April
Emerge Nevada--2011 April
Emerge MA--2011 April

In Process

Emerge Oregon???? Check where it is.

Lois G. Lerner
Director of Exempt Organizations

SFC 002272

From: Lerner Lois G
Sent: Wednesday, July 27, 2011 12:47 PM
To: Ruth.Madrigal SFC
Subject: RE: IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center

you're welcome

Lois G. Lerner
Director of Exempt Organizations

From: Ruth.Madrigal SFC
Sent: Wednesday, July 27, 2011 1:44 PM
To: Lerner Lois G
Subject: RE: IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center

Thanks much.

Ruth

M. Ruth M. Madrigal
SFC

From: Lerner Lois G SFC
Sent: Wednesday, July 27, 2011 1:40 PM
To: Madrigal, Ruth
Subject: FW: IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center

Thought you might be interested

Lois G. Lerner
Director of Exempt Organizations

From: Erin Kesle SFC
Sent: Wednesday, July 27, 2011 9:54 AM
To: Erin Kesler
Subject: IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center

July 27, 2011

Douglas H. Shulman
Commissioner, Internal Revenue Service

1111 Constitution Avenue Northwest
Washington D.C., DC 20224

Dear Commissioner Shulman,

Enclosed is a petition for IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President, Democracy 21

From: Lerner Lois G
Sent: Friday, May 25, 2012 3:29 PM
To: Light Sharon P; Thomas Cindy M
Cc: Paz Holly O
Subject: RE: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION

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. Have a relaxing weekend!

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Light Sharon P
Sent: Friday, May 25, 2012 3:52 PM
To: Lerner Lois G; Thomas Cindy M
Cc: Paz Holly O
Subject: Re: #17 2012 TNT 102-17 WATCHDOGS A5K IR5 TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION

We don't use the term "full development" for the buckets since it's a screening word. People mostly use "general development" when an org has told us almost nothing useful and we have to develop practically everything. "Focused development" doesn't mean that development is minimal or that it's a likely approval. Instead, , it's targeted at a couple of things. Here, it's the ads mostly. So the info in the most recent letter on the focus group involvement in developing the ads would get pulled into the "focused development."

There's another big org that has ad issues. It's in the second round of reconciliation b/c we got a response after doing the first one. I am thinking they should both move ahead with the same bucket recommendation, for the sake of consistency.

Sent using BlackBerry

------Original Message------
From: Lois Lerner
To: Light Sharon P
To: Thomas Cindy M
Cc: Holly Paz
Subject: RE: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION
Sent: May 25, 2012 3:37 PM

Based on the public information on this org --seems like full development may be the best course --but keep me posted.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Light Sharon P
Sent: Friday, May 2S, 2012 3:33 PM
To: Thomas Cindy M; Lerner Lois G
Cc: Paz Holly O
Subject: Re: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION

It's been reviewed by two people. They basically agree on next steps, i.e., questions to ask, but they've pu t it in different buckets - one limited development, the other general development. They'll reconcile on Tuesday.
I've already added this letter to the folder. The taxpayer did submit a response to our initial development letter.

Sent using BlackBerry

------Original Message------
From: Thomas Cindy M
To: Lois Lerner
Cc: Holly Paz
Cc: Light Sharon P
Subject: RE: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION
Sent: May 25, 2012 2:30 PM

I think Sharon would be the best person to provide you with the status since she is overseeing the team looking at these cases and is tracking each case.
I don't have that information.

Sent from my iPhone

---- Original Message ----
From: Lerner Lois G
Sent: Fri 5/25/12 1:22 PM
To: Thomas Cindy M
Cc: Paz Holly O; Light Sharon P
Subject: FW: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GP5 APPLICATION FOR EXEMPTION

FYI Can I get a status on the matter?

Lois G. Lerner
Director of Exempt Organizations

From: Urban Joseph J
Sent: Friday, May 25, 2012 7:45 AM

SFC 002276

To: Grant Joseph H; Medina Moises C; Lerner Lois G; Paz Holly O; Fish David L; Kindell Judith E; Light Sharon P; Miller Thomas J; Lowe Justin; Megosh Andy; *Manager EO Cl assification; Goehausen Hilary; Marks Nancy J; Downing Nanette M
Subject: #17 2012 TNT 102-17 WATCHDOGS ASK IRS TO DENY CROSSROADS GPS APPLICATION FOR EXEMPTION

ABSTRACT: Democracy 21 and Campaign Legal Center, two campaign finance watchdog groups, asked the IRS to deny Crossroads GPS's application for tax-exempt status under <https://w3.lexis.com/research2/tax/irclinkhandler.do?_m d991e398b6900cbb17a 060fd9a26b5fb&wchp dGLzVzt-zSkAb&_xfercite &butInfo IRCODE%20501&_butNum 2&_ md5 72F2A057AFBFE7895E6985D1E5D9AF3C> section 501(c)(4), saying that recent news accounts demonstrate that Crossroads GPS is engaging in behavior not engaged in by "legitimate" <https://w3.lexis.com/research2/tax/irclinkhandler.do?_m d991e398b6900cbb17a 060fd9a26b5fb&wchp dGLzVzt-zSkAb&_xfercite &butInfo IRCODE%20501&_butNum 3&_ md5 9F220B9E581A5156552FEE67FBE691E7> section 501(c)(4) organizations.

Release Date: MAY 24, 2012

Published by Tax Analysts(R)

------Original Message Truncated------

SFC 002277

From: Klein Richard T
Sent: Monday, January 28, 2013 10:33 AM
To: Lerner Lois G
Subject: Document.ashx
Attachments: Document.ashx.pdf

here is one for 10/01/2013...actually all three estimates are done as if you do not pay it....like on this estimate attached the reduction is $ per month permanent reduction if you do not pay the SFC deposit

if you would want to pay it...just email and I will email back the form.

IRS0000202615

SFC 002278

From: Klein Richard T
Sent: Monday, January 28, 2013 10:34 AM
To: Lerner Lois G
Subject: RE: personnel info

Importance: Low

yo SFC [redacted] so that category does not apply to you

This e mail and any attachments contain information intended solely for the use of the named recipient(s). This e mail may contain privileged communications not suitable for forwarding to others. If you believe you have received this e mail in error, please notify me immediately and permanently delete the e mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e mail or attachments

Richard T. Klein
Benefits Specialist
SFC [redacted]

TOD 6:30 am to 3:15 EST

Address:
SFC [redacted]

Please review your designation(s) of beneficiary form (s). Click on Designation of Beneficiary to find out more.

From: Lerner Lois G
Sent: Monday, January 28, 2013 11:06 AM
To: Klein Richard T
Subject: RE: personnel info

OK--questions already. I see at the bottom what m SFC [redacted] would be should I decide to repay. It looks like the calculation at the tops assumes I am repaying --is that correct? Can I see what the numbers look like if I decide not to repay? Also, how do I go about repaying, if I choose to? Where would I find that information? Would you mind running a calculation for a retirement date of October 1, 2013? Also, the definition of monthly social security offset seems to say that a SFC SFC [redacted] my monthly annuity will be offset by social security even if I don't apply. First--what the heck does that mean? Second, I don't see an offset on the chart--please explain. Thank you.

SFC 002279

Lois G. Lerner
Director of Exempt Organizations

From: Klein Richard T
Sent: Monday, January 28, 2013 6:23 AM
To: Lerner Lois G
Subject: personnel info
Importance: Low

Here are your reports you requested.....set your sick leave a SFC for the first report and bumped it up t SFC for the second.....redeposit amount and hi three used are shown on the bottom right.....call or email if you need any thing else please.

This e mail and any attachments contain information intended solely for the use of the named recipient(s). This e mail may contain privileged communications not suitable for forwarding to others. If you believe you have received this e mail in error, please notify me immediately and permanently delete the e mail, any attachments, and all copies thereof from any drives or storage media and destroy any printouts of the e mail or attachments

Richard T. Klein
Benefits Specialist
SFC [redacted]

TOD 6:30 am to 3:15 EST

Address:
SFC [redacted]

Please review your designation(s) of beneficiary form (s). Click on Designation of Beneficiary to find out more.

SFC 002280

From: Paz Holly O
Sent: Friday, March 08, 2013 4:49 AM
To: Lerner Lois G
Cc: Marks Nancy J; Light Sharon P
Subject: FW: 501(c)(4) Draft Denial
Attachments: 501(c)(4) Draft Denial.doc

Importance: High

Lois,

Attached for your review and transmission to Counsel is the first draft advocacy case denial. As the text of all of the ads at issue is included in the attachment to the letter and this case is not a close call, I would recommend that we ask Counsel to limit its review to the letter and not plunge into its own review of this sizeable file. As we discussed a few weeks ago, we have roughly 70 cases in bucket 4 (many of which date back to 2010) so we really do need to move this letter that we think will serve as somewhat of a template for other denials. I realize Counsel has many other things on its plate so I'm not asking for them to turn this around in a few weeks but I think we can help speed their review by limiting what we are asking them to review.

Holly

SFC 002281

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: **Draft 3/7/13**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:
SFC [redacted]

UIL:
[redacted]

SFC [redacted]

Legend

SFC [redacted]

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided in connection with your application and in your Form 990 for Year1 , we have concluded that you do not qualify for exemption under section 501(c)(4). The basis for our conclusion is set forth below.

Facts

You were incorporated on Date in State. Your Articles of Incorporation and Bylaws state that you are to be organized and operated exclusively for section 501(c)(4) purposes , specifically to "educate the general public on issues of pub lic concern, including climate change, health care, food policy, and other such issues. "

Your activities consist of producing and disseminating radio, television and print communications, producing and disseminating white papers, meeting with interested business and civic leaders in State, and polling.

You represented that the greatest proportion of your time and resources has been spent on

DRAFT

television and radio broadcast messages, and you have posted many of these items on your website. You provided a "complete list of media buys," which listed the following 10 statewide advertisements and described them as follows:

- Ad No. 1, "Truth," an economic policy and social security advertisement (television);
- Ad No. 2, "State is not for sale," an independent expenditure (television);
- Ad No. 3, "Them," an independent expenditure (television);
- Ad No. 4, "Jobs," an agriculture policy advertisement (television)
- Ad No. 5, "Buying It," a campaign ethics reform and agriculture advertisement (radio)
- Ad No. 6, "Shark Business," campaign ethics reform advertisement (radio)
- Ad No. 7, "Manure," an agriculture policy advertisement (radio)
- Ad No. 8, Regulatory advertisement, a USDA and EPA impact on Industry advertisement (print)
- Ad No. 9, Tax policy advertisement, a Federal tax policy advertisement (print)
- Ad No. 10, "Leadership," an agriculture policy advertisement (print)

In addition, you submitted content from 11 of your advertisements. We have reproduced that content in Attachment A, and, where possible, identified it according to the list of advertisements provided with your submission. We do not have text for Ad No. 10, but there were two additional print advertisements, Ad No. 11 and Ad No. 12. Most of the advertisements identified an election, identified candidates, and made positive and negative comments about the candidate. Some advertisements asked the audience to vote for or against the specific candidate.

In response to our question about your expenses for radio and TV time to educate residents on key issues facing State, you responded that you spent more than $ x on media buys and media production in Year1. This corresponds to amounts reported on your Form 990 for Year1. In Part IX, Statement of Functional Expenses, you reported more than $ x on Education-Media and Production, which comprised more than 80 percent of your total reported expenditures. In Schedule C, Part I-A, you reported as expenditures for "direct and indirect political activities" an amount that comprised half of your total expenditures in E and 85 percent of the amount of Program Service Expenses in E reported in Part IX, Statement of Functional Expenses, Column (B). In Schedule C, Part IV, you described these expenditures as "independent expenditures in support of Candidate. These independent expenditures included radio, television, and print advertisements which were designed to educate the citizens of State on where Candidate stood on important social welfare issues."

You stated that you intend to conduct polling and public opinion research and have conducted one poll to date. You contracted with a professional polling firm to survey registered likely Political Party primary voters about issues pertinent to State voters such as agriculture policy, unions, and social security issues. The survey script you provided starts by asking whether the respondent is a registered voter, what primary the respondent is planning to vote in, and how likely the respondent is to vote in the upcoming Political Party primary. The conductors of the survey were instructed to terminate the survey if the respondent is not a registered voter or if the

respondent is not either "certain" or "50 -50" to vote in the upcoming primary. The survey then covers a series of questions asking the respondent to rate the performance of th e United States, Congress, the President, and the current Political Party Officeholder for State. It then asks whether the respondent is likely to re -elect the current Officeholder or to vote for one of the primary challengers. The survey goes on to ask the respondents to rate various statements supporting and opposing the current senator and one particular challenger. The question asking about supporting statements contains two positive statements about the incumbent and one positive statement about the challenger. The question asking about opposing statements contains two negative statements about the incumbent and seven negative statements about the challenger.

You held meetings in Year1 – Year3 where your directors met with various agriculture and business leaders to discuss various issues such as climate change, immigration policy, and health care implementation.

Finally, you produced four white papers on the following topics: climate change, tax policy, agriculture policy, and regulatory policy. None of these white papers is more than one page long. Each states the issue, provides some facts, and states your position. You posted these documents on your website and e -mailed them to a distribution list.

Law

Section 501(c)(4) of the Code provides for the exemption from federal income tax of organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1 (a)(2) of the Income Tax Regulations provides that 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. In addition, the regulations provide that the promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of or in opposition to any candidate for public office.

Rev. Rul. 68-45, 1968-1 C.B. 259, explains that all facts and circumstances are taken into account in determining an organization's primary activity under section 501(c)(4). The activities of the organization included: veteran's programs; assist ance to needy veterans, widows, and orphans; patriotic programs; and community welfare programs, such as providing and furnishing playgrounds for children and sports programs for teenagers. The organization also conducted bingo games for the general public, and the resulting income was its principal source of revenue. The Service held that the fact that the bingo games generated its principal source of income did not mean that the games were its primary activity. Taking into account all facts and circumstances, the Service found that the facts clearly established that the organization's social welfare activities were its primary activities

In Rev. Rul. 67-368, 1967-2 C.B. 194, the Service held that an organization, formed for the purpose of promoting an enlightened electorate, whose primary activity was rating candidates

for public office, was not exempt under section 501(c)(4) because such activity is not "the promotion of social welfare." The ruling stated that comparative rating of candidates, even though on a non-partisan basis, is participation or intervention on behalf of candidates favorably rated and in opposition to those less favorably rated.

In Rev. Rul. 81-95, 1981-1 C.B. 332, the Service considered the effect of engaging in political campaign activities on a section 501(c)(4) organization. The ruling refers to five revenue rulings, each involving a section 501(c)(3) organization, for other examples of what constitutes participation or intervention in political campaigns. The organization was primarily engaged in activities designed to promote social welfare. In addition, it conducted activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. The ruling concluded that since the organization's primary activities promoted social welfare, its lawful participation or intervention in political campaigns on behalf of or in opposition to candidates for public office would not adversely affect its exempt status under section 501(c)(4).

Rev. Rul. 2004-6, 2004-1 C.B. 328, analyzes six situations to determine whether the organization described in each has expended funds for a section 527(e)(2) exempt function as a result of an advocacy communication on a public policy issue. A section 527(e)(2) 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. All the facts and circumstances must be considered when making this determination. Factors that tend to show that an advocacy communication on a public policy issue is for a section 527(e)(2) exempt function include, but are not limited to, the following:

- The communication identifies a candidate for public office;
- The timing of the communication coincides with an electoral campaign;
- The communication targets voters in a particular election;
- The communication identifies that candidate's position on the public policy issue that is the subject of the communication;
- 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
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

In facts and circumstances such as those described in the six situations, factors that tend to show that an advocacy communication on a public policy issue is not for a section 527(e)(2) exempt function include, but are not limited to, the following:

- The absence of any one or more of the factors listed above;
- The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- 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) ;

- The communication identifies the candidate solely as a gov emment 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
- The communication identifies the candidate solely in the list of key or pri ncipal sponsors of the legislation that is the subject of the communication.

Each of the situations assumes that:

- All payments for the described activity are from the general treasury of the organization rather than from a separate segregated fund under section 527(f)(3);
- The organization would co ntinue to be exempt under section 501(a), even if the described activity is not a section 501(c) exempt activity, because the organization's primary activities are described in the appropriate subparagraph of section 501(c); and
- All advocacy communications described also include a solicitation of contributions to the organization.

Rev. Rul. 2007-41, 2007-1 C.B. 1421, analyzes 21 situations to determine whether the section 501(c)(3) organization described in each has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public office. All facts and circumstances are considered when making this determination. When determining whether a communication results in political campaign intervention, key factors include:

- Whether the statement identifies one or more candidates for a given public office ;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election ;
- Whether the statement makes reference to voting or an election ;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a giv en office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election ; and
- Whether the timing of the communication and identification of the candida te are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office .

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Additionally, the ruling states that section 501(c)(3) organizations are permitted to conduct certain voter education activities if they are carried out in a non -partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Finally, the ruling states that a web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

Analysis

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. Treas. Reg. §1.501(c)(4)-1(a)(2)(i). The promotion of social welfare does not include direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office. Treas. Reg. §1.501(c)(4)-1(a)(2)(ii). Revenue Rulings 2004-6 and 2007-41 identify factors that are relevant when determining whether an organization has directly or indirectly participated in a political campaign on behalf of or in opposition to a candidate for public of fice. Although the revenue rulings, respectively, discuss the factors in terms of whether an organization has engaged in a section 527(e)(2) "exempt function activity," and whether a section 501(c)(3) organization has directly or indirectly participated or intervened in a political campaign on behalf of or in opposition to a candidate for public office, these factors are appropriately among those to be considered when determining whether an organization claiming exemption under section 501(c)(4) has engaged in direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candidate for public office. See also, Rev. Rul. 81-95, *supra*.

The key is to determine the character of the organization's primary activitie s by looking at all of the facts and circumstances. Rev. Rul. 68-45. You have been primarily engaged in producing and disseminating advertisements and also have produced and disseminated white papers, met with interested business and civic leaders, and e ngaged in polling.

Advertisements

Most of your advertisements identified an election, identified candidates, and made positive and negative comments about the candidate s. Some advertisements asked the audience to vote for or against the specific candid ate. When considered in light of factors for determining whether an organization claiming exemption under section 501(c)(4) has engaged in direct or indirect participation or intervention in a political campaign on behalf of or in opposition to any candi date for public office, it is clear that your advertisements primarily served to support or oppose a particular candidate for public office.

The following advertisements you produced and distributed through TV, radio and print communications and website posting constitute support of or opposition to candidates for your state's Office seat.

- Ad No. 1, because it aired shortly before the Political Party primary in your state, identified one of the candidates, and opposed a particular position that candidate had taken in the past. While the advertisement couches its opposition in terms of telling

viewers to call the candidate and tell him not to "roll the dice" on that issue, he was not currently a government official who was in a position to act on that issu e.

- Ad No. 2, because it identified an election, specific candidates in that election, and contained positive statements about one candidate's accomplishments in the senate and negative statements about the other candidate 's supporters. Additionally, you identified this as an independent expenditure.
- Ad No. 3, because you identified this advertisement as an independent expenditure, and you reported your independent expenditures as expenditures for "direct and indirect political activities" on Form 990. We were unable to view Ad No. 3.
- Ad No. 5, because it identified an election, specific candidates in that election, and contained positive statements about one candidate ("one of us," highlighting the candidate's experience in the senate) and negative statemen ts about another candidate (referring to the candidate as a puppet and being owned).
- Ad No. 6, because it explicitly stated "Candidate is the best candidate."
- Ad No. 7, because it contained positive statements about one candidate's accomplishments and stated that "State needs to show some common sense and re - elect Candidate. We need to keep Candidate working for us."
- Ad No. 11, because it contained positive statements about one candidate and asked readers to "Vote for Candidate."
- Ad No. 12, because it contained positive statements about one candidate and asked readers to "Vote for Candidate."

Although you did not report Ad No. 4 as an independent expenditure, we cannot conclude that Ad No. 4 promoted social welfare because we we re unable to view the content.

Only two of your advertisements, both of which were print communications —Ad No. 8, Regulatory Advertisement, and Ad. No. 9, Tax Policy Advertisement —did not mention a candidate and did address specific legislation that your organization hoped to influe nce. Rev. Rul. 2007-41, *supra*, states that a communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. The majority of your advertisements made reference to a c andidate. In short, we have concluded that the overwhelming focus of your advertising is to support the election of a candidate for public office.

Polling

Your polling activities also constitute political campaign intervention becau se the primary impact of the poll that you conducted was to identify voters who supported a particular candidate and to provide information favorable to the candidate in the guise of asking respondent s' views. The poll was directed solely at a specific voting demographic and was focused almost exclusively on assessing the strength or weakness of various statements for and against particula r candidates for public office. In addition, the content of the poll emphasized the go od qualities of the incumbent and the bad qualities of the challenger in the race, the same position on the candidates that you took in your various media communications. Rev. Rul. 2007-41, *supra*, provides that voter education or registration activities conducted in a biased manner that favors

(or opposes) one or more candidates is prohibited.

Meetings

Based on the limited information you submitted regarding your meetings with various agriculture and business leaders, we are unable to determine if the meetings promoted social welfare. However, they, by your description, make up a small portion of your time and efforts and do not affect the outcome of our analysis of all of the facts and circumstances .

White papers

Your white papers do not name candidates and neither the timing of their release nor their content appears to be connected to an election. However, the white papers contain little information and are only a few paragraphs long . They make up a very small portion of your time and efforts and do not affect the outcome of our analysis of all of t he facts and circumstances.

Conclusion

Based on our analysis of the information you submitted with your application and in subsequent correspondence, we have determined that you are not operated exclusively for the promotion of social welfare within th e meaning of section 501(c)(4), because you are primarily engaged in the participation in political campaigns on behalf of, or in opposition to, a candidate for public office .

Accordingly, you are not exempt under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the dat e of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more i nformation about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Region al Office Appeal". The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's re presentative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice Before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure: Publication 892

DRAFT

SFC [redacted]

ATTACHMENT A

Ad No. 1, "Truth"
AIG. Lehman brothers. Bailouts. Wall Street has lost billions, yet some want to privatize social security. And gamble our retirement on Wall Street. Lik S [redacted] SFC [redacted]. As head of social security, he calle d for investing a share of social security revenues in the stock market. Ca SFC [redacted] and tell him not to roll the dice with our retirement money.

Ad No. 2 SFC [redacted] is not for sale"
Big labor bosses and DC radicals are trying to buy our US senat e seat. These outsiders throw mud SFC [redacted]. The sam SFC [redacted] who just pushed through the toughest finance reform in history. The sam SFC [redacted] who heads the agriculture committee and protects our way of life SFC [redacted] friends think we're for sale. We're not. Let's send them all packin SFC [redacted] paid for and is responsible for the content of this advertising. Not authorized by any candidate or candidate's committee.
SFC [redacted]

Ad No. 3, "Them"
We were unable to access the material you provided.

Ad No. 4, "Jobs"
We were unable to access the material you provided.

Ad No. 5, "Buying It" –
Big labor bosses and DC radicals are trying to buy our US senate seat. They've spent millions of dollars t o try and fool us abo SFC [redacted]. Shame on them SFC [redacted] is one of us she doesn't do as Washington insiders tell her to do, and that's why they want her beat. The labor unions and extremists want a puppet in the senate they can control an d their puppet i SFC [redacted]. So these outsiders throw mud SFC [redacted]. The sam SFC [redacted] who just pushed through the toughest finance reform in history. The sam SFC [redacted] who heads the agriculture committee and protects our way of life. The folks who own SF [redacted] think they can fool us SFC [redacted] friends think we're for sale. Well we're not. Let's send them all packing SFC [redacted] paid for and is responsible for the content of this advertising. Not authorized by any candidate or candidate's committee SFC [redacted]

Ad No. 6, "Shark Business" –
Just when you thought it was safe again to go into the voting booth. They're back. Outside radical groups are spending millions trying to tell u SFC [redacted] who to vote for. They've turned the race nasty and mean. Here's what SFC [redacted] are saying. Th SFC [redacted] sai SFC [redacted] is the best candidate. And the paper criticized the national labor groups backing her opponent. Th SFC [redacted] sai SFC [redacted] has pushed

SFC

11

for causes that make America strong. Th SFC endorse SFC because she refuses to blindly follow the liberal party line. An SFC understands that SFC know SFC well and it says a lot that he's solidly fo SFC. On May 18, vote f SFC, that's yes t SFC. And yes to sending the outsiders packin SFC paid for and is responsible for the content of this advertising. Not authorized by any candidate or candidate's committee.
SFC

Ad No. 7, "Manure" –
Well you can tell it's an election year again because you can smell the manure piling up. I SFC we know the difference between good old common sense and spin from a Union Boss in Detroit. Don't be fooled by all of the fertilizer being thrown around. SFC is one tough lady and she delivers fo SFC. She's being criticized by the extremes in the Republican and Democratic parties whic h tells me she must be doing something right. Early voting starts May 3rd and runs to May 18th. You never know what the weather will be on election day, so head to the polls as early as possibl SFC needs to show some common sense and re -ele SFC. We need to keep SFC working for u SFC paid for and is responsible for the contents of this advertisement. Not authorized by any candidate or candidates
SFC

Ad No.8, Regulatory Advertisement
The aggressive Obama regulatory agenda threaten SFC jobs. From the price of groceries to your electric bill, pain will be felt by ever SFC. Farming i SFC number one industry. We're the top rice -producing state and the second-largest chicken growing state in the nation. But Obama's USDA is proposing regulations that would hurt progressive farmers and raise the price of chickens to consumers. In addition, Obama's EPA is seeking increased authority that has significant impact on your pocket book, but fails to use common sense on how it approaches industries ranging from rice farmers to utility plants. With so much SFC economy relying on commodities and natural resources, the Obama Administration needs to use com mon sense when regulating industry. Do you part to kee SFC top industries strong. We need Congress to stand strong and provide the necessary checks and balances that we all need to be fair and effective. Call your congressman and ask them to tell Obama to slow down and use common sense approaches to regulation. U.S. Congress: (202)224 -3121. Paid Political Advertisement b SFC

Ad No. 9, Tax Policy Advertisement –
Going Back Is No Way To Mov SFC Forward. Let's keep the tax cuts permanent. Think our economy is struggling now? It could get worse. A two -year extension is a step in the right direction, but we need mor SFC is faring better than the majority of the states and now is not the time for change. The economy is still recovering and raising taxes will only result in more businesses

SFC [redacted]

closing and more families being forced to cut back. Ever SFC will be affected. Do you part to extend tax cuts that continue to spur investments, boost consumption, and create much-needed jobs within our state. Let's keep the hard - earned money SFC in the hands of the people and corporations who've earned it. Tell your congressman that going back to the old tax rates will not mov SFC forward. U.S. Congress: (202)22 4-3121. Paid for b SFC [redacted]

We were unable to associate the content of the following two advertisements with Ad No. 10, "Leadership," which was included in your list of media buys:

Ad No. 11

Don't Let Union Bosses and Outside Radical Groups Buy This Election.
In the past few months, radical groups like the Service Employees International Union and MoveOn.org from outside the state SFC have spent millions of dollars on television ads trying to tell you how to vote in our Democ ratic Senate primary election on May 18. What really matters in this election is what SFC think about Senato SFC, the Chair of the Senate SFC. "She refuses to blindly follow the liberal party line" SF [redacted] SFC is the best candidate" – SFC. "As chair of the Senat SFC, SFC finally has a seat at the table when it comes to farm policy, which will be good for a SFC for gene rations to come" SFC [redacted]. "The Union Bosses are trying to come into our state to unseat Se SFC simply because she works for all SFC" SFC [redacted] So on May 18, Vote for Senato SFC. It's a Vote fo SFC. Paid Political Advertisement. Paid for b SFC [redacted]. Not authorized by any candidate or candidate's committe SFC [redacted]

Ad No. 12

Thank yo SFC for supporting Senato SFC. You can always count o SFC having common sense. That's wh SFC was a good governor and good president. That's also why he supports Senato SFC. At a recent event i SFC SFC indicated his concern for such national labor groups pouring money int SFC by saying, "[Senato SFC [redacted] real opponent isn SFC, but organized labor…" and that "…the labor organizations aren't int erested in who would best represent SFC SFC, May 29, 2010. In this runoff election on June 8, the common sense choice is clear. Vote for Senato SFC. Paid Political Advertisement. Paid for b SFC [redacted]. N ot authorized by any candidate or candidate's committee.
SFC [redacted]

SFC 002293

From: Cook Janine SFC
Sent: Thursday, March 14, 2013 9:14 AM
To: Lerner Lois G
Cc: Judson Victoria A
Subject: FW: 501(c)(4) Draft Denial.doc

Good morning, Lois,

We have looked through this. We agree with conclusion but have some comments/questions on a few of the sentences in the analysis/conclusion (since this will be public and will get lots of attention). We're going to put our comments in the draft and send back to you. Is Monday/Tuesday ok? Not sure how close you are in being ready to go (and I presume there may be others similar getting ready)?

-----Original Message-----
From: Lerner Lois G SFC
Sent: Friday, March 08, 2013 5:14 PM
To: Judson Victoria A
Subject: 501(c)(4) Draft Denial.doc

IRS0000202865

From: Lerner Lois G
Sent: Tuesday, May 07, 2013 9:40 AM
To: Megosh Andy; Paz Holly O
Cc: Biss Meghan R
Subject: RE SFC [redacted]

Just tell them we have the application and it is assigned and being worked --we have had several; conversations with the applicant --only if they ask about expedite--tell them expedite gets you to the head of the line for assigning --this one is assigned

Lois G. Lerner
Director of Exempt Organizations

From: Megosh Andy
Sent: Tuesday, May 07, 2013 8:57 AM
To: Lerner Lois G; Paz Holly O
Cc: Biss Meghan R
Subject: RE SFC [redacted]

I think we owe the liaison a response.

With similar requests, we usually tell the Liaison - received application, in contact with POA, working in normal process. If the organization requests expedited treatment, we also tell them whether approved or denied.

Andy

From: Lerner Lois G
Sent: Monday, May 06, 2013 6:46 PM
To: Megosh Andy; Paz Holly O
Cc: Biss Meghan R
Subject: RE SFC [redacted]

What are we supposed to do? Do we owe her a letter saying we have received the application and have had several discussions with the applicant in an effort to complete the process quickly? That's all we can say

Lois G. Lerner
Director of Exempt Organizations

From: Megosh Andy
Sent: Monday, May 06, 2013 3:57 PM
To: Lerner Lois G; Paz Holly O
Cc: Biss Meghan R
Subject: FW SFC [redacted]

Lois, Holly,

Received this status request with attachments from a Governmental Liaison. Se SFC letter is addressed directly to the Liaison and he e-mailed us.

Not sure how we want to respond back to the Liaison.

Andy

From: Messuri Fred M
Sent: Monday, May 06, 2013 3:47 PM
To: Rifkin Dave
Cc: Megosh Andy
Subject SFC

Hi Dave, please provide the status of the application and request for expedite processing filed fo SFC . Thanks.

Fred Messuri, IRS Governmental Liaison
SFC

From SFC
Sent: Tuesday, April 23, 2013 11:35 AM
To: Messuri Fred M
Subject: FU 5/6 SFC

Fred,

Please see attached, I will also deliver a hard copy today. Thank you for all of your hard work on this.

SFC

SFC 002296

From: DiCarlo Angela L
Sent: Wednesday, May 08, 2013 10:38 AM
To: &&Executives All
Cc: &HCO Exec Services; &Senior Exec Team Schedulers; Deneroff Jan S
Subject: Executive Announcements

This message is being sent on behalf of the Acting Commissioner Steven Miller:

I am pleased to make several major announcements involving the TE/GE and Appeals leadership teams.

I have asked **Sheldon "Shelly" Kay** to serve as the **Chief, Appeals.** Shelly has served as the Deputy Chief, Appeals, since his return to the IRS in May 2011, and has been acting in the Chief position since the departure of Chris Wagner.

Shelly was formerly a member of the Sutherland's Tax Practice Group, focusing on tax co ntroversy issues, including IRS procedures, dispute resolutions and tax litigation matters. Before joining Sutherland, he was the partner-in-charge of the Southeast area's tax controversy group for a Big Four accounting firm. He also served as the IRS Dis trict Counsel for the Georgia District where he was the primary legal representative for the District Director, the Director of the Atlanta Service Center, and the Chiefs of Appeals, Collection, Criminal Investigation and Examination Divisions.

Kirsten Wielobob will serve as the **Deputy Chief, Appeals**. Kirsten, currently the Director, Specialty Operations in Appeals, has served in the IRS since 1997. She has played a number of important roles in the Service, including Assistant to the Commissioner and Co unsel to the National Taxpayer Advocate. She later became W&I Division Counsel in 2001, Assistant Deputy Commissioner for Operations Support in 2003 with later roles as Adviser to the SB/SE Commissioner and Adviser to the Deputy Commissioner for Services a nd Enforcement. Kirsten joined Appeals in 2009.

In TE/GE, I am pleased to announce that **Joseph Grant** has been selected as **TE/GE Commissioner**, where he has been acting.

Joseph has been the deputy TE/GE Commissioner. He joined the IRS in August 2005, as Di rector of the EP Rulings & Agreements division and became TE/GE Deputy Commissioner in 2007. Before that, he was Chief Operating Officer and a Deputy Executive Director of the Pension Benefit Guaranty Corporation (PBGC). Joseph also served on the staff of the Oversight and Social Security subcommittees of the House Ways and Means Committee.

With Joseph becoming Commissioner, **Sarah Hall Ingram** will continue in her current role leading as Director of the Affordable Care Act Office.

I have also asked **Michael Julianelle** to serve as the **TE/GE Deputy Commissioner**. Michael, currently the SB/SE Director of Enterprise Collection Strategy, began his career as a Tax Auditor in 1978. He has held a long list of positions in exam and collection. Michael has also s erved several roles in TE/GE, including two years as Director, Employee Plans Examination, one year as Director, Government Entities and two years as Director of Employee Plans.

Join me in congratulating them in their new roles.

Angela DiCarlo
Executive Services

SFC 002298

From: Lerner Lois G
Sent: Wednesday, May 08, 2013 4:30 PM
To: Flax Nikole C
Cc: Grant Joseph H; Marks Nancy J
Subject: DOJ Call

Importance: High

I got a call today from Richard Pilger Director Elections Crimes Branch at DOJ. I know him from contacts from my days there. He wanted to know who at IRS the DOJ folks could talk to about Sen. Whitehouse 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 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.

I told him that sounded like we might need several folks from IRS. I am out of town all next week, so wanted to reach out and see who you think would be right for such a meeting and also hand this off to Nan as contact person if things need to happen while I am gone --

Thanks

Lois G. Lerner
Director of Exempt Organizations

SFC 002299

From: Lerner Lois G
Sent: Wednesday, May 08, 2013 4:40 PM
To: Miller Steven T
Subject: RE: Hey

OK--I am not in until 10:00-10:30

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Miller Steven T
Sent: Wednesday, May 08, 2013 5:37 PM
To: Lerner Lois G
Subject: Re: Hey

Let's talk in am. Think we do it

Sent using BlackBerry

----- Original Message -----
From: Lerner Lois G
Sent: Wednesday, May 08, 2013 05:31 PM Eastern Standard Time
To: Miller Steven T
Subject: RE: Hey

LOL! Thanks--hope they were easy on you. 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. Thanks

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Miller Steven T
Sent: Wednesday, May 08, 2013 5:29 PM
To: Lerner Lois G
Subject: Hey

Heard I was the second best witness today! Ain't that cool. Thank you.

Sent using BlackBerry

IRS0000209214

SFC 002300

From: Lerner Lois G
Sent: Thursday, May 09, 2013 9:44 AM
To: Flax Nikole C
Subject: RE:

Didn't know that was it

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Flax Nikole C
Sent: Thursday, May 09, 2013 10:38 AM
To: Lerner Lois G
Subject: Re:

We have a call set for 1130. Are you joining?
------Original Message------
From: Lerner Lois G
To: Flax Nikole C
Subject: RE:
Sent: May 9, 2013 10:37 AM

Do 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

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Flax Nikole C
Sent: Wednesday, May 08, 2013 6:13 PM
To: Lerner Lois G
Subject:

Heard you did great today. Congrats.

SFC 002301

From: Lerner Lois G
Sent: Thursday, May 09, 2013 12:22 PM
To: Marks Nancy J
Subject: RE: DOJ Call

Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, May 09, 2013 1:20 PM
To: Lerner Lois G
Subject: RE: DOJ Call

I'll come to your office at 5.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 1:20 PM
To: Marks Nancy J
Subject: RE: DOJ Call

There is no time! After 5 tonight--but I do need to be in Bethesda at 7, so sooner after 5 the better.

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, May 09, 2013 1:18 PM
To: Lerner Lois G; Flax Nikole C; Grant Joseph H; Vozne Jennifer L
Subject: RE: DOJ Call

Lois it is fine to hand it off to me but before you leave you and I should talk because so I have more of a clue what is going on here. Let's look for some time.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 1:10 PM
To: Marks Nancy J; Flax Nikole C; Grant Joseph H; Vozne Jennifer L
Subject: RE: DOJ Call

I would like to get back to to Pilger to say it's handed off for setting up--who shall I tell him will be contacting him for scheduling?

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, May 09, 2013 1:04 PM
To: Lerner Lois G; Flax Nikole C; Grant Joseph H; Vozne Jennifer L
Subject: Re: DOJ Call

Makes sense

Sent using BlackBerry

From: Lerner Lois G
Sent: Thursday, May 09, 2013 11:16 AM Eastern Standard Time
To: Marks Nancy J; Flax Nikole C; Grant Joseph H; Vozne Jennifer L
Subject: Re: DOJ Call

I still believe it is up to DOJ. They have their own relationship with FEC as they have concurrent jurisdiction over CampAign Finance law--so if they want them there fine, but we would need to ask them. Like I said --it is their meeting
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Thursday, May 09, 2013 11:02 AM Eastern Standard Time
To: Lerner Lois G; Flax Nikole C; Grant Joseph H; Vozne Jennifer L
Subject: Re: DOJ Call

I agree no real dog which took me the other way on separate. Woldn't it be helpful to get all the thinking shaken out at one time?

Sent using BlackBerry

From: Lerner Lois G
Sent: Thursday, May 09, 2013 09:40 AM Eastern Standard Time
To: Flax Nikole C; Marks Nancy J; Grant Joseph H; Vozne Jennifer L
Subject: Re: DOJ Call

I would say separate. . No real dog in this fight. Plus I think that would be DOJ's call as it is their meeting. I would want CI Counsel as well as CI
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Thursday, May 09, 2013 09: 03 AM Eastern Standard Time
To: Lerner Lois G
Cc: Grant Joseph H; Marks Nancy J; Vozne Jennifer L
Subject: RE: DOJ Call

I think we should do it also need to include CI, which we can help coordinate. Also, we need to reach out to FEC. Does it make sense to consider including them in this or keep it separate?

From: Lerner Lois G
Sent: Wednesday, May 08, 2013 5:30 PM
To: Flax Nikole C
Cc: Grant Joseph H; Marks Nancy J
Subject: DOJ Call
Importance: High

I got a call today from Richard Pilger Director Elections Crimes Branch at DOJ. I know him from contacts from my days there. He wanted to know who at IRS the DOJ folks could talk to about Sen. Whitehouse 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 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.

I told him that sounded like we might need several folks from IRS. I am out of town all next week, so wanted to reach out and see who you think would be right for such a meeting and also hand this off to Nan as contact person if things need to happen while I am gone --

Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 5:30 PM
To: Paz Holly O
Cc: Fish David L; Thomas Cindy M
Subject: RE: updated timeline

Importance: High

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 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

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 29, 2012 3:56 PM
To: Lerner Lois G
Cc: Fish David L
Subject: FW: updated timeline

doc attached to my last email had some highlighting in it. I have removed that. A clean version is attached.

From: Paz Holly O
Sent: Wednesday, February 29, 2012 3:53 PM
To: Lerner Lois G
Cc: Fish David L
Subject: updated timeline

Lois,

EO Determinations noticed an uptick in applications from advocacy organizations early in 2010.

The first case was referred to EO Technical in March 2010. That case was an application for 501(c)(3) status. It closed failure to establish in late May 2010 when the organization failed to respond to our first request fo r additional information.

At that time, EO Technical requested another 501(c)(3) application from an advocacy organization be transferred to EO Technical. Such a case was transferred in June 2010. That case also closed failure to establish in January 2012 after the organization failed to respond to our request for additional information.

EO Technical also requested an application from a 501(c)(4) advocacy organization be transferred from Determinations. A case was transferred in April 2010. It is still being developed by EO Technical.

To give you a sense of the growth in the number of these cases, in October 2010, we had identified approximately 40 advocacy cases.
As of about 10:00 a.m. on 2/28/2012, we had 229 of these cases .

Of the 229 cases, 141 have been assigned. Development letters have been sent to the majority of the 141 assigned cases. The oldest control dates of those cases that are still unassigned are 2/8/2011, 3/18/2011, 4/28/2011, and 5/28/2011. These will be assigned next. Otherwise, we're at approximately 6/6/2011 control date for these cases.

EO Technical provided guidance regarding the development of applications by advocacy organizations to EO Determinations in November 2011.

The case assignment matrix is attached.

Holly

From: Lerner Lois G
Sent: Friday, February 24, 2012 3:46 PM
To: Spellmann Don R; Cook Janine; Paz Holly O
Cc: Kindell Judith E; Lowe Justin; Flax Nikole C; Urban Joseph J
Subject: Congressional Follow Up
Importance: High

Just came back from the meeting and they have asked for several things.

1. Don/Janine-- The guidance provided to Cincy that Don reviewed -- I"m hoping you can let us know your concerns as soon as possible so we can finalize the draft. We will be sending it over to them and putting it out on the web with other check sheets/guide sheets.

2. Holly--a timeline relating to the uptick --that is, about when did we notice there were enough of these that we needed guidance from R & A and then when did we get cases up here to look at. If there is info regarding development and FTEs and replacement cases, give me that too.

3. Case Grading Guide --I think it is not disclosable, but please confirm and if not, let me know the basis.

Thanks to all who got me ready for today--I think it went as well as it could.

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, August 17, 2012 11:13 AM
To: Paz Holly O; Light Sharon P
Subject: RE: Advocacy Case - Threat of TAO if Case not Expedited

At this point, we aren't sending a response because we know hw will ask for an end date -- which is why I was asking 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. With TAS, I think the best answer is the truth--we had some delay with these type cases to try and ensure consistent treatment -- it is now being actively worked but there are issu es that have to be resolved and we have sent the applicant and letter and reached out to try and expedite receiving the necessary information.

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Friday, August 17, 2012 7:12 AM
To: Lerner Lois G; Light Sharon P
Subject: FW: Advocacy Case Threat of TAO if Case not Expedited
Importance: High

We also have TAS threatening a TAO in the sam e case as Lungren wrote about. If we are going to change our response to Lungren, please let me know what we're going to say so I can formulate what to tell TAS.

Sharon, how soon do you think we can get the development letter out?

From: Thomas Cindy M
Sent: Thursday, August 16, 2012 3:27 PM
To: Paz Holly O
Subject: Advocacy Case Threat of TAO if Case not Expedited
Importance: High

Holly,

If I remember correctly, we discussed this case a couple of weeks ago and you asked that we go ahead and make a copy of it and include it with the second batch of bucket 4 cases sent to D.C. (and we did that).

Is someone in D.C. working with TAS on this case, or do we need to contact the LTA? If we need to make the conta ct, what do you want us to say?

Name: Mother Lode Tea Party
EIN: SFC

SFC 002307

From: Combs Peggy L
Sent: Thursday, August 16, 2012 12:11 PM
To: Thomas Cindy M
Subject: FYI Threat of TAO if Case not Expedited

FYI - This case is a bucket 4 case. I believe Tamara sent a copy of the application to EOT.

From: Bibb Kenneth B
Sent: Thursday, August 16, 2012 11:53 AM
To: Bowling Steven F
Cc: Combs Peggy L; Herr Joseph R
Subject: FW: Mother Lode Tea Party

Steve,

I have not responded to Mr. Maiuro as this has been elevated.

Kenneth B. Bibb, Manager
EO Determinations Group 7821
SFC [redacted]

From: Maiuro Daniel M
Sent: Wednesday, August 15, 2012 6:53 PM
To: Bibb Kenneth B
Cc: Bowling Steven F; Gingerich Linda A; Ruppel Tom J
Subject: FW: Mother Lode Tea Party

Mr. Bibb:
I am following up on the abovenamed entity, EIN SFC [redacted], and the status of its application for exempt status. I left a message for you on 8/10 and emailed you the same day with no response. Our OAR was submitted to Joseph Kerr {HERR} with a completion date of 8/3 with no response to renegotiate the completion date to the case advocate who is assigned this case. Based on the instructions for F1023 below, we are requesting our OAR for exempt status processing be expedited per 3) below.

[The IRS] will only approve expedited processing of an application where a request is made in writing and contains a compelling reason for processing the application ahead of others.
Circumstances generally warranting expedited processing include:
1) A grant to the applicant is pending and the failure to secure the grant may have an adverse impact in the organization's ability to continue operations;
2) The purpose of the newly created organization is to provide disaster relief to victims of emergencies such as floods and hurricanes;
3) There have been undue delays in issuing a letter caused by problems within the IRS.

We understand that TEGE may be back logged in processing these applications but considering the timeframe that has passed and the entity has been waiting for over a year now in getting its application processed, that it rises to criteria 3 above and we are requesting the applic ation be

expedited. If you agree, please let me know as soon as possible. If not, our office may elevate this to a TAO.

Thank you for your time in this very important matter.

Regards,

Dan Maiuro

Daniel M. Maiuro, CPA
Taxpayer Advocate Service
Local Taxpayer Advocate - Sacramento
SFC [redacted]

From: Maiuro Daniel M
Sent: Friday, August 10, 2012 9:56 AM
To: Bibb Kenneth B
Subject: Mother Lode Tea Party

Hi Mr. Bibb.
I left you a voicemail today. Please call me when you have a cha nce so we can discuss this case. The entity EIN is 27-4020256 and the case is currently assigned to Joseph Kerr. The entity has been waiting for its application exemption status for over a year now and need to find out what is the status. The OAR complet ion date was 8/3 with no communication with Mr. Kerr.

Thank you.

dan

Daniel M. Maiuro, CPA
Taxpayer Advocate Service
Local Taxpayer Advocate - Sacramento
SFC [redacted]

From: Lerner Lois G
Sent: Sunday, August 22, 2010 3:09 PM
To: Urban Joseph J; Ingram Sarah H; Giosa Christopher P; Daly Richard M; Pyrek Steve J; Fish David L; Miller Thomas J; Choi Robert S; Downing Nanette M; Kindell Judith E; Zarin Roberta B
Subject: Re: FYI: - Washington Post article on IRS and campaign expenditures

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks Joe--:)
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Urban Joseph J
To: Ingram Sarah H; Giosa Christopher P; Daly Richard M; P yrek Steve J; Lerner Lois G; Fish David L; Miller Thomas J; Choi Robert S; Downing Nanette M; Kindell Judith E; Zarin Roberta B
Sent: Sun Aug 22 12:50:12 2010
Subject: Fw: FYI: Washington Post article on IRS and campaign expenditures

Sent from Blackberry

From: Joe Urban SFC [redacted]
To: Urban Joseph J
Sent: Sun Aug 22 12:47:27 2010
Subject: FYI: Washington Post article on IRS and campaign expenditures

Ruling sets up IRS as overseer of groups' gifts to campaigns

By T.W. Farnam
Washington Post Staff Writer
Sunday, August 22, 2010; A05

The Supreme Court's decisi on this year in *Citizens United*, which lifted campaign spending restrictions for companies and interest groups, has indirectly thrust the Internal Revenue Service into the more prominent role of overseeing those expenditures.

The ruling largely tied the hands of the Federal Election Commission to force companies or groups that are funding political or advocacy advertisements to disclose their donors. And although Democrats in Congress had pushed legislation that would have mandated more disclosure, the me asure failed in the Senate this summer.

Long-standing IRS regulations require some groups to reveal their donors, and that is why the agency suddenly finds itself with what some might see as a more crucial watchdog role, stepping in to monitor disclosur e in the absence of the FEC. But the IRS rules also have long-standing loopholes and, with limited resources and enforcement tools, the nation's tax collector is not set up to be a campaign regulator.

"The chances of the IRS being able to catch a violat ion of the tax law around campaigns is virtually nil," said Marcus S. Owens, a lawyer with Caplin & Drysdale who directed the agency's tax -exempt organizations division for 10 years. "Certainly if it happens, it's going to be well after the election has al ready ended."

Since the court's ruling, some prominent Democrats and others have argued that, with much more freedom to spend on campaign ads, corporations, unions and advocacy organizations ought to be forced to disclose who is paying for the ads and, in the case of groups, where the money is coming from.

The IRS, which declined to comment, requires groups whose "primary purpose" is political activity to name their donors. But that requirement is open to wide interpretation.

The conservative group Americans for Job Security, for example, founded in 1997 as a business association, spends the vast majority of its budget on television and radio ads before elections.

At the end of July, it disclosed spending $585,000 on an ad attacking Colorado Republ ican Senate candidate Jane Norton, who recently lost her primary contest against Ken Buck, a county district attorney with "tea party" backing. The ad, running just ahead of the primary, said, "Norton passed the largest tax hike in Colorado history" and "J ane Norton's real record has cost us plenty."

The ad is similar to most run by Americans for Job Security -- criticizing politicians before an election. That fits under the definition of lobbying and not election activity, according to the group, which has declared itself in the advocacy category and therefore is not required to disclose its donors to the IRS.

"What we do is grass-roots lobbying and issue advo cacy," Executive Director Steve DeMaura said. "Elections are when the American people are most engaged in educating themselves about public policy issues."

Ideological groups taking the form of nonprofit "social welfare" organizations -- which also are not required to disclose -- include FreedomWorks, the anti-tax group fueling the tea party movement, and American Crossroads GPS, a new organization associated with Karl Rove, an adviser in the George W. Bush administration.

Since the court's ruling, some groups have opted to disclose donor information to the FEC. But others, including some of the largest, have protected donors' identities by registering with the IRS as nonprofits whose primary purpose is advocacy rather than politics.

The IRS has limited ability to enforce its rules. It cannot fine groups for violating their tax status, for example. Its only option is to charge taxes on specific types of expenditures or take the much bigger step of revoking a group's tax -exempt status -- a punishment often considered incommensurate with most infractions.

"The only effective tool the IRS has to use against a nonprofit is the death penalty," said Brett Kappel, a lawyer with the firm Arent Fox.

One of the few times the IR S has denied tax-exempt status was in 1999 for the Christian Coalition, which operated as a social welfare organization while distributing "voter guides" to churches favoring certain candidates. The battle became highly politicized, with legal challenges t hat stretched out for years.

Also hampering the agency's ability to enforce is the fact that it operates on what Owens calls "tax time." Any investigation comes after an organization has filed a tax return. Nonprofits are often granted two three -month extensions before they file, meaning most returns showing campaign spending this fall will come about a year after the election.

When returns detailing election-related spending are filed, they fit into a queue with 1.9 million other tax -exempt organizations, including charities, foundations and clubs. The agency's 200 revenue agents focused on tax -exempt filings have traditionally focused on making sure that the groups don't abuse tax -deductible gifts or tax-exempt status for private gain.

Watchdog groups complain that when they have flagged alleged violations, their notices seem to go nowhere.

"The IRS doesn't respond," said Fred Wertheimer, president of Democracy 21, which advocates for increased regulation of money in politics. "Sometimes they say 'we have received your letter,' but you never hear from them about the status."

SFC 002312

From: Miller Steven T
Sent: Monday, September 20, 2010 5:50 PM
To: Schultz Ronald J; Flax Nikole C
Subject: Fw: NYT story expected tomorrow on C (4)s

Sent from my BlackBerry Wireless Handheld

From: Eldridge Michelle L
To: Shulman Doug; Miller Steven T; Ingram Sarah H; Ke ith Frank; Davis Jonathan M (Wash DC); Campbell Carol A
Cc: Lerner Lois G; Pyrek Steve J; Lemons Terry L; Pyrek Steve J; Friedland Bruce I; Kindell Judith E
Sent: Mon Sep 20 17:08:47 2010
Subject: NYT story expected tomorrow on C (4)s

We expect that Stephanie Strom's story on 501(c)(4)'s will likely run tomorrow. Stephanie has heard from various sources, including Marc Owens and others that there is a large upswing in the money donated to 501(c)(4)'s, that IRS has too few resources to monitor and deal with compliance and enforcement issues in this area. 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 potential lobbying efforts and other activities are complete. Stephanie talked to Sarah Ingram, Lois Lerner, and Judith Kindell on background, not-for-attribution, and explained the requirements and rules for 501 (c)(4)s. We have also provided the statement below that she can use on the record.

We expect this story to run tomorrow. Thanks. --Michelle

Statement of Sarah Hall Ingram, IRS Commissioner of the Tax-Exempt and Government Entities Division
"The IRS is committed to running a balanced program in the tax-exempt sector, and this effort includes overseeing a wide range of groups to ensure the tax laws are followed. It's important to keep in mind that the statutory rules differ according to the kinds of tax-exempt organizations and the types of activities they may engage in. An activity that may be prohibited for one type of exempt organization may be allowed for another group, and it may or may not generate a tax liability .

For example, even though some people use the term "political activity" to refer broadly to many things, federal tax law specifically distinguishes among activities to influence legislation through lobbying, to support or oppose a specific candidate for election, and to do general a dvocacy to influence public opinion on issues. Whether a specific activity raises issues affecting an organization's exemption, or tax liability, or neither, depends on all of the facts and circumstances, including the type of activity and the type of org anization.

The IRS remains vigilant to help protect the integrity of the tax-exempt sector."

SFC 002313

From: Eldridge Michelle L
Sent: Monday, February 27, 2012 4:35 PM
To: Davis Jonathan M (Wash DC); Flax Nikole C
Cc: Keith Frank; Lemons Terry L
Subject: FW: Sarah - here is the email i've received; i'm a SFC, thanks - Alan Fram, AP

Here is news advisory, attached below, that is out there that AP has called in about.

Also--here are roll-call questions:

Below you will find a sampling of the questions contained in letters requesting additional information from 501c4 applicants.. I think it might be easiest if you could put me on the phone with one of your specialists who handles this kinds of queries. I've been contacted by several Tea Party groups who think these questions go far beyond necessary protocol. How common these kinds of questions? Why should a 501c4 group have to disclose their donors? How does the IRS define "close relationship?" How does the IRS define Tea Party?

1. detailed explanation of donations including, donor names, dates and amounts. H ave any of those donors run for office? If so what office?
2. Names of volunteers
3. Detailed content of past speeches, forums with names of speakers and their credentials
4. Disclose any "close relationships" with elected officials, candidates or political part ies
5. Resumes for each member of governing body
6. Please explain in detail your organization's involvement with the Tea Party?

NEWS ADVISORY
For Immediate Release
February 27, 2012

Contact: Eric Wilson
Cell Phone SFC
Email SFC.

LIBERTY GROUPS UNDER ATTACK BY THE IRS!

Kentucky 9/12 Project, Ohio Liberty Council, Unite in Action, an Numerous Tea Parties across the nation square off against the IRS.

Kentucky – On February 14, 2012 the Kentucky 9/12 Project joined close to 80 liberty groups from around the country the IRS has targeted and is attempting to regulate out of existence. Even though many of these groups have filed for Not for Profit status at various times (over the past three years) all have received IRS inquiries and responses in just the last three months.

"This is nothing more than a governmental witch hunt on freedom speaking Americans" Said Eric Wilson director of Kentucky 9/12 Project. "It is their attempt to either drown groups like ours in unnecessary paper work and time or you survive and give the m everything they want only to be hung."

The Kentucky 9/12 Project filed for a 501(c)(4) status in December of 2010. They received their first correspondence almost immediately back from their application saying there would be a determination within 90 days. Since then all of their activities, relations, and dealings have falling well within the bonds of that which defines this status. Despite this and with no reference to any issues with its original application or specific concerns almost 14 months later they received a letter (dated February 14) requesting detailed documentation to answer 30 questions with sub bullets (88 total separate inquiries) and only a two week period to comply. Even more alarming to directors of the group were the personal information the IRS were requesting a nd overreaching questions.

Various Tea Parties, 9/12 Project, and Liberty groups around the country are coming forward with very similar oppressive dema nds being sent to them from the IRS as well.

Ohio Liberty Council Released a statement February 16 http://www.ohiolibertycouncil.org/?p=3839

Richmond Virginia Tea Party issued a similar statement on the same day http://www.richmondteaparty.com/2012/02/press_release_irs_demanding_unreasonable_documentation_to_satisfy_rtps_tax_exempt_request/

Ohio Liberty Council President, Tom Zawistowski said in his s tatement "I defy any American to read this list of demands by the IRS and not be outraged. This is the kind of personal information that this government is going to be demanding from your church, your doctor, your hospital, your business and your favorite charity going forward."

It is now the collective hope of these organizations that this issue is highlighted as an example of the clear and obvious ov erreach of a federal agency beyond its authority. **The Kentucky 9/12 Project now stands with other liberty groups across the nation demanding an official congressional investigation for the arbitrary and capricious use of governmental power.**

The Kentucky 9/12 Project operates a civic organization for the purpose of charity, education, and recreational purposes. Their mission is to provide a forum for individuals grounded in the 9 Principles and 12 Values, and to foster an environment to ins pire and empower Self-Governing Leaders through the process of education, independence , sacrifice, with a firm reliance on Divine providence.

For more information about The Kentucky 9/12 Project, please visit their website at www.ky912.com

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If you'd like more information about this topic, or to schedule an interview with:
The Kentucky 9/12 Project - Eric Wilson (Executive Director KY912) a SFC
Unite in Action - Stephani Scruggs (President of UinA) a SFC
Ohio Liberty Council – Tom Zawistowski (President of OLC) a SFC

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and delete this email. Thank you.
[IP_US_DISC]

msk dccc60c6d2c3a6438f0cf467d9a4938

From: Flax Nikole C
Sent: Thursday, March 08, 2012 7:04 AM
To: Barre Catherine M
Subject: Fw: New York times Editorial

From: Keith Frank
Sent: Thursday, March 08, 2012 07:55 AM
To: Shulman Doug; Davis Jonathan M (Wash DC); Lerner Lois G; Miller Steven T; Flax Nikole C; Grant Joseph H
Cc: Eldridge Michelle L; Lemons Terry L
Subject: New York times Editorial

The I.R.S. Does Its Job

Published: March 7, 2012

Taxpayers should be encouraged by complaints from Tea Party chapters applying for nonprofit tax status at being asked by the Internal Revenue Service to prove they are "social welfare" organizations and not the political activists they so obviously are.

Related News

- Scrutiny of Political Nonprofits Sets Off Claim of Harassment **(March 7, 2012)**

Tea Party supporters claim they are being politically harassed with extensive I.R.S. questionnaires. But the service properly contends that it must ensure that these groups are "primarily" engaged in social welfare, not political campaigning, to merit tax exemption under section 501(c)(4) of the tax code.

Such I.R.S. inquiries are long overdue and should be applied across the board to the gr owing number of organizations, allied with the major political parties, that are also ludicrously posing as "social welfare" groups. Legitimate social welfa re organizations are allowed limited political activity. But these political offshoots are using tha t tax status in a transparent ploy to keep big donors secret while funneling the money to campaigns. Chief among these groups are American Crossroads, the campaign machine created by Republican guru Karl Rove, and Priorities USA, the Democratic counterpart founded by former White House aides, now openly encouraged by President Obama as he runs for re - election.

These groups, which already have 501(c)(4) status, should be as thoroughly investigated as any Tea Party chapter applying for that tax exempt status . So should two other blatant offenders: the conservative American Action Network, a "social welfare" claimant reported by the Center for Public Integrity to have spent more than 80 percent of its expenditures on the 2010 elections; and Americans Elect, a third-party effort enjoying "social welfare" secrecy as it secures ballot space across the nation.

All these groups should be operating as political organizations required to disclose their donors under the law. Blatant abuses of tax law and common sense are part of the laissez-faire dynamic that is driving the 2012 campaigns. The I.R.S.

must not flinch from its duty to enforce the tax code and root out political operatives who are abusing the law and conning taxpayers and voters.

A version of this editorial appeared in print on

SFC 002318

From: Lerner Lois G
Sent: Thursday, January 24, 2013 10:46 AM
To: Light Sharon P
Subject: RE: EO Tax Journal 2013-15

Oh--maybe I can get the DC office job!

Lois G. Lerner
Director of Exempt Organizations

From: Light Sharon P
Sent: Thursday, January 24, 2013 11:35 AM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: RE: EO Tax Journal 2013 15

This is the most informative article I've read about it http://www.theatlantic.com/politics/archive/2013/01/how-organizing-for-action-plans-to-keep-obamas-foot-soldiers-enlisted/267384/.

Right now, the Obama campaign site includes info about this new org, featuring a blog from the new executive director who is leaving the White House to run it from Chicago. They'll also have a DC office.

Since Priorities USA did not file a 1024, I would think they would follow the same self -declaring path here. But maybe not.

From: Lerner Lois G
Sent: Thursday, January 24, 2013 11:26 A M
To: Paz Holly O; Fish David L
Cc: Light Sharon P
Subject: RE: EO Tax Journal 2013 15

I know--this is the second article I've read about this. You may want to look for the earlier one--it may say whether they intend to apply

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, January 24, 2013 10:05 AM
To: Lerner Lois G; Fish David L
Cc: Light Sharon P
Subject: RE: EO Tax Journal 2013 15

I am not aware that we have received this but will check. It is hard to have certainty without the org's EIN though.

IRS0000217252

SFC 002319

From: Lerner Lois G
Sent: Thursday, January 24, 2013 8:27 AM
To: Paz Holly O; Fish David L
Subject: Fw: EO Tax Journal 2013 15

Has this org actuAlly come in? If so, do we have it in D C? We need to be careful to make sure we are comfortable. I am not going to ABA because I am not feeling great so will be in later today. Thanks
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: paul streckfus SFC [redacted]
Sent: Thursday, January 24, 2013 05:11 AM Eastern Standard Time
To: paul streckfus SFC [redacted]
Subject: EO Tax Journal 2013 15

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2013-15 (Thursday, January 24, 2013)
Copyright 2013 Paul Streckfus

1 - New (c)(4) to Supersede DNC?

2 - IRS Denies Organization for Benefitting Musicians and Music Companies

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1 - New (c)(4) to Supersede DNC?

Dem Officials Fret over New Obama Nonprofit
By James Hohmann, *Politico,* January 23, 2013

Some key Democrats worry that President Obama's new Organizing for Action group will marginalize the traditional party apparatus, cannibalizing dollars and volunteers while making it harder to elect down -ballot candidates.

State party leaders grumbled Tuesday at the Democratic National Committee's meeting in Washington about a lack of detail on how exactly the new tax -exempt advocacy organization will work. "It's stil l a big question mark right now," said Minnesota Democratic chairman Ken Martin. "We were told before the end of this campaign that all of that [the Obama campaign machinery] would fold into state parties. Now we're being told something different, which is they're going to set up this 501(c)(4)."

Martin backs the idea of the new structure in theory but worries that the organizations responsible for actually electing Democrats will get left behind in the chase for donors and activists. "I'm not a dummy," he said. "I understand post-*Citizens United* the necessity to set up vehicles for different types of money to flow, but the reality is you can't strip the party bare and expect in four years that we're going to be able to pick up the pieces and get a Democrat elected president if you've completely stopped building capacity within the party."

Obama's White House intends for OFA to serve as a perpetual grass -roots arm, energizing supporters in favor of the president's policies. Rather than focus on fundraising and candidates, leaders said last week that they will engage -- at least initially -- in harnessing Obama's network of supporters and volunteers. Nonprofit status

allows Obama to raise unlimited money from both individuals and corporations, which the DNC a nd individual state parties cannot do. But it prevents OFA from directly participating in elections.

"People are very concerned. They don't know where it will lead," said North Carolina Democratic Party Chairman David Parker. "The concerns vary. Nothing i n particular, and everything in general.... There's always a question of what does a successful reelection campaign do after the show is over. Is there another play to be involved with? Or what? And we're in the 'or what' stage?"

"I would love to know," he added. "It's like the three wise men come to [King] Herod, and Herod says, 'Well, this is really cool. After you find the baby Jesus, come back and tell me where he is so that I too may go worship,'" Parker added. "Now, was he acting in good faith or did h e kill all the children in Bethlehem? I don't know how the story ends."

Other Democratic leaders huddling at the Omni Shoreham Hotel would not go so far on the record the day after the president's inauguration, but they view the post -election shuffle with just as much apprehension. "Essentially, it's an end run around the DNC and state parties," said a third state chairman. "For the long -term health of our party, I don't think it is the way to go. I don't think fighting for donors is the way to do it.... W e've won five of the last six popular votes in the general elections, so something's working.

"The simple truth of the matter is that OFA 4.0, or whatever it is now, is not going to work to elect our local legislators," the chairman added. "It's not going to work to elect our local governors. It's going to work to push the president's agenda. I come from a state where the president's not very popular. My elected Democrats are not always going to line up with him, and getting the activists all juiced up ove r it doesn't help elect Democrats."

On Sunday, the new group welcomed thousands of Obama supporters to another Washington hotel for a "Legacy Conference" to discuss ways they might support the president's legislative agenda. Indiana Democratic Chairman Dan Parker welcomes any outside help. He also notes that parties have unique functions that cannot be replicated, including direct coordination with party nominees. "In each state, it's going to be interesting to see how they work with the parties because I don't know if they can," he said.

DNC Chairwoman Debbie Wasserman Schultz, who was reelected unanimously at Tuesday afternoon's meeting, pronounced herself "thrilled" by the new arrangement and pledged to "work closely" with OFA. "Organizing for Action will enable us to keep our volunteers engaged through issue advocacy [and] to help pass the president's legislative agenda while training the next generation of grass -roots organizers and leaders," she said. "We will march forward with OFA to build the stron gest progressive beachhead ever seen by electing leaders across the country whose values match our hearts and whose determination needs our commitment."

Behind the scenes, though, the new incarnation of OFA will undoubtedly diminish the DNC's relevance an d overshadow Wasserman Schultz. Many insiders believe Obama's decision to allow her to stay on as chairman for another term suggests a lack of interest in the party as much as a vote of confidence in her leadership.

Separating OFA and the DNC allows the W hite House to avoid relying on the Florida congresswoman as a spokeswoman. A poll conducted for the Obama campaign last year ranked Wasserman Schultz dead last as an effective surrogate. The new model allows those who are actually in Obama's inner circle t o speak for him, including Jim Messina (Obama's former campaign manager who will chair the group), Jon Carson and David Plouffe. An OFA spokeswoman did not respond to a request for comment.

Many rank-and-file committee members, especially those who do not chair state parties, were much more positive about the new endeavor. Gus Bickford, a Massachusetts national committeeman, noted that OFA and his state party worked together well during the 2012 election. That was true, he said, even though the Obama

campaign was focused on winning neighboring New Hampshire while the state party's priority was electing Elizabeth Warren to the Senate. "We didn't fight against each other," he said.

He does not expect infighting for limited resources. "I'm not naïve as to how political fundraising works," said Bickford. "From what I do know ... I don't think so ... I'm not a person to say it's a bad thing."

Oregon national committeewoman Laura Calvo said local Democrats already have lots of experience partnering with outside advocacy organizations like labor or abortion rights groups. "So far, it's so brand new that the word really hasn't trickled down to something that's concrete, that you can sit down and read. Personally, I think it's pretty exciting," she said. "Sometimes the structure and the logistics and the priorities don't quite match up.... So that causes what I would call hiccups, but there's never been a major problem as far as I can see."

She said her state party, because Oregon's not a swing state, has a stable structure that could win without national help in 2012. "We were pretty much left to our own devices, and the party really pulled through," said Calvo. "The more progressive voices there are out there, the better off we are."

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2 - IRS Denies Organization for Benefitting Musicians and Music Companies

I recognize that, because of the section 7428 declaratory judgment provisions, the IRS feels compelled to make all possible arguments in denial letters to (c)(3) applicants, hoping that on judicial review a judge will find an argument for denial he or she agrees with.

In denial letter 201303018, reprinted below, the IRS's National Office cites 13 revenue rulings (all from the sixties and seventies -- the golden age of EO revenue rulings) and four court cases, but did the IRS make its case? (Aside: why many organizations don't protest remains a mystery.)

To me the underlying issue, based on the facts set forth, is whether the applicant is engaged in some sort of commercial endeavor or something else. Also, I'd like to know more about its funding, which is described thusly: "Your primary source of income is from gifts, grants, and contributions. You also receive some income from membership, consulting, and other fees." That doesn't sound like your typical commercial endeavor, unless the focus is on consulting income. An important factor here may be the statement that "Although Y software is free, you will charge a flat fee for your hosting services." Are the hosting services a significant source of revenue?

In its rationale for denying the applicant, the IRS states: "You do not conduct any public discussion groups, forums, panels, lectures or similar programs; all of your educational instruction occurs online on your website and blog." While this may be true, is the IRS saying more traditional educational programs are favored over websites and blogs? Surely not. I suppose this sentence needs to be read in context with the next sentence, which states: "These activities are best described as providing product information and are analogous to a product manual, which does not rise to the level of educational as required under I.R.C § 501(c)(3)." But this raises another question: is the IRS saying providing product information is not educational ? Are product manuals not educational and presumably commercial endeavors? If these two sentences are not head -scratching enough, the next sentence states: "Furthermore, you are not described in I.R.C. § 501(c)(3) as a charitable organization for providing information on your website relating to best practices and current trends in the music industry." Again, I wonder why this is not educational or is the argument being made that the applicant's activities are so commercial that they overwhelm its educational activities?

The next rationale paragraph cites Revenue Rulings 70 -584, 75-294, and 78-310, and then states: "... you are not conducting any of the activities described above." That may be true, but why does an organization have to

do the activities described in revenue rulings? The issue, it seems to me, is whether the applicant comes within the Code and regulations, not whether it can find revenue rulings where its activities are being conducted.

The result in this denial letter may be correct, but i t seems to me the rationale is a bit sloppy, especially for a denial coming out of the National Office where just about all the Tax Law Specialists are tax attorneys. I wonder if Tax Law Specialists and Reviewers ever discuss technical issues among themsel ves. In the old days there were technical issue meetings and the EO Division had issue experts. I suspect that if we still had annual EO CPE textbooks coming out, a lot of the questionable rationales we see in rulings and denials would not withstand internal scrutiny.

Denial 201303018

Contact Person: * * *
Identification Number: * * *
Contact Number: * * *
Employer Identification Number: * * *
Form Required To Be Filed: * * *
Tax Years: * * *

UIL Number: 501.03-08
Release Date: 1/18/2013
Date: October 19, 2012

Dear * * *:

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the e nclosed Notice 437, *Notice of Intention to Disclose,* and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for peo ple with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Exempt Organizations

Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

* * * * *

Contact Person: * * *
Identification Number: * * *
Contact Number: * * *
FAX Number: * * *
Employer Identification Number: * * *

Date: June 19, 2012

LEGEND:
State = * * *
Date 1 = * * *
Date 2 = * * *
X = * * *
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Dear * * *:

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code (I.R.C.) § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under I.R.C. § 501(c)(3). The basis for our conclusion is set forth below.

FACTS

You are organized as a nonprofit corporation under the laws of a State on Date 1. You filed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on Date 2.

Your Articles of Incorporation (hereinafter, "Articles") state that you are organized and operated exclusively for charitable, educational, and scientific purposes within the meaning of I.R.C. § 501(c)(3). In a le tter dated March 19, 2010, you stated that you intend to abandon your charitable activities and to pursue only your educational and scientific activities henceforth. Specifically, your purpose is to create freely available open source software for the music community at large, to provide hosted online tools designed to enhance participation in the further development of the open source software, and to provide education about intellectual property issues, copyright issues, and music industry best practices. You state that you are operated to benefit musicians and music companies.

You state that your educational activities consist of instructing the public about best practices and current trends in the music industry. Topics include, but are not limited to: media licensing, music management, music marketing tactics, business structures for musicians, technology trends, and case studies of specific examples. All of your educational instruction occurs online through your website and blog. You do not maintain an online forum where the public may ask questions; all questions are fielded through a public e -mail address or via posts on social networking websites. The only in -person educational events you intend to offer are seminars or

conferences, but you have not held any such event to date. You state that you spend approximately 15 percent of your financial and personnel resources on your educational activities.

You state that your scientific activities consist of developing open source software for music promoti on, sales, and digital distribution. X software -- which include an audio player, image galleries, and video players -- allows musicians and music companies to create music and media rich websites to sell, share, and promote their music or artists directly to fans. X software is available for download by the public for free from your website. You provide free, informal technical support via e -mail. Y software allows musicians and music companies to manage media, e-mail lists, digital downloads, website secu rity, and basic commerce provided by online payment systems. Y software interfaces with X software to allow musicians and music companies to analyze fan behavior. Although Y software is publicly available, it is intended for a business or information techn ology audience with more powerful computing ability. Y software may be utilized in one of two ways: as a "self - install" version hosted on the user's chosen server or a "hosted" version on your server. Although Y software is free, you will charge a flat fee for your hosting services. The fee will cover fixed costs such as hosting and bandwidth. You do not report any restrictions on the amount of fees you can charge for your hosting services. The self-install version of Y software is currently available and y ou anticipate the hosted version to be available soon. You state that you spend approximately 70 percent of your financial and personnel resources developing software.

You retain the copyright to X and Y software but distribute it under two publicly avail able and commonly used open source licenses, the Berkley Software Distribution ("BSD") license for any code that is read by a browser ("interface code") and the Affero General Public License ("AGPL") license for all other code. In general, both licenses allow unrestricted redistribution of either the source code or the program, with or without modification, so long as it retains or reproduces the original copyright notice. You explain that these licenses allow third parties to use your software's source cod e for any purpose, including commercial purposes. All written or visual material on your website, including your educational material, is distributed under the publicly available and commonly used Creative Commons BY ("CC BY") license, which allows use of copyrighted information so long as attribution to the original work is provided. Any material covered by the CC BY can be used for any purpose, including commercial purposes. You state that you will not apply for or hold any patents. You will ask contributors to either assign copyright to you or to declare their work to be in the public domain.

You also provide consulting services for a fee through which you create online projects for musicians and music companies. You state that you only accept these proj ects where it will contribute to the development of X or Y software and where the customer will allow all code to be licensed under an open source license. You state that the fees from this activity have been nominal, a total of $x for four projects to dat e. However, you do not report any restrictions on the amount of fees you can charge for your consulting services. You state that these services are not a major part of your long-term plan.

Your primary source of income is from gifts, grants, and contribut ions. You also receive some income from membership, consulting, and other fees. In the future, you intend to allow artists to pledge a percentage of their net income back to the organization, which will provide you with an additional income source.

LAW

I.R.C. § 501(c)(3) exempts from taxation any corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competitio n, or for the prevention of cruelty to children or animals, provided no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organiza tion described in I.R.C. § 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the

purposes specified in I.R.C. § 501(c)(3). If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in I.R.C. § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in I.R.C. § 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or i ndirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides that the term educational relates to: (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(ii)(Example 2) provides that an educational organization includes an organization whose activities consist of presenting public discussi on groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(i) provides that a scientific organization must be organized and operated in the public interest. Therefore, the term scientific, as used in I.R.C. § 501(c)(3), includes the carrying on of scientific research in the public interest. "Research," when taken alone, is a word with various meanings; it is not synonymous with scientific; and the nature of particular resea rch depends upon the purpose which it serves. For research to be scientific, within the meaning of I.R.C. § 501(c)(3), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on w hether such research is classified as fundamental or basic as contrasted with applied or practical.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(ii) provides that scientific research does not include activities of a type ordinarily carried on as an incident to comme rcial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

Treas. Reg. § 1.501(c)(3)-1(d)(5)(iii) provides that scientific research will be re garded as carried on in the public interest: (a) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the public on a nondiscriminatory basis; (b) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or (c) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest: (1) scientific research carried on for the purpose of aiding in the scientific education of college or university students; (2) scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public; (3) scientific research carried on for the purpose of discovering a cure for a disease; or (4) scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an

industry in the community or area.

Rev. Rul. 65-1, 1965-1 C.B. 226, describes an organization which promoted and fostered the development and design of machinery in connection with commercial operation, and in connection therewith had the power to sell, assign, and grant licenses with respect to its copyrights, trademarks, trade names, or patent rights, that did not qualify for exemption from Federal income tax under I.R.C. § 501(c)(3). The primary purposes of the organization were to foster the development an d design of labor saving agricultural machinery, including the development of new labor saving ideas and methods, and to conduct pertinent research related to this purpose. The organization was engaging in development activities of a type incident to comme rcial activities and was not exempt under I.R.C. § 501(c)(3).

Rev. Rul. 66-147, 1966-1 C.B. 137, held that an organization formed to survey scientific and medical literature published throughout the world and to prepare and distribute, free of charge, abs tracts taken from such literature qualified for exemption under I.R.C. § 501(c)(3). The organization employed technical personnel who surveyed the world's medical and scientific publications as soon as they were published. These individuals then selected and abstracted the articles appearing in the literature. The abstracts were mailed in monthly publications and were distributed free of charge to anyone having particular interest in the subject matter. The Service determined that the organization's activit ies, consisting of reviewing medical and scientific publications and preparing and disseminating free abstracts of meaningful and accurate reference materials based on articles appearing in such publications, advanced education and science.

Rev. Rul. 66-255, 1966-2 C.B. 210, describes an educational organization that qualified for providing public information. In this ruling, the organization educated the public as to a particular method of painless childbirth. The organization utilized meetings, films, fo rums, and publications to educate the public. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conduc ted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians.

Rev. Rul. 66-359, 1966-2 C.B. 219, held that an organization that promoted humane treatmen t of laboratory animals by carrying on a program for the accreditation of animal care facilities that supplied, kept, and cared for animals used by medical and scientific researchers qualified for exemption under I.R.C. § 501(c)(3). The organization was created to conduct a voluntary accreditation program for laboratory animal care facilities. The accreditation program was intended to educate and furnish guidance for the maintenance and operation of laboratory animal care facilities and to upgrade the stand ards for such facilities. The organization prepared and published specific standards and requirements for accreditation of laboratory animal care facilities. As part of the program, the organization furnished experts to inspect, evaluate, and recommend imp rovements to applicants for accreditation. All organizations having facilities caring for animals used for research purposes were invited to apply for accreditation. Based on the above, the Service found that the development and publication of standards fo r the operation of laboratory animal care facilities and the inspection, evaluation, and recommendations for improvement of such facilities were activities that supported and advanced education and science.

Rev. Rul. 67-4, 1967-1 C.B. 121, held that an or ganization that encouraged basic research of specific types of physical and mental disorders, that improved educational procedures for teaching those afflicted with such disorders, and that disseminated educational information about such disorders qualifie d for exemption under I.R.C. § 501(c)(3). The organization published a journal containing abstracts of current information about mental disorders from the world's medical and scientific publications. The journal was sold, below cost, to the public. The organization's staff consisted of leading pathologists, other medical specialists, and teachers. The Service determined that an organization engaged in publishing scientific and medical literature may qualify for exemption under I.R.C. § 501(c)(3) if several conditions are met: (1) the content of the publication is

educational; (2) the preparation of material follows methods generally accepted as "educational" in character; (3) the distribution of materials is necessary or valuable in achieving the organizatio n's educational and scientific purposes; and (4) the manner in which the distribution is accomplished is distinguishable from ordinary commercial publishing practices. The Service then held that the organization met the four requirements set forth above.

Rev. Rul. 68-373, 1968-2 C.B. 206, described an organization whose principal activity was clinically testing drugs for commercial pharmaceutical companies. These tests were required in order to comply with Food and Drug Administration requirements that dru gs be tested for safety and efficacy before they can be marketed. The pharmaceutical companies selected the drugs to be tested and used the results of the tests in their marketing applications to the Food and Drug Administration. In addition, the results o f the tests were freely available for publication in various scientific and medical journals. Clinical testing is an activity ordinarily carried on as an incident to a pharmaceutical company's commercial operations. The fact that the testing must be done b y highly qualified professionals does not change its basic nature. Therefore, such testing did not constitute scientific research within the meaning of Treas. Reg. § 1.501(c)(3) -1(d)(5)(i). The organization failed to qualify for exemption from Federal inco me tax under I.R.C. § 501(c)(3).

Rev. Rul. 69-526, 1969-2 C.B. 115, describes an organization formed by a group of physicians specializing in heart disease, to research the causes of heart defects and publish treatments, that qualified for exemption under I.R.C. § 501(c)(3). In this ruling, patients were referred to the organization by physicians and welfare agencies when it appeared that their condition merited special study and evaluation. Each patient underwent a medical examination to determine whether their condition fell within the scope of the organization's research goals. If the patient's case met the criteria, the patient was accepted without regard to their ability to pay. The data collected from the patient studies is used by the organization in the development of new methods and procedures for preventing and treating heart defects. The results of the research, as well as any medical procedures derived, were made public through publication. The organization's research could only be performed by individuals with advanced scientific and/or technical expertise -- i.e., cardiologists. Patients in the organization's study underwent medical examination pertaining to their heart defects. The medical examinations naturally entail medical observation and e xperimentation to formulate and verify objective human bodily responses to treatment. The results of the organization's research were publicly disseminated and add to the knowledge of internal medicine, specifically the causes and treatments for heart dise ase. Based upon the above, the Service held that the organization's research activities were scientific under I.R.C. § 501(c)(3).

Rev. Rul. 70-129, 1970-1 C.B. 128, held that an organization formed to support research in anthropology by manufacturing qual ity cast reproductions of anthropological specimens which were sold to scholars and educational institutions in a noncommercial manner qualified for exemption under I.R.C. § 501(c)(3). Specifically, the organization manufactured and distributed anthropolog ical reproductions that illustrated important developments in human evolution. These reproductions were manufactured under the direction of qualified scientific personnel with emphasis placed on quality control to assure accurate reproductions. The reproductions were then sold to scholars and educational institutions in a noncommercial manner to recoup costs and expenses. The Service determined that the examination of anthropological specimens was an important step in anthropological education and research and that the manufacture and sale of accurate reproductions provided an effective means for making these important research and study aids generally available. Therefore, the Service held that the distribution of the reproductions advanced science and educ ation.

Rev. Rul. 70-584, 1970-2 C.B. 114, held that an organization that recruited college students for government internship programs that related to their course of study qualified for exemption under I.R.C. § 501(c)(3). The internship program advanced the students' education because it trained the individual for the purpose of improving or developing his capabilities in his chosen field of study.

Rev. Rul. 71-506, 1971-2 C.B. 233, describes an engineering society formed to engage in scientific research in

the areas of heating, ventilating, and air conditioning ("HVAC") for the public that qualified as a scientific research organization under I.R.C. § 501(c)(3). The Service found that the organization was comprised of HVAC engineers, architects, educators and others who have a professional interest in HVAC -- with full membership in the organization limited to persons with 8 years of experience in the science related to HVAC. The organization's research was conducted by a full -time paid staff in the organization's own laboratory. Typical subjects of investigation for the organization included the effects of solar radiation through various materials, the phenomena of heat flow and transfer, development of data on air friction, the problems of panel heating, and the physiological effects of air conditioning upon the human body. The organization's research was devoted exclusively to the development of data on basic physical phenomena, which data can be used by anyone. The organization published a regular journal and maintained a library where its data, and specifically scores of model codes of minimal standards for HVAC, are stored for public review. The Service concluded that this organization engaged in scientific research. Specifically, the organization used observation and experimentation to formulate and verify facts or natural laws pertaining to HVAC -- such as the effects of solar radiation through various materials. Its activities were performed by professionals with extensive scientific and/or or technical expertise in HVAC -- such as members with a minimum of 8 years experience in HVAC science. The organization conducted experimentation in its own laboratory. The organization's activities added to the knowledge of HVAC science, specifically with the organization publishing scores of model codes of minimum standards for HVAC. All the organizations data was maintained in a library and was publicly available. Based upon the above, the Service held that the organization's research activities were scientific under I.R.C. § 501(c)(3).

Rev. Rul. 75-284, 1975-2 C.B. 202, held that an organization that provided high school graduates and college students with uncompensated work experience in selected trades or professions qualified for exemption under I.R.C. § 501(c)(3). The program provided students with exposure to five of twenty -five trades or professions. Such exposure advanced the students' education by familiarizing the students with various career fields and developing the students' capabilities.

Rev. Rul. 77-365, 1977-2 C.B. 192, describes an educational organization that conducted clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport.

Rev. Rul. 78-310, 1978-2 C.B. 173, held that an organization that provided law students with practical experience in exempt public interest law firms and legal aid societies qualified for exemption under I.R.C. § 501(c)(3). The organization advanced the law students' education by developing or improving the students' capabilities.

In *Better Business Bureau of Washington, D.C., Inc. v. United States,* 326 U.S. 279 (1945), the Supreme Court held that the presence of private benefit, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

In *IIT Research Institute v. United States,* 9 Cl. Ct. 13, (1985), the issue before the U.S. Court of Claims was whether certain activities of which a recognized I.R.C. § 501(c)(3) tax -exempt scientific research organization was engaging in would constitute scientific research and thus not be subject to unrelated business income taxation under I.R.C. § 512. The Court held that "in the context of this litigation, 'science' will be defined as the process by which knowledge is systematized or classified through the use of observation, experimentation, or reasoning." The Court further held that as scientific research does not include activities of a type ordinary carried on as incident to commercial or industrial operations, the organization was found not to be involved "in the commercialization of the products or processes developed as a result of its research," as it "would only develop a project to the point where the research principles were established." The Court held that the projects at issue were scientific.

In *Midwest Research Institute v. United States,* 554 F. Supp. 1379, (W.D. Mo 1983), the issue before the U.S. District Court was whether certain activities of which a recognized I.R.C. § 501(c)(3) tax-exempt scientific research organization was engaging in would constitute scientific research and thus not be subject to unrelated business income taxation under I.R.C. § 512. The Court held that "while projects may vary in terms of degree of sophistication, if professional skill is involved in the design and supervision of a project intended to solve a problem through a search for a demonstrable truth, the project would appear to be scientific research." The Court further held that as scientific research did not include activities of a type ordinary carried on as incident to commercial or industrial operations, the organization was found not to engage in the ordinary or routine testing of products and processes, but rather engaged in "testing done to validate a scientific hypothesis." The Court concluded that the projects at issue were scientific.

In *American Campaign Academy v. Commissioner,* 92 T.C. 1053 (1989), the Tax Court determined that the American Campaign Academy, a training program for political campaign professionals, operated for the private benefit of the Republican party because its curriculum was tailored to Republican interests, its graduates worked for Republican candidates and incumbents, and it was financed by Republican sources. The Tax Court defined private benefit as "nonincidental benefits conferred on disinterested persons that serve private interests." Private benefits included "advantage; profit; fruit; privilege; gain; [or] interest."

RATIONALE

An organization seeking tax-exempt status under I.R.C. § 501(c)(3) must be organized and operated exclusively for charitable or other exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. *See also* Treas. Reg. § 1.501(c)(3)-1(a)(1). The presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under I.R.C. § 501(c)(3) regardless of the number or importance of any other exempt purposes. *Better Business Bureau of Washington, D.C. v. United States,* 326 U.S. 279 (1945). The materials you submitted state that you are seeking tax-exempt status under I.R.C. § 501(c)(3): (1) as an educational organization for educating the public about intellectual property issues, copyright issues, and music industry best practices; and (2) as a scientific organization for creating open source software. Based upon a review of your activities, you are not described in I.R.C. § 501(c)(3) as explained below.

1. Educational Purpose

You are not described in I.R.C. § 501(c)(3) as an educational organization for providing information on your website relating to best practices and current trends in the music industry. The term "educational," as used in I.R.C. § 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i). The regulations provide several examples of organizations that qualify as educational organizations, including "organizations whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs." *See* Treas. Reg. § 1.501(c)(3)-1(d)(3)(ii), example (2). One such educational organization was described in Rev. Rul. 66-255, 1966-2 C.B. 210, which describes an organization formed to educate the public as to a particular method of painless childbirth. The organization carried out its purpose through (a) public programs of films followed by discussions with doctors and members of the organization; (b) presentations on local radio stations; (c) meetings conducted by a doctor or a registered nurse for expectant parents; and (d) pamphlets, manuals, and books which are distributed to libraries, hospitals, and obstetricians. Another example of a qualifying educational organization was described in Rev. Rul. 77-365, 1977-2 C.B. 192, in which the organization qualified for its activities of conducting clinics, workshops, lessons, and seminars at municipal parks and recreational areas to instruct and educate individuals in a particular sport. Here, you are not conducting any of the activities described above. You do not conduct any public discussion groups, forums, panels, lectures or similar programs; all of your educational instruction occurs online on your website and blog. These activities are best

described as providing product information and are analogous to a product manual, w hich does not rise to the level of educational as required under I.R.C § 501(c)(3).

Furthermore, you are not described in I.R.C. § 501(c)(3) as a charitable organization for providing information on your website relating to best practices and current tren ds in the music industry. The revenue rulings provide several examples of organizations that advance education. For example, the organization described in Rev. Rul. 70-584, 1970-2 C.B. 114, recruited college students to participate in a government internsh ip program, the organization described in Rev. Rul. 75 -284, 1975-2 C.B. 203, provided high school graduates and college students with uncompensated work experience in selected trades and professions, and the organization described in Rev. Rul. 78 -310, 1978-2 C.B. 173, provided law students with practical experience in exempt public interest law firms and legal aid societies. Here, you are not conducting any of the activities described above.

2. Scientific Purpose

You also claim to qualify for tax exemptio n as a scientific research organization for your activities related to the development [of] open source software. For an organization to qualify as an I.R.C. § 501(c)(3) scientific research organization, the organization must (1) engage in scientific resea rch; (2) the scientific research must not include activities that are incident to commercial or industrial operations; and, (3) the scientific research must be undertaken in the public's interest. Treas. Reg. § 1.501(c)(3) -1(d)(5).

Under the first element, the organization seeking exempt status as a scientific research organization must be engaging in scientific research. Treas. Reg. § 1.501(c)(3) -1(d)(5). For research to be "scientific," within the meaning of I.R.C. § 501(c)(3), it must be carried on in f urtherance of a 'scientific' purpose. Treas. Reg. § 1.501(c)(3)-1(d)(5)(i). Although the Regulations provide that research that is scientific can be practical or applied as well as fundamental or theoretical, the term "scientific" is not clearly identified in either the Code or the Treasury Regulations. However, several revenue rulings and cases have interpreted "science" and "scientific" in terms of scientific research for I.R.C. § 501(c)(3) purposes.

For example, in Rev. Rul. 71 -506, 1971-2 C.B. 233, the Service held that an engineering society qualified as a scientific research organization under I.R.C. § 501(c)(3). The organization was operated to engage in scientific research in the areas of heating, ventilation, and air conditioning ("HVAC") for the p ublic benefit. The organization was comprised of HVAC engineers, architects, and others who had a professional interest in HVAC. Its main activity was research conducted by highly skilled personnel in the organization's own laboratory, which personnel used observation and experimentation to formulate and verify facts or natural laws pertaining to HVAC -- such as the effects of solar radiation through various materials, the phenomena of heat flow and transfer, development of data on air friction, the problem s of panel heating, and the physiological effects of air conditioning upon the human body. The organization published its results, along with papers related to its findings in its journal. These results became model codes of minimum standards for HVAC. The organization's research was devoted exclusively to the development of data on basic physical phenomena, which data could be used by anyone, and not on the development or improvement of particular products or services. The testing and improvement of commer cial products was forbidden by the organization's charter. The organization's activities added to the knowledge of HVAC science.

In another example, the Service held that an organization formed by a group of physicians specializing in heart disease to research the causes of heart defects and publish treatments, qualified under I.R.C. § 501(c)(3). Rev. Rul. 69-526, 1969-2 C.B. 115. Patients were referred to the organization by physicians and welfare agencies when it appeared that their condition merited spe cial study and evaluation. The data collected from the patient studies was used by the organization in the development of new methods and procedures for preventing and treating heart defects. The results of the research, as well as any medical procedures d erived, were made public through publication. The medical examinations entailed medical observation and experimentation to formulate

and verify objective human bodily responses to treatment. The results of the organization's research was publicly disseminated and added to the knowledge of internal medicine, specifically the causes and treatments for heart disease.

Furthermore, two court cases have interpreted "science" and "scientific" in terms of scientific research for I.R.C. § 501(c)(3) purposes. Specifically, the Court of Claims in *IIT Research Institute v. United States,* 9 Cl. Ct. 13, 20 (1985), held that "in the context of this litigation, 'science' will be defined as the process by which knowledge is systematized or classified through the use of obse rvation, experimentation, or reasoning." The court further held that as scientific research does not include activities of a type ordinary carried on as incident to commercial or industrial operations, the organization must not be involved in the commercia lization of the products or processes developed as a result of its research, but rather must only "develop a project to the point where the research principles are established." *Id.* at 21. Whereas, the District Court in *Midwest Research Institute v. United States,* 554 F. Supp. 1379, 1386 (W.D. Mo 1983), *aff'd* 744 F2d 635, found that "while projects may vary in terms of degree of sophistication, if professional skill is involved in the design and supervision of a project intended to solve a problem through a search for a demonstrable truth, the project would appear to be scientific research." The Court further held that as scientific research does not include activities of a type ordinary carried on as incident to commercial or industrial operations, the orga nization was found not to engage in the ordinary or routine testing of products and processes, but rather engaged in "testing done to validate a scientific hypothesis." *Id.*

Based upon the above law, you do not meet the first and second elements for recogn ition as a scientific research organization under I.R.C. § 501(c)(3) because you do not engage in scientific research and your development activities are of a type incident to commercial or industrial operations. Unlike the organizations described above, you are not utilizing objective scientific methods to formulate or verify facts or natural laws, or to search for a demonstrable truth. You do not propose a hypothesis pertaining to the verification of facts or natural laws. You do not utilize scientific me thods to test this hypothesis and objectively record the results of your experimentation. Finally, you do not objectively evaluate your research results and publish the findings for the public to utilize. Instead, you describe your scientific research acti vities as developing open source software. These activities can best be described as routine product development, which are a type incident to commercial operations. Under Treas. Reg. § 1.501(c)(3) -1(d)(5)(ii), scientific research does not include activiti es carried on as an incident to commercial or industrial operations, such as the design or improvement of goods or services. For example, in Rev. Rul. 65-1, 1965-1 C.B, 226, the Service held that an organization operated to research, design and develop lab or saving agricultural machinery was not a scientific organization under I.R.C. § 501(c)(3) but rather was engaging in product development incident to commercial purposes. Similarly, in Rev. Rul. 68-373, 1968-2 C.B. 206, the Service held that an organizati on that engaged in clinical testing of pharmaceuticals by highly qualified personnel was not a scientific research organization under I.R.C. § 501(c)(3) but rather was engaging in ordinary testing necessary to comply with standards to bring the pharmaceuticals to market. Here, you are engaging in routine software development similar to what a commercial software company engages in to develop new products to be competitive in the market. As such, your activities are incident to commercial operations and are not exempt under I.R.C. § 501(c)(3).

Finally, you do not meet the third element for a scientific research organization, which requires that scientific research to be directed toward benefiting the public. Treas. Reg. § 1.501(c)(3) -1(d)(5)(iii). Your research does not benefit the public. First, you do not publish the results of your research. See Treas. Reg. § 1.501(c)(3) -1(d)(5)(iii)(a). Rather, you make X and Y software's source code and documentation, not the results of your research, available to the pu blic. The release of X and Y software's source code is akin to the release of a commercial product, not the publication of scientific research. Second, your research is not performed for the United States. See Treas. Reg. § 1.501(c)(3) -1(d)(5)(iii)(b). Third, your research is not carried on for the purpose of aiding in the scientific education of college or university students; obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is availab le to the interest public; discovering a cure for a disease; or aiding a community or geological by attracting new industry to the

community or area or by encouraging the development of, or retention of, an industry in the community or area.*See* Treas. Reg. § 1.501(c)(3)-1(d)(5)(iii)(c). Production of X and Y software benefits musicians and music companies, not the public generally. Therefore, you do not qualify under I.R.C. § 501(c)(3) as a scientific research organization.

You also are not described in I. R.C. § 501(c)(3) as a charitable organization advancing science for your activities related to the continued research and development of open source software. Activities that advance science include reviewing medical and scientific publications and the dis seminating the abstracts of those articles for free, conducting a voluntary accreditation program for laboratory animal care facilities, publishing a journal with current technical literature relating to physical and mental disorders, and selling quality c ast reproductions of anthropological specimens to scholars and educational institutions. Rev. Rul. 66 -147, 1966-1 C.B. 137; Rev. Rul. 66-359, 1966-2 C.B. 219; Rev. Rul. 67-4, 1967-1 C.B. 121; Rev. Rul. 70-129, 1970-1 C.B. 128. Here, you are not conducting any of the activities described above. Therefore, your activities will not be regarded as advancing science within the meaning of I.R.C. § 501(c)(3).

3. Private Benefit

An organization is not organized or operated exclusively for one or more exempt purpo ses unless it serves a public rather than private interest. Treas. Reg. § 1.501(c)(3) -1(d)(1)(ii). Private benefit has been defined as "nonincidental benefits conferred on disinterested persons that service private interests." *American Campaign Academy v. Commissioner,* 92 T.C. 1053 (1989). "Prohibited private benefit may include an 'advantage; profit; fruit; privilege; gain; [or] interest.'" *Id.* It is the organization's burden to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii).

You benefit the private interests of musicians and music companies by providing open source software tools assisting with the promotion, sale, and distribution of the musicians' music. X and Y software are broadly available to the public under two commonly and widely us ed open source licenses. Both licenses allow redistribution of the source code or the software, with or without modification, so long as the subsequent product retains or reproduces the original copyright notice. Both licenses allow for the commercial use of the original source code or software. Thus, anyone may download X or Y software and redistribute it, with or without modification, for a fee. However, both programs target a specific audience -- musicians and music companies. That audience derives a com mercial advantage from your open source programs because, in its absence, the musician or company would either need to develop their own software or would have to purchase commercial software. Thus, by providing open source software, you reduce or eliminat e production costs and provide musicians and music companies with a distinct commercial advantage. Furthermore, musicians and music companies profit from being able to redistribute your open source programs, with or without modification, for a fee. Thus, y ou are operated for private rather than public interests in violation of I.R.C. § 501(c)(3).

CONCLUSION

Based on the above, we have determined that you fail to meet the requirements necessary to be recognized as a tax-exempt organization under I.R.C. § 5 01(c)(3). You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have e xamined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

This declaration must be signed by an elected off icer, a member of the board of directors, or a trustee rather than an attorney or accountant.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified p ublic accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, Power of Attorney and Declarati on of Representative, if you have not already done so. For more information about representation, see Publication 947, Practice before the IRS and Power of Attorney. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protes t as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the Dist rict Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T3)
* * *
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements
Internal Revenue Service
Washington, D.C.

From: Marks Nancy J
Sent: Tuesday, March 27, 2012 4:26 PM
To: Grant Joseph H
Subject: RE: :: Referral to TIGTA on (c)(4)

call is probably not on but I can try to reach her on this, If I miss her tonight we will both be with Steve on Thursday and can work this on the side--Steve will defer to our best judgement --I think we can make the call on your return on friday.

From: Grant Joseph H
Sent: Tuesday, March 27, 2012 2:59 PM
To: Marks Nancy J
Subject: Re: :: Referral to TIGTA on (c)(4)

Nan,

This may already have been decided by now, but, for my part, I think it would be a good id ea to have TIGTA review this. I, of course, would want to have Sarah's input. If it is still an open question we could take it up on our evening call today . Is the call on?

I hope all is well.

Thanks - Joseph

Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Monday, March 26, 2012 10:17 AM
To: Grant Joseph H
Subject: FW: :: Referral to TIGTA on (c)(4)

this may be just as well what do you think? I'm wondering if we might want to call TIGTA to say we'd welcome this. Nikole is planning to chat with Steve this morning don't know what they plan to cover but I suspect this is part of us she is planning to call us after that chat

---

From: Urban Joseph J
Sent: Monday, March 26, 2012 10:03 AM
To: Grant Joseph H; Medina Moises C; Daly Richard M; Marks Nancy J; Zarin Roberta B; Lerner Lois G; Marx Dawn R
Cc: Fish David L; Paz Holly O; Lowe Justin; Megosh Andy; Kindell Judith E; Light Sharon P
Subject: :: Referral to TIGTA on (c)(4)

This letter was published today in Paul streckfus ' EO Tax Journal 2012 53 . The letter is also on the organizations' web site. FYI, Landmark Legal was the organization that brought, and lost, a FOIA suit against IRS seeking disclosure of thi rd party requests to investigate tax exempt status of various politically active entities.

Conservative Legal Foundation Calls for Investigation of EO Division

March 23, 2012

Treasury Inspector General for Tax Administration
P.O. Box 589
Ben Franklin Station
Washington, DC 20044-0589

Re: REQUEST FOR INVESTIGATION INTO IRS AGENCY MISCONDUCT

To Whom It May Concern:

Landmark Legal Foundation ("Landmark") requests an immediate investigation into possible misconduct by the Internal Revenue Service's Exempt Organization (EO) Division that calls into question the integrity of federal tax administration and IRS programs.

Recent media reports indicate that the EO Division is using inappropriate and intimidating investigation tactics in the administration of applications for exempt status submitted by organizations associated with the Tea Party movement. (Exhibit A, Perry Chiaramonte, "Numerous Tea Party chapters claim IRS attempts to sabotage nonprofit status," FoxNews.com, http://www.foxnews.com/politics/2012/02/28/numerous -tea-party-chapters-claim-irs-attempting-to-sabotage-non-profit-status/print# (February 28, 2012)). Reports indicate that as many as 20 groups are being targeting for improper treatment. (Exhibit B, "IRS Accused of 'Intimidation Campaign' Against Tea Party," CNSNews.com, http://cnsnews.com/news/article/irs -accused-intimidation-campaign-against-tea-party-groups (March 7, 2012)).

The information demanded in many cases goes far beyond the appropriate level of in quiry regarding the religious, charitable and/or educational activities of a tax -exempt entity. The inquiries are not relevant to these permitted activities. Inquiries extend to organizational policy positions and priorities, personal and political affiliations, and associations of staff, board members and even family members of staff and board members. (Exhibit A). In at least one reported incident, the IRS requested an organization's relationship with a private individual who does not have any relationshi p with the applicant or with any political candidate or organization. (Exhibit C, Justin Binik-Thomas, "Why is the IRS asking Tea Party groups if they know me?", Washington Examiner, (http://washingtonexaminer.com/2012/03/why -irs-asking-tea-party-groups-if-they-know-me/377566) (March 16, 2012)).

Specific examples of improper inquiries from one IRS investigation include, but are not limited to, questions seeking:

5. List each past or present board member, officer, key employee and members of their families who:
a) Has served on the board of another organization.
b} Was, is or plans to be a candidate for public office. Indicate the nature of each candidacy.
c) Has previously conducted similar activities for another entity.
d) Has previously submitted an application for tax -exempt status.

8. Please provide the following regarding your merchandise sales:
a) A vendor list. Indicate if the vendor is a related party.
b) A list of items sold.
c) Your cost for each item.
d) The selling price of each item.

13. Fully describe your youth outreach program with the local school district.

14. Provide information regarding the Butler County Teen Age Republicans and your rel ationship.

16. Provide a list of all issues that are important to your organization. Indicate your position regarding each issue.

25. It appears you have received training (EmpowerU). Provide the following for all persons or organizations that have provided educational services to you:
a) The name of the person or organization.
b) A full description of the services provided.
c) The political affiliation of the person or organization.
d) A copy of the educational material used.

26. Provide details regarding your relationship with Justin Bink-Thomas (sic).

34. Has your organization engaged in any activities with the news media? If so, please describe those activities in further detail and, if available, provide copies of articles printed or transcripts of items aired because of that activity. News media activity may include the following:
a) Newspaper advertisements
b) Press releases
c) Interviews with news media
d) Letters to the editor
e) Op-ed pieces

(Exhibit D, March 1, 2012 IRS Letter, http://binikthomas.com/sunshine/IRS_Redact.pdf).

This level of inquiry goes well beyond the scope of the Form 1023 application for exempt status and appears to be improper. As you are aware, to qualify as a tax-exempt organization under 501(c)(3), the organization must prove that it is both organized and operated exclusively for tax-exempt purposes. Treas. Reg. Sec. 1.501(c)(3)-1(d)(1)(i)(a). To meet the organizational test, it must show that its Articles of Incorporation do not authorize it to undertake any non-exempt activity. 26 U.S.C. Sec. 501(c)(3)-1(b)(i)(iii). To meet the operational text, the organization must show that it operates exclusively for exempt purposes, that it has no substantial non-exempt purpose, and that no benefits inure from it to private individuals. Treas. Reg. Sec. 1.501(c)(3)-1(c). Any inquiry by the Service should be limited to determining whether an applicant satisfies both the "organizational" and "operation" tests. The questions presented herein go well beyond making such a determination.

Moreover, inquiries about personal associations and political viewpoints are not only inappropriate, but impinge upon constitutionally-protected freedoms of speech and association. Although the Internal Revenue Code has limited the tax exemption subsidy of 501(c)(3) organizations to groups that do not participate in political activity, the Service must still tread lightly when dealing with fundamental constitutional rights. Inquiring about the positions a prospective organization adopts on various policy issues serves no valid purpose if the organization does not engage in political activity. Such inquiries appear to be designed only to intimidate the applicants. As it has been upheld repeatedly by the Supreme Court, the government cannot regulate political speech with laws that chill permissible speech. Finally, reports that Tea Party-related organizations are being singled out for the IRS's intrusive inquires raises serious questions about the propriety of the personnel involved in the evaluation of tax exemption applications.

Landmark Legal Foundation respectfully requests an immediate and thorough investigation to determine whether IRS employees are acting improperly in the evaluation of exempt status applications. This investigation also must determine whether the relevant IRS employees are acting at the direction of politically motivated

superiors.

Sincerely,

/s/ Mark R. Levin
Landmark Legal Foundation
The Ronald Reagan Legal Center
3100 Broadway - Suite 1210
Kansas City, Missouri 64111

From: Flax Nikole C
Sent: Monday, September 20, 2010 1:58 PM
To: Schultz Ronald J; Miller Steven T
Subject: RE: Times statement
Attachments: Advocacy Organizations.doc; political expenditures QAs 4-12-10.doc

I like Ron's changes. I am attaching the doc that TEGE sent for Doug as well as a shorter one that we put together in the spring.

From: Schultz Ronald J
Sent: Monday, September 20, 2010 2:54 PM
To: Miller Steven T; Flax Nikole C
Subject: RE: Times statement

I am okay with it but would make the edits shown in red/maroon below. I don't think we want to blame Congress by referring to how it structured the rules in the first paragraph - I suggest instead referring to the differing statutory rules.

"The IRS is committed to running a balanced program in the tax-exempt sector, and this effort includes overseeing a wide range of groups to ensure the tax laws are followed. It's important to keep in mind that the statutory rules differ according to the kinds of tax-exempt organizations and the types of activities they may engage in. An activity that may be prohibited for one type of exempt organization may be allowed for another group, and it may or may not generate a tax liability.

For example, even though some people use the term "political activity" to refer broadly to many things, federal tax law specifically distinguishes among activities to influence legislation through lobbying, to support or oppose a specific candidate for election, and to do general advocacy to influence public opinion on issues. Whether a specific activity raises issues affecting an organization's exemption, or tax liability, or neither, depends on all of the facts and circumstances, including the type of activity and the type of organization.

The IRS remains vigilant to help protect the integrity of the tax-exempt sector."

From: Miller Steven T
Sent: Monday, September 20, 2010 2:44 PM
To: Flax Nikole C; Schultz Ronald J
Subject: FW: Times statement

thoughts

From: Lemons Terry L
Sent: Monday, September 20, 2010 11:21 AM
To: Miller Steven T
Subject: RE: Times statement

SFC 002339

Steve -- any other thoughts on this Times statement from over the weekend?

From: Miller Steven T
Sent: Friday, September 17, 2010 5:39 PM
To: Lemons Terry L
Subject: Re: Times statement

On my way-late but penitent

Sent from my BlackBerry Wireless Handheld

From: Lemons Terry L
To: Miller Steven T
Sent: Fri Sep 17 17:35:31 2010
Subject: Re: Times statement

Top of this - first sentence - is meant to be a general statement about our program. She may well use this to counter - balance critics who say we won't do enough on c4s. Doesn't say a lot, but does delicately get across the point we run a balanced program even with all we have going on in EO. Thi s is the most likely quote she'll pull. I like it and think we need it.

Rest of the statement deals with a couple things that came up. She spent a lot of time talking about c4s, 5s and 6s with some overlay on what c3s can do. Also wanted something for at tribution on differences between lobbying and pol activities. Not sure she'll use much on this section; no harm, no foul.

Anyway, doesn't say much but it's definitely better than no -comment. Remember, if we look like idiots, it's my fault.

Shouldn't you be home cooking?

Sent from my BlackBerry Wireless Handheld

From: Miller Steven T
To: Lemons Terry L
Sent: Fri Sep 17 16:59:09 2010
Subject: RE: Times statement

Cannot really say--this is so out of context that I don't know what we are answering...and it says nothing -- may be fine or may make us look like idiots

---

From: Lemons Terry L
Sent: Friday, September 17, 2010 3:50 PM
To: Miller Steven T; Keith Frank; Ingram Sarah H; Lerner Lois G; Eldridge Michelle L
Subject: Times statement

Here's what we've worked out with TE/GE for a statement for the Times. We also have an eye on this becoming a standard statement for any subsequent press inquiries. The second graph is in response to a request from S. Strom to have something on the record add ressing nuances regarding political activity and lobbying.

See what you think. Thanks.

The IRS is committed to running a balanced program in the tax -exempt sector, and this effort includes overseeing a wide range of groups to ensure the tax laws are f ollowed. It's important to keep in mind

Congress has structured the tax rules differently according to the kinds of tax -exempt organizations and the types of activities they may engage in. An activity that may be prohibited for one type of exempt organization may be allowed for another group, and it may or may not generate a tax liability.

For example, even though some people use the term "political activity" to refer broadly to many things, federal tax law specifically distinguishes among activities to in fluence legislation through lobbying, to support or oppose a specific candidate for election, and to do general advocacy to influence public opinion on issues. Whether the activity raises issues of the organization's exemption, or tax liability, or neither, depends on all of the facts and circumstances, including the type of activity and the type of organization.

The IRS remains vigilant to help protect the integrity of the tax-exempt sector.

From: Flax Nikole C
Sent: Wednesday, February 29, 2012 10:58 AM
To: Miller Steven T
Subject: RE:

I am getting more info, but I think the figures are of two different things.

The 100+ was the number of all political cases (c3, 4, 5, 6). The 51 is c4 exams (not limited to political, which is low).

From: Miller Steven T
Sent: Wednesday, February 29, 2012 6:11 AM
To: Flax Nikole C
Subject:

Ok--lets get our facts together...geez

Number of determs and the ever shrinking number of exams. Also a fuller story on the guide sheet
---
Sent using BlackBerry

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 08:56 PM
To: Miller Steven T
Subject: Re: 501c4 response for AP

Exams.

From: Miller Steven T
Sent: Tuesday, February 28, 2012 08:15 PM
To: Flax Nikole C
Subject: Re: 501c4 response for AP

Exams or determs?

Sent using BlackBerry

From: Flax Nikole C
Sent: Tuesday, February 28, 2012 07:16 PM
To: Miller Steven T
Subject: RE: 501c4 response for AP

I had told them to go ahead. btw, Lois says 51 exams in this area. I will attempt to run down the discrepancy.

From: Miller Steven T
Sent: Tuesday, February 28, 2012 7:03 PM

SFC 002342

To: Lerner Lois G; Eldridge Michelle L; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank
Subject: Re: 501c4 response for AP

Don't wait on me--Nikole has my vote-I may have lost the train of email here but am fine with "otherwise able to operate..."

Sent using BlackBerry

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 01:32 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Just FYI--I am having a separate discussion with Nikole on this issue but with different players. I've asked her to get Steve's OK on the redrafted one below, so I think we need to get that OK before sending out

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 1:22 PM
To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Yes--I think that is better. Works for us if it works for you. Thanks --Michelle

---

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:29 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

I think the point Steve was trying to make is --it doesn't harm you that we take a long time. You don't get that unless you add the red language.. I don't think the rest of the paragraph does go to this. Is says you can hold yourself out if you meet all the requirements. If you aren't sure you do meet them, you may want the IRS letter. would you be more comfortable if we say:

While the application is pending, the organization must file a Form 990, like any other tax - exempt organization, and is otherwise able to operate.

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 12:23 PM
To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Any chance that we can delete the language at the end -- and just say: While the application is pending, the organization must file a Form 990, like any other tax-exempt organization. I am concerned that the phrase "operate without material barrier" is a bit challenging for a statement. Given the context of the rest of the paragraph, I think the message gets across without it.

While the application is pending, the organization must file a Form 990, like any other tax - exempt organization, and is otherwise able to operate without material barrier.

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:02 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Subject: FW: 501c4 response for AP
Importance: High

Let me know if the addition (in bold red) does what you wa nt. I'd like to share this with doc. on a Congressional coming in through TAS.

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Monday, February 27, 2012 06:17 PM
To: Miller Steven T; Davis Jonathan M (Wash DC); Lern er Lois G; Grant Joseph H; Flax Nikole C; Keith Frank; Lemons Terry L; Zarin Roberta B
Subject: FW: 501c4 response for AP

OK--Here is final I'm using. Edits were incorporated. Thanks. --Michelle

By law, the IRS cannot discuss any specific taxpayer situation or case. Generally however, when determining whether an organization is eligible for tax -exempt status, including 501(c)(4) social welfare organizations, all the facts and circumstances of that specific organization must be considered to determine whether it is eligible for tax-exempt status. To be tax-exempt as a social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare.

The promotion of social welfare does not include any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these no n-exempt activities are not its primary activities. Even where the non-exempt activities are not the primary activities, they may be taxed.

Unrelated business income may be subject to tax under section 511 -514, and expenditures for political activities may be subject to tax under section 527(f). For further information regarding political campaign intervention by section 501(c) organizations, see Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations , and Revenue Ruling 2004-6.

Unlike 501(c)(3) organizations, 501(c)(4) organizations are not required to apply to the IRS for recognition of their tax-exempt status. Organizations may self-declare and if they meet the statutory and regulatory requirements they will be treated as tax-exempt. If they do want reliance on an IRS determination of their status, they can file an application for exemption. While the application is pending, the organization must file a Form 990, like any other tax -exempt organization, and is otherwise able to operate without material barrier.

In cases where an application for exemption under 501 (c)(4) present issues that require further development before a determination can be made, the IRS engages in a back and forth dialogue with the applicant. For example, if an application appears to indicat e that the organization has engaged in political activities or may engage in political activities, the IRS will request additional information about those activities to determine whether they, in fact, constitute political activity. If so, the IRS will l ook at the rest of the organization's activities to determine whether the primary activities are social welfare activities or whether they are non-exempt activities. In order to make this determination, the IRS must build an administrative record of the c ase. That record could include answers to questions, copies of documents, copies of web pages and any other relevant information.

Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political party affiliation or ideology.

SFC 002345

From: Miller Steven T
Sent: Friday, June 22, 2012 2:21 PM
To: Flax Nikole C
Subject: FW: 201210022 Engagement Letter
Attachments: 201210022-Engagement Letter.doc

Importance: High

From: Price Emma W TIGTA SFC [redacted]
Sent: Friday, June 22, 2012 2:56 PM
To: Grant Joseph H
Cc: Davis Jonathan M (Wash DC); Miller Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Holmgren R David TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA; Stephens Dorothy A TIGTA
Subject: 201210022 Engagement Letter
Importance: High

FYI Engagement Letter *Consistency in Identifying and Reviewing Applications for Tax -Exempt Status Involving Political Advocacy Issues.*

Thanks,
Emma Price

SFC 002346

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
for TAX
ADMINISTRATION

June 22, 2012

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Political Advocacy Issues (Audit # 201210022)

The Treasury Inspector General for Tax Administration is initiating a review to assess the Internal Revenue Service (IRS) Exempt Organizations function's consistency in the identification and review of applications for tax-exempt status involving political advocacy issues. We will be contacting the liaison for Tax Exempt and Government Entities Division to schedule an entrance conference with the appropriate IRS managers.

During the 2012 election cycle, the campaign activities of Internal Revenue Code (IRC) Section (§) 501(c)(4) social welfare organizations have been highlighted in many news articles. According to various reports, the IRS is requesting extensive amounts of additional information from organizations applying for IRC § 501(c)(4) tax-exempt status, including donor information, prior to approving their applications. Several accusations of inconsistent treatment towards conservative groups have been made.

The tax laws do not prohibit IRC § 501(c)(4) social welfare organizations from engaging in campaign activity. However, Treasury Regulations require IRC § 501(c)(4) organizations to operate exclusively for the promotion of social welfare. An organization is considered to be operating this way if it is primarily engaged in promoting the common good and general welfare of the people of the community and not making political activities their primary purpose.

Overall Objective and Subobjectives

Our overall objective is to assess the consistency of the Exempt Organizations function's identification and review of applications for tax-exempt status involving political advocacy issues. To accomplish our objective, we will:

- Assess the actions taken by the Exempt Organizations function in re sponse to the increase in applications for tax-exempt status from organizations involved in political advocacy activities.
- Determine whether changes to procedures and controls since May 2010 affected the timeliness of reviewing applications involving political advocacy issues.
- Determine whether the actions taken by the Exempt Organizations function to identify applications for tax-exempt status of organizations with political advocacy issues were consistent.
- Determine whether the Exempt Organizations function had a reasonable basis for requesting information from organizations seeking tax -exempt status involved in political advocacy.

Offices Subject to Review

We will perform audit work at the Determinations Office in Cincinnati, Ohio. We may also visit Exempt Organizations function's offices in Washington, D .C.; Baltimore, Maryland; and other offices to obtain case files.

Deliverables and Estimated Completion Dates

We will be issuing an interim report after we complete our initial review of the applicat ion process. In addition, we will issue the draft report by March 2013 and the final report by April 2013.

Information Needed From Auditee

To accomplish the audit objectives, we require the following information no later than July 6, 2012:

- All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision -making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.
- Access to case files (open, closed, paper, and electronic) from the Determinations Office. After we select our sample, we will work with Determinations Office officials to obtain the cases we need.

During the course of fieldwork, additional informatio n may be needed and we will request employees to provide responses and documentation as soon as it is practical, but not to exceed 2 weeks from the date of the request.

Special Considerations

During our on-site visits, we will need work space for three auditors, access to a telephone, a photocopier, and supplies.

Designated Treasury Inspector General for Tax Administration Executive Liaison

Russell Martin, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations) SFC

Responsible Inspector General Staff

Questions regarding this review may be directed to:

Troy Paterson, Director, Tax Exempt and Government Entities/Human Capital, SFC
Thomas Seidell, Audit Manager, SFC
Cheryl Medina, Lead Auditor SFC

cc: Commissioner C
Office of the Commissioner – Attention: Chief of Staff C
Deputy Commissioner, Services and Enforcement SE
Acting Deputy Commissioner, Tax Exempt and Government Entities Division SE:T
Director, Exempt Organizations, Tax Exempt and Government Entities Division SE:T:EO
Director, Office of Legislative Affairs CL:LA
Deputy Inspector General for Inspections and Evaluations IG:IE
Director, Strategic Data Services IG:OI:SDS

SFC 002349

From: Marx Dawn R
Sent: Tuesday, February 21, 2012 3:55 PM
To: Nielson Jacqueline R; Paz Holly O
Cc: Thomas Cindy M; Hall Regeina D
Subject: RE: Ohio organization meeting with Rep. Jordan today

Couldn't hurt. Working to finalize this.

Thanks.

Dawn R. Marx

INTERNAL REVENUE SERVICE
ATTN: Dawn R. Marx
TE/GE SE:T:EO
NCA-572
SFC[redacted]

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 4:53 PM
To: Marx Dawn R; Paz Holly O
Cc: Thomas Cindy M; Hall Regeina D
Subject: RE: Ohio organization meeting with Rep. Jordan today

Rep. Jordan's Aide said she usually leaves at 5. Should I ask her to stay a little longer? Thanks!!

From: Marx Dawn R
Sent: Tuesday, February 21, 2012 4:51 PM
To: Paz Holly O
Cc: Thomas Cindy M; Nielson Jacqueline R; Hall Regeina D
Subject: FW: Ohio organization meeting with Rep. Jordan today

Holly, FYI.

Dawn R. Marx

INTERNAL REVENUE SERVICE
ATTN: Dawn R. Marx
TE/GE SE:T:EO
NCA-572
SFC[redacted]

SFC 002350

SFC [redacted]

From: Hall Eric
Sent: Tuesday, February 21, 2012 4:49 PM
To: Nielson Jacqueline R; Thomas Cindy M; Marx Dawn R
Cc: Hall Regeina D
Subject: RE: Ohio organization meeting with Rep. Jordan today

I'm gone for the day. Please send whatever you get directly to Jackie. Thanks.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:47 PM
To: Thomas Cindy M; Marx Dawn R
Cc: Hall Regeina D; Hall Eric
Subject: RE: Ohio organization meeting with Rep. Jordan today

Great!!

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 3:46 PM
To: Nielson Jacqueline R; Marx Dawn R
Cc: Hall Regeina D; Hall Eric
Subject: RE: Ohio organization meeting with Rep. Jordan today

Jackie - Holly is in a meeting with Lois Lerner and others drafting talking points.

Dawn - No need to catch Holly. She sent me an email indicating she and Lois are working on talking points. That is all I needed.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:35 PM
To: Thomas Cindy M; Marx Dawn R; Hall Eric
Cc: Hall Regeina D
Subject: RE: Ohio organization meeting with Rep. Jordan today

Karen Batey isn't answering either. Cindy, could I call you and we could quickly dra ft a few talking points for Rep. Jordan?

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 3:28 PM
To: Marx Dawn R; Hall Eric; Nielson Jacqueline R
Cc: Hall Regeina D
Subject: FW: Ohio organization meeting with Rep. Jordan today

Dawn - I should have cc'd you on my email below.

Eric -- I meant to cc: you but inadvertently cc'd Regeina Hall instead.

Jackie -- I called Holly prior to sending my email. She didn't answer and I left a voice message.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:23 PM
To: Thomas Cindy M; Paz Holly O
Cc: Light Sharon P; Zarin Roberta B; Hall Regeina D
Subject: RE: Ohio organization meeting with Rep. Jordan today

Holly, are you at your desk? Could I call you? Thanks! Jackie N.

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 3:18 PM
To: Paz Holly O
Cc: Light Sharon P; Zarin Roberta B; Nielson Jacqueline R; Hall Regeina D
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

Holly,

Please read Jackie's email directly below. How do you want to handle this?

NOTE: This case was assigned to Joseph Herr on 2/6/2012. It has a control date from 9/2010.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:04 PM
To: Zarin Roberta B; Thomas Cindy M
Cc: Hall Eric
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

I do have the privacy release from the Sidney Shelby County Liberty Group, EIN 36-4674344 re: their Form 1024. They have authorized release of information to Congressman Jordan. In the release they say their application has been assigned to RA Ron Bell in EO. Should I call Ron for an update? He may be able to provide the list of questions he has asked the group to answer. If we could also give him just a couple of talking points, that might be helpful, e.g. we review each application for completeness, etc. Thanks! Jackie N., Governmental Liaison SFC

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 11:22 AM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O
Cc: Eldridge Michelle L; Cressman William M; Daly Richard M; Hall Eric; Cressman William M
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

see the email request below and the attached email traffic from late last week. Can someone in EO help please?

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
SFC

SFC 002352

From: Hall Eric
Sent: Tuesday, February 21, 2012 10:53 AM
To: Zarin Roberta B
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

Bobbi - Congressman Jim Jordan will be addressing a group this evening that is wondering what has become of its application for tax exempt status. The group appears to be politically active and vocal. See below. Is there any chance of getting some talking points or comments before close -of-business, so that we can prep Congressman Jordan? We do not have a disclosure authorization, so any talking points would have to be generic, focused on the bigger picture outlined below.

Let me know. Thanks,

Eric Hall
Internal Revenue Service
Legislative Affairs
SFC

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 10:24 AM
To: Hall Eric; Esrig Bonnie A
Subject: Ohio organization meeti ng with Rep. Jordan today

Help! An organization in Ohio - the Ohio Liberty Council - applied for exempt status in Sept., 2010 and has not gotten their determination yet. Per the news report below, IRS has requested substantial additional information fr om them, and it sounds like they feel they are being singled out due to their beliefs. Per the article, there have been allegations of similar incidents by groups in other states. Susan Ohl, a staff member of Rep. Jim Jordan's, called this morning and sa id he has been invited to address this group this evening, and she is hoping to get an update. We don't have a disclosure authorization from the group, although I expect she could get one. Our reply could be that they need to answer the questions IRS has given them, and that the agent assigned to the case will make a determination as soon as he/she gets the requested information? Is there anything else we can say? Thanks for your help and advice. Jackie N.

From: Jenkins Jennifer A
Sent: Tuesday, February 21, 2012 9:32 AM
To: *Media Relations
Cc: Kerns Chris D; Cressman William M; Nielson Jacqueline R
Subject: Clip: Is IRS targeting Obama's enemies? The New American Magazine 021512

The New American Magazine
021512

Is IRS targeting Obama's enemies?

Written by Raven Clabough

In 2010, *American Thinker* posted an interesting defense of a flat tax, noting that it would help preserve privacy and freedom of speech by eliminating the need for the federal government to know virtually every aspect of a taxpayer's financial assets. Two years later, some people are seeing truth in the magazine's assessment that the administration may be using the Internal Revenue Service to silence its opposition.

Ohio Liberty Council, for instance, says they are being made to jump through hoops by the IRS, which has demanded certain documents in order for the group's process of acquiring non -profit status to move forw ard. OLC President Tom Zawistowski posted a letter on the organization's website detailing the difficulties:

> My own Portage County TEA Party has been waiting for over a year just to get a response from the IRS so we can file our 2010 tax return! In the attached PDF I share with you, the "Additional Information Requested" of the Ohio Liberty Council from our June 30th, 2010 application which we just received on January 30, 2012. Yes, they took a year and a half to respond to our application and they are giving us two weeks to respond back. As you will see, this is no simple request.

Besides its 19-month delay in answering the OLC, the IRS is requiring such a large amount of documents and information that a small organization such as the OLC would likely have to stop all other operations in order to comply.

The following are the IRS demands of the OLC:

> • A hard copy printout of the website — A pdf file emailed to the IRS will not suffice
>
> • A list of all social media outlets being used (Facebook, Twitter, etc.) including hard copy printouts of every posting
>
> • A narrative description of every activity of [the] organization since June 30, 2010 (filing date). [The IRS does not want a mere description of an event, but full details, including who conducted it, their qualifications, who was allowed to take part in the activities and how they were selected, and if there was a fee, how much it was.]
>
> • Details of the [OLC's] members, including their names, addresses, roles, plus a corporate federal ID of all organizations which are members of the Ohio Liberty Council.

Additionally, the IRS required the following from the OLC:

> • Time, location and content schedule of each scheduled public event
>
> • Copies of any and all handouts
>
> • Names and credentials of all instructors and copies of any workshop materials used
>
> • Identification of all speakers and copies of every speech

The letter sent to the OLC also indicates that the IRS will make public and post on the Internet all information received from the OLC. *The Blaze* views this statement as a threat: "Anyone who is part of a non-profit or even has attended a gathering held by a non-profit will have their information posted on the internet by the government. It makes you wonder if the same information will be asked of other non-profits?"

Zawistowski notes that by the same logic, names of all buyers of Girl Scout cookies as well as all who attend church each week would have to be posted online.

According to *The Blaze*, the OLC's ordeal with the IRS is not an isolated incident:

> Tea Party groups across the country have written to us sharing similar information. One Texas group filed their application for non-profit status in late 2007, but only received the information demand letter last month. As stated above, the Ohio Liberty Council submitted paperwork over 18 months ago[;] their demand was received at the end of January. Florida groups (who we have spoken with, but have requested anonymity) report similar experiences.
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> Many different groups applied for non-profit status at very different times — (over a three year period) and yet, they all seem to have gotten the IRS replies within the last month.

As mentioned earlier, some critics charge that the Obama administration is attempting to silence its opposition — opposition, for instance, to the ObamaCare contraceptive mandate. In a recent press release, the OLC indicated that it stands with the Catholic Church in that battle:

> The Ohio Liberty Council (OLC) announced today that it supports the decision of the Catholic Church to refuse to comply with the ruling by the Health and Human Services Department concerning mandatory insurance coverage. The ruling says that under ObamaCare, Catholic institutions — including charities, hospitals and schools — will be

> required by law, to provide and pay for insurance coverage that includes contraceptives, abortion -inducing drugs and sterilization procedures. If they do not, they will face fines in the millions of dollars which will put organizations like catholic hospitals and schools out of business. This decision has the full support of President Obama and his Administration.

Meanwhile, the timing of the IRS's seemingly absurd requests for documentation coordinates with the announcement of the Obama campaign's plans to mobilize its "Truth Team" members across the country, who will also seek to silence opposing voices.

During Obama's 2008 presidential campaign, a similar group of his supporters in Missouri took their agenda too far, vowing to arrest anyone who told "lies" about Obama, and did what they could to intimidate anyone who criticized him or his policies.

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> A local television station's coverage of a Missouri campaign "truth squad" on behalf of Democratic presidential nominee Barack Obama has touched off a national Internet frenzy. What has prompted all the furor is that several members of the Obama's "truth squad" in Missouri are prosecutors or members of law enforcement. They include St. Louis Circuit Attorney Jennifer Joyce, Jefferson County Sheriff Glenn Boyer and St. Louis County Prosecuting Attorney Bob McCulloch. All are Democrats.

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> What Senator Obama and his helpers are doing is scandalous beyond words. The party that claims to be the party of Thomas Jefferson is abusing the justice system and offices of public trust to silence political criticism with threats of prosecution and criminal punishment. This abuse of the law for intimidation insults the most sacred principles and ideals of Jefferson. I can think of nothing more offensive to Jefferson's thinking than using the power of the state to deprive Americans of their civil rights.

Because of possible political retribution — by way of an IRS audit — by the administration against its foes, *American Thinker* believes the federal tax code should be abolished in favor of a simple flat tax:

> The fact that we have a tax system so vast and complex that it may be vindictively used as a political tool is unconscionable. Couple that with the fact that we have a president with a Chicago -brass-knuckles political background, and we have an environment chilling to free speech.
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> How many of Obama's political "enemies" have been cowed into silence due to fear of retribution via an unfriendly IRS tax audit? How many signatures are missing from petitions against the administration out of fear of arbitrary retribution? The IRS can ruin a completely innocent person by forcing an expensive and time -consuming defense against a vindictive audit.

http://thenewamerican.com/usnews/politics/10875 -is-irs-targeting-obamas-enemies

SFC 002355

From: Paz Holly O
Sent: Tuesday, February 21, 2012 9:34 PM
To: Thomas Cindy M
Subject: RE: Ohio organization meeting with Rep. Jordan today

That would be great. Thanks!

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 10:33 PM
To: Paz Holly O
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

Holly,

I asked for timeline, etc., for Sidney Shelby simi lar to what Peggy sent to you for Ohio Liberty. I hope to have this to you by 2/22 at the end of the day at the latest.

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 5:20 PM
To: Zarin Roberta B; Paz Holly O
Cc: Thomas Cindy M
Subject: RE: Ohio organization meeting with Rep. Jordan today
Importance: High

We are handling this at a higher level --Nikole Flax and I are supposed to go talk to Congressman on Friday. No one else should be doing anything. Bobby can you let the leg affairs and media relations folks know. Holly--I need a complete timeline since it came in the door please.

Lois G. Lerner
Director of Exempt Organizations

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 5:13 PM
To: Paz Holly O; Lerner Lois G
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
SFC [redacted]

SFC 002356

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 3:18 PM
To: Paz Holly O
Cc: Light Sharon P; Zarin Roberta B; Nielson Jacqueline R; Hall Regeina D
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

Holly,

Please read Jackie's email directly below. How do you want to handle this?

NOTE: This case was assigned to Joseph Herr on 2/6/2012. It has a control date from 9/2010.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:04 PM
To: Zarin Roberta B; Thomas Cindy M
Cc: Hall Eric
Subject: FW: Ohio organization meeting with Rep. Jordan today
Importance: High

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Communications and Liaison
Tax Exempt and Government Entities
SFC

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http://thenewamerican.com/usnews/politics/10875 -is-irs-targeting-obamas-enemies

From: Lerner Lois G
Sent: Monday, August 13, 2012 4:40 PM
To: Paz Holly O
Subject: RE: OARs for Advocacy Cases

Well, that's a wonderful piece of news!

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Sunday, August 12, 2012 9:55 PM
To: Lerner Lois G
Subject: FW: OARs for Advocacy Cases

FYI - TAS may have made a global decision to close OARs on advocacy cases.

From: Thomas Cindy M
Sent: Sunday, August 12, 2012 4:58 PM
To: Paz Holly O
Subject: OARs for Advocacy Cases

Holly,

A TAS caseworker advised us that they were instructed to close their OARs for advocacy cases and to tell the taxpayers that they had to wait for decisions to be made. Have you heard anything about this? We're trying to see whether they issued something in writing that we can use to close other advocacy case OARs in addition to the one referenced below.

From: Thomas Cindy M
Sent: Sunday, August 12, 2012 4:53 PM
To: Esrig Bonnie A; Combs Peggy L
Subject: RE: Expired Operations Assistance Request CF# 4978504

Bonnie - I haven't seen or heard anything regarding this.

Peggy - If Winnie is still in touch with Debbra, it would be helpful if she asked Debbra if the instructions were provided in writing and, if so, whether we could have a copy for our records. Thanks.

From: Esrig Bonnie A
Sent: Tuesday, August 07, 2012 10:41 AM
To: Combs Peggy L; Thomas Cindy M
Subject: FW: Expired Operations Assistance Request CF# 4978504

From the TAS email below, it seems as though TAS may have made a function -wide decision regarding the advocacy cases. Have either of you seen anything regarding that?

SFC 002361

Bonnie A. Esrig
Manager, Area 1, EO Determinations
SEC [redacted]

From: Berry Daniel W
Sent: Monday, August 06, 2012 2:32 PM
To: Esrig Bonnie A
Subject: FW: Expired Operations Assistance Request CF# 4978504

FYI

From: Lee Winnie
Sent: Monday, August 06, 2012 2:01 PM
To: Sharp Debbra M
Cc: Steele Mitchell P; Berry Daniel W
Subject: FW: Expired Operations Assistance Request CF# 4978504

Debbra,

What is the date that you closed this OAR in your system?

Thanks,

Winnie Lee
Group 7846
TE/GE TAS Liaison
SEC [redacted]

From: Steele Mitchell P
Sent: Monday, August 06, 2012 1:47 PM
To: Berry Daniel W
Cc: Lee Winnie
Subject: FW: Expired Operations Assistance Request CF# 4978504

Dan

It looks like the OAR on my advocacy case has been closed

Mitch

From: Sharp Debbra M
Sent: Monday, August 06, 2012 1:39 PM
To: Steele Mitchell P
Subject: RE: Expired Operations Assistance Request CF# 4978504

Sorry for the late response. TAS has insturcted us to close these cases. We have explained the to tp's that they had to wait for the decisions to be made. So there is no problem as far as obtaining a completion date

Debbra Sharp
Case Advocate
SFC
[redacted]

From: Steele Mitchell P
Sent: Friday, July 27, 2012 11:10 AM
To: Berry Daniel W
Cc: Lee Winnie; Sharp Debbra M
Subject: RE: Expired Operations Assistance Request CF# 4978504

Dan

Just called the taxpayer advocate in CA. She is not in the office. She is on va cation until 8/6/12. I will contact her then to obtain a new completion date.

Mitch

From: Berry Daniel W
Sent: Friday, July 27, 2012 10:03 AM
To: Steele Mitchell P
Subject: RE: Expired Operations Assistance Request CF# 4978504

Mitch,

Please let me know the new comp letion date. Also, set up a reminder to contact the advocate to renegotiate the completion date as needed as long as the case stays open.

Thanks

Dan

From: Steele Mitchell P
Sent: Friday, July 27, 2012 9:38 AM
To: Sharp Debbra M
Cc: Lee Winnie; Berry Daniel W
Subject: FW: Expired Operations Assistance Request CF# 4978504

Debbra

Attached is the below referenced OAR.

No action has been taken. I am waiting on feedback from EO Technical in DC.

I do not know when feedback will be provided. A good estimate is within 30 days.

SFC 002363

Please submit information regarding the estimated completion date you are using for the OAR to Winnie Lee.

Thanks

Mitch

From: Lee Winnie
Sent: Friday, July 27, 2012 9:15 AM
To: Steele Mitchell P
Cc: Berry Daniel W
Subject: Expired Operations Assistance Request CF# 4978504

Our records indicate the Operations Assistance Request (OAR) for the organization specified below is assigned to you and according to our records; the requested completion date of the OAR has expired. Please provide the new negotiated completion date on this OAR so we can update our records. If you have not contacted the Case Advocate to negotiate a new completion date, please do it as soon as you can.

Please keep me informed of any future changes to the estimated completion date. If the OAR has been resolved or you no longer are assigned to this OAR, please let me know.

Name: Patriots Educating Concerned Americans Now
EIN: SFC [redacted]
TAMIS #: SFC [redacted]

Thanks,

Winnie Lee
Group 7846
TE/GE TAS Liaison
SFC [redacted]

SFC 002364

From: Urban Joseph J
Sent: Thursday, April 01, 2010 8:10 AM
To: Flax Nikole C; Giosa Christopher P; Miller Thomas J; Kindell Judith E; Choi Robert S; Lerner Lois G; Fish David L; Buller Siri
Subject: 2010 TNT 62-5 IRS URGED TO INVESTIGATE CHARITY FOR POSSIBLE POLITICAL ACTIVITY.
Attachments: core up.gif

ABSTRACT: An ethics watchdog group has asked the IRS to investigate a charitable organization associated with conservative figures Oliver North and Sean Hannity, contending the charity may have violated the conditions of its tax-exempt status by engaging in partisan political activity.

AUTHOR: Stokeld, Fred
Tax Analysts

Release Date: MARCH 31, 2010

Published by Tax Analysts(R)

An ethics watchdog group has asked the IRS to investigate a charitable organization associated with conservative figures Oliver North and Sean Hannity, contending the charity may have violated the conditions of its tax-exempt status by engaging in partisan political activity.

In a March 29 letter to the IRS, Me lanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, urged the agency to launch a probe of Freedom Alliance, a section 501(c)(3) organization formed by North in 1990 that provides scholarships to the children of American soldiers who have been killed or wounded in battle. Sean Hannity, a well -known conservative radio and television commentator, has raised money for the scholarships from his listeners and by hosting Freedom Alliance concerts. (For the letter, see *Doc 2010-7167*.)

In her letter, Sloan acknowledged that Freedom Alliance conducts several laudable programs, but said the charity's Web site has an archive of columns writt en by North -- the group's honorary chair -- that are sometimes political. The Web site also links to other politically partisan materials, including a response by Freedom Alliance President Tom Kilgannon to a Department of Homeland Security report on righ t-wing extremism, according to Sloan.

In a statement on Freedom Alliance's Web site the same day, Kilgannon called the complaints baseless and scurrilous. "The smear-mongers who have launched this politically motivated witch hunt against Freedom Alliance will be proven wrong as we aggressively defend ourselves in the days and weeks ahead," he said.

Sloan suggested Freedom Alliance may be making its mailing list available only to conservative organizations, and she said the group hosts cruises with speak ers who are almost all conservative political figures. She also questioned whether Freedom Alliance operates for the private interests of conservatives through its ties to political figures such as North, Hannity, former House Speaker Newt Gingrich, and Re publican National Committee Chair Michael Steele.

"Operating to provide benefits to private interests, even if the organization's other activities would otherwise be

permissible under IRC section 501(c)(3), is in direct violation of the federal tax law requirement that Freedom Alliance operate for a public, rather than private, interest," Sloan wrote. She also said the IRS should examine Freedom Alliance's relationship with Team America PAC, a political action committee that she said supports conservative candidates.

March 29, 2010

Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Re: Complaint Against Freedom Alliance (EIN 54 -1411430)

Dear Commissioner Shulman:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests an Internal Revenue Service ("IRS") investigation into the political activities of Freedom Alliance ("Freedom Alliance"), a non - profit public charity exempt from taxation pursuant to Internal Revenue Code ("IRC") Sections 501(c)(3) and 509(a). Because of the potentially serious nature of the of the tax law violations, the IRS should consider revoking Freedom Alliance's tax -exempt status and/or imposing appropriate excise taxes and penalties on the organization.

Overview

Freedom Alliance is classified as a public charity and is an organization described in IRC Section 170(b)(1)(A)(iv). Freedom Alliance was founded by controversial political figure Lt. Col. Oliver North in 1990. [1] Freedom Alliance's mission, as disclosed on its website, is "to advance the American heritage of freedom by honoring and encouraging military service, defending the sovereignty of the United States and promoting a strong national defense." [2] Freedom Alliance conducts several laudable program activities, including educational programs on public policy issues, a "Support Our Troops" program, a Military Leadership Academy, and a scholarship fund. However, ma ny of Freedom Alliance's activities appear to be politically partisan, which suggests that Freedom Alliance may have impermissibly engaged in political activities.

As an IRC Section 501(c)(3) public charity, Freedom Alliance is strictly prohibited from intervening in a political campaign on behalf of or in opposition to any candidate for public office. Accordingly, Freedom Alliance may not endorse candidates, dist ribute statements for or against candidates, raise funds for or donate to candidates or become involved in any activity that would be either supportive or in opposition to any candidate.

The IRS has indicated that the prohibition on political activities is absolute -- there is no requirement that the political campaigning be substantial. [3] Charities can violate this requirement directly (such as by endorsing or opposing a candidate running for public office), but campaign intervention can also be more subtle. For example, charities may not se nd a letter condemning a candidate for a particular ideological view, [4] selectively invite candidates to speak at hosted events, [5] make their mailing list selectively available to one political party, [6] sponsor issue advocacy communications that cross the line into election intervention, [7] or allow their directors or officers, in their capacities as such, to espouse political viewpoints and opinions. [8]

Despite this prohibition, Freedom Alli ance appears to have engaged in political activities. First, Freedom Alliance's website contains extensive commentary that, at times, is political in nature (under the "Public Policy Center"). Second, Freedom Alliance hosts annual Freedom Cruise events, wh ich often feature seminars on

political topics, as presented by speakers that are virtually exclusively identified with conservative political causes. Third, Freedom Alliance has also sold its mailing list to conservative marketing firms with political clients. Finally, Freedom Alliance appears to maintain connections with Team America -- an organization that appears to be predominately active through its political action committee ("PAC").

As set forth below, the totality of the facts and circumstances i ndicate that Freedom Alliance may have engaged in political activities and that Freedom Alliance may be operating, in part, to provide a private benefit to conservative political groups. The IRS should extensively investigate this matter and pursue appropr iate penalties, including revocation of Freedom Alliance's tax exempt status.

Political Activities -- Freedom Alliance Website

During Freedom Alliance's initial exemption application process, the IRS warned Freedom Al liance to avoid participating in political activities. In Freedom Alliance's determination letter dated November 5, 1999, the IRS conditioned Freedom Alliance's tax exempt status on the fact that it removed politically partisan material from its website and adopted procedures to prevent intervening in political campaigns. Exempt status was retroactively granted to January 1, 1997, but the IRS cautioned Freedom Alliance to not engage in any activity that would constitute intervention in a political campaign.

Freedom Alliance appears to have forgotten this initial warning from the IRS. As of March 2010, Freedom Alliance's website contained an archive of Lt. Col. Oliver North's "Common Sense" columns going back to November 30, 1999 [9] -- a column written for the *Washington Times* and that is sometimes political in tone. For example, as of March 23, 2010, the following material appeared on Freedom Alliance's website: [10]

> Last Sunday, Senator John McCain met in Washington with Iraqi Foreign Minister, Hoshyar Zebari. After their closed-door session, the two men took questions from waiting reporters. The following day, Senator Barak Obama told reporters that he too had found time for a conversation with Mr. Zebari. The way in which the two events apparently took place and how they were reported reflect the profound diffe rences between Messer's. McCain and Obama. *(Show and Tell,* by Oliver North, June 20, 2008).

> This place should have had real appeal to Senator Barack Obama. The poverty of the Afghan people is evident everywhere. Wracked by decades of Soviet occupation, civil war and an oppressive Taliban theocracy, the country is a veritable centerpiece for one of Mr. Obama's legislative objectives: a frontal assault on Global Poverty. Regrettably, when Senator Obama was here last week to play basketb all for the cameras, neither he nor any of the media -sycophants traveling with him mentioned the Global Poverty Act of 2007 (S.2433), legislation that he introduced on January 7, 2007. *(Change We Can Believe In,* by Oliver North, July 31, 2008).

These columns are directly available by hyperlinks on Freedom Alliance's website. [11] The author of the columns, Lt. Col. Oliver North, is currently designated as an "Honorary Chairman" of Freedom Alliance on its

website. [12] However, Lt. Col. North's role in the organization is not disclosed on Freedom Alliance's Form 990 information returns.

In addition to Lt. Col. North's columns, Freedom Alliance contains other links to politically partisan material. For example, Freedom Alliance's website links to President Tom Kilgannon's "point by point" breakdown of the Department of Homeland Security's report on Rightwing Extremism. The IRS should recognize that the inflammatory nature of Mr. Kilgannon's response and his distorted use of facts make the presentation of his retort to the report partisan. [13] Freedom Alliance also links to Lt. Col. Oliver North's response to the Rightwing Extremism report, and provides links to columns written by Mr. Kilgannon, which are often political in tone. Finally, Freedom Alliance's newsletter promotes Mr. Kilgannon's anti-United Nations book. Similar to other Freedom Alliance website content, the newsletter "interview" with Mr. Kilgannon is decidedly partisan in nature, as demonstrated by this excerpt: [14]

> **[Freedom Alliance Review's Question]** Legally and logistically speaking, what would have to happen for the U.S. to actually "divorce" the UN?
>
> **[Kilgannon's Response]:** Congressman Ron Paul (TX) is the sponsor of legislation in the House which would free the United States from any more obligations to the United Nations. His bill has actually been gaining support in recent years. But what it really will take, is an act of political courage by today's politicians.

The political material appearing on Freedom Alliance's website suggests that Freedom Alliance's "educational efforts on public policy issues" may in fact be partisan efforts by Lt. Col. North, Mr. Kilgannon and others with connections to Freedom Alliance. Read in light of Freedom Alliance's propensity for posting questionably partisan material on its website, the following description of Freedom Alliance's public policy activities takes on a more sinister tone:

> *Public Policy and Education:* Freedom Alliance conducts research and offers analysis on public policy matters -- especially those issues which impact America's national sovereignty, national defense, foreign policy, American history, and the role of government generally. Freedom Alliance educates the public on these matters through the publication of policy papers, newspaper columns and grassroots communications. Freedom Alliance also hosts or co-hosts conferences and seminars and provides opinion and analysis on issues of concern through the Internet, talk radio, television, talk shows, and newspapers.

Although charities are permitted to take positions on public policy issues, including issues that divide electoral candidates, charities must carefully avoid activities that could give rise to political campaign intervention. [15] The activities of Freedom Alliance suggests that the IRS should investigate all the facts and circumstances of Freedom Alliance's public policy statements to determine whether Freedom Alliance has (and continues to) intervene in political campaigns through its efforts on public policy research, analysis, and publications.

The partisan material posted on Freedom Alliance's website, as discussed above, appears to cross the line into

political campaign interevention. However, CREW urges the IRS to also investigate other materials propagated by Freedom Alliance that could constitute political activities, including:

- Letters and other mailings to Freedom Alliance supporters
- Letters to potential donors
- Freedom Alliance statements in the media (talk radio, television, newspapers and the Internet).

To aid the IRS's investigation, CREW has compiled a number of Freedom Alliance materials, which are included with this letter.

Partisan Use of Freedom Alliance's Mailing List

Freedom Alliance rents its mailing list to companies, most recently to Eberle & Associates and the Richard Norman Company, which are both companies that work w ith conservative political groups. [16] The Richard Norman Company bills itself as "the premier communications firm for candidates, non -profits, PAC's, and affiliated organizations that seek to reach Republicans and conservatives across the United States." [17] Meanwhile, Eberle & Associates is "America's Trusted Conservative Fund R aiser." [18]

Freedom Alliance has possibly intervened in a political campaign if it made its mailing list available only to conservative groups. The IRS has previously indicated IRC section 501(c)(3) organizations should make their mailing lists available to all candidates and political organizations on the same terms, otherwise partisan use of mailing lists may constitute impermissible intervention in a political campaign. [19] While it is possible that Freedom Alliance made its list avai lable to both liberal and conservative groups, the fact that Freedom Alliance only sold its mailing list to conservative groups should cause the IRS to question whether Freedom Alliance impermissibly intervened into a political campaign. [20]

Political Activities -- Freedom Cruise Seminar Topics

Freedom Alliance annually hosts a "Freedom Cruise" event. More than just tours of exotic locales, the Freedom Cruises give participants the opportunity to participate in "in -depth discussions and debates" and "public p olicy discussions," which usually occur with a conservative twist. As detailed further below, the speakers on the Freedom Cruises are virtually all conservative political figures. Furthermore, the Freedom Cruise seminar topics are often political in nature, including the following:

- "A Preview of the 2008 Elections" (2007 Freedom Cruise). [21]
"A Preview of the 2008 Elections" (2007 Freedom Cruise). [21]
- "Assessing Obama's First Six Months of Change" (2009 Freedom Cruise). [22]

Similar to the partisan material published on its website, Freedom Alliance appears to permit conservative political figures to use its Freedom Cruises as a platform to advance a conservative political agenda.

Does Freedom Alliance operate for the Private Interest of Conservatives?

Freedom Alliance is required to be organized and operated exclusively for charitable purposes under IRC Section 501(c)(3). [23] An organization does not qualify for section 501(c)(3) status "if more than an insubstantial

part of its activities are not in furtherance of an exempt purpose." [24] Moreover, an organization is not operated exclusively for an exempt purpose "unless it serves a public ra ther than private interest." [25] In the past, the IRS has revoked the tax exempt status of organizations that have served the private interests of political parties. [26]

Freedom Alliance's strong ties to many conservative political figures suggest that Freedom Alliance may be providing a more than insubstantial benefit to the pr ivate interests of conservative political figures and groups. Freedom Alliance's strong connections with notable conservatives include the following:

- **Lt. Col. Oliver North.** Lt. Col. North is Freedom Alliance's founder and honorary Chairman. Lt. C ol. North is a controversial political figure and has campaigned for public office as a Republican candidate. Currently, Lt. Col. North is a media pundit, and often appears as a political commentator on Sean Hannity's FOX News program a nd pens columns for the Washington Times.

- **Sean Hannity.** Sean Hannity is the host of a popular conservative television program on FOX News. Mr. Hannity personally donates to Freedom Alliance [27] and also hosts the "Freedom Concerts" series, which donates a small portion of its revenues to the Freedom Alliance scholarship program. [28] (The 2005 and 2006 Freedom Concerts were co-hosted by Sean Hannity and Freedom Alliance.) [29] In December of 2006, Mr. Hannity broadcast a portion of Freedom Alliance's 15th Anniversary Gala Event on his FOX News television program. [30]

- **Ralph Smith.** Mr. Smith currently serves on Freedom Alliance's board of directors. Mr. Smith is also currently serving as a Republican Virginia State Senator (elected in 2007). [31]

- **Thomas P. Kilgannon.** Mr. Kilgannon is Freedom Alliance's current President. Before joining Freedom Alliance, Kilgannon served as a top aide to Republican U.S. Congress Representative Mark Neumann (Wisconsin) and "helped Neumann become one of the most visible and effective members of the historic freshman class of 1995." [32] Mr. Kilgannon also served as deputy press secretary for Republican candidate Patrick J. Buchanan's 1992 presidential campaign.

Other influential conservative figures frequently appear as guests and speakers at Freedom Alliance events, particularly with respect to the Freedom Alliance's "Freedom Cruises":

- **Newt Gingrich.** Mr. Gingrich, former Republican Speaker of the House, attended a Freedom Alliance Memorial Day Hawaiian Luau event held in 2007. [33] Mr. Gingrich has served as a featured guest and speaker on Freedom Cruises hosted by Freedom Alliance. [34]

- **Michael Steele.** Mr. Steele is currently serving as Chairman of the Republic National Committee ("RNC"). Mr. Steele has also served as a featured guest and speaker on Freedom Cruises hosted by Freedom Alliance. [35]
speaker on Freedom Cruises hosted by Freedom Alliance. [35]

- **Edwin Meese.** Mr. Meese, who served as Attorney General under Republican President Ron ald Reagan from 1985 to 1988, has served as a featured guest and speaker on Freedom Cruises hosted by Freedom Alliance. [36]

- **David A. Keene.** Mr. Keene is the Chairman of the Board for the American Conservative Union, which is "America's Oldest and Largest Grassroots Co nservative Organization." [37] Mr. Keene has served as a featured guest and speaker on Freedom Cruises hosted by Freedom Alliance. [38]

- **Duncan Hunter.** Mr. Hunter is a former elected Republican Representative in the U.S. Congress (California). [39] Mr. Hunter has served as a featured guest and speaker on Freedom Cruises hosted by Freedom All iance. [40]

- **Bob Barr.** Mr. Barr is a former Congressman and former Libertarian presidential candidate. [41] Mr. Barr has served as a featured guest and speaker on Freedom Cruises hosted by Freedom Alliance. [42]

Freedom Alliance has also bestowed awards on many conservative political figures and pundits. For example, Freedom Alliance annually presents the Edward J. Bronards Defender of Freedom Award to "an outstanding individual who, in the face of adversity, exemplifies faith, courage and fidelity to the Constitution and the principles of freedom." [43] In addition to presenting the award to military leaders and heroes, Freedom Alliance has also presented the award to these notable conservative figures:

- **John Bolton.** Mr. Bolton has served various roles in several Republic presidential administrations. From August 2005 until December 2006, during the George W. Bush administration, Mr. Bolton served as Permanent U.S. Representative to the UN. [44] Currently, Mr. Bolton serves as a Senior Fellow at the American Enterprise Institute for Public Policy Research, a nonpartisan research institution, and occasionally appears as a commentator/guest on FO X News television programs. [45]

- **Sean Hannity.** As discussed above, Mr. Hannity is the host of a popular conservative television program on FOX News. Mr. Hannity personally donates to Freedom Alliance [46] and hosts the "Freedom Concerts" series. [47]

Alliance [46] and hosts the "Freedom Concerts" series. [47]

- **Jesse Helms, Jr.** Mr. Helms, deceased, was a five-term Republican United States Senator (North Carolina). [48]
Republican United States Senator (North Carolina). [48]

- **Bob Barr.** Mr. Barr is a former Congressman and former Libertarian presidential candidate. [49]

CREW is not aware of any Democratic public officials that have received an award from Freedom Alliance.

An analogy to the case *of American Campaign Academy v. Commissioner,* 92 T.C. 1053 (1989) is apt in this situation. In *American Campaign Academy,* the court upheld the IRS's denial of exempt status to an organization formed to train individuals for careers as Republican Party political campaign professionals. Despite the fact that other exempt organizations provi ded similar training, the IRS determined that American Campaign Academy served the private interests of the Republican party, as the school's graduates only went on to serve Republican candidates and organizations. Similarly, Freedom Alliance, by (i) permi tting only conservative speakers at its annual Freedom Cruise events, (ii) conferring awards on well -known conservatives, (iii) maintaining strong ties with powerful and influential conservative figures, and (iv) posting conservative political commentary on its website, appears to provide a more than insubstantial benefit to conservative individual groups. Operating to provide benefits to private interests, even if the organization's other activities would otherwise be permissible under IRC section 501(c)(3), is in direct violation of the federal tax law requirement that Freedom Alliance operate for a public, rather than private, interest. [50]

Political Activities -- Team America Connection

On both its 2007 and 2008 Form 990, Freedom Alliance admitted to a relationship with "Team America." On the 2008 Form 990, Freedom Alliance provided EIN number 54 -1743483 to identify Team America. However, Freedom Alliance has inconsistently identified Team America as a IRC section 501(c)(4) organization (2007 Form 990) [51] and as an IRC section section 501(c)(3) organization. [52] Yet Team America is not listed in IRS's Publication 78 and is not found in the "Guidestar" database. [53] Nevertheless, a Google search for "Team America" and "Oliver North" quickly turns up references to "Team America PAC."

Team America PAC is a political action committee that was created by Tom Tancredo, a Republican Congressman. The Team America PAC is "Dedicated to Securing Our Nation's Border" and supports conservative candidates. [54] According to a Robertson Mailing List Company profile, Team America PAC has utilized the Freedom Alliance mailing list in the past. [55] Team America PAC, as a political action committee, is clearly a partisan political organization.

The Form 990 disclosure does not entirely clarify Freedom Alliance's connection to Team America PAC, but only indicates that Freedom Alliance has a direct or indirect rel ationship with Team America. CREW urges the IRS to investigate Freedom Alliance's connection with Team America to determine if this relationship results in Freedom Alliance directly or indirectly participating in a political campaign. If Team America is in deed a political action committee, the IRS should closely examine Freedom Alliance's direct and indirect ties to the PAC and impose any and all appropriate penalties on Freedom Alliance for engaging in impermissible political activities.

Conclusion

The totality of the facts and circumstances indicate that Freedom Alliance potentially has engaged in political activities, in direct violation of IRC section 501(c)(3). The connections that Freedom Alliance maintains with

conservative political figures potentially indicate that Freedom Alliance also operates, in part, to provide a private benefit to conservative figures and groups.

CREW respectfully requests that the IRS conduct an investigation to determine if Freedom Alliance is operating in compliance with the federal tax rules applicable to IRC section 501(c)(3) organizations. This investigation should focus on the politically partisan activities of Freedom Alliance and its founder, officers and directors. Based on the apparent political nature of many Freedom Allianc e's activities, the IRS should determine whether Freedom Alliance has impermissibly intervened in a political campaign. The IRS should also determine whether Freedom Alliance is operating to provide an impermissible private benefit to conservative politica l organizations and persons.

If Freedom Alliance has engaged in political activities or is operating for a private interest, the IRS should consider all appropriate fines and penalties, including the revocation of Freedom Alliance's tax -exempt status. The IRS should consider that the extensive nature of Freedom Alliance's political activities suggests that intermediate sanctions may not be enough to prevent Freedom Alliance from continuing to engage in political activity, and that revocation of Freedom Al liance's tax exempt status may be the only remedy to prevent public tax dollars from subsidizing Freedom Alliance's political activities.

Thank you for your attention to this matter.

Sincerely,

Melanie Sloan
Executive Director
Citizens for Responsibility
and Ethics in Washington

Encls.

cc:
Jerry Brown
Attorney General
State of California

Bill McCollum
Attorney General
State of Florida

Thurbert Baker
Attorney General
State of Georgia

Paula Dow
Attorney General
State of New Jersey

Catherine Cortez Masto
Attorney General
State of Nevada

Richard Corday

Attorney General
State of Ohio

W.A. Drew Edmondson
Attorney General
State of Oklahoma

Greg Abbott
Attorney General
State of Texas

FOOTNOTES:

n1

Freedom Alliance, *Our Mission,* http://www.freedomalliance.org/index.php?option=co m_content&task=view&id=2172&Itemid=21 (visited Mar. 23, 2010).

n2

See id.

n3

See Internal Revenue Manual 73(10)(1).

n4

See TAM 9609007.

n5

Rev. Rul. 2007-41 ("Candidate Appearances").

n6

Rev. Rul. 2007-41; IRS Fact Sheet 2006-17.

n7

Rev. Rul. 2007-41; IRS Fact Sheet 2006-17.

n8

Id.

n9

Although the earliest column is dated November 30, 1999, CREW is unable to verify when the material was posted, as links to Lt. Col. Oliver North's 1999 columns are not archived on internet archival websites. However, the internet archive of Freedom Alliance's homepage indicates that partisan material appeared on Freedom Alliance's website dating back to at least March 3, 2000 (excluding archives predating the determination letter). *See* Wayback Machine, http://web.archive.org (visited Mar. 23, 2010).

n10

On March 23, 2010, the columns could be reached by visiting www.freedomalliance.org and clicking the menu item "Public Policy" on the left-hand menu and then choosing the grey "Common Sense" link in the middle of the screen.

n11

As of March 23, 2010, the columns could be published as PDFs through a lin k. Using this option, the columns are printed to a PDF file with "Freedom Alliance" prominently shown on the top of the file.

n12

See Freedom Alliance, *About Us,* http://www.freedomalliance.org/ind ex.php?option=com_content&task=view&id=2172&Itemid=21 (visited Mar. 23, 2010).

n13

See Rev. Proc. 86-43 (presenting a method to determine whether communications are educational or political).

n14

Freedom Alliance Review Spring 2006, available at http://www.freedomalliance.org/pdf_articles/V6N2.pdf. The interview is continued in the Fall 2006 Freedom Alliance Review, available at http://www.freedomalliance.org/pdf_articles/V6N3.pdf.

n15

See IRS Fact Sheet 2006-17 ("Issue Advocacy v. Political Campaign Intervention").

n16

See Freedom Alliance's 2008 Form 990, Schedule G, Part I.

n17

See Richard Norman, http://www.richardnorman.com/ (visited Mar. 23, 2010).

n18

See Eberle & Associates, http://www.eberleassociates.com/ (visted Mar. 23, 2010).

n19

See Rev. Rul. 2007-41 (Situation 18); TAM 200044038.

n20

See Rev. Rul. 2007-17 (Situation 18). If Freedom Alliance's mailing list was only attractive to conservative groups, this should be a factor in considering whether Freedom All iance operates in such a manner as to give rise to a more than insubstantial benefit for private groups (i.e., conservative groups), as discussed below.

n21

Freedom Alliance, *Past Freedom Cruise and Conference Articles,* http://www.freedomalliance.org/index.php?option=com_content&task=view&id=2394&Itemid=76 (visited Mar. 23, 2010).

n22

2009 Freedom Cruise Seminars and Speakers, available at http://www.freedomalliance.org/images/pdf_and_largepics/seminarsandspeak_ers.pdf.

n23

Treas. Reg. section 1.501(c)(3)-1(c)(3)(c)

n24

Id.

n25

Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii).

n26

See American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989) (discussed above).

n27

See Freedom Alliance March 18, 2010 Letter, available at http://www.freedomalliance.org/images/pdf_and_largepics/freedom_alliance_response.pdf .

n28

The Freedom Concerts and Freedom Alliance have recently come under fire as a charity "scam." *See, e.g.,* Debbie Schlussel, *Sean Hannit's Freedom CONcert Scam* (Mar. 18, 2010), http://www.debbieschlussel.com/6938/sean-hannitys-freedom-concert-scam-only-7-of-charitys-money-went-to-injured-troops-kids-of-fallen-troops-g5s-g6s-for-vannity/ (visited Mar. 23, 2010). As another political tie, the College Republicans provide volunteers for the Freedom Concerts. *See* Texas College Republicans Facebook Page, http://www.facebook.com/topic.php?uid=95372675231&topic=10721 (visited Mar. 23, 2010).

n29

Freedom Alliance Review (Spring 2006), available at http://www.freedomalliance.org/pdf_articles/V6N2.pdf .

n30

Freedom Alliance Review (Winter 2006), available at http://www.freedomalliance.org/pdf_articles/v6n1.pdf .

n31

See Ralph Smith, http://www.ralphsmithsenate.com (visited Mar. 23, 2010).

n32

Freedom Alliance, *Thomas P. Kilgannon, President,* http://www.freedomalliance.org/index.php?option=com_content&task=view&_id=2287&Itemid=16 (visited Mar. 23, 2010).

n33

Freedom Alliance Review (Summer 2007), available at http://www.freedomalliance.org/pdf_articles/v7n3. pdf.

n34

2009 Freedom Cruise Seminars and Speakers, available at http://www.freedomalliance.org/images/pdf_and_largepics/seminarsandspeakers.pdf ; Freedom Alliance, *Former House Speaker Newt Gingrich Joins Freedom Cruise,* http://www.freedomalliance.org/index.php?option=com_content&task=view&id=2095&Itemid=15 (visited Mar. 23, 2010); Freedom Alliance Review (Fa ll 2006), available at http://www.freedomalliance.org/pdf_articles/v6n4.pdf ; Freedom Alliance Review (Winter 2008), available at http://www.freedomalliance.org/pdf_articles/v8n1.pdf ; Freedom Cruise Event Highlights, http://www.tcacruise.com/freedom2004/highlights.htm (visted Mar. 23, 2010).

n35

Freedom Alliance Review (Winter 2009), available at http://www.freedomalliance.org/images/pdf_and_large pics/V9N1.pdf.

n36

2009 Freedom Cruise Seminars and Speakers, available at http://www.freedomalliance.org/images/pdf_and_largepics/seminarsandspeakers.pdf ; Freedom Alliance, http://www.freedomalliance.org/index.php?option=com_content&task=view&id=2095&Itemid=15 (visited Mar. 23, 2010).

n37

American Conservative Union, *About Us,* http://www.conservative.org/about-acu/ (visited Mar. 23, 2010); American Conservative Union, *Board of Directors,* http://www.conservative.org/about-acu/board-of-directorsstaff/ (visited Mar. 23, 2010).

n38

Freedom Alliance, *Former House Speaker Newt Gingrich Joins Freedom Cruise,* http://www.freedomalliance.org/index2.php?option=com_co ntent&do_pdf=1&id=2095 (visited Mar. 23, 2010); Freedom Cruise Event Highlights, http://www.tcacruise.com/freedom2004/highlights.htm (visted Mar. 23, 2010).

n39

GovTrack.us, *Duncan Hunter Former U.S. Representative from California's 52 nd District,* http://www.govtrack.us/congress/person.xpd?id=400191 (visited Mar. 29, 2010).

n40

Freedom Alliance Review (Winte r 2009), available at

http://www.freedomalliance.org/images/pdf_and_largepics/V9N1.pdf .

n41

Bob Barr, http://www.bobbarr.org/default.asp?pt=doc&doc=bio (visited Mar. 23, 2010).

n42

Freedom Alliance, *Former House Speaker Newt Gingrich Joins Freedom Cruise,* http://www.freedomalliance.org/index2.php?option=com_content&do_pdf=1&id=2095 (visited Mar. 23, 2010).

n43

Freedom Alliance, *General Edward J. Bronars Defender of Freedom Award,* http://www.freedomalliance.org/index.php?option=com_content&task=view&id=2174&Itemid=83 (visited Mar. 23, 2010).

n44

American Enterprise Institute, *John Bolton Profile,* http://www.aei.org/scholar/121 (visited Mar. 23, 2010).

n45

Id; Greta Wire Blog, *Ambassador John Bolton On the Record,* http://gretawire.blogs.foxnews.com/amb-john-bolton-on-the-record-2/ (Mar. 4, 2010) (visited Mar. 23, 2010).

n46

See Freedom Alliance March 18, 201 0 Letter, available at http://www.freedomalliance.org/images/pdf_and_largepics/freedom_alliance_response.pdf .

n47

Freedom Alliance Review (Spring 2006), available at http://www.freedomalliance.org/pdf_articles/V6N2.pdf

n48

Jesse Helms Biography, http://bioguide.congress.gov/scripts/biodisplay.pl?index=h000463 (visited Mar. 23, 2010).

n49

Bob Barr, http://www.bobbarr.org/default.asp?pt=doc&doc=bio (visited Mar. 23, 2010).

n50

See Treas. Reg. section 1.501(c)(3)-1(d)(1)(ii); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989).

n51

See Freedom Alliance 2007 Form 990, Schedule A, Part VII, Line 52(b).

n52

See Freedom Alliance, 2008 Form 990, Schedule R, Part II.

n53

GuideStar is a nonprofit organization that compiles information, including tax forms, on other nonprofit organizations, available at www.guidestar.org.

n54

See Team America PAC, http://teamamericapac.org/ (visited February 26, 2010).

n55

Robertson Mailing List Company Data Card, available at http://www.rmlc.net/datacards/2/team-america-pac.pdf.

SFC 002380

From: Judson Victoria A
Sent: Tuesday, April 03, 2012 7:10 AM
To: Wilkins William J; Corwin Erik H
Cc: Cook Janine; Munroe David; Tackney Stephen B; Brown Kyle N
Subject: Revised AGENDA for TEGE Bi-weekly

4-3-12.doc

Attached is a revised agenda for our meeting this morning.

Victoria A. Judson
Division Counsel/Associate Chief Counsel (TEGE)
SEC [redacted]

TEGE BI-WEEKLY
AGENDA
4/03/12

1. Airline bankruptcy
2. Previously mentioned items coming soon, with CC, or being modified :
   a. 83(b)
   b. Notice re 132(f) smart cards
   c. Wage recharacterization
   d. 101(j) Notice
   e. EPCRS (and revision of Rev. Proc. 94-22)
   f. Basis rulings (402(c) and Roth IRAs)
   g. 411(d)(6) and ESOPs
   h. Form 55OO regulation (Form 8955-SSA)
   i. RP on pilot 5500ez delinquent filer program
   j. Cafeteria Plan $2,500 limit
   k. Announcement re service charges and tips
   l. 3504
   m. EO revenue procedures updating grantor and contributor re liance criteria
   n. 501(r)
3. Multis- New proposal with trust or VEBA
4. MV
5. 4980H
   a. Reporting related issues
   b. Large group (scheduled for April 13)
6. 2715
7. SFC [redacted] favorable PLR on UBIT—client proposes to revoke prospectively
8. SFC [redacted] —PLR request regarding exemption/UBIT for providing power SFC [redacted] and affiliated teaching hospitals; proposed adverse
9. Guide Sheet for Political Campaign Intervention (501(c)(4) Advocacy document) & 501(c)(4) standards
10. Defined benefit plan guidance roll-up
11. Additional registered domestic partners FAQs for irs.gov; restating SECA position
12. Additional Sub-Pay cases starting while waiting fo SFC [redacted] opinion
13. SFC PLR permitting plan amendment with window lump sum benefit
14. IRS FAQs re loss due to investment fraud

From: Urban Joseph J
Sent: Thursday, October 14, 2010 7:55 AM
To: Fish David L; Miller Thomas J; Kindell Judith E; Lowe Justin; Buller Siri; Downing Nanette M; Lerner Lois G; Giosa Christopher P; Ingram Sarah H
Subject: 2010 TNT 198-27 DURBIN CALLS FOR IRS TO INVESTIGATE TAX STATUS OF EXEMPT ORGS

ABSTRACT: Senate Democratic Whip Richard J. Durbin of Illinois in an October 11 letter called on the IRS to promptly examine the tax status of 501(c)(4) organizations, including Crossroads GPS, saying the activities of the organization "appear to be inconsistent with its tax status" and raise questions about its tax compliance.

Release Date: OCTOBER 12, 2010

Published by Tax Analysts(R)

October 12, 2010

DURBIN URGES IRS TO INVESTIGATE SPENDING BY CROSSROADS GPS

[WASHINGTON, D.C.] Assistant Senate Majority Leader Dick Durbin (D IL) urged the Internal Revenue Service (IRS) to quickly investigate the tax status of Crossroads GPS and other organizati ons that are directing millions of dollars into political advertising without disclosing their funding sources. U.S. tax law requires that the primary purpose of 501(c)(4) organizations, like Crossroads GPS, cannot be political, including the "participatio n or intervention in political campaigns."

"I write to urge the Internal Revenue Service to examine the purpose and primary activities of several 501(c)(4) organizations that appear to be in violation of the law," wrote Durbin. "[Crossroads GPS] has spent nearly $ 20 million on television advertising specific to Senate campaigns this year. If this political activity is indeed the primary activity of the organization, it raises serious questions about the organization's compliance with the Internal Revenue Code."

Crossroads GPS was created in June 2010 as a non profit "social welfare" organization under section 501(c)(4) of the federal tax code, which means, in a ddition to tax exempt status, the group can raise and spend freely without being required to disclose to the public the sources of its funding. Crossroads GPS is affiliated with American Crossroads, a Section 527 group that can raise and spend freely on direct advocacy but must reveal its source of funding. Together these organizations have already spent a total of $ 20 million on political campaigns nationwide.

[Text of the letter below]

October 11, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Dear Commissioner Shulman:

I write to urge the Internal Revenue Service to examine the purpose and primary activities of several 501(c)(4) organizations that appear to be in violation of the law.

One organization whose activities appear to be inconsistent with its tax status is Cros sroads GPS, organized as a (c)(4) entity in June. The group has spent nearly $ 20 million on television advertising specific to Senate campaigns this year. If this political activity is indeed the primary activity of the organization, it raises serious que stions about the organization's compliance with the Internal Revenue Code.

In addition to its tax exempt status, an entity organized as a 501(c)(4) is not required to disclose to the public the sources of its funding. Given the millions of dollars these groups are pouring into Senate campaigns across the country, it is imperative that the organizations spending such sums on political advertising are appropriately disclosing relevant information about contributors. The current spending patterns without dis closing the sources of the funding create a deeply troubling lack of transparency that threaten to undermine the ability of the electorate to make informed choices on Election Day.

I ask that the IRS quickly examine the tax status of Crossroads GPS and o ther (c)(4) organizations that are directing millions of dollars into political advertising, and respond with your findings as soon as possible.

Sincerely,

Richard J. Durbin
United States Senator

SFC 002384

From: Fish David L
Sent: Monday, October 03, 2011 2:41 PM
To: Megosh Andy
Cc: Lerner Lois G
Subject: FW: Letter from Democracy 21 and Campaign Legal Center
Attachments: Letter to the IRS from Democracy 21 and Campaign Legal Center 9 28 2011.pdf

Correspondence

From: Lerner Lois G
Sent: Friday, September 30, 2011 7:13 PM
To: Fish David L
Cc: Letourneau Diane L; Grant Joseph H
Subject: FW: Letter from Democracy 21 and Campaign Legal Center

This is a referral so it needs to go to Dallas and we need an acknowledgement letter to them. It also went to the Commissioner, so I don't know if that requires something additional?

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, September 28, 2011 10:49 AM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: FW: Letter from Democracy 21 and Campaign Legal Center

And so it begins

Lois G. Lerner
Director of Exempt Organizations

From: Erin Kesler SFC[redacted]
Sent: Wednesday, September 28, 2011 9:33 AM
To: Erin Kesler
Subject: Letter from Democracy 21 and Campaign Legal Center

September 28, 2011

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
1100 Commerce Street

SFC 002385

MC 4900 DAL
Dallas, TX 75242

Dear Director Lerner,

Enclosed is a letter from Democracy 21 and the Campaign Legal Center requesting an IRS investigation into whether certain organizations are ineligible for tax exempt status under section 501(c)(4).

Sincerely,

/s/ Fred Wertheimer

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.

---

[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]

---

[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

[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, Ameriean 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

SFC 002409

From: Pyrek Steve J
Sent: Monday, September 20, 2010 12:33 PM
To: Flax Nikole C
Cc: Pyrek Steve J
Subject: Two-pager on Advocacy Organizations
Attachments: Advocacy Organizations.doc

Nikole,

Sarah asked that I send this to you. Can you make sure Steve Miller gets it too?

We gave it to Media Relations last Friday, for use in the NYTimes interview with Stephanie Strom, on 501(c)(4)s.

Steve

Advocacy by Exempt Organizations

Exempt organizations engage in a wide variety of activities to encourage people to adopt the particular viewpoint that they advocate. For example, an anti -littering organization may attempt to convince the pu blic to go out and pick up trash by the side of the road, the legislature to enact laws making it illegal to throw trash by the road, and people to elect candidates who support their views on trash by the road. From the perspective of the organization, these are all activities intended to reduce the level of trash by the road. Under the Internal Revenue Code, however, these are different types of activities with different tax consequences for exempt organizations that engage in these activities.

The Code draws distinctions between activities that influence legislation, those that influence candidate elections, and those that do neither. A variety of exempt organizations may engage in advocacy consistent with their exempt purpose. However, the types of advocacy a particular exempt organization engages in may be limited under the Code section from which it derives exemption. Exempt organizations that engage in advocacy include charitable organizations (section 501(c)(3)), social welfare organizations (se ction 501(c)(4)), labor organizations (section 501(c)(5)), business league organizations (section 501(c)(6)) and political organizations (section 527).[1] Although all of these organizations are exempt organizations under the federal income tax code, there are substantial differences in the way they are treated and the types of advocacy they may do. The following chart illustrates the tax consequences to these organizations:

	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive Tax-Deductible Charitable Contributions	YES	NO	NO	NO	NO
May Receive Contributions or Fees Deductible as a Business Expense	YES	YES	YES	YES	NO
Substantially Related Income Exempt from Federal Income Tax	YES	YES	YES	YES	YES
Investment Income Exempt from Federal Income Tax	YES	YES	YES	YES	NO
Engage in Legislative Advocacy	LTD[2]	YES	YES	YES	LTD
Engage in Candidate Election Advocacy	NO	LTD	LTD	LTD	YES
Engage in Public Advocacy Not Related to Legislation or Election of Candidates	YES	YES	YES	YES	LTD

[1]Although other types of exempt organizations may engage in advocacy, such as section 501(c)(7) social clubs or section 501(c)(19) veterans' organizations, these are the primary types of organizations that engage in advocacy.

[2]Limited

Charitable Organizations (Section 501(c)(3))

Charitable organizations described in section 501(c)(3) must be organized and operated exclusively for charitable, religious, educational, etc. purposes and their earnings may not inure to the benef it of any private shareholder or individual. They may not carry on propaganda or otherwise attempt to influence legislation as a substantial part of their activities and they can not intervene in, or participate in, any political campaign on behalf of or in opposition to any candidate for public office. With certain exceptions, section 501(c)(3) organizations are eligible to receive contributions deductible under section 170. Organizations may be able to deduct contributions to a section 501(c)(3) organization as a business expense under section 162, provided it is not earmarked for lobbying or political campaign activity. Section 501(c)(3) organizations are exempt from federal income tax except as provided in sections 511 -514, which impose a tax on the unrelated business income of the organization. Investment income, such as interest and dividends, is specifically excluded from unrelated business income.

Social Welfare Organizations (Section 501(c)(4)), Labor Organizations (Section 501(c)(5)), and Busi ness League Organizations (Section 501(c)(6))

Social welfare organizations described in section 501(c)(4) must not be organized for profit and must be operated exclusively for the promotion of social welfare. An organization is operating for the promoti on of social welfare if it is primarily engaged in promoting the common good and general welfare of the people in the community. Labor organizations described in section 501(c)(5) must be organized and operated for the betterment of conditions of those en gaged in their pursuits and their earnings may not inure to the benefit of any member. Business league organizations described in section 501(c)(6) are associations of persons with a common business interest which promote the common interest and do not co nduct a regular trade or business for profit. Organizations may be able to deduct contributions or membership fees to these organization as a business expense under section 162, to the extent it is not used for lobbying or political campaign activity. These organizations may attempt to influence legislation that is germane to their specific exempt purpose as their primary activity. Participation or intervention in a political campaign on behalf of or in opposition to a candidate for public office involve s issues necessarily broader than the specific exempt purpose of these organizations. Therefore, these organizations may not intervene in elections as their primary activity, although they may do so as a less than primary activity. These organizations ar e not eligible to receive contributions deductible under section 170. These organizations are exempt from federal income tax except as provided in sections 511-514, which impose a tax on the unrelated business income of the organization. Investment income, such as interest and dividends, is specifically excluded from unrelated business income.

Political Organizations (Section 527)

Political organizations described in section 527 are organized and operated primarily for the purpose of directly or indire ctly accepting contributions or making expenditures for the function of attempting to influence the selection, nomination, election or appointment of any individual to Federal, State, or local public office. Section 527 organizations are not eligible to r eceive contributions deductible under section 170. Organizations may not deduct contributions to a section 527 organization as a business expense under section 162. Section 527 organizations are exempt from federal income tax on specific types of politic al income that is segregated for use for a section 527 exempt function. A fund is considered segregated for use for section 527 exempt function if there are no substantial non -exempt function expenditures from the fund. Therefore, a section 527 organization may attempt to influence legislation or engage in public advocacy that is not germane to its exempt purpose without tax consequence, so long as it is not a substantial expenditure from a segregated fund. Other income, primarily investment income, is s ubject to tax.

SFC 002412

From: Miller Steven T
Sent: Monday, April 16, 2012 1:53 PM
To: Flax Nikole C; Campbell Carol A
Subject: FW: Disclosure involving the National Organization for Marriage

Note who received

From: Bogadi Peggy A
Sent: Monday, April 16, 2012 11:25 AM
To: Miller Steven T
Cc: Holland Debra S
Subject: FW: Disclosure involving the National Organization for Marriage

Just spoke to Terry Peacock. TIGTA is in Ogden doing a thorough investigation of what may have happened and will keep us updated. He expects that once GSA and other weekend incidents die down this may get more attention.

Peggy Bogadi
Commissioner
Wage and Investment Division
Phone: SFC [redacted]

From: Peacock Terry K TIGTA SFC [redacted]
Sent: Monday, April 16, 2012 9:51 AM
To: Bogadi Peggy A
Subject: Disclosure involving the National Organization for Marriage

Peggy, I assume you are aware of this issue. I've included a short article, just to make sure you are. Would you have a few minutes today that I can discuss with you?

Same-Sex Marriage Opponent Seeks TIGTA Investigation Of Tax Document Leak.
April 16, 2012

The National Organization for Marriage (NOM), a Washington -based section 501(c)(4) group that works to oppose same-sex marriage, is calling for the **Treasury Inspector General for Tax Administration** to investigate how a 2008 list of the organization's contr ibutors got posted online.

In an April 11 letter to Treasury Inspector General for Tax Administration J. Russell George, NOM said the publication of the officially filed Schedule B to its Form 990, "Return of Organization Exempt from Income Tax," could have occurred only as the result of a third party's illegal action -- either on the part of one or more IRS employees or by an external source who unlawfully obtained access to IRS computers and confidential taxpayer information. In the letter, NOM said Sch edule B, on which organizations are required to list donors of $ 5,000 or more, is not a public document.

TIGTA reviews all allegations of unauthorized disclosure of confidential tax information brought to its attention, **Karen Kraushaar**, **TIGTA's director of communications**, said in a statement. Federal

confidentiality law, including code section 6103, prohibits TIGTA from disclosing any information about its review of such allegations, she said.

Brian Brown, president of NOM, told Tax Analysts that given the level of security at the IRS, he finds it hard to believe someone was able to hack into the Service's systems and obtain the donor list. Brown said that while his organization wants an investigation to determine the facts, it seems highly likely that someone at the IRS who disagrees with NOM gave the donor list to the Human Rights Campaign (HRC), a gay rights advocacy group that posted it online.

NOM in an April 13 release noted that the donor information had been removed from the HRC's website after NOM's attorneys demanded its removal in an April 11 letter. However, the group said the tax form was still available on the Huffington Post website, even though NOM had sent a similar letter there. The letters warned the HRC and the Huffington Post that they were violating federal law by posting the donor list.

The Huffington Post's link to the donor information form was included in a March 30 article that mentions a $ 10,000 donation to NOM from Republican presidential candidate Mitt Romney's political action committee. The article says the donation was uncovered when the HRC was sent a private IRS filing from NOM via a whistleblower. The HRC then shared the document with the Huffington Post, according to the article.

From: Daly Richard M
Sent: Monday, June 25, 2012 5:07 PM
To: Flax Nikole C
Subject: FW: 201210022 Engagement Letter
Attachments: 201210022-Engagement Letter.doc

Importance: High

FYI - TIGTA will look at how we process applications for (c)(4) status. Report in the spring. Mike

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From: Daly Richard M
Sent: Friday, June 22, 2012 5:10 PM
To: Ingram Sarah H; Lerner Lois G; Marx Dawn R; Urban Joseph J; Marks Nancy J
Subject: FW: 201210022 Engagement Letter
Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. The engagement letter bears a close reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

- All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

From: Rutstein Joel S
Sent: Friday, June 22, 2012 3:01 PM
To: Daly Richard M
Subject: FW: 201210022 Engagement Letter
Importance: High

Mike, please see below and attached. Given that TIGTA sent this to Joseph Grant and cc'ed Lois and Moises, do you still need me to circulate this under a cover memo and distribute it to all my liaisons including you? Thanks, Joel

Joel S. Rutstein, Esq.
Program Manager, GAO/TIGTA Audits
Legislation and Reports Branch
Office of Legislative Affairs
SEC [redacted]

From: Price Emma W TIGTA SEC [redacted]
Sent: Friday, June 22, 2012 2:56 PM
To: Grant Joseph H

SFC 002415

Cc: Davis Jonathan M (Wash DC); Miller Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Holmg ren R David TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA; Stephens Dorothy A TIGTA
Subject: 201210022 Engagement Letter
Importance: High

FYI Engagement Letter *Consistency in Identifying and Reviewing Applications for Ta x-Exempt Status Involving Political Advocacy Issues*.

Thanks,
Emma Price

SFC 002416

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
for TAX
ADMINISTRATION

June 22, 2012

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Political Advocacy Issues (Audit # 201210022)

The Treasury Inspector General for Tax Administration is initiating a review to assess the Internal Revenue Service (IRS) Exempt Organizations function's consistency in the identification and review of applications for tax-exempt status involving political advocacy issues. We will be contacting the liaison for Tax Exempt and Government Entities Division to schedule an entrance conference with the appropriate IRS managers.

During the 2012 election cycle, the campaign activities of Internal Revenue Code (IRC) Section (§) 501(c)(4) social welfare organizations have been highlighted in many news articles. According to various reports, the IRS is requesting extensive amounts of additional information from organizations applying for IRC § 501(c)(4) tax-exempt status, including donor information, prior to approving their applications. Several accusations of inconsistent treatment towards conservative groups have been made.

The tax laws do not prohibit IRC § 501(c)(4) social welfare organizations from engaging in campaign activity. However, Treasury Regulations require IRC § 501(c)(4) organizations to operate exclusively for the promotion of social welfare. An organization is considered to be operating this way if it is primarily engaged in promoting the common good and general welfare of the people of the community and not making political activities their primary purpose.

Overall Objective and Subobjectives

Our overall objective is to assess the consistency of the Exempt Organizations function's identification and review of applications for tax-exempt status involving political advocacy issues. To accomplish our objective, we will:

- Assess the actions taken by the Exempt Organizations function in re sponse to the increase in applications for tax-exempt status from organizations involved in political advocacy activities.
- Determine whether changes to procedures and controls since May 2010 affected the timeliness of reviewing applications involving political advocacy issues.
- Determine whether the actions taken by the Exempt Organizations function to identify applications for tax-exempt status of organizations with political advocacy issues were consistent.
- Determine whether the Exempt Organizations function had a reasonable basis for requesting information from organizations seeking tax -exempt status involved in political advocacy.

Offices Subject to Review

We will perform audit work at the Determinations Office in Cincinnati, Ohio. We may also visit Exempt Organizations function's offices in Washington, D .C.; Baltimore, Maryland; and other offices to obtain case files.

Deliverables and Estimated Completion Dates

We will be issuing an interim report after we complete our initial review of the applicat ion process. In addition, we will issue the draft report by March 2013 and the final report by April 2013.

Information Needed From Auditee

To accomplish the audit objectives, we require the following information no later than July 6, 2012:

- All documents and correspondence (including e-mail) conceming the Exempt Organizations function's response to and decision -making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.
- Access to case files (open, closed, paper, and electronic) from the Determinations Office. After we select our sample, we will work with Determinations Office officials to obtain the cases we need.

During the course of fieldwork, additional informatio n may be needed and we will request employees to provide responses and documentation as soon as it is practical, but not to exceed 2 weeks from the date of the request.

Special Considerations

During our on-site visits, we will need work space for three auditors, access to a telephone, a photocopier, and supplies.

Designated Treasury Inspector General for Tax Administration Executive Liaison

Russell Martin, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations) SFC

Responsible Inspector General Staff

Questions regarding this review may be directed to:

Troy Paterson, Director, Tax Exempt and Government Entities/Human Capital, SFC
Thomas Seidell, Audit Manager, SFC
Cheryl Medina, Lead Auditor SFC

cc: Commissioner C
Office of the Commissioner – Attention: Chief of Staff C
Deputy Commissioner, Services and Enforcement SE
Acting Deputy Commissioner, Tax Exempt and Government Entities Division SE:T
Director, Exempt Organizations, Tax Exempt and Government Entities Division SE:T:EO
Director, Office of Legislative Affairs CL:LA
Deputy Inspector General for Inspections and Evaluations IG:IE
Director, Strategic Data Services IG:OI:SDS

SFC 002419

From: Castro Jorge E
Sent: Monday, January 28, 2013 4:46 PM
To: Flax Nikole C
Subject: Congressional/Tax Exempt Inquiries
Attachments: TaxExemptOrgs.CongressionalInquiries.doc

Hi, Nikole – Attached is a summary of the 35 Congressional letters that I found in the binders. I tried to be concise, but also give Steve some context of the Congressional requests. I added some additional information at the end of the document that may be useful (information that I found when reviewing the binders). I have not yet numbered the letters since I wanted to wait once we had a complete set. Also, the binders included several letters from outside groups like Democracy 21 and CREW. I didn't summarize those letters in order to not combine it with Congressional letter, but I can certainly add them. We can discuss it tomorrow.

Let me know that you think. I welcome any edits. Thanks! Jorge

Congressional Inquiries on Tax -Exempt Issues

	Date	Members	Issue
	10-29-08	Sen. Tom Coburn (OK)	Sen. Coburn requested an investigation into possible tax evasion and failure to report taxable expenditures by certain 501(c)(5) labor unions.
	9-28-10	Sen. Max Baucus (MT)	1) Sen. Baucus requested for the IRS to survey major 501(c)(4), (c)(5), and (c)(6) organizations involved in political campaign activity to examine whether they are operated for the organization's intended tax exempt purpose, and to ensure that political campaign activity is not the organization's primary activity. 2) He also requested for the IRS to survey major (c)(4), (c)(5), and (c)(6) organizations to determine whether they are acting as conduits for major donors advancing their own p rivate interests regarding legislation or political campaigns, or are providing major donors with excess benefits. Sen. Baucus also requested that possible violation of tax laws be identified as the IRS conducts this study.
	10-06-10	Sen. Orrin Hatch (UT) Sen. John Kyl (AZ)	Sens. Hatch and Kyl express ed concern with the above survey requested by Sen. Baucus. Sens. Hatch and Kyl asked for additional information and for the IRS to report back to the Senate Finance Committee before the IRS moves forward w ith such a survey. Also, if the IRS moves forward with the survey, Sens. Hatch and Kyl request ed for TIGTA to monitor these efforts "to ensure that political independence is maintained."
	10-11-10	Sen. Dick Durbin (IL)	Sen. Durbin wrote to "urge" the IRS to examine the purpose and primary activities of several 501(c)(4) organizations that appear to be in violation of the law. Specifically, he requested for the IRS to "examine the tax status of Crossroads GPS and other (c)(4) organizations that are dire cting millions of

			dollars into political advertising."
	3-4-11	Sen. Kay Bailey Hutchison (TX)	Sen. Hutchison inquired about whether the IRS has audited Citizens Against Government Waste and its affiliates within the last 5 years. She asked the IRS to determine if these organizations are "abiding by the law with its tax-exempt advantage, and if not, to take appropriate steps to assure future candidates are not unfairly targeted by organizations that enjoy tax-exempt status." Sen. Hutchison also inquires about our general compliance activities in this area.
	3-15-11	Rep. Charles Boustany (LA)	A constituent of Rep. Boustany sent an email to the IRS Exempt Organizations Classifications unit inquiring about non-profit organizations competing with for-profit organizations for underwater surveying work. Rep. Boustany's staff forwarded the constituent's email to the IRS legislative affairs office requesting a response and a briefing on the issue.
	4-8-11	Rep. Wally Herger (CA) Rep. Charles Boustany (LA) Rep. Dave Reichert (WA)	The Representatives requested that the IRS review their report "Behind the Veil: The AARP America Doesn't Know" and assess whether a further investigation of AARP is necessary. They contend that the information in the report gives rise "to a number of serious concerns regarding AARP's organization structure and activities, and it raised questions about whether AARP, Inc. continues to qualify as a tax-exempt organization" under section 501(c)(4). The letter asked a series of questions regarding AARP's activities.
	5-18-11	Sen. Orrin Hatch (UT) Sen. John Kyl (AZ) Sen. Pat Roberts (KS) Sen. John Cornyn (TX) Sen. John Thune (SD) Sen. Richard Burr (NC)	The Senators inquired about the tax treatment of contributions to 501(c)(4) organizations. Citing a May 2011 article in the New York Times, the Senators raise the general question regarding whether IRS enforcement policy as it pertains to 501(c)(4) organizations is influenced by political considerations.
	6-3-11 (2 letters)	Rep. Dave Camp (MI)	On 6-3-11, Rep. Camp sent two letters in light of the IRS recently confirming "that it began examinations of five taxpayers that donated money to IRC § 501(c)(4) organizations to determine whether 'the donations were taxable gifts and if a gift tax return should have been

			filed.'" 1) The first letter asked a series of questions on the application of gift tax contributions to 501(c)(4) organizations. Rep. Camp found the "lack of IRS transparency deeply troubling," and he sought information "in an effort to promote transparency and reassure taxpayers that fair and consistent enforcement of the country's tax laws is the norm." 2) The second letter is a 6103 request seeking access to returns and return information related to this issue ("the IRS aud it of § 501(c)(4) organizations and their donors"). *** Note: The IRS issued 8 responses to Rep. Camp's 6-3-11 letters.
	10-06-11	Rep. Charles Boustany (LA)	In five pages of detailed questions, Rep. Boustany inquired about the current regulatory environment of the tax-exempt sector and the status of new laws and ongoing enforcement initiatives. His letter is described as a follow-up to the issues raised in the May 2011 joint hearing that focused on AARP held by the Ways and Means Subcommittees on Oversi ght and Health. The IRS issued two responses to the letter (11/18/11 and 3/12/12).
	10-11-11	Rep. John Lewis (GA)	Rep. Lewis forwarded a letter from a constituent seeking to expedite the processing of the organization's application for reinstatement of tax-exempt status (Universal Humanities, Atlanta, GA).
	12-21-11	Rep. Wally Herger (CA) Rep. Charles Boustany (LA) Rep. Dave Reichert (WA)	As a follow up to their original 4-8-11 letter and their report "Behind the Veil: The AARP America Doesn't Know," the Representatives asked the IRS to consider additional questions about "business partnerships and activities that permit AARP to engage in for-profit businesses under the cover of its tax-exempt status."
	1-25-12	Rep. Erik Paulsen (MN)	Rep. Paulsen forwarded a constituent request to expedite the handling of the organization's exemption application (Veterans' Solutions, Rogers, MN).
	2-14-12	Rep. Diane Black (TN)	Rep. Black forwarded a constituent request seeking the status of their organization's 501(c)(3) application (Council of Americana Roots Music, Livingston, TN).
	2-16-12	Sen. Michael Bennet (CO)	The letter expressed concern that groups designated as "social welfare" are improperly

		Sen. Al Franken (MN) Sen. Jeff Merkley (OR) Sen. Charles Schumer (NY) Sen. Jeanne Shaheen (NH) Sen. Tom Udall (NM) Sen. Sheldon Whitehouse (RI)	engaged in substantial or predominant amount of campaign activity. The Senators also asked whether the IRS is investigating or intends to investigate these organizations.
	3-1-12	Rep. Charles Boustany (LA)	Rep. Boustany wrote with additional questions "relating to the IRS' oversight of applications for tax exemption for new organizations." It is a follow-up to his 10/6/11 letter to the IRS, and in light of him hearing that "the IRS has been questioning new tax-exempt applicants, including grass roots political entities such as Tea Party groups, about their operations and donors." Specifically, Rep. Boustany seeks additional information as it relates to the IRS review of new applications for section 501(c)(3) and (c)(4) tax-exempt status. The IRS responded twice (3/23/12 and 4/26/12).
	3-7-12	Rep. Bill Flores (TX)	Rep. Flores inquired about the 501(c)(4) application of the Waco Tea Party, a constituent. He posed several questions regarding the IRS's application review process specific to the Waco Tea Party application, such as the length of the review process. ****Note that the binder does not include a copy of the IRS response letter.*
	3-8-12	Rep. Dan Lungren (CA)	In a letter to Treasury Secretary Tim Geithner, Rep. Lungren inquired about the 501(c)(3) application of Mother Lode Tea Party Patriots and why it has taken the IRS 12 months to process their application. He requested for the application to be processed in a timely manner. ****Note that the binder does not include a copy of the response letter.*
	3-9-12	Sen. Charles Schumer (NY) Sen. Michael Bennet (CO) Sen. Sheldon Whitehouse (RI) Sen. Tom Udall (NM) Sen. Jeanne Shaheen	The Senators asked the IRS to immediately change the administrative framework for enforcement of the tax code as it applies to groups designated as "social welfare" organizations. They expressed concern that some 501(c)(4) groups are engaged in a substantial amount of political campaign activity. This is a follow-up to their 2-16-12

		(NH) Sen. Jeff Merkley (OR) Sen. Al Franken (MN)	letter, highlighting new issues raised in a March 7 New York Times article. The Senators propose three administrative changes to the tax rules governing 501(c)(4) organizations.
	3-12-12	Rep. Aaron Shock (IL)	Rep. Shock forwarded a letter from a constituent (Springfield Christian School, Springfield, IL) seeking assistance to determine the school's original exemption date and obtain a copy of the school's original exemption letter. The constituent also inquired whether a private letter ruling was necessary to declare that the school is exempt from the Form 990 filing requirement.
	3-13-12	Rep. Randy Forbes (VA)	Rep. Forbes enclosed a copy of a letter he received from a constituent and requested that the IRS respond. The constituent expressed a concern about the IRS's treatment of the Richmond Tea Party, highlighting "inordinate delays and burdensome requirements."
	3-14-12	Sen. Orrin Hatch (UT) Sen. Rob Portman (OH) Sen. Lamar Alexander (TN) *[Sen. Bob Corker (TN)]* Sen. Kay Bailey Hutchison (TX) Sen. John Cornyn (TX) Sen. Mitch McConnell (KY) Sen. Rand Paul (KY) Sen. Pat Roberts (KS) Sen. Chuck Grassley (IA) Sen. John Thune (SD) Sen. John Kyl (AZ)	The Senators expressed concern about reports and information they had received "from nonprofit civic organizations in Kentucky, Ohio, Tennessee, and Texas concerning recent IRS inquiries perceived to be excessive." They "seek assurance that this recent string of inquiries ha[ve] a sound basis in law and is consistent with the IRS's treatment of tax-exempt organizations across the spectrum." The Senators asked questions about IRS procedures to obtain 501(c)(4) tax exemption.
	3-15-12	Sen. Richard Lugar (IN)	Sen. Lugar forwarded an email from his constituent inquiring about the status of applications for exemption from Tea Party groups. The constituent expressed concern about the IRS not providing a response to these groups within 90 days and "blatant harassment."
	3-20-12	Rep. Jean Schmidt (OH)	Rep. Schmidt forwarded a letter she received from a constituent (Justin Bink-Thomas)

			inquiring why his name was included in IRS correspondence sent to a separate organiza tion seeking tax-exempt status. The organization was the Liberty Township Tea Party, and item #26 of the IRS correspondence asks "Provide details regarding your relationship with Justin Bink-Thomas."
	3-27-12	Rep. Darrell Issa (CA) Rep. Jim Jordan (OH)	The letter expressed concern about why over the past several weeks the IRS has sent many organizations lengthy and detailed questionnaires. According to the Representatives, the "questionnaires ask for information well beyond the scope of typical disclosures required under IRS Form 1024. These questionnaires may be connected to IRS's 2012 work plan. ... " Citing "potentially serious implications of IRS overreach and selective enforcement," the House Oversight Committee asked for significant amount of information relating to the IRS's 2012 work plan pertaining to 501(c)(4), 501(c)(5), and 501(c)(6) organizations and questionnaire. The IRS responded on 4-26-12 and 5-4-12.
	3-28-12	Rep. Kenny Marchant (TX)	Rep. Marchant expressed concern over recent inquiries by the IRS for additional information relating to applications for tax-exempt status from certain organizations. He particularly highlighted Tea Party groups. Rep. Marchant seeks an explanation for why Tea Party groups have received "numerous lengthy questionnaires and intrusive demands from the IRS," characterizing such information requests as beyond the scope of any legitimate IRS inquiry.
	3-28-12	Rep. Peter Welch (VT) + 31 additional members of the House of Representatives	The letter expressed concerns that groups designated as social welfare organizations under Section 501(c)(4) are improperly engaged in political campaign activity. The Representatives urged the IRS to investigate these organizations.
	3-30-12	Sen. Carl Levin (MI)	Senator Levin expressed concern about some entities claiming tax-exempt status as social welfare organizations under Section 501(c)(4) engaging in political activities more appropriate for political organizations claiming

			tax-exempt status under Section 527. The letter posed a series of questions relating to the IRS review and application process for tax - exempt organizations.
	4-23-12	Rep. Bill Flores (TX) + 62 additional members of the House of Representatives.	The letter questioned IRS requests for additional information from applicants for tax exemption. The Representatives state that it has come to their attention "that numerous nonprofit civic organizations across the country have experienced extensive delays and received excessively burdensome information requests[.] ... These recent inquiries appear to constitute disparate treatment for no apparent reason other than political persuasion of applicants. Such practices chill these groups' Constitutionally-guaranteed rights to civic participation, freedom of association and free speech and are better left to despotic regimes than a revenue-collection agency in a free country." The letter requested that 1) a response is provided demonstrating how these recent requests by IRS are consistent with precedent and supported by law, and 2) the IRS "refrain from any additional unwarranted and excessive information demands and other dilatory tactics."
	5-3-12	Rep. Dave Camp (MI)	In this letter Rep. Camp made a 6103 request relating to tax-exempt organizations. He highlights "multitude of reports in recent months that have publicized the IRS targeting certain applicants for tax-exempt status." The letter noted media reports suggesting that such inquiries have been limited to Tea Party groups. Rep. Camp stated that the IRS's recent response to Rep. Boustany on this issue was "insufficient to assuage the [Ways and Means] Committee's concerns." Pursuant to Section 6103, the letter asked to provide returns and return information related to the IRS's review of 501(c)(4) organizations seeking tax-exempt status, including all applications seeking 501(c)(4) status received by the IRS in the 2010 and 2011 tax years. ***An IRS response letter is not included in the binder.
	5-30-12	Rep. Lamar Smith	Rep. Smith noted that it has been brought to his

		(TX)	attention that the San Antonio Tea Party, along with other nonprofit civic organizations, have experienced delays and received burdensome information requests relating to their tax - exempt application. He asked that the IRS provide a response for how recent information requests, like those sent to the San Antonio Tea Party and other civic organizations across the country, are supported by law.
	6-13-12	Sen. Carl Levin (MI)	Senator Levin followed-up to his 3-30-12 letter and Steve Miller's 6-4-12 response. Senator Levin's 3-30-12 letter expressed concern with 501(c)(4) organizations becoming increasingly active in partisan political campaigns. His 3-30-12 letter attaches a 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, which "indicates that the IRS based its denial on the fact the organization was engaged in partisan political activity, stating that 'partisan political activity does not promote social welfare as defined in section 501(c)(4),' and that the applicant 'benefit[s] select individuals or groups, instead of the community as a whole,'" Senator Levin noted that the "June 4 response from Mr. Miller has a somewhat weaker interpretation." The Senator urged the IRS to send a message to 501(c)(4) entities on an urgent basis (within 30 days) to ensure that they understand that any political activities they undertake must constitute a secondary and not the primary activity. ***An IRS response letter is not included in the binder.
	6-18-12	Sen. Orrin Hatch (UT) Sen. John Cornyn (TX) Sen. John Kyl (AZ) Sen. Lamar Alexander (TN) Sen. Mitch McConnell (KY) Sen. Mike Enzi (WY) Sen. Rand Paul (KY) Sen. Kay Bailey Hutchison (TX) *[Sen. Bob Corker (TN)]* Sen. John Thune (SD)	This letter followed-up to their 3-14-12 letter inquiring about the procedures the IRS uses when evaluating organizations that apply for tax-exempt status. The Senators remained concerned that the IRS is "requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors." The letters asked several questions on this issue "[i]n order to better understand the background on these recent requests for confidential donor

		Sen. Pat Roberts (KS)	information and the authority of the [IRS] to make these requests." ***An IRS response letter is not included in the binder.

ADDITIONAL BACKGROUND

- Appropriations Subcommittee on Financial Services and General Government
  Hearing on IRS FY 2013 Budget -- Questions for the Record
  March 21, 2012

Rep. Kevin Yoder (KS) submitted several questions for the record regarding the IRS review process of 501(c)(4) applications. Rep. Yoder asked about recent Congressional letters sent to the IRS, as well as inquired about communications the IRS has had on the issue with the White House and Administration political appointees.

- Senate Committee on Governmental Affairs
  Hearings and Committee Report "Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns."
  1997 (Report was issued in March 1998)

During the course of 1997, the Committee held hearings based on revelations of unusual, and potentially illegal, campaign contributions during the 1996 federal elections. Although it was not the focus of their investigation, the Committee also held hearings on the National Policy Forum (NPF), a think-tank established by the Republican National Committee (RNC). The Committee was particularly concerned by allegations that the RNC knew that a loan it made to the NPF had been guarantee with foreign money. The Committee report referenced the IRS in the following excerpt:

> In January 1997, the NPF's operations ceased. On February 21, 1997, the IRS issued a letter disapproving the NPF's 1993 application for 501(c)(4) status. Although the dispute regarding NPF's tax status had no actual tax implications the NPF never earned any profit or conferred any tax deductions on its donors -- the IRS's decisions has been appealed. (Footnote 10.) The appeal is pending.
>
> Footnote 10: There has been significant controversy regarding the IRS's February 21, 1997 ruling. During the Committee's hearings, the IRS's disapproval of the NPF's application was sharply contrasted with the IRS's approval of tax-exempt status for the Democratic Leadership Council. ...

SFC 002429

From: Simmons, Nancy < SFC >
Sent: Friday, January 27, 2012 7:54 AM
To: Brandolino, John M; jsle SFC v; Swartz, Bruce; Ohr, Bruce; Rodriguez, Mary; Edmonds, Nathaniel; Hamann, Kathleen; TLutz@fec.gov; thintermist SFC ; Lerner Lois G; Hulser, Raymond; Ainsworth SFC
Cc: Leventhal, Robert
Subject: RE: GRECO report published today

The Public Integrity Section agrees with John.

From: Brandolino, John M [mailt SFC]
Sent: Thursday, January 26, 2012 7:45 PM
To: jsle SFC ; Swartz, Bruce; Ohr, Bruce; Rodriguez, Mary; Edmonds, Nathaniel; Hamann, Kathleen; TLut SFC ; thintermist SFC ; Lois.G.Lern SFC ; Simmons, Nancy; Hulser, Raymond; Ainsworth SFC .
Cc: Leventhal, Robert
Subject: Re: GRECO report published today

Jane, this is a good news story. We know there were many long hours of work behind getting COE to the point of praising our "extraordinarily" transparent system of campaign financing and to generally compliment our criminal justice efforts (we knew they would call for us to ratify - that was a given - but the other positive observations were not a given). All who participated deserve tons of credit. But OGE and you assumed the lions share of the preparation and advocacy, and we are "extraordinarily" grateful and lucky to have you overseeing the process.

Congrats!

John

John Brandolino
Senior Advisor
U.S. Department of State/INL
+ SFC (w)
SFC (cell)

From: Jane S. Ley [mailto SFC
Sent: Thursday, January 26, 2012 06:44 PM
To: 'Swartz, Bruce' < SFC >; 'Ohr, Bruce' < SFC 'Rodriguez, Mary' < SFC >; 'Edmonds, Nathaniel' < SFC >; 'Hamann, Kathleen' < SFC >; 'TLu SFC ' < SFC >; 'thintermist SFC < SFC >; 'Lois.G.Lerner@irs.gov' < SFC >; 'Simmons, Nancy' < SFC gov >; Hulser, Raymond < SFC gov >; 'Ainsworth, Peter' < SFC >
Cc: Leventhal, Robert; Brandolino, John M
Subject: GRECO report published today

Dear All,

Guess the Council of Europe's press office decided they could get the U S report published before next week. It went up today. Here's the press story that went with it.

Council of Europe Group of States against Corruption calls on the USA to ratify the Criminal Law Convention on Corruption, praises the overall transparency of political financing but stresses the need to enhance this transparency in respect of certain types of contributions.

Press Release

Strasbourg, 26 January 2012 – The Council of Europe's Group of States against Corruption (GRECO) calls for the United States of America to ratify the Criminal Law Convention on Corruption and to fully incorporate it into the law. GRECO stresses that the United States is one of the very few member states which are not a party to the Convention and its Additional Protocol. Although the US legislation and practice provide for a high degree of "functional" consistency with the Convention and the enforcement regime is effective in prosecuting corruption offences, US law does not appear to meet all the requirements of the Convention, for example, as regards bribery in a foreign context and private sector bribery.

The constitutional and legal framework and practice in respect of political financing generally ensures an extraordinarily transparent system under the Federal Election Campaign Act, the implementation of which has been supervised by the Federal Election Commission, for more than 35 years. GRECO notes the trend of a general rise in total election campaign spending in the USA and highlights that campaign financing for a specific cause ("issue advocacy") is not covered by the transparency rules. Moreover, GRECO calls for further transparency in respect of political funding by so called "501(c) organisations" which, under certain conditions, may be used as vehicles to circumvent the rules on public disclosure of donations for political campaigning.

GRECO will monitor the United State's responses to the report during 2013.

Here's a link to the GRECO home page and the release: http://www.coe.int/t/dghl/monitoring/greco/default_en.asp

Here's a link to the third round evaluation reports; scroll down to the US

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp

From: Meredith Miles SFC [redacted] >
Sent: Wednesday, November 07, 2012 7:15 AM
To: Lerner Lois G
Subject: Re: Voting

He was actually in the house before. We had a republican senator before. I think there were 3 seats that switched from tea party republicans to democrats so that's exciting!

Sent from my iPhone

On Nov 7, 2012, at 8:08 AM, Lerner Lois G SFC [redacted] > wrote:

> WooHoo! I was important to keep the Senate. If it had switched, it would be the same as a Rep president! Was he senator before?
> Lois G. Lerner---------- Sent from my BlackBerry
> Wireless Handheld
>
>
> ----- Original Message -----
> From: Meredith Miles [mailt SFC [redacted]]
> Sent: Wednesday, November 07, 2012 07:23 AM
> To: Lerner Lois G
> Subject: Re: Voting
>
> Red, but we got elected a democrat s eat in the senate... Joe Donnelly, which was a small feat. Democrats have majority of the senate and republicans have majority of the house.
>
> Sent from my iPhone
>
> On Nov 7, 2012, at 7:13 AM, Lerner Lois G SFC [redacted] > wrote:
>
>> Thanks so much for letting me know about Maryland. Didn't think it would go through. We are great --high five! Which way did Indiana go?
>> Lois G. Lerner---------- Sent from my BlackBerry
>> Wireless Handheld
>>
>>
>> ----- Original Message -----
>> From: Meredith Miles SFC [redacted]]
>> Sent: Wednesday, November 07, 2012 06:16 AM
>> To: Lerner Lois G
>> Subject: Re: Voting
>>
>> I'm sure you heard about Obama.. Also Maryland joined the 21st century last night with approving gay marriage. Very cool! Good jo SFC
>>
>>

>> Hope you are having fun! I have a cold :(not the flu... No fever! Don't panic, I have medicine and I'm dr inking a lot of orange juice. I'm taking it easy after my test today and the rest of the week.
>>
>> Love you!
>>
>> Sent from my iPhone
>>
>> On Nov 6, 2012, at 11:45 AM, Lerner Lois G [redacted] SFC > wrote:
>>
>>> Love you. XXOO
>>> Lois G. Lerner---------- Sent from my BlackBerry
>>> Wireless Handheld
>>>
>>>
>>> ----- Original Message -----
>>> From: Meredith Miles [redacted] SFC]
>>> Sent: Tuesday, November 06, 2012 11:22 AM
>>> To: Lerner Lois G
>>> Subject: Re: Voting
>>>
>>> I am, I hadn't gone yet... Just heard they were bad. I'm going to go around 4:30 don't worry!
>>>
>>> Sent from my iPhone
>>>
>>> On Nov 6, 2012, at 9:48 AM, Lerner Lois G [redacted] SFC > wrote:
>>>
>>> [redacted] SF said you had long lines and you are going back later. I'm guessing it won't be better -probably worse. If there are that many folks, you're vote will be important. Make sure you go back please!
>>>> Lois G. Lerner---------- Sent from my BlackBerry
>>>> Wireless Handheld

SFC 002433

From: Lerner Lois G
Sent: Wednesday, March 13, 2013 5:11 PM
To: Flax Nikole C; Eldridge Michelle L; Zarin Roberta B; Vozne Jennifer L
Cc: Grant Joseph H; Lemons Terry L; Burke Anthony
Subject: RE: Disclosure reported

There is a whole process that automatically occurs when this happens. David is out, but I'll go back and make sure they are following it.

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, March 13, 2013 4:17 PM
To: Eldridge Michelle L; Lerner Lois G; Zarin Roberta B; Vozne Jennifer L
Cc: Grant Joseph H; Lemons Terry L; Burke Anthony
Subject: RE: Disclosure reported

Have we notified TIGTA?

From: Eldridge Michelle L
Sent: Wednesday, March 13, 2013 3:46 PM
To: Lerner Lois G; Zarin Roberta B; Flax Nikole C; Vozne Jennifer L
Cc: Grant Joseph H; Lemons Terry L; Burke Anthony
Subject: RE: Disclosure reported

FYI--We got a call on this one this afternoon. Please see Anthony's e-mail below. We don't plan to respond back to this organization. Please advise if you feel differently. Paul writes on this org.'s website, but does not repr esent a news organization. Thanks. --Michelle

From: Abowd, Paul SFC
Sent: Wednesday, March 13, 2013 12:35 PM
To: Burke Anthony
Subject: Question about Republican Governors Association c4 group

Dear Anthony,
Attached is the 990 form for 2011 for the RGA Public Policy Committee.
It includes a partial list of Schedule B donors on page 13 of the pdf.

When reached for comment about those donors, the RGA said that the IRS has made an "erroneous" and "unauthorized" disclosure, adding that its release is a felony.

I'd like IRS comment on this matter.

How did this happen, who is responsible for the disclosure, and is this a common occurrence? What is the standard procedure at the IRS when something like this h as happened?

Michelle Eldridge is cited in another article by ProPublica saying that publishing unauthorized return information is indeed a felony. Is the IRS criminally liable in this matter? What will the IRS do at this point to remedy the situation?

Thanks,
Paul

Paul Abowd, Reporter
SFC [redacted]

From: Lerner Lois G
Sent: Wednesday, March 13, 2013 1:53 PM
To: Zarin Roberta B; Eldridge Michelle L
Cc: Grant Joseph H
Subject: FW: Disclosure reported
Importance: High

While this happens sometimes --this is not the best org, it could have happened with --sigh

Lois G. Lerner
Director of Exempt Organizations

From: Peek Connie
Sent: Wednesday, March 13, 2013 12:54 PM
To: Hamilton David K; Laforet Lina M
Cc: Archibald JaLynne K; Grant Joseph H; Hooke Maria D; Lerner Lois G; Fish David L; Williams Maureen J; Williams Melinda G; Fish David L; Peek Connie
Subject: Disclosure reported
Importance: High

Hello,

An individual contacted the IRS through TEGE and informed us a Schedule B was disclosed to the public on the following Exempt Organization return.

Organization - Republican Governors Public Policy Committee
EIN 20-0309803
Form - 990
Tax period - 201112 (page 28 in SEIN)

The Schedule B is not disclosable to the public. The recipients of the DVDs will be contacted to request they remove the data from their files.

David Hamilton - Will you please:

1- Provide a list of customers names, telephone numbers, and addresses who received the disclosed information on CD/DVDs.

2- Remove the Schedule B from the CD/DVDs and restrict the form from the SEIN system data base (page 28 on SEIN).

3- Do not distribute future CD/DVD orders until the data is removed.

4- Provide me an estimated date the data will be restricted.

5- Notify me when all actions are completed.

Lina Laforet - Will you please:

1- Inform W&I/SOI management per SOP 20, of the disclosure.

2- Request they provide feedback to the employees who imaged and reviewed the return.

3- Provide me the date of notification and the date feedback was provided (a CC to me and Maureen Williams on your emails will suffice.)

Thank you,

Connie Peek
TE/GE Program Analyst
SE:T:BSP:SPP
SFC [redacted]

From: Miller Steven T
Sent: Sunday, May 05, 2013 10:53 AM
To: Lerner Lois G; Flax Nikole C
Subject: Re: Summary of Application

Can I get the one pager encrypted. Thx

Sent using BlackBerry

From: Lerner Lois G
Sent: Sunday, May 05, 2013 09:59 AM Eastern Standard Time
To: Miller Steven T; Flax Nikole C
Subject: Fw: Summary of Application

Language fro SFC
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Biss Meghan R
Sent: Saturday, May 04, 2013 03:55 PM Eastern Standard Time
To: Lerner Lois G
Subject: RE: Summary of Application

Page 7 of the PDF has the language re (c)(3)s. It is section 104 of the Act.

From: Lerner Lois G
Sent: Saturday, May 04, 2013 12:59 PM
To: Biss Meghan R
Subject: Re: Summary of Application

Got it. Both will print. Thank goodness you are tech savvy!
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Biss Meghan R
Sent: Saturday, May 04, 2013 12:53 PM Eastern Standard Time
To: Lerner Lois G SFC @msn.com SFC @msn.com>
Subject: RE: Summary of Application

Here is the 1 page summary

From: Lerner Lois G
Sent: Saturday, May 04, 2013 12:31 PM
To: Biss Meghan R
Subject: Re: Summary of Application

SFC 002437

Thanks. Good move. I will look now and give you a call when I'm done. You're my hero!
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Biss Meghan R
Sent: Saturday, May 04, 2013 11:07 AM Eastern Standard Time
To: Lerner Lois G SFC S@msn.com SFC S@msn.com>
Subject: Summary of Application

Lois:

Attached is a summary of the entire application fro SFC. It includes the information from their initial 1023, our development letter, and their May 3 response. In it, I also point out situations where the revenue rulings they cite aren't exactly on point. Additionally, where they reference othe SFC, I included the information we have on thos SFC from internet research.

SFC

SFC

After you have had a chance to look over this document, we can have a discussion about it and any questions prior to your meeting with Steve.

Thanks,

Meghan

SFC 002438

From: Lerner Lois G
Sent: Tuesday, April 17, 2012 4:10 PM
To: Marks Nancy J; Paz Holly O
Subject: FW: 501(c)(4)
Attachments: Picture (Metafile); Picture (Metafile)

I get more and more concerned that these cases can't properly be worked in Cincy

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, April 17, 2012 1:27 PM
To: Lerner Lois G; Urban Joseph J; Marks Nancy J
Subject: Fw: 501(c)(4)

From: Barre Catherine M
Sent: Tuesday, April 17, 2012 01:25 PM
To: Flax Nikole C
Subject: Fw: 501(c)(4)

Sent using BlackBerry

From: Hall Eric
Sent: Tuesday, April 17, 2012 01:16 PM
To: Norton William G Jr; Williams Floyd L; Barre Catherine M
Subject: 501(c)(4)

The issue is still picking up st eam.

Eric Hall
Internal Revenue Service
Legislative Affairs
SFC [redacted]

http://thehill.com/blogs/floor-action/house/221945-gop-lawmaker-calls-for-investigation-into-irs-harassment-of-tea-party-group

GOP lawmaker says IRS harassed Tea Party group, calls for investigation

By Josh Fatzick - 04/17/12 11:21 AM ET

Rep. Tom McClintock (R-Calif.) on Tuesday asked his House colleagues to investigate what he said was the IRS's harassment of a Tea Party group in his district.

In a floor speech, McClintock said the Internal Revenue Service demanded thousands of pages of documents from the group and took steps that could only have been designed to harass the group when it applied for nonprofit status.

"I bring these facts to the attention of the House today and ask that they be rigorously investigated, and, if found accurate, that those officials responsible be exposed, disgraced, dismissed, and be barred from any position of trust or power within our government," he said on the floor.

McClintock did not identify the Tea Party group in his district, but said the IRS demanded the names of all the participants who attended group meetings for the past two years, transcripts of the meetings, and other documents pertaining to the group's status as a nonprofit organization.

He called the demands "intimidation and harassment," and compared them to the tactics used against civil-rights groups during the 1950s.

"Ironically, the same tactics you now see used by the IRS against Tea Parties were once used by the most abusive of the Southern states in the 1950s to intimidate civil-rights groups like the NAACP," he said.

McClintock said the leader of the Tea Party group was subject to a personal income tax audit from the IRS shortly after the group applied for its 501(c)(4) tax-exempt status.

"This administration is very clearly, very pointedly, and very deliberately attempting to intimidate, harass and threaten civic-minded groups with which they disagree using one of the most feared and powerful agencies in the United States government to do so," said McClintock.

The American Center for Law and Justice is representing almost 20 Tea Party organizations across the United States in an effort to stop what they see is an attempt to intimidate these groups. ACLJ chief counsel Jay Sekulow said last week that the demands for information from the groups are outside the scope of legitimate inquiry and violate the group's First Amendment rights.

"These organizations have followed the law and applied for tax exempt status for their activities as Americans have done for decades," Sekulow said. "The problem here is the IRS has gone beyond legitimate inquiries and is demanding that these organizations answer questions that actually violate the First Amendment rights of our clients."

The ACLJ is currently urging Congress to conduct hearings about the IRS actions involving the Tea Party groups.

SFC 002440

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:32 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Just FYI--I am having a separate discussion with Nikole on this issue but with different players. I've asked her to get Steve's OK on the redrafted one below, so I think we need to get that OK before sending out

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 1:22 PM
To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Yes--I think that is better. Works for us if it works for you. Thanks --Michelle

---

From: Lerner Lois G
Sent: Tuesday, February 28, 201 2 12:29 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

I think the point Steve was trying to make is--it doesn't harm you that we take a long time. You don't get that unless you add the red language.. I don't think the rest of the paragraph does go to this. Is says you can hold yourself out if you meet all the requirements. If you aren't sure you do meet them, you may want the IRS letter. would you be more comfortable if we say:

While the application is pending, the organization must file a Form 990, like any other tax - exempt organization, and is otherwise able to operate.

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, February 28, 2012 12:23 PM

SFC 002441

To: Lerner Lois G; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Cc: Burke Anthony; Patterson Dean J
Subject: RE: 501c4 response for AP

Any chance that we can delete the language at the end -- and just say: While the application is pending, the organization must file a Form 990, like any other tax-exempt organization. I am concerned that the phrase "operate without material barrier" is a bit challenging for a statement. Given the context of the rest of the paragraph, I think the message gets across without it.

While the application is pending, the organization must file a Form 990, like any other tax - exempt organization, and is otherwise able to operate without material barrier.

From: Lerner Lois G
Sent: Tuesday, February 28, 2012 12:02 PM
To: Eldridge Michelle L; Miller Steven T; Lemons Terry L; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L
Subject: FW: 501c4 response for AP
Importance: High

Let me know if the addition (in bold red) does what you wa nt. I'd like to share this with doc. on a Congressional coming in through TAS.

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Monday, February 27, 2012 06:17 PM
To: Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Grant Joseph H; Flax Nikole C; Keith Frank; Lemons Terry L; Zarin Roberta B
Subject: FW: 501c4 response for AP

OK--Here is final I'm using. Edits were incorporated. Thanks. --Michelle

By law, the IRS cannot discuss any specific taxpayer situation or case. Generally however, when determining whether an organization is eligible for tax -exempt status, including 501(c)(4) social welfare organizations, all the facts and circumstances of that specific organization must be considered to determine whether it is eligible for tax -exempt status. To be tax-exempt as a social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare.

The promotion of social welfare does not include any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these non -exempt activities are not its primary activities. Even where the non-exempt activities are not the primary activities, they may be taxed. Unrelated business income may be subject to tax und er section 511-514, and expenditures for political activities may be subject to tax under section 527(f). For further information regarding political campaign intervention by section 501(c) organizations, see Election Year Issues, Political Campaign

and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, and Revenue Ruling 2004-6.

Unlike 501(c)(3) organizations, 501(c)(4) organizations are not required to apply to the IRS for recognition of their tax-exempt status. Organizations may self-declare and if they meet the statutory and regulatory requirements they will be treated as tax-exempt. If they do want reliance on an IRS determination of their status, they can file an application for exemption. While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate without material barrier.

In cases where an application for exemption under 501 (c)(4) present issues that require further development before a determination can be made, the IRS engages in a back and forth dialogue with the applicant. For example, if an application appears to indicate that the organization has engaged in political activities or may engage in political activities, the IRS will request additional information about those activities to determine whether they, in fact, constitute political activity. If so, the IRS will look at the rest of the organization's activities to determine whether the primary activities are social welfare activities or whether they are non-exempt activities. In order to make this determination, the IRS must build an administrative record of the case. That record could include answers to questions, copies of documents, copies of web pages and any other relevant information.

Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political party affiliation or ideology.

SFC 002443

From: Fink Faris R
Sent: Wednesday, February 29, 2012 7:21 AM
To: Miller Steven T
Cc: Perez Ruth
Subject: FW: Politically Sensitive Issue
Attachments: Is the IRS Attempting to Intimidate Local Tea Parties.doc

Do not know if you have seen the attached?

Faris R. Fink,
Commissioner,
Small Business/Self Employed Operating Division,

SFC [redacted]

From: Ferguson Shane
Sent: Wednesday, February 29, 2012 8:11 AM
To: Perez Ruth; Fink Faris R; Wilkerson Rob C; Shoemaker Linda
Subject: FW: Politically Sensitive Issue

Hello Faris and Ruth, I'm forwarding the email alerting us to practitioner inquiries that includes the attachment as requested by Rob. Thanks, Shane

R. Shane Ferguson
Internal Revenue Service
Director Stakeholder Liaison Field
SFC [redacted].
Follow us on Twitter!
Follow the Nationwide Tax Forums on Facebook!
Check out IRS on YouTube

<hr size=2 width="100%" align=center>

From: Ferguson Shane
Sent: Tuesday, February 28, 2012 4:35 PM
To: Wilkerson Rob C; Grimes Phyllis T; Taylor Karen M; Shoemaker Linda; Kirk Janice M Birmingham AL
Cc: Dunn Lucille P; Krysztof Cynthia A
Subject: FW: Politically Sensitive Issue

Hello All,

I'm forwarding this practitioner "noise" issue so it's on our radar.

Phyllis, I've asked Cindy Krysztof to work with your Communications staff on language that helps us deflect all of these types of inquiries especially during this political season.

Shane

<hr size=2 width="100%" align=center>

From: Crews Craig E
Sent: Tuesday, February 28, 2012 11:52 AM
To: Ferguson Shane
Subject: Politically Sensitive Issue

Shane
I received a call from a practitioner this morning who said he had received a couple of calls about the attached article which apparently came out yesterday. In addition, he said it was a subject being covered on many national and radio talk shows. Not sure there is anything we can do about it, but I would hate for one of our SLs to get "ambushed" by a practitioner at an outreach event. Anyway, just something I thought you might want to see.
Thanks

Craig E. Crews
Mid South SL Area Manager
Nashville, TN
SFC [redacted]

Is the IRS Attempting to Intimidate Local Tea Parties?

posted by dcalvin | 5:05pm Monday February 27, 2012

Excerpt: ...documents ...Signed by six [Democrat] Senators, ... requests tha t the [IRS] commissioner investigate [Tea Party] 501(c)(4) groups to determine whether they are engaging in substantial campaign activity, including opposition to any candidate. Who si gned this letter? Senators Schumer, Franken, Udall, Shaheen, Whitehouse, Merkley and Bennet all Democrats. Could it be that these Senators want the IRS to investigate the nonprofit status of Media Matters [a Democrat aligned group] and its coordinated political activity with the White House? Or perhaps they are concerned wi th nonprofit ACORN groups' [another Democrat aligned group] record of voter fraud, and other previous campaign abuses including alleged close ties with President Obama's Project Vote? No, when these Senators sent this letter to the IRS commissioner, the me ssage would be very clear. The 501(c)(4) groups they want investigated are NOT those with Democratic liberal ties.

by Colleen Owens

In January and February of this year, the Internal Revenue Service began sending out let ters to various local Tea Parties across the country. Mailed from the same Cincinnati, Ohio IRS office, these letters have reached Tea Parties in Virginia, Hawaii, Ohio, and Texas (we are hearing of more daily). There are several common threads to these le tters: all are requesting more information from these independent Tea Parties in regard to their nonprofit 501(c)(4) applications (for this type of nonprofit, donations are not deductible). While some of the requests are reasonable, much of them are striki ngly onerous and, dare I say, Orwellian in nature.

What are local Tea Partiers to think with requests like "Please identify your volunteers" or "are there board members or offi cers who have run or will run for office (including relatives)"? What possible r eason would the IRS have for Tea Parties to "name your donors" when said donations are non deductible? These are just a few of the questions asked by the IRS in these letters, and one cannot help but suspect an intrinsic threat encompassing all these deman ds.

The other question is the timing of these IRS letters requesting reams of copies and hundreds of hours of work and potentiall y thousands of dollars in accounting/legal fees (all due in two weeks). Some of these Tea Party groups have not received anythi ng concerning their nonprofit status since 2010 prior to these letters.

These documents are further undermined by a letter sent to the IRS Commissioner Shulman. Signed by six Senators, it requests that the commissioner investigate 501(c)(4) groups to deter mine whether they are engaging in substantial campaign activity, including opposition to any candidate. Who signed this letter? Senators Schumer, Franken, Udall, Shaheen, Whitehouse, Merkley and Bennet all Democrats.

Could it be that these Senators want the IRS to investigate the nonprofit status of Media Matters and its coordinated political activity with the White House? Or perhaps they are concerned with nonprofit ACORN groups' record of voter fraud, and other previous campaig n abuses including alleged close ties with President Obama's Project Vote? No, when these Senators sent this letter to the IRS commissioner, the message would be very clear. The 501(c)(4) groups they want investigated are not those with Democratic liberal ties.

But why would a department like the IRS cave to Democrat demands? Could it be because this Democratic administration proposed a budget earlier this month that would result in "$1.1 billion in new funds for the Internal Revenue Service... that would transl ate to 5,112 new hires, or a 5 percent expansion of enforcement operations"? Colleen Kelley, president of the National Treasury Employees Union, coul dn't contain her glee at the prospect of over 5,000 new union hires, exclaiming in response to the announcement that "the administ ration's 2012 funding level for the IRS would permit the agency to improve services through increasing response rates to inquiries, deployi ng enforcement resources to what the White House called high return integrity activities and by modernizing informati on technology systems."

The IRS is already focusing on "deploying enforcement resources," as Kelley put it, toward targeting small, local Tea Parties ; we're sorry to report that these "high return integrity activities" are generating a higher fear factor, not necessarily higher returns.

In the near future, the Affordable Healthcare Act mandate and all things related to healthcare are to be policed and enforced by the IRS. This means thousands more IRS agents will be added, but the actual number is yet unkno wn. Considering that healthcare accounts for 1/6th of the U.S. economy, it will probably be a significant number of additional agents. According to the tax administration inspector general, Russell George, "The new Affordable Care Act provisions represents the largest set of tax law changes in 20 years." That's an overwhelming thought considering there are over 70,000 pages of federal tax code.

The Tea Party movement is well known for wanting to shrink the size of government and decrease government spending because of the ballooning deficit. This means that unionized government employees that may be out of a job if the Tea Party is successful al so have the power to choose whether or not Tea Party groups get nonprofit status. And those same employees are also requesting names and information of board members, volunteers, donors, invited speakers(and party affiliation) and just about anyone that has had any association with the Tea Party.

It is apparent that there is a potential conflict of interest and it coul d be used to stifle the right to free speech of the Tea Party members, or any other citizen willing to question the system and powers that be.

Many Tea Party boards are afraid to speak out publicly about these intrusive requests because of fear of being pe rsonally targeted and singled out by the IRS. This is especially scary to citizens of modest incomes that don't have the financial means to hire ac countants or tax attorneys. And that is probably the point. Cower and fade away, or face possible persecution at the hands of government bureaucrats.

Some people may read this article about this possibly coordinated effort against Tea Parties and be glad. But, the tables can easily be turned if and when another party takes control. The potential of using the IRS as a weapon against those that disagree with the people in power is exactly why the Tea Party fears the growth of government.

If your Tea Party has received similar letters, please let me know (Colleen Owens, citizenczar@gmail.com) and I will put you in contact with other Tea Parties that have also received them. I will not publish your Tea Party or names publicly.

Remember the words of Ben Franklin, "We must all hang together, or assuredly we shall all hang separately."

From: Eldridge Michelle L
Sent: Thursday, March 01, 2012 3:00 PM
To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Keith Frank; Lemons Terry L; Lerner Lois G; Grant Joseph H
Cc: Zarin Roberta B; Patterson Dean J
Subject: FYI: AP: IRS battling conservatives over tax-exempt status

IRS battling conservatives over tax -exempt status

By ALAN FRAM, Associated Press – 30 minutes ago

WASHINGTON (AP) — The Internal Revenue Service is embroiled in battles with tea party and other conservative groups who claim the government is purposely frustrating their attempts to gain tax -exempt status.

The fight features instances in which the IRS has asked for voluminous details about the groups' postings on social networking sites like Twitter and Facebook, information on donors and key members' rel atives, and copies of all literature they have distributed to their members, according to documents provided by some organizations.

While refusing to comment on specific cases, IRS officials said they are merely trying to gather enough information to decide whether groups qualify for the tax exemption. Most organizations are applying under section 501 (c) (4) of the federal tax code, which grants tax -exempt status to certain groups as long as they are not primarily involved in activity that could influence an election, a determination that is up to the IRS.

The tax agency would seem a natural target for tea party groups, which espouse smaller and less intrusive government and lower taxes. Yet over the years, the IRS has periodically been accused of political vendettas by liberals and conservatives alike, usually without merit, tax experts say.

The latest dispute comes early in an election year in which the IRS is under pressure to monitor tax -exempt groups — like the Republican-leaning Crossroads GPS and Demo cratic-leaning Priorities USA — which can shovel unlimited amounts of money to allies to influence campaigns, even while not being required to disclose their donors.

Conservatives say dozens of groups around the country have recently had similar experience s with the IRS and say its information demands are intrusive and politically motivated. They complain that the sheer size and detail of material the agency wants is designed to prevent them from achieving the tax designations they seek.

"It's intimidation," said Tom Zawistowski, president of the Ohio Liberty Council, a coalition of tea party groups in the state. "Stop doing what you're doing, or we'll make your life miserable."

Authorities on the laws governing tax -exempt organizations expressed surprise at some of the IRS's requests, such as the volume of detail it is seeking and the identity of donors. But they said it is the agency's job to learn what it can to help decide whether tax -exempt status is warranted.

"These tea party groups, a lot of their mat erial makes them look and sound like a political party," said Marcus S. Owens, a lawyer who advises tax -exempt organizations and who spent a decade heading the IRS division that

oversees such groups. "I think the IRS is trying to get behind the rhetoric an d figure out whether they are, at their core: a political party," or a group that would qualify for tax -exempt status.

While tea party members were first emblazoned on the public's mind for their noisy opposition to President Barack Obama's health care ove rhaul at congressional town hall meetings in the summer of 2009, group leaders say they are chiefly educational organizations.

They say they mostly do things like invite guests to discuss issues and teach members about the Constitution and how to request government documents under the Freedom of Information Act. Some say they occasionally endorse candidates and seek to register voters.

"We're doing nothing more than what the average citizen does in getting involved," said Phil Rapp, executive director of the Richmond Tea Party in Virginia. "We're not supporting candidates; we are supporting what we see as the issues."

One group, the Kentucky 9/12 Project, said it applied for tax -exempt status in December 2010. After getting a prompt IRS acknowledgement of it s application, the organization heard nothing until it got an IRS letter two weeks ago requesting more information, said the project's director, Eric Wilson.

That letter, which Wilson provided to The AP, asked 30 questions, many with multiple parts, and ga ve the group until March 6 to respond.

Information requested included "details regarding all of your activity on Facebook and Twitter" and whether top officials' relatives serve in other organizations or plan to run for elective office. The IRS also sought the political affiliation of every person who has provided the group with educational services and minutes of every board meeting "since your creation."

"This is a modern-day witch hunt," said Wilson, whose 9/12 group and others around the country were in spired by conservative activist Glenn Beck.

Other conservative organizations described similar experiences.

A January IRS letter to the Richmond Tea Party requests the names of donors, the amounts each contributed and details on how the funds were used. Th e Ohio Liberty Council received an IRS letter last month seeking the credentials of speakers at the group's public events. In a February letter, the IRS asked the Waco Tea Party of Texas whether its officials have a "close relationship" with any candidates for office or political parties, and was asked for events they plan this year.

"The crystal ball I was issued can't predict the future," and future events will depend on factors like what Congress does this year, said Toby Marie Walker, president of the W aco group.

The IRS provided a five-paragraph written response to a reporter's questions about its actions. It noted that the tax code allows tax-exempt status to "social welfare" groups, which are supposed to promote the common good of the community.

Groups can engage in some political activities "so long as, in the aggregate, these non -exempt activities are not its primary activities," the IRS said.

"Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political affiliation or ideology," the agency said.

There were 139,000 groups in the U.S. with 501 (c) (4) tax -exempt status in 2010, the latest year of available IRS data. More than 1,700 organizations applied for that designation in 2010 while over 1,400 were approved. Such volume means it might take months for the IRS to assign applications to agents, said Lloyd Hitoshi Mayer, a Notre Dame law professor who specializes in election and tax law.

Ever since a 2010 Supreme Court decision all owing outside groups to spend unlimited funds in elections, such organizations have been under scrutiny.

Two nonpartisan campaign finance watchdogs called on the IRS last fall to strip some large groups of tax - exempt status, claiming they engage in so much political activity that they don't qualify for the designation.

Last month, seven Democratic senators asked the IRS to investigate whether some groups were improperly using tax-exempt status — they didn't name any organizations — because they are "improperly engaged in a substantial or even a predominant amount of campaign activity."

SFC 002450

From: Holton Winonna F
Sent: Thursday, June 07, 2012 10:42 AM
To: Miller Steven T; Flax Nikole C
Cc: Page Christopher M
Subject: FW: advocacy cases - final bucketing tally - information for meeting tomorrow at 10:30

FYI

From: Paz Holly O
Sent: Thursday, June 07, 2012 11:26 AM
To: Holton Winonna F
Cc: Lerner Lois G; Grant Joseph H; Marks Nancy J; Marx Dawn R; Urban Joseph J
Subject: advocacy cases final bucketing tally information for meeting tomorrow at 10:30

83 c/3s bucketed:

16 approval (19%)
16 limited development (19%)
23 general development (28%)
28 likely denial (34%)

199 c/4s bucketed:

65 approval (33%)
48 limited development (24%)
56 general development (28%)
30 likely denial (15%)

Quality review (numbers as of Wednesday evening):

Cumulative Count: 45 reviewed - 7 disagreed

SFC 002451

From: Miller Steven T
Sent: Friday, October 19, 2012 12:21 AM
To: Flax Nikole C
Subject: Re: politico
Attachments: homelogo.gif

Maybe we can discuss next week--you, Cathy B and I. 30 minutes. Thx.

Sent using BlackBerry

From: Flax Nikole C
Sent: Wednesday, October 17, 2012 11:13 AM
To: Miller Steven T
Subject: politico

POLITICO

The IRS's 'feeble' grip on big political cash

By: Kenneth P. Vogel and Tarini Parti
October 15, 2012 04:31 AM EDT

The Billion-Dollar Buy: About this series
Like never before, big dollars are having a big impact on politics and governance. This series examines how the new wide-open fundraising landscape will affect the 2012 campaigns.
See also: Inside the mind of a mega-donor | Inside Koch world | GOP groups plan record $1 billion blitz | Rove hits big: Birth of a mega-donor | Myth of the small donor

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The deep-pocketed conservative group Americans for Prosperity has spent $72 million on ads bashing Democrats so far this year.

It spent $39.4 million on ads and organizing in 2010, when it helped deliver the midterm elections for Republicans.

So when the Koch brothers-backed nonprofit set up shop back in 2004, how much did it tell the Internal Revenue Service it planned to spend on elections?

Zero dollars.

Surely, the IRS is hopping mad and has a team of auditors trying to get to the bottom of this massive discrepancy.

Actually, no.

Since the IRS granted its tax exemption in 2004, Americans for Prosperity has never received so much as a phone call, a letter or an inquiry from the agency about its spending, according to Chairman Art Pope.

AFP has turned in its tax returns every year, just as the law requires, reporting that it did not spend a dime on politics an answer that seems implausible from a common-sense perspective, but one that the IRS appears to have accepted as consistent with its vague and ambiguous definition of political activity.

AFP isn't alone; at least $134 million in ads, mail, phone calls and other political spending this election have come from tax-exempt groups that said they didn't plan to spend money on political campaigns, according to a POLITICO analysis of records filed with the IRS and the Federal Election Commission, as well as news reports and press releases.

If you're looking for the cop on the beat for much of the outside spending in 2012 when Republican-allied groups alone intend to spend upwards of $1 billion stop by the IRS, one of the most feared and hated government agencies around.

Except when it comes to political spending, the IRS is more like a toothless tiger.

Unlike campaigns or super PACs, which the FEC regulates as political committees, groups like AFP operate under a once-sleepy section of the Tax Code 501(c)4 written decades earlier to allow a range of groups to avoid paying taxes while serving a social benefit. The 501(c)4 groups are able to:

• Raise and spend unlimited donations, without ever publicly disclosing where they got the money.

• Pay no corporate income taxes on any of those donations.

• Do all that raising and spending without filing a single piece of paper with the IRS until months after Election Day.

• Operate in the shadows of an IRS bureaucracy that won't tell reporters, or even members of Congress, who has applied to create 501(c)4 groups, how it evaluates applications or whether it's approved particular groups.

Even some members of Congress say they feel stonewalled in their requests for basic information.

Sen. Carl Levin (D-Mich.), one of several lawmakers dogging the IRS over its apparent inaction in the face of the 501(c)4 spending surge, sees the irony in the situation.

"We have case after case in this office of little folks that the IRS goes after for assessments small business that they go after where they used their highly aggressive tactics," Levin said. "And you've got huge amounts of money being spent here, but very, very feeble, weak enforcement of the law."

Levin and other lawmakers such as Sen. Orrin Hatch (R-Utah), have spent months trying to get the IRS to explain itself. "Getting information out of them is like pulling teeth," Levin said.

Pretty sweet deal? That's right. Just ask the groups. who have essentially written their own rulebook for political spending in the wake of federal court rulings and FEC gridlock that have eroded election laws over the last few years. Operatives and their billionaire donors have taken full advantage of the leeway given them by the IRS, which has yet to raise even the first public question about any of the 501(c)4 groups behind the explosion of TV ads.

In fact, groups can operate as 501(c)4 nonprofits without ever applying for, or being granted, that status by the IRS a process that can take years.

The Karl Rove-conceived Crossroads GPS applied for nonprofit status in September 2010, but the IRS still won't tell the group (or POLITICO) what the status is or when it will act. That didn't stop Crossroads from spending about $42 million around the 2010 election — mostly on hard-hitting ads attacking Democrats and another $123-million-and-counting in the run-up to 2012, according to FEC and IRS filings and analyses of the group's press releases.

The Dick Morris-affiliated League of American Voters has been waiting more than three years for its nonprofit approval. The group used that time to raise at least $8.2 million but has said little about what it's doing with its cash, beyond a few FEC-disclosed donations to political committees like Crossroads GPS's sister super PAC, American Crossroads.

And the Eric Cantor-linked 501(c)4 YG Network, which requested tax exemption in February, has spent at least $1.4 million — mostly on ads and mailers mostly boosting Republicans.

Those groups say they're awaiting tax-exempt status, though the IRS won't confirm that. Other groups freely admit that they're not planning to apply and the IRS doesn't make them. They include the deep-pocketed centrist group Americans Elect, which dropped $893,000 this month boosting independent Angus King in his bid for a Maine Senate seat, and the liberal research outfits American Bridge 21st Century Foundation and Media Matters Action Network which between them have raised at least $11.7 million.

Then there's Priorities USA, which has raised at least $2.3 million in secret money to boost President Barack Obama, but won't tell POLITICO whether it's applied for 501(c)4 tax status or ever plans to. The IRS told POLITICO it has "no record of the tax-exempt status" for Priorities the same answer it gave when asked about Crossroads GPS, American Bridge 21st Century Foundation, Media Matters Action Network, the League of American Voters and others.

Meanwhile, the IRS is having trouble keeping track of its paperwork on the matter. It actually lost the original application filed by Americans for Prosperity and a sister foundation, which together constitute one of the most active outfits in American politics. Also lost: the acceptance letter to the groups.

Lost applications aren't uncommon, POLITICO found, despite the IRS's stern instructions

warning nonprofits to keep a copy of their acceptance letters "in your permanent records" because it could "help resolve any questions regarding your status."

The IRS says it's "aware of the current public interest" in the surge in nonprofit politicking and will may consider changes to the rules, according to a letter it sent in July to a pair of watchdog groups. It also told Sen. Levin it was reviewing 1,600 applications for 501(c)4 tax-exemption and examining another 70 groups that had already been granted it. The agency also said it's looking at groups that claim 501(c)4 status without applying.

But IRS spokesman Grant Williams wouldn't say why it was taking so long to process Crossroads GPS's exemption application, why the IRS couldn't say whether groups like Priorities USA had submitted similar applications and why the agency couldn't find the approved applications of several groups.

"Federal law just strictly prohibits us from discussing or commenting on any particular case," Williams said.

When it was pointed out that federal law actually requires the IRS to provide the records of approved groups like those it lost, he replied, "Well, that's our response."

And the IRS was equally tight-fisted when POLITICO filed Freedom of Information Act requests for correspondence related to inquiries from lawmakers and watchdog groups about the IRS's handling of 501(c)4 issues.

The IRS first said it wouldn't speed up its search despite the groups' efforts to influence the 2012 election, because, to the IRS, "that's not really a compelling need," said Valerie Barta, a senior tax law specialist.

"Just telling us that the IRS is doing some shady stuff well, you know, we get accused of that all the time," Barta added.

Months later, the IRS found 91 pages of such correspondence, only to withhold all of them.

The stinginess with information is likely not what Justice Anthony Kennedy had in mind when he cast the swing vote in the 2010 *Citizens United* ruling that struck down decades of campaign cash restrictions as unconstitutional infringements on free speech. Kennedy stressed in the majority opinion that voters should know who's footing the bill for campaign ads.

"The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way," Kennedy wrote. "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."

Kennedy even noted the Internet could provide the platform for the "prompt disclosure of expenditures [that] can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

Of course, the ability to give anonymously is one of the main reasons some rich donors

prefer 501(c)4 groups to super PACs, donations to which are regularly disclosed in reports posted on the FEC's website. In contrast, the IRS is neither nimble nor transparent, agree lawmakers overseeing the agency from across the political spectr um, reporters, watchdogs and Washington lawyers who represent political non -profits.

Horror stories abound about errors and delays in processing the litany of paperwork the IRS requires from political nonprofits, from the form clearing lawyers to represent the nonprofits before the IRS (form 2848) and the exemption requests themselves (form 1024).

"I've had them lose pages of 1024 applications not the whole thing and be unable to locate form 2848 on multiple occasions, including one client where I had to resend the exact same form about three times," said a Washington lawyer who represents politica lly active nonprofit groups.

And the agents have other things to do than just look at political spending. One of the lawyer's 501(c)4 clients was audited by "an agent who has last been auditing Elks Clubs in southwest Virginia no kidding and had no idea that (c)4s could lobby."

It's possible that, even if the IRS wanted to, it lacks the resources to closely track and police all the 501(c) groups. The IRS says it has 1,000 employees overseeing tax law compliance for more than 1 million nonprofits of all stripes from churches to unions. The agency takes an average of 210 days to handle a complaint, but often has to wait months before beginning the process, it told Levin, adding it had not revoked or proposed to revoke the exemption of a single 501(c)4 group from March to September.

If history is any guide, any investigations won't bear fruit until years after the election, as was the case with the FEC's clampdown on the 527 nonprofit groups that played a major role in 2004, including Swift Boat Veterans and POWs for Truth, and Progress for America Voter Fund on the right, and MoveOn.org Voter Fund, the Media Fund, and America Coming Together on the left.

Democratic lawmakers and watchdog gr oups insist there are grounds for the IRS to rebuke the 501(c)4s for ignoring the Tax Code's requirement that they operate "exclusively" for the promotion of social welfare. Instead, the IRS explains that for 50 years, it has interpreted "exclusively" to m ean "primarily."

Therefore, IRS Deputy Commissioner for Services and Enforcement Steven . Miller wrote to Levin, nonprofits "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."

Creative lawyers and operatives have largely taken that to mean that 501(c)4 groups can spend as much as 49 percent of their total budget on politics. But deep-pocketed groups like Crossroads GPS often don't count as political spending grants to other politically active 501(c)4s, let alone their own often-hard-hitting issue ads, despite the fact that the FEC requires such ads be disclosed as "electioneering communications" when aired close to an election.

The vague IRS definition of political activity is likely why some of the most aggressive conservative advertising outfits out there told the agency they didn't plan to spend "any

money attempting to influence the selection, nomination, election, or appointment of any person to any federal, state, or local public office or to an office in a political organization," despite the fact that many ads appear political in nature.

That also explains why even when 501(c)4 groups report political activity to the IRS on their annual tax filings, it's often in far smaller amounts than they report to the FEC and state election authorities, as detailed in a ProPublica analysis of 2010 tax returns.

In a twist, AFP this year will report some ads as political spending for the first time, but not because the IRS demanded it alter its filings. Rather, its board voted in August to air ads expressly urging Obama's defeat partly because a March federal court ruling would have required groups that aired less explicit electioneering commu nication ads to disclose their donors.

"Once the decision came down, we decided, well, we're not going to disclose our donors," said AFP President Tim Phillips, explaining the shift. "We thought it was a terrible decision, but obviously we complied with it when it was in effect," he said . Nonetheless, AFP shifted back to less-explicit electioneering communication ads after a federal appeals court unanimously overturned the decision last month.

Regardless, AFP isn't planning to update its 2004 application for tax -exempt status, "because it was correct at the time," said AFP Chairman Pope. "We just ne ed to update our disclosure the next time our 990 is due."

The IRS was never really meant to be in this position , and its hands have been tied by aggressive conservative litigators targeting all manner of campaign cash restrictions. The 2002 McCain-Feingold bill seriously curtailed the utility of 501(c)4 groups by barring corporations or unions from funding electioneering communications. But in 2007, the Supreme Court dramatically narrowed that restriction, and *Citizens United* did away with it entirely, while overturning laws barring corporations and unions from spending directly on harder-hitting ads expressly advocating for or against candidates.

At the same time, the six-member FEC fell into deep partisan gridlock that has stymied efforts to aggressively enforce existing rules, much less enact new ones to fill the gaps left by court decisions.

American Future Fund founder and President Nick Ryan said *Citizens United* changed the game. AFF, which has spent at least $14 million on ads in 2012, told the IRS it didn't intend to spend money on politics in 2008 when it was forming. "At the time the application was filed, AFF had no intent to violate a law that had been on the books since the 1940s, and told the IRS it would not do so," Ryan said.

Sen. Hatch has both expressed concern over reports the agency's given a hard time to conservative tea party groups seeking 501(c)4 status and asked the IRS for evidence it was scrutinizing the pro-Obama Priorities USA.

He doesn't see the need for any changes in the law, however. "We have good language in the law that allows the IRS to really go after them if they don't abide by the rules of a 501(c)4 situation," Hatch told POLITICO. "So I don't think we need to change anything."

Efforts to enact tougher disclosure laws or spending restrictions on 501(c)4 groups have failed amidst allegations of political bias, with AFP's Pope casting them as a plot "to intimate donors, intimidate activists and intimate concerned citizens."

But Pope also asserted that most nonprofits would prefer to have more "bright guidelines from the IRS," explaining "the IRS, the FEC, the tax laws and campaign finance laws do not work together and it does cause confusion."

No matter what rules are enacted and how strictly they're enforced, though, he predicted, people would find a way to spend on politics. "Free speech, I'm glad to say, in a positive sense, is like a balloon. You squeeze it on one side and it will balloon out on another side, and voices will be heard."

Manu Raju contributed to this report.

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SFC 002458

From: Urban Joseph J
Sent: Wednesday, February 02, 2011 6:01 AM
To: Fish David L; Paz Holly O; Downing Nanette M; Miller Thomas J; Kindell Judith E; Lowe Justin; Buller Siri; Lerner Lois G
Cc: Giosa Christopher P; Zarin Roberta B
Subject: BNA - CREW Referral - Citizens for Responsibility and Ethics in Washington Complaint to IRS on Exempt Status, Activities of American Future Fund Inc.

February 1, 2011

Douglas H. Shulman

Commissioner

Internal Revenue Service

SFC [redacted]

Dear Commissioner Shulman:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests an Internal Revenue Service ("IRS") investigation into whether the American Future Fund, Inc., ("AFF"), a non-profit organization exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code ("Code"), is operating with the primary purpose of influencing political campaigns in violation of the Code. [1]

[1] CREW submits this letter in lieu of Form 13909; a copy is being sent to the Dallas office.

Despite the fact that AFF repeatedly told the IRS it had not and did not plan to support or oppose candidates for office or spend any money attempting to influence elections, AFF did exactly that throughout the 2010 campaign cycle. Because of the serious nature of the tax law violations, the IRS should consider revoking the AFF's tax-exempt status and/or impose appropriate excise taxes and penalties on the organization.

Under the law, section 501(c)(4) organizations such as the AFF may not engage in political campaign activity as their primary purpose.[2] Beyond a general conclusion that political activities are those activities that influence or attempt to influence the election of an individual to public office, the Code does not precisely state what constitutes political activity. Instead, the IRS currently applies a facts and circumstances test to determine whether an organization has intervened in a political campaign.[3]

[2] Treas. Reg. § 1.501(c)(4)-1(a)(2) (a section 501(c)(4) organization must be primarily engaged in promotion of social welfare, which does not include "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office"); *see also* Rev. Rul. 81-95. While the Supreme Court's landmark decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010) greatly expanded the types of political activities in which section 501(c)(4) organizations could engage, it did not alter the requirement that political activity may not be the primary activity of these organizations.

[3] Rev. Rul. 2007-41.

In some cases, such tests are difficult to apply. Such is not the case here, where even a cursory review of the AFF's activities—whether measured by expenditure of funds, staff time, or otherwise —clearly demonstrates that the organization's activities are primarily political in nature. In fact, the AFF's primary activity in 2010 appears to have been sponsoring express advocacy independent expenditures and electioneering communications, activities that are clearly political.[4]

[4] *Id.; see also Election Year Issues, 2002 EO CPE Text* at 349, 388-89, 433.

The American Future Fund's Representations to the IRS

The American Future Fund, EIN 26-0620554, was established in 2007 and recognized by the IRS in 2008 as tax exempt under section 501(c)(4). In its February 2008 application for tax-exempt status, the organization represented under penalty of perjury it had not spent, and did not plan to spend, any money attempting to influence the selection, nomination, election, or appointment of any person to any federal, state, or local public office or to an office in a political organization.[5] On its application and in subsequent correspondence with the IRS, the only activities the AFF asserted it would undertake were education of the public on policy issues and grassroots activity to influence legislation.[6]

[5] *See* Form 1024, Application for Recognition of Exemption Under Section 501(a), response to Part II, Line 15 (attached as Exhibit A).

[6] *Id.*, response to Part II, Line 1; Letter from the American Future Fund to the IRS, August 18, 2008 (attached as Exhibit B)

The IRS nevertheless raised several concerns during the application review process with respect to the AFF's activities, and requested additional information and clarification on several issues. The IRS specifically requested information about activities that appeared political, asking for an explanation as to why the organization's advertisements appeared to be "more partisan than non-partisan," whether it was supporting or opposing a particular candidate for public office through its grassroots lobbying activities, and for a more detailed description of the organization's activities.[7]

[7] *See* Letter from the IRS to the American Future Fund, September 22, 2008 (attached as Exhibit C).

In response, the AFF assured the IRS under penalty of perjury its efforts were "strictly issue based and non-partisan," and that all of its admittedly aggressive grassroots advocacy efforts were conducted in a non-partisan manner.[8] The organization further asserted it "does not support or oppose any candidate for public office."[9] The AFF also represented its "grassroots issue advocacy fits within the Supreme Court's definition of 'genuine issue ads.' Its activities are directed toward influencing key votes by Congress on these issues, not supporting or opposing any candidate for public office."[10]

[8] *See* Letter from American Future Fund to the IRS, October 6, 2008 (attached as Exhibit D).

[9] *Id.*

[10] *Id.*

As a section 501(c)(4) organization, the American Future Fund annually files Form 990 tax returns. As in its earlier representations to the IRS, the organization asserted under penalty of perjury on its 2008 and 2009 Form 990s it had not engaged in direct or indirect political campaign activities on behalf of, or in opposition to, candidates for public office.[11]

[11] *See* AFF 2008 Form 990, response to Part IV, Line 3 (attached as Exhibit E); AFF 2009 Form 990, response to Part IV, Line 3 (attached as Exhibit F).

The American Future Fund's Political Activity

In contrast to these sworn representations, the AFF directly intervened and participated in poli tical campaigns in 2010, frequently expressly advocating the election or defeat of candidates for federal office. Moreover, it appears the organization's primary activity in 2010 was political campaigning in violation of its tax -exempt status under section 501(c)(4).

The AFF's express advocacy is reflected both in the political advertisements it produced and broadcast, and in the organization's independent expenditure and electioneering communications reports filed with the Federal Election Commission ("FEC").

As shown on the YouTube channel the AFF established, [12] the organization produced numerous television advertisements expressly advocating the election or defeat of candidates for federal office. For example, an advertisement about Rep. Bill Foster (D-IL) posted on the AFF's website and on its YouTube channel tells voters: "On Election Day, take the right path. Vote against Bill Foster. American Future Fund is responsible for the content of this advertising." [13] The AFF created similar ads targeting other Democratic candidates in the 2010 elections, including John Adler (D -NJ), Bobby Bright (D-AL), Chad Causey (D-AR), Travis Childers (D-MS), Barney Frank (D-MA), Chet Edwards (D-TX), Phil Hare (D-IL), Debbie Halvorson (D-IL), Denny Heck (D-WA), Martin Heinrich (D-NM), Baron Hill (D-IN), Rick Larsen (D-WA), Jim Marshall (D-GA), Gary McDowell (D-MI), Mike Oliverio (D-WV), Ed Perlmutter (D-CO), Stephanie Herseth Sandlin (D-SD), Mark Schauer (D-MI), and John Spratt (D-SC).[14] All of these ads urged voters to " vote against" the targeted candidate or said the candidate did not "deserve re-election."

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[12] *See http://www.youtube.com/user/AmericanFutureFund* .

[13] *See* AFF TV Ad IL "Fork in the Road" Rep. Bill Foster, *available at http://www.youtube.com/watch?v t_peHEcQzIE& feature mfu_in_order& list UL* (last visited January 25, 2011).

[14] *See, e.g.*, AFF TV Ad IL "Fork in the Road" Rep. Debbie Halvorson, *available at http://www.youtube.com/watch?v p0vMn3P33Ao& feature autoplay& list ULal2khkMVIgg& index 4& playnext 2* (last visited January 31, 2011); AFF TV Ad WA "Fork in the Road" Rep. Rick Larsen, *available at http://www.youtube.com/watch?v tmAcXwUIXEk& feature mfu_in_order& list UL* (last visited January 31, 2011); AFF TV Ad CO "Pure Pelosi" Rep. Ed Perlmutter, *available at http://www.youtube.com/watch?v kPhU4-BR1Aw& feature autoplay& list ULal2khkMVIgg& index 8& playnext 2* (last visited January 31, 2011).

According to the AFF's FEC reports, the organization broadcast these and other political advertisements in 2010. [15] Moreover, these reports indicate the AFF spent nearly $10 million on political activities in 2010 —a sum greater than the organization's total expenditures for 2008 and 2009 combine d. Specifically, the AFF spent more than $7.3 million in the 2010 election on independent expenditures expressly advocating the election or defeat of candidates for federal office, and at least another $2.2 million on electioneering communications —ads that mention a candidate by name close to an election.[16] In one race alone, AFF spent nearly $1.1 million in electioneering communications and almost $900,000 in independent expenditures targeted at Rep. Bruce Braley (D -IA).[17] News reports described the AFF as "one of the more active players in this fall's campaigns, spending millions of dollars on ads attacking Democrats across the country." [18] While the organization's total spending figures for 2010 are not yet available, it reported to the IRS it spent $1.9 m illion in 2009 and $6.3 million in 2008, a total less than the amount it spent in 2010 in political activity reported to the FEC. [19] In addition, the *New York Times* reported on October 17, 2010 that at that time the AFF had devoted more than half of its television advertising spending in 2010 to express advocacy advertisements. [20]

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[15] *See http://query.nictusa.com/cgi-bin/fecimg/?C90011677* (FEC reports of independent expenditures); *http://images.nictusa.com/cgi-bin/fecimg/?C30001028* (FEC reports of electioneering communications); *see also American*

Future Fund, Outside Spending: Independent Expenditures, Electioneering Communications, and Communications Costs by Candidate as of December 31, 2010, OpenSecrets.org (summarizing campaign spending) (attached as Exhibit G).

[16] *Outside Spending, OpenSecrets.org* (attached as Exhibit H).

[17] *See http://query.nictusa.com/cgi-bin/fecimg/?C90011677; http://images.nictusa.com/cgibin/fecimg/?C30001028 ; see also American Future Fund, Outside Spending: Independent Expenditures, Electioneering Communications, and Communications Costs by Candidate as of December 31, 2010, OpenSecrets.org.* Approximately $442,000 of the independent expenditures were for the producti on and placement of an advertisement against both Rep. Braley and Rep. Dave Loebsack (D-IA) suggesting the voters should "send them home for good." *See* Home Sweet Home, *available at http://www.youtube.com/user/AmericanFutureFund#p/search/0/ Gc7yc9C3Tq4* (last visited January 31, 2011).

[18] Jim Rutenberg, Don Van Natta Jr., & Mike McIntire, *Offering Donors Secrecy, and Going on Attack, New York Times,* October 11, 2010 (attached as Exhibit I).

[19] *See* AFF 2009 Form 990, response to Part I, Line 18; AFF 2008 F orm 990, response to Part I, Line 18.

[20] Michael Luo, *Groups Push Legal Limits in Advertising, New York Times,* October 17, 2010 (attached as Exhibit J).

The amount the AFF spent on clearly political advertisements and ot her political activity suggests that its primary purpose in 2010 was political campaigning.

The American Future Fund's Political Ties

In addition to spending heavily on political advertisements largely attacking Democratic candidates for Congress, the AFF appears to have strong ties to the Republican party. These include:

- Nicole Schlinger, the AFF's sole board member when it was organized, is the former finance director for the Republican Party of Iowa.[21] Ms. Schlinger now serves as President of Capitol Resources, Inc.,[22] which does business as Campaign Headquarters. Campaign Headquarters bills itself as serving "Republican candidates and conservative organizations across the country."[23]

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[21] *See* Our Management Team page, Campaign Headquarters website (attached as Exhibit K).

[22] *Id.*

[23] *See* History page, Campaign Headquarters website (attached as Exhibit L).

- Sandra Greiner, who was added to th e AFF board in 2008 and is now its president,[24] was a Republican member of the Iowa House of Representatives from 1992 -2008, and was elected to the state Senate as a Republican in 2010.[25] Ms. Greiner said she will continue to serve as president of the AFF while in office.[26]

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[24] *See* Letter from the American Future Fund to the IRS, August 18, 2008; About Us page, AFF website (attached as Exhibit M).

[25] *See* About Sandy page, Greiner state senate campaign website (attached as Exh ibit N).

[26] Jason Hancock, *Greiner Will Remain President of American Future Fund, Iowa Independent,* January 11, 2011 (attached as Exhibit O).

- Bruce Rastetter, co-founder and chief executive of Hawkeye Energy Holdings, an ethanol company, reportedly provided the AFF with an undisclosed sum of "seed money."[27] Mr. Rastetter is a "long-time power

broker in Iowa politics" who has donated more than $540,000 to mostly Republican state candidates in Iowa, [28] and hundreds of thousands more to Republican federal candidates and party entities. [29]

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[27] Rutenberg, Van Natta, Jr., & McIntire, *New York Times,* October 11, 2010.

[28] Jason Hancock, *CCI critical of Rastetter's new role on Branstad inaugural team, Iowa Independent,* December 2, 2010 (attached as Exhibit P).

[29] *See* Center for Responsive Politics, *Donor lookup, Bruce Rastetter* (attached as Exhibit Q).

These close ties to Republican operatives further suggest that the AFF's primary purpose is political activity.

Conclusion

CREW urges the IRS to investigate the AFF to determine whether its activities are consistent with its tax exemption application and comport with its status as a section 501(c)(4) organization.

Should the IRS find that the AFF has violated its tax -exempt status, CREW urges the IRS to take appropriate and prompt action, which may include revoking section its 501(c)(4) status, imposing any applicable excise taxes under section 4958 for excess benefit transactions, and treating the AFF as a taxable corporation or as a section 527 organization.

Recently, CREW and others have filed complaints with the IRS against groups that have engaged in impermissible political activity in violation of their tax exempt status. [30] It is imperative that the IRS investigate likely tax law violators and institute enforcement actions prior to the 2012 election season. Only vigorous enforcement by the IRS will de ter other exempt organizations from violating our nation's tax laws for political gain.

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[30] *See, e.g.,* Letter from CREW to the IRS, October 26, 2010 (requesting investigation of Pray in Jesus Name Project for violating its 501(c)(3) status); Letter from Campaign Legal Center and Democracy 21 to the IRS, October 5, 2010 (requesting investigation of Crossroads GPS for violating its 501(c)(4) status); Letter from Americans United for Separation of Church and State to the IRS, September 30, 2010 (requesting investigation of Cornerstone World Outreach for violating its 501(c)(3) status).

Thank you for your prompt attention to this matter.

Sincerely,

/s/

Melanie Sloan

Executive Director

Citizens for Responsibility and Ethics in Washington

Encls.

cc: IRS-EO Classification

From: Paz Holly O
Sent: Thursday, April 07, 2011 2:02 PM
To: Lerner Lois G; Kindell Judith E
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: Re: sensitive (c)(3) and (c)(4) applications

They 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.
------Original Message------
From: Lerner Lois G
To: Paz Holly O
To: Kindell Judith E
Cc: Light Sharon P
Cc: Letourneau Diane L
Cc: Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applications
Sent: Apr 7, 2011 1:47 PM

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 G. Lerner
Director, Exempt Organizations

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:26 AM
To: Kindell Judith E; Lerner Lois G
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applications

The last information I have is that there are approx. 40 Tea Party cases in Determs. 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.

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige

SFC 002464

Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. 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. Apparently the p

------Original Message Truncated------

Sent from my BlackBerry Wireless Device

SFC 002465

From: Flax Nikole C
Sent: Wednesday, August 22, 2012 7:33 AM
To: Paz Holly O
Subject: TIGTA
Attachments: BOLO Iterations Sheet 04302012.xls

From: Lerner Lois G
Sent: Monday, May 21, 2012 4:57 PM
To: Flax Nikole C
Subject: FW: BOLO Spreadsheets

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Monday, May 21, 2012 4:20 PM
To: Lerner Lois G
Subject: FW: BOLO Spreadsheets

revised version

01/25/12	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.**	EI 1	x	Forward case to Group 7822. Stephen Seok is the coordinator.	Open
07/27/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI 1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech Justin Lowe.	Open
07/11/11	Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI 1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech Chip Hull.	Open

02/02/11	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
11/16/10	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. Ron Bell is coordinating. These cases are currently being coordinated with EOT.	Open
08/12/10	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

Pre BOLO Spread Sheet						
07/27/10	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 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

SFC 002468

BOLO Iteration History TEGE EOD 04/30/2012

Pre BOLO Spread Sheet						
05/06/10	Tea Parites		2010 1		Coordinate with group 7825	Opened

SFC 002469

Revisions made by:	
Coordination between Steve Bowling (manager), Ron Bell, Stephen Seok, and Sherri Royce all in Group 7822. Also, solicited input from Jon Waddell (manager).	
Same as prior. Only change was contact person in D.C. made by Ron Bell (coordinator).	
Steve Bowling (manager) and Ron Bell (coordinator) based on language provided by EO Technical.	

SFC 002470

Same as prior. Only change was contact persons made by Ron Bell (coordinator).

Same as prior. Only change was contact persons made by Ron Bell (coordinator).

Same as prior. Only change was group 7825 to 7822 made by Liz Hofacre (coordinator).

Liz Hofacre (coordinator) prepared and Joseph Herr (manager) reviewed.

SFC 002471

Coordination
between
Joseph Herr
(manager) and
Liz Hofacre
(coordinator).

IRS0000352984

This summary discusses at a high level IRS Exempt Organizations (EO) processes with respect to examinations and compliance checks of tax exempt organizations involved in political activity.

An enforcement review of a tax exempt organization falls into one of two broad categories: examinations and compliance checks.

The IRS conducts examinations, also known as audits, which are authorized under Section 7602 of the Internal Revenue Code. An examination is a review 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. EO conducts two different types of examinations: correspondence and field examinations. A correspondence examination is conducted remotely solely through the issuance of information document requests to the taxpayer by the examiner. During a field examination the examiner conducts in-person interviews of the taxpayer's representatives in addition to issuing information document requests.

A compliance check is a review to determine whether an organization is adhering to recordkeeping and information reporting requirements and/or whether an organization's activities are consistent with its stated tax-exempt purpose. Although during a compliance check the examiner may contact the taxpayer, it is not an examination since it does not involve review of the taxpayer's books and records and does not directly relate to determining a tax liability for any particular period. See Publication 4386, *Compliance Checks*, for further details.

As a result of the Advisory Committee for Tax Exempt and Government Entities (ACT) recommendation, EO established the Review of Operations (ROO) in 2005. Its initial vision was to follow-up on exempt organizations within three to five years of recognition of exemption in order to assess whether the organizations are operating as stated in their applications for exemption. The ROO conducts compliance reviews on organizations. It is authorized to determine whether an organization's activities are consistent with its stated tax-exempt purpose and whether the organization is adhering to recordkeeping and reporting requirements. However, unlike a compliance check, the ROO does not make taxpayer contact. In addition, because the ROO does not conduct an examination, it is not authorized to examine an organization's books and records or ask questions regarding tax liabilities or the organization's activities.

EO Determinations makes referrals to EO Examinations when questionable activity is likely to occur, e.g., future operations may impact exempt status, generate Unrelated Business Income (UBI) or other tax liabilities, or necessitate a change in private foundation classification (IRM 7.20.1.5.2). EO Determinations started sending referrals to the ROO in approximately July 2006. At that time, specialists in EO Determinations were required to complete a Form 6038 and a Form 6038 Attachment. In March 2009, the Form 6038 was discontinued for cases closed through the screening program and replaced with a version of Form 14261, Memorandum to File. The procedures were also changed and required the specialist to complete a Form 6038 attachment only if the specialist made a referral to the ROO. In 2011, the Form 6038 and attachments

were discontinued and replaced with the Form 14261 and Form 14266 for the ROO referrals. See IRM 7.20.1.5.2 for additional information.

The initial vision for the ROO has been expanded to include the building of cases for EO Examinations for various compliance initiatives. The initial review conducted by the ROO allows for a more focused examination thus increasing the overall effectiveness of EO Examinations. In 2011, EO began building a Dual Track process to use data analytics and referrals to determine if exempt organizations have compliance issues related to political activities. Procedures were approved in October 2012. Cases identified in the Dual Track process, including those identified through data analytics and referrals, first are routed to the ROO for case development and research. These cases then are routed to a Committee for review and decision on whether an examination is warranted. Dual Track Data Analytics and Referral examination cases were first assigned to the field late October 2012. The Director, EO suspended examination case work November 16, 2012, pending the development of additional guidance. On February 4, 2013, the directive to resume examination work was given. The first Dual Track examination case was started in March 2013.

On June 3, 2013, the new TEGE leadership team made a decision to temporarily suspend all Dual Track examinations until a review of the procedures and process is completed. During the summer of 2013, a cross functional team was created to review the selection and data analytics criteria and made recommendations. TEGE leadership is still evaluating the team's recommendations. Although several Dual-Track cases were started in March 2013, taxpayer contacts remain suspended.

In response to a congressional request, the IRS reviewed the 493 cases that were on the advocacy case tracking spreadsheet as of May 9, 2013, to determine whether they were considered by the ROO or are currently under examination. EO Examinations has received a total of 53 referrals on 24 organizations identified on the list. None of these referrals were from EO Determinations. Referrals can come from various sources, including, external stakeholders, other areas of the Federal government, and taxpayers. Eleven referrals went through the Dual Track process, and 13 referrals were determined by career civil servant classifiers not to have political allegations and thus did not go through Dual Track. Five organizations were identified through data analytics of the Dual Track process. Out of 16 Dual Track cases (11 referrals and five data analytics), 14 have been reviewed by the ROO and two are currently in the ROO review process. (See the following summary).

EO Examinations separately identified 60 organizations that were referred to EO Examinations from EO Determinations during the period of 2012 through 2013. However, EO Examinations has not taken any actions on these referrals for two reasons. First, they were not acted on because they were referrals for future year follow-ups. Second, they have not been acted on because in reviewing the ROO, Dual Track and examination processes during the summer of 2013, new TEGE leadership decided to return these referrals to EO Determinations for further review to ensure the referrals were appropriate. Accordingly, no EO Determinations referrals of political advocacy cases have resulted in review by the ROO or processing through the Dual Track system.

A. Referrals:	
1) Eleven referrals went through Dual Track process:	
a. Selected for examination: (None assigned to field groups)	3
b. Not selected for examination:	1
c. Awaiting Committee Review:	5
d. Transferred to ROO for research and review:	2
2)Thirteen referrals were determined by career classifiers not to have political allegations, so did not go through the Dual Track process	
a. Selected for examination (None assigned to field groups)	2
b. Not selected for examination:	6
c. Awaiting classification	5
B. Dual-Track Data Analytics: - Selected for examination (None assigned to field groups)	5

EIN	Name	Date Rec'd	Follow-Up Date
27-SFC	DALLAS TEA PARTY INC	08/02/12	201512
27-SFC	OHIO LIBERTY COUNCIL CORP	01/02/13	201400
27-SFC	AMERICAN FREEDOM AND ENTERPRISE	07/26/12	201412
27-SFC	OKC PIA ASSOCIATION	07/26/12	201412
27-SFC	CHATTANOOGA TEA PARTY	04/18/13	201400
27-SFC	COALITION FOR A CONSERVATIVE	04/01/13	201400
27-SFC	HAWAII TEA PARTY INC	07/26/12	201412
27-SFC	RICHMOND TEA PARTY PATRIOTS INC	07/26/12	201412
27-SFC	ROANE COUNTY TEA PARTY	04/18/13	201400
27-SFC	SAN JUAN COUNTY 9-12 PROJECT CORP	04/01/13	201400
27-SFC	LAS CRUCES TEA PARTY	04/01/13	201400
27-SFC	CITIZEN IMPACT USA INC	12/04/12	201500
27-SFC	DELAWAREANS FOR SOCIAL & ECONOMIC	04/01/13	201400
27-SFC	SWFL 912 PROJECT INC	03/05/13	201400
27-SFC	912 PROJECT OF THE LEHIGH	07/26/12	201412
27-SFC	NORCAL TEA PARTY PATRIOTS	08/17/12	201512
27-SFC	4 CORNERS LIBERTY RESTORATION GROUP	06/25/12	201512
27-SFC	MINNESOTA CAMPAIGN FOR LIBERTY	04/01/13	201400
27-SFC	ONE GENERATION AWAY	11/20/12	201500
27-SFC	CLINTON COUNTY TEA PARTY	06/25/12	201512
27-SFC	VETERANS IN DEFENSE OF LIBERTY	05/17/13	201500
27-SFC	NATIONAL JOBS FOR ALL COALITION	11/20/12	201500
27-SFC	PROGRESSIVE USA	07/26/12	201412
27-SFC	PROTECTING AMERICAN VALUES INC	07/26/12	201412
27-SFC	LIBERTY COUNSEL ACTION INC	07/26/12	201412
27-SFC	CHATTANOOGA ORGANIZED FOR ACTION	01/25/13	201400
27-SFC	CARLESON CENTER FOR PUBLIC	11/20/12	201500
27-SFC	NORTH CAROLINA REPUBLICAN ATTORNEYS	06/06/13	201900
27-SFC	IOWANS FOR GROWTH AND DEVELOPMENT	01/02/13	201400
27-SFC	OHIO FIRST FOR A BETTER GOVERNMENT	07/26/12	201412
32-SFC	TIE THE KNOT	03/07/13	201400
37-SFC	ONE IN A MILLION INC	07/09/13	201600
37-SFC	TEA PARTY PATRIOTS OF SOUTHERN NJ	01/23/13	201400
45-SFC	HONOLULU TEA PARTY	03/07/13	201400
45-SFC	MICHIGAN FAITH AND FREEDOM	07/26/12	201412
45-SFC	AMERICAN SOLUTIONS FOR WINNING THE	10/26/12	201500
45-SFC	CONSERVE OUR REPUBLICS DIGNITY AND	01/14/13	201500
45-SFC	CORPORATE ACCOUNTABILITY PROJECT	01/02/13	201500
45-SFC	CENTER FOR ELECTION SCIENCE	11/20/12	201500
45-SFC	CALIFORNIANS FOR REGULATORY REFORM	11/20/12	201500
45-SFC	CENTER FOR AMERICAN FREEDOM	01/02/13	201400
45-SFC	ALABAMA FAIRTAX EDUCATIONAL	03/05/13	201500
45-SFC	CAMPAIGN FOR VERMONT PROSPERITY INC	08/02/12	201512
45-SFC	NATIONAL TEA PARTY GROUP	01/02/13	201400
45-SFC	OCEAN STATE TEA PARTY IN ACTION	07/26/12	201412
45-SFC	FREEDOM PLAINS	07/26/12	201412
45-SFC	FREEDOM TRAIL	08/02/12	201512
45-SFC	LIBRE INITIATIVE INSTITUTE INC	01/02/13	201400
45-SFC	RESTORING OHIO INC	07/27/12	201412
45-SFC	CARLESON CENTER ACTION FUND	07/26/12	201412

45-	SFC	CHARLOTTE MATTERS	08/02/12	201512
45-	SFC	WE THE PEOPLE ALLIANCE INC	07/12/13	201500
45-	SFC	GEORGIANS FOR SMART BUSINESS INC	11/20/12	201500
45-	SFC	WISCONSIN SMALL BUSINESSES UNITED	01/02/13	201400
45-	SFC	HARD WORK CLEAN HANDS	03/07/13	201400
80-	SFC	SAN ANTONIO TEA PARTY INC	07/26/12	201412
80-	SFC	PROGRESS TEXAS	06/25/12	201512
87-	SFC	US HEALTH FREEDOM COALITION INC	06/25/12	201512
90-	SFC	CONSERVATIVE ROUNDTABLE OF TEXAS	01/02/13	201400
90-	SFC	REBUILD THE DREAM	08/24/12	201512

From: Shafer John H
Sent: Monday, October 18, 2010 9:26 AM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: EO Tax Journal 2010-150

From the Desk of Paul Streckfus, Editor, EO Tax Journal

Email Update 2010-150 (Monday, October 18, 2010)
Copyright 2010 Paul Streckfus

1 - *New York Times*□ Primer on EO Tax Law

2 - Ofer Goes Where Lions Fear to Tread: Is a Political Contribution a Gift?

1 - New York Times□ Primer on EO Tax Law

Who would have guessed that the *New York Times* would devote two articles appearing today in its print edition to explain basic concepts of EO tax law. Of course we know □basic concepts□ don□t take you far in EO election tax law, as it□s all facts and circumstances, as Judy Kindell is fond of explaining. The *Times*□Michael Luo gets it mostly right in his bold attempt to go where no IRS has gone before. I□ve noted in CAPS my comments.

Groups Push Legal Limits in Advertising
By Michael Luo, *New York Times,* October 17, 2010

A recent television commercial sponsored by an Iowa based nonprofit group, American Future Fund, attacking Representative Bobby Bright, an Alabama Democrat, could hardly have been more explicit in its closing: □On Election Day,□ the narrator said, □take the right path. Vote against Bobby Bright.□ Such a direct appeal to voters might seem unremarkable, but actually it is an example of an important new tool afforded to outside interest groups that is reshaping the contours of this year □s midterm elections.

Before the Supreme Court□s landmark campaign finance ruling in January, nonprofit groups like American Future Fund, able to accept unrestricted contributions from individuals and corporations, had been limited to broadcasting □issue ads□ and barred from □express advocacy,□ advertisements that directly urge voters to elect or defeat specific candidates.

Now, in the aftermath of the court□s ruling in the *Citizens United* case, third party groups in growing numbers have been flocking to this sharper form of messaging in the closing weeks of the campaign. In the process, however, the groups are, as never before, pushing the legal limits that enable them to preserve the anonymity of their donors. They are doing so just as Democratic officials and campaign finance watchdogs alarmed by the gushers of secret money pouring into races, largely in favor of Republicans have stepped up their calls for investigations by regulators.

The basic rule of thumb for nonprofit groups organized under Section 501(c) of the tax code is that more than 50 percent of their annual activities cannot be political. NOT TRUE FOR 501(c)(3)s, OF COURSE. Although it is a matter of debate how spending on traditional issue ads would be categorized by the Internal Revenue Service, it is indisputable that spending on express advocacy would be classified as political.

An analysis by *The New York Times* of data provided by the Campaign Media Analysis Group, which tracks political and issue related advertising, found at least two major Republican leaning groups, the American Future Fund and the 60 Plus Association, which bills itself as a conservative alternative to AARP, have now devoted more

than half of their spending this year on television advertising for express advocacy. Other organizations, including Crossroads GPS, a nonprofit group tied to Karl Rove, and Americans for Job Security, a Republican oriented trade association, have been flirting relatively close to that threshold as well.

Even operating just under that dividing line, however, does not mean they are safe, because it is po ssible the I.R.S., in particular, could classify many of their issue ads as political too, Democratic and Republican campaign finance lawyers said. WHAT □S THE LIKELIHOOD OF THE IRS DOING ANYTHING? □I think engaging in full blown express advocacy is aggress ive,□ said Michael Toner, a lawyer at Bryan Cave and a former Republican chairman of the Federal Election Commission. □It□s aggressive because you have to concede at least some of what you□re doing is political. Then it is a battle of how everything else i s going to be defined.□ He added: □It reduces your margin for error.□

Marc Elias, a campaign finance lawyer at Perkins Coie whose clients include Democratic candidates and the Democratic Senatorial Campaign Committee, was blunter about the risks for the groups. □They need to basically pull an inside straight to stay within the law, □ he said. □They need to argue every one of those issue ads needs to wind up nonpolitical, which seems to be a Herculean task.□ IF THERE IS NO ENFORCEMENT OF THE LAW, DOES IT MATTER WHETHER YOU ARE IN OR OUT?

A thorough audit would require examining all types of outlays by an organization, including, for example, radio advertisements and direct mail. Television advertising, however, usually accounts for the bulk of the spending b y these groups. NOT GOING TO HAPPEN, CERTAINLY NOT ANYTIME SOON TO MAKE A DIFFERENCE IN THIS YEAR□S ELECTION CYCLE.

It is possible that the groups will seek to stay under the 50 percent limit by increasing their nonpolitical spending after the election is over, a common tactic. They may, for example, broadcast a lot of advertisements during the lame duck Congress. OR THEY MAY JUST DISAPPEAR. The strategy can be risky, however, because it depends on organizations□ keeping money in reserve, or being able to raise enough money for sucb work after the election.

In the case of the 60 Plus Association, it has spent $3.7 million on television time for express advocacy ads, or more than 86 percent of its total. Tom Kise, a spokesman, challenged the completeness o f the advertising figures but also said the organization had spent heavily on grassroots lobbying and other activities that balance out its political spending. The group has also been filing with the I.R.S. based on a fiscal year, instead of the calendar y ear, so it may have until July 2011 to get its ledgers in order. A DODGE RECENTLY POINTED OUT AT A D.C. BAR GATHERING.

American Future Fund, set up by a cadre of Republican political operatives, has devoted $3 million, or about 56 percent of its televisio n advertising spending, to express advocacy. Meanwhile, Crossroads GPS and Americans for Job Security have been more conservative, keeping their express advocacy spending on television to rougbly 40 percent. Several lawyers said that while the 50 percent l imit is widely cited, the I.R.S. has never explicitly ruled that 50 percent is the official limit for political spending. It could, in fact, be less. WITH THE IRS MISSING IN ACTION, ALL OF THIS IS JUST SPECULATION.

Under the law, nonprofit 501(c)(4) □social welfare□ organizations, 501(c)(5) labor unions and 501(c)(6) trade associations are supposed to be primarily focused on those tax exempt purposes, as opposed to influencing elections. The crucial question is how a group □s □primary purpose□ is evaluated. AS NOTED IN FRIDAY □S EMAIL UPDATE, RETIRED IRSer BILL BROCKNER SAYS THERE IS NO □PRIMARY PURPOSE□ TEST FOR NON (c)(3)s, ONLY AN ACTIVITY TEST. Some tax lawyers advise their clients to keep their political spending to less than 40 percent of their budgets.

Another surprisingly murky issue is what, other than explicit appeals to voters about how they should cast their ballots, tbe I.R.S. actually considers political. Auditors weigh a host of factors, according to tbe agency, including whether an advertisemen t is part of a continuing series by the group on the same issue. If it is, the group could make a stronger case that the ad is an cxample of issue, not political, advocacy.

Most casual observers, however, would probably consider many of the issue ads by these groups to be very much political. They attack or praise candidates, just like straight political advertisements, but they invariably add a tag

line that urges voters to do something other than vote for or against candidates. A recent commercial by C rossroads GPS, criticizing Representative Joe Sestak, who is running for the Senate in Pennsylvania, ends by urging viewers, □Tell Congressman Sestak, □Stop the Medicare cuts,□ □ and displays his phone number.

Some pro Republican groups, for legal or tact ical reasons, have continued to script all of their commercials as issue ads, including the United States Chamber of Commerce and Americans for Prosperity, a group linked to the billionaire David Koch.

Problems with the I.R.S. could lead to tax penalties and revocation of tax exempt status. SO WHAT? A SMALL PRICE TO PAY IF YOU ARE THE WINNING CANDIDATE. But nonprofit groups engaging heavily in express advocacy could also run into issues with the Federal Election Commission. If the commission determines tha t a group□s □major purpose□ is political, the group is required to register as a political committee and disclose its donors.

The commission□s three Republican members, however, are generally inclined to give these groups leeway, effectively deadlocking t he commission because it is split along party lines, and a majority vote is required for it to act. But if most of a group□s spending seems to be on express advocacy, even the Republican commissioners would probably have to scrutinize the group, lawyers sa id.

A Profusion of □Magic Words□
By Michael Luo, *New York Times,* October 17, 2010

In legal parlance, they are called □magic words,□ and their use has exploded in this year □s midterm races. Television commercials that include them represent the most basic form of □express advocacy,□ or advertisements that explicitly urge votes for or against a specific candidate. A footnote in a 1976 Supreme Court decision laid them out, seeking to define what the term □express advocacy□ means.

That definition has since been broadened to include other advertisements beyond those with magic words. But they remain a useful, albeit incomplete, proxy for measuring the shift that has occurred since the Supreme Court □s ruling in *Citizens United* that freed corporations and labor unions to pay for advertisements that directly called for the election or defeat of candidates.

What are the magic words? □Vote for,□ □elect,□ □support,□ □cast your ballot,□ □vote against,□ □defeat,□ □reject,□ and phrases along the lines of □Smith for Congress.□ The idea is that any ad that uses any of these words should be considered □express advocacy□ and cannot pretend to be so called issue ads.

In 2010, outside interest groups have used magic words in one out of every 10 t elevision advertisements in Senate races and one out of three in House races, according to an analysis by the Wesleyan Media Project. In 2008, over the same time period, outside groups used them in just 3 percent of House race television ads and in no Sena te ads.

The fact that interests groups can now be more direct in their ads as opposed to confining themselves to issue ads that might attack or praise a candidate but must focus on issues and stop short of a direct appeal to vote for or against the person has also made personal attacks on candidates, as well as praise, fair game.

As a result, about a quarter of the ads in House and Senate races in 2010 have mentioned personal characteristic s of candidates, up from 20 percent in 2008, according to the Wesleyan Media Project analysis.

2 - Ofer Goes Where Lions Fear to Tread: Is a Political Contribution a Gift?

Ofer Lion has sent out an interesting client memo, rep rinted below, which served as a basis for an article in *Forbes Magazine*. However, after reading the memo, one should note that Professor Susan Gary of the University of Oregon School of Law has made the following note in the Nonprofit Law Prof Blog (10/16/ 10):

□Although [section] 2501 may not exclude these gifts directly, Paul Caron blogged that case law in effect prior to

adoption of that Code section focused on donative intent, and a person making a gift to a 501(c)(4) organization does not have the donative intent that the Code seeks to tax under the gift tax. There seems to be little direct information about the issue, but perhaps the gifts are not the sort Congress intended to tax as gifts. □

Professor Gary□s reference is to the following note by Professor Paul Caron of tbe University of Cincinnati College of Law in tbe Tax Prof Blog:

□In the run up to next month□s elections, a big and controversial development has been the ability of tycoons to make unlimited political donations without any public disclosure whatsoever. This is done by giving the money to certain 501(c)(4) organizations so named for the tax code provision establishing their status. Right now the best known 501(c)(4) is Crossroads Grassroots Policy Strategies, or Grassroots GPS, set up by conservative political operative Karl Rove.

□The Grassroots GPS Web site makes clear that such contributions are not deductible by the donor from personal federal income taxes. But that may not be the whole story from a tax perspectiv e. A Los Angeles tax lawyer is telling clients such gifts could be subject to the federal gift tax, which is a hefty 35% this year but is scheduled to rise to a weightier 55% on January 1.

□In a memo, Ofer Lion, a lawyer with Mitchell Silberberg & Knupp who specializes in nonprofit organizations, writes that unlike contributions to certain other political organizations, there is no gift tax exemption written into federal law for contributions to 501(c)(4) □s, which the IRS officially classifies as socia l welfare organizations but also are often used for lobbying. And that, he says, raises the possibility that down the road the IRS might come calling for the tax, plus interest, plus penalties. □The IRS may well find irresistible the potential revenue to b e raised from assessing gift taxes on 501(c)(4) contributors, □ writes Lion.

□A spokesman for Crossroads GPS, which is based in Washington, D.C., said Thursday he had never heard anything about a possible gift tax liability on 501(c)(4) contributions u ntil*Forbes* called, and did not know if bis organization had a written legal opinion specifying wby there would be no liability for its donors.

□But if news reports are correct, well heeled individuals are making multi million donations to 501(c)(4)s, which would blow through any yearly or lifetime exemptions. It□s also not hard to imagine that the level of giving by tax averse moguls might go way down if the threat of a gift tax liability is not negated.

□Lion writes that there is no indication no w the IRS intends to collect the gift tax on 501(c)(4) contributions, and that there might be First Amendment issue if it tried. But he notes the agency wouldn□t have a difficult research task. While there is no public disclosure of donors to a 501(c)(4) a presumed part of the appeal for many □federal law requires 501(c)(4)□s to reveal to the IRS the names of all donors of $5,000 and up. The easy to use lists would be a □treasure trove□ for the IRS, Lion declares.

□Although I [Paul Caron] have not se en Mr. Lion's memo, he is certainly correct that the § 2501(a)(4) gift tax exclusion for contributions to political organizations does not apply to transfers to § 501(c)(4) groups like Crossroads GPS. But as we note in the Teacher's Manual accompanying our casebook (*Federal Wealth Transfer Taxation* (Foundation Press, 6th ed. 2009)), these types of political contributions should not be subject to the gift tax in any event because of the lack of true donative intent on the part of the contributors as develope d in the case law prior to the enactment of § 2501(a)(4). See also Kip Dellinger, Gift Tax on Political Contributions? A Lousy Idea!, 78 Tax Notes 621 (1998).□

MS&K Tax Alert

Potential Gift Tax Liability for Election Year Contributions to 501(c)(4) Social Welfare (Political?) Organizations, by Ofer Lion

October 14, 2010

Contributors to 501(c)(4) "social welfare organizations" may maintain their anonymity with respect to the public, but disclosure is still owed to the IRS, and contribution s by individuals may be subject to gift taxes.

Individual contributors to 501(c)(4)s may wish to consider carefully the possible gift tax implications of their contributions and to include documentation of related tax reporting positions (including any a dvice of counsel) with their tax records for the applicable year.

Numerous 501(c)(4)s have been in the news lately. Their tax exempt status (under section 501(c)(4) of the Internal Revenue Code (the "Code")) is being questioned as a result of substantial political activities relating to the upcoming elections. In addition, there has been concern expressed about large donors eluding normal IRS and Federal Election Commission disclosure rules by contributing money to those 501(c)(4)s. Citing media reports t hat question whether the tax code is being used to eliminate campaign finance transparency, Senator Max Baucus, as Chairman of the Senate Finance Committee, sent a September 28, 2010 letter to the IRS Commissioner demanding an examination of major tax exempt organizations involved in political campaign activity.

Tax exempt organizations are permitted varying levels of political campaign activity and have different disclosure obligations. Organizations exempt from federal income tax under the more well known section 501(c)(3) of the Code may not participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. The names and addresses of contributors to 501(c)(3)s, other than "private foundations," are not available for public inspection. At the other end of the spectrum, Code section 527 "political organizations" generally are required to be organized and operated primarily for the purpose of accepting contributions and/or making expenditures to try to influence political elections. 527s are subject to periodic reporting, which generally must include the names and addresses of all contributors of $200 or more during the calendar year.

501(c)(4)s fall somewhere in the middle. They may participate or interv ene in political campaigns on behalf of, or in opposition to, any candidate for public office, so long as they are not "primarily engaged" in those activities. Unlike 527s, tbey need not publicly disclose their contributors. As a result, it seems, 501(c)(4)s have become the vehicle of choice for campaign spending from anonymous sources, and vast sums have been flowing into them in anticipation of the upcoming elections.

There have been reports that the IRS Exempt Organizations division lacks the appetite and/or the capacity to pursue what arguably amount to campaign finance issues. Critics have pointed out that the IRS is set up to collect taxes, not to actively monitor political campaigns. Apparently, there is little revenue to be raised by tightly overse eing whether 501(c)(4)s have been "primarily engaged" in campaign activities in violation of their tax exempt status. However, it is possible that the gift tax is applicable to their individual donors.

Gift tax generally is imposed annually on the "trans fer of property by gift" by any individual (it is not applicable to corporations). It is unclear whether a particular contribution to a 501(c)(4) may be such a transfer under the applicable regulations. However, the IRS has indicated that "gratuitous trans fers to persons other than [527 organizations] are subject to the gift tax absent any specific statute to the contrary...." Transfers to 527s have a "specific statute to the contrary," excluding them from gift tax treatment. Charitable contributions to 501 (c)(3)s are eligible for a deduction from income taxes, but they also generally provide a deduction for gift tax purposes, effectively excluding them from the gift tax. Qualifying contributions to fraternal societies and veterans' organizations carry similar gift tax deductions.

On the other hand, there is no comparable statutory exclusion for contributions to 501(c)(4)s, and courts have upheld gift taxation of such contributions. Nonetheless, the IRS docs not appear to be actively attempting to enforce t he gift tax on contributions to 501(c)(4)s. The IRS perhaps is rightfully wary of the First Amendment and other constitutional challenges it would be sure to face, especially in light of the broadened freedom of speech positions taken by the Supreme Court earlier this year in the Citizens United case.

However, the IRS may soon find itself in receipt of a treasure trove of Form 990s, the annual information return for tax exempt organizations, reporting large election season contributions by individuals to 501(c)(4)s. The names and addresses of contributors to a tax exempt organization, other than a private foundation or a 527, generally are not available for public inspection, unlike the rest of the Form 990. Perhaps for that reason, seemingly little has be en made of the requirement that 501(c)(4)s disclose to the IRS, on Schedule B of Form 990, the names of contributors of $5,000 or more and the aggregate amount of such contributions.

With these reports in hand, the IRS may well find irresistible the pote ntial revenue to be raised from assessing gift taxes on 501(c)(4) contributors. In that regard, while the gift tax rate for 2010 is 35%, it is scheduled to increase to 55% beginning in 2011, in time for the 2012 presidential election season and likely an a ttendant vast increase in contributions to
501(c)(4)s.

Donors wishing to remain anonymous may feel the need to pay these sizable and perhaps unconstitutional gift tax assessments rather than challenge the tax in open court, and on the public record.

As indicated above, individual contributors to 501(c)(4)s may wish to consider carefully the possible gift tax implications of their contrihutions and to include documentation of related tax reporting positions (including any advice of counsel) with their t ax records for the applicable year. This concern generally may be applicable only to large contributors. Currently, the annual exclusion from gift tax generally applies to gifts of $13,000 or less to each recipient. The lifetime exclusion beyond that is $1 ,000,000. Note that the annual exclusion effectively is $26,000 per recipient for married couples.

If you have any questions about this Alert, please contact the author, Ofer Lion, (310) 312 3237, or any member of the Mitchell Silberberg & Knupp LLP Tax Department.

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For an article citing the author, see □Hey, Secret Big Political Donor, Don □t Forget the 35% Gift Tax,□ Forbes Magazine, October 14, 2010.

From: Shafer John H
Sent: Thursday, July 28, 2011 7:08 AM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: EO Tax Journal 2011-126

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2011-126 (Thursday, July 28, 2011)
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1 - The Lack of Guidance Conundrum - Part 2

2 - Groups Challenge Legality of IRS Regs as Failing to Properly Limit Campaign Activity by 501(c)(4) Organizations

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1 - The Lack of Guidance Conundrum - Part 2

Yesterday□s discussion of the lack of IRS guidance drew three immediate comments from three former IRSers. Here they are, in reverse alphabetical order (being an □S□ I□m very sensitive to alphabetical discrimination).

Mark Scott, former Director of the IRS□s Tax Exempt Bonds Division, had this to say:

□I agree with your thoughts on the lack of guidance, and would add a thought. I was in the Office of Chief Counsel as early as the mid eighties. I left D.C. for about ten years, and when I came back, I immediately noticed how the decline in guidance related directly to the inability of mid level executives to take responsibility for a substantial amount of guidance that used to be approved at their lower levels. If the Chief Counsel and Assistant Secretary assigned more responsibility to these executives and *selected* mid level executives who would take this responsibility the flow of guidance would dramatically increase.

□In other words, Counsel and Treasury need to spread responsibility and trust beyond the 3rd floor and Pennsylvania Avenue. Perhaps I'm jaded, but I do not expect political appointees (of either party) to cede this type of authority to technical experts in our current political climate, so I expect guidance will remain stuck in the current, narrow stove pipe.□

Conrad Rosenberg, retired EO Division Branch Chief, had this to say:

□I agree with you, Paul, that what is needed to improve the precedential publication process at IRS is simply the will to do it, and the guts, at Counsel and Treasury, to take the consequences when publications are criticized. The notion that it is the built in inefficiency of government, or the lack of modern technology, that causes the problem lacks historical perspective. Back in the day when desktop computers were something we were still reading about in sci fi stories, EO alone was able to publish 67 (if I recall the number correctly) precedential revenue rulings and procedures in a single year.

□As you no doubt remember, any time a private letter ruling was issued, the tax law specialist who wrote the ruling, and his or her reviewers, had to sign a sheet in the file that explained why it was not being sent forward to be published as a revenue ruling. Of course, the most common explanation was that there was published precedent, which had to be referenced, for the issue in question. Reviewers could, and often did, take issue with that conclusion, and sent the cases back to be re considered for publication.

□There were revenue ruling review sessions at the division level every Tuesday morning; attendance by all branch chiefs, plus the group chief in whose group the case originated, and the originating specialist and reviewer on the

case, was mandatory. That not only created pressure for publication, but it also kept management and staf f informed of the significant cases in the division. It served another purpose as well: it gave group managers an opportunity to showcase the work of their best young talent, and gave other managers the chance to make judgments on the quality of work of individual specialists with whom they were not otherwise familiar.

"Thus, the technical review meetings on revenue ruling drafts were valuable tools in considering young staffers for promotion, training, and so forth. The system was far from perfect many rulings took far too long to reach publication but it worked a damn sight better than today's method (whatever that might be) if indeed there is one. Revenue procedures, on the other hand, were often initiated from the compliance side of the house, rather than the technical branches, and some were routinized in the pipeline to be updated yearly.□

Milt Cerny, former EO Division Branch Chief and Technical Advisor, now with McGuireWoods, had this to say:

□Paul, I read with interest the roundtable discussion on the lack of guidance and your cogent remarks to which I largely agree. The problem lies in the fact that the guidance process should be in the hands of the IRS and not Treasury. There was a time at the IRS when the Assistant Commissioner (Technical) was responsible and held accountable for the publication of revenue rulings and revenue procedures. There was even a Technical Planning Division under the Assistant Commissioner that prepared regulations. Tax law spe cialists had to find authority for not publishing a letter ruling. That is why we had 60 or more published rulings as compared to the one or two we see today. When revenue rulings went to Treasury, Tax Legislative Counsel had a fixed number of days to requ est withholding publication and to discuss the matter with the IRS before the ruling was published. That system has been completely turned on its head.

□Guidance is important in the ever changing environment we find ourselves today. If Treasury cannot re spond in a timely manner, then the IRS should rethink its policy by making letter rulings precedent for other taxpayers to rely on. This could be done with regard to repetitive rulings on which the IRS has taken the same position. The main job of the National Office should be the direction of the program and guidance to the field offices and the public. Routine letter ruling functions should be delegated to the field offices if they are not being utilized in the development of guidance.

□Until the IRS is given back its authority and is held responsible for the program, we will not see any improvement in the system. The eight hundred pound gorilla in the room that no one talks about is that Treasury is geared to the political will of Congress and the Presid ent rather than to the interpretation of the tax laws as written by Congress, which is the IRS□s responsibility.□

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2 - Groups Challenge Legality of IRS Regs as Failing to Properly Limit Campaign Activity by 501(c)(4) Organizations

Crossroads GPS, Priorities USA Violate Tax Laws: Reform Groups Allege In IRS Petition
By Dan Froomkin, *Huffington Post,* July 27, 2011

WASHINGTON The Internal Revenue Service should crack down on organizations that are soliciting anonymous tax free donations for blatantly political purposes, two good government groups demanded Wednesday [July 27].

Political organizations like Karl Rove affiliated Crossroads Grassroots Political Strategies (GPS) have embraced 501(c)(4) tax status as a way to secretly funne l unlimited contributions from big donors into colossal political advertising buys unleashing a flood of secret campaign money the likes of which haven't been seen since Watergate. Unlike section 527 of the tax code, which was explicitly created for pol itical advocacy groups, section 501(c)(4) doesn't require groups to disclose their donors. But that designation was intended for what are known as "social welfare" groups.

In a petition for a rulemaking filed with the IRS Wednesday morning, Democracy 21 a nd the Campaign Legal Center ask the IRS to revise its regulations regarding eligibility for 501(c)(4) status on the grounds that current IRS enforcement allows far more political activity by social welfare groups than the actual law intended. Furthermore, they say, many of the overtly political groups currently claiming 501(c)(4) status don't come remotely close to

meeting even the existing standards Crossroads GPS being a prime example.

"If you look at the facts and circumstances here, you can't reach any conclusion other than that the overriding purpose of this organization is to influence elections," said Fred Wertheimer, president of Democracy 21 and dean of D.C.'s campaign reform community. "They're in the business of electing Republicans and defea ting Democrats," he added.

American Crossroads GPS has not yet been granted its 501(c)(4) status by the IRS, but it was one of several mostly conservative, often interrelated organizations that started reaping unlimited clandestine funds after the Supreme Court's decision in *Citizens United vs. Federal Election Commission* blew away caps on campaign donations established post Watergate.

The group was so successful that it inspired copycats on the other side of the political spectrum, most notably Priorities USA, a Democratic group launched in the spring by former aides of President Barack Obama. "Groups like Crossroads and Priorities, in our mind, are violating the existing regulations," Wertheimer told *HuffPost.*

IRS guidelines say social welfare groups "mu st operate primarily to further the common good and general welfare of the people of the community (such as by bringing about civic betterment and social improvements)." That explicitly "does not include direct or indirect participation or intervention in political campaigns on bebalf of or in opposition to any candidate for public office," although a group "may engage in some political activities, so long as that is not its primary activity." Another IRS advisory states that 501(c)(4) groups "may engage in only limited political campaign activity."

The petition requests the IRS to issue clear new regulations establishing precisely what type and level of campaign activity is allowable. And it cites language in the statute and in court rulings indicating tha t only groups operating "exclusively" as social welfare organizations qualify for the exemption. "That means you can't do more than an insubstantial amount of campaign activity and retain your 501(c)(4) tax status," Wertheimer said.

The petition states: "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 campaig n activities." And that bright line, the petition says, should be a low bar: "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."

Political groups organized as 501(c)(4)s currently take the position that as long as they spend 49 percent or less of their money on overtly election related campaign activity, then they qualify for the tax status. But if they do qualify which is far from clear it's by categorizing what they call "advocacy ads" on the "social welfare" side of their ledgers. These advocacy ads might meet the Federal Elections Commission's narrow definition of what constitutes electioneering communication, but they are nevertheless overtly political; almost without exception they slam elected officials in swing districts.

Crossroads GPS spokesman Jonathan Collegio could not be reached for immediate comment Wednesday morning, but he has previously stated that his organization operates "comfortably within the guidelines set out by the IRS" for social welfare groups. "GPS invested millions of dollars in social welfare issue advocacy advertising before the FEC's 60 day reporting window last summer," he wrote in an email in May.

Bill Burton, co founder of Priorities USA, said he rejected "the argument that we are not an organization that is primarily dedicated to a social welfare purpose." He denied that his group's purpose is to influence elections. "Our focus is on strengthening the middle class," he said. "Priorities USA was formed to help advance the middle class, and focus on issues that are important to middle class Americans."

The petition also calls on the IRS to explicitly rule out the increasingly common practice of 501(c)(4)s raising large amounts of money from anonymous donors then funneling that money to related 527 organizations, who can th en spend it on campaign ads.

Wertheimer and his allies are fighting what they consider the abuse of 501(c)(4) status on several fronts. Last October, they asked the IRS to investigate Crossroads GPS's tax status in particular. And in April, they sued the Federal Election Commission to close the loophole that allows 501(c)(4)s not to report their donors to the FEC as long as they claim donors were giving money to further the group's general agenda, rather than to buy campaign ads.

The petition calls for quick action: "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," it s tates. Wertheimer said he knows he is up against a long tradition of the IRS avoiding doing anything that smacks of political payback. And rulemakings can take years. "But we're trying to force the issue," he said. "If they [the IRS] don't do anything, we' ll have to look at what our options are."

Meanwhile, the money continues to pour in. The *Wall Street Journal* reported in March that Rove and fellow Republican strategist Ed Gillespie announced that Crossroads GPS and its 527 twin American Crossroads would be "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." The group launched its first ad against Obama in June, at a cost of $20 million.

Should groups like Crossroads GPS be denied their 501(c)(4) status, or have that status revoked, their tax problems could be considerable. Experts consulted by *The Huffington Post* have said they could suddenly owe the government a lot of money, either in taxes on donations received and/or in the form of a hefty fine for violating disclosure rules. And going forward, of course, they would have to disclose their donors.

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Democracy 21 News Release
July 27, 2011

Democracy 21 and Campaign Legal Center Challenge Legality of IRS Regulations as Failing to Properly Limit Campaign Activity by 501(c)(4) Organizations

Democracy 21 and the Campaign Legal Center filed a petition today [reprinted below] with the Internal Revenue Service challenging the legality of IRS regulations that define whether an organization that conducts campaign activity is entitled to obtain or maintain tax exempt status as a section 501(c)(4) organization. Under Section 553(e) of the Administrative Procedure Act, □Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.□

The petition states that existing IRS regulations permit section 501(c)(4) groups to make far more campaign expenditures than is allowed by the law. □IRS regulations are improperly permitting 501(c)(4) groups to spend far more money on campaign activity than is allowed by the Internal Revenue Code and by court rulings interpreting the Code,□ according to Fred Wertheimer, President of Democracy 21, which took the lead in preparing the IRS petition filed today.

□But even under these flawed IRS regulations, we believe that organizations like Crossroads GPS, the brainchild of Karl Rove, and Priorities USA, recently formed by two former Obama White Hou se officials, are still not entitled to 501(c)(4) tax exempt status. The overriding purpose of these groups is to influence elections, not to engage in □social welfare□ activities,□ Wertheimer said.

□Improper IRS regulations bave resulted in widespread abuses of the tax laws and allowed political organizations to operate under the guise of being section 501(c)(4) □social welfare□ groups in order to keep secret the donors who are financing their campaign expenditures. The IRS should promptly issue new regul ations and start to properly enforce the laws,□ Wertheimer said.

According to Paul Seamus Ryan, FEC Program Director & Associate Legal Counsel at the Campaign Legal Center, □The IRS has a duty to issue a clear set of regulations that state what type and level of campaign activity 501(c)(4) groups may engage in and maintain their tax exempt status. What we have seen in recent years is a

proliferation of (c)(4) political front groups that abuse their privileged tax exempt status to evade campaign finance disclosure laws. What was once a small trickle of abuse by these organizations is now a gusher. □

□It would be irresponsible of the IRS not to move promptly to rectify this shortcoming as section 501(c)(4) groups have become the vehicle of choice for anonym ous, massively funded political attack ads. A growing number of these organizations have nothing whatsoever to do with the promotion of □social welfare□ and everything to do with the promotion of □partisan warfare,□□ Ryan stated.

Petition for Rulemaking On Campaign Activities by Section 501(c)(4) Organizations

Before the Internal Revenue Service
U.S. Department of the Treasury

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 con form 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, nonprofit 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 s candals.

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 tbe 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 interpr eted 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) 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 d ecisions. 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 participat es 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 en forcing, 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 wit h 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 sa me 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 organizati on 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 interpretati on 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 ge nerating 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 ju st 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/

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 th e greatest amount of independent spending to influence the 2010 congressional races. /4/ Crossroads GPS is affiliated with American Crossroads, a nonprofit political organization registered under 26 U.S.C. §527. American Crossroads is registered with the F ederal 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, hoth 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 Gillesp ie.□ /6/ According to the *Los Angeles Times,* both groups □receive advice and fundraising support from Rove.□ /7/

16. According to the Center for Responsive Politics, Crossroads GPS spent a total of $17.1 million on campaign activity, including both indepe ndent 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, lea st of all one associated with Rove, who Democrats still revile for his role in running former President George W. Bush□s political operation.

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 A merican 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 spending in a spe cial 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, t he section 501(c)(4) groups were primarily pro Republican groups.) According to an article in the *Los Angeles Times*(April 29, 2011), former Obama 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 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

24. The Center for Responsive Politics reports that, in ag gregate, 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) organ izations 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 higger 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 campa ign spending. This may not he 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 th at 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.

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 <u>operated exclusively</u> 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 i ndirect 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 requiremen t 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.

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 nonprofit 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 promp tly 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 tbe IRC. The regulations also would have the effect of greatly diminishing the pra ctice 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 50 1(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 ex penditures 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 it transfers funds to a section 527 organization or to any other person with the intention or reasonable expec tation 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 offic ials 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 sectio n 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 pro vide 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,

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July 27, 2011

Footnotes

/1/ *See* http://www.opensecrets.org/outsidespending/summ.php?cycle 2010&disp O&type U&chrt D.

/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).

/4/ Democracy 21 and the Campaign Legal Center filed an IRS complaint against Crossroads GPS on October 5, 2010, requesting t he IRS to investigate whether Crossroads GPS was operating in violation of the current requirements for obtaining or m aintaining 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 beh alf 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).

/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).

/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).

/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).

/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.

/19/ *See* http://www.opensecrets.org/outsidespending/summ.php?cycle_2010&chrt_V&disp_O&type_E_.

/20/ *See* http://www.opensecrets.org/outsidespending/summ.php?cycle_2010&chrt_D&disp_O&type_U.

/21/ Doyle, *BNA Report, supra.*

/22/ Congressional Research Service, □501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Law, □ R40183 (January 29, 2009) at 2.

SFC 002496

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 82 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	

SFC 002497

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)				

IRS0000385549

SFC 002498

Subject	Location	Start	End
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 002499

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 002500

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/Commisisoner, 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)				

SFC 002501

Subject	Location	Start	End
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)			

SFC 002502

Subject	Location	Start	End	RC
Lunch w/Nancy Killifer	Central	Wed 2/9/2011 1:00 PM	Wed 2/9/2011 2:15 PM	
Start: Wednesday, February 09, 2011 3:00 PM (1 item)				
360 Assessments		Wed 2/9/2011 3:00 PM	Wed 2/9/2011 3:30 PM	
Start: Wednesday, February 09, 2011 3:30 PM (1 item)				
CAP Discussion w/Commissioner, Jonathan/Carol, Heather, Paul D...	3000	Wed 2/9/2011 3:30 PM	Wed 2/9/2011 4:00 PM	
Start: Wednesday, February 09, 2011 4:00 PM (1 item)				
Conference Calls	3000	Wed 2/9/2011 4:00 PM	Wed 2/9/2011 5:00 PM	
Start: Thursday, February 10, 2011 11:00 AM (1 item)				
Monthly Meeting w/Colleen Kelley	3000	Thu 2/10/2011 11:00 AM	Thu 2/10/2011 12:00 PM	
Start: Thursday, February 10, 2011 12:00 PM (1 item)				
Tape Video Greeting for Town Hall Meetings	7141	Thu 2/10/2011 12:00 PM	Thu 2/10/2011 12:30 PM	
Start: Thursday, February 10, 2011 1:15 PM (1 item)				
CI Transport		Thu 2/10/2011 1:15 PM	Thu 2/10/2011 1:30 PM	
Start: Thursday, February 10, 2011 1:30 PM (1 item)				
Rep. Serrano		Thu 2/10/2011 1:30 PM	Thu 2/10/2011 2:30 PM	
Start: Thursday, February 10, 2011 3:00 PM (1 item)				
Call w/Jack Brennan		Thu 2/10/2011 3:00 PM	Thu 2/10/2011 3:30 PM	
Start: Thursday, February 10, 2011 3:30 PM (1 item)				
One on One w/Commissioner and Karen	3000	Thu 2/10/2011 3:30 PM	Thu 2/10/2011 4:00 PM	
Start: Thursday, February 10, 2011 4:00 PM (1 item)				
One on One w/Commissioner and Steve	3000	Thu 2/10/2011 4:00 PM	Thu 2/10/2011 4:30 PM	
Start: Thursday, February 10, 2011 4:30 PM (1 item)				
Call w/Pam Olson	(202) 371-7...	Thu 2/10/2011 4:30 PM	Thu 2/10/2011 5:00 PM	
Start: Friday, February 11, 2011 8:30 AM (1 item)				
Dr's Appointment		Fri 2/11/2011 8:30 AM	Fri 2/11/2011 10:30 AM	
Start: Friday, February 11, 2011 10:45 AM (1 item)				
CI Transport w/Floyd		Fri 2/11/2011 10:45 AM	Fri 2/11/2011 11:00 AM	
Start: Friday, February 11, 2011 11:00 AM (1 item)				
Meeting with Congressman Camp	H-208 The ...	Fri 2/11/2011 11:00 AM	Fri 2/11/2011 12:00 PM	
Start: Friday, February 11, 2011 1:00 PM (1 item)				
Fresh Start Initiative w/Commissioner, Jonathan, Steve, Beth, Nik...	3313/Conf ...	Fri 2/11/2011 1:00 PM	Fri 2/11/2011 2:00 PM	
Start: Friday, February 11, 2011 2:00 PM (1 item)				
Hiring w/Commissioner, Steve and Beth (by phone)	3000/Corina...	Fri 2/11/2011 2:00 PM	Fri 2/11/2011 2:30 PM	
Start: Friday, February 11, 2011 2:30 PM (2 items)				
Call w/Joanne Emerson		Fri 2/11/2011 2:30 PM	Fri 2/11/2011 2:45 PM	
Meeting Prep w/Commissioner, Frank and Sarah and Pam	3000	Fri 2/11/2011 2:30 PM	Fri 2/11/2011 3:00 PM	
Start: Friday, February 11, 2011 3:30 PM (1 item)				
Call with Bob Kerrey	he will call us	Fri 2/11/2011 3:30 PM	Fri 2/11/2011 4:30 PM	
Start: Monday, February 14, 2011 8:45 AM (1 item)				
CI Transport from Home		Mon 2/14/2011 8:45 AM	Mon 2/14/2011 9:15 AM	
Start: Monday, February 14, 2011 11:00 AM (1 item)				
Prep for March 1 House Appropriations Hearing	3000	Mon 2/14/2011 11:00 AM	Mon 2/14/2011 12:00 PM	
Start: Monday, February 14, 2011 1:00 PM (1 item)				
APA w/Commissioner, Carol, Bill and John Hinding	3000	Mon 2/14/2011 1:00 PM	Mon 2/14/2011 2:00 PM	
Start: Monday, February 14, 2011 2:00 PM (1 item)				
Staffing w/Commissioner, Steve and Beth	3000	Mon 2/14/2011 2:00 PM	Mon 2/14/2011 2:30 PM	
Start: Monday, February 14, 2011 2:30 PM (1 item)				
CI transport to Airport		Mon 2/14/2011 2:30 PM	Mon 2/14/2011 3:30 PM	
Start: Monday, February 14, 2011 3:34 PM (1 item)				
United Flight to Chicago O'Hare		Mon 2/14/2011 3:34 PM	Mon 2/14/2011 4:35 PM	
Start: Monday, February 14, 2011 4:00 PM (1 item)				
Meeting with Staff	Secretary's ...	Mon 2/14/2011 4:00 PM	Mon 2/14/2011 5:00 PM	
Start: Monday, February 14, 2011 6:00 PM (1 item)				
Filing Season Status w/Commissioner, Jonathan, Carol, Beth, Stev...	202-927-22...	Mon 2/14/2011 6:00 PM	Mon 2/14/2011 6:30 PM	

SFC 002503

From: Shafer John H
Sent: Friday, October 08, 2010 1:19 PM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: BOLO Tab Update

Importance: Low
FYI

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
Telephone: S SFC [redacted]
FAX: S SFC F [redacted]

From: Camarillo Sharon L
Sent: Friday, October 08, 2010 1:09 PM
To: Shafer John H
Cc: Thomas Cindy M
Subject: FW: BOLO Tab Update
Importance: Low

John: Please ask your screeners to be on the lookout for these cases.

From: Waddell Jon M
Sent: Thursday, October 07, 2010 8:25 AM
To: Bowling Steven F; Camarillo Sharon L
Subject: BOLO Tab Update
Importance: Low

Steve and Sharon,

We have discovered some new components to the **Acorn-Related Category** listed on the **BOLO Tab as Issue #3.** Specifically, we have identified two additional Acorn-Related coming out of SFC [redacted] both sharing the same address. As was the situation the currently assigned two SFC [redacted] cases, one is applying as a c(3) and one as a c(4). The officers of the organizations had prior affiliations with Acorn as members of boards on various chapters. The names of the applicants are as follows:

1. SFC [redacted] **.= 501(c)(3) Applicant**

2. SFC [redacted] **.= 501(c)(4) Applicant**

Overall, I would suggest an alert be sent informing agents/screeners that to be on the lookout for the following name an application factors associated with Acorn related cases. Additionally, during the next spreadsheet update, add these factors to the Watch Issue Description section for this category. Name and Application Factors are as follows:

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

Issue Name	Watch Issue Description	Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or closed)
[redacted]	SFC [redacted]	[redacted]	[redacted]	[redacted]	[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]	SFC [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	SFC [redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	8/6/10

SFC 002505

All,

Attached is the latest BOLO updates. Issue # 24 has been added to the Watch List. Be on the looko

The issue description for **Current Political Issues** located in the Emerging Issue Tab has been revis

Please contact me with any questions or concerns.

Ron Bell
Emerging Issues Coordinator
513-263-3660

ut for an application from SFC [redacted].

ed. Watch list issues #2 Acorn Successors and #21 "Occupy" Organizations from the last BOLO Alert

dated 3-26-12 have been removed and now are to be included in the description for Current Political Issu

ues.

SFC 002509

From: Paz Holly O
Sent: Thursday, May 02, 2013 12:12 PM
To: Lerner Lois G
Subject: Congressional staffer wants to talk to us about potential c4 legislation

Importance: High

Lois,

I spoke with Pete Davila in Leg Affairs regarding a request they have received from a staffer to Congressma SFC office. The staffer said the Congressman is interested in crafting legislation regarding c4s and 527s and would like to talk to someone from the IRS about question SF has. Specifically SF wants to know more about:

- what triggers an audit of a c4?

- what are IRS questionnaires? How are they used? (I asked Leg Affairs if this question was about the 4, 5 and 6 questionnaire or just a general question and they indicated it was about questionnaires in general)

- the availability of information about 527s

Leg Affairs has the sense that this staffer knows very little about the EO area. Leg Affairs (Cathy Barre does know about this request) thinks this is not a very sensitive request because Cong SFC is not on the Ways and Means committee.

The staffer would like to talk to someone early next week.

Please let me know how you would like to handle this request.

Thanks,

Holly

SFC 002510

From: Shafer John H
Sent: Friday, October 08, 2010 1:19 PM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: BOLO Tab Update

Importance: Low
FYI

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
SFC [redacted]

From: Camarillo Sharon L
Sent: Friday, October 08, 2010 1:09 PM
To: Shafer John H
Cc: Thomas Cindy M
Subject: FW: BOLO Tab Update
Importance: Low

John: Please ask your screeners to be on the lookout for these cases.

From: Waddell Jon M
Sent: Thursday, October 07, 2010 8:25 AM
To: Bowling Steven F; Camarillo Sharon L
Subject: BOLO Tab Update
Importance: Low

Steve and Sharon,

We have discovered some new components to the **Acorn-Related Category** listed on the **BOLO Tab as Issue #3**. Specifically, we have identified two additional Acorn -Related coming out of Pennsylvania both sharing the same address. As was the situation the currently assigned two New York cases, one is applying as a c(3) and one as a c(4). The officers of the organizations had prior affiliations with Acorn as members of boards on various chapters. The names of the applicants are as follows:

SFC [redacted] **501(c)(3) Applicant**

SFC [redacted] **501(c)(4) Applicant**

Overall, I would suggest an alert be sent informing agents/screeners that to be on the lookout for the following name an application f actors associated with Acorn related cases. Additionally, during the next

spreadsheet update, add these factors to the Watch Issue Description section for this category. Name and Application Factors are as follows:

1. **The name(s) Neighborhoods for Soci al 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 Po licy Makers (i.e Politicians) on the above subjects

thanks

SFC 002512

From: Daly Richard M
Sent: Thursday, March 29, 2012 1:34 PM
To: Grant Joseph H; Medina Moises C; Lerner Lois G; Marx Dawn R; Downing Nanette M; Paz Holly O; Marks Nancy J; Urban Joseph J
Cc: Miller Steven T; Flax Nikole C; Williams Floyd L
Subject: TIGTA announces audit of our processs for reviewing I 501(c)(4)-(6) applications

Troy Paterson advises that TIGTA will look at how we process applications for tax -exemption by (c) (4)s, (5)s and (6)s.

He says the audit will be part of TIGTA's FY 2013 Audit Plan, but some pre -audit planning activity will take place. He provides no dates, but I've left a message asking if any are set yet.

Tom Seidell and Cheryl Medina will be involved for TIGTA.

Mike

From: Rutstein Joel S
Sent: Thursday, March 29, 2012 2:12 PM
To: Daly Richard M
Subject: FW: Planning/Research Activities: Review of Internal Revenue Service's Process for Reviewing Applications for Tax Exemption by Potential 501(c)(4)-(6) Organizations

FYI

From: Paterson Troy D TIGTA [SFC [redacted]]
Sent: Thursday, March 29, 2012 1:55 PM
To: Rutstein Joel S
Cc: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA; McGovern Michael A TIGTA; Lerner Lois G
Subject: Planning/Research Activities: Review of Internal Revenue Service's Process for Reviewing Applications for Tax Exemption by Potential 501(c)(4)-(6) Organizations

Joel,

This e-mail is to inform you of an audit we plan to conduct of the IRS's process for reviewing applications for tax exemption by potential section 501(c)(4), 501(c)(5), and 501(c)(6) organizations, which will be in cluded in our Fiscal Year 2013 Annual Audit Plan. Currently, we do not have an associated audit number. Once we receive a number, I will provide it to you.

To develop an understanding of the controls in the area, we will be conducting a limited amount of planning to develop the appropriate scope for this audit. We will follow the established process of coordinating interviews and requests through the appropriate points of contact within the Tax Exempt and Government Entities Division's Exempt Organizations function. Once we have completed our planning, we will prepare and issue an engagement letter. If you have any questions or comments, please feel free to contact me or the research team mentioned below.

Troy Paterson
Audit Director
Phone: SFC [redacted]
e-mail: SFC [redacted].

Tom Seidell
Audit Manager
Phone: SFC
e-mail: SFC.

Cheryl Medina
Lead Auditor
Phone: SFC
e-mail: SFC.

Mike McGovern
Auditor
Phone: SFC
e-mail: SFC.

From: Williams Floyd L
Sent: Friday, March 02, 2012 2:32 PM
To: Shulman Doug; Davis Jonathan M (Wash DC); Onorato Corina R
Cc: Flax Nikole C; Barre Catherine M
Subject: FW SFC [redacted] application for tax-exempt status
Attachments: SFC [redacted] letter and documents.pdf

Senato SFC wants to talk to you about this issue at 9:30 Monday morning. A brief summary of the issue is in the e mail below. SFC [redacted] has been turned down twice for expeditious treatment. Generally an organization has to show that it has signif icant donations/grants contingent on receiving a ruling by a date certain to get expeditious treatment.

I don't think you need to spend a lot of time learing about the case. (And, of course, you should explain that you do not get directly involved in cases.) Rather, I would suggest just listening to what Senato SFC has to say and telling S that you will let the EO staff know S reasons for thinking the case should be expedited.

Senato SFC office has a disclosure authorizati on from the organization.

From SFC [redacted]
Sent: Tuesday, February 21, 2012 5:08 PM
To: Williams Floyd L
Subject SFC [redacted] application fo r tax exempt status

Floyd:

Thanks so much for taking my call today. Attached are the letter and documents that we provided to your office on February 8th, outlining the issue at hand.

SFC [redacted] is requesting timely review of its Form 1023 application for tax exempt status. Its original request was submitted October 17, 2011.

SFC [redacted] fits the profile of a "new markets" district, with its low income and high unemployment profile SFC will acquire, finance, construct, rehabilitate and lease to th SFC [redacted], a 125,000 175,000 square foot building for use as a municipal office facility with street level retail.

Bot SFC an SFC separately submitted form 1023 to the IRS on October 17, 2011. Onl SFC received a tax - exemption determination letter dated December 19, 2011 from the IRS.

Further delay in securing exemption will challenge the ability for this project to utilize new market tax credit finan cing. It was reported to our office from the City that CDFI Fund (Community Development Financial Institutions Fund) is set to make allocation announcements as early as end of this week.

Any assistance in expediting processing of their application would be very helpful.

Thanks again,
Leslie

SFC 002515

SEC [redacted]

[redacted]

[redacted]

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 8:09 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST

From: Paz Holly O
Sent: Thursday, March 08, 2012 4:49 PM
To: Thomas Cindy M
Subject: RE: letters

Still waiting on answer about withdrawals. Lois' initial answer was that it was OK but she was checking with Nikole. I will follow up.

From: Thomas Cindy M
Sent: Thursday, March 08, 2012 4:43 PM
To: Paz Holly O
Subject: RE: letters

I don't know its origin. I've not seen the question in the past but perhaps it could be in someone' s canned list of questions. If you need for me to find out, let me know.

I'd like to send out 1 comprehensive email with the things you, Mike and I discussed the other day and can include the information from the email below. Did you find out whether it is okay for us to close "withdrawals" if the organization requests it?

From: Paz Holly O
Sent: Thursday, March 08, 2012 4:24 PM
To: Thomas Cindy M
Subject: FW: letters

Cindy,

In addition to everything you, Mike and I discussed the other day, if advocacy orgs that were asked to provide 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 d evelopment letter). Two SFC [redacted]) of the 7 development letters I have seen contained the following question:

1. Provide the following information for the income you received and raised for the year s from inception to the present. Also, provide the same information for the income you expect to receive and raise for 2012 and 2013.

   a. Donations, contributions, and grant income for each year which includes the following Information:

      - The names of the donors, contributors, and grantors. If the donor, contributor, or grantor has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
      - The amounts of each of the donations, contributions, and grants and the dates you received them.
      - How did you use these donations, contributions, and grants? Provide the details.

Is this a question we regularly ask in other contexts? Interestingly, it is not on the list of advocacy org questions you sent to Andy/Justin.
So I'm curious as to its origin.

Thanks!

Holly

From: Lerner Lois G
Sent: Thursday, March 08, 2012 10:36 AM
To: Thomas Cindy M
Cc: Paz Holly O
Subject: FW: letters

FYI--Holly will call you after we get back from the Hill

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Thursday, March 08, 2012 10:35 AM
To: Flax Nikole C
Cc: Paz Holly O
Subject: RE: letters

Confirmed. All letters are on hold until we've modified the info request and yes, we will allow other info for contributor names, unless after reading everything, we feel we really need them --and that would be a discussion with DC

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, March 08, 2012 10:30 AM
To: Lerner Lois G
Subject: letters

Lois - maybe we can chat after the meeting. Steve wanted to make sure that going forward we were modifying the info request (I told him that I thought your guys were already working on it) and that for the cases already on going, that is was clear that if the TP calls, we will allow them not to send donor names in the initial submission (but we may need later). Thanks

SFC 002518

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 8:18 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST
Attachments: QuestionnairesSamples.doc

Importance: High

From: Seok Stephen D
Sent: Friday, March 23, 2012 2:07 PM
To: Thomas Cindy M
Subject: ADVOCACY QUESTIONS REFERENCE
Importance: High

Mrs. Thomas,

Here are the questions distributed to my Team Members just for reference, not as a template.

Thank you,
Stephen.

From: Thomas Cindy M
Sent: Friday, March 23, 2012 1:47 PM
To: Seok Stephen D
Subject: Advocacy Questions NEED INFO ASAP
Importance: High

Stephen,

Were the attached questions given out to team members to use? If not, were other questions given to them? If other questions were given to them, please forward those questions to me. If other questions weren't given to them, what was, i.e., just the guide sheet from EOT?

I need this information ASAP. I'm on the phone with Lois Lerner. Thanks

1) In your Form 1023 application, you provided the fliers of two types of activities (Constitution education and essay project and workshops on the Constitution). Provide the following information for all the events you have held from inception to the pre sent:

   a) The time, location, and content schedule of each event

   b) A copy of the handouts you provided to the audience

   c) Identify the education and workshop materials that instructors used

   d) The names and credentials of the instructors

   e) If speeches or forums were co nducted in the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members were paid, provide the amount paid for each person. If not, please indicate that they volu nteered to conduct the event.

   f) The names of persons from your organization and the amount of time they spent on the event. Indicate the name and amount of time they spent on the event. Indicate the name and amount of compensation that was paid to each perso n. If no one was paid, indicate this event was conducted by volunteers to each person.

   g) Indicate the percentage of time and resources you spent on these activities in relation to 100% of all your activities.

   Note: You do not need to submit any materials that you already provided with your Form 1023 application. See the attached. They are the ones you already submitted.

2) Provide the following information for all the events you will conduct for 2012 and 2013:

   a) The time, location, and content schedule of ea ch event

   b) Identify handouts you provided to the audience

   c) Identify workshop materials that instructors will use

   d) The names and credentials of the instructors

   e) If speeches or forums will be conducted in the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members will be paid, provide the amount will be paid for each person. If not, please indicate they volunteered to conduct the event.

   f) The names of persons from your or ganization and the amount of time they will spend on the event. Indicate the name and amount of time they will spend on the event. Indicate the name and amount of compensation that will be paid to each person. If no one will be paid, indicate this event will be conducted by volunteers to each person.

   g) Indicate the percentage of time and resources you will spend on these activities in relation to 100% of all your activities.

3) Provide the following information for your web and internet related activities:

a) Copies of your current web and intemet pages. If you are a membership organization, please include all the pages that are accessible only to your members, .

b) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

c) Expense amounts incurred for these activities for 2010 and 2011.

d) Expense amounts to be incurred for these activities for 2012 and 2013.

4) Provide the following for your publishing activities:

a) Copies of all the publications and/or adve rtising materials that you have distributed or will distribute.

b) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

c) Expense amounts incurred for these activities for 2010 and 2011

d) Expense amounts to be incurred on these activities for 2012 and 2013

5) Have you conducted or will you conduct rallies or exhibitions for or against any public policies, legislations, public officers, political candidates, or like kinds? Provide the following for all the events you have conducted and will conduct for 2012 and 2013:

a) The time, location, and content schedule of each rally or exhibition

b) Provide copies of handouts you provided or will provide to the public.

c) The names of persons from your organization a nd the amount of time they have spent or will spend on the event. Indicate the name and amount of time they spent on the event. Indicate the name and amount of compensation paid or will be paid to each person. If you did not pay or will not pay anyone, the n, indicated the event was or will be conducted by volunteers.

d) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

e) Expense amounts incurred for these activities for 2010 and 2011

f) Expense amounts to be incurred for these activities for 2012 and 2013

If not, please confirm by answering "No" to this question.

6) Have you conducted or will you conduct candidate forums or other events at which candidates running for pu blic offices are invited to speak? If so, provide the following details and nature of the forum including:

a) The names of candidates invited to participate

b) the names of the candidates who did participate

c) The issues that were discussed

d) The time and location of the event

e) copies of all handouts provided and distributed at the forum, including any internet or advertising material discussed or used at the forum.

f) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

7) Have any candidates running for public office spoken or will they speak at a function of your organization?

a) If so, provide the names of the candidat es, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any speeches given by the candidate(s).

b) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

8) Have you distributed or will you distribute materials or conduct ot her communications that are prepared by another organization or person? If so, provide the following:

a) Copies of materials and contents of communications

b) When and where the distribution have been conducted or will be conducted?

c) Who has distributed or will distribute the materials?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

9) Will you, or have you ever, conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides? If so, provide the following:

a) What is the location, date and time of the events?

b) Who on the organization's behalf have conducted or will conduct the voter registration or get out to vote drives?

c) Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

10) Have you engaged or will you engage in business dealings with any candidate(s) for p ublic office or an organization associated with the candidate, such as renting office space or providing access to a membership list?

If so, describe the relationship in detail and copies of any contracts or other agreements documenting the business rela tionship.

If not, please confirm by answering "No" to this question.

11) Have you attempted or will you attempt to influence the outcome of specific legislation? If so, provide the following:

a) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation.

b) Provide copies of any radio, television, or internet advertisements relating to your lobbying activities

c) Please indicate the percentage of time and resources you have spent or w ill spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

12) Do you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and contents of other form of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No " to this question.

13) Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

a) Provide the name, employer identification number, and address of the organizations

b) Describe in detail the nature of the rel ationship(s).

c) Do you work with those organization(s) regularly? Describe the nature of the contacts.

d) List shared employees, volunteers, resources, office space, etc. with the organization(s).

e) Please indicate the percentage of time and resources you have sp ent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

14) Provide the following for your fundraising activities:

a) Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non -election year.

b) Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, and webpage solicitations.

c) How much of your organization's budget is spent on fundraising?

d) What are the sources of the fundraising expenses?

e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activitie s.

15) If you have conducted or will conduct any activities other than the ones we have already cited, provide answers for the following questions regarding past, present and future activities. If you have not conducted and will not conduct any other activit ies, please confirm by answering "No" to this question.

a) What does the activity/service entail?

b) Who conducts the activity/service?

c) When and where is the activity/service conducted?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If you have not conducted or will not conduct any activities other than the ones we have already cited, please confirm by answering "No" to this question.

16) Please provide the following information for your board of directors and officers:

a) Provide all copies of your corporate minutes from inception to the present.

b) Provide the titles, duties, work hours, and compensation amounts of your board members, officers, and employees. If they only work for a certain time yearly, bi -yearly, or quad-yearly, please provide the periods they had (have) worked and will work. Please identify your volunteers.

c) If you have a board member or officer who has run or will run for a public of fice, please describe fully. If none, please confirm by answering "None" to this question.

17) Are you a membership organization? If so, provide the following for your membership:

a) How many members do you have currently?

b) What does the memberships consist o f? Are they mostly individuals? What is the percentage of the organizational members as they are part of the whole membership?

c) Provide member application/registration form

d) Provide membership agreement and rules that govems members.

e) Provide a membership fee schedule.

f) What are the membership requirements?

g) What services and benefits do you provide especially for members only?

h) What are the roles and duties of your members?

i) Provide copies of your website that your members can only access.

18) Provide the following information for the income you received and raised for the years from inception to the present. Also, provide the same information for the income you expect to receive and raise for 2012, 2013, and 2014.

a) Donations, contributions, and grant income f or each year which includes the following Information:

- The names of the donors, contributors, and grantors. If the donor, contributor, or grantor has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each of the donations, contributions, and grants and the dates you received them.
- How did you use these donations, contributions, and grants? Provide the details.

If you did not receive or do not expect to receive any do nation, contribution, and grant income, please confirm by answering this question "None received" and/or "None expected".

b) The amounts of membership income received for each year. If you did not receive or do not expect to receive any membership income , please confirm by answering this question "None received" and/or "None expected".

c) The amounts of fundraising income received for each year. If you did not receive or do not expect to receive any fundraising income, please confirm by answering this qu estion "None received" and/or "None expected".

d) The amounts of any other incomes received for each year. If you did not receive or do not expect to receive any other incomes, please confirm by answering this question "None received" and/or "None expecte d".

NOTE: Please do not attach tax returns or ledgers to respond to the above questions.

19) Provide the following information for the expenses you incurred for the years from inception to the present. Also, provide the same information for the expens es you expect to incur for 2012, 2013, and 2014.

a) Donation, contribution, and grant expenses for each year which includes the following Information:

- The names of the donees, recipients, and grantees. If the donee, recipient, or grantee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each of the donations, contributions, and grants and the dates you donated, contributed, or granted them.
- The amounts of each of the donations, contributions, and grants and the dates you expect to donate, contribute, or grant them.
- Provide the reasons for issuing the donations, contributions, and grants.

If you did not issue or do not expect to issue receive any donations, contributions, and grants, please confirm by answering this question "None to be provided".

b) Compensation, salary, wage and reimbursement expenses for each year with the following information:

- The names of the payees. If the payee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each payment and the dates you made or expect to make each payment.
- The services the payee provided in return for the payment.
- Provide the reasons for issuing the donations, contributions, and grants?

c) The lists and amounts of any other expenses for each year.

NOTE: Please do not attach tax returns or ledgers to respond to the above questions.

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1. Submit copies of emails you sent to educate members about political issues and describe in detail how you encourage members to voice their opinions.
2. Describe in detail your proposed mailings regarding political issues. State whether these mailings are sent only to your members, visitors to your website, or general mass mailings.
3. Provide copies of your web pages.
4. Submit copies of materials from Facebook, Meetup and Twitter.
5. Provide resumes for your board members.

6. You indicated that you are h osting "Meet and greets" and town hall meetings. Therefore, provide copies of literature used to promote these events and a list of candidates and/or elected officials who attended and their political affiliation. Also, provide copies of materials distribu ted at the event.

7. Explain the criteria you used when selecting individuals for your "Meet and greets".

8. Provide copies of the printed agenda from your meetings and educational events for the past year.

9. Describe in detail your educational events, includin g topics that you cover, any particular motivational activities, and copies of any publications presented.

10. Provide copies of contracts and agreements that you have as well copies of agreements that you plan to enter in to.

11. Describe in detail your Advoca cy Training, and provide copies of any publications concerning such training.

12. Give detailed examples on how you will educate the public concerning key legislation and the positions of political candidates and elected officials on that legislation.

13. Provide a list of speakers and their qualifications for the events you have held in the last year.

14. Provide copies of board meeting minutes since your inception

15. You indicated that you have organized public awareness events including debates, forums and issued related seminars and rallies. Complete the following concerning these events:

    a. Provide a specific list of events including who participated and the location of the event.
    b. Provide copies of promotional materials used for each of your events.
    c. Provide copies of literature handed out at these events.

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1. Provide a detailed breakdown of your expenses.

2. Provide copies of all Board meeting minutes to date.

3. You state that you are the "educational arm" of AAA Council and that you are a servant to member groups throughout State. However, you have not explained in detail what you mean by "educational arm" and "servant." Provide the following information:

    a. Describe in detail specifically what activities you engage in as an "educational arm" of the AAA Council.

    b. Provide copies of any and all materials related to being the "educational arm" of the AAA Council, including but not limited to any documents, brochures or other resources you have provided to the AAA Council.

    c. Explain in detail what you mean by "servant" to member groups and describe in detail the activities you undertake in this regard and state to what member groups or other organizations you have provided such services.

4. Provide a detailed description of any and all political c ampaign and/or election activity that you have engaged in to date. In addition, provide the following:

    a. Copies of any and all materials you have published or distributed, in print, on - line or otherwise, expressing support or opposition to a candidate for public office.

    b. Copies of any and all materials you have distributed with regards to any political campaign to date.

5. You have indicated that your services include the planning, facilitating, and executing of educational events for BBB Party.

    a. State whether you have planned, facilitated and/or executed any educational events for BBB Party or any other organization. If so, explain in detail.

    b. Provide a detailed explanation of the types of educational activities that you engage in or have engaged in to date .

    c. Describe in detail the content of the educational events that you provide or have provided including copies of any and all materials related to these and any other events, including materials advertising the event, distributed at the event, or otherwise.

    d. Provide a detailed explanation of any other recipients of such educational activities.

    e. Explain who within your organization or otherwise undertakes these educational activities, organizes events and programs, and provides the educational content.

6. In your response to our Date letter, you indicated that you had not and would not engage in any type of voter education activities, including candidate forums, get out the vote drives, or voter registration. However, you indicated that you will provide "spec ific education on the process of becoming a county precinct member."

    a. With regards to your purpose of educating on the process of becoming a county precinct member, state whether this is your only activity. If no, describe in detail what other activities you engage in.

    b. Provide a detailed explanation of how you educate and who you educate on the process of becoming a county precinct member including whether you educate individuals on how to get elected as a county precinct member in any manner.

    c. Provide copies of any and all materials to date that you have published or distributed in any manner related to your educational activities and your activities related to educating on the process of becoming a county precinct member.

7. You indicated that you seek to centralize the accounting functions of member groups by providing a central tax-deductible donation vehicle for educational opportunities.

    a. To date, state what the status of this activity is.

    b. Explain in detail what activities you are engaged in or will engage in to undertake this function.

    c. Explain who the "member groups" are that you are referring to.

    d. Explain why organizations would seek to solicit donations from you as opposed to seeking contributions from the general public for their educational act ivities?

8. You indicated in your Form 1023, Part Z, question Y, that you will "raise funds to be utilized under a grant process for other organizations. These organizations will apply for grants to complete educational activities with their current organiz ation." With regards to this activity:

    a. To date, state whether you have raised funds for other organizations. If so, provide a detailed description of the organization and/or individuals that have provided funds, the amount of the funds provided, and if any of the funds have been utilized, including a detailed description of what the funds were utilized for.

    b. To date, state whether you have made any grants to other organizations. If so, provide a description of the organization, the amount of money grant ed, a copy of their grant application, and any other related documents.

    c. If you have not made any grants to date, state whether you are currently considering any grant applications. If so, provide a detailed description of the

organization and the activities for which they are seeking grant money, and the amount of the grant requested.

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1. Submit your completed financial data for 20 10, financial data for 2011 to date, and proposed budgets for the remainder of 2011 and 2012. If you have filed Form 990, Return of Organization Exempt From Income Tax (or any other tax return), for years 2009 or 2010, submit a copy of any such returns.

2. Provide a detailed breakdown of your expenses.

3. Provide a detailed narrative of your ac tivities dating from your letter dated June 8, 2010, including a break down of:

   d. The amount of time your members and/or volunteers devoted to each activity.
   e. The amount of financial resources devoted to each activity.

4. In your Form 1024, you indicate that your financial support would be from contributions and sales of merchandise. Submit copies of all solicitations you have made regarding fundraising, copies of all documents relating to your fundraising events (including pamphlets, flyers, brochures, and webpage solicitations), and a statement detailing how much of your budget is spent on fundraising, and the source of your fundraising expenses.
   f. Regarding your sales of merchandis e, provide a detailed list of the items you sell or plan to sell.

5. In your answer to Question 15 on your Form 1024 (whether you have spent or plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public offic e or to an office in a political organization) you stated: "No monies have been spent in the past, but an approximate 20% of (your) budget will be set aside for future considerations." Describe in detail:
   g. Any and all planned expenditures of mone y you have set aside for this purpose.
   h. Any and all expenditures you have made.

6. Regarding your Advocacy Training, you sent us a statement of your goal, your objectives to achieve the goal, Patriot Commitments, aaa Team Policy Statement, and team descriptions.

   i. Describe in detail any actual traini ng of individuals you perform with regard to the various action teams, including what the training entails, as opposed to informing volunteers of opportunities to participate.
   j. Provide any and all materials distributed to individuals who participate in the Advocacy Training.

7. You state that a major objective of the CCC Team mission is to inform volunteers of opportunities and to equip them to actively participate in the political process, such as volunteering to help at a Tea Party Rally.

    k. Describe in detail what "opportunities" you are referring to and how you inform volunteers.
    l. Describe in detail how you equip members of the aaa to participate in the political process
    m. Explain in detail how members participate in the political process including but not limited to what type of participation this entail s.

8. In describing your Event Rallies you stated that you hosted a question and answer forum with the GOP Primary Candidates for Governor of the state, and that not all GOP candidates attended. You stated that s ince there was only one candidate in the Democratic primary, there was no comparison to be made in the primary.

    n. Describe in detail the GOP Event Rally, including questions asked, and state the reasons you did not have a candidate rally for the lone Demo cratic candidate.
    o. Describe the reasons you needed a majority of the candidates to schedule a forum for the Candidates for Lt. Gov. in the Democratic primary.
    p. Provide copies of any materials distributed during the event or related to the event such as mat erials advertising the event.

9. Provide a copy of each publication of your newsletter, AAA, since April 29, 2010 (except Issue 1, Number 1; Issue 2, Number 5; and Issue 2, Number 7).

10. Provide a copy of each publication of BBB (except Volume 1, No. 8, submitted with your application).

11. In The DDD, Issue 1, Number 1, dated April 29, 2010, you state that the mission of the FFF Action Team is to organize micro -communities of well -informed citizens and motivate them to actively participation in the political pr ocess. In the same issue, you stated on page 3 that your action teams will enable you to achieve your principal goal: "In 2010 elect or retain the maximum number of conservative or moderate Democrats, Republicans, and Independents in Local, State, and Fe deral elected positions." In addition, you state that you will "expose our wayward politicos and either change their actions, or their careers!"

    q. Describe in detail your activities to attain this goal, and how you achieve such purpose.
    r. Provide your definition of "wayward politicos" and explain in detail how you will effectuate a change of their actions or their careers .

12. In The bbb, Issue 2, Number 7, dated Date, in GGG on page 9, you stated: "Bob Young met with HHH, a City Council member, about (you r) strategy for the upcoming

election. HHH said that III was much the same as UUU but JJJ's opponent is a big liberal. That would be KKK." You also stated that you "put together 10 questions for the candidates running for City Counsel. They will be e -mailed to candidates and then printed on the pamphlets that we are going to distribute before the election."

s. Describe in detail how you effectuated your "strategy for the election" and submit copies of the 10 questions posed to the candidates and their replies.
t. Submit copies of the pamphlets you printed, explain how they were distributed, and when they were distributed in relation to the election.

13. The letter you published in DDD, Issue A, Number A, dated Date, states on page 19: "LLL is bad for NNN (actually for all the States that voted it in) and we should encourage our Legislators to repeal it. MMM Noon lists all of the NNN Legislators that voted FOR this bad legislation (SB XXX). PPP instigated this bill and Senator introduced the bill in the Leg islature." State the reasons for the list, where it was published, and when and how it was distributed.

14. State whether you engage in business dealing s with any candidate(s) for public office or an organization associated with the candidate, such as rentin g office space or providing access to a membership list. If so, describe in relationship in detail, including any contracts or other agreements documenting the business relationship.

15. Describe in detail your relationship to the OOO School.

16. Provide a copy of the board of directors' meeting minutes from formation to date.

17. Provide copies of any other materials, including but not limited to program guides, rules, regulations, and guidelines that will assist us in better understanding you and your activities.

SFC 002532

From: Paz Holly O
Sent: Tuesday, July 19, 2011 9:25 AM
To: Cook Janine
Cc: Marks Nancy J
Subject: RE: Advocacy orgs

Below is some background on what we are seeing:

Background:

- 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. Often there is possible political intervention or excessive lobbying.

- Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.

· Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
· The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for rev iew.

1 The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development lette r.

Lois would like to discuss our planned approach for dealing with these cases. We suspect 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 EO Determinations work the cases. However, 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 representat ions re: the amount of political activity, etc.). EO Technical will also designate point people for Determs to consult with questions. We will also refer these organizations to the Review of operations for follow-up in a later year.

From: Cook Janine [redacted]
Sent: Monday, July 18, 2011 3:08 PM
To: Paz Holly O
Subject: Advocacy orgs

Holly,

Do you have any additional background for meeting next week with Lois and Nan about increase in exemption requests from advocacy orgs? Thanks!

Janine

SFC 002533

From: Paz Holly O
Sent: Thursday, July 21, 2011 9:23 AM
To: Thomas Cindy M
Subject: history of this case?

Importance: High

Cindy,

I'm sorry to greet you with a fire drill your first day back. EOT denied three Emerge organizations and the denial letters were published this week. The press (particularly the New York Times) has taken great interest in these denials. NYT is now asking why we previously approved several other Emerge organizations. We believe they were approved in error (starting back in 2004) and have referred those to EO Exam. The most difficult one to explain is Emerge Kentucky (EIN 45-0706920) whose c4 application was approved in Apr l 2011. Brenda had Bill Angner PDF me the application yesterday. It described its activities in exactly the same way as the three denied Emerge organizations (i.e., identify, educate and train women interested in obta ining Democratic leadership roles). The case was apparently a full development case approved by a Determ specialist in California. Lois is wondering why this case was not transferred to EOT when four other Emerge cases had already been transferred beginn ing in August 2008. She is also curious why it did not go through Quality. I'd appreciate any information you can find as to how this case ended up the way that it did.

Thanks,

Holly

From: Thomas Cindy M
Sent: Thursday, September 15, 2011 2:25 PM
To: Paz Holly O
Subject: Advocacy Cases for Triage
Attachments: advocacy.xls

Holly,

Per our discussion when you were in Cincinnati, we agreed that Justin and Hillary would review the advocacy cases in TEDS and would triage them. Attached is a list of all the cases we have that includes the name, EIN, subsection requested, and control date. The cases can be pulled up in TEDS by the EIN.

I also included a column for "Action To Be Taken." I thought that they could use this column to let us know if a case can be approved, needs more information, etc. If they choose to handle another way, that is fine too.

Please let me know if you need for me to take any other action. Thanks.

From: Thomas Cindy M
Sent: Tuesday, March 06, 2012 11:10 AM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE SFC issues

Importance: High

I'm confused by your email. I'm not aware of any requests being sent to the organization for information. The case was sitting in our full development unassigned inventory. When I received the emails yesterday, I had a specialist get the approved case fo SFC and ge SFC from the unassigned inventory and review them both.

Based on this cursory review, a conversation was held with the 509(a)(3) manager an SFC reassigned back to his group. After discussion and review of the case, the manager said that because of the involvement with the City, he felt comfortable going ahead and approving the case and documenting workpapers to support this conclusion.

The case has been approved and the le tter faxed t SFC an SFC.

Please let me know if you need any other information.

From: Lerner Lois G
Sent: Tuesday, March 06, 2012 11:12 AM
To: Thomas Cindy M; Paz Holly O
Subject: FW SFC issues
Importance: High

Were we able to approve because they sent in what they said they were going to, or because when Cindy re-looked, she thought they had made the wrong call initially? I'd prefer the former, but if it's the latter, then the next question t hey will be asking is why did we ask for more stuff. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 11:05 AM
To: Lerner Lois G; Paz Holly O
Subject: RE SFC issues

Did they submit additional info?

From: Lerner Lois G
Sent: Tuesday, March 06, 2012 9:59 AM
To: Flax Nikole C; Paz Holly O
Subject: RE SFC issues

SFC 002536

The latest is that they will get approved today. Cindy took another look and they are comfortable with this one. I've asked Holly to tell Cindy to let us know once it has actually been approved and closed. There is no "but" here. it will be approved today.

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 9:40 AM
To: Lerner Lois G; Paz Holly O
Subject SFC issues

I need to report on the latest status of the case this afternoon at 4. Do you have a few minutes bw 2 and 4 that we can talk to make sure I have the latest? Thanks

SFC 002537

From: Paz Holly O
Sent: Wednesday, May 16, 2012 9:49 AM
To: Medina Cheryl J TIGTA; Seidell Thomas F TIGTA; McGovern Michael A TIGTA
Cc: Thomas Cindy M
Subject: FW: Briefing Paper on c3/4 Advocacy Orgs.
Attachments: June 29 C3-4 Advocacy Orgs Briefing Paper.doc

Attached is the briefing paper used in the meeting with the EO Director in June 2011.

From: Lowe Justin
Sent: Monday, June 27, 2011 8:56 AM
To: Paz Holly O
Cc: Seto Michael C; Buller Siri; Hull Carter C; Kastenberg Elizabeth C; Goehausen Hilary
Subject: Briefing Paper on c3/4 Advocacy Orgs.

Holly,

Attached is the briefing paper we plan to use at the meeting with Lois on Wednesday afternoon. Please let us know if you have any questions or would like to meet beforehand.

Thanks,

Justin

SFC 002538

Increase in (c)(3)/(c)(4) Advocacy Org. Applications

Background:

- 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. Often there is possible political intervention or excessive lobbying.

- EOD Screening identified this type of case as an emerging issue and began sending cases 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 by advocacy/lobbying to "make America a better place to live"
  - Statements in the case file criticize how the country is being run

- Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.

- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
  - The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.
  - The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development letter.

- EOT is assisting EOD by providing technical advice (limited review of application files and editing of development letters).

EOD Request:

- EOD requests guidance in working these cases in order to promote uniform handling and resolution of issues.

Options for Next Steps:

- Assign cases for full development to EOD agents experienced with cases involving possible political intervention. EOT provides guidance when EOD agents have specific questions.

- EOT composes a list of issues or political/lobbying indicators to look for when investigating potential political intervention and excessive lobbying, such as reviewing website content, getting copies of educational and fundraising materials, and close scrutiny of expenditures.

- Establish a formal process similar to that used in healthcare screening where EOT reviews each application on TEDS and highlights issues for development.

- Transfer cases to EOT to be worked.

- Include pattern paragraphs on the political intervention restrictions in all favorable letters.

- Refer the organizations that were granted exemption to the ROO for follow-up.

Cautions:

- These cases and issues receive significant media and congressional attention.

- The determinations process is representational, therefore it is extremely difficult to establish that an organization will intervene in political campaigns at that stage.

From: Paz Holly O
Sent: Monday, June 25, 2012 12:42 PM
To: Light Sharon P; Giuliano Matthew L
Subject: draft email re: advocacy case issues

I want to provide some clarification as to certain scenarios that have arisen as folks work the bucket 1 and bucket 2 advocacy cases.

1. Donor names - If we asked an org for donor names and the org provided them, we need to expunge that info from the file and send the applicant a letter to that effect (template letter previously provided). If we asked for the names but the org did not provide them, no need to send the letter re: expunging the file; the favorable can be issued (bucket 1) or a development letter can be sent (bucket 2).

2. Outstanding development letter - (a) If the org was previously sent a development letter and (b) has not yet responded and (c) we are sending a new development l etter, we need to call the org before sending the new development letter to explain that we have just completed another review of the file and all we need is x,y, z to be described in letter and they should disregard the old letter (see script previously provided). The new development letter should contain some language to that effect:

> e.g., Please note that we have just completed another review of your request to be recognized as tax-exempt under section 501(c)(4) of the Internal Revenue Code. Based on that review, we concluded that we do not need all of the additional materials previously requested. The information we need is as follows :
>
> or:
>
> Please note that we have just completed another review of your request to be recognized as tax - exempt under section 501(c)(4) of the Internal Revenue Code. Based on that review, we concluded that we do not need all of the additional materials previously requested. We need items #2 and #4 of the letter to you dated February 10, 2012 as well as the following:

3. Autorevocation- Applicants who research reveals are already autorevoked by operation of law should be held until further notice. Applicants that are not yet autorevoked but will be in the near future if they don't file soon should be contacted and reminded to file.

4. As we discussed in the training and bucketing, there is no need to engage in extensive development regarding each and every activity that may constitute political campaign intervention. The key question is whether, if those activ ities were political intervention, does the applicant have sufficient social welfare activity to meet the primary test.

SFC 002540

From: Hull Carter C
Sent: Tuesday, July 24, 2012 8:51 AM
To: Paz Holly O
Cc: Seto Michael C; Shoemaker Ronald J
Subject: Procedures

Holly,

I found a note I wrote to myself concerning my early handling of "Tea Party" cases. The note states:

4/5/10 - Prescott Tea Party, LLC and Albuquerque Tea Party Inc. assigned to Hull.

4/25/10 - Cindy Thomas asked Steve Grodnitzky who Liz Hofacre could contact re: "Tea Party" cases. Cases were being transferred to her - they had been held in screening.

4/26/10 - Steve G. advised Ron Shoemaker and Hull. Copies of letters to Prescott and Albuquerque.

5/17/10 - Liz will send proposed copies of development letters to Hull.

5/26/10 - Prescott case closed - ci- FTE. Asked Cincinnati for new (c)(3) application.

5/27/10 - Control for a Line 21 prepared for Coordinating Tea Party Cases, assigned to Hu ll. Started reviewing proposed Cincinnati letters - phone results to Liz H.

6/14/10 - Rec'd 1st info from Albuquerque.

6/30/10 - American Junto assigned to Hull.

I found nothing else that was not case specific that you may not have. If you need the note, or a copy thereof, I will supply it.

Carter "Chip" Hull
Senior Tax Law Specialist
SFC [redacted] Phone

From: Paz Holly O
Sent: Wednesday, August 08, 2012 9:12 AM
To: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA
Subject: FW: Advocacy Team Minutes and Progress Reports
Attachments: 111216 Meeting Minutes Resolution.doc

From: Seok Stephen D
Sent: Tuesday, August 07, 2012 2:41 PM
To: Paz Holly O
Subject: Advocacy Team Minutes and Progress Reports

Ms. Paz,

Below and attached please find the meeting minutes and the status reports I provided to Steve Bowling and Advocacy Team Members.
Please let me know if you have any questions or need any other information about the Advocacy Project.

Thank you.

Stephen.

From: Seok Stephen D
Sent: Wednesday, February 29, 2012 8:18 AM
To: Bell Ronald D; Estes Janine L; Garuccio Jodi L; Herr Joseph R; Herring Donald Grant; Marquez Elizabeth J; Morris Annetta R; Perry Lori A; Steele Mitchell P; Seok Ste phen D; Woo Gregory; Young Carly
Cc: Bowling Steven F; Hofacre Elizabeth L; Hartrick William M
Subject: Advocacy Meeting

Hi, Team,

Thank you for attending yesterday's meeting. I apologize for the access number confusion. You all are resilient enough to send me an email and check the email - thank you!!!!!
Please feel free to order Advocacy cases again and send out the development letters. There is no change how we develop the Advocacy cases except internet related questions.
See internet related questions our team members developed. *(Again, we want to make sure not to send any controversial or personal questions, which you all do a great job.)*
We will start to assign TEDS cases, so let me know if you are not trained on TEDS.
Currently the template questions is being reviewed by the management now. Hopefully we will share with you soon.

PS. I am currently reviewing several responses. If you have responses, please let me know asap - I will coordinate a review meeting with you. I would like to review them concurrently.

Stephen.

For your reference:

Enclosed is a copy of information we downloaded from your website. Because we have provided a copy of this information to you, it is available for public inspection as part of your exemption application. If you have any questions regarding this information, please let us know.

Please provide us with a temporary Username and Password that we could use to review your organization's website.

Upon review of the organization's website at www., it shows that a section of the website is accessible to members only. In order to get a better understanding of the organization's activities though its website, please provide a temporary login and password.

From: Seok Stephen D
Sent: Tuesday, February 28, 2012 9:37 AM
To: Bowling Steven F
Subject: RE: advocacy cases

Hi, Steve, below please find the info you asked:

1) Agents' name who are working the advocacy cases and cases assigned since the team formed: Bell Ronald D (1); Estes Janine L (2); Garuccio Jodi L (3); Herr Joseph R (35); Herring Donald Grant (21); Marquez Elizabeth J (21); Morris Annetta R (6); Perry Lori A (will be full capacity); Seok Stephen D (21); Woo Gregory (7); Young Carly (6); Mitch Steele (18 - no more case ordering- assigned to a new project)

2) Total EDS cases: 169 cases, 141 cases assigned: most recent control date in unassigned inventory: 10/15/11. oldest control date not assigned yet: 6/6/11. 5 cases closed as 04.

Total TEDS cases: 60 cases, none assigned yet: In TEDS, we have 5 older control date cases than 6/6/11 because they are recently transferred into TEDS.
Their control date is 2/8/11, 3/18/11, 3/25/11, 4/28/11, 5/28/11 - They will be assigned as soon a s we resume assigning cases.

Please let me know if you have any questions.

Thank you,
Stephen.

From: Seok Stephen D
Sent: Monday, February 13, 2012 11:13 AM
To: Bowling Steven F
Subject: BOLO Advocacy work progress report 2 13 2012

Hi, Steve,

Below find the BOLO Advocacy Team's work progress. Please feel free edit, correct, and revise the report.
If you see any other needs and improvements in the directions and progress below described, please let me know.
I will definitely improve them for the better.

Thank you,
Stephen.

Cases:

Number of Cases at the start of the Team (10/16/11):

165 cases (127 c4 and 38 c3) - control date of last case is 7/6/11

Case assigned as of 2/10/12: 119 cases

Case closed as of 2/10/12: 1 (withdrawal)

Cases added: since 10/16/11 (Ron should be able to come up with number that including recently screened ones, EDS and TEDS)

1) First inquiry letters are out for most of assigned cases except cases assigned recently.

   a) Temporary template questionnaires that were made by the agents who had (has) worked on BOLO cases (Liz and Stephen) were distributed to the team members for consisten cy and reference.

   b) To make sure the consistency and all team members are in same page, the cases and inquiry letters had been reviewed by Stephen (and Stephen also conferred with Steve for sensitive and complex issues.)

   c) At this point, we are comfortable that the team members send out the letter without reviewed by Stephen. However, Stephen still briefly checks out the letters sent to make sure that the consistency is intact - so far, all team members are doing a good job.

   d) Specific guidance are constantly given to all team members as issues and questions arise after careful research by Stephen and input from the team members, Steve and other EOD managers.

2) Except a few cases, no responses are in yet. All team members are instructed to copy all responses to Stephen. Each team member will meet with Stephen for further development of process after each response is in. If needed, Steve, QA, EO Tech will be involved in the meetings. It is expected that there will be many meetings that will include a team member, Stephen, Steve, QA, and EO Tech until desirable and comfortable consistency and consent are established among all players.

3) It is too early to tell yet. However, it appears that some c3 may be adverse -bounded and adverse c4 cases seem to be minimal.

4) There are high-profile cases such as Crossroads Grassroots Policy Strategies. For this kind of cases, extra efforts and attention, and frequent communi cation with management and EO tech will be given.

5) All OAR cases are assigned. The developmental letters are out and copied to TAS. Completion dates are set where TAS asks for. Therefore, all OAR cases for BOLO Advo cases should be all current. All team members are instructed to copy any TAS related correspondence to Stephen immediately. TAS cases is being closely monitored by Stephen to minimize any complaints.

Team and Committee Meetings:

1) Full member team meetings: Initial team meeting - 10/16/11 (team assembly, introduction, case assignment, and initial development instructions).

   Next team meeting is planned after we complete the 1 st drafts of template questions and development guidance. Expected next full team meeting date is end of February, 2012.

2) Forming a committee for template questions and development guidance (Steve, Stephen, Ron, Mitch, Joseph):

As of 2/13/12, Stephen, Joseph, and Mitch completed 1st drafts of the template questions and develop ment guidance.

The full committee will meet either this week or next week depending on members' availability.
Once the 1st drafts are finalized, the drafts will presented to the full member team meeting for input and suggestions.

After 1st drafts are amended per the input and suggestions, they will be sent to EO Tech (Justin and Hillary) for its input and suggestions.

Once Justin and Hillary input and suggestions are in, template questions and development guidance will be finalized in a short period, and will be distributed to the team members.
(The template questions should be used for all team members, especially for 1 st inquiry letter; however, the team members will have discretion to add specific questions and delete questions to avo id repetitious questions.)

3) Third full team meeting will be held after most of team members complete at least one case development. Before the meeting, determination principle and guidance on BOLO Advo cases will be forged by a committee which will consist of Stephen, Steve, QA (Donna and Liz), and EO Tech (Justin and Hillary) for consistency, correct application of law, and efficient case closings.

From: Seok Stephen D
Sent: Wednesday, January 18, 2012 2:54 P M
To: Bowling Steven F
Subject: BOLO Advo Case Report

Hi, Steve,

So far 35 cases out of 170+ have been assigned, and I expect the case assignments will be accelerated as the team members become more free from existing inventory.
All of OAR cases are so far being developed or assigned. The agents are instructed to contact the TAS person asap and notify TAS the status of the case at least.
So, OAR cases should be fine so far. If you hear anything, please let me know, I will get on it right away.

The inquiry letters for the assigned cases were out as soon as I finish my review of the letters without any delay.
At this point, I am comfortable that the team members send first inquiry letters without consulting with me.
I will discuss further development in depth with the team and team members when responses are in.

As far as next team meeting goes, I am planning to have one early February. By the time, I think that every team member is ready to discuss about template development questions.

Thank you,
Stephen.

Advocacy Team Meeting Minutes (12/16/11, 7112B) and Resolution

Attendees: Steve, Stephen, Ron, Janine, Joseph, Grant, Mitch, Annette, Greg, Elizabeth, Liz
Absent: Carly, Jodi (on leave)

1) History of Advocacy Cases was briefed by Liz, Ron, and Steve

2) Advocacy Case Briefing by Stephen:

About 172 cases so far and counting
37 c3 125 c4, no other sections.
Mostly Advocacy with strong or some political activities, at least implied
About 155 cases reviewed by EO Tech: Favorable 13, Denial 13, All othe rs: Development Needed.
30 Something TEA party, Several 912, Repeal PPACT (Patient Protection and Affordable Care Act), Enact Universal Single-Payer Health Case System, etc.

3) Purpose of Advocacy Team:

Consistent development and determination through team effort
Thorough development and determination through team effort
Carful development and determination through team effort

4) Discussion on how we tackle the cases

Control date: General Rule

Cases by Patterns: Specializing similar cases? - Tea Party, c3, c4, 912, general category (not belonging to patterned cases), etc.: Will pursue as long as we do not deviate from the general rule.

Constant updates on new ideas, questions and cases - All team members, management, QA, EO Tech.

1) Stephen, Joseph, and Liz will formulate a general template questionnaire from the letters done by EOD and EO Tech and it will be done by the Advocacy Team members in the future.
2) Once the draft is formulated, it will be emailed to the Advocacy Team members for review and input, and will be discussed at a round table style meeting.
3) This process will be repeated if needed until finalized.

Case closing: Approval and Denial - coordinated process among team members, coordinator, management, QA, and EO Tech - maybe to less degr ee once all the foundations are established to increase efficiency and effectiveness: Further details will be discussed and forthcoming as case developments progress.

5) Work Capacity: Team Members Time Allocation Survey - the team members will notify Ste phen after a discussion with their manager.

6) Case assignment: Questions that have been used so far will be emailed for inquiry letters as a reference:

The various inquiry letters sent out from EO Tech and EO D are attached with those minutes.
Note: The memorandum for file by Hull Carter (EO Tech) will be emailed to all team members as soon as I image it.

Cases will be assigned this afternoon to those who requested them - I will send an notification email after assignment.

7) **Research Tools:** All cases should be researched in Accurint and the web during the development. For the Team members who do not have Accurint, Accurint ID request form is attached with this memo.

Note: Manager forwards the completed request form to Saundra C Shaw after approval.

From: Thomas Cindy M
Sent: Friday, January 28, 2011 3:13 PM
To: Seto Michael C
Cc: Paz Holly O
Subject: FW: Political Cases -- Status?

Importance: High

Any update on the tea party cases? TAS has contacted us regarding 1 case.

From: Paz Holly O
Sent: Monday, December 13, 2010 4:54 PM
To: Thomas Cindy M
Cc: Trilli Darla J
Subject: RE: Political Cases Status?

We will be going to Judy shortly with the proposal to grant exemption to the c4 applicant we have here; the memo recommending approval of c4 is being finalized this week. The c3 application is not yet ready for discussion with Judy - TP's response to development letter is under review. We expect to move that to Judy sometime in January.

From: Thomas Cindy M
Sent: Monday, December 13, 2010 11:33 AM
To: Paz Holly O
Cc: Trilli Darla J
Subject: FW: Political Cases Status?

Holly,

Has there been any update regarding the tea party cases as far as the discussion with Judy Kindell?

From: Thomas Cindy M
Sent: Saturday, November 20, 2010 9:59 AM
To: Camarillo Sharon L; Bowling Steven F
Subject: FW: Political Cases Information
Importance: High

Sharon/Steve,

I had a discussion with Holly Paz on Wednesday (11/17) afternoon to again discuss the tea party cases. She advised me that we were sending applicable parts of the application package to EOT along with the additional information letter and that based on this information they are finding that not all of the tea party cases have the same issues. This is why they have not been able to prepare a template letter with additional information questions. EOT is putting together a briefing paper and going to discuss the various issues in these cases with Judy Kindell (Senior Technical Advisor to EO Director). 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. If this has not been finalized by 12/13/2010, please follow up with me and I will ask for a status report from Holly. Also, if we are not sending applicable parts of the application package to EOT and

are just sending the additional information letter, I need to know so that I can get back with Holly to find out what basis they are using to determine cases a re different.

If you have questions/concerns regarding this, please let me know. Thanks.

From: Thomas Cindy M
Sent: Tuesday, October 26, 2010 3:57 PM
To: Paz Holly O
Subject: Political Cases Need to Discuss
Importance: High

Holly,

This is a follow up to my voice message. 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. It seems to me that if he reviewed a template lette r and approved it, we should be good to go. Then, when we get responses, we need to coordinate these cases as a group and not try to work them one by one. Right now, I believe we have approximately 45 or more of these cases.

Should these cases be transferred to EOT? If not, could we schedule some time to discuss the approach that is being used and come up with a process so we can get these cases moving? Thanks.

From: Paz Holly O
Sent: Thursday, August 04, 2011 8:12 AM
To: Lowe Justin; Fish David L; Seto Michael C
Subject: RE: Advocacy Checksheet

Yes.

From: Lowe Justin
Sent: Thursday, August 04, 2011 9:11 AM
To: Paz Holly O; Fish David L; Seto Michael C
Subject: Advocacy Checksheet

Hi All,

Do we plan to have Counsel look over the checksheet for the advocacy orgs. before we send it to Determs?

Thanks,

Justin

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(e)(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 <u>would be set up under a section of the tax code that allows its donors to remain anonymous if they so choose</u> (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]
Washington, D.C. 20036
SFC [redacted]

Donald J. Simon
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J. Gerald Hebert
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Counsel for the Campaign Legal Center

July 27, 2011

SFC 002569

20

IRS0000436260

SFC 002570

From: Thomas Cindy M
Sent: Tuesday, April 17, 2012 7:44 AM
To: Marks Nancy J; Malone Robert; Urban Joseph J; Light Sharon P; Paz Holly O
Subject: FW: Advocacy Project Team Members
Attachments: Potential Team.xls

This email is the only one I have regarding team members identified to work the Advocacy Organization cases. All specialists listed are grade 13 agents.

Next time we meet we can discuss further why certain specialists were selected for the team.

From: Thomas Cindy M
Sent: Wednesday, December 07, 2011 6:31 PM
To: Bowling Steven F
Subject: FW: Advocacy Project Team Members

Joseph Herr will be representing Group 7821.

From: Thomas Cindy M
Sent: Wednesday, December 07, 2011 2:57 PM
To: Bowling Steven F
Subject: FW: Advocacy Project Team Members

Steve,

Attached is the list of team members. Jovonnie is on leave today. Wayne Bothe is checking with Ken Bibb regarding Joseph Herr. I'll get back with you regarding QA.

From: Esrig Bonnie A
Sent: Wednesday, December 07, 2011 1:30 PM
To: Thomas Cindy M
Subject: Advocacy Project Team Members

Cindy, please see attached. Names in yellow are available per manager. Have not yet been able to talk to Wayne or Jovonnie (on leave). Will update as soon as possible. Also, Lynn made a good verbal case for Grant instead of either name suggested. She'll send a summary of the reasons but if he's okay with you, there will be no need for that.

SFC 002571

	7822	7829	7821	7823	7824	7827
	Cincinnati	Cincinnati	Cincinnati	Cincinnati	Cincinnati	Cincinnati
	Bowling, Steve	Vicki Lahey	Ken Bibb	Dan Berry	Lynn Brinkley	Angner, Bill
G 13	Seok, Stephen	Kennedy, Joseph	Ny, Faye		Mayi, Sirijun	Steele, Mitch
	Bell, Ron	Estes, Janine			Conder, Michael	Gentry, Elaine
			?	N/A	Grant Herring	

	7828	7830	7880	7887	7888
	Cincinnati	Cincinnati	Baltimore	El Monte	Sacramento/Laguna
	Lewis, Jovonnie	Waddell, Jon	Jefferson-White, Beverly	Shankling, Lonnie	Haley, Phillip
G 13	Young, Carly	Garuccio, Jodi	Annetta Morris	Woo, Greg	Marquez, Elizabeth
	Wayne, Sherry	Garrett, April			Brockner, Mark

Confirmed availability highlighted in yellow.

Note: Ken is out; I left a message for Wayne. Will follow up via email later if he doesn't return the call.
Lynn suggested an alternative that she thought would be a better choice. Do you agree? If not Sirijun ok.
Jovonnie is on leave. Left voice and email message just in case.

SFC 002572

From: Lerner Lois G
Sent: Thursday, May 17, 2012 3:55 PM
To: Flax Nikole C
Cc: Paz Holly O; Marks Nancy J
Subject: FW: Emailing: bolo memo.doc
Attachments: bolo memo.doc

FYI--this is the memo that will go out tonight --process will be added to IRM

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Paz Holly O
Sent: Thursday, May 17, 2012 4:50 PM
To: Lerner Lois G
Subject: Emailing: bolo memo.doc

Attached is the memo to Determs re: BOLO procedures. I have to leave shortly but will be back online this evening and can send this out if it is approved.

SFC 002573

//www.irs.gov/charities/article/0,,id=232771,00.html DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

May 17, 2012

MEMORANDUM FOR MANAGER, EO DETERMINATIONS

FROM: Holly Paz
Director, EO Rulings and Agreements

SUBJECT: Be On the Look Out (BOLO) Spreadsheet

The purpose of this memorandum is to set forth the procedures to be used with regard to the Be On the Look Out (BOLO) spreadsheet.

Abusive Transactions and Fraud Issues, Emerging Issues, and Coordinated Processing[1] cases will all be tracked on a single combined Be On the Look Out (BOLO) spreadsheet.

(a) The spreadsheet is maintained to enable EO Determinations specialists to be informed about the current status of abusive transactions and fraud issues, emerging issues, coordination, and watch issues, and to process cases in a consistent manner.

(b) Abusive Transactions and Fraud Issues, Emerging Issues, and Coordinated Processing will each occupy a separate tab of the spreadsheet.

(c) A fourth tab, the "Watch List" will list recent developments such as changes in the law, current events, or specific issues that EO Determinations management believes has the potential to impact the filing of applications.

The Emerging Issues coordinator will maintain the combined spreadsheet including:

(a) Creating original entries for new emerging issues and entering them on the appropriate tab of the spreadsheet.

(b) Creating original entries for new coordinated processing cases and entering them on the appropriate tab of the spreadsheet.

(c) Receiving issue updates from the abusive transaction and fraud group and

[1] Coordinated Processing cases are cases that present similar issues and thus are to be handled by a single team or group in order to facilitate consistency.

entering them on the appropriate tab of the spreadsheet.

(d) Receiving "Watch List" updates from senior management and entering them on the appropriate tab of the spreadsheet.

(e) Updating the spreadsheet as necessary.

All original entries and updates to the BOLO must be approved by the group manager of the Emerging Issues Coordinator. The group manager of the Emerging Issues Coordinator must obtain the approval of the Manager, EO Determinations to all original entries and updates to the BOLO. The Manager, EO Determinations must obtain the approval of the Director, EO Rulings & Agreements to all original entries and updates to the BOLO.

Only after the approval of the group manager of the Emerging Issues Coordinator, the Manager, EO Determinations and Director, EO Rulings & Agreements have been obtained will EO Determinations groups be notified of new or updated Watch List items, Potential Abusive Transaction and Fraud Issues, Emerging Issues, and Coordinated Processing cases through single e-mail alerts. The Emerging Issues coordinator is responsible for issuing all e-mail alerts after all of the required approvals have been obtained.

The most recent updated copy of the spreadsheet will be posted on the EO Determinations shared drive folder.

The content of this memorandum will be incorporated in IRM 7.20.4.

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 4:33 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST

From: Thomas Cindy M
Sent: Monday, December 12, 2011 10:36 AM
To: Bowling Steven F
Subject: RE: Advocacy Orgs

I have standing meetings the 1st Tuesday and 1st Thursday of each month from 1-3 and use my number during those timeframes.

From: Bowling Steven F
Sent: Monday, December 12, 2011 10:21 AM
To: Thomas Cindy M
Subject: RE: Advocacy Orgs

Cindy,

Looks like we can get a room this Friday. Do you have a call-in number we can use or do you want me to check with Bonnie, I have hers written down.

Thanks,

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]

From: Thomas Cindy M
Sent: Monday, December 12, 2011 8:15 AM
To: Bowling Steven F
Subject: FW: Advocacy Orgs

Steve,

Liz Hofacre will participate from QA.

Mike Seto is still checking into D.C. contacts. I informed Mike that the D.C. contacts don't need to participate in the initial meeting since it would be to provide background on what has taken place thus far, discuss case assignment and closing process, etc., and that they will be needed during other meetings to provide technical clarification, etc.

You should have all team members now and it would be best to get a meeting scheduled. If you have questions or want to discuss, please let me know. Thanks.

From: Abner Donna J
Sent: Friday, December 09, 2011 1:04 PM
To: Seto Michael C; Thomas Cindy M
Subject: RE: Advocacy Orgs

Liz Hofacre will participate from QA.

From: Seto Michael C
Sent: Friday, December 09, 2011 10:02 AM
To: Thomas Cindy M; Abner Donna J
Subject: RE: Advocacy Orgs

I am incline to have Justin and Hilary as the contacts. I have to check with Mary Jo Salins, who us acting Guidance manager about Justin because he works for Guidance.

From: Thomas Cindy M
Sent: Thursday, December 08, 2011 3:37 PM
To: Seto Michael C; Abner Donna J
Subject: Advocacy Orgs
Importance: High

Mike - I met with Steve Bowling and Stephen Seok (replacing Ron Bell as coordinator) last week to discuss our game plan. We're getting a team together to work these cases that will include 1 grade 13 specialist from each of our groups. We've looked at the document you sent (attachment 1) and it doesn't appear to be anything new, just consolidates what is out there in different places. We're still identifying team members and after this is finalized will have a meeting with all of them.

Is there someone on your staff that you could make available for the meetings to provide technical clarification, i.e., Justin or Hiliary (or both)? It probably isn't necessary for the person to participate during the first meeting if they don't have the time since that meeting will be to provide background to other team members as to what has taken place thus far, discuss case assignment and closing process, etc. Also, has EOT finalized the c3 and c4 cases that were worked? If so, we'd like the names of those cases so that we can pull them for case studies and also have the denial letter to use as a template. If not, could we at least get a copy of the additional information letters that were sent?

Donna - This is a follow up to the phone message I left for you earlier today requesting an EODQA reviewer for this team.

If either of you have questions, please let me know. Thanks.

From: Thomas Cindy M
Sent: Wednesday, November 23, 2011 1:47 PM
To: Seto Michael C
Subject: RE: List of advocacy org cases screened by EOT for EODi

Thanks -- I forwarded to manager with oversight of these cases (Steve Bowling), along with the document EOT put together. After I meet with manager and coordinator of these cases, Ron Bell, I'll be back in touch with you.

From: Seto Michael C
Sent: Tuesday, November 22, 2011 3:56 PM

SFC 002577

To: Thomas Cindy M; Fish David L; Kindell Judith E
Cc: Grodnitzky Steven; Goehausen Hilary; Lowe Justin; Kastenberg Elizabeth C; Lieber Theodore R
Subject: List of advocacy org cases screened by EOT for EODi

Hilary has updated the spreadsheet, the content of which is self-explanatory.

We have screened 162 cases, substantial majority of which needs to be developed.

We identified 12 cases that may qualify for exemption. The caveat is that the favorable suggestions are based on initial screening of the cases, not full development. We recommend that EOD review our suggestions on these 12 cases.

We identified 15 cases for possible denial of exemption. The caveat is that our denial suggestions are based on initial screening of the cases, not full development. We recommend that EOD review our suggestions on these 15 cases.

We have indicated in red font the names of the 2 organizations (#40: Ohio Liberty Council and #137 Ohioans for Healthcare Freedom) that are related to American Junto, one of the 2 political advocacy cases pending here. Please suspend action on these two cases while EOT is working on American Junto.

If you have questions, please contact Hilary and Steve or me. FYI . . . Steve is the manager overseeing this technical area.

Thanks, Mike

From: Paz Holly O
Sent: Wednesday, September 12, 2012 10:22 AM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Megosh Andy; Fish David L; Light Sharon P; Kindell Judith E
Subject: RE: Advocacy Denial

Any 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. I understand the TPs' frustration and I also want to move these cases as quickly as possible but we are in overly sensitive climate right now and have to be aware of that.

From: Abner Donna J
Sent: Wednesday, September 12, 2012 11:19 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Megosh Andy; Fish David L
Subject: RE: Advocacy Denial

Hi Mike,
I also left you a phone message. TP's are starting to pressure the specialist's for a decision on the cases. All three have been under review for several months - the oldest was forwarded to DC in January. We've reached agreement all should be denied so what's the hold up? Can we go ahead and complete our review of the the proposed denial letters and issue them to the TP's?

Thanks,
Donna

From: Seto Michael C
Sent: Tuesday, September 11, 2012 3:27 PM
To: Abner Donna J
Cc: Lieber Theodore R; Paz Holly O; Megosh Andy; Fish David L
Subject: RE: Advocacy Denial

We are doing our best; everyone here is multi-tasking and dealing with multiple priorities. Guidance and Technical have agreed on the results on all 3 cases. They are working out the details. Can you follow-up with me in the next two weeks? If you have any questions, let me know.

From: Abner Donna J
Sent: Tuesday, September 11, 2012 1:15 PM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

Thought I better follow up again.....as noted below review in Guidance was expected to be done no later than the end of August 25th week. I've yet to receive anything. Update??????

Thanks,
Donna

SFC 002579

From: Abner Donna J
Sent: Tuesday, August 28, 2012 7:09 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

Any update on guidance?

From: Seto Michael C
Sent: Monday, August 13, 2012 4:58 PM
To: Abner Donna J
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

All three cases are pending in EO Guidance for review. Guidance should be done with the review by no later than the end of next week. EO Technical recommends an adverse position on all three cases.

From: Abner Donna J
Sent: Monday, August 13, 2012 7:21 AM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Paz Holly O
Subject: RE: Advocacy Denial

Any update on the three cases below??????

From: Abner Donna J
Sent: Friday, August 03, 2012 11:39 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O
Subject: FW: Advocacy Denial

Following up on the three cases below as well.....any updates?

From: Seto Michael C
Sent: Friday, June 08, 2012 11:40 AM
To: Abner Donna J
Cc: Paz Holly O; Lieber Theodore R
Subject: Status of Technical Assisatance Requests Pending Denials

Hi Donna,

Here is the status of the three Technical Ass istance Requests we have from EOQA:

1. SFC [redacted] - Pending with a reviewer in EO Guidance. The initiator recommends adverse, and concurs with your position.

2. SFC [redacted] - Pending with a reviewer in EO Guidance. The initiator recommends adverse and concurs with your position.

3. SFC [redacted] The initiator is reviewing the case now. The initiator will forward it to the Guidance reviewer, and the projected timeline f or sending to Guidance is on the week of 6/11 or 6/18.

If you have questions, let me know.

Thanks, Mike

From: Flax Nikole C
Sent: Monday, January 25, 2010 1:45 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations
Attachments: political expenditures Q&As 1-25-10 draft.doc

Categories: NUUU

Attached is a slightly revised version that was sent to Steve -

Thanks

From: Flax Nikole C
Sent: Monday, January 25, 2010 1:57 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

Joe and I did some minor tweaking. We took the safe approach on the third question - not sure how far we want to go on that one.

Q: Does federal tax law permit a charity or other section 501(c)(3) tax-exempt organization to make political campaign expenditures?

A: Congress imposes certain conditions on tax-exempt status. In order to maintain tax-exempt status under Internal Revenue Code section 501(c)(3), organizations are prohibite d from making political campaign expenditures or otherwise intervening in a campaign on behalf of (or in opposition to) any candidate for public office. [The prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial or revocation of tax - exempt status and the imposition of certain excise taxes.] This prohibition applies regardless of whether the organization is a corporation, trust or unincorporated association.

Q: Does federal tax law permit a section 501(c)(4), (5), or (6) tax -exempt organization to make political campaign expenditures?

A: The requirements for tax-exempt status differ based on the type of tax-exempt organization. A section 501(c)(4) organization promotes social welfare; such an organization may make political campaign expenditures as long as its primary purpose remains the promotion of social welfare. A section 501(c)(5) organization is a labor or agricultural organization; such organization may make political campaign expenditures as long as its primary purpose remains to serve labor and agricultural purposes. A section 501(c)(6) organization is a business league or trade association; such organization may make political campaign expenditures a s long as its primary purpose remains to serve collective business interests. If a section 501(c)(4), (5), or (6) organization makes political campaign expenditures, it may be subject to tax on those expenditures under section 527(f).

Q. Does the Citizens United v. Federal Election Commission decision address the requirement for Federal tax-exempt status?

A. The Supreme Court decision addressed the constitutionality of Federal Election Commission restrictions on corporate expenditures. The decision d oes not modify the conditions that Congress applied on organizations as a condition of being exempt from Federal income tax.

From: Livingston Catherine SFC [redacted]
Sent: Sunday, January 24, 2010 9:56 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J
Cc: Pyrek Steve J; Schultz Ronald J; Flax Nikole C; Ingram Sarah H; Grant Joseph H
Subject: RE: Political Activity by Corporations

To get the ball rolling given that time is t ight and many of you may be in meetings, here is something all can discuss or edit:

Q: Does federal tax law permit a charity or other section 501(c)(3) tax-exempt organization to make political campaign expenditures?

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"No sufficient governmental interest justifies limits on the political speech of nonprofit or for -profit corporations."

This leads perhaps to the question of whether the subsidy available through deductible contributions is a sufficient interest -- governmental or otherwise.

I do note that the opinion is quite clear that Hillary, the movie, is the functional equiv alent of express advocacy because it is not susceptible to any other reasonable interpretation than opposition to her candidacy. This conclusion may support where we have been on campaign intervention and that it goes beyond magic words.

Glad to be useful or to organize a call to discuss or do whatever else is helpful in moving from this language to whatever you'd like to share with media affairs.

Political Campaign Expenditures and Tax-Exempt Organizations
Draft 1-25-10

Q: Does federal tax law permit a charity or other section 501(c)(3) tax-exempt organization to make political campaign expenditures?

A: Congress imposes certain conditions on tax-exempt status. In order to maintain tax-exempt status under Internal Revenue Code section 501(c)(3), organizations are prohibited from making political campaign expenditures or otherwise intervening in a campaign on behalf of (or in opposition to) any candidate for public office. This prohibition applies regardless of whether the organization is a corporation, trust or unincorporated association.

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Q. Does the Citizens United v. Federal Election Commission decision address the requirement for Federal tax-exempt status?

A. The Supreme Court decision addressed the constitutionality of Federal Election Commission restrictions on corporate expenditures. The decision does not address the conditions that Congress applied on organizations as a condition of being exempt from Federal income tax.

SFC 002584

From: Ingram Sarah H
Sent: Monday, January 25, 2010 4:44 PM
To: Livingston Catherine E; Flax Nikole C
Cc: Lerner Lois G; Marks Nancy J; Pyrek Steve J; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

Categories: NUUU

Had to give Doug something if pushed. Specifically asked for. In fact, DS and STM and Frank Keith worked on something this am so Steve told DS to use first two questions and have the Frank keith am one in back pocket. And no, I do not have a copy of the Frank version. As STM (and Ron?) were there I trust 'em.

From: Livingston Catherine SFC [redacted]
Sent: Monday, January 25, 2010 3: 40 PM
To: Flax Nikole C
Cc: Lerner Lois G; Ingram Sarah H; Marks Nancy J; Pyrek Steve J; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: FW: Political Activity by Corporations

All, I recommend against including the third question and answer. I think it best for the IRS not to speak to the case directly, particularly as we have not been able to study it in real depth and as there is language in the opinion that raises questions.

From: Flax Nikole SFC [redacted]
Sent: Monday, January 25, 2010 2:59 PM
To: Lerner Lois G; Ingram Sarah H; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

"modified" was changed to "address" in the revised ver sion.

From: Lerner Lois G
Sent: Monday, January 25, 2010 2:57 PM
To: Flax Nikole C; Ingram Sarah H; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

How about for the 3rd one--the decision did not specifically address to conditions Congress has applied to organizations as a condition of being exempt from federal tax? This is the danger zone no matter what we say.

Lois G. Lerner
Director, Exempt Organizations

From: Flax Nikole C
Sent: Monday, January 25, 2010 1:57 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

Joe and I did some minor tweaking. We took the safe approach on the third question - not sure how far we want to go on that one.

Q: Does federal tax law permit a charity or other section 501(c)(3) tax-exempt organization to make political campaign expenditures?

A: Congress imposes certain conditions on tax-exempt status. In order to maintain tax-exempt status under Internal Revenue Code section 501(c)(3), organizations are prohibited from making political campaign expenditures or otherwise intervening in a campaign on behalf of (or in opposition to) any candidate for public office. [The prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.] This prohibition applies regardless of whether the organization is a corporation, trust or unincorporated association.

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To: Ingram Sarah H; Lerner Lois G; Marks Nancy J
Cc: Pyrek Steve J; Schultz Ronald J; Flax Nikole C; Ingram Sarah H; Grant Joseph H
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To get the ball rolling given that time is tight and many of you may be in meetings, here is something all can discuss or edit:

SFC 002586

Q: Does federal tax law permit a charity or other section 501(c)(3) tax-exempt organization to make political campaign expenditures?

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I think the quote from the Citizens United opinion that will most likely be used in questions to us appears on page 50 in the majority.

"No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations."

This leads perhaps to the question of whether the subsidy available through deductible contributions is a sufficient interest -- governmental or otherwise.

I do note that the opinion is quite clear that Hillary, the movie, is the functional equivalent of express advocacy because it is not susceptible to any other reasonable interpretation than opposition to her candidacy. This conclusion may support where we have been on campaign intervention and that it goes beyond magic words.

Glad to be useful or to organize a call to discuss or do whatever else is helpful in moving from this language to whatever you'd like to share with media affairs.

From: Ingram Sarah H
Sent: Sunday, January 24, 2010 10:54 AM
To: Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Flax Nikole C; Ingram Sarah H; Grant Joseph H
Subject: RE: Political Activity by Corporations

Categories: NUUU

Guys I agree with you all let's prepare a FAQ that can go on the web and be given to the press office. I think we start with the press office and then work the pros/cons of putting on the web.

Here's my concern there are those eager to take the test of the tax-exemption issue to the courts and, if I were them, would be even more eager now. In prior meetings, my proposal that we cooperate with that desire (let's get an answer whatever it is) has not been greeted with enthusiasm at any level. I remain interested in that as one of a number of options, but we have not had the right internal conversations.

Even assuming some discussion of that option, Lois et al. are right we need a quick, plain vanilla, no - news, kinda blurb.

Lois I assume these guys will hit us up first thing Monday morning at coffee and in the hallways and not wait for the general session Tuesday. Can you tread water Monday and I'll be firm Tuesday at the 8:30 general session?

From: Lerner Lois G
Sent: Friday, January 22, 2010 6:12 PM
To: Marks Nancy J; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporations

Thanks Nan--Cathy is a good one to have involved. Unfortunately, Judy Kindell is at the ABA so she and I haven't had any chance to talk. What you described in the first paragraph is exactly what I had in mind, but understand that the sensitivity surrounding this issue may mean we just have that piece available in our back pockets so we wouldn't have to scramble letter, but initially put the softer item on the web or to our media folks. Sarah--your thoughts?

Lois G. Lerner
Director, Exempt Organizations

From: Marks Nancy SFC
Sent: Friday, January 22, 2010 6:05 PM
To: Lerner Lois G; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporati ons

SFC 002588

I'm pulling Cathy into this (thanks for being mindful of her unavailability Lois but she has a bit of a window right now and was brainstorming this issue herself). Are you thinking of something like --we've had some inquiries about whether the Supreme Court decision in ... applies to the laws governning political activity by charities followed by a fairly short plain english no which briefly summarizes the constraints (to remind people) distinquishes the opinion and maybe cites to the authority for concluding that these constraints do not violate first amendment rights.

I guess, and this is an issue for Steve and Sarah which I know you've served up to them, the question is whether we take it head on with a general statement or whether we come in so fter maybe putting a Q&A on the web site and equiping public affairs with the same Q&A. I might be inclined to the softer approach because so far the public debate does not seem to be running too far off the mark. That is more of a PR call which I happil y leave in your hands. (your section of the ACT stampeding--not a pretty thought)

From: Lerner Lois SFC [redacted]
Sent: Friday, January 22, 2010 5:53 PM
To: Marks Nancy J; Ingram Sarah H
Cc: Pyrek Steve J
Subject: RE: Political Activity by Corpor ations

I'm going to need them by Tuesday at the latest! Sarah--perhaps we can head off the stampede from the EO ACT by a general statement in the larger ACT meeting?

Lois G. Lerner
Director, Exempt Organizations

From: Marks Nancy SFC [redacted]
Sent: Friday, January 22, 2010 4:01 PM
To: Lerner Lois G; Ingram Sarah H; Miller Steven T
Subject: RE: Political Activity by Corporations

Thanks Lois I was wondering along the same lines --thought a few plain english Q&A's might be helpful. I gave Bill Wilkins a bit of background and also my read that this didn't change our position on the exempts in case he got the question at the EO lunch at the ABA

From: Lerner Lois SFC [redacted]
Sent: Friday, January 22, 2010 3:16 PM
To: Ingram Sarah H; Miller Steven T; Marks Nancy J
Subject: Political Activity by Corporations

I'm sure you've heard about the S Ct.'s decision in Citizen's United that corporations have first amendment rights and the prohibitions on corporate spending in elections are unconstitutional. While I don't think that changes our legal position -- that tax-exemption is a privilege and if you want the privilege you have to play by the rules, I do think we need to be prepared to respond to inquires about c3 and c4 spending in elections. Last November when the opinion was expected, EO practitioners asked if the IRS would put out a press release reminding folks of the c3 prohibition on campaign spending. They weren't arguing about whether the prohibition was legal --instead they were trying to stave off confusion in the event the court struck down the corporate prohibit ion. I'm sure they will be back asking soon. This also coming on the eve of our hearing on 7611 seems like much fodder for the press. I've asked Steve Pyrek to see if there have been press inquiries, but I am more concerned about folks getting questions on this at speaking opportunities. I know I have a few coming up and it is likely I'll be asked. I know this is a very sensitive issue, so thought it best to raise it with all of you to get high level direction as soon as possible. Thanks
Lois G. Lerner

SFC 002589

Director, Exempt Organizations

IRS0000444377

SFC 002590

From: Westcott Cindy M
Sent: Wednesday, September 24, 2008 7:23 AM
To: Melahn Brenda
Subject: RE: Policitial Case Alert

Couldn't open attachment.

From: Melahn Brenda
Sent: Wednesday, September 24, 2008 7:00 AM
To: Westcott Cindy M
Cc: Camarillo Sharon L
Subject: RE: Policitial Case Alert

Cindy -- sorry I'm so late responding --- only sent it to my managers -- see attached -- if you can't open this because it is encrypted, let me know and I'll forward separately.

Brenda

From: Westcott Cindy M
Sent: Friday, September 12, 2008 11:08 PM
To: Melahn Brenda
Cc: Camarillo Sharon L
Subject: RE: Policitial Case Alert

Brenda,

Did you send this out to everyone or only to Area 2 managers? Also, there was no attachment.

From: Melahn Brenda
Sent: Friday, September 12, 2008 2:04 PM
To: Camarillo Sharon L; Westcott Cindy M
Subject: RE: Policitial Case Alert

Sharon -- I sent out a reminder with Rob's memo from December attached --

---

From: Camarillo Sharon L
Sent: Friday, September 12, 2008 1:00 PM
To: Westcott Cindy M; Melahn Brenda
Subject: FW: Policitial Case Alert

Cindy or Brenda - have we done anything with Donna's suggestion?

SFC 002591

Sharon L. Camarillo
EO Determinations Manager, Area 1

SFC [redacted]

Telephone: SFC [redacted]
Fax: SFC [redacted]

From: Abner Donna J
Sent: Monday, September 08, 2008 4:57 AM
To: Westcott Cindy M; Camarillo Sharon L; Melahn Brenda
Cc: Bibb Kenneth B; Waddell Jon M
Subject: Policitial Case Alert

The purpose of this e-mail is to alert you to information discovered during the review of 2 cases - designated by Jon Waddell for Manager discretion review. In brief, during the review of the 2 cases it was discovered that several more already received exemption and because of the organization's structure, additional applications are very likely. Here's the specifics:

Jon's Cases: SFC [redacted] - Cas SFC [redacted]
SFC [redacted] - Cas SFC [redacted]

Already Exempt SFC [redacted] - Cas SFC [redacted] - Closed Status 06 - 3/16/06
SFC [redacted] - Cas SFC [redacted] - Closed status 01 - 9/2/04
SFC [redacted] - Cas SFC [redacted] - Closed status 01-3/12/08
SFC [redacted] - Cas SFC [redacted] - Closed status 01 - 5/8/07
SFC [redacted] - Cas SFC [redacted] - Closed status 06 - 3/6/08

Open Case -
SFC [redacted] - Cas SFC [redacted] Open status 61

As you can see from the above list the organizations appear to form based on "State" boundaries. Therefore, we may receive applications for the remaining states. The purpose of the organizations appear to be similar - train "Democratic" party canidates in areas such as campaigning, fundraising, public speaking, press relations, and leadership skills.

Because of the partisan nature of the cases - guidance from EO Technical is pending. Recent rulings considered include PLR 200833021 and Democratic Leadership Council, 542 F. Supp. 2d 63 (2008).

Per IRM 7.20.5 - "sensitive political issue" cases were designated as subject to mandatory review in 2007. Please note the two case above closed in 2008 that did not come through QA.

I recommend an alert be issued regarding this type of case as well as a reminder that "sensitive political issue" cases are subject to mandatory review.

Thank you,
Donna

From: Judson Victoria A
Sent: Friday, December 14, 2012 1:26 PM
To: Lerner Lois G; Ruth.Madrig SFC
Cc: Marks Nancy J; Grant Joseph H
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Great. Let's plan accordingly.

Victoria A. Judson
Division Counsel/Associate Chief Counsel (TEGE)
Phone: SFC
Fax: SFC

From: Lerner Lois G SFC
Sent: Friday, December 14, 2012 2:01 PM
To: Ruth.Madrig SFC ; Judson Victoria A
Cc: Marks Nancy J; Grant Joseph H
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

I'm good with telling them January--really just wanted to get it on your mind and make sure we have all the right folks in the room

Lois G. Lerner
Director of Exempt Organizations

From: Ruth.Madrig SFC SFC
Sent: Friday, December 14, 2012 1:47 PM
To: Lerner Lois G; Judson Victoria A
Cc: Marks Nancy J; Grant Joseph H
Subject: Re: Meeting with Democracy 21 and Campaign Legal Center

Next week is not possible, and the following week is tight. I'd prefer January - the first week is good

---

From: Lerner Lois G [SFC
Sent: Friday, December 14, 2012 01:18 PM
To: Judson, Victoria A; Madrigal, Ruth
Cc: Marks Nancy J SFC Grant Joseph H SFC
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

I'm thinking Jan. also--I'll wait to hear from Ruth--thanks

Lois G. Lerner
Director of Exempt Organizations

From: Judson Victoria A SFC
Sent: Friday, December 14, 2012 1:12 PM
To: Lerner Lois G; Ruth Madrigal SFC

SFC 002593

Cc: Marks Nancy J; Grant Joseph H
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

I could come in on the 28 or 29th, but next week won't work given the reg projects I have that need to get out by the end of the year. First week of January would also work.

Victoria A. Judson
Division Counsel/Associate Chief Counsel (TEGE)
Phone: SFC
Fax: SFC

From: Lerner Lois G SFC
Sent: Friday, December 14, 2012 12:48 PM
To: Judson Victoria A; Ruth Madrigal SFC
Cc: Marks Nancy J; Grant Joseph H
Subject: FW: Meeting with Democracy 21 and Campaign Legal Center
Importance: High

Before I respond, I thought I'd bring you into the loop. I have no problem listening to them, but would prefer not to do it without you in the room. Not sure they understand guidance is a joint effort, and he has been very vocal in the past. Are you willing to join me in a meeting and, if so, what is your timing--they are asking for next week, if possible. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Beard SFC
Sent: Friday, December 14, 2012 12:25 PM
To: Lerner Lois G
Subject: Meeting with Democracy 21 and Campaign Legal Center

Dear Ms. Lerner,

I am writing on behalf of Fred Wertheimer, President of Democracy 21, to inquire about setting up a meeting for him and the Campaign Legal Center to meet with you to discuss the request for a petition for rulemaking on candidate election activities by Section 501(c)(4) groups.

If possible, Mr. Wertheimer would like to set up a meeting sometime next week.

Thank you very much and I look forward to speaking with you.

Kathryn Beard

Communications & Research Director
Democracy 21

2000 Massachusetts Ave NW
Washington, DC 20036
SFC
SFC

SFC 002594

From: Ruth Madrig SFC
Sent: Wednesday, December 19, 2012 10:44 AM
To: Lerner Lois G; Judson Victoria A
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Thanks Lois.

From: Lerner Lois SFC
Sent: Wednesday, December 19, 2012 11:37 AM
To: Judson, Victoria A; Madrigal, Ruth
Subject: FW: Meeting with Democracy 21 and Campaign Legal Center

FYI--not sure we got anything from Campaign Legal Center --will check

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Bear SFC
Sent: Wednesday, December 19, 2012 11:30 AM
To: Lerner Lois G
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Lois,

The five people attending the meeting will be Fred Wertheimer and Donald Simon from Democracy 21 and Paul Ryan, Tara Malloy and Gerald Hebert from the Campaign Legal Center.

Thanks and we look forward to receiving the invitation.

Kathryn Beard

Communications & Research Director
Democracy 21

SFC

From: Lerner Lois SFC
Sent: Wednesday, December 19, 2012 10:48 AM
To: Kathryn Beard

Cc: Sandifer Theodora
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

My secretary, Theodora Sandifer, will send an invitation, and will provide you with information about how to get to us once you reach the building. Will any one other than you and Mr.. Wertheimer be attending?

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Bear SFC[redacted]
Sent: Wednesday, December 19, 2012 10:21 AM
To: Lerner Lois G
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Lois,

January 4th at 11am works for Mr. Wertheimer and the Campaign Legal Center.

Thanks,

Kathryn Beard

Communications & Research Director
Democracy 21

[redacted]
SFC[redacted]

From: Lerner Lois SFC[redacted]
Sent: Tuesday, December 18, 2012 3:44 PM
To: Kathryn Beard
Cc: Sandifer Theodora; Marx Dawn R
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

I have spoken with my colleagues. We can meet Friday, January 4th at 11:00. let us know if that works and we will send out an invitation.

Lois G. Lerner
Director of Exempt Organizations

SFC 002596

From: Kathryn Bear SFC[redacted]
Sent: Monday, December 17, 2012 1:26 PM
To: Lerner Lois G
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Great. Thank you very much.

Kathryn Beard

Communications & Research Director
Democracy 21

SFC[redacted]

From: Lerner Lois SFC[redacted]
Sent: Monday, December 17, 2012 12:06 PM
To: Kathryn Beard
Cc: Sandifer Theodora
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Let's see what we can put together. We'll get back to you once we've reached my colleagues.

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Bear SFC[redacted]
Sent: Monday, December 17, 2012 11:46 AM
To: Lerner Lois G
Cc: Sandifer Theodora
Subject: RE: Meeting with Democracy 21 a nd Campaign Legal Center

Dear Ms. Lerner,

Thank you for getting back to me.

After speaking with Mr. Wertheimer and the Campaign Legal Center, they are all free all day on Friday, January 4, 2013. Whatever time works best for you is fine with them. If t hat day does not work, I can try to find another day that they will be free. Thank you,

Kathryn Beard

Communications & Research Director
Democracy 21

SFC [redacted]

From: Lerner Lois SFC [redacted]
Sent: Friday, December 14, 2012 2:16 PM
To: Kathryn Beard
Cc: Sandifer Theodora
Subject: RE: Meeting with Democracy 21 and Campaign Legal Center

Thank you for your interest in meeting with us. Because all EO related guidance is a joint effort by EO, IRS Chief Counsel and Treasury, it makes the most sense to have all three offices in attendance at the meeting. I have reached out to my counterparts and we can set something up for the first week in January, but schedules do not permit a meeting before then. Please provide some proposed dates/times and my secretary, Theodora Sandifer, will coordinate schedules.

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Bear SFC [redacted]
Sent: Friday, December 14, 2012 12:25 PM
To: Lerner Lois G
Subject: Meeting with Democracy 21 and Campaign Legal Center

Dear Ms. Lerner,

I am writing on behalf of Fred Wertheimer, President of Democracy 21, to inquire about setting up a meeting for him and the Campaign Legal Center to meet with yo u to discuss the request for a petition for rulemaking on candidate election activities by Section 501(c)(4) groups.

If possible, Mr. Wertheimer would like to set up a meeting sometime next week.

Thank you very much and I look forward to speaking with you.

Kathryn Beard

Communications & Research Director
Democracy 21

SFC [redacted]

SFC 002598

SFC [redacted]

IRS0000446775

From: Ruth.Madrig [redacted]
Sent: Thursday, October 07, 2010 12:48 PM
To: Kindell Judith E
Subject: RE: Political Activity Materials on (c)(4)s (c)(5)s and (c)(6)s

Many thanks.

Ruth

M. Ruth M. Madrigal
[redacted]

-----Original Message-----
From: Kindell Judith [redacted]
Sent: Thursday, October 07, 2010 1:47 PM
To: Madrigal, Ruth
Subject: FW: Political Activity Materials on (c)(4)s (c)(5)s and (c)(6)s

Here are the background materials we have gathered for ourselves

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From: Buller Siri
Sent: Wednesday, October 06, 2010 11:15 AM
To: Urban Joseph J; Lerner Lois G; Kindell Judith E; Fish David L; Lowe Justin
Cc: Letourneau Diane L; Douglas Akaisha
Subject: Political Activity Materials on (c)(4)s (c)(5)s and (c)(6)s

1) "Advocacy by Exempt Organizations" internal two -page summary with accompanying chart

2) Revenue Ruling 2004-6, 2004-4 I.R.B. 328 (available at http://www.irs.gov/charities/nonprofits/article/0,,id_155031,00.html)

3) Schedule C Political Campaign and Lobbying Activities, 2009 Form 990 or 990-EZ

4) 2009 Instructions for Schedule C (Form 990 or 990 -EZ)

5) "Rules for Exempt Organizations During an Election Year" slideshow presentation (available at http://www.irs.gov/charities/nonprofits/article/0,,id_155031,00.html)

Siri Buller
Tax Law Specialist

Technical Group 1
Exempt Organizations
SFC [redacted]
SFC [redacted]

SFC 002601

From: Eldridge Michelle L
Sent: Friday, August 06, 2010 4:24 PM
To: Miller Steven T; Ingram Sarah H; Lerner Lois G; Davis Jonathan M (Wash DC); Campbell Carol A; Keith Frank; Potter Clarissa C; Marks Nancy J
Cc: Lemons Terry L; Pyrek Steve J; Patterson Dean J
Subject: Washington Post inbound re: 501 c4 and 527 groups/supreme court ruling

Washington Post reporter, Tim Farnam is working on a story that as he explains it, is about the new importance of IRS regulations covering campaign/election -related activity for section 501c4 and 527 groups in light of a recent Supreme Court decision freeing corporations to run campaign ads. The premise of his story, in his words, is that the IRS has a harder time regulating money in politics than the FEC because it is primarily a bill collector and not an enforcement agency.

We have been working with TE/GE on this inbound and provided him with a few links to existing data/stats on the web for his story. Beyond that--we did not touch this issue. We expect his story to run over the weekend. Thanks.
--Michelle

SFC 002602

From: Lerner Lois G
Sent: Wednesday, October 06, 2010 12:14 PM
To: Fish David L; Ingram Sarah H; Grant Joseph H
Cc: Kindell Judith E; Urban Joseph J
Subject: RE: Call From Karen McAfee--Ways and Means

Good to know--where is it being worked? perhaps it ought to be here?

Lois G. Lerner
Director, Exempt Organizations

From: Fish David L
Sent: Wednesday, October 06, 2010 1:14 PM
To: Lerner Lois G; Ingram Sarah H; Grant Joseph H
Cc: Kindell Judith E; Urban Joseph J
Subject: RE: Call From Karen McAfee--Ways and Means

FYI--there is a 1024 in house that has not been approved.

From: Lerner Lois G
Sent: Wednesday, October 06, 2010 1:12 PM
To: Ingram Sarah H; Grant Joseph H
Cc: Kindell Judith E; Fish David L; Urban Joseph J
Subject: FW: Call From Karen McAfee--Ways and Means

Another glitch in the law. If they started up this year and did not come i nto us for exemption, we have nothing on them until they file a 990. So, allegations going into Dallas would be closed out in EO and sent to SB since we have no record of them being taxable. If they are taxable, SB would do nothing because they can do th is activity--so they'd close it out. then, if they do file a 990 the next year, there wouldn't be anything open in IRS to pursue. Solution --Congress pass a law that says all organizations that want tax exemption must apply!!!!!

Lois G. Lerner
Director, Exempt Organizations

SFC 002603

From: Fish David L
Sent: Wednesday, October 06, 2010 1:04 PM
To: Williams Floyd L; Lerner Lois G; Urban Joseph J
Cc: Seto Michael C; Megosh Andy
Subject: RE: Call From Karen McAfee --Ways and Means

We have not recognized American Crossroads GPS as a tax -exempt organization. We're checking on whether there is a 990. We are also checking whether there is a 527 in our records.

From: Williams Floyd L
Sent: Wednesday, October 06, 2010 12:19 PM
To: Lerner Lois G; Urban Joseph J; Fish David L
Subject: Call From Karen McAfee --Ways and Means

Karen called about American Crossroads GPS. Is there public information to the effect that it is a S01(c)(4) organization? Also, can we publicly verify that there is an American Crossroads 527 organization? Thanks.

From: Seok Stephen D
Sent: Wednesday, January 18, 2012 12:21 PM
To: Estes Janine L
Subject: Info request letter

Hi, Janine,

I will be on leave from tomorrow afternoon till next Monday, so please send out the letter as soon as done without consulting with me if the letter is done during my absence.
Just ecopying me the development letter is fine.

So far the following items brought our attention:

1) Even if 1312 letter was out previously and the applicant answered questions in detail, we need to ask questions updating the applicant's activities for the time lapse (2010 and 2011).
2) When we ask for copies of websites, we need to ask the applicants provide them rather than we send printed copies.
3) We need to be careful about any questions that touches any sort of private matters - these organization may be very sensitive on such questions.
(When in doubt, leave them out for now and confer with me.)

Note: Please feel free to use the questions that I sent you.

Thank you,
Stephen.

From: Seok Stephen D
Sent: Tuesday, January 17, 2012 11:13 AM
To: Estes Janine L
Cc: Bowling Steven F
Subject: RE: Case request

Hi, Janine,

I assigned the following case to you. Please see Henry Shamburger (sits near Steve's office) to get the case file.
Please email me your development letter before you send out (for consistency purpose).

Thank you,
Stephen.

			Control			**Current**	**Lobbying**	**General Advocacy (i.e. issue advocacy and/or educational activities)**	**Propaganda/Inflammatory (little to no educational aspects)**	**Politic: Activit**

SFC 002605

Organization Name	Assigned to	Date	Date	EIN	Subsection	EDS Status				
King Street Patriots	Janine	1/17/12	05/11/10	27-1620172	c-4	52		X		

From: Estes Janine L
Sent: Tuesday, January 17, 2012 10:45 AM
To: Seok Stephen D
Cc: Bowling Steven F
Subject: RE: Case request

I'm planning on working from home t omorrow; so, it would be fantastic if it were possible to get the case today.

From: Seok Stephen D
Sent: Tuesday, January 17, 2012 10:44 AM
To: Estes Janine L
Cc: Bowling Steven F
Subject: RE: Case request

Good morning, Janine,

I will be in office tomorrow. I will bring the case to you or put in your mailbox before 10 in the morning tomorrow.
If you need the case today, please let me know.

Thank you,
Stephen.

From: Estes Janine L
Sent: Tuesday, January 17, 2012 10:39 AM
To: Seok Stephen D
Cc: Bowling Steven F; Lahey Victoria
Subject: Case request

I'd like to request an advocacy case.

Janine L. Estes
Exempt Organizations,
Determinations, Group 7829
SFC [redacted]

From: Thomas Cindy M
Sent: Thursday, March 15, 2012 12:49 PM
To: Seok Stephen D
Cc: Bowling Steven F
Subject: Advocacy Cases -- ACTION REQUIRED
Attachments: Extension Letter for Advocacy Cases-03152012.doc; Advocacy Cases Already in Suspense-03152012.doc

Importance: High

Stephen,

I've had a couple of conversations with Holly Paz regarding the advocacy cases and we've come up with a few scenarios, along with the manner in which cases should be processed. If you have questions regarding the scenarios or process to be followed, please let me know. Otherwise, please forward the information to all team members and be certain to copy their managers, Bonnie, and me.

Also, Lois Lerner and Holly Paz worked with Steve Miller's office to develop the attached letters. Therefore, they shouldn't be modified, other than to fill in the missing fields.

If team members have scenarios that aren't covered in the information below or have any questions/concerns, please let me know and we'll get them addressed. Thanks for your help in coordinating these cases.

Scenarios

1. Cases Where an Additional Information Letter Was Issued and No Response Has Been Received: All of these organizations will be given a 60-day extension. Please refer to Attachment 1 which is a letter prepared for the c4 applicants. This letter must be issued to each of the c4 applicants, today if possible. If the specialist to whom the case is assigned isn't available and his/her manager or another specialist doesn't have access to the information needed to send the letter, we'll need to wait until the specialist returns. If the specialist hasn't returned by Monday (3/19/2012), however, we will need to come up with an alternative approach to make sure the letter is sent by then. For c3 applicants, the Washington Office will be preparing a letter to be issued to these organizations.

2. Cases Where an Additional Information Letter Was Issued and the Applicant Requested an Extension: Follow the same procedures as under item 1 above.

3. Cases Where an Additional Information Letter Was Issued, the Applicant Has Responded, and More Information is Needed: These cases should continue to be held with no action taken. EO R&A in the Washington Office is in the process of revising the Guidesheet previously sent to us, based on feedback they received from Counsel. After we receive the revised Guidesheet, the cases will need to be revisited to determine whether additional information is still needed.

4. Cases Where the Applicant Has Submitted a Written Request to have its Application Withdrawn: These cases can be processed and closed as a withdrawal.

5. Cases Where the Specialist Determines the Application should be Approved: Normal case closing procedures should be followed, except that the cases must be transferred to the Group 7822 manager to be reviewed, with the assistance of the advocacy case coordinator.

6. Cases Where the Specialist Determines the Application should be Denied: Coordination will take place with the Advocacy Case Coordinator, who will be working with EO R&A in the Washington Office and with EODQA.

7. **Unassigned Cases or Those Assigned to a Specialist Where no Additional Information Letter has been Issued:** These cases should continue to be held with no action ta ken. EO R&A in the Washington Office is in the process of revising the template questions and will send them to us as soon as they are finalized.

8. **Cases Already Placed in Suspense:** These cases will be taken out of suspense and reassigned back to t he specialist. Attachment 2 is a letter that was prepared for the c4 applicants. This letter must be issued to each of the c4 applicants, whose case was already placed in suspense, today if possible. If the specialist to whom the case is assigned isn't available and his/her manager or another specialist doesn't have access to the information needed to send the letter, we'll need to wait until the specialist returns. If the specialist hasn't returned by Monday (3/19/2012), however, we will need to come up with an alternative approach to make sure the letter is sent by then. For c3 applicants whose case was already placed in suspense, the Washington Office will be preparing a letter to be issued to these organizations.

SFC 002608

Internal Revenue Service
Address
Address

Department of the Treasury

Employer Identification Number:
[NN-NNNNNNN]
Contact Person:
[Agent Name and ID Number]
Contact Telephone Number:
[Enter Contact Number]
Fax Number:
[Enter Fax Number]
Response Due Date:
[Enter 60 days from the date of this letter]

Date:

[Organization Name]
[Address]
[Address]

Dear Applicant:

Our previous letter, copy enclosed, requested additional information about your application for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. To be tax-exempt under section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare. When determining whether an organization meets that standard, all the facts and circumstances of that specific organization must be considered .

As indicated in our previous letter, we are unable to make a final determination on your exempt status without additional information. Because you did not provide the additional information requested within the time period specified in our previous letter, your case was placed in suspense. In light of the original timeframe for response, we are reactivating your case to give you additional time to respond to our request for additional information. We ask that you provide the previously requested information by the response due date shown above (60 days from the date of this letter). Please contact the individual listed above if you believe that the information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, if you need additional time to provide the requested information, or if you have other questions or concerns. Please submit your response to us at:

Internal Revenue Service
Address
Address

If you do not provide the additional information or receive an extension from us by the response due date shown above (60 days from the date of this letter), your case will be placed in suspense. You may reactivate your case by providing the requested information within 90 days of being placed in suspense. After the 90-day period has passed, we will close your case and if you wish to pursue IRS recognition of tax-exempt status you will be required to submit a new application package and new user fee payment.

Please note that if your case is closed and you continue to hold yourself out as a section 501(c)(4) organization, you must file the appropriate Form 990-series return (Form 990-N, Form 990-EZ or Form 990).

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:
Previous Letter

SFC 002609

Avrutine Melissa

Subject:	EO Data Matters
Location:	3308
Start:	Tue 5/7/2013 4:00 PM
End:	Tue 5/7/2013 5:00 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Miller Steven T
Required Attendees:	Flax Nikole C; Silverman Dean R; Schweikert Eric; Grant Joseph H

4/30: Scheduled per Dean/Steve. Corina

SFC 002610

From: Miller Thomas J
Sent: Friday, March 26, 2010 4:05 PM
To: Choi Robert S
Subject: RE: ACTION by 12noon 3/29/10: Investigation
Attachments: Potentially Re Brkl Entities.xls

Although an organization is required to disclose on its application if it is taking over the activities of another Form 1024 specifically asks in Part II, line 4 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. I searched the EOBMF for NY and found no record for an organization using either the ACORN acronym or the full name (Association of Community Organizations for Reformation Now), or starting with "The." However, after I found a section 501(c)(3) housing/development organization with ACORN in the name at th SFC [redacted] street address given in the article, I searched the NY listings for that addressed and identified seven additional housing dev elopment entities with th [redacted] SFC [redacted], address, as well as the section 501(c)(4) -recognized organization described in the article as taking over activities SFC [redacted]., which is listed as having an address [redacted] S SFC Whether that is the same building a SFC [redacted] is something to be determined, but I would suspect it is at least very close. There is another section 501(c)(3) organization listed with the address o [redacted] S [redacted], name SFC [redacted]. I do not know if it is related to any of the others, but it is the only other entity I found at that address. The c/o name SFC [redacted], does not appear on any other listing, but the organization's name suggests its purpose is consistent with the other organizations.

I copied the listings I found on the attached spreadsheet FYI. Sorry if it is a complete workbook, but I don't know how to save a single sheet.

TM

Thomas J. Miller
Technical Advisor
Exempt Organizations
Rulings & Agreements
SFC [redacted]
Fax SFC [redacted]

From: Choi Robert S
Sent: Friday, March 26, 2010 2:11 PM
To: Thomas Cindy M; Camarillo Sharon L; Melahn Brenda; Shafer John H; Waddell Jon M; Berry Daniel W
Cc: Grodnitzky Steven; Miller Thomas J; Choi Robert S
Subject: ACTION by 12noon 3/29/10: Investigation

I need a summary from Cincy regarding this issue of ACORN morphing into new entities. I have a meeting Monday afternoon, 3/29, to discuss this issue with HQ folks. I'm trying to get background on what we have seen so far and if there are any concerns identified on the applications that have been submitted.

What have we received to date re applications? Numbers.
Have we approved, denied, or FTE'd any? Numbers.
How do we know that these new applcations are related to the predecessor organizations? In other words, how are we linking them?
Have we identified any concerns to date?

SFC 002611

Have any of these new entities assumed the assets and liabilities of the predecessor orgs?
I see from the email thread below that this originated from Ritchie Heidenreich in ROO, EO Exam. Do you know what his role is regarding ACORN?

Need response by email to Steve, Tom and I by 12noon, Monday, 3/29/10.

Thanks.

From: Grodnitzky Steven
Sent: Wednesday, March 24, 2010 9:43 AM
To: Choi Robert S
Subject: FW: Investigation

Just a heads up 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 FTE. Will keep you updated as to new developments in this area. May cause some press attention.

From: Thomas Cindy M
Sent: Monday, March 22, 2010 7:28 PM
To: Grodnitzky Steven
Subject: FW: Investigation

Steve,

Does EO Technical need this information?

From: Camarillo Sharon L
Sent: Monday, March 01, 2010 1:18 PM
To: Thomas Cindy M; Melahn Brenda
Cc: Shafer John H; Waddell Jon M
Subject: FW: Investigation

Cindy: Please elevate this issue to alert EOT to a potential new twist on the former ACORN organization. It appears that ACORN may have gone out of business, but has re-organized into several different organizations with the same purpose. These new organizations include:

- SFC [redacted],
- SFC [redacted], and
- SFC [redacted] (located in SFC [redacted]).

I agree with Jon's recommendation that we not open a new TAG issue until we actually receive one of these applications and can make an assessment for their potential for fraud or other abuse.

John: Can you tell if we have received any of these applications in our screening unit? If so, the cases should be forwarded to the TAG group.

SFC 002612

Sharon L. Camarillo
EO Determinations Manager, Area 1

SFC [redacted]

Telephone: SFC [redacted]
Fax: SFC [redacted]

From: Waddell Jon M
Sent: Monday, March 01, 2010 6:40 AM
To: Camarillo Sharon L
Subject: FW: Investigation

Sharon,

I'm forwarding on this e-mail I rec'd from Richie in the ROO. It concerns **ACORN** and its apparent new incarnation as **Communities for Change**. Richie inquired as to how Acorn Affiliated cases are identified when they come in for exemption as well as suggesting these types of cases be worked in TAG.

I have informed Richie I would elevate his e -mail but hare are my specific thoughts:

1. To date, I remember seeing only one Acorn-related application which was previously assigned to Julie Chen and was ,at one time, included on the Sensitive Case Report in 7821. I believe that the case was ultimately closed fte.

2. I don't think this issue should be added to TAG until we actually review a case and assess the level of potential fraud, I f any.

3. Lastly, it might be a good idea to alert the screener's that if they see an ACORN related case or one referencing Communities for Change that they send it the TAG Group for review.

Overall, at this point, I think its premature to state anything is TAG case unt il we actually see and review a case.

thanks

From: Heidenreich Richie
Sent: Friday, February 26, 2010 3:58 PM
To: Todd Nancy M
Cc: Lawson Colleen C; Waddell Jon M
Subject: Investigation

Nancy,

There is a lot of internet traffic about ACORN reinventing itself. Th SFC ACORN office is now occupied b SF [redacted] Communities for Change. They have formed a new corporation and will be applying for exemption under 501(c)(4). In SFC [redacted] the remnants of ACORN have become the SFC [redacted]. In SFC [redacted] they have become SFC [redacted]. I am guessing other

offices will be doing the same. These cases probably should be handled by the TAG group if they can be identified.

John,

Do we have a mechanism to recognize these cases if and when they come in for exemption.

Richie

SFC 002614

From: Camarillo Sharon L
Sent: Wednesday, April 28, 2010 12:29 PM
To: Thomas Cindy M
Cc: Choi Robert S; Waddell Jon M
Subject: FW: Response due 9:am PST to Rob Choi/Cindy Thomas

Importance: High

Cindy and Rob: Here is the information that you asked for relating to the ACORN cases. Please let me know if you need any additional information.

1. What have we received to date? To date we have received two applications: SFC [redacted]. This organization refers to themselves as a successor to th SFC Chapter of ACORN (page 3 of 1024) . Additionally, we have identified one other organization SFC [redacted]) which was closed as an FTE and subsequently re -opened. A Sensitive Case Report has been submitted and that case is currently in Quality Assurance

2. Have we approved, denied, fte'd any? Regarding th SFC [redacted], the case has been recommended for approval and forwarded to QA. No closing action or recommendation has been taken relating to th SFC

3. How do we know this application is related to the predecessor organization? The SFC application specifically mentions the predecessor organization on page 3 of the 1024. The predecessor's name i SFC Chapter of the Association of Communities for Reform Now.

4. Have we identified any concerns to date: Regarding th SFC [redacted], the agent ra ised questions concerning research and polling activities and whether the applicant made a contribution to the Missouri Proposition C campaign (a citizen -initiated state statute regarding renewable electricity standards). No issues have yet been identified relating to th SFC,

Have any of these new entities assumed the assets and liabilities of the predecessor org? Per the application for SFC , the applicant is acquiring the assets of the predecessor organization via an attached Asset Purchase Agreement.

6. ROO's role in the initial e -mail? Richie Heidenreich in the ROO forwarded the initial newspaper article to the EOD TAG Group which made specific mention o SFC Communities for Change .

Sharon L. Camarillo
EO Determinations Manager, Area 1

SFC [redacted]

Telephone: SFC [redacted]
Fax: SFC [redacted]

SFC 002615

From: Munroe David
Sent: Thursday, August 09, 2012 4:32 PM
To: Judson Victoria A; Cook Janine; Brown Susan D; Blumenfeld Michael B; Griffin Kenneth M; Edlund Taina; Hunt Sylvia F; Quesenberry Preston; Spellmann Don R
Subject: Monday's EO guidance meeting

Attached for Monday's 3 to 4 pm meeting on EO guidance is an excel chart that shows info for the 12 -13 PGP EO projects and projects we've agreed to work off plan. Thanks. Dav SFC

PGP and local chart-EO-8-09-12...

SFC 002616

Draft EO Items - Published Plan and Local List - 8-09-12				
Project ID in TECHMIS (if applicable)	PGP Description of Subject Matter/Issue & Code Section	Att/ Rev	Target Publication Date	Comments
	ITEMS ON PUBLISHED PLAN			
PGP-144443-02	Regulations under §7701 providing criteria for treating an entity as an integral part of a state, local, or tribal government. {Under General Tax Issues Heading}	Jones/ Hunt/ Lothamer/ Brown	6/30/2013	Project was on hold pending 414(d) guidance (ANPRM issued Nov. 2011). Team regrouping to start project. CC:PSI is on board with keeping it on the plan. See related proposal on instrumentalities on ET chart.
RP-122085-09/ RP-122087-09/RP-127099-12	Revenue procedures updating grantor and contributor reliance criteria under §§170 and 509. [Carryover]	Marshall/ Edlund	10/15/2012	Three RPs have been green sheeted and are in clearance with EO client.
Unopened	Revenue Procedure to update Revenue Procedure 2011-33 for EO Select Check.	Marshall/ Edlund	12/31/2012	EO function priority #2. Update to Rev. Proc. 2011-33 (which provides guidance on the extent to which contributors and grantors may rely on Pub. 78 and the BMF extract for purposes of deducting contributions and making grants under §§ 4942, 4945, 4966) to reflect final 990 regulations, EO Select Check, and to provide guidance on reliance in cases involving automatic revocation §6033(j).
REG-106499-12	Regulations under §501(r) on requirement for community health needs assessments by charitable hospitals as added by §9007 of the ACA.	Franklin/ Quesenberry	10/31/2012	ACA implementation. Includes section 4959 piece to turn on excise tax, and other remaining issues under 501(r).
REG-130266-11	Final regulations under §§501(r) and 6033 on additional requirements for charitable hospitals as added by §9007 of the ACA. Proposed regulations were published on June 26, 2012.	Mackenzie/ Franklin/ Quesenberry	1/31/2013	ACA implementation. The final regulations will cover both these proposed regulations and the CHNA proposed regulations.
REG-155929-06	Final regulations under §§509 and 4943 regarding the new requirements for supporting organizations (SOs) as added by §1241 of the Pension Protection Act of 2006. Proposed regulations were published on September 24, 2009. [Carryover]	Kartha/ Quesenberry	10/31/2012	Awaiting comments from OTP on proposals on additional flexibility.
REG-118867-10	Additional guidance on §509(a)(3) supporting organizations (SOs). [Carryover]	Kartha/ Quesenberry	10/31/2012	Awaiting comments from Treasury on draft. Depending on timing, this project could include guidance on mandatory "typing" of SOs (see work off plan project below).
REG-XXXXXX-12, [RP-120386-097]	Additional guidance under §§4942 and 4945 regarding reliance standards for making equivalency determinations. [Carryover - somewhat]	Harris/ Jones/ Edlund	9/21/2012	All outside suggestors would like the guidance to cover equivalency determination information repositories. Repositories are Treasury's #1 priority. Description changed from the one on 11-12 PGP.
REG-144267-11	Final regulations under §4944 on program-related investments. Proposed regulations were published on 4/19/2012.	Jones/ Lothamer	3/30/2013	Practitioners may request revenue ruling dealing with additional issues.
REG-142338-07	Regulations regarding the new excise taxes on donor advised funds and fund management under §4966 as added by §1231 of the Pension Protection Act of 2006. [Carryover]	Mackenzie/ Edlund/ Blumenfeld	6/30/2013	Treasury has draft for comment.
REG-140399-09/ NOT-153387-09	Regulations under §6033 on group returns. [Carryover]	Rosenbaum/ Griffin	6/30/2013	In 2011, ACT made recommendation that may affect direction of project.

IRS0000458990

Draft EO Items - Published Plan and Local List - 8-09-12				
Project ID in TECHMIS (if applicable)	PGP Description of Subject Matter/Issue & Code Section	Atl/ Rev	Target Publication Date	Comments
Unopened	Revenue Procedure under Section 6033 to update and consolidate all non-regulatory exceptions from filing.	Harris/ Blumenfeld	10/31/2012	EO function priority #1. Update to Rev. Proc. 2011-15 to incorporate Rev. Proc. 95-48 (instrumentalities) and Rev. Proc. 96-10 (managing assets of churches) and take into account PPA prohibition on IRS giving discretionary filing exceptions to §509(a)(3)s (SOs).
REG-140108-08	Final regulations under §6104(c). Proposed regulations were published on March 15, 2011.	Marshall/ Griffin	3/30/2013	EO priority # 7. NPRM can be finalized substantially as proposed. Comments requested statutory changes, not changes to the regulations.
REG-112756-09	Final regulations under §7611 relating to church tax inquiries and examinations. Proposed regulations were published on August 5, 2009. [Carryover]	Franklin/ Griffin	12/31/2012	In clearance at Treasury.
	LOCAL LIST (i.e., work off plan)			
Unopened	Guidance relating to mandatory "typing" of §509(a)(3) supporting organizations (SOs).	Kartha/ Quesenberry	Unknown	High priority for EO Division, but would not list as separate project. Work off plan with Treasury to determine what Type I/II SO "fixes" are needed before this project can proceed. Current year's PGP lists additional guidance on SOs and typing program could come under that umbrella.
Unopened	In the context of a "dual use facility," where a facility is used to conduct an exempt activity and an unrelated trade or business, provide guidance on what constitutes a "reasonable basis" for purposes of allocating expenses, etc. between the exempt use and the use constituting an unrelated trade or business for purposes of calculating UBIT.	Rosenbaum/ Edlund/ Blumenfeld	Unknown	Issue comes up in exam. Large dollar amounts involved. Considering committing resources to work off plan.
Unopened	Guidance on the standard for qualification of HMOs under § 501(c)(4), including (1) whether and how HMOs that arrange for the provision of health care services for their premium paying members can qualify as exempt under § 501(c)(4) (this issue was raised in the Vision Service Plan litigation) and (2) whether the 1986 off-Code provision for Delta Dental Plan organizations effectively treats them as operating for the promotion of social welfare under § 501(c)(4), or it only excepts them from the § 501(m) proscription on commercial type insurance.	Weinstock/ Spellman	Unknown	Client has pending applications. Needs guidance on applying (c)(4) post-Vision Service Plan litigation. Will continue to work issue with client and Treasury off-plan.

SFC 002618

Draft EO Items - Published Plan and Local List - 8-09-12				
Project ID in TECHMIS (if applicable)	PGP Description of Subject Matter/Issue & Code Section	Att/ Rev	Target Publication Date	Comments
Unopened	Guidance stating the foundation's transfer of property to a disqualified person partnership in exchange for a partnership interest, or transfer of a partnership interest in exchange for property (a redemption) constitutes a "sale or exchange" for purposes of §4941 and therefore is self-dealing. Needed to correct previously issued PLRs and provide transition relief.	Marshall/ Edlund	Unknown	EO function priority #3. Draft notice with Counsel for review. Preliminary discussion with Treasury regarding appropriate vehicle for guidance. Work off plan.
Unopened	Distributions from donor advised fund that results in more than incidental benefit to donor or advisor, giving rise to excise tax under section 4967.	Haney/ Edlund	Unknown	Possibility of folding into current §4966 project (or breaking off and doing separate, non-reg guidance). Work off plan.
Unopened	Whether "operated exclusively" has the same meaning under section 501(c)(3) and (c)(4). Regulations under 501(c)(3) permit only an insubstantial amount of the organizations activities to be not in furtherance of exempt purposes. For purposes of 501(c)(4), the term is often interpreted to mean primarily.	Jones/ Spellman	Unknown	Work off plan.

EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

June 3, 2010

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

I have written to you previously concerning the Association of Community Organizations for Reform Now ("ACORN") and its alleged fraudulent activities. Press reports claim ACORN is rebranding itself after apparently shutting down its offices. Because of your vested interest in investigating ACORN, I have enclosed in this letter the Committee on Oversight and Government Reform's report detailing the changed names of various ACORN affiliates.

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 also ask that you maintain oversight over ACORN's rebranded affiliates.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Thank you for your attention to this matter. If you have any questions regarding this request, please contact Daniel Epstein, Committee Counsel, at (202) 225-5074.

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Mr. Douglas Shulman
June 3, 2010
Page 2

Sincerely,

Rep. Darrell Issa
Ranking Member

cc: Chairman Edolphus Towns
Encl.: Primer on ACORN Rebranding

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Ranking Member

ACORN Political Machine Tries to Reinvent Itself

Staff Report
U.S. House of Representatives
111th Congress
Committee on Oversight and Government Reform
June 3, 2010

I. The Myth of ACORN's Dissolution

On February 18, 2010, the House Oversight and Government Reform Committee Republicans, in a staff report, described ACORN's financial management as a "shell game . . . designed to conceal illegal activities, to use taxpayer and tax-exempt dollars for partisan political purposes, and to distract investigators."[1] ACORN officials, however, appear to be trying to dupe government officials and the American public through false and misleading claims about ending operations. ACORN officials told the *New York Times* that "at least 15 of the group's 30 state chapters have disbanded and have no plans of re-forming".[2] On Sunday March 21, 2010, it was reported that the ACORN Board met to discuss the closing of state affiliates and field offices.[3]

However, claims that ACORN is disbanding have been greatly exaggerated. As ACORN CEO Bertha Lewis told *National Public Radio*, "[ACORN is] not dead, yet."[4] ACORN's new affiliates have filed corporate registrations in Secretary of State offices throughout the country. Based upon its review of these corporate filings, Committee investigators have discovered that Affordable Housing Centers of America, Inc. maintains the same Tax Identification Number as ACORN Housing, Inc., its predecessor. This means that, for tax purposes, Affordable Housing Centers of America and ACORN Housing are the same. Additionally, Committee investigators found that several new ACORN affiliates maintain the same boards, staff and Employer Identification Numbers as former ACORN offices. This reflects the lack of true change or reform between these new organizations and their predecessors.[5]

ACORN affiliates in various states are also changing their names in what has been described as, "a desperate bid to ditch the tarnished name of their parent organization and restore federal grants and other revenue streams."[6] In California, ACORN is now the Alliance of Californians for Community Empowerment ("ACCE"). In Massachusetts, Rhode Island, and Connecticut, ACORN is New England United for Justice. In New York, ACORN is New York Communities for Change. In Arkansas, ACORN has become Arkansas Community Organizations ("ACO"). In Louisiana,

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[1] Minority staff report, *Follow the Money: ACORN, SEIU, and their Political Allies*, COMM. OVERSIGHT AND GOV'T REFORM (2010) at *passim*, *available at*: http://republicans.oversight.house.gov/images/stories/Reports/20100218followthemoneyacornseiuandtheirpoliticalallies.pdf.

[2] Ian Urbina, *Acorn on Brink of Bankruptcy, Officials Say*, N.Y. TIMES, Mar. 19, 2010, *available at*: http://www.nytimes.com/2010/03/20/us/politics/20acorn.html?src=me (last visited Mar. 24, 2010).

[3] Kate Rogers, *ACORN Closing Its Doors, Chapters Might Re-Emerge*, NONPROFIT TIMES, Mar. 23, 2010, *available at*: http://www.nptimes.com/10Mar/news-100323-1.html (last visited Mar. 26, 2010)

[4] Deborah Tedford, *CEO Says ACORN 'Isn't Dead Yet'*, NPR, Mar. 23, 2010, *available at*: http://www.npr.org/templates/story/story.php?storyId=125073113 (last visited Mar. 24, 2010).

[5] PRESS RELEASE, *What's In a Name? Reports of ACORN's Demise Just Another Deceptive Act by Criminal Organization*, Mar. 23, 2010, *available at*: http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=623%3Awhats-in-a-name-reports-of-acorns-demise-just-another-deceptive-act-by-criminal-organization&catid=22&Itemid=29.

[6] Michael Tarm, *ACORN branches rename, rebrand after video scandal*, AP, Mar. 15, 2010, *available at*: http://www.google.com/hostednews/ap/article/ALeqM5gUiGsBtx2MUMlFmLr_mclQfAZA6AD9EEVUT80 (last visited Mar. 15, 2010).

ACORN is "A Community Voice". In Missouri, ACORN is Missourians Organizing for Reform and Empowerment ("MORE"). In Washington state, ACORN is Organization United for Reform ("OUR") Washington. In Minnesota, ACORN is Minnesota Neighborhoods Organizing for Change. In Pennsylvania, ACORN has become the Pennsylvania Communities Organizing for Change ("PCOC") and Pennsylvania Neighborhoods for Social Justice, Inc. In Texas, ACORN is now the Texas Organizing Project. In Maryland and Washington, D.C., ACORN is Communities United, Inc. ACORN Housing Corporation ("AHC") has renamed itself Affordable Housing Centers of America, Inc. According to Marcel Reid, a former ACORN Board member and director of the ACORN 8, the reform group composed of former ACORN members, ACORN has also formed new offices in North Carolina.[7]

Finally, the ACORN 8 – a group of former ACORN members that sought to bring accountability and transparency to ACORN – has reported that while ACORN has ceased operations in Kentucky, Ohio, and Maryland, there are no reports that ACORN offices in Kansas, Oregon or Tennessee have shut down.[8] According to their respective Secretary of State offices, ACORN is still active in Alabama, Delaware, Florida, Georgia, Oklahoma, and Texas. ACORN's corporate registrations have been revoked in Arizona and Indiana.[9]

II. The Motives behind ACORN's Rebranding

On November 12, 2009, *Politico* reported that "[a]n internal memo from the Republican staff of the House Oversight and Government Reform committee claims that ACORN has serious financial problems and may be 'ready to file for bankruptcy.'"[10] Brian Kettenring, the Deputy Director of National Operations for ACORN, called the Oversight Committee's findings a "partisan slap" and that the "bankruptcy claims by Rep. Darrell Issa . . . are inaccurate."[11] *Politico* also reported that the Committee found Bertha Lewis had "taken custody of hundreds of bank accounts with funds totaling roughly $20 million[,]" On February 22, 2010, *Politico* reported "ACORN is in the process of dissolving its national structure".[12] The motives behind this decision by ACORN appear to be an effort to protect the survival of the organization as well as a consolidated effort by senior ACORN officials to consolidate resources.

The Louisiana Department of Justice has been actively investigating ACORN for several months, filing subpoenas against the organization in October 2009 and raiding the

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[7] Email from Marcel Reid to Committee Staff, Mar. 24, 2010 (on file with author).
[8] *Id.*
[9] *See* ARIZONA CORPORATION COMMISSION, State of Az. Public Access System, *available at: starpas.azcc.gov/. See also* ACCESS INDIANA, Business Services Online, *available at:* https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx.
[10] Jake Sherman, *GOP claims ACORN in financial trouble*, POLITICO, Nov. 12, 2009, *available at:* http://www.politico.com/news/stories/1109/29468.html (Last visited Mar. 25, 2010).
[11] *Id.*
[12] Ben Smith, *ACORN 'dissolved as a national structure'* Politico, Feb. 22, 2010, *available at:* http://www.politico.com/blogs/bensmith/0210/ACORN_dissolved_as_a_national_structure.html (last visited Mar. 25, 2010).

national headquarters for documents and records.[13] According to the Louisiana Department of Justice, there is a power struggle and an apparent "civil war," between the three national ACORN chapters in New York City, Washington D.C., and New Orleans.[14] At the center is Bertha Lewis, residing at the National Chapter in New York City, "who has forcefully taken control over all ACORN accounts and is trying to consolidate whatever assets exist."[15]

Bertha Lewis's consolidation of ACORN finances has been a catalyst driving the shutdown of some local and state chapters, which have lost their operating budgets as a result of Lewis hoarding ACORN's remaining assets. Louisiana investigators believe there is approximately $20 million in cash in 800 bank accounts, ACORN entities own $10 million worth of property, and the majority of the leftover ACORN assets are donor funds that have been consolidated by Bertha Lewis and undoubtedly commingled with other funds against the intent of the donors.[16]

A subpoena from Louisiana Attorney General Buddy Caldwell reported $5 million were embezzled by Dale Rathke from ACORN in 2008. According to Scott Bailey, an investigator in the Louisiana Department of Justice, "federal grant money was embezzled by Dale Rathke between 2000 and 2008."[17] Mr. Bailey discovered this information from audit information subpoenaed from William Stamm, ACORN's accountant at the Duplantier firm in New Orleans. Louisiana investigators believe ACORN chapters were shutdown so that Bertha Lewis could funnel assets to herself in order to further consolidate power and control over ACORN.[18]

Rebranding is an important legal strategy for ACORN to survive. By changing the names of its state and local affiliates, ACORN can rebuild its tax-exempt contributions under the guise of its superficially new and separate corporations as well as its public image. Additionally, because the 2010 Continuing Appropriations Resolution that banned federal funding to ACORN did not include a list of ACORN's newly formed affiliates, federal agencies will be more likely to provide grants to these organizations and will not engage in the scrupulous monitoring processes that would be expected concerning ACORN and ACORN affiliated corporations.

A document detailing the sale by Bertha Lewis on behalf of ACORN to the newly formed Alliance of Californians for Community Empowerment ("ACCE") in return for cash shows how a rebranded ACORN chapter is essentially an ACORN chapter reborn with the same assets, same membership lists, and without real reform.[19] The document, titled "Asset Transfer and License Agreement" states, "ACORN owns certain valuable

[13] Michael Kunzelman, *La. Prosecutor Probes ACORN After Embezzlement*, AP, Oct. 6, 2009, *available at*: http://abcnews.go.com/US/wirestory?id=8762542&page=3 (last visited Mar. 25, 2010).
[14] Testimony of David Caldwell, Comm. Oversight and Gov't Ref & Comm. Jud., ACORN Forum, Dec. 1, 2009, at 1.
[15] *Id.*
[16] *Id.*.
[17] Telephone interview of Scott Bailey, Louisiana Department of Justice, by Committee staff, Mar. 24, 2010.
[18] *Id.*
[19] Email from Scott Bailey to Committee Staff, Mar. 30, 2010, 11:40 A.M. E.S.T. (on file with author).

assets associated with its activities in California ('the assets') and desires to dispose of the Assets by selling them for fair market value to another organization that will use them to conduct similar charitable or social welfare activities in California."[20] According to the agreement, ACCE has hired former ACORN employees, purchased the ACORN database of dues-paying members, and purchased a database with "e-mail contact information for approximately 16,202 potential contributors residing in California."[21] Moreover, the agreement reveals that ACORN has not closed: "[a]s of the date of this Agreement, ACORN is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Arkansas, and has full power and authority to carry on its operations as now conducted[.]"[22] The agreement was signed on March 24, 2010 by Bertha Lewis and March 25, 2010 by Amy Schur.[23]

These rebrandings and transactions indicate that local chapters are not forcibly separating themselves from ACORN, but are attempting to reinvent themselves through a process done in full coordination with ACORN and its national senior leadership including Bertha Lewis. The close coordination of the rebranding process signals a level of continued control that ACORN's senior officials exert over newly rebranded affiliates. ACORN and its affiliates appear to be following a strategy that will allow it to rehabilitate important state and local chapters under new names and then solicit private donations and public grants. In fact, on May 15, 2010, ACORN's lawyers claimed "ACORN has not dissolved its organization. ACORN may reorganized through bankruptcy[.]"[24] ACORN is clearly reeling from public and official scrutiny of its many misdeeds. Documents and investigation, however, reveal that changes taking place at ACORN are the result of financial hardship and a desire to rebrand without real reform. Rebrandings should not be mistaken for real reforms which would, at a minimum, have to include a house cleaning of ACORN leadership, organizational transparency, and an exclusive focus on charitable work and services.

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[20] Asset Transfer and License Agreement at 1 (Mar. 1, 2010).
[21] *Id.*
[22] *Id.* at 3.
[23] *Id.* at 5.
[24] Walter F. Roche Jr., *ACORN leaves door open to rebuilding organization*, PITT TRIBUNE-REV, May 15, 2010, *available at:* http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_681320.html (last visited May 17, 2010).

ACORN Rebranding		
Then		**Now**
ACORN Housing Corp.	→	Affordable Housing Centers of America[25]
Arkansas ACORN	→	Arkansas Community Organizations[26]
California ACORN	→	Alliance of Californians for Community Empowerment[27]
Connecticut ACORN	→	New England United for Justice[28]
D.C. ACORN	→	Communities United, Inc.[29]
Louisiana ACORN	→	A Community Voice[30]
Maryland ACORN	→	Communities United, Inc.[31]
Massachusetts ACORN	→	New England United for Justice[32]
Minnesota ACORN	→	Minnesota Neighborhoods Organizing for Change[33]
Missouri ACORN	→	Missourians Organizing for Reform and Empowerment[34]
New York ACORN	→	New York Communities for Change[35]

Pennsylvania ACORN	→	Pennsylvania Neighborhoods for Social Justice[36]
	→	Pennsylvania Communities Organizing for Change[37]
Rhode Island ACORN	→	New England United for Justice[38]
Texas ACORN	→	Texas Organizing Project[39]
Washington ACORN	→	Organization United for Reform (OUR) Washington[40]

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

Contacting the Committee

For information regarding this report:

Daniel Z. Epstein, Counsel
(202) 225-5074

For press inquiries:

Frederick R. Hill, Director of Communications
(202) 225-0037

For general inquires or to report waste, fraud or abuse:

Phone: (202) 225-5074
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http://republicans.oversight.house.gov

Committee on Oversight and Government Reform
Ranking Member, Darrell Issa (CA-49)
B350A Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-5074 • Fax: (202) 225-3974

SFC 002629

From: Urban Joseph J
Sent: Thursday, November 04, 2010 9:07 AM
To: Fish David L
Cc: Kindell Judith E
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner
Attachments: Letter from Democracy 21 and Campaign Legal Center 10 5 10.DOC

From: Lerner Lois G
Sent: Thursday, November 04, 2010 9:37 AM
To: Kindell Judith E; Downing Nanette M; Urban Joseph J
Subject: Fw: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Did this ever come in to us to send the acknowledgment and send to Dallas?
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Friedland Bruce I
To: Lerner Lois G; Pyrek Steve J
Cc: Kindell Judith E; Eldridge Michelle L; Lemons Terry L
Sent: Tue Oct 05 10:31:53 2010
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

They called this morning and asked for the commissioner's fax number. I provided it.

They did their blast to the media on this at 10 am.

Bruce

From: Erin Kesle [redacted]
Sent: Tuesday, October 05, 2010 10:29 AM
To: Friedland Bruce I
Subject: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Dear Mr. Friedland:

Attached is a a letter from Democracy 21 and the Campaign Legal Center to IRS Commissioner Douglas Shulman and IRS Director of Exempt Organizations Lois Lerner, requesting an IRS investigation to determine whether "Crossroads GPS" is operating in violation of its 501(c)(4) tax status.

Thank you again for your assistance in directing this inquiry.

Best Regards,
Erin Kesler

Erin Kesler
Communications Associate Democracy 21
SFC [redacted]

SFC 002631

October 5, 2010

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SFC [redacted]

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SFC [redacted]

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 report

[2] M. Crowley, "The New GOP Money Stampede," *Time* (Sept. 16, 2010).

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 st rategists 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. . . .Th ey 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 sp ending 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," righ t 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 state s 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 Californ ia 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 Sesta k:

> We're hurting, but what are they doing in Washing ton? Congressman Joe Sestak voted for Obama's big government health care s cheme, 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 c uts. 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 he ad 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 d ifferent 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 5 27 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 electi ons."[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 <u>operated exclusively</u> 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 <u>primarily engaged</u> 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 an y 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 c andidates 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 e xempt 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 of fice" 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 o rganization. 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 def eat 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 th e 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 advo cacy 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 c ampaign;

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 ev ent 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

SFC 002646

From: Fish David L
Sent: Thursday, November 04, 2010 9:07 AM
To: Kindell Judith E; Urban Joseph J
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

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From: Seto Michael C
Sent: Thursday, November 04, 2010 10:05 AM
To: Fish David L
Subject: RE: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Yes. It was on E-TRAK (2011-15500). We sent the written response (usual template) to the taxpayer and forward the complaint to Dallas on Nov. 2.

From: Fish David L
Sent: Thursday, November 04, 2010 10:01 AM
To: Seto Michael C
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Did this ever come through channels?

From: Kindell Judith E
Sent: Thursday, November 04, 2010 9:38 AM
To: Fish David L
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

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From: Lerner Lois G
Sent: Thursday, November 04, 2010 9:37 AM
To: Kindell Judith E; Downing Nanette M; Urban Joseph J
Subject: Fw: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Did this ever come in to us to send the acknowledgment and send to Dallas?
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Friedland Bruce I
To: Lerner Lois G; Pyrek Steve J
Cc: Kindell Judith E; Eldridge Michelle L; Lemons Terry L
Sent: Tue Oct 05 10:31:53 2010
Subject: FW: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

They called this morning and asked for the commissioner's fax number. I provided it.

SFC 002647

They did their blast to the media on this at 10 am.

Bruce

From: Erin Kesle SFC[redacted]
Sent: Tuesday, October 05, 2010 10:29 AM
To: Friedland Bruce I
Subject: Letter from Democracy 21 and Campaign Legal Center to Commissioner Shulman and Director Lerner

Dear Mr. Friedland:

Attached is a a letter from Democracy 21 and the Campaign Legal Center to IRS Commissioner Douglas Shulman and IRS Director of Exempt Organizations Lois Lerner, requesting an IRS investigation to determine whether "Crossroads GPS" is operating in violation of its 501(c)(4) tax status.

Thank you again for your assistance in directing this inquiry.

Best Regards,
Erin Kesler

Erin Kesler
Communications Associate Democracy 21
SFC[redacted]

SFC 002648

From: Flax Nikole C
Sent: Wednesday, October 05, 2011 4:57 PM
To: Lerner Lois G; Grant Joseph H
Cc: Medina Moises C; Ingram Sarah H
Subject: RE: Next Steve Meeting

Thanks. We'll set something up.

From: Lerner Lois G
Sent: Wednesday, October 05, 2011 4:20 PM
To: Grant Joseph H; Flax Nikole C
Cc: Medina Moises C; Ingram Sarah H
Subject: Next Steve Meeting

I wanted to let you know we are ready for the next meeti ng with Steve on the political activity if you want to start looking for a meeting time. Nan may be here the week of 17th, so she might be able to join us if we can do it then. Let us know.

Lois G. Lerner
Director of Exempt Organizations

SFC 002649

From: Flax Nikole C
Sent: Wednesday, August 22, 2012 7:53 AM
To: Paz Holly O
Subject: TIGTA

From: Flax Nikole C
Sent: Thursday, March 08, 2012 10:30 AM
To: Lerner Lois G
Subject: letters

Lois - maybe we can chat after the meeting. Steve wanted to make sure that going forward we were modifying the info request (I told him that I thought your guys were already working on it) and that for the cases already ongoing, that is was clear that if the TP calls, we will allow them not to send donor names in the initial submission (but we ma y need later). Thanks

SFC 002650

From:	Letourneau Diane L
Sent:	Thursday, October 13, 2011 5:19 PM
To:	Butcher Ruth K; Ingram Sarah H; Flax Nikole C; Grant Joseph H; Medina Moises C; Marks Nancy J; Downing Nanette M
Cc:	Kindell Judith E; Lowe Justin; Lerner Lois G
Subject:	Prereads for EO Update Meeting
Attachments:	Dual Track Approach 10-5-11.ppt; Case Sel Criteria 10-5-11.doc; Dual Track Approach to Processing 10-13-11.doc; IRS Approach to Campaign Intervetion by EOs 10-13 without c3 ref.doc

Here are the prereads for the meeting with Steve Miller on Wednesday, October 19 at 4 pm.

Please let me know if you need anything else.

Thanks,
Diane
SFC

Potential Case Prioritization Criteria for the Political Activities Referral Committee

After concluding that a referral alleging political campaign intervention should be selected for examination (or inquiry), the referral committee follows these steps to determine whether the referral should be classified as a high priority referral.

Step One— Determine whether the IRS concluded in a prior examination that the organization intervened in a political campaign.

- If yes, the referral is classified as a high priority.
- If no, go on to step two.

Step Two— Evaluate the referral in light of the following factors to determine whether it should be classified as a high priority.

- The amount of money expended (measured either in absolute terms or in relation to the organization's other activities).
- The size of the audience exposed to the alleged intervention.
- The significance of the political campaign.
- The frequency of the alleged intervention.
- The degree of specificity used to identify the candidate or the support/opposition.
- The degree of candidate participation in the alleged intervention.
- The degree to which the organization is soliciting contributions to support its political campaign intervention
- Any other relevant factors.

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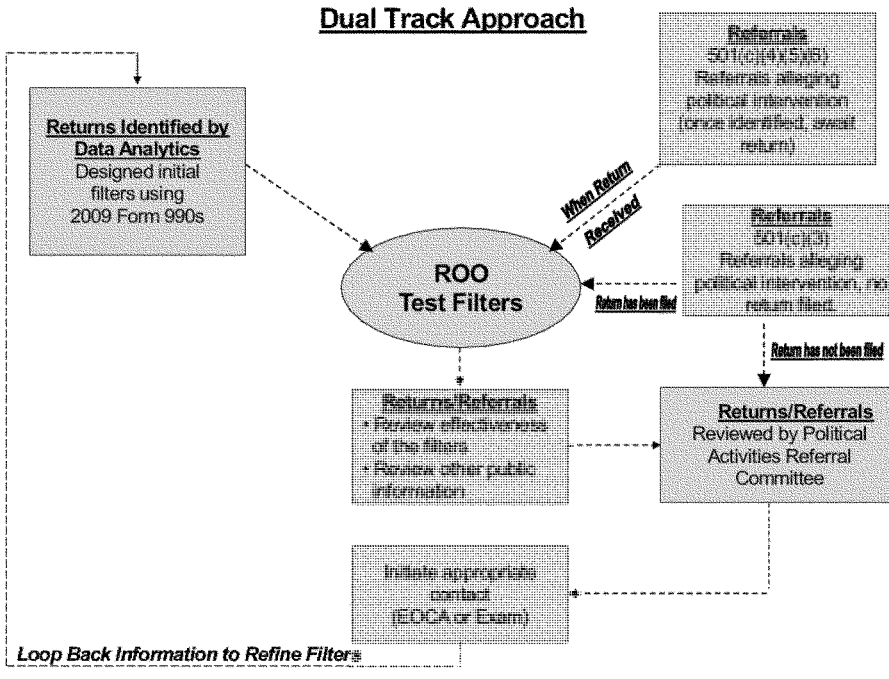
SFC 002652



IRS0000468123

Dual Track Approach to Analyzing Political Activity by Exempt Organizations

Referrals Received:

1) Referral is received in Classification.

2) Referral is classified in accordance with existing procedures: (1) there is an initial review of the referral and the referral is categorized as Political, etc and entered on the database; (2) then the referral undergoes a more detailed review by the assigned classifier.

   a. If the Form 990 has been filed, the referral is sent to ROO to (1) test the filters using a lead sheet to determine whether the return would have been identified by the filters and (2) to review the Form 990 and other public information. ROO makes a recommendation on the appropriate treatment of the referral. Those treatments would be:

      - Select for examination
      - Select for compliance check
      - Non select – no issues identified

      The referral is then returned to Classification to be forwarded to the Political Activities Referral Committee for evaluation. If the recommendation of the ROO is to Non Select, the case will still go to the Political Activities Referral Committee for concurrence.

      The Political Activities Referral Committee reviews the file and ROO's recommendation. The Committee can follow the recommendation or modify it. The Committee will also determine whether it is a "high priority" referral. If so, the case will be assigned immediately to a group. Non-high priority referrals selected will be dealt with under general examination procedures.

   b. If the Form 990 is not yet due and the referral is for a non-501(c)(3) organization, it is set-up as a Future Year Referral, and is not sent to the ROO until the return is filed or becomes delinquent. (Note: The Referrals Manager runs a monthly Future Year Referrals Report and processes the required returns). Once return is filed, step 2(a) is performed.

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c. If the Form 990 is not yet due but the referral is for a 501(c)(3) organization, the referral is forwarded directly to the Political Activities Referral Committee.

3) The selected cases are assigned to the field or EOCA for examination or compliance check.

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Data Analytics:

1) CSCI analyzes Form 990 returns using designed initial filters (condition codes).

2) ROO conducts a compliance review on all identified organizations, including review of publicly available information, the Form 990, any Forms 1120-POL or 4720 filed by the organizations and consideration of whether Forms 1120-POL or 4720 were filed when required.

3) ROO makes a recommendation on the appropriate treatment of the referral. Those treatments would be:

    - Select for examination
    - Select for compliance check
    - Non select no issues identified

    The case file is then forwarded to the Political Activities Referral Committee for evaluation. If the recommendation of ROO is to Non Select, the case will still go to the Political Activities Referral Committee for concurrence.

4) All data is captured via a lead sheet. After all reviews are completed, an analysis of the actions and responses is conducted and recommendations made concerning any needed modifications to the filters.

5) The Political Activities Referral Committee reviews the file and ROO's recommendation. The Committee can follow the recommendation or modify it. The Committee will also determine whether it is a "high priority" case. If so, the case will be assigned immediately to a group. Non-high priority referrals selected will be dealt with under general examination procedures.

6) If further action is warranted, the case is built and established, and assigned to the field or EOCA for examination or compliance check.

For both referrals and data analytics:

Once an exam or EOCA contact has been concluded, data will be collected from the case and when all cases are completed the information will be

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analyzed by CSCI and a report prepared detai ling whether the filters worked, and if not, how they may be refined .

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IRS Approach to Political Campaign Intervention by Exempt Organizations

- The IRS continues to maintain a presence in this area.
    - We look at every allegation to determine whether it has merit.
        - Allegations are reviewed by a dedicated referral committee made up of career civil servants with expertise in this area.
- We are not focused solely on activities of 501(c)(3) organizations; we will look at compliance by all categories of exempt organizations.
- We will use information gathered from the new Form 990 to assist us in focusing resources on particular areas of noncompliance.
- We will prioritize our compliance work by using risk-based analytics.
- We are focusing our audit resources on more serious allegations. [We will assess whether allegations indicate mere "foot-faults" or more serious noncompliance.]
- This will result in a different footprint visible to the public because there no longer will be a dedicated project and report system focused on this issue.
    - Instead, we will use the expertise gathered from our projects to take a more focused approach.
- In the past, all examination activity was solely based on referrals. Now, we anticipate some examinations also will result from our internal research and reporting activities.

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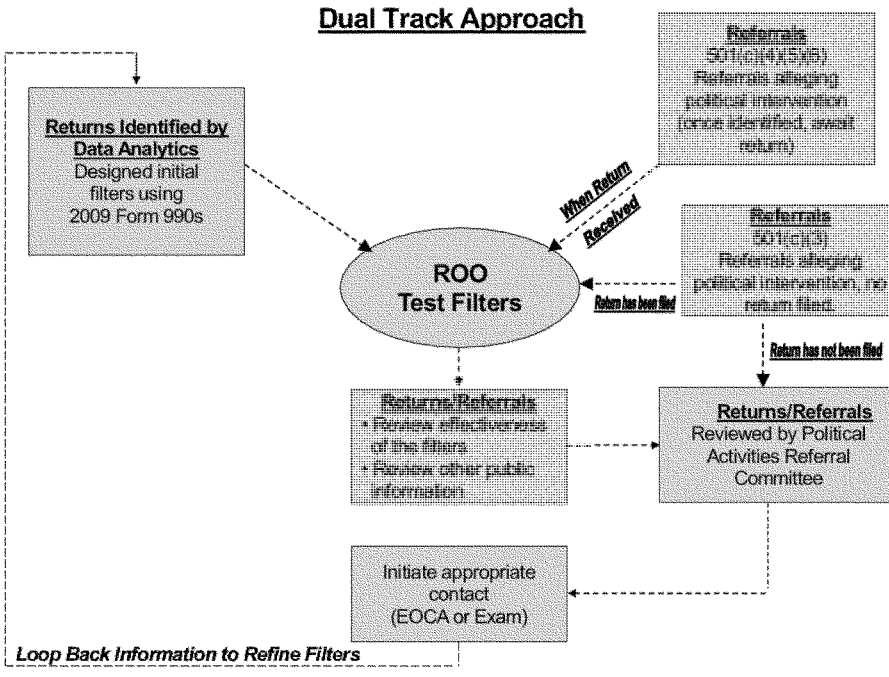
SFC 002658

From: Letourneau Diane L
Sent: Thursday, November 10, 2011 2:41 PM
To: Onorato Corina R; Butcher Ruth K; Flax Nikole C; Miller Steven T; Grant Joseph H
Subject: Documents for Nov 15 Meeting
Attachments: IRS Approach to Campaign Intervetion by EOs.doc; Dual Track Approach 10-5-11.ppt

Here are the documents for the 5 PM meeting with the Commissioner on Tuesday, November 15.

Please let me know if you need anything else.
Thanks,
Diane Letourneau
Executive Assistant
Director, Exempt Organizations
SEC

SFC 002659



IRS0000468519

IRS Approach to Political Campaign Intervention by Exempt Organizations

- The IRS continues to maintain a presence in this area.
    - We look at every allegation to determine whether it has merit.
        - Allegations are reviewed by a dedicated referral committee made up of career civil servants with expertise in this area.
- We are not focused solely on activities of 501(c)(3) organizations; we will look at compliance by all categories of exempt organizations.
- We will use information gathered from the new Form 990 to assist us in focusing resources on particular areas of noncompliance.
- We will prioritize our compliance work by using risk-based analytics.
- We are focusing our audit resources on more serious allegations.
- This will result in a different footprint visible to the public because there no longer will be a dedicated project and report system focused on this issue.
    - Instead, we will use the expertise gathered from our projects to take a more focused approach.
- In the past, all examination activity was solely based on referrals. Now, we anticipate some examinations also will result from our internal research and reporting activities.

DRAFT

SFC 002661

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 9:40 AM
To: Miller Steven T
Subject: A Question

I'm wondering if you might be able to give me a better sense of your expectations regarding roles and responsibilities for the c4 matters. I understand you have asked Nan to take a deep look at the what is going on and make recommendations. I'm fine with that. Then there was the discussion yesterday about how we plan to approach the issues going forward. That is where the confusion lies. What are your expectations as to who is implementing the plan?

Prior to that meeting, unbeknownst to me, Cathy had made comments regarding the guidance --which Nan knew about. Nan then directed one of my staff to meet with Cathy and start moving in a new direction. The staff person came to me and I talked to Nan, suggesting before we moved, we needed to hear from you, which is where we are now.

We're all on good terms and we all want to do the best, but I fear that unless there's a better understanding of roles, we may step on each others toes without intending to.

Your thoughts please. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Miller Steven T
Sent: Thursday, April 18, 2013 7:29 AM
To: Flax Nikole C
Subject: Re: speech

We will talk at noon

Sent using BlackBerry

From: Flax Nikole C
Sent: Thursday, April 18, 2013 08:28 AM Eastern Standard Time
To: Miller Steven T
Subject: Re: speech

Maybe not a terrible idea for her to get out how many approvals we have had to date and discuss the issue a bit.

From: Miller Steven T
Sent: Thursday, April 18, 2013 08:21 AM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

She can apologize for undermanaging.

Sent using BlackBerry

From: Flax Nikole C
Sent: Thursday, April 18, 2013 08:17 AM Eastern Standard Time
To: Miller Steven T
Subject: Re: speech

April 25 - she is begging for material to discuss

From: Miller Steven T
Sent: Thursday, April 18, 2013 08:04 AM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

When is her speech--may want to use it to burst a bubble

Sent using BlackBerry

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 08:37 PM Eastern Standard Time
To: Miller Steven T

SFC 002663

Subject: Fw: speech

I assume you don't want lois talking sequestration at GT? I know the answer, but she will want to know that I asked.

From: Lerner Lois G
Sent: Wednesday, April 17, 2013 08:08 PM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

Any possibility we'd ask permission on this?
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 07:32 PM Eastern Standard Time
To: Lerner Lois G
Subject: Re: speech

Anything we say re sequestration has to be cleared by omb. A new memo on it came out today.

From: Lerner Lois G
Sent: Wednesday, April 17, 2013 07:13 PM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

Am at home so can't send until tomorrow. Got a message from Terry nixing it, which puts me in a pickle since I need to talk about something high level for 40 minutes. C and U won't do it. I have already spoken about sequester publicly and only used stats that came from Miller messages --except one, which Joseph got permission for yesterday. So, where does this leave me? Can we take stats out or is the topic just off the table? I will be asked, so there is no avoiding it. I figured managing it was a better shot. Will send as soon as I can
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 04:12 PM Eastern Standard Time
To: Lerner Lois G
Subject: speech

Lois - C&L said you sent a copy of your speech - can you send it? Thanks

Tax Exempt and Government Entities Quarterly Briefing

I. **TIGTA Changes**

A. Personnel

B. Responsibilities

C. Annual Plan

II. **FY 2012 Audits Completed (6)**

A. Automatic Revocation of Tax-Exempt Status for Not Filing an Annual Return or Notice for Three Consecutive Years (Audit # 201110014)

B. Oversight of Non-Bank or Insurance Company Entities Permitted to Act as Trustees or Custodians Over Certain Employee Retirement Plans (Audit # 201110015)

C. Review of the IRS's Progress in Implementing the Tax-Exempt Hospital Provisions of the Patient Protection and Affordable Care Act (Audit # 201110017)

D. Review of Potential Disclosure of Personally Identifiable Information on Tax-Exempt Information Returns (Audit # 201110021)

E. Review of the Exempt Organizations Function's Referral Process (Audit # 201110023)

F. Review of the Tax Exempt Bonds Office's Enforcement Results (Fiscal Years 2005 – 2010) (Audit # 201110028)

III. **Current Audits in Fieldwork (4)**

A. Review of the Indian Tribal Governments Office's Abuse Detection and Prevention Efforts (Audit # 201210018)

B. Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Potential Political Advocacy Issues (Audit # 201210022)

1. To the best of your knowledge, did any individual or organization outside the IRS influence the creation of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

2. To the best of your knowledge, did IRS or Tax Exempt and Government Entities Division management sanction the use of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

3. When did you become aware the IRS was targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

C. Review of Internal Revenue Service's Efforts to Ensure Claims by Tax-Exempt Organizations for the Small Business Health Care Tax Credit Are Appropriate (Audit # 201210323)

D. Review of the Exempt Organizations Function's Participation in the National Research Project on Employment Taxes (Audit # 201210003)

IV. Current Audits in Planning (3)

A. Accuracy of Reporting Simplified Employee Pension Plan Contributions (Audit # 201210031)

B. Review of Tax Credit Bond Information Reporting (Audit # 201210032)

C. Assessment of the IRS's Process for Identifying Noncompliant Bonds (Audit # 201210034)

V. Audits Planned but Not Started (7)

A. Review of the TE/GE Division's Procedures for Separating/Departing Employee Clearances

B. Review of the Exempt Organizations Function's Penalty Unit

C. Review of Abatements of Tax and Penalty Assessments on Retirement Plans

D. Review of the Accuracy of Reporting Savings Incentive Match Plan for Employees (SIMPLE) Retirement Plan Contributions

E. Review of the EO Function's Progress in Conducting the Community Benefit Reviews of Tax-Exempt Hospital Organizations

F. Review of the IRS's Oversight of § 501(c)(4), (c)(5), and (c)(6) Organizations That Are Politically Active

G. Follow-up Review of the IRS's Efforts to Identify Tax-Exempt Organizations Supporting Terrorism or Potentially Engaged in Fundraising Activities For Terrorist Organizations

VI. IRS Suggestions

A. EO Reinstatements

B. EP Unagreed Inventory

C. TEB Workload Selection

D. ITG Tips Program

E. FSLG Workload Selection

VII. Status of FY 2013 Planning Efforts

VIII. TE/GE-Related Audits, Inspections, and Evaluations Planned, In Process, or Complete (Conducted by Other TIGTA Functions and Business Units)

A. Review of the Revocation of the Tax-Exempt Status of Selected Organizations (Inspection # IE-11-014) (Status: Complete)

B. Review of the Federal Agency Delinquency Program (Audit # 201130035) (Status: Complete)

C. Congressional Request to Look at the Law and Specific Aspects of a Specific Tax-Exempt Organization (Assigned to the Inspections and Evaluations function) (Status: Complete)

IX. Open Discussion

A. Are there any initiatives going on within the TE/GE Division that the TE/GE Division would like to highlight?

B. Have any external stakeholders (IRS Oversight Board, Congress, etc.) expressed interest in TE/GE Division initiatives recently?

General welfare exclusion

Governmental Plan Guidance

PACI – 501(c)(4)

e-Filing of Applications

Taxability of Bonds

C. Are there any TE/GE Division areas that TIGTA has not audited that should be considered for future audit?

D. Are there any employee gatherings (physical or virtual) being planned that would benefit from a TIGTA awareness presentation?

OUTLINE

(1) Fd March 2010
Tea Party was W/POL Group Manager says that looking for Bias
let's group + get help from HQ

(2) March - Aug 2010
use of verbal and email prompts to group cases
Name - Tea Party, Patriots, 9/12 other orgs involving some inception of pol activity

(3) Aug 2010
A letter was used - a "BOLO" by GM
Tea Party local orgs
Exhibit asked specialists said they took this to mean (1) Tea Party, Patriots 9/12 Project
(2) issues include government spending, debt & taxes
(3) educate through advocacy / legislative to make America better
(4) statements in letter they are critical of how country being run
This was modified a bit in February 2011 - still Tea Party (no longer "local")

(4) From Aug 10 to June 11
they worked with HQ specialists but got no where

(5) June 11
Conversations with management in EO HQ led to blocking of Lois --
Listing came up
LOIS said
(A) stop the listing instead use "Advocacy Organizations involved with political, lobbying advocacy issues"
(B) HQ needs to work on guidelines or other way to facilitate movement of cases
LOIS DID NOT ELEVATE ANYTHING

(6) July 2011 to Nov 2011 -
→ Guidelines work actually not hostile
→ Now know put together
6A

(7) Jan / Feb 2012
Team starts pulling out development letters --
- short timeframe
- donor lists exhibit
- web info overbroad - hit to wide array of orgs

(6A) IN JAN 2012 → New BOLO ISSUED -- Political Orgs involved in limiting/expanding govt, education in the Constitution or bill of rights, social & economic reform movement

(8) February / March 2012
Articles and letters on development letter hit
I by now aware of letters
Re to me involved
worked w/ EO to issue new letters giving more time giving flexibility on knowledge and on other info (takes up most asking for donors and not anything any in Co we got)
Doug and I aware of issues but not of BOLO But I was concerned enough that...

(9) Asked Nan Marks March 27, 10 who is the Senior Technical Advisor in TEGE (updated to is a part)
to take a look - and come up with facts/reason the put together a team that went out for a couple of weeks to talk to folks - pull some cases

(10) Around the same time TIGTA indicated they were opening an audit - Hostile Oversight request

(11) May 3 2012
New briefs are on findings
TIGTA report is similar
(A) inappropriate criteria used
(B) overbroad development letters
(C) cases that were languishing
(D) LACK of training to agents and other tools
(E) No indicia of outside influence or political motivation
This is the first date I knew of BOLO list

(12) Why silent -- waiting for facts from independent party TIGTA -- we got them

(12) Any correspondence was answered truthfully

(13) Not the case
- Exempt
- Exempt
- Advocacy Cases
- Actual NGA
- Not Worthy

Went to Commissioner Shulman
The Commissioner
Not to write Internal Memorandum

New Recommendations which we did
(1) Training for staff and review - we did it
(2) triage the cases to move them forward
- those that can go
- those that need a little work
- those we have questions but no real indications of exempt problems
- those we have questions and indications of real issues
We did that and began to move the cases

Added Technical help from HQ to partner with revenue agents

EO → now
Listing orgs
C3-C6 orgs
with indicators of signif amounts of political campaign activity

Other Actions
Concerned with BOLO being approved at executive level only
AND
while I am waiting for TIGTA Report -
I ~~contacted~~ had that the team coordinator be reassigned and asked for oral counselling for the person who did BOLO listing originally.
Now that we have Report I will look again

(14) 472
14 Y (1)
301 (2)
6 C1
1 C10
70 Rulings
1 Pending
34 C3
136 C4
1 C6
37 WD

SFC 002667

IRS0000468988

SFC 002668

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

June 21, 2010

MEMORANDUM FOR DEPUTY COMMISSIONER, OPERATIONS, LMSB
DIRECTOR, EO EXAMINATIONS, TE/GE
DIRECTOR, EXAMINATION, SBSE
DIRECTOR, EP EXAMINATIONS, TE/GE

FROM: Nancy Todd, TLS, Office of Senior Advisor, TE/GE
Joe Urban, Technical Advisor to TE/GE Commissioner

SUBJECT: Investigative Research Findings

In the latter half of 2009 the IRS became aware of allegations that the Association of Community Organizations for Reform Now (ACORN) and a number of affiliate organizations and individuals may have operated in a fashion that was not in compliance with the Internal Revenue Laws. A research team was established in November 2009 to review available information that would identify and understand relationships, nature of transactions and money flows between ACORN and its affiliate organizations and individuals. Further the team would summarize its findings and present recommendations as appropriate including whether or not further compliance activities were warranted.

The research team was able to conduct electronic research that included internal and public sources to develop an understanding of the transactions, including money flows, between the entities and individuals. At no time did the team communicate with anyone outside of IRS.

The team completed its research and finalized the report in April, 2010. The purpose of this memorandum is to convey the team's research findings and provide recommendations for your consideration.

Attached to the memorandum are the research team's report, referrals from Senator Charles Grassley, Congressman Darrell Issa and Congresswoman Michelle Bachmann, as well as a subsequent June 2010 report from Congressman Darrell Issa. Since the research team had completed its duties and finalized the report in April 2010, the subsequent June 2010 report from Congressman Issa was not considered by the team.

Based upon the information reviewed, there appears to be sufficient evidence to warrant further investigations of the activities of ACORN and associated individuals and organizations. The research team recommends that a cross-divisional examination team be established to develop strategy, identify specific returns for examination, and share expertise to obtain an optimal outcome.

If you have any questions or which to discuss the report please contact us at:
Nancy Todd SFC [redacted]
Joseph Urban SFC [redacted]

From: Lerner Lois G
Sent: Monday, June 25, 2012 5:00 PM
To: Daly Richard M; Ingram Sarah H; Marx Dawn R; Urban Joseph J; Marks Nancy J
Cc: Paz Holly O; Fish David L
Subject: RE: 201210022 Engagement Letter

It is what it is. Although the original story isn't as pretty as we'd like, once we learned this were off track, we have don e 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 what it is.

Lois G. Lerner
Director of Exempt Organizations

From: Daly Richard M
Sent: Friday, June 22, 2012 5:10 PM
To: Ingram Sarah H; Lerner Lois G; Marx Dawn R; Urban Joseph J; Marks Nancy J
Subject: FW: 201210022 Engagement Letter
Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. The engagement letter bears a close reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the followin g:

- All documents and correspondence (including e -mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax -exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

From: Rutstein Joel S
Sent: Friday, June 22, 2012 3:01 PM
To: Daly Richard M
Subject: FW: 201210022 Engagement Letter
Importance: High

Mike, please see below and attached. Given that TIGTA sent this to Joseph Grant and cc'ed Lois and Moises, do you still need me to circulate this under a cover memo and distribute it to all my liaisons including you? Thanks, Joel

SFC 002670

Joel S. Rutstein, Esq.
Program Manager, GAO/TIGTA Audits
Legislation and Reports Branch
Office of Legislative Affairs
SFC
SFC (fax)
Email: SFC
Web SFC

From: Price Emma W TIGT SFC
Sent: Friday, June 22, 2012 2:56 PM
To: Grant Joseph H
Cc: Davis Jonathan M (Wash DC); Miller Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Ho Imgren R David TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA; Stephens Dorothy A TIGTA
Subject: 201210022 Engagement Letter
Importance: High

FYI Engagement Letter Consistency in Identifying and Reviewing Applications fo r Tax-Exempt Status Involving Political Advocacy Issues.

Thanks,

Emma Price

From: Marks Nancy J
Sent: Monday, June 18, 2012 3:22 PM
To: Lerner Lois G
Subject: RE: May I Pick Your Brain?

On the line with Joseph will drop down when done

From: Lerner Lois G
Sent: Monday, June 18, 2012 4:19 PM
To: Marks Nancy J
Subject: RE: May I Pick Your Brain?

Are you here? Maybe a call makes more sense than email?

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Monday, June 18, 2012 4:12 PM
To: Lerner Lois G
Subject: RE: May I Pick Your Brain?

glad you told me I had not realized that I was assuming it was more analagous to the campus contacts th at go out when they don't see a return from an entity that had filed previously. So the question then is do you get enough from doing this to make it worth it since any subsequent audit interest in that return would have to meet reopener standard. Would probably also want P&A to have a chance to react. It might be worth a pilot--if most of the inquiries were resolved in favor of the taxpayer in that no return was yet due we'd move on but if most inquiries identified entities that were out of compliance on filing obligations (either through unfamiliarity or intent) then we'd have a good initiative.

From: Lerner Lois G
Sent: Monday, June 18, 2012 3:59 PM
To: Marks Nancy J
Subject: RE: May I Pick Your Brain?

just so you'll know, a compliance check in this context is an audit.

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Monday, June 18, 2012 2:54 PM
To: Lerner Lois G
Subject: RE: May I Pick Your Brain?

SFC 002672

That sounds like an interesting and workable idea to me. Presumably our internet check could be a bit sensitive to whether they appeared to be just starting up despite having an earlier EIN but in general an inquiry doesn't seem inappropriate at the 1 and 1/2 year point and the letter could be soft in that in addition to asking the key question it could point them to resources ava lable to them as a new organization.

From: Lerner Lois G
Sent: Monday, June 18, 2012 2:23 PM
To: Marks Nancy J
Subject: May I Pick Your Brain?
Importance: High

I've been thinking about how we might move things a bit faster in the c4 arena. As you know, for the most part, we need to see the 990 before we can actually j udge whether an org's primary activities are social welfare activities. That means waiting at least 5 and a half months after their tax year closes, and usually another 6 months for their requested extensions.

We have received several referrals on orgs that have not applied for exemption and have not yet filed a 990. Some of the allegations are that the org is just a political committee in c4 clothing and that once the election is over, it will go away without ever filing. I'm thinking if we can go back and look at when they received their EIN, we may have a way to move a bit faster. So, for example, if an org. received its EIN over a year and a half ago, but has not applied or filed, but our internet research shows it is acti ve, is there any reason we couldn't send them a compliance check saying, we noticed you haven't filed and it looks like you may owe us a return, so either file or explain why you don't have to? So long as we are only looking at the filing piece, I don't see why not. Otherwise, there is truly a way for an org to be out there doing stuff forever (or at least 3 years), so long as it doesn't file, Thoughts

Lois G. Lerner
Director of Exempt Organizations

SFC 002673

From: Paz Holly O
Sent: Friday, January 04, 2013 10:30 AM
To: Marks Nancy J
Subject: RE: Discuss Latest Articles

Nan,

Just realized you were not on this invite but should be. We're going to discuss the Crossroads application. I suspect this will be the first of many discussions so no worries if you cannot make it.

Thanks,

Holly

From: Paz Holly O **On Behalf Of** Lerner Lois G
Sent: Friday, January 04, 2013 11:28 AM
To: Waddell Jon M; Herr Joseph R; Marks Nancy J
Subject: FW: Discuss Latest Articles
When: Friday, January 04, 2013 3:30 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Conf Rm 574 - [redacted] 6 access 9 [redacted]

From: Lerner Lois G
Sent: Wednesday, January 02, 2013 4:38 PM
To: Lerner Lois G; Light Sharon P; Fish David L; Paz Holly O
Subject: Discuss Latest Articles
When: Friday, January 04, 2013 3:30 PM-4:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Conf Rm 574 - 1- [redacted] access 9 [redacted]

From: Bowling Steven F
Sent: Monday, March 05, 2012 1:31 PM
To: Seok Stephen D
Subject: FW: Advocacy cases -- MORE CHANGES

Importance: High

Stephen,

Please read Cindy's email. Let me know if you have any questions.

Thanks,

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
[redacted]

-----Original Message-----
From: Thomas Cindy M
Sent: Monday, March 05, 2012 2:16 PM
To: Bowling Steven F
Subject: FW: Advocacy cases -- MORE CHANGES
Importance: High

Steve,

We can't put any more of these cases in suspense and can't close any FTE. Pl ease let me know how many were put in suspense thus far.

Also, please ask Stephen to send me an email with some developmental letters attached. The developmental letters should be ones where different questions were asked than those sent to Ohio Libe rty and Sidney Shelby.

Let me know if you have questions. Thanks.

-----Original Message-----
From: Paz Holly O
Sent: Monday, March 05, 2012 1:42 PM
To: Thomas Cindy M
Subject: Advocacy cases

In addition to not sending out anymore development letters, we are not to put any in suspense or close fte until we get the go ahead from above.

Also, sometime in the next few days can you please give me a few development letters we have sent to these o rgs that have different questions from the ones that have been in the press? Lois wants to support her story that we are not asking everyone all the same questions -that the letters are tailored.

Thanks!

Sent from my BlackBerry Wireless Device

SFC 002676

From: Herr Joseph R
Sent: Tuesday, January 31, 2012 3:59 PM
To: Seok Stephen D
Subject: Advocacy developmental letters
Attachments: SFC [redacted] SF [redacted].doc SFC [redacted] SF [redacted].doc SFC [redacted] SF [redacted].doc

Stephen,

Attached are the Advocacy developmental letters I mailed today.

Joseph

Joseph R. Herr
Revenue Agent Group 7821
Exempt Organizations Determinations
SFC [redacted]
[redacted] fax

SFC 002677

Internal Revenue Service
SFC
Cincinnati, O SFC

Date: January 31, 2012

SFC

Department of the Treasury

Employer Identification Number:
SFC

Contact Telephone Numbers:
SFC Phone
SFC Fax
Response Due Date:
February 21, 2012

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax <u>and</u> mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

SFC [redacted]

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Joseph R Herr
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312 (Rev. 05-2011)

SFC [redacted]

Additional Information Requested:

1. Since you are a corporation, you must submit a complete copy of your Articles of Incorporation and any amendments thereto that show evidence that they have been filed with and approved by the State in which you are incorporated.

2. Submit a copy of your by-laws.

   NOTE: If your organization does not have by-laws, submit a statement to that effect signed by one of your principal officers.

3. Does your organization have a website? If so, please provide a hardcopy printout of your organization's website.

4. Does your organization promote or publicize itself using any internet social media such as Facebook? If so, please list the social media outlets and provide hardcopy printouts of those outlets.

5. You filed Form 1024 on September 2, 2010. Please provide an updated narrative description of activities since that time. In your description, please do not merely describe the purpose of the organization. Rather, describe the activities that your organization will initiate and/or participate in to fulfill your purpose. Your description should include the answers to the following basic questions:

   a. What does the activity entail?
   b. Who conducts the activity and what are their qualifications?
   c. Where is the activity conducted?
   d. When is the activity conducted?
   e. How significant is the activity in relation to your total activities as described as percentage of time and a percentage of expenses?
   f. Who may participate in the activity?
   g. How are the participants selected?
   h. Is there a fee for participation in the activity? If so, provide a fee schedule.
   i. How does the activity further your exempt purpose?

6. Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

   a. Provide the name, employer identification number, and address of the organizations
   b. Describe in detail the nature of the relationships.
   c. Do you work with those organizations regularly? Describe the nature of the contacts.
   d. List shared employees, volunteers, resources, office space, etc. with the organizations.
   e. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

7. Provide the following information for all the public events conducted or planned to be conducted by your organization:

SFC [redacted]

a. The time, location, and content schedule of each event
b. Identify and provide copies of handouts to the audience
c. Identify workshop materials that instructors will use
d. The names and credentials of the instructors
e. If speeches or forums were or will be conducted at the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members will be paid, provide the amount will be paid for each person. If not, please indicate they volunteered to conduct the event.
f. The names of persons from your organization and the amount of time they will spend on the event. Indicate the name and amount of time they will spend on the event. Indicate the name and amount of compensation that will be paid to each person. If no one will be paid, indicate this event will be conducted by volunteers to each person.
g. Indicate the percentage of time and resources you will spend on these activities in relation to 100% of all your activities.

8. Have you conducted or will you conduct can didate forums or other events at which candidates running for public offices are invited to speak? If so, provide the following details and nature of the forum including:

   a. The names of candidates invited to participate
   b. The names of the candidates who did participate
   c. The issues that were discussed
   d. The time and location of the event
   e. Copies of all handouts provided and distributed at the forum, including any internet or advertising material discussed or used at the forum.
   f. Indicate the percentage of time and r esources you have spent or will spend conducting these activities in relation to 100% of all your activities.

9. Have you attempted or will you attempt to influence the outcome of specific legislation? If so, provide the following:

   a. Provide copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation.
   b. Provide copies of any radio, television, or internet advertisements relating to your lobbying activities
   c. Please indicate the percentage o f time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

10. Do you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and contents of other form of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

11. Will you, or have you ever, conducted voter education activ ities, including voter registration drives, get out to vote drives, or publish or distribute voter guides? If so, provide the following:

SFC

a. What is the location, date and time of the events?
b. Who on the organization's behalf have conducted or will conduct th e voter registration or get out to vote drives?
c. Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.
d. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
SFC
Cincinnati, O SFC
Attn: Joseph R Herr
SFC

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
SFC
Cincinnati, O SFC
Attn: Joseph R Herr
SFC

SFC 002682

Internal Revenue Service
SFC
Cincinnati, O SFC

Date: January 31, 2012

SFC

Department of the Treasury

Employer Identification Number:
SFC

Contact Telephone Numbers:
SFC Phone
SFC Fax
Response Due Date:
February 21, 2012

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax <u>and</u> mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above .

SFC [redacted]

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we recei ve the information after the response due date, we may ask you to send us a new application.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Joseph R Herr
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312 (Rev. 05-2011)

SFC [redacted]

Additional Information Requested:

1. Your application references two web add resses regarding your organization:
   - SFC [redacted].
   - [redacted].

   Please describe the purpose of the two websites. Provide the following in formation for your web and internet related activities:
   a. Copies of your current web and internet pages. If you are a membership organization, please include all the pages that are ac cessible only to your members.
   b. Indicate the percentage of time and resourc es you spend on these activities in relation to 100% of all your activities.
   c. Expense amounts incurred or budgeted for past and future years.

2. Does your organization promote or publicize itself using any internet social media such as Facebook? If so, pleas e list the social media outlets and provide hardcopy printouts of those outlets.

3. You filed Form 1024 on August 31, 2010. In your response regarding the narrative description of your activities, you indicated you have three activities:
   - Public Awareness an d Education
   - Advocacy
   - Website & Membership

   For each of the three activities, please provide an update on the following information:

   a. Provide a more detailed description of the activity that includes examples of actions you have taken or plan to undertake to further your exempt purpose.
   b. How much time is has been or will be devoted to each activity?
   c. How much financial resources have been or will be devoted to each activity?
   d. Do you operate the activities in conjunction with each other? For example, do you encourage the members to communicate with legislators at the Awareness and Education forums? Please explain your response.

4. Has your organization engaged in any activities with the news media? If so, please describe those activities in further detail and, if available, provide copies of articles printed or transcripts of items aired because of that activity. New media activity may include the following:
   a. Press releases
   b. Interviews with news media
   c. Letters to the editor
   d. Op-ed pieces

5. Does your organization endor se political candidates? If so, please describe that activity in further detail. In your description, please comment on the following items":
   a. What criteria you use to selects for endorsement?
   b. Once a candidate is endorsed, how does your organization hand le the endorsement?
   c. How many candidates has your organization endorsed?
   d. Does your organization notify the candidate of the endorsement? If so, please

SFC [redacted]

provide copies of those endorsements.

e. Do you provide any materials to candidates, which they may use to p romote their candidacy? If so, please describe and provide copies of those materials.
f. What percentage of your organization's overall activities do endorsements comprise?

6. Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

   a. Provide the name, employer identification number, and address of the organizations
   b. Describe in detail the nature of the rel ationships.
   c. Do you work with those organizations regularly? Describe the nature of the contacts.
   d. List shared employees, volunteers, resources, office spac e, etc. with the organizations.
   e. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

7. Provide the followin g information for all the public events conducted or planned to be conducted by your organization:

   a. The time, location, and content schedule of each event
   b. Identify and provide copies of handouts to the audience
   c. Identify workshop materials that instructors will use
   d. The names and credentials of the instructors
   e. If speeches or forums were or will be conducted at the event, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel membe rs will be paid, provide the amount will be paid for each person. If not, please indicate they volunteered to conduct the event.
   f. The names of persons from your organization and the amount of time they will spend on the event. Indicate the name and amount of time they will spend on the event. Indicate the name and amount of compensation that will be paid to each person. If no one will be paid, indicate this event will be conducted by volunteers to each person.
   g. Indicate the percentage of time and resources you will spend on these activities in relation to 100% of all your activities.

8. Have you conducted or will you conduct candidate forums or other events at which candidates running for public offices are invited to speak? If so, provide the following details and nature of the forum including:

   a. The names of candidates invited to participate
   b. The names of the candidates who did participate
   c. The issues that were discussed
   d. The time and location of the event
   e. Copies of all handouts provided and distributed at the forum, including any internet or advertising material discussed or used at the forum.
   f. Indicate the percentage of time and resources you have spent or will spend

SFC [redacted]

conducting these activities in relation to 100% of all your activities.

9. Have you attempted or will you attempt to influence the outcome of specific legislation? If so, provide the following:

    a. Provide copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation.
    b. Provide copies of any radio, television, or internet advertisements relating to your lobbying activities
    c. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

10. Do you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and contents of other form of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

11. Will you, or have you ever, conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides? If so, provide the following:

    a. What is the location, date and time of the events?
    b. Who on the organization's behalf have conducted or will conduct the voter registration or get out to vote drives?
    c. Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.
    d. Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
Attn: Joseph R Herr
SFC [redacted]

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
Attn: Joseph R Herr
[redacted]
SFC SFC

SFC 002687

Internal Revenue Service
SFC
Cincinnati, O SFC

Department of the Treasury

Date: January 31, 2012

Employer Identification Number:
SFC

SFC

Contact Telephone Numbers:
SFC Phone
SFC Fax
Response Due Date:
February 21, 2012

Dear Sir or Madam:

We need more information before we can co mplete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowle dge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that cou ld result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, pl ease note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

SFC [redacted]

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

In addition, if you do n't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your applicati on for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Joseph R Herr
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312 (Rev. 05-2011)

SFC [redacted]

Additional Information Requested:

1. In your response regarding the narrative description of your activities, you indicated you have three purposes:
   - Educate and inform the Latino population on conservative iss ues and values
   - Empower Latinos to get involved in protecting and promoting their conservative values in their homes, communities, state and country
   - Serve as a bridge between non -Hispanics on conservative issues and values

   For each of the three purposes, pl ease provide the following information:

   a. Provide a more detailed description of the purpose that includes examples of actions you have taken or plan to undertake to further each purpose.
   b. How much time is has been or will be devoted to each purpose?
   c. How much financial resources have been or will be devoted to each purpose?
   d. Of the three purposes, how do you rank it in order of importance?

2. In your response regarding the narrative description of your activities, you i ndicated you will conduct two significant a ctivities:
   - Research, preparation, and representation of conservative values in Spanish and English media communication such as television, radio, newspapers, books, newsletters, and electronic media.
   - Research, preparation, and representation of conservati ve values through conferences, speeches, presentations, and other forms of public speaking and personal correspondence related to the purposes of the organization

   For each of the two activities, please provide the following information:

   a. Provide a more det ailed description of the activity that includes examples of actions you have taken or plan to undertake to further each purpose.
   b. How much time is has been or will be devoted to each activity?
   c. How much financial resources have been or will be devoted to eac h activity?
   d. Of the two activities, how do you rank it in order of importance?
   e. How does the activity relate back to each of the three purposes? How does it further each purpose?

3. Relating to your activities involving the media, please provide copies of art icles printed or transcripts of items aired because of that activity. New media activity may include the following:
   a. Press releases
   b. Interviews with news media
   c. Letters to the editor
   d. Op-ed pieces

4. Relating to your activities involving public speaking, p rovide the following information for all events conducted or planned to be conducted by your organization:

   a. The time, location, and content schedule of each event
   b. Identify and provide copies of handouts to the audience
   c. Identify workshop materials and provide copies that instructors will use
   d. The names and credentials of the speakers
   e. If speeches or forums were or will be conducted at the event, provide detailed

SFC [redacted]

contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members will be paid, provide the amount will be paid for each person. If not, please indicate they volunteered to conduct the event.

f. The names of persons from your organization and the amount of time they will spend on the event. Indicate the name and amount of time they will spend on the event. Indicate the name and amount of compensation that will be paid to each person. If no one will be paid, indicate this event will be conducted by volunteers to each person.

g. Indicate the percentage of time and resources you will spend on these activities in relation to 100% of all your activities.

5. You filed Form 1023 on March 5, 2010. Please provide an updated description of activities since that time.

6. Does your organization have a website? If so, please provide a hardcopy printout of your organization's website.

7. Does your organization promote or publicize itself using any internet social media such as Facebook? If so, please list the social media outlets and provide hardcopy printouts of those outlets.

8. You stated your organization has a close connection with another organization, VOCES Action, which applied for exemption under section 501(c)(4). Please describe the relationship in further detail. How will the two organizations work together? What activities or expenses are shared?

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
Attn: Joseph R Herr
SFC [redacted]

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
Attn: Joseph R Herr
[redacted]

SFC 002691

Internal Revenue Service
SFC
Cincinnati, O SFC

Department of the Treasury

Date: February 1, 2012

SFC

Employer Identification Number:

Specialist Name - Stephen Seok
SFC
Contact Telephone Numbers:
SFC Phone
SFC Fax
Response Due Date:
February 22, 2012

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.*

If we approve your application for exemption, we will be required by law to make the appl ication and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whos e name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your applica tion. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.

- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

SFC [redacted]

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Stephen Seok
Exempt Organizations Specialist

Enclosure: Information Request

SFC [redacted]

RETURN THIS PAGE WITH YOUR RESPONSE

Please read the Penalties of Perjury statement on page 1 above. Then, please sign and date below, indicating you agree to the Declaration.

Name _____ Date _____

Additional Information Requested:

1) Please provide the following information for your board of directors and officers:

   a) Provide all copies of your corporate minutes from inception to the present.

   b) Provide the titles, duties, work hours, and compensation amounts of your board members, officers, and employees. If they only work for a certain time yearly, bi -yearly, or quad-yearly, please provide the periods they had (have) worked and will work. Please identify your volunteers.

   c) If you have a board member or officer who has run or will run for a public office in the near future, please describe fully. If none, please confirm by answering "None" to this question.

2) Are you a membership organization? If so, provide the following for your membership:

   a) How many members do you have currently?

   b) What does the memberships consist of? Are they mostly individuals? What is the percentage of the organizational members as they are part of the whole membership?

   c) Provide member application/regist ration form

   d) Provide membership agreement and rules that govems members.

   e) Provide a membership fee schedule.

   f) What are the membership requirements?

   g) What services and benefits do you provide especially for members only?

   h) What are the roles and duties of your members?

   i) Provide copies of your website that your members can only access.

3) Provide the following information for the income you received and raised for the years from inception to the present. Also, provide the same information for the income you expect to receive and raise for 2012, 2013, and 2014.

   a) Donations, contributions, and grant income for each year which includes the following Information:

      - The names of the donors, contri butors, and grantors. If the donor, contributor, or grantor has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".

SFC [redacted]

- The amounts of each of the donations, contributions, and grants and the dates you received them.
- How did you use these donations, contributions, and grants? Provide the details.

If you did not receive or do not expect to receive any donation, contribution, and grant income, please confirm by answering this question "None received" and/or "None expected".

b) The amounts of membership income rec eived for each year. If you did not receive or do not expect to receive any membership income, please confirm by answering this question "None received" and/or "None expected".

c) The amounts of fundraising income received for each year. If you did not r eceive or do not expect to receive any fundraising income, please confirm by answering this question "None received" and/or "None expected".

d) The amounts of any other incomes received for each year. If you did not receive or do not expect to receive any other incomes, please confirm by answering this question "None received" and/or "None expected".

NOTE: Please do not attach tax returns or ledgers to respond to the above questions.

4) Provide the following information for the expenses you have incurred for the years from inception to the present. Also, provide the same information for the expenses you expect to incur for 2012, 2013, and 2014.

a) Donation, contribution, and grant expenses for each year which includes the following Information:

- The names of the donees, recipients, and grantees. If the donee, recipient, or grantee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each of the donations, contributio ns, and grants and the dates you donated, contributed, or granted them.
- The amounts of each of the donations, contributions, and grants and the dates you expect to donate, contribute, or grant them.
- Provide the reasons for issuing the donations, cont ributions, and grants.

If you did not issue or do not expect to issue receive any donations, contributions, and grants, please confirm by answering this question "None to be provided".

b) Compensation, salary, wage and reimbursement expenses for eac h year with the following information:

- The names of the payees. If the payee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each payment and the dates you made o r expect to make each payment.
- The services the payee provided in return for the payment.

SFC [redacted]

- Provide the reasons for issuing the donations, contributions, and grants?

c) The lists and amounts of any other expenses for each year.

Note: Please do not attach tax returns or ledgers to respond to the above questions.

5) Provide the following for your fundraising activities:

a) Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election ye ar and non-election year.

b) Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, and webpage solicitations.

c) How much of your organization's budget is spent on fundraising?

d) What are the sources of the fundraising expenses?

e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

6) Provide the following information for all the events and programs you have conducted and participated from May 26, 2009 to now (other than the events and programs that are questioned below separately). Please answer the following for each event:

a) The time, location, and detailed description of each event or program

b) Copies of handouts you provided to the audience, participants, and the public

c) The names and credentials of the organizers

d) If speeches or forums were conducted in the event or program, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members were paid, provide the amount were paid for each person. If not, please indicate they volunteered to conduct the event or program.

e) The names of persons from your organization and the amount of time they spent on the event or program. Indicate the name and amount of time they spent on the event or program. Indicate the name and amount of compensation that were paid to each person. If no one were paid, indicate this event were conducted by volunteers to each person.

f) Indicate the percentage of time and resources you spent on all the events and programs in relation to 100% of all your activities.

g) Will your near future events and programs remain similar to those you have been conducting recently? If not, explain the changes of your events and programs in the near future in terms of contents, time, and resources.

7) Provide the following for your publishing activities including books, CD's, DVD's, newsletters, literatures, flyers, brochures, pamphlets, vot er guides, and class handouts (from May 26, 2009 to now):

a) Copies of all the publications and/or advertising materials that you have distributed.

b) Expense amounts incurred for your publishing activities from May 26, 2009 to now

SFC [redacted]

c) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

h) Will your near future publishing activities remain similar to those you have been conducting recently? If not, explain the changes of your publishing activities in the near future in terms of contents, time, and resources.

8) Provide the following information for your web and internet related activities:

a) Copies of your current web pages and your presentations on other web pages such as social networking sites and blog sites. If you are a membership organization, please include all the pages that are accessible only to your members.

If you have not established your website yet, but you have a plan to have your own website, Provide print-outs and contents of proposed website, including any pages with restricted access.

b) Expense amounts incurred for your web and internet related activities from May 26, 2009 to now.

b) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

9) Have you attempted or will you attempt to influence the outcome of specific legislation (in the near future)? If so, provide the following:

a) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation.

b) Provide copies of any radio, television, or internet advertisements relating to your lobbying activities

c) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

10) Have you or will you directly or indirectly communicate with members of legislative bodies (in the near future)? If so, provide copies of the written communications and contents of other form of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

11) Have you conducted or will you conduct candidate forums or other events at which candidates running for public offices are invited to speak (in the near future)? If so, provide the following details and nature of the forum including:

a) The names of candidates invited or will be invited to participate

b) The issues that were discussed or will be discussed

c) The time and location of the forums or other events held or will be held

SFC [redacted]

d) Copies of all handouts (to be) provided and distributed at th e forums and other events, including any internet or advertising material discussed or used at the forums and other events.

e) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all yo ur activities.

If not, please confirm by answering "No" to this question.

12) Have you distributed or will you distribute materials or conduct other communications that are prepared by another organization or person (in the near future)? If so, provide the f ollowing:

a) Copies of materials and contents of communications

b) When and where the distribution have been conducted or will be conducted?

c) Who has distributed or will distribute the materials?

d) Please indicate the percentage of time and resources you have spen t or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

13) Will you, or have you conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides (in the near future)? If so, provide the following:

a) What is or will be the location, date and time of the events?

b) Who on the organization's behalf have conducted or will conduct the voter registration o r get out to vote drives?

c) Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

14) Have you engaged or will you engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, suc h as renting office space or providing access to a membership list (in the near future)?

If so, describe the relationship in detail and copies of any contracts or other agreements documenting the business relationship.

If not, please confirm by answerin g "No" to this question.

15) Are you associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

a) Provide the name, employer identification n umber, and address of the organizations

SFC [redacted]

b) Describe in detail the nature of th e relationship(s).

c) Do you work with those organization(s) regularly? Describe the nature of the contacts.

d) List shared employees, volunteers, resources, office space, etc. with the organization(s).

e) Please indicate the percentage of time and resources you ha ve spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

16) If you have conducted or will conduct any activities other than the ones we have already cited above (in the near future), provide answers for the following questions regarding past, present and future activities. If you have not conducted and will not conduct any other activities, please confirm by answering "No" to this question.

a) What does the activity/service entail?

b) Who conducts the activity/service?

c) When and where is the activity/service conducted?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your act ivities.

If you have not conducted or will not conduct any activities other than the ones we have already cited, please confirm by answering "No" to this question.

17) Since you are a corporation (according to page 1 of your application), you must submit a c omplete copy of your Articles of Incorporation and any amendments thereto that show evidence that they have been filed with and approved by the State in which you are incorp orated.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
ATT: Stephen Seok
SFC [redacted]

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
SFC [redacted]
Cincinnati, O SFC [redacted]
ATT: Stephen Seok
[redacted]

SFC 002699

From: Koester John J
Sent: Wednesday, August 04, 2010 7:33 AM
To: Muthert Gary A
Subject: FW: Case # EO SFC SFC SFC

From: Shafer John H
Sent: Tuesday, August 03, 2010 3:15 PM
To: Koester John J
Subject: FW: Case # EO SFC SFC SFC

FYI

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
Telephone SFC
FAX SFC

From: Camarillo Sharon L
Sent: Tuesday, August 03, 2010 2:51 PM
To: Shafer John H
Subject: RE: Case # EO SFC SFC SFC SFC SFC

John: I forwarded this information to Justi n Lowe, the EOT SME on Legislative Activities. Please ask Jack to hold onto the application until we hear back from Justin.

Thanks

From: Shafer John H
Sent: Tuesday, August 03, 2010 10:07 AM
To: Camarillo Sharon L
Subject: FW: Case # EO SFC SFC SFC SFC SFC
Importance: Low

This case may be something to consider elevating. What do you think?

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
Telephone SFC
FAX SFC

SFC 002700

From: Koester John J
Sent: Tuesday, August 03, 2010 11:12 AM
To: Shafer John H
Cc: Muthert Charles E
Subject: Case # EO SFC SFC SFC SFC SFC
Importance: Low

John

The subject case is the one I discussed with you earlier today. The organization is applying for exemption under Section 501(c)(4) and appears to be affiliated with and shares some leadership control with th SFC SFC S SFC a Section 501(c)(6) organization. The applicant's activities are legislative/political and are attached below as excerpted from the application.. The applicant indicates that its political activities are not its primary focus. It 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. the applicant's annual income and expenditures of the next four years range from $250- 350K per year.

Would normally consider closing the case on merit as the applicant appears to meet the requirements of a Section 501(c)(4) organization. However, considering the current political climate and possible sensitivity of the applic ation, the case may be worth elevating to upper management.

Let me know what you think.

Jack

Attachment to Form 1024 for
SFC SFC SFC
SFC
Part I: Identification of Applicant
Line 8a. Articles of Incorporation and Bylaws.
The Articles of Incorporation fo SFC SFC SFC (the "Corporation") are attached hereto as Exhibit "A". The Corporation's Bylaws are attached hereto as Exhibit "B".

Part II: Activities and Operational Information
Line 1. Narrative Description of Activities.
Mission and Goals
The Corporation is a newly forme SFC non -profit corporation that is organized and shall be operated exclusively for the promotion of social welfare within the meaning of Section 501 (c)(4) of the Internal Revenue Code of 1986, as amended ("Code"). The Corporation will accomplish its tax -exempt purposes by educating the public about legislation pending before the state legislature of si gnificance to th SFC business community and by providing nonpartisan factual information regarding the stances of candidates and elected officials on business -related issues.

Activities:

Voter Education.
The Corporation will primarily engage in ac tivities related to voter education. These activities will include monitoring legislation pending before the state legislature; reviewing the respective stances of candidates and elected officials on issues of significance to th SFC business community ; and researching the potential impact of legislation, candidates, elected officials, and other issue effecting the climate of the State o SFC businesses and th SFC economy. After reviewing proposed legislation and/or candidate platforms, the Cor poration will prepare educational information for dissemination to the general public in the form of voter guides; mailers; television, internet, and broadcast media; and other available means of communication. These communications will not advocate for or against any specific issues, candidates, or elected officials, but will focus on providing the public with unbiased factual information. Through these

efforts, the Corporation hopes to promote greater public participation in the legislative process and to ensure tha SFC voters go to the polls prepared to make informed decisions in the best interests of the overall business community. The Corporation will conduct these activities on an on -going basis through its officers and directors.

Issue Advocacy.
The Corporation will also advocate in favor of or against specific legislation affecting the business community in accordance with Treasury Reguiations § 1.501(c)(3) - I(c)(3)(ii) and (iv), as permitted for civic organizations under Treasury Regulations § 1.50I(c)94)-I(a)(2)(ii). In accordance with such provisions, the Corporation may contact, or urge the public through printed materials, internet and broadcast media to contact, members of the legislature to propose, support, or oppose legislation. The Corporation will also advocate forthe adoption or rejection of specific legislation. These communications will be separate and apart from the voter education communications described above and will not target any specific candidates for office.

Campaign Support.
To 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 th SFC 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.

Events.
The Corporation may also, from time to time, hold fundraising or other events in connection with the above described activities.
SCHEDULE B
Line 2. Performance of Services.
As described in Part II, Line 1, above, the Corporation will prepare and disseminate non -partisan voter information to SFC citizens and businesses to assist them in making informed decisions as they participate in the legislative process. This information will be provided to the public free of charge in the form of voter guides; mailers; internet, television, an d radio media; and other available forms of communication. The Corporation will incur costs to print, publish , broadcast, or otherwise distribute this information.

SFC 002702

From: Condon Michael W
Sent: Tuesday, September 28, 2010 9:50 AM
To: Muthert Gary A
Subject: Super PAC

Among super PAC spending, more than half has come from American Crossroads, a pro -Republican group founded with the help of former George W. Bush administration adviser Karl Rove. Donations to the group include $400,000 from **American Financial Group**, a publicly held company, which could make the contribution because of the Supreme Court ruling in *Citizens United v. Federal Election Commission* . That ruling lifted restrictions on corporate spending in elections.

Michael Condon
TE/GE Determinations Unit 7821
SFC [redacted]

IRS0000487036

From: Bowling Steven F
Sent: Thursday, October 07, 2010 9:20 AM
To: Muthert Gary A; Beckerich Karl J
Subject: RE: Hot Case

Importance: High

Its in 51?? Karl - can you get this case and put it in my 75 - 31850 and place it on my desk.

Thanks,

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]
Tel SF SF SFC
Fax SF SF SFC

From: Muthert Gary A
Sent: Thursday, October 07, 2010 9:47 AM
To: Bowling Steven F
Cc: Muthert Gary A
Subject: RE: Hot Case

CROSSROADS GRASSROOTS POLICY EO SFC SFC S SFC SFC

Gary Muthert
TE/GE, ID SFC
Screening Group, Group 7838
SFC [redacted]
SF SF SF **Phone**
SF SF SF **FAX**

From: Bowling Steven F
Sent: Thursday, October 07, 2010 9:35 AM
To: Muthert Gary A
Subject: RE: Hot Case
Importance: Low

Is that the name on the app? can't find it. Do you have the EIN?

STEVEN F. BOWLING
Manager, EO Group 7822

SFC 002704

Exempt Organizations Determinations
SFC
Tel SF SF SFC
Fax SF SF SFC

From: Muthert Gary A
Sent: Thursday, October 07, 2010 8:48 AM
To: Bowling Steven F
Cc: Muthert Gary A
Subject: Hot Case

Groups Seek IRS Investigation to Determine Whether "Crossroads GPS" Is Operating in Violation of Its 501(c)(4) Tax Status

You might want to get this case. I sent it to you as a TEA PARTY.

Gary Muthert
TE/GE, ID SFC
Screening Group, Group 7838
SFC
Phone
SFC **FAX**

From: Shafer John H
Sent: Thursday, October 07, 2010 8:23 AM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawnt el R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: EO Tax Journal 2010 143

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2010-143 (Thursday, October 7, 2010)
Copyright 2010 Paul Streckfus

For those who have had enough on the perils of (c)(4)s engaged in politicking, you can skip my reprint of the recent letter to the IRS from Democracy 21 and the Campaign Legal Center. For those who have had enough on the perils of Paul, you can skip my reprint of an article from the *Baltimore Sun.* Last week I reported on the rain and imminent flooding in my neighborhood. What I didn't realize then is that a tornado came within a mile of my house. I'm always amused by local reporting, so the article follows. Tomorrow, barring rain and tornados, I expect to have a transcript of the remarks of Lois, Phil, and Ruth in Toronto. That'll make for good wee kend reading while watching baseball and football.

National Weather Service Confirms Tornado near Pasadena
Downed Trees Reported in Lake Shore Neighborhood
By Jessica Anderson, *The Baltimore Sun,* October 1, 2010

The National Weather Service confirmed Friday that a tornado passed through the Lake Shore neighborhood east of Pasadena in Anne Arundel County during Thursday's storm. Officials at the National Weather Service said the tornado reached maximum winds of 8 0

mph, with a path as wide as 200 yards and as wide as one mile long, passing within a half mile of Chesap eake High, Chesapeake Middle and Bodkin Elementary schools.

The tornado formed at about 9:46 p.m. over Cornfield Creek, knocking a sailboat on its side and then moving toward Milburn Ci rele in Lake Shore, where it knocked down several trees. The tornado l eft a trail of damage, running from southeast to northeast, and weakened, touching down a final time in the 8300 block of Dock Road at about 9:49 p.m. No injuries were reported as a result of the tornado.

Groups Seek IRS Investigation to Determine Whether "Crossroads GPS" Is Operating in Violation of Its 501(c)(4) Tax Status

October 5, 2010

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SEC [redacted]

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SEC [redacted]

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 it s tax status because it has a primary purpose of participating in political eampaigns in support of, or in opposition to, eandidates for p ublic 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 pe rmitted 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 fro m the American people, the IRS has an obligation to take st eps 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 congressio nal 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 don ors who are providing the money to influence their votes and the amounts they are giving.

The IRS applies a "facts and circumstanc es" 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 str ongly 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 oper ated 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 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 nonprofit 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 "nonprofit 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 nonprofit 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 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 wo rk of two former Bush aides: Ed Gillespie, the former Republican National Committee chairman who later s erved 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 wo rking 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 mes sage." *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]

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 t o 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 C rossroads 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, [sp okesman 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 cons ervative 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 mill ion into another round of TV ads targeting Democrats. This brings to roughly $5 million t he 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 t he 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 wh ich are highly critical of Democratic Senatorial candidates and attack those candidat es 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 bill ion. Cuts so costly to hospitals and nursing homes that they could stop taking Medicare altogether. Boxer's cuts would sharply reduce benefits for s ome 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 Ses tak:

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. Pennsyl vania can't 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 insur ance 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. Benn et'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 dis agrees, 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 car e.

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 e ven 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 atta cking 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 Cro ssroads 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 obligati on to disclose its donors to the public and is not doing s o. 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) gr oup was created in order to provide anonymity for donors providing money for campaign expenditures who otherwise might resist making donations to the American Crossroads 527 group because donations to t he 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 ac tivities 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 Democr ats 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 g ood 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 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 se ction 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 r emain 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 politieal 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") activi ty for purposes of the tax code:

The term "exempt function" means the function of influencing or attempting to inf luence 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 ele ction 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 pu blic 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 ad vocacy 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 el ection or defeat of an individual to public office, the expenditure clearly is for an exe mpt 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 exp enditure 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 expr ess advocacy, it can still be treated as "direct or indirect participation or intervention in poli tical 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 th e 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 o rganization hopes to influence;

c) The timing of the communication coincides with a specific event outside the control of the orga nization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative commi ttee 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 mids t 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 le gislative 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 interventi on 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 int ervention. The Letter Ruling states:

A facts and circumstances test is to be used in d etermining 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 a s 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 mea ns 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 ins iders.*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 ci rcumstances 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 pu blic 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 primar ily 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 G PS 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 subseq uent years. [22]

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 congre ssional 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 w as 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 ha s 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 partic ipating 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 t o operate as a nonprofit 527 group required to disclose its contributions and expenditures.

Sincerely,

J. Gerald Hebert
Executive Director
Campaign Legal Center

Fred Wertheimer
President
Democracy 21

Footnotes

[1] M. Luo and S. Strom, "Donors' Names K ept Secret as They Influence the Midterms," *The New York Times* (Sept. 21, 2010).

[2] M. Crowley, "The New GOP Money Stampede," *Time* (Sept. 16, 2010).

[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).

[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).

[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.*

[13] Crossroads GPS website, at *http://www.crossroadsgps.org/* (left sidebar) (last visited Sept. 30, 2010).

[14] Jeremy P. Jacobs, Crossroads GPS Targ ets 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/ameri_can_crossr.php ; see also* Crossroads GPS website, at *http://www.crossroadsgps.org/video/bennet_-calendar* (last visited Sept. 30, 2010).

[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); se e 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.*

[19] K. Vogel, *supra.*

[20] K. Vogel, "Crossroads hauls in $8.5M in June," *Politico* (June 30, 2010).

[21] H. Bailey, *supra.*

[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 engag e in, consistent with its charitable status. 26 U.S.C. § 501(h).

SFC 002714

Internal Revenue Service
memorandum

date: **July 6, 2011**

to: **Mike Seto**

from: **Hilary Goehausen, TLS, Group 1**

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subject: Notes from meeting on c3/c4 "advocacy organization" applications with Lois on July 5

Per the meeting with Lois regarding 501c3 and 501c4 "advocacy organizations," the next steps were recommended:

- 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 Technical to review (or via TEDS system).
- TLSs in EO Technical will continue to be available to Cincinnati in order to answer questions, walk through issues, etc. with regards to these c3/c4 "advocacy organization" cases.
- 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.

Please let me know if you'd like more information, but I wanted to provide a succinct list of what was decided to be the next steps regarding these applications.

United States Senate

WASHINGTON, DC 20510

March 14, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SFC[redacted]

Dear Commissioner Shulman:

We have received reports and reviewed information from nonprofit civic organizations in Kentucky, Ohio, Tennessee, and Texas concerning recent IRS inquiries perceived to be excessive. It is critical that the public have confidence that federal tax compliance efforts are pursued in a fair, even-handed, and transparent manner—without regard to politics of any kind. To that end, we write today to seek your assurance that this recent string of inquiries has a sound basis in law and is consistent with the IRS's treatment of tax-exempt organizations across the spectrum.

As you know, the designation as a tax-exempt organization under section 501(c)(4)(A) is reserved for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, ... the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." 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."[1] The 501(c)(4) designation has been conferred on many organizations in America that espouse political or public policy viewpoints—including Priorities USA, the sister organization of "[t]he super PAC supporting President Obama,"[2] and American Crossroads, the sister organization of a super PAC supporting Republicans.

Civic and social welfare organizations have long performed valuable roles and offered numerous benefits to our society, and tax exemptions for such organizations can be traced all the way back to the Tariff Act of 1913. It is imperative that organizations applying for tax-exempt status are able to rely on a consistent and foreseeable review structure from the IRS. Any significant changes to the IRS review process should be implemented only after appropriate notice and opportunity for comment from the public and affected parties.

A number of our constituents have raised concerns that the recent IRS inquiries sent to civic organizations exceed the scope of the typical disclosures required under IRS Form 1024 and

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[1] *Federal Election Commission v. Beaumont*, 539 U.S. 146, 150 n. 1 (2003) (quoting Rev. Rul. 81-95, 1981-1 Cum. Bull. 332, 1981 WL 166125).
[2] Jeremy Peters, "'Super PACs,' Not Campaigns, Do Bulk of Ad Spending," N.Y. Times (Mar. 2, 2012).

accompanying Schedule B—the forms that all 501(c)(4) organizations must submit. Understandably, this has prompted some concerns about selective enforcement and the duty to treat similarly situated taxpayers similarly. To address these concerns, we respectfully request that you provide answers to the following questions:

1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?

2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?

3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?

4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?

5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?

6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include "amounts received from the general public…for the exercise or performance of the organization's exempt function." In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization $5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this

information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.

7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?

8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection."[3] In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.

Given the potentially serious implications of selective or discriminatory enforcement, we request that you hold further IRS-initiated demands for information from 501(c)(4) applicants beyond the extensive information already required of all applicants (in Form 1024 and Schedule B), until the agency provides a response demonstrating these recent IRS requests are consistent with precedent and supported by law.

Thank you for your prompt attention to this matter.

Sincerely,

Orrin Hatch

Rob Portman

Lamar Alexander

Bob Corker

[3] *See* Form 1024, Application for Recognition of Exemption OMB No. 1545-0057 Under Section 501(a).

Kay Bailey Hutchison

John Cornyn

Mitch McConnell

Rand Paul

Pat Roberts

Chuck Grassley

John Thune

Tom Coburn

From: Lowe Justin
Sent: Monday, May 06, 2013 4:11 PM
To: Medina Moises C; Marks Nancy J
Subject: FW: Briefing Deck for May 7 TEGE EO Data Matters Discussion
Attachments: 501(c)4 Trend Analysis May 7 Mtg.pdf

From: Abold Justin L
Sent: Monday, May 06, 2013 5:11 PM
To: Lowe Justin; Biss Meghan R; Rogers Peter; Weber Michael E
Subject: FW: Briefing Deck for May 7 TEGE EO Data Matters Discussion

Here's a copy of the briefing deck I sent forward to Steve Miller's office. Thanks for everyone's help getting the details right.

Best regards

Justin

Justin Lewis Abold

Initiative Director

Office of Compliance Analytics

SFC [redacted]

SFC [redacted]

SFC [redacted] (Staff Assistant SFC [redacted] SFC [redacted]

SFC [redacted] (Blackberry)

Emai SFC [redacted].

SFC 002720

From: Abold Justin L
Sent: Monday, May 06, 2013 5:10 PM
To: Onorato Corina R
Cc: Silverman Dean R; Grant Joseph H; Schweikert Eri SFC [redacted]); Lerner Lois G
Subject: Briefing Deck for May 7 TEGE EO Data Matters Discussion

Hi Corina

I'm forwarding a read ahead for tomorrow's May 7 mtg on TEGE EO Data Matters D iscussion. The briefing deck has previously been shared with TEGE though any errors or omissions are mine. The deck does include 501(c)(4) names and Form 990 data all publicly available but I just wanted to mention that as a precaution.

Best regards

Justin

Justin Lewis Abold

Initiative Director

Office of Compliance Analytics

SFC [redacted]

[redacted]

SFC [redacted] (Staff Assistant SFC [redacted] SFC [redacted]

SFC [redacted] (Blackberry)

Emai SFC [redacted].

SFC 002721

Working draft – for discussion only

Updated Baseline Analysis of 501(c)(4) Form 990 Filers with *Political Campaign Activities*

May 7, 2013

IRS

PARTNERSHIP BETWEEN

TE/GE AND OCA

Official Use Only – Sensitive But Unclassified

IRS0000494607

SFC 002722

Preliminary draft – for discussion

This presentation examines the trends in 501(c)(4) Form 990 filers with *Political Campaign Activities* from TY2008 – TY2011

Agenda

- Background
- Executive summary
- Updated preliminary findings
- Next steps
- Appendix
  - Tax year definition
  - Initial focus on 501(c)(4) Form 990 filers with *Political Campaign Activities* and > $10M in revenue
  - Instructions for Schedule C *Political Campaign and Lobbying Activities* (Extract)
  - Detailed charts showing *Political Campaign Activities* expenses for TY2009 & TY2011
  - Number of 501(c)(4) Form 990 filers with *Political Campaign Activities*, both greater than and less than $10M in total revenue
  - Data Constraints

SFC 002723

Preliminary draft – for discussion

Background

Background

- Since Citizens United (2010) removed the prohibition 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 activities.

Question

- Have 501(c)(4) organizations become increasingly involved in *Political Campaign Activities* (PCA) since 2010?

Potential Analytic Indicators

- Is the number of 501(c)(4)s with political campaign activity increasing?
- Is the amount of political expenditures by 501(c)(4)s increasing?
- Is the number of 501(c)(4)s engaging in political campaign activities and then ceasing activity after an election increasing?

Notes for subsequent slides:
- *Political Campaign Activities* (PCA) for Form 990 Filers are reported to the IRS on Schedule C, Parts 1-A, 1-C and IV.
- Not all Form 990s for TY2011 have been received by the IRS; TY2012 filing is largely incomplete and therefore not included
- Trends span both election years and non-election years; trends also span a significant redesign in Form 990 incl. changes in filing thresholds.

SFC 002724

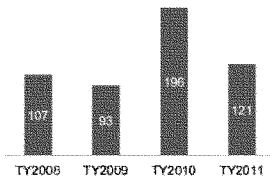
Preliminary draft – for discussion

[redacted]

Executive Summary

- Has there been an increase in the number of 501(c)(4) organizations engaging in *Political Campaign Activities*?

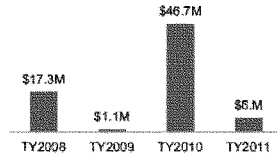
501(c)(4) Form 990 filers with PCA



- The number of 501(c)(4)s reporting PCA almost doubled from TY2008 TY2010**

- Has there been an increase in *Political Campaign Activities* expenditures either directly or as grants to other organizations?

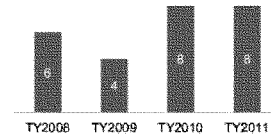
PCA expenditures for large 501(c)(4) Form 990 filers



- The amount of PCA for large filers almost tripled from TY2008 TY2010

- Has there been an increase in "one year" 501(c)(4) organizations who are engaged in *Political Campaign Activities*?

"One year" 501(c)4 Form 990 Filers with PCA



- There is a very limited population of "one year" filers with PCA between TY2008 TY2011

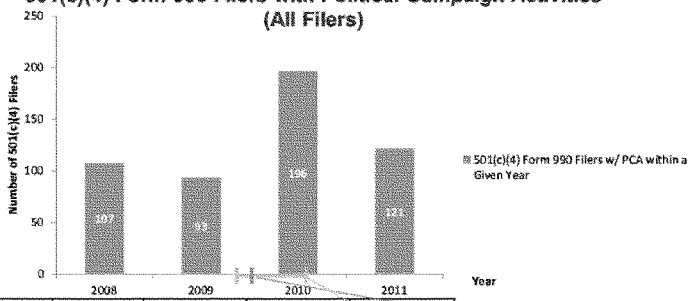
Reminder:
- *Political Campaign Activities* (PCA) for Form 990 Filers are reported to the IRS on Schedule C, Parts 1-A, 1-C and IV.
- **Not all Form 990s for TY2011 have been received by the IRS; TY2012 filing is largely incomplete and therefore not included
- **Trends span both election years and non-election years; trends also span a significant redesign in Form 990 incl. changes in filing thresholds.

SFC 002725

Preliminary draft – for discussion

Filers with *Political Campaign Activities* increased from 107 in TY2008 to 196 in TY2010; this outpaces the increase in overall 501(c)(4) Form 990 filers

501(c)(4) Form 990 Filers with *Political Campaign Activities* (All Filers)



	2008	2009	2010	2011
Filers w/ PCA	107	93	196	121
Percent Change in Number of Filers with PCA	--	(13%)	210%	(38%)
Total Filers	8,962	9,133	11,486	9,444
Percent Change in Number of Form 990 Filers	--	2%	26%	(18%)

Citizens United January 2010

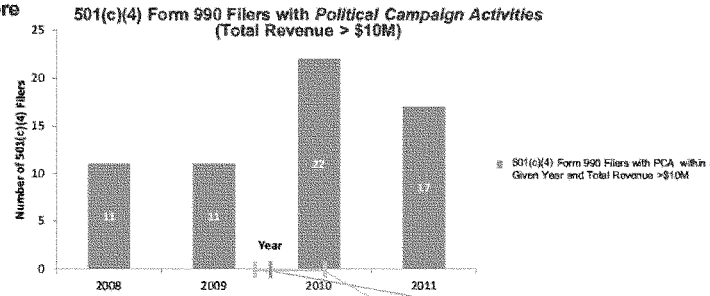
ACA Reconciliation[1] Oct 2009 – June 2010

Source: Returns Inventory and Classification System (RICS), Form 990; [1] Wikipedia

SFC 002726

Preliminary draft – for discussion

For filers with *Political Campaign Activities*, those with over $10M in revenue represent 95%[1] of total expenses (by filers with PCA) and present a small universe to explore



	501(c)(4) Form 990 filers with total revenue > $10M			
Large filers with PCA	11	11	22	17
Large filers without PCA	274	269	258	221
Total large filers	285	280	280	238
Percentage with PCA	3.86%	3.93%	7.86%	7.14%

Citizens United January 2010

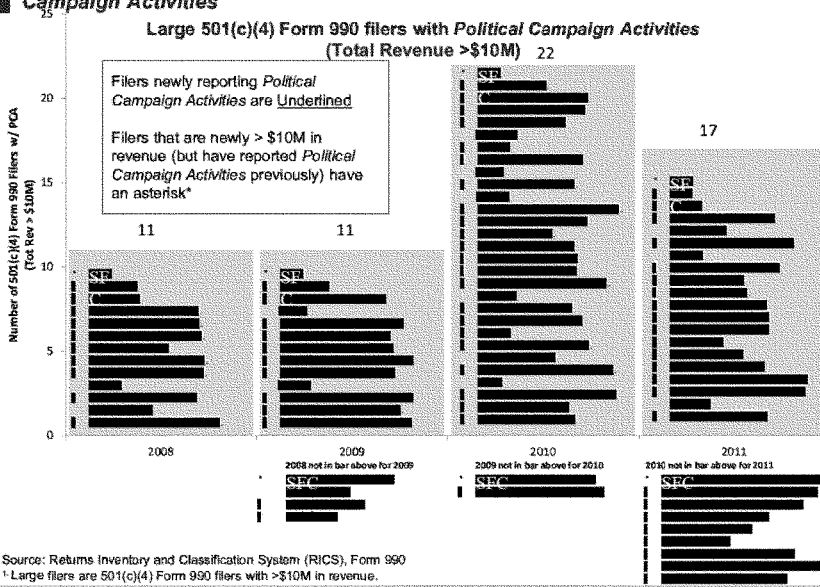
ACA Reconciliation[2] Oct 2009 – June 2010

[1] See appendix for further details
Source: Returns Inventory and Classification System (RICS) , Form 990; [2] Wikipedia

SFC 002727

Preliminary draft – for discussion

In federal election years, there is substantial "churn" in large [1] filers with *Political Campaign Activities*



Source: Returns Inventory and Classification System (RICS), Form 990

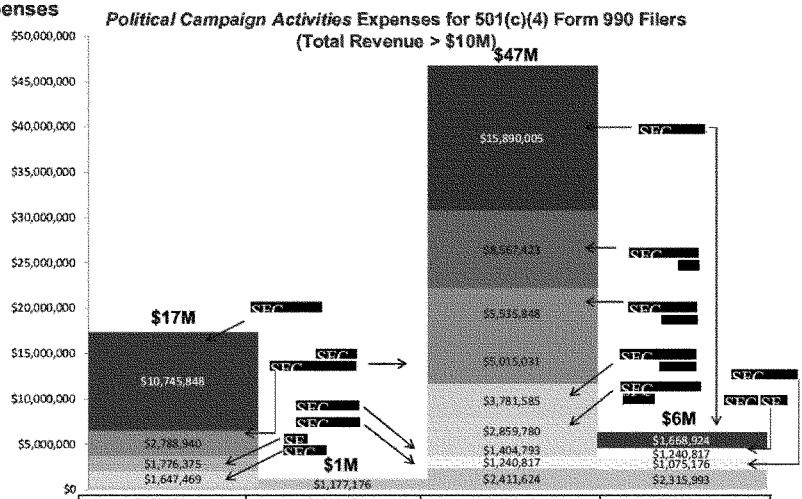
[1] Large filers are 501(c)(4) Form 990 filers with >$10M in revenue.

IRS0000494813

SFC 002728

Preliminary draft – for discussion

Total *Political Campaign Activities* expenses[1] for large[2] filers increased from $17M in TY2008 to ~$47M in TY2010 but only represented 0.61% of TY2010 total expenses



	TY2008	TY2009	TY2010	TY2011
# of Filers	11	11	22	17

Source: Returns Inventory and Classification System (RICS), Form 990; GuideStar.org [1] As reported on Sched. C, Part 1-C-3; [2] Large filers have >$10M in rev.

IRS0000494814

SFC 002729

Preliminary draft – for discussion

[redacted] *Political Campaign Activities* expenditures for 501(c)(4) Form 990 Filers with > $10M in Revenue in federal election years (2008 and 2010)

Year 2008

Name	*Political Campaign Activities* Expenses	Report 990 Total Expense	Political Expenses as a percentage of Total Expenses
[redacted]	$10.7M	$36.9M	29%
[redacted]	$2.8M	$10.5M	27%
[redacted]	$1.8M	$1,109.3M	0%
[redacted]	$1.6M	$10.M	17%
[redacted]	$.2M	$32.M	1%
[redacted]	$.1M	$878.4M	0%
[redacted]	$.02M	$385.9M	0%
[redacted]	$.01M	$58.1M	0%
[redacted]	$.01M	$466.M	0%
[redacted]	$.001M	$939.5M	0%
[redacted]	$.001M	$31.8M	0%
TOTAL	$17.3M	$3,958.5M	0%

Year 2010

Name	*Political Campaign Activities*	Report 990 Total Expense	Political Expenses as a percentage of Total Expenses
[redacted]	$15.9M	$42.3M	38%
[redacted]	$8.6M	$21.4M	40%
[redacted]	$5.5M	$25.7M	22%
[redacted]	$5.M	$19.M	26%
[redacted]	$3.8M	$12.4M	30%
[redacted]	$2.9M	$13.4M	21%
[redacted]	$1.4M	$22.9M	6%
[redacted]	$1.2M	$11.9M	10%
[redacted]	$.89M	$1025.M	0%
[redacted]	$.71M	$14.2M	5%
[redacted]	$.38M	$398.3M	0%
[redacted]	$.28M	$28.8M	1%
[redacted]	$.08M	$928.7M	0%
[redacted]	$.02M	$1,281.6M	0%
[redacted]	$.01M	$468.4M	0%
[redacted]	$.02M	$26.5M	0%
[redacted]	$.01M	$81.M	0%
[redacted]	$.01M	$881.4M	0%
[redacted]	$.01M	$1313.M	0%
[redacted]	$.002M	$890.4M	0%
[redacted]	$.002M	$40.7M	0%
[redacted]	$0	$11.4M	0%
TOTAL	$46.7M	$7,658.3M	1%

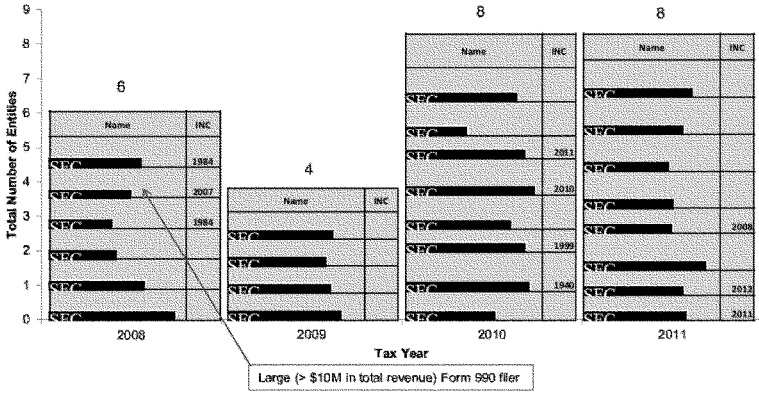
Source: Returns Inventory and Classification System (RICS), Form 990

SFC 002730

Preliminary draft – for discussion

In the last 4 tax years, 26 (out of 299 total unique) 501(c)(4) Form 990 filers with *Political Campaign Activities* filed only once with the IRS during that period

501(c)(4) Form 990 Filers w/ *Political Campaign Activities* who File Form 990 One Time between TY2008 – TY2011



Source: Returns Inventory and Classification System(RICS), Form 990; GuideStar (incorporation dates)

IRS0000494816

SFC 002731

Preliminary draft – for discussion

The definition of reportable spending is different for the IRS and FEC; our preliminary analysis shows the amounts reported to each

IRS Form 990 Data Compared to FEC Data (TY 2010)

Organization	IRS Data		FEC Data 2010			
	TY2008 Sched C Part 1 Expenses	TY2010 Sched C Part 1 Expenses	FEC Expenses - Independent Expenditures	FEC Expenses - Electioneering Communication	Total	TY2010 Diff btwn FEC data and IRS Sch. C data
SFC	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Greater than $1M differencie

Source: Returns Inventory and Classification System(RICS), Form 990; FEC Electioneering Communication & Independent Expenditures Reports.
We continue to review the FEC data to ensure we have accurately distinguished in the FEC data between 501(c)(4)s and related organizations.

SFC 002732

Preliminary draft – for discussion

[redacted] The definition of reportable spending is different for the IRS and FEC; our preliminary analysis shows 1 instance where there *may* have been different reporting outcomes

Amounts reported to the FEC by large[1] 501(c)(4) Form 990 filers with no Schedule C in TY2010

	IRS Data	FEC Data					
	2010	2010			2012		
Organization	Filed Schedule C?	Independent Expenditures	Electioneering Communication	Total	Independent Expenditures	Electioneering Communication	Total
[redacted]**	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

**We are verifying that the organization above is a 501(c)(4) and not a related organization with a different status.

A more robust analysis of the reporting requirements and specific circumstances of each organization would be required to assess what may have contributed to the different reporting to the IRS and FEC.

Source: Returns Inventory and Classification System(RICS), Form 990; FEC Electioneering Communication & Independent Expenditures Reports; [1] Large filers have >$10M in rev.

IRS0000494818

SFC 002733

Preliminary draft – for discussion

While Form 990 for TY2012 is not yet due for many filers, large[1] 501(c)(4)s with *Political Campaign Activities* expenditures in TY2010 reported a large increase in spending to the FEC between 2010 and 2012

Reported Expenditures to FEC 2010 and 2012

Organization	2010 (non presidential election year)			2012 (presidential election year)		
	Independent Expenditures	Electioneering Communication	Total	Independent Expenditures	Electioneering Communication	Total
SFC	SFC					

Source: FEC Electioneering Communication & Independent Expenditures Reports. [1] Large filers are 501(c)(4) Form 990 filers with >$10M in revenue.
We continue to review the FEC data to ensure we have accurately distinguished in the FEC data between 501(c)(4)s and related organizations.

IRS0000494819

SFC 002734

Preliminary draft – for discussion

What do you see as potential next steps?

Potential Next Steps

- Compare preliminary analysis with results of survey

IRS0000494820

SFC 002735

Preliminary draft – for discussion

Appendix

IRS0000494821

SFC 002736

Preliminary draft – for discussion

Using December of the previous year through November of the current year ensures that all the same form types are included

Definition of Tax Year

- Using January to December Calendar year will present problems because different tax year forms will be mixed in this time period. For example, here a 2012 calendar year definition

Tax Period	Accounting End Period	Accounting Beginning Period	Required Tax Form to File
January 2012	January 2012	February 2011	2011 Form 990
February 2012	February 2012	March 2011	2011 Form 990
March 2012	March 2012	April 2011	2011 Form 990
April 2012	April 2011	May 2011	2011 Form 990
June 2012	June 2012	July 2011	2011 Form 990
July 2012	July 2012	August 2011	2011 Form 990
August 2012	August 2012	September 2011	2011 Form 990
September 2012	September 2012	October 2011	2011 Form 990
October 2012	October 2012	November 2011	2011 Form 990
November 2012	November 2012	December 2011	2011 Form 990
December 2012	December 2012	January 2012	2012 Form 990

- A better approach is to use December of previous year through November of the current year. This will ensure all the same form type are included. For example, here is a 2012 definition

Tax Period	Accounting End Period	Accounting Beginning Period	Required Tax Form to File
December 2011	December 2011	January 2011	2011 Form 990
January 2012	January 2012	February 2011	2011 Form 990
February 2012	February 2012	March 2011	2011 Form 990
March 2012	March 2012	April 2011	2011 Form 990
April 2012	April 2011	May 2011	2011 Form 990
June 2012	June 2012	July 2011	2011 Form 990
July 2012	July 2012	August 2011	2011 Form 990
August 2012	August 2012	September 2011	2011 Form 990
September 2012	September 2012	October 2011	2011 Form 990
October 2012	October 2012	November 2011	2011 Form 990
November 2012	November 2012	December 2011	2011 Form 990

Source: Returns Inventory and Classification System (RICS), Form 990

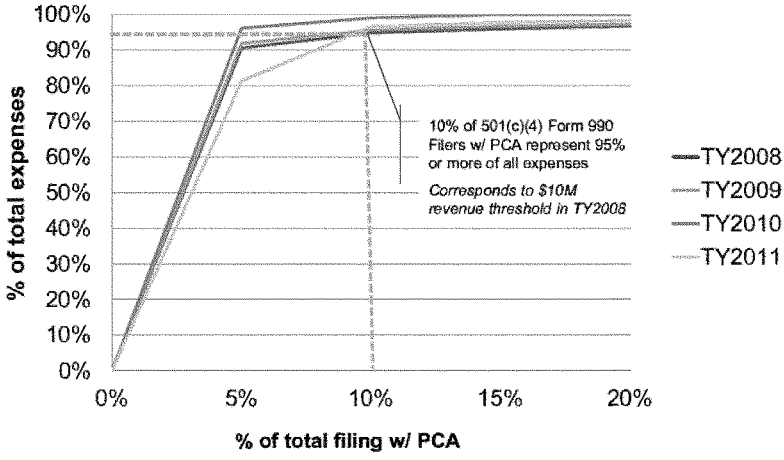
IRS0000494822

SFC 002737

Preliminary draft – for discussion

We selected an initial threshold >$10M in revenue for focused review because 501(c)(4) Form 990 Filers with *Political Campaign Activities* and >$10M in revenue represent 95% or more of total expenses (by filers with PCA)

Concentration of Expenses, 501(c)(4) Form 990 Filers with Political Campaign Activities, TY2008-2011



Source: Returns Inventory and Classification System (RICS), Form 990

SFC 002738

Preliminary draft – for discussion

We use $10M in total revenue as a dividing line between large and small entities with *Political Campaign Activities* spending

Revenue of Largest 501(c)(4) Form 990 Filers with *Political Campaign Activities* (values in Thousands)

Represents 95% of total expenses in TY2008

2008	2009	2010	2011
$1,144,792 (1)	$1,102,404 (1)	$1,347,977 (1)	$1,376,060 (1)
$949,343 (2)	$1,093,253 (2)	$1,287,048 (2)	$1,331,382 (2)
$898,222 (3)	$926,574 (3)	$1,176,022 (3)	$1,224,438 (3)
$491,929 (4)	$434,658 (4)	$1,033,367 (4)	$1,098,622 (4)
$398,641 (5)	$420,254 (5)	$942,474 (5)	$950,601 (5)
$58,952 (6)	$73,998 (6)	$874,430 (6)	$536,525 (6)
$38,469 (7)	$39,993 (7)	$480,120 (7)	$454,940 (7)
$34,307 (8)	$26,918 (8)	$408,942 (8)	$392,225 (8)
$32,271 (9)	$14,313 (9)	$81,424 (9)	$145,305 (9)
$11,239 (10)	$10,750 (10)	$48,405 (10)	$136,126 (10)
$10,798 (11)	$10,318 (11)	$43,528 (11)	$49,120 (11)
$9,599 (12)	$9,254 (12)	$29,245 (12)	$33,859 (12)
$9,560 (13)	$8,967 (13)	$28,718 (13)	$32,610 (13)
$9,251 (14)	$8,200 (14)	$27,479 (14)	$28,402 (14)
$8,855 (15)	$8,153 (15)	$23,305 (15)	$12,095 (15)
$8,549 (16)	$7,373 (16)	$21,132 (16)	$11,581 (16)
$7,940 (17)	$7,149 (17)	$19,483 (17)	$10,046 (17)
$7,809 (18)	$7,129 (18)	$14,166 (18)	$9,193 (18)
$7,734 (19)	$6,083 (19)	$14,154 (19)	$9,100 (19)
$7,646 (20)	$5,780 (20)	$13,434 (20)	$8,251 (20)
$7,444 (21)	$5,626 (21)	$13,374 (21)	$7,519 (21)
$7,427 (22)	$4,783 (22)	$12,393 (22)	$7,207 (22)
$5,923 (23)	$4,104 (23)	$9,914 (23)	$6,873 (23)
$5,896 (24)	$3,789 (24)	$9,566 (24)	$6,837 (24)
$5,794 (25)	$3,683 (25)	$9,491 (25)	$6,075 (25)
$5,521 (26)	$3,253 (26)	$9,069 (26)	$5,880 (26)
$5,085 (27)	$3,177 (27)	$8,894 (27)	$5,876 (27)
$4,691 (28)	$3,123 (28)	$8,630 (28)	$5,756 (28)
$4,305 (29)	$3,005 (29)	$8,364 (29)	$5,550 (29)

- A clear dividing line would be between 501(c)(4)s with several hundred million in revenue and all other entities, but the population size would be in the single digits.
- For this reason, we looked for a break point that represented a significant percentage of total expenses – and that falls at $10M in revenue for TY2008.
- We then kept the same threshold for all tax years for ease of analysis.

Preliminary draft – for discussion

501(c)(4)s that engage in *Political Campaign Activities* must check yes on line 3, Part IV of the Form 990 and attach a Schedule C which details political expenditures

Required Schedule for Reporting *Political Campaign and Lobbying Activities*

Purpose of Schedule[1]

- Schedule C (Form 990 or 990-EZ) is used by:
  Section 501(c) organizations, and
  Section 527 organizations.

  These organizations must use Schedule C (Form 990 or 990-EZ) to furnish additional information on **political campaign activities** or **lobbying activities**, as those terms are defined below for the various parts of this schedule.

Who Must File[2]

- An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 3, 4, or 5, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990. An organization that answered "Yes" on Form 990 -EZ, Part V, line 46 or Part VI, line 47, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ. An organization that answered "Yes" to Form 990-EZ, Part V, line 35c, because it is subject to the section 6033(e) notice and reporting requirements and proxy tax, must complete Part III of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ.

[1,2] *Instructions for Schedule C (Form 990 or 990-EZ)* 2012

SFC 002740

Preliminary draft – for discussion

[redacted] *Political Campaign Activities* expenditures for 501(c)(4) Form 990 Filers with > $10M in Revenue in years without federal elections (2009 and 2011)

Year 2011 Name	*Political Campaign Activities*	Form 990 Total Expense	Political Expenses as a percentage of Total Expenses
SFC [redacted]	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
	[redacted]	[redacted]	[redacted]
TOTAL	$6.M	$7690.2M	0%

Source: Returns Inventory and Classification System (RICS), Form 990

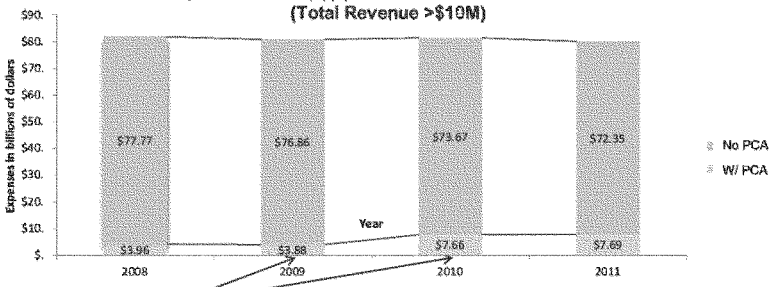
IRS0000494826

SFC 002741

Preliminary draft – for discussion

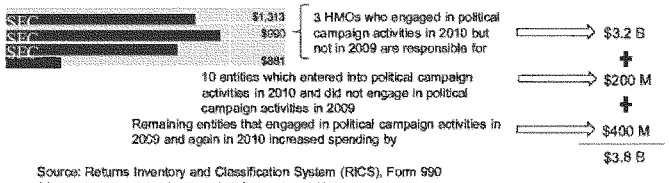
Total expenses for large[1] filers with *Political Campaign Activities* almost double from TY2009 to TY2010; however, most of the increase is attributable to 3 HMOs

Total Expenses of 501(c)(4) Form 990 Filers within a Given Year (Total Revenue >$10M)



The difference between year 2009 and 2010 is $3.78 billion = 7.66B 3.88B

Break down of $3.8 billion dollar difference



Source: Returns Inventory and Classification System (RICS), Form 990

[1] Large filers are 501(c)4 Form 990 filers with >$10M in revenue

IRS0000494827

SFC 002742

Preliminary draft – for discussion

After TY2009, the number of 501(c)(4) Form 990 Filers with *Political Campaign Activities* increases both for those with total revenue > $10M and for those with total revenue < $10M

Numbers of 501(c)(4) Filers with and without *Political Campaign Activities* in a Given Year Total Revenue > $10M vs Total Revenue < $10M

	501(c)(4) Form 990 filers with Total Revenue > $10M				... with Total Revenue < $10M			
	TY2008	TY2009	TY2010	TY2011	TY2008	TY2009	TY2010	TY2011
501(c)(4) Form 990 Filers, with PCA	11	11	22	17	96	82	174	104
501(c)(4) Form 990 Filers without PCA in a Given Year	274	269	258	221	8581	8771	11032	9102
Total 501(c)(4) Form 990 Filers	285	280	280	238	8677	8853	11206	9206
Percentage of 501(c)(4) Form 990 Filers w/ PCA	3.86%	3.93%	7.86%	7.14%	1.11%	1%	1.55%	1.13%
Total PCA expenditures	$17M	$1M	$47M	$6M				
Total expenditures	$3960M	$3880M	$7658M	$7690M				
Total PCA as percent of total expenditures*	0.43%**	0.03%**	0.57%**	0.08%**				

Pls note: The percent of PCA as total expenditures for individual large 501(c)(4)s runs from 0% to 29% in TY 2008; 0% to 1% in TY2009; 0% to 40% in TY2010; and 0% to 14% in TY2011.

***** Pls further note: The percentages displayed on Slides 14 and 21 are rounded to the nearest whole percent..***

Source: Returns Inventory and Classification System (RICS), Form 990

SFC 002743

Preliminary draft – for discussion

Data Constraints

- Due to the filing deadlines for Form 990, TY2011 is not yet complete; this means trend analysis including TY2011 may understate filings in that year
- There was a significant change in Form 990 in TY2008 complicating historical trend analysis that spans across that tax year
- The threshold for determining whether a 501(c)(4) should file a Form 990 or a Form 990EZ changed each year from TY2008 through TY2010
- Information on Schedule C is not transcribed; this requires a manual review of the fields for analysis. For example:

  Schedule C *Political Campaign Activities* expenditures is not transcribed
- Information from the Form 990 detailing recipients of grants is not transcribed; this requires a manual review of the fields for analysis

Fact sheet—630pm

Introduction:

Law in the Area

An organization is described in section 501(c)(3) of the tax code if it is organized and operated for religious, charitable, educational and certain other specified purposes.

An organization is described in section 501(c)(4) if it is operated exclusively for the promotion of social welfare.

There are specific rules relating to exemption and political campaign intervention. Organizations described in section 501(c)(3) may not engage in such activity. Social welfare organizations described in section 501(c)(4) may engage in a limited amount of political campaign activity. Note that there are no bright-line tests for what constitutes political campaign intervention or whether an organization is primarily engaged in social welfare activities.

The applications for exemption (Form 1023 for recognition under 501(c)(3); Form 1024 for recognition under 501(c)(4)) contain questions about such activity as does the Form 990, the annual report filed by these organizations.

Determination letter process

Section 501(c)(3) organizations must apply to be recognized for tax exempt status by the IRS. Although the tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, most apply. Once an organization does apply for recognition, EO must ensure the organization meets the applicable legal requirements before granting recognition.

All applications for tax exempt status are sent to the IRS Exempt Organization offices in Cincinnati. A group of experienced revenue agents screens all EO Determination Letter applications before the applications are assigned to other revenue agents for review. Based on that screening, a case may be handled in one of the following ways:

(1) Cases resolved on screening—if the application clearly meets the requirements for exempt status on its face and all necessary documents are provided, the case is forwarded from screening to a closing unit which issues a favorable letter.
(2) Cases with minor omissions—if the application clearly meets the requirements for exempt status but the file lacks some required documentation (for example the articles of incorporation are not executed) then the case is forwarded to a unit which will contact the

organization by letter to complete the file. Once the file is completed, the unit will issue a favorable determination.

(3) Cases that cannot be resolved favorably without further development—if the application leaves open questions as to the adequacy and scope of the exempt purposes, the presence of private benefit, or the presence of other activities inconsistent with exempt status, then the case is forwarded for full development to a Revenue Agent who will work with the taxpayer to resolve the questions raised and to ascertain whether the organization qualifies.

(4) Cases in category 3 that present novel issues or particularly complex fact patterns are sometimes handled on a coordinated basis by a particular group of agents in order to ensure proper development of the issues and consistency in handling (e.g. credit counseling cases, down payment assistance cases, advocacy cases, etc.).

(5) In either categories 3 or 4 assistance from career specialists in the Headquarters office of Exempt Organizations may be sought.

Trend line of applications for 501(c)(4) status

The IRS has seen a steep increase in the number of applications for section 501(c)(4) status and there are indications of a large increase in political campaign activity by social welfare organizations.

Between FY2008 and 2012, the number of applications for 501(c)(4) status more than doubled.

	FY2008	FY2009	FY2010	FY2011	FY2012	% Chg
501(c)(4) applications received	1,631	1,751	1,735	2,265	3,357	+105%

Not all exempt organizations must file the annual Form 990, only those with gross receipts of more than $200,000 or total assets greater than $500,000. Within this population, IRS has seen a growth in reported political campaign activity since 2008.

	TY2008	TY2009	**TY2010**	TY2011	% Chg TY08-10
§501(c)(4) organizations filing F990	**8,962**	9,133	**11,486**	9,444	28%
Number of those returns reporting political campaign activity (PCA)	**107**	93	**196**	121	83%
Reported PCA expenditures of organizations with revenues of $10 million or more ($M)	**$17.3**	$1.1	**$46.7**	$6.0	170%

Federal electoral cycles in **bold**.

Based on historic filing patterns, TY11 data are ~90% complete.

Between the 2008 and 2010 electoral cycles, the number of §501(c)(4) organizations reporting political campaign activity nearly doubled, outpacing the overall growth in the §501(c)(4) population. At the same time, the value of campaign expenditures by large §501(c)(4) organizations nearly tripled..

While Tax Year 2012 Form 990 filings are due beginning this week, Federal Election Commission data from 2012 electoral cycle are available. Although the definitions of reportable spending are different, a

preliminary analysis of FEC data indicates another significant increase in spending in the most recent electoral cycle. The same large §501(c)(4) organizations that reported PCA to IRS in 2010 also doubled their levels of campaign expenditures reported to the FEC between 2010 and 2012. (Note that this reflects an increase in expenditures among the population of filers identified from 2010 F990 data. It will not reflect *additional* organizations that may have undertaken political campaign activity in 2012.)

Centralization of Advocacy Cases

Early in 2010, a 501(c)(4) application from a Tea Party organization indicated its intention to influence elections as part of its activities. This led a group manager in the Cincinnati office to take the following actions in February and March of 2010: handle this type of application as an emerging issue, and that screeners look for and identify similar cases in order to ensure appropriate and consistent handling. The Cincinnati office had people try to identify and coordinate cases raising the issue of political activity using verbal and email reminders to look for cases involving the Tea Party, Patriots, 9/12 and other 501(c)(4) applications involving names suggestive of political activity. See Appendix A for the iterations of the lists that were used, along with relevant timelines. An increasing number of cases were found. The list is adopted as a method to replace the ad hoc email approach previously used to identify cases requiring coordination. On that initial list one of the categories was listed as "various local organizations in the Tea Party movement . . . applying for exemption under 501(c)(3) or 501(c)(4). See

In June 2011, concerns about the progress, identification and handling of these cases led to conversations among senior staff culminating in a briefing of the EO Director at the end of June. The EO Director instructed that the list should be revised immediately to use criteria focused on whether (c)(4) or (c)(3) applicants were involved with political, lobbying, or advocacy activities, and that headquarters should work on facilitating the resolution of the now over 100 cases.

Late in 2011, efforts to facilitate case processing were slow. A new team was formed in Cincinnati to begin developing and resolving the cases with assistance from Headquarters specialists.

In January of 2012, without any executive knowledge, staff in Cincinnati updated the list of centralization criteria out of concern that the criteria were over broad and pulling in too many cases. The new criteria read "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, social economic reform/movement." Headquarters in Exempt Organizations was not informed.

In January through February 2012, the centralized team started issuing development letters to the applicants using the standard response time provided in the manual (21 days) and asking for voluminous information from some applicants, including in some cases web information and donors. Note that these letters went to organizations representing the full political spectrum.

Increasing public concern (news articles/letters from Congressional) was being expressed about the singling out of certain types of organizations, the nature of the questions in the development letters and the short turnaround time given to respond.

At the end of February the Director EO stopped the issuance of additional information letter requests pending new guidance to the Determinations unit. At the same time, in light of the public nature of the discussion of the letters, the Deputy Commissioner, Services and Enforcement became aware that cases were being centralized in this area. In early March, after consultation with the Deputy Commissioner, a letter was sent to organizations with a pending development letter giving them a sixty day extension and allowing flexibilities on what information to provide.

At the end of March, the Deputy Commissioner Services and Enforcement requested that the Senior Technical Advisor (STA) to the Acting Commissioner (TEGE) conduct a review of what had happened with respect to determination letter inventory in this area and report back on the review and on recommendations for how to address any issues. At the same time, TIGTA indicated that they were going to review this area.

The review by the STA was initiated by going to Cincinnati with a team of specialists to interview people about the process to date and to conduct a review of a broad cross section of the files and of the development letters issued.

On May 3, 2012, the STA reported back to the Deputy Commissioner, Services and Enforcement and to the Acting Commissioner TEGE identifying significant concerns in the case handling including:

(1) Use of inappropriate criteria in the emails and then the list used to identify the cases that should go to the advocacy case group;
(2) Use of development letters that included troubling questions;
(3) Delays in resolution of applications; and
(4) A failure to provide the agents with the training and the tools they needed in order to handle this inventory appropriately and on a timely basis.

The review did not identify:

(1) Any evidence of improper influence on the IRS from any party external to the Service.
(2) Any evidence of partisan motivation or behavior by any IRS employee.

Note that May 3, 2012, was the first date that the Deputy Commissioner had knowledge that a list with inappropriate names was being utilized by the Cincinnati Office. [Shortly thereafter, the Commissioner was made aware of the situation.]

Corrective Actions Taken

On May 3, 2012, the STA recommended that training be conducted for a cadre of experienced agents including quality review staff and that it be followed by having a joint team of technical specialists from headquarters and agents go through the inventory together to group the cases into four categories: (1) cases that could be closed on their merits with the information in the file; (2) cases that required focused development; (3) cases that needed significant development; and (4) cases that presented significant concerns and might well conclude as adverse determinations. This process was designed both to enhance training, experience, and consistency while also moving the inventory forward to resolution as swiftly as possible. This approach was approved and implemented.

Procedures were put in place to advise organizations that they generally did not need to provide donor information and that donor information that had been received in response to development letters was neither utilized nor retained. [when was this?]

In addition, having learned in April of 2012 that the centralization criteria had changed again in January, the Director EO Rulings & Agreements directed changes to the BOLO criteria and issued a memorandum requiring Director R&A approval for any listing to centralize determination applications. [This approach was concurred in by the Deputy Commissioner on May 3, 2012.]

The Numbers and Demographics

Through May 9, IRS identified 472 applications for exemption for review of potential advocacy issues (including 301 §501(c)(4) applications). The balance of applicants are for section 501(c)(3) status. To date, 176 applications have been approved (136 of which §501(c)(4) applications). There have been 37 withdrawals, inclusive of both §501(c)(3) and (4) organizations.

Of the cases reviewed by TIGTA, only one-third have a name listed for centralization. y of those have been approved. Moreover, while it is impossible based on name alone to determine with specificity the political alignment of all organizations, in their totality it is clear that they span the entire political spectrum.

Of the approximately 300 section 501(c)(4) advocacy cases noted in the TIGTA report, more than 120 have been approved and nearly 30 have withdrawn. The difference in numbers is due to the point in time when TIGTA did its work.

Consistent Treatment for Determination Letter cases

I need help here.
There are certain protections against any adverse action in a determination letter case. Any adverse rulings against section 501(c)(4) organizations require multiple layers of review. No single person makes the determination, and multi-person review provides further protection for the integrity of the review process.
[anything in this case—partner with specialist from dc—mandatory review for all or just adverse?]

IRS Analysis of this Matter

The Internal Revenue Service is dedicated to reviewing applications for tax-exempt status in an impartial manner.

Similar to our approach in other areas (e.g., credit counseling, down payment assistance organizations, etc.), EO sought to centralize work and assign cases to designated employees in an effort to promote consistent treatment of applications. Given what was happening in the community in terms of the number of organizations and concerns on campaign spending, centralizing advocacy cases for review in the determination letter process made sense. The way it was done did not. It was inappropriate but there has been no finding of political motivation.

It should be noted that the vast majority of entities that were centralized would still have been centralized on a less narrow, more appropriate, centralization listing. Organization names did not play a role in the

5/9/13 ABA closed door

SFC 002749

Topic ⇒ start a discussion on whether ABA can help us in our current conundrum on C4 / Political

Ground Rules — lawsuit? — 4 walls

Set the context —

① — Gift tax issue is under discussion but we are late in going out

② We are in our usual spot — comfortable place in some respects but not really palatable

→ One side
- hit us hard on Gift Tax
- will hit us hard on Tea Party Applications

short outline of what happened

uptick of C4 with political aspect to operation
centralized applic (a la crude counseling)
but used names
not political vendette by low level but dumb
We have changed the centralization process and we have worked hard to clean up cases
lots of them are cleared
300 total 120 approved 70 wld

Other side is pushing on C4 regulation and whether it should be changed

Senator Levin — lots of correspondence
hearing will occur this summer

key argument is why does exclusively mean primarily...

Notes for ABA closed door did not run thru this may be did a sentence on it as part of context I think
SM
5/22/13

2

SFC 002750

So the question is what should be done ...
I would like to move forward on the gift tax discussion

AND I DON'T MIND A DISCUSSION ON THE C4
REG AS WELL

AND I AM WONDERING ~~WHAT~~ HOW THE ABA MIGHT HELP

On the C4 reg -- sort of interesting
I am old -- spent the 90's trying to drive
pol activity into C4's and out of C3's
This allowed us to get a bit out of the
difficult issue of ~~no~~ enforcing a
no tolerance rule AND
Out of the precise debilitating battle of education
vs campaign activity
whether its voters guides or issue ads

Then along came a wave of cash ~~or~~ -- unleased
by Citizen's united
and that cash chose a favorable port
due to disclosure and under enforced gift tax rules

My little ~~so~~ hope of peace was dashed - I can now have a
C4 - 100% of which is political + close to the line education issue ads
or grants to other orgs that are pol activists

So I would prefer a legislative fix - disclosure
~~at~~ would be best but -

Open to looking at regulation -

But I have a series of ~~no~~ concerns
that I would want answers to

This is what questionnaire is trying to tease out

IRS0000506548

All of that time driving political activity to C4 SFC 002751 3
The hope that the line between education and politics
could be fuzzy in C4 →
All of that may already be at risk
But I think that risk skyrockets ~~when~~ if we change the primarily
standard
We have been anything but perfect in C3
enforcement
What happens when C4 becomes ~~just like~~ very similar to C3 – which
is what some argue for -- do I want to
expand the already inadministrable area

So I'd want to raise some questions as we proceed

A] Do we craft a brand new rule in C4?
[Greg's safe harbor comes to mind] don't think this solves anything

B] If so -- is the definition of C4 pol activity
the same? Doesn't have to be – not statutory like C3

C] is it only C4 we'd be talking about
would 5 and 6 change – w

D] what remains of the distinction between
C3 and C4 -- Does it come down to lobbying?

E] what else gets impacted by the reduction of permi
amount of non social welfare activities – can't
do a politics only rule I think – nothing special
about politics versus other "bad" C4 activity
AND folks have 50 years of operational repose that
would be interrupted

~~What~~ Need to understand what is out
there -- presumably UBIT activity would be
ok but...

IRS0000506549

SFC 002752 8

So there are some real questions that those who want to change the reg would have to be ready to discuss

options

(B) (1) better definitions -- more guidance but this is hard -- education vs politics
-- level of activity - how to measure
-- grants and how they should be treated
-- concepts of private benefit application in c4 context

(A) (2) study sponsored by ABA?

(C) (3) return to ~~prod~~ administrative safeharbors 25/10/15?

(4) push for disclosure of c4's and gift tax answer in affirmative - this is legislation enough or not enough due to concepts of social grant making and of shell corporations

(5) other?

SFC 002753

3/14/12 1

What CU did

C4 org - did an anti Hillary film
attached rule in Mc-F
That said no expenditures for pol
advocacy 60/gen elec 30/primary

Ct struck down this rule
broadly
made clear - no limit
on pol exp. for express advocacy
by corps, unions, nonprofits

Uphold - quarterly disclosure rules

By the way issue advocacy already carved out of 60/30 rule by Wisc Rt to Life

Not a tax case AND
Did not deal with - limits
(or bar) on contrib to
candidates or campaigns

Post CU

rise of Super PACs -
527' to make independent
expenditures
can receive unlimited dollars from
anyone (not deductible)
but quarterly reporting
from us and FEC

SFC 002754

-2-

Anecdotal — Reported in Press
EY 11 22 donors 50% of Super PAC $
1st QR 12 196 " 80% of " " "

Post Super PAC and C.U.
other c4 rises to be used
as non disclosure alternative
note - unlimited issue advocacy
- limited political campaign activity

Disclosure
Applications - if approved open
- if not redacted
donors not specifically called for

990 - c4 will do Schedule
B donor list
and Schedule C →
Pol & Lobbying Schedule

donor list is not public

From: Ingram Sarah H
Sent: Tuesday, September 21, 2010 7:52 AM
To: Lemons Terry L; Pyrek Steve J; Lerner Lois G; Kindell Judith E; Grant Joseph H; Eldridge Michelle L
Subject: RE: NY Times: As Rules Shift, Donor Names Stay Secret

Thanks, as always, for the excellent support from Media. I do think it came out pretty well. The "secret donor" theme will continue see Obama salvo and today's Diane Reehm (sp). At least SS started the idea that we don't have the law to do something, although Marcus had a flavor that we just don't care because we are a tax agency. He should know better even if he is unhappy with the environment and the tax laws.

From: Lemons Terry L
Sent: Tuesday, September 21, 2010 8:28 AM
To: Pyrek Steve J; Lerner Lois G; Kindell Judith E; Ingram Sarah H; Grant Joseph H; Eldridge Michelle L
Subject: RE: NY Times: As Rules Shift, Donor Names Stay Secret

Not that bad overall. Glad you guys talked to her -- think it helped.

From: Pyrek Steve J
Sent: Tuesday, September 21, 2010 7:19 AM
To: Lerner Lois G; Letourneau Diane L; Choi Rober t S; Downing Nanette M; Zarin Roberta B; Kindell Judith E; Ingram Sarah H; Grant Joseph H; Eldridge Michelle L; Lemons Terry L
Cc: Adam Debbie A
Subject: NY Times: As Rules Shift, Donor Names Stay Secret

September 20, 2010

As Rules Shift, Donor Names Stay Secret

By MICHAEL LUO and STEPHANIE STROM

Crossroads Grassroots Policy Strategies would certainly seem to the casual observer to b e a political organization: Karl Rove, a political adviser to President George W. Bush, helped raise money for it; the group is run by a cadre of experienced political hands; it has spent millions of dolla rs on television commercials attacking Democrats in key Senate races across the country.

Yet the Republican operatives who created the group earlier this year set it up as a 501(c)(4) nonprofit corporation, so its primary purpose, by law, is not supposed to be political.

The rule of thumb, in fact, is that more than 50 percent of a 501(c)(4)'s activities cannot be political. But that has not stopped Crossroads and a raft of other nonprofit advocacy groups like it — mostly on the Republican side, so far — from becoming some of the biggest players in this year's midterm elections, in part because of the anonymity they afford donors, prompting outcries from campaign finance watchdogs.

The chances, however, that the flotilla of groups will draw much legal scr utiny for their campaign activities seem slim, because the organizations, which have been growing in popularity as conduits for large, unrestricted donations among both Republicans and Democrats since the 2006 election, fall into something of a regulatory netherworld.

Neither the Internal Revenue Service, which has jurisdiction over nonprofits, nor the Federal Election Commission, which regulates the financing of federal races, appears likely to examine them closely, according to campaign finance watchdogs, lawyers who specialize in the field and current and former federal officials.

A revamped regulatory landscape this year has elevated the attractiveness to political operatives of groups like Crossroads and others, organized under the auspices of Section 501(c) of the tax code. Unlike so-called 527 political organizations, which can also accept donations of unlimited size, 501(c) groups have the advantage of usually not having to disclose their donors' identity.

This is arguably more important than ever after the Supreme Court decision in the Citizens United case earlier this year that eased restrictions on corporate spending on campaigns.

Interviews with a half-dozen campaign finance lawyers yielded an anecdotal portrait of corporate political spending since the Citizens United decision. They agreed that most prominent, publicly traded companies are staying on the sidelines.

But other companies, mostly privately held, and often small to medium size, are jumping in, mainly on the Republican side. Almost all of them are doing so through 501(c) organizations, as opposed to directly sponsoring advertisements themselves, the lawyers said.

"I can tell you from personal experience, the money's flowing," said Michael E. Toner, a former Republican F.E.C. commissioner, now in private practice at the firm Bryan Cave.

The growing popularity of the groups is making the gaps in oversight of them increasingly worrisome among those mindful of the influence of money on politics.

"The Supreme Court has completely lifted restrictions on corporate spending on elections," said Taylor Lincoln, research director of Public Citizen's Congress Watch, a watchdog group. "And 501(c) serves as a haven for these front groups to run electioneering ads and keep their donors completely secret."

Almost all of the biggest players among third-party groups, in terms of buying television time in House and Senate races since August, have been 501(c) organizations, and their purchases have heavily favored Republicans, according to data from Campaign Media Analysis Group, which tracks political advertising.

They include 501(c)(4) "social welfare" organizations, like Crossroads, which has been the top spender on Senate races, and Americans for Prosperity, another pro-Republican group that has been the leader on the House side; 501(c)(5) labor unions, which have been supporting Democrats; and 501(c)(6) trade associations, like the United States Chamber of Commerce, which has been spending heavily in support of Republicans.

Charities organized under Section 501(c)(3) are largely prohibited from political activity because they offer their donors tax deductibility.

Campaign finance watchdogs have raised the most questions about the political activities of the "social welfare" organizations. The burden of monitoring such groups falls in large part on the I.R.S. But lawyers, campaign finance watchdogs and former I.R.S. officials say the agency has had little incentive to police the groups because the revenue-collecting potential is small, and because its main function is not to oversee the integrity of elections.

The I.R.S. division with oversight of tax-exempt organizations "is understaffed, underfunded and operating under a tax system designed to collect taxes, not as a regulatory mechanism," said Marcus S. Owens, a lawyer who once led that unit and now works for Caplin & Drysdale, a law firm popular with liberals seeking to set up nonprofit groups.

In fact, the I.R.S. is unlikely to know that some of these groups exist until well after the election because they are not required to seek the agency's approval until they file their first tax forms — more than a year after they begin activity.

"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."

A report by the Treasury Department's inspector general for tax administration this year revealed that the I.R.S. was not even reviewing the required filings of 527 groups, which have increasingly been supplanted by 501(c)(4) organizations.

Social welfare nonprofits are permitted to do an unlimited amount of lobbying on issues related to their primary purpose, but there are limits on campaigning for or against specific candidates.

I.R.S. officials cautioned that what may seem like politica l activity to the average lay person might not be considered as such under the agency's legal criteria.

"Federal tax law specifically distinguishes among activities to influence legislation through lobbying, to support or oppose a specific candidate for election and to do general advocacy to influence public opinion on issues," said Sarah Hall Ingram, commissioner of the I.R.S. division that oversees nonprofits. As a result, rarely do advertisements by 501(c)(4) groups explicitly call for the election or defeat of candidates. Instead, they typically attack their positions on issues.

Steven Law, president of Crossroads GPS , said what distinguished the group from its sister organization, American Crossroads, which is registered with the F.E.C. as a political committee, was that Crossroads GPS was focused over the longer term on advocating on "a suite of issues that are likel y to see some sort of legislative response. " American Crossroads' efforts are geared toward results in this year's elections, Mr. Law said.

Since August, however, Crossroads GPS has spent far more on television advertising on Senate races than American Crossroads, which must disclose its donors.

The elections commission could, theoretically, step in and rule that groups like Crossroads GPS should register as political committees, which would force them to disclose their donors. But that is unlikely becau se of the current make-up of the commission and the regulatory environment, campaign finance lawyers and watchdog groups said. Four out of six commissioners are needed to order an investigation of a group. But the three Republican commissioners are incline d to give these groups leeway.

Donald F. McGahn, a Republican commissioner, said the current commission and the way the Republican members, in particular, read the case law, gave such groups "quite a bit of latitude."

2012-Mar-14 11:10 AM Senate Finance Committee 202-228-2131 SFC 002758

United States Senate
WASHINGTON, DC 20510

RECEIVED
By CONG. CORR. BR at 11:44 am, Mar 14, 2012

March 14, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

We have received reports and reviewed information from nonprofit civic organizations in Kentucky, Ohio, Tennessee, and Texas concerning recent IRS inquiries perceived to be excessive. It is critical that the public have confidence that federal tax compliance efforts are pursued in a fair, even-handed, and transparent manner—without regard to politics of any kind. To that end, we write today to seek your assurance that this recent string of inquiries has a sound basis in law and is consistent with the IRS's treatment of tax-exempt organizations across the spectrum.

As you know, the designation as a tax-exempt organization under section 501(c)(4)(A) is reserved for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, ... the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." 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."[1] The 501(c)(4) designation has been conferred on many organizations in America that espouse political or public policy viewpoints—including Priorities USA, the sister organization of "[t]he super PAC supporting President Obama,"[2] and American Crossroads, the sister organization of a super PAC supporting Republicans.

Civic and social welfare organizations have long performed valuable roles and offered numerous benefits to our society, and tax exemptions for such organizations can be traced all the way back to the Tariff Act of 1913. It is imperative that organizations applying for tax-exempt status are able to rely on a consistent and foreseeable review structure from the IRS. Any significant changes to the IRS review process should be implemented only after appropriate notice and opportunity for comment from the public and affected parties.

A number of our constituents have raised concerns that the recent IRS inquiries sent to civic organizations exceed the scope of the typical disclosures required under IRS Form 1024 and

[1] *Federal Election Commission v. Beaumont*, 539 U.S. 146, 150 n. 1 (2003) (quoting Rev. Rul. 81-95, 1981-1 Cum. Bull. 332, 1981 WL 166125).
[2] Jeremy Peters, "'Super PACs,' Not Campaigns, Do Bulk of Ad Spending," N.Y. Times (Mar. 2, 2012).

accompanying Schedule B—the forms that all 501(c)(4) organizations must submit. Understandably, this has prompted some concerns about selective enforcement and the duty to treat similarly situated taxpayers similarly. To address these concerns, we respectfully request that you provide answers to the following questions:

1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?

2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?

3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?

4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?

5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?

6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include "amounts received from the general public...for the exercise or performance of the organization's exempt function." In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization $5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this

information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.

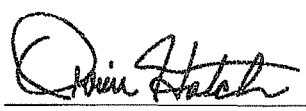
7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?

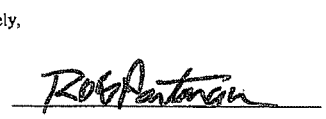
8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection."[3] In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.

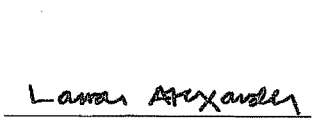
Given the potentially serious implications of selective or discriminatory enforcement, we request that you hold further IRS-initiated demands for information from 501(c)(4) applicants beyond the extensive information already required of all applicants (in Form 1024 and Schedule B), until the agency provides a response demonstrating these recent IRS requests are consistent with precedent and supported by law.

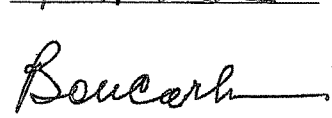
Thank you for your prompt attention to this matter.

Sincerely,









[3] *See* Form 1024, Application for Recognition of Exemption OMB No. 1545-0057 Under Section 501(a).

Kay Bailey Hutchison

John Cornyn

Mitch McConnell

Rand Paul

Pat Roberts

Chuck Grassley

John Thune

Jon Kyl

SFC 002762

From: Landes Scott S
Sent: Monday, May 13, 2013 11:01 AM
To: Barre Catherine M
Subject: FW: TIGTA Timeline
Attachments: 201210022-Draft Report.doc; TIGTA 4-30-13.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Cathy, attached is the latest draft report and TEGE's response (Cathy Williams put this on your desk this morning). Per your request, below, please find the timeline of the TIGTA inquiry that culminated in the 501(c)(4) report.

From: Rutstein Joel S
Sent: Monday, May 13, 2013 11:09 AM
To: Landes Scott S
Subject: TIGTA Timeline

3/29/12 - audit planning notification from TIGTA that TIGTA will audit IRS's handling of applications for 501(c)(4), (5), and (6) organizations [e-mail message to Lois Lerner, among others]

6/22/12 - engagement letter for audit # 201210022 - Consistency in Identifying and Reviewing Applications for Tax - Exempt Status Involving Political Advocacy Issues - news reports referenced - [e-mail message to Jonathan Davis, Steve Miller, Joseph Grant, and Lois Lerner, among others - engagement letter attached]

3/28/13 - discussion draft report - Inappropriate Criteria Were Used to Identify Tax -Exempt Applications for Review [e-mail message to Leg. Affairs with attachment - comments due from TEGE by 4/4/13]

4/2/13 - comments from TEGE to TIGTA on discussion draft report [e -mail message from Lois Lerner with attachments]

4/2 or 4/3/13 - TEGE's mark-up of discussion draft rep ort sent to TIGTA [Word document consisting of a draft version that may only differ slightly from the one Lois Lerner sent to TIGTA]

4/12/13 - draft report [e-mail message to Leg. Affairs with attachment]

4/30/13 - IRS response [e-mail message to Leg. Affairs with attachment]

From: Thomas Cindy M
Sent: Monday, June 06, 2011 9:16 AM
To: Bowling Steven F
Cc: Esrig Bonnie A
Subject: RE: Application Info.

Steve,

After receiving and reviewing the 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.

My response was that we have no problem including or excluding any type of case, as long as they come up with the criteria so we can provide it to the Screening Group. And, it doesn't matter what the cases are called or how they are grouped, EOD still needs guidance to ensure consistency.

A meeting has been set up for 6/29 for EOT to brief Lois on these cases. Holly asked for me to participate. I asked her if she wants me to have you, Ron, and Bonnie participate. If so, I'll forward the information.

Until we hear otherwise, we'll continue working cases as we have been.

From: Bowling Steven F
Sent: Monday, June 06, 2011 9:04 AM
To: Thomas Cindy M
Cc: Esrig Bonnie A; Combs Peggy L; Bell Ronald D
Subject: RE: Application Info.

Cindy,

This is the case that I had Karl copy and send to Holly last week.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]
Tel SFC [redacted]
Fa SFC [redacted]

From: Thomas Cindy M
Sent: Monday, June 06, 2011 8:59 AM
To: Combs Peggy L; Bell Ronald D
Cc: Bowling Steven F; Esrig Bonnie A
Subject: RE: Application Info.

Peggy - Please get back with Cesar and let him know that we do have an application pending. It is assigned to Ron Bell. Also, please ask him to send a copy of the complaint to Ron so that it can be reviewed and made part of the Administrative File.

Ron – If, based on your review, you believe the complaint needs to be made part of the Administrative Record, it would need to be shared with the organization. If you believe this is necessary, please elevate through management channels

BEFORE taking that action. If you are simply going to include it in the non -disclosable section of the file, no need to elevate. NOTE: I'm not sure what is going on with this o rganization. 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 (J udy Kindell).

Any questions, please let me know. Thanks.

From: Combs Peggy L
Sent: Monday, June 06, 2011 8:06 AM
To: Thomas Cindy M
Subject: FW: Application Info.

Cindy,

Below is a message from EO Exam regarding a pending case. Let me know if you would like me to do anything.

Peggy

From: Sabando Cesar A
Sent: Friday, June 03, 2011 4:50 PM
To: Combs Peggy L
Cc: Abramowitz Hyman; Bradley Kenneth W
Subject: Application Info.

Hi Peggy,

I'm on the Classification Referral Committee along with Hy Abramowitz and Ken Bradley. We are reviewing a complaint on Crossroads Grassroots Policy Strategies, EI SFC [redacted]. According to IDRS it was just formed in June 2010 and has no EO subsecti on. We would like to know if an application for exemption (Form 1024) is pending in your area for this organization.

Thanks for assistance.

Cesar Sabando
Manager, EO: 7910
Ph SFC [redacted]
Fx. SFC [redacted]

SFC 002765

From: Lerner Lois G
Sent: Wednesday, September 28, 2011 9:49 AM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: FW: Letter from Democracy 21 and Campaign Legal Center
Attachments: Letter to the IRS from Democracy 21 and Campaign Legal Center 9 28 2011.pdf

And so it begins

Lois G. Lerner
Director of Exempt Organizations

From: Erin Kesler SFC [redacted]
Sent: Wednesday, September 28, 2011 9:33 AM
To: Erin Kesler
Subject: Letter from Democracy 21 and Campaign Legal Center

September 28, 2011

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SFC [redacted]

Dear Director Lerner,

Enclosed is a letter from Democracy 21 and the Campaign Legal Center requesting an IRS investigation into whether certain organizations are ineligible for tax exempt status under section 501(c)(4).

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President, Democracy 21

September 28, 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SFC [redacted]

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SFC [redacted]

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

[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

SFC 002789

From: Lerner Lois G
Sent: Friday, September 30, 2011 6:13 PM
To: Fish David L
Cc: Letourneau Diane L; Grant Joseph H
Subject: FW: Letter from Democracy 21 and Campaign Legal Center
Attachments: Letter to the IRS from Democracy 21 and Campaign Legal Center 9 28 2011.pdf

This is a referral so it needs to go to Dallas and we need an acknowledgement letter to them. It also went to the Commissioner, so I don't know if that requires something additional?

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, September 28, 2011 10:49 AM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: FW: Letter from Democracy 21 and Campaign Legal Center

And so it begins

Lois G. Lerner
Director of Exempt Organizations

From: Erin Kesler SFC [redacted]
Sent: Wednesday, September 28, 2011 9:33 AM
To: Erin Kesler
Subject: Letter from Democracy 21 and Campaign Legal Center

September 28, 2011

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SFC [redacted]

Dear Director Lerner,

Enclosed is a letter from Democracy 21 and the Campaign Legal Center requesting an IRS investigation into whether certain organizations are ineligible for tax exempt status under section 501(c)(4).

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President, Democracy 21

September 28, 2011

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SFC [redacted]

Lois Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
SFC [redacted]

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.

---

[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

[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

SFC 002814

From: Hofacre Elizabeth L
Sent: Tuesday, September 14, 2010 1:05 PM
To: Hull Carter C
Subject: FW: EO Tax Journal 2010-129

Hello,

Have you seen this. One of these cases is in screening.

Liz Hofacre

From: Muthert Gary A
Sent: Tuesday, September 14, 2010 1:54 PM
To: Condon Michael W
Cc: Hofacre Elizabeth L
Subject: FW: EO Tax Journal 2010 129

Gary Muthert
TE/GE, ID [redacted]
Screening Group, Group 7838
[redacted]
[redacted] **Phone**
[redacted] **FAX**

From: Shafer John H
Sent: Tuesday, September 14, 2010 9:23 AM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Ki mberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: EO Tax Journal 2010 129

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2010-129 (Tuesday, September 14, 2010)
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1 - Is 501(c)(4) Status Being Abused?

2 - Revocation 201036031 -- Private Benefit and Inurement Discussion

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1 - Is 501(c)(4) Status Being Abused?

The *New York Times* had an interesting artiele yesterday, "Interest Group Spending Drives G.O.P. Lead in Ads," about "an array of Republican oriented organizations that are set up so that they can accept donations of unlimited size from individuals and corporat ions without having to disclose them."

The article notes that one of the groups, Crossroads GPS, "is organized as a 501(c)(4) nonprofit, meaning it legally cannot d evote more than half of its activities to politics, but it also means that it does not have to disclose its donors." Also mentioned is Americans for Prosperity, "another 501(c)(4), which does not have to disclose its donors. Mr. Koch, who has mostly supported Republican s over the years, serves as the chairman of its sister organization, Americans for Prosperity Foundation, which is much more limited in its political activities because it is set up as a 501(c)(3) nonprofit."

As I noted yesterday, the less Lois Lerner and her folks do, the more they embolden those who would flout the prohibition o n political campaign intervention.

Section 501(c)(4) organizations may engage in political activity, but not as their primary activity. I suspect many of the (c)(4)s being formed have few activities that are not political. ***Query for Lois, Rob, and Cindy:*** What's being done in Cincinnati to make sure new (c)(4)s will be truly engaged in social welfare activities? ***Query for Lois, Rob, and Nan:*** Is anyone looking at existing (c)(4)s those in the news to make sure that they are truly engaged in social wel fare activities?

I also suspect that many of these political (c)(4)s are operating in tandem with (c)(3)s so that donors can claim 170 deducti ons. ***Query for all of the above:*** Who is looking at these (c)(4)/(c)(3) combinations?

2 - Revocation 201036031

In PLR 201036031, the IRS revoked an organization based in part on findings of private benefit and inurement. The facts are v ery detailed, but what I found of interest is the law and rationale portion of PLR 201036031. The IRS practically wrote a CPE article on what they consider the law of private benefit and inurement, with special emphasis on the much maligned *American Campaign Academy* case. I'm setting out the IRS discussion in PLR 201036031 in case anyone is currently dealing with these issues sort of a roadmap of the IRS' views, and about all we now know about the IRS' current thinking in this area.

LAW

Internal Revenue Code (Code) Section 501(c)(3) provides that organizations that are "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, . . . **no part of the net earnings of which inures to the benefit of any private shareholder or individual** . . ." (emphasis in original) are exempt from federal income tax under this section.

Federal Income Tax Regulation (Regulation) Section 1.501(c)(3) 1(a)(1) states: "In order to be exempt as an organization described in Section 501(c)(3), an organization **must be** both organized and **operated exclusively for one or more of the purposes specified in such Code section.** If an organization fails to meet either the organizational test or th e operational test, it is not exempt." (emphasis in original)

Regulation Section 1.501(c)(3) 1(c) defines the **"Operational test".** Regulation Section 1.501(c)(3) 1(c)(1) "Primary activities" provides, in part: "An organization will be regarded as **'operated exclusively'** for one or more exempt purposes **only if it engages primarily** in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will **not** be so regarded **if more than an insubstantial part** of its activities is not in furtherance of an exempt purpose." (emphasis in original)

Regulation Section 1.501(c)(3) 1(c)(2) "Distribution of earnings" expands on the definition of an activity that is not in furtherance of an exempt purpose. It states: "An organization is **not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.** For the definition of the words 'private shareholder or individual', see paragraph (c) of Sec. 1.501(a) 1." (emphasis in original)

Regulation Section 1.501(a) 1(c) defines 'private shareholder or individual' when it states: "The words 'private shareholder or individual' in Section 501 refer to persons having a personal and private interest i n the activities of the organization.".

Regulation Section 1.501(c) 1(d)(ii) provides emphasis to the operational test. It states that an organization is not organized or operated exclusively for one or more exempt purposes ". . . **unless it serves a public rather than a private interest.** Thus . . . it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organizat ion, or persons controlled, directly or indirectly, by such private

interests." (emphasis in original)

Revenue Ruling 77 366, 1977 2 C.B. 192, states that operating exclusively for charitable, religious, or educational purposes "has been construed as requiring all the resources of the organization to be applied to the pursuit of such purposes."

Revenue Ruling 56 304, 1956 2 C.B. 306, states that charitable organizations are not precluded from making distributions of their funds to individuals, provided su ch distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. In addition, it should maintain adequate records and case histories to show the name and address of each recipient of aid, the amount distributed, the purpose for which the aid is given, the manner in which the recipient was selected and the relationship that exists between the recipient and members, officers, and trustees of the organization or a corporation controlled by the such individuals; in order to establish that distributions are made for charitable purposes.

In *American Campaign Academy v. Commissioner,* 92 T.C. 1053 (1989), the Court addressed the operational test and illuminates the difference between private benefit, derived by priva te interests where such private benefit is adverse to exemption under Section 501(c)(3), from inurement, derived by insiders, which also is adverse to exemption under Section 501(c)(3). It states:

The Treasury Regulations specify three conditions whic h must be satisfied for an organization to meet the operational test. *Church by Mail, Inc. v. Commissioner,* 765 F.2d 1387, 1391 (9th Cir. 1985), *affg.*T.C. Memo. 1984 349. First, the organization must be primarily engaged in activities which accomplish one or more of the exempt purposes specified in Section 501(c)(3). Sec. 1.501(c)(3) 1(c)(1), Income Tax Regs. Second, the organization's net earnings must not be distributed in whole or in part to the benefit of private shareholders or individuals. Sec. 1.501(c)(3) 1(c)(2), Income Tax Regs. Third, the organization must not be an "action" organization, i.e., one which devotes a substantial part of its activities attempting to influence legislation, or participates or interven es, directly or indirectly, in any political campaign. Sec. 1.501(c)(3) 1(c)(3), Income Tax Regs.

. . . To establish that it operates primarily in activities which accomplish exempt purposes, petitioner must establish that no more than an insubstantial part of its activities does not fu rther an exempt purpose. Sec. 1.501(c)(3) 1(c)(1), Income Tax Regs. The presence of a single substantial nonexempt purpose destroys the exemption regardless of the number or importance of the exempt purposes. *Better Business Bureau v. United States,* 326 U.S. 279, 283 (1945); *Copyright Clearance Center v. Commissioner,* 79 T.C. 793, 804 (1982).

. . . Prohibited private benefits may include an 'advantage; profit; fruit; privilege; gain; [or] interest.' *Retired Teachers Legal Fund v. Commissioner,* 78 T.C. 280, 286 (1982). Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. *Kentucky Bar Foundation v. Commissioner,* 78 T.C. at 926. Thus, should petitioner be shown to benefit private interests, it will be deemed to further a nonexempt purpose under Section 1.501(c)(3) 1(d)(1)(ii), Income Tax Regs. This nonexempt purpose will prevent petitioner from operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities further the private interests or any other nonexempt purposes. Sec. 1.501(c)(3) 1(c)(1), Income Tax Regs.

. . . We have consistently recognized that while t he prohibitions against private inurement and private benefits share common and often overlapping elements, *Church of Ethereal Joy v. Commissioner,* 83 T.C. 20, 21 (1984), *Goldsboro Art League, Inc. v. Commissioner,* 75 T.C. 337, 345 n. 10 (1980), the two are distinct requirements which must independently be satisfied. *Canada v. Commissioner,* 82 T.C. 973, 981 (1984); *Aid to Artisans, Inc. v. Commissioner,* 71 T.C. at 215. Nonetheless, we have often observed that the prohibition against private inurement of net earnings appears redundant, since the inurement of earnings to an interested person or insider would constitute the conferral of a benefit inconsistent with operating exclusively for an exempt purpose. *Western Catholic Church v. Commissioner,* 73 T.C. 196, 209 n. 27 (1979), *affd. in an unpublished opinion* 631 F.2d 736 (7th Cir. 1980). *See also* sec. 1.501(c)(3) 1(c)(2), Income Tax Regs. In other words, when an organization permits its net earnings to inure to the benefit of a private shareholder or individua l, it transgresses the private inurement prohibition and operates for a nonexempt private purpose.

. . . The absence of private inurement of earnings to the benefit of a private shareholder or individual does not, however, e stablish that the organization is operated exclusively for exempt purposes. Therefore, while the private inurement prohibition may arguably be subsumed within the private benefit analysis of the operational test, the reverse is not true. Accordingly, when the Court co ncludes that no prohibited inurement of earnings exists, it cannot stop there but must inquire further and determine whether a prohibited private benefit is conferred. *See Aid to Artisans, Inc. v. Commissioner,* 71 T.C. at 215; *Retired Teachers Legal Fund v. Commissioner,* 78 T. C. 280, 287 (1982).

Moreover, an organization's conferral of benefits on disinterested persons may cause it to serve 'a private interest' within the meaning of Section 1.501(c)(3) 1(d)(1)(ii), Income Tax Regs. *Christian Stewardship Assistance, Inc . v. Commissioner,* 70 T.C. 1037 (1978). *See Kentucky Bar Foundation v. Commissioner, supra; Aid to Artisans, Inc. v. Commissioner, supra; see also The Martin S. Ackerman Foundation v. Commissioner,* T.C. Memo. 1986 365. In this connection, we use "disintere sted" to distinguish persons who are not private shareholders or individuals having a personal and private interest in the activities of the organization with in the meaning of Section 1.501(a) 1(c), Income Tax Regs."

In defining who is an insider, *United Cancer Council, Inc. v. Commissioner,* 165 F. 3d 1173, 1176 (7th Cir. 1999), states: "The term "any private shareholder or individual" in the inurement clause of Section 501(c)(3) of the Internal Revenue Code has been in terpreted to mean an insider of the charity. *Orange County Agricultural Society, Inc. v. Commissioner,* 893 F.2d 529, 534 (2d Cir. 1990); *Church of Scientology v. Commissioner, supra,* 823 F.2d at 1316 19; *Church by Mail, Inc. v. Commissioner,* 765 F.2d 1387, 1392 (9th Cir. 1985); *American Campaign Academy v. Commissioner,* 92 T.C. 1053, 1066 (1989). A charity is not to siphon its earnings to its founder, or the members of its board, or their families, or anyone else fairly to be described as an insider, that is, as the equivalent of an owner or manager. The test is functional. It looks to the reality of control rather than to the insider's place in a formal table of organization. The insider could be a "mere" employee or even a nominal outsider, such as a physician with hospital privileges in a charitable hospital, *Harding Hospital, Inc. v. United States,* 505 F.2d 1068, 1078 (6th Cir. 1974) . . ."

Revenue Ruling 69 383, 1969 2 CB 113, in examining the compensation arrangement between a radiologist and an exempt hospital wherein the radiologist was paid on the basis of a fixed percentage of the radiology department's income, provides criteria useful in distinguishing between an insider and private interests. It notes: "Under certain circumstances, the use of a method of compe nsation based upon a percentage of the income of an exempt organization can constitute inurement of net earnings to private individuals." The presence of a percentage compensation agreement will destroy an organization's exemption under Section 501(c)(3) of the Code "where such arrangement transforms the principal activity of the organization into a joint venture . . . (*Lorain Avenue Clinic v. Commissioner,* 31 T.C. 141 (1958)), or is merely a device for distributing profits to persons in control (*Birmingham Business College v. Commissioner,* 276 F. 2d 476 (1960))." The compensation agreement in this ruling did not constitute inurement because (1) the amount received was not excessive but was reasonable in terms of the responsibilities and activities the radiologist assumed under the contract, (2) the radiologist did not control the hospital and, (3) the compensation agreement was as a result of arm's length bargaining.

The courts have determined that the inurement proscription does not prevent the payment of reasonable compensati on for goods and services and the payment of reasonable salaries and benefits do not give rise to inurement. Though the Courts in *Mabee Petroleum Corp. v. United States,* 203 F. 2d 872 (5th Cir. 1953); *Birmingham Business College, Inc. v. Commissioner,* 276 F. 2d (476) (5th Cir. 1960) determined that excessive salaries do result in inurement, they have, in addressing the issue, indicated that the payme nt of reasonable salaries by a tax exempt organization does not result in the inurement of net earnings to th e benefit of private individuals. In their decisions the courts indicate that this determination of whether the salaries paid are reasonable is a question of f act. The court in *United Cancer Council v. Commissioner,* 165 F. 3d 1173 (7th Cir. 1999), stated t hat the inurement provision of the Code "is designed to prevent the siphoning of charitable receipts to insiders of the charity, not to empower the IRS to monitor the te rms of arm's length contracts made by charitable organizations with the firms that supp ly them essential inputs, whether premises, paper, computers, legal advice, or fundraising services."

In *People of God Community v. Commissioner,* 75 T.C. 127 (1980), the court, in examining the compensation arrangement of an insider, noted that it is an e stablished principle that the organization is entitled to pay reasonable compensation to an insider but the burden of establishing the reasonableness of the compensation fell upon the organization. It noted that where the insider's (Donhowe's) compensation was based ". . . upon a percentage of petitioner's gross receipts, apparently subject to no upper limit, a portion of petitioner's earnings is being passed on to Donhowe. *See Birmingham Business College, Inc. v. Commissioner,* 276 F.2d 476 (5th Cir. 1960), *affg. on this point* T.C. Memo. 1958 166;*est of Hawaii v. Commissioner,* 71 T.C. 1067 (1979), appeal filed (9th Cir., June 1, 1979); *Founding Church of Scientology v. United States,* 188 Ct. Cl. 490, 412 F.2d 1197 (1969), *cert. denied* 397 U.S. 1009 (1970). The statute specifically denies tax exemption where a portion of net earnings is paid to private shareholders or individuals. We hold here that paying over a portion of gross earnings to those vested with the control of a charitable organization co nstitutes private inurement as well. All in all, taking a slice off the top should be no less prohibited than a slice out of net."

The inurement of earnings to an insider is described in *Founding Church of Scientology v. United States,* 412 F. 2d 1197 (Ct. Cl. 1969), *cert. den.,* 397 U.S. 1009 (1970). The court determined that the different arrangements between the organization and its founder, such as payment of ten percent of gross revenues, lending of money to him and his family, payment of expenses on the ir behalf, rental of property at inflated prices, resulted in inurement. The court rejected the reasonable compensation defense. It stated: If in fact a loan or other payment in addition to salary is a disguised distribution or benefit from the net earning s, the character of the payment is not changed by the fact that the recipient's salary, if increased by the amount of the distribution or benefit, wo uld still have been reasonable.

It is clear in other decisions that an organization's net earnings may inu re to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. *General Contractors' Ass'n v. United States,* 202 F.2d 633 (7th Cir. 1953) reports and surveys furnished to members; *Chattanooga Auto. Club v. Commissioner,* 182 F.2d 551 (6th Cir. 1950) services to members; *Underwriters' Laboratories, Inc. v. Commissioner,* 135 F. 2d 371 (7th Cir.), *cert. denied,* 320 U.S. 756 (1943) reports and studies furnished; *Spokane Motorcycle Club v. United States,* 222 F. Supp. 151 (E.D. Wash. 1963) goods, services, and refreshments given. That the benefit conveyed may be relatively small does not change the basic fact of inurement. *Spokane Motorcycle Club v. United States, supra.*

Though inurement involves the flow of funds or other financial resources from the exempt organization to an individual that is an insider of the organization, the determination of private benefit does not require that payments for goods and services be un reasonable or exceed fair market value. In *est of Hawaii v. Commissioner,* 71 T.C. 1067 (1979), the court upheld the revocation of the organization's exemption where it had operated for another organization that exerted considerable control over it. In upholdi ng the revocation, the court stated "Nor can we agree with petitioner that the critical inquiry is whether the payments made to Internat ional were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, Internat ional and EST, Inc., benefited substantially from the operation of petitioner."

In a similar case, *Westward Ho v. Commissioner,* TCM 1992 192 (1992), the Court noted that the organization that had been created by three restaurant owners to provide funds to 'indigent and antisocial persons', thereby enabling them to leave the city, did in fact have another motive. It determined that the organization's true motive was to provide its creators with a more desirable busi ness environment by removing disruptive ho meless persons from the area. The court ruled that the organization did not qualify for exemption even though it provided direct 'assistance' to members of the charitable class.

In *Church by Mail v. Commissioner,* 765 F.2d 1387 (9th Cir. 1985) *aff'g* TCM 1984 349 (1984), the court noted that Church by Mail, Inc. ('Church') paid Twentieth Century Advertising Agency ('Twentieth') for services provided. Twentieth was owned and contro lled by the two individuals who ran Church. The Tax Court had found it unnecess ary to consider the reasonableness of payments made by the applicant to a business owned by its officers. In addressing whether Church operated for a substantial non exempt purpose the 9th Circuit Court of Appeals, in affirming the Tax Court's decision, st ated: ". . . The critical inquiry is not whether particular contractual payments to a related for profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for profit organization ben efits substantially from the operation of the Church, *est of Hawaii v. Commissioner,* 71 T C. at 1080 81; *see also Presbyterian & Reformed Publishing Co. v. Commissioner,* 743 F.2d 148, 155 (3d Cir. 1984) (courts must look to all objective indicia from which a corporate actor's intent may be discerned); *United States v. Dykema,* 666 F. 2d 1096, 1100 (7th Cir. 1981), *cert. denied,* 456 U.S. 983, 72 L.Ed. 2d 861, 102 S.Ct. 2257 (1982) (it is necessary and proper for the I.R.S. to survey all of the activities of an organization to determine whether a non exempt purpose is furthered)."

SFC 002819

From: Spellmann Don [redacted]
Sent: Wednesday, April 25, 2012 2:48 PM
To: Lerner Lois G; Marks Nancy J; Paz Holly O; Kindell Judith E; Fish David L; Megosh Andy; Lowe Justin; Goehausen Hilary; Urban Joseph J
Cc: Judson Victoria A; Cook Janine; Brown Susan D; Marshall David L
Subject: Clean-ups & Revisions to Guide Sheet

We just can't seem to keep our hands off this thing (or stop thinking about it). You'll see a fair amount of red here. But it's predominantly clean-up, more consistency in language, some rephrasing (political now ahead of lobbying throughout), added precision and clarity (we hope), and better conformity to the published ruling examples. We also removed, combined, or massaged a number of factors that were neutral (or unnecessary) free -standing.

The first document is clean, only containing the discrete comment windows from before.

The second is red, white and black.

Please let us know if you have questions or would like to discuss anything.

Don & Crew

guide sheet master 04-25-12 to...

guide sheet master compare 04-...

SFC 002820

DRAFT 4/25/2012

Reviewing Section 501(c)(3) and 501(c)(4) Exemption Applications (Political Campaign Intervention and Lobbying)

OVERVIEW

This document provides information to assist you in processing the exemption applications under sections 501(c)(3) and 501(c)(4) of organizations that indicate they may participate or intervene in a political campaign ("political campaign intervention") , or attempt to influence legislation ("lobbying").[1] This document will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity may be po litical campaign intervention or lobbying.

Questions on case development and applicable law should be directed to Exempt Organizations Technical.

This document contains the following sections:

1. Definitions of political campaign intervention and lobbying
2. Rules on political campaign intervention and lobbying for section 501(c)(3) and section 501(c)(4) organizations
3. A separate guide sheet for certain activities that may be political campaign intervention or lobbying

PART 1: DEFINITIONS

1) **Political Campaign Intervention:**

- Participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. [§ 501(c)(3); § 1.501(c)(4)-1(a)(2)]

- It includes, but is not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to a candidate. [§ 1.501(c)(3)-1(c)(3)(iii)]

[1] This document is not designed for use in processing exempti on applications under § 501(c)(5) (labor, agricultural, or horticultural organizations) or § 501(c)(6) (business leagues). The guide sheets relating to specific types of activities conducted by § 501(c)(4) organizations may be relevant for gathering infor mation from these organizations.

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2) **Lobbying:**

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- Advocating the adoption or rejection of legislation.
- Legislation includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.
- Lobbying does not include engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

[§ 1.501(c)(3)-1(c)(3)(ii), (3)(iv); Rev. Rul. 71-530 (applying to § 501(c)(4) organizations)]

PART 2: RULES ON POLITICAL CAMPAIGN INTERVENTION AND LOBBYING[2]

1) **Section 501(c)(3) Organizations:**

- Organized and operated exclusively for charitable, educational, and other specified purposes. [§ 501(c)(3)]
- Do not engage in political campaign intervention. [§ 501(c)(3), § 1.501(c)(3)-1(c)(1), Rev. Rul. 2007-41]
- No substantial part of their activities is lobbying.[3] [§ 501(c)(3)]

2) **Section 501(c)(4) Organizations:**

- Operated exclusively for the promotion of social welfare [§ 501(c)(4)]
- Promotion of social welfare does not include political campaign intervention. [§ 1.501(c)(4)-1(a)(2)] The regulations do not impose a complete ban on such activities, as long as the organization's primary activities promote social welfare.[4] [Rev. Rul. 81-95]
- Lobbying may promote social welfare. [§ 1.501(c)(3)-1(c)(3)(flush); Rev. Rul. 68-656, Rev. Rul. 71-530]

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[2] Organizations described in § 501(c) (other than § 501(c)(3)) are subject to special reporting rules regarding their political and lobbying activities and may be subject to tax on those activities. *See* § 527 and § 6033(e).
[3] For private foundations, even insubstantial lobbying activities are subject to penalty excise taxes. [§ 4945(e)]
[4] A § 501(c) organization that makes expenditures for political organization "exempt function" activity as defined in § 527(e) is subject to tax on the organization's net investment income, up to the amount of the "exempt function" expenditures. [§ 527(f)]

PART 3: GUIDE SHEETS FOR SPECIFIC ACTIVITIES

Below are separate guide sheets for certain activities that may be political campaign intervention or lobbying. Use the guide sheet only if the organization indicates that it may engage in that specific activity.

The guide sheets will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity is political campaign intervention or lobbying. The guide sheets each present a specific set of facts in which an activity generally is (or generally is not) political campaign intervention or lobbying. For all other situations, the guide sheets list individual facts for you to consider and develop. The facts are listed by whether they tend to show (or tend not to show) political campaign intervention or lobbying. Each fact contains a citation to revenue rulings or other legal authorities to consult for further information. These authorities contain examples that illustrate how to apply the law on political camp aign intervention and lobbying to these activities.

Your determination is based on all the facts and circumstances. No one fact determines whether an activity is political campaign intervention or lobbying. If an organization engages in multiple activities, the interaction among them may affect whether the organization is engaged in political campaign intervention [Rev. Rul. 2007 -41]. Questions on case development and applicable law should be directed to Exempt Organizations Technical.

Possible Political Campaign Intervention

- **Guide Sheet 1: Voter Guides**
- **Guide Sheet 2: Candidate Forums**
- **Guide Sheet 3: Other Candidate Appearances**
- **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention**
- **Guide Sheet 5: Individual Activity by Organization Leaders**
- **Guide Sheet 6: Business Activities**

Possible Lobbying : For Section 501(c)(3) Organizations Only

- **Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)**
- **Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)**

Guide Sheet 1: Voter Guides

Certain voter education, including the preparation and distribution of certain voter guides, conducted in a non-partisan manner, may not constitute political campaign intervention. [Rev. Rul. 2007-41] On the other hand, an organization that publishes a compilation of candidate positions or incumbents' voting records may engage in political campaign intervention if the questionnaire used to solicit candidate positions or the voter guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. [Rev. Rul. 78–248] The timing and manner of the distribution also are relevant to determining whether the organization is engaged in political campaign intervention. [Rev. Rul. 80–282]

Use this guide sheet only if the organization indicates that it may publish or distribute voter guides. This guide sheet will help you screen the organization's voter guide activities for possible political campaign intervention, decide which voter guide activities require further case development and which facts to develop, and determine whether a particular voter guide activity may be political campaign intervention.

Parts A and B present a specific set of facts in which voter guide activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. Voter guide activities generally are not political campaign intervention if either :

1. The organization annually prepares and makes generally available to the public a compilation of voting records of all members of a particular legislative body on major issues involving a wide range of subjects, the publication contains no editorial opinion; and the contents and structure of the publication do not imply approval or disapproval of any members or their voting records [Rev. Rul. 78-248, Situation 1]; or

2. The organization sends a questionnaire to all candidates for the same public office soliciting a brief statement of their positions on a wide variety of issues; it publishes all responses in a voter guide it makes generally available to the public; it selects the issues for their importance and interest to the electorate as a whole; and neither the questionnaire nor the voter guide, in form or content, shows a bias or preference for any candidate. [Rev. Rul. 78-248, Situation 2]

B. Voter guide activities generally are political campaign intervention if either :

1. The organization sends a questionnaire evidencing bias on certain issues to candidates for public office, and it uses the responses to prepare a voter guide that it distributes during an election campaign [Rev. Rul. 78-248, Situation 3]; or

2. The organization publishes a compilation of the voting records of incumbents on a narrow range of issues, and it widely distributes the publication among the electorate during an election campaign. [Rev. Rul. 78 -248, Situation 4]

C. Voter Guides -- Facts to Consider and Develop

Below is a list of facts that tend to show whethe r a voter guide activity is (or is not) political campaign intervention. The facts are listed separately for guides on the positions of candidates for public office and guides on the voting records of incumbents. Consider all the facts and circumstances. No one fact determines whether a voter guide activity is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Positions of Candidates for Public Office

Does the organization indicate that it may prepare and distribute a guide summarizing the positions of one or more candidates for public office? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the candidate position activity is not political campaign intervention:

- The organization sends to all candidates for the same public office a questionnaire that covers a wide variety of issues selected by the organization based on their importance and interest to the electorate as a whole , and publishes all of the responses. [Rev. Rul. 78-248, Situation 2]

- The questionnaire does not, in conte nt or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

- The questionnaire solicits from all candidates for the same public office a statement of his or her position, an d the organization publishes or distributes all candidate responses to the questionnaire in the voter guide. [Rev. Rul. 78 -248, Situation 2]

- The voter guide covers a wide variety of issues, which the organization selects based on their importance and interest to the electorate as a whole. [Rev. Rul. 78-248, Situation 2]

- The voter guide does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

b. Facts tending to show that the candidate position activity is political campaign intervention:

- The organization sends a questionnaire to all candidates for the same public office that covers a narrow range of issues of importance to the organization, and it uses the responses to prepare a voter guide which it widely distributes during an election campaign. [derived from Rev. Rul. 78-248, Situations 2 & 4]

- The questionnaire shows a bias on certain issues, and the organization uses the responses to the questionnaire to prepare a voter guide which it distributes during an election campaign. [Rev. Rul. 78-248, Situation 3]

- The voter guide, in content or structure, shows a bias or preference with respect to the views of any candidate or group of candidates, and the organization distributes the guide during an election campaign. [derived from Rev. Rul. 78-248, Situations 1 & 2]

- The voter guide covers a narrow range of issues of importance to the organization, and the organization widely distributes the voter guide among the general public during an election campaign. [derived from Rev. Rul. 78-248, Situation 4]

2. Voting Records of Incumbents

Does the organization indicate that it may prepare and publish or distribute a report or other compilation of the voting records of incumbents (for example, current Members of Congress)? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the voting record activity is not political campaign intervention:

- The organization annually prepares and makes generally available to the public a compilation of voting records of incumbents on major legislative issues involving a wide range of subjects. [Rev. Rul. 78-248, Situation 1]

- The organization usually publishes the voting records after the close of the legislative session, and the distribution is not geared to the timing of any election. [Rev. Rul. 80-282]

- The publication contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any incumbents or their voting records. [Rev. Rul. 78-248, Situation 1]

- The publication presents the voting records of all incumbents, and it does not identify candidates for reelection. [Rev. Rul. 80-282]

- The format and content of the publication is not neu tral because it reports on whether the incumbent supported the organization's views, but distribution occurs as soon as practical after the end of each legislative session, is limited to a relatively small group consisting of the organization's normal read ership, is not targeted to particular areas in which elections are occurring , and is not timed to coincide with an election campaign. [Rev. Rul. 80 -282]

- The publication does not comment on an individual's overall qualification for public office, or compare candidates who might be competing with the incumbents in any political campaign. [Rev. Rul. 80-282]

b. Facts tending to show that the voting record activity is political campaign intervention :

- The publication contains a statement that endorses or r ejects any incumbent as a candidate for public office, or identifies candidates for re -election and comments on their overall qualification for public office, or compares candidates that might be competing with incumbents in a political campaign, and the publication is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived from Rev. Rul. 80 -282]

- The publication reports on the organization's views on select ed legislative issues, indicates whether the incumbent supported or opposed the organization's view, and is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived both from Rev. Rul. 80-282 and Rev. Rul. 78-248, Situation 4]

- The publication covers a narrow range of issues selected for their importance to the organization, and it is widely distributed during an election campaign. [Rev. Rul. 78-248, Situation 4]

D. Legal References

- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 78-248, 1978-1 C.B. 154

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Guide Sheet 2: Candidate Forums

The presentation of public forums or debates is a recognized method of educating the public. [Rev. Rul. 66–256] Providing a forum for candidates does not, in and of itself, constitute political campaign intervention. [Rev. Rul. 74–574] However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate, such as through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute political campaign intervention. [Rev. Rul. 86–95] [also cited in Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may invite candidates for public office to speak at its events in their capacity as political candidates. This guide sheet will help you screen the organization's candidate forums for possible political campaign intervention, decide which candidate forums require further case development and which facts to develop, and determine whether a particular candidate forum may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate forums generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. Candidate forums generally are not political campaign intervention if:

The organization invites all candidates seeking the same office to participate at the same (or a substantially similar) event, provides each candidate an equal opportunity to address and field questions on a wide variety of topics, and does not comment on their qualifications or indicate a preference for any candidate. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

B. Candidate forums generally are political campaign intervention if:

The organization invites one candidate to speak at an organization event in support of the candidate's campaign and does not invite any other candidates for the same public office. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

C. Candidate Forums -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate forum is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate forum is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains

any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate forum is not political campaign intervention:

- The organization does not comment on the qualifications of, or indicate a preference for, any candidate during the event. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

- The topics discussed cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7); Rev. Rul. 86-95]

- The organization does not indicate support for or opposition to a candidate during the event (such as when the candidate is introduced). [Rev. Rul. 2007-41 (Candidate Appearances, Situations 7 & 8)]

- The candidates at the event are not asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007-41 (Candidate Appearances)]

- A nonpartisan, independent panel prepares any questions presented to candidates at the event. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- A nonpartisan, independent panel or moderator presents the questions. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- The moderator does not comment on questions or otherwise imply approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- The moderator states that the views expressed are those of the candidates and not of the organization, and that sponsorship of the forum is not intended as an endorsement of any candidate. [Rev. Rul. 86-95]

- The organization provides an equal opportunity for candidates to use its facilities to speak in support of their respective campaigns. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

2. Facts tending to show that a candidate forum is political campaign intervention:

- The organization comments on the qualifications of, or indicates a preference for, any candidate during the event. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)

- The topics discussed at the forum do not cover a broad range of the issue s that the candidates would address if elected to the office sought and that are of broad interest to the public. [derived both from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7) and Rev. Rul. 86-95]

- The organization indicates support for or oppo sition to a candidate during the event (such as when the candidate is introduced). [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situations 7 & 8)]

- The candidates at the event are asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007 -41 (Candidate Appearances)]

- Questions to forum participants are not prepared and presented by a nonpartisan, independent panel. [Rev. Rul. 2007 -41 (Candidate Appearances); derived from Rev. Rul. 86-95]

- The moderator comments on questions or otherwise impl ies approval or disapproval of a candidate. [Rev. Rul. 2007 -41 (Candidate Appearances); Rev. Rul. 86-95]

- The moderator does not state that the views expressed are those of the candidates and not of the organization, or that sponsorship of the forum is not intended as an endorsement of any candidate . [derived from Rev. Rul. 86 -95]

- The organization selectively provides a n opportunity for one candidate (but not others) to use its facilities to speak in sup port of his or her campaign. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

D. Legal References

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances, Situations 7-9)
- Rev. Rul. 86-95,1986-2 C.B. 73
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 66–256, 1966-2 C.B. 210

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Guide Sheet 3: Other Candidate Appearances

The question whether an activity constitutes political campaign intervention may arise in the context of a candidate appearance at an organization event. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may be involved with any candidate appearance. This guide sheet will help you screen any candidate appearances at organization events for possible political campaign intervention, decide which candidate appearances require further case development and which facts to develop, and determine whether a particular candidate appearance may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate appearances generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

Consult **Guide Sheet 2: Candidate Forums** for assistance in evaluating whether inviting candidates for public office to speak at organization events in their capacity as political candidates may be political campaign intervention.

A. Candidate appearances generally are not political campaign intervention if either:

1. The organization invites the individual to speak solely for reasons other than his or her candidacy; neither the individual nor any representative of the organization mention the individual's candidacy or the upcoming election; and no political fundraising occurs at the event [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]; or

2. The individual appears at an organization event only in a non-candidate capacity; the organization only acknowledges the individual's presence and his official title; and the organization makes no reference to the individual's candidacy or the upcoming election. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 10)]

B. Candidate appearances generally are political campaign intervention if:

The individual attends an organization's event that is open to the public; and an official of the organization asks the crowd to support the candidate in the upcoming election. [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

C. Candidate Appearances -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate appearance is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate appearance is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate appearance is not political campaign intervention:

- The individual was invited to appear or speak at the organization's event for reasons other than his or her political candidacy. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]

- The individual attends or speaks only in a non-candidate capacity. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]

- The organization does not indicate any support for or opposition to the individual's candidacy (including introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]

- No political fundraising or other campaign activity occurs at the event in connection with the candidate's attendance. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]

- The organization makes no mention of the individual's political candidacy or the upcoming election in communications announcing the individual's attendance at the event. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

- The organization maintains a nonpartisan atmosphere at the event at which the candidate is present. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

2. Facts tending to show that a candidate appearance is political campaign intervention:

- The organization indicates support for or opposition to the individual's candidacy (including during introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

- There is political fundraising at the event, or other campaign activity occurs at the event in connection with the candidate's attendance. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating a s a Non-Candidate. Situation 11)]

- The organization maintains a partisan atmosphere on the premises or at the event where the candidate is present. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-13)

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Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention

Organizations may take positions on public policy issues, including issues t hat divide candidates in an election for public office. However, issue advocacy may function as political campaign intervention. [Rev. Rul. 2007 -41] Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement may engage in political campaign intervention if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name, but also by other means such as sh owing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign int ervention. [Rev. Rul. 2007-41]

A web site is a form of communication. An organization that posts something on its web site that favors or opposes a candidate for public office will be treated the same as if it distributed printed materials, oral statem ents or broadcasts. When an organization establishes a link to another web site, it is responsible for the consequences of establishing and maintaining that link, even if it does not have control over the content of the linked site. Links to candidate-related material, by themselves, do not necessarily result in political campaign intervention. All facts and circumstances must be taken into account when assessing whether a link produces that result. [Rev. Rul. 2007-41]

Use this guide sheet <u>only</u> if the organization indicates that its issue advocacy communications (including on its web site) may support or oppose a candidate for public office. This guide sheet will help you screen the organization's issue advocacy communications for possible political campaign intervention, decide which issue advocacy communications require further case development and which facts to develop, and determine whether a particular issue advocacy communication may be political campaign intervention.

Parts A and B present a specific set of facts in which issue advocacy communications generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. <u>Issue advocacy communications generally are not political campaign intervention if:</u>

> The communication urges the public to contact an officeholder to s upport specific legislation, the statement appears immediately before the officeholder is scheduled to vote on that legislation, the statement does not mention the election or the candidacy of the office holder, and the issues that are the subject of the l egislation have not been raised as distinguishing the officeholder from any election opponent. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]

B. Issue advocacy communications generally are political campaign intervention if:

The communication is delivered shortly before an election, identifies by name an officeholder who is also a candidate in that election, takes a position on an issue that has been used to distinguish the candidates in the election, is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue, and is not timed to coincide with a non-electoral event (such as a legislative vote or other major legislative action on the issue). [Rev. Rul. 2007-41 (Issue Advocacy, Situation15)]

C. Issue Advocacy Communications -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a n issue advocacy communication, including on a website, is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a n issue advocacy communication is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law , contact Exempt Organizations Technical.

1. Facts tending to show that issue advocacy communications are not political campaign intervention:

- The communication does not identify one or more candidate s for a given public office by name or by other means. [Rev. Rul. 2007 -41 (Issue Advocacy)]
- The communication does not address any issue that has been raised as an issue distinguishing candidates for a given office. [Rev. Rul. 2007 -41 (Issue Advocacy, Situation 14)]
- The communication is timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue . [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]
- The communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (Issue Advocacy)]
- The communication is not delivered close in time to an election [Rev. Rul. 2007 -41 (Issue Advocacy)]
- The organization has not posted anything on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007 -41 (Web Sites)]

- The organization's web site does not provide a direct link to a web page that contains material favoring or opposing a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 20)]

- The organization's web site links to the website of another entity, the web site link serves an exempt purpose of the organization (such as educating the public), and neither the context for the link nor the relationship between the organization and the other entity indicates that the organization was favoring or opposing an y candidate. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]

- The organization establishes on its web site links to the official campaign web sites of all the candidates for a particular office and presents all of the links in a neutral, unbiased manner. [Rev. Rul. 2007-41 (Web Sites, Situation 19)]

2. Facts tending to show that issue advocacy communications are political campaign intervention:

- The communication identifies one or more candidates for a given public office by name or by other means, such as addressing an issue that has been raised as an issue distinguishing the candidates for that office. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]

- The communication is delivered close in time to an election and is not timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15]

- The communication is delivered close in time to an election and is not part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 20 07-41 (Issue Advocacy, Situation 15)]

- The organization posts a message on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 21)]

- The organization's web site provides a direct link to a web page that contains material favoring or opposing a candidate for public office , and the web site link does not serve an exempt purpose of the organization, such as educating the public. [derived from Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]

- The organization establishes a link to a candidate's official campaign web site and does not present the link in a neutral, unbiased manner or does not establish similar links for all of the candidates for a particular office. [derived from Rev. Rul. 2007-41 (Web Sites, Situation 19)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Issue Advocacy, Situations 14-16; Web Sites, Situations 19-20)

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Guide Sheet 5: Individual Activity by Organization Leaders

The question whether an activity constitutes political campaign intervention may arise in the context of political campaign activities by any organization leader. [Rev. Rul. 2007-41]

Use this guide sheet only if any organization leader may engage in any political campaign activity. This guide sheet will help you screen the political campaign activity of any organization leader for possible political campaign intervention by the organization, decide which organization leader activities require further case development and which facts to develop, and determine whether a particular political campaign activity by any organization leader may be political campaign intervention by the organization.

Parts A and B present a specific set of facts in which political campaign activities by any organization leader generally are political campaign intervention by the organization and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

A. Political campaign activity by any organization leader generally is not political campaign intervention if:

The leader makes a statement in the leader's personal capacity supporting the election of a candidate for public office; the statement appears in a publication that is not an official publication of the organization; the organization pays none of the costs of the publication; and the publication states that the leader's title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41, Situation 3.]

B. Political campaign activity by any organization leader generally is political campaign intervention if:

The leader makes an oral statement to vote for a candidate for public office at an official meeting of the organization. [Rev. Rul. 2007-41 (Situation 6).

C. Political Campaign Activity by Organization Leaders -- Facts to Consider and Develop

Below is a list of facts that tend to show whether the political campaign activity by any organization leader is (or is not) political campaign intervention by the organization. Consider all the facts and circumstances. No one fact determines whether political campaign activity by any organization leader is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that political campaign activity by any organization leader is not political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office does not appear in an official publication of, or in a publication paid for by, the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]

- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

- The leader does not say that he is speaking as a representative of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

- The leader personally endorses a candidate in a publication that is not paid for by the organization and is not an official publication of the organization, and the publication states that her title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 3)]

- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization or otherwise use the organization's assets, and the leader does not say that he is speaking on behalf of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

2. Facts tending to show that political campaign activity by any organization leader is political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office appears in an official publication of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 4)]

- The leader makes the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 6)]

- The organization pays for the publication of the leader's statement in support of (or in opposition to) a candidate for public office. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]

- The leader makes the statement in support of (or in opposition to) a candidate for public office at an event that is not an official function of the organization, and the

leader states that she is speaking on behalf of the organization. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Individual Activity by Organization Leaders, Situations 3-6)

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Guide Sheet 6: Business Activities

The question whether an activity constitutes political campaign intervention may arise in the context of a business activity of the organization, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may engage in business activities with any candidate for public office. This guide sheet will help you screen the organization's business activities for possible political campaign intervention, decide which business activities require further case development and which facts to develop, and determine whether a particular business activity may be political campaign intervention.

Parts A and B present a specific set of facts in which business activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

A. Business activities with candidates generally are not political campaign intervention if :

> The organization sells or rents goods, services, or facilities to the general public, it makes them available to all candidates in the same election on an equal basis, and the fees charged to candidates are at the organization's customary and usual rates. [Rev Rul. 2007-41 (Business Activity, Situation 17)]

B. Business activities with candidates generally are political campaign intervention if:

> The organization does not normally sell or rent goods, services or facilities to the general public, but does so selectively to a candidate for public office, and it does not make its goods, services or facilities available on an equal basis to the other candidates in the same election. [Rev Rul. 2007-41 (Business Activity, Situation 18)]

C. Business Activities – Facts to Consider and Develop

Below is a list of facts that tend to show whether a business activity is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a business activity is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a business activity is not political campaign intervention :

- The business activity is an ongoing activity of the organization. [Rev. Rul. 2007 -41 (Business Activity, Situation 17)]
- The organization makes the good, service or facility available to the general public. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]
- The organization makes the good, service, or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity))]
- The organization charges all candidates in the same election its usual and customary rates for the good, service, or facility. [Rev. Rul. 2007-41 (Business Activity)]

2. Facts tending to show that a business activity is political campaign intervention :

- The organization only provides the good, service or facility to a political candidate. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]
- The organization does not make the good, service or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity)]
- The organization does not charge all candidates in the same election its usual and customary rates for the good, service or facility . [Rev. Rul. 2007-41 (Business Activity)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Business Activity, Situations 17 -18)

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Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention o f molding public opinion or creating public sentiment to an acceptance of its views does not preclude the organization from qualifying under section 501(c)(3). [§ 1.501(c)(3)-1(d)(2)] However, an organization does not qualify under section 501(c)(3) if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. [§ 1.501(c)(3)-1(c)(3)]

An organization also does not qualify for exemption under section 501(c)(3) if its primary objective may be attained only by legislation (or a defeat of proposed legislation) and it advocates for the attainment of such objective, as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. [§ 1.501(c)(3)-1(c)(3); Rev. Rul. 64-195]

Use this guide sheet only if the organization indicates that it may communicate with the general public on legislative issues. This guide sheet will help you screen the organization's communications with the general public on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which comm unications with the general public on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to sh ow, lobbying. Parts D and E contain legal and other references.

Consult **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention** for assistance in evaluating whether a communication on legislative issues functions as political campaign intervent ion.

A. Communications with the general public generally are not lobbying if either:

1. The communication does not advocate the adoption or rejection of legislation or urge the public to contact one or more legislators to propose, support, or oppose legislation; and the organization's primary objective can be attained other than by the enactment or defeat of legislation. [§ 1.501(c)(3)-1(c)(3)(ii), (iv)] or

2. The organization conducts nonpartisan analysis, study, and research to develop solutions for problems affecting a particular region and publishes the results for the benefit of the public, and does not advocate the adoption of any legislation or legislative action to implement its findings . [Rev. Rul. 70-79]

B. Communications with the general public generally are lobbying if:

The communication urges members of the general public to contact legislators to support or oppose legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

C. Communication with the general public -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with the general public on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with the general public is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with the general public is not lobbying:

- The communication does not advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 64-195; Rev. Rul. 70-79]
- The communication does not urge the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with the general public is lobbying:

- The communication advocates the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication urges the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

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Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)

An organization can communicate with government officials on legislative issues without engaging in lobbying. For example, an organization is not engaged in lobbying activity if, at the request of a legislative committee, a representative testifies as an expert witness on pending legislation affecting the organization. [Rev. Rul. 70-449] Similarly, an organization may seek to assist government officials in the study of problems by conducting nonpartisan analysis, study, and research into these problems and publishing the results for the benefit of the general public. Such activities may qualify as educational. However, an organization may be engaged in lobbying if it advocates the adoption of legislation to implement the organization's findings. [Rev. Rul. 70-79]

Use this guide sheet only if the organization indicates that it may communicate with government officials on legislative issues. This guide sheet will help you screen the organization's communications with government officials on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with government officials on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

A. Communications with government officials generally are not lobbying if:

1. At the request of a legislative committee, the organization sends a representative to provide expert testimony on pending legislation [Rev. Rul. 70-449]; or

2. The organization's activities are limited to studying, researching, and assembling materials necessary to evaluate legislation, and presenting an objective analysis of the legislation to those who are interested in the issue (both those who favor the legislation and those who oppose it) and to the general public. [Rev. Rul. 64-195]

B. Communications with government officials generally are lobbying if:

The organization contacts legislators to advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)].

C. Communications with government officials – Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with government officials on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with government officials is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with government officials is not lobbying:

   - The communication is in response to a request for technical assistance from a governmental body, such as a Congressional committee. [Rev. Rul. 70-449]

   - The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 64-195, and Rev. Rul. 70-79]

   - The communication does not advocate the adoption or rejection of any legislation. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with government officials is lobbying:

   - The organization contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

   - The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127
- Rev. Rul. 70-449, 1970-2 C.B. 111

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

Reviewing Section 501(c)(3) and 501(c)(4) Exemption Applications (Political Campaign Intervention and Lobbying)

OVERVIEW

This document provides information to assist you in processing the exemption applications under sections 501(c)(3) and 501(c)(4) of organizations that indicate they may participate or intervene in a political campaign ("political campaign intervention "), or attempt to influence legislation ("lobbying ").[1] This document will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity may be political campaign intervention or lobbying.

Questions on case development and applicable law should be directed to Exempt Organizations Technical.

This document contains the following sections:

1. Definitions of political campaign intervention and lobbying
2. Rules on political campaign intervention and lobbying for section 501(c)(3) and section 501(c)(4) organizations
3. A separate guide sheet for certain activities that may be political campaign intervention or lobbying

PART 1: DEFINITIONS

1) <u>Political Campaign Intervention</u>:

- Participating or intervening in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office. [§ 501(c)(3); § 1.501(c)(4)-1(a)(2)]

- It includes, but is not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to a candidate. [§ 1.501(c)(3)-1(c)(3)(iii)]

[1] This document is not designed for use in processing exemption applications under § 501(c)(5) (labor, agricultural, or horticultural organizations) or § 501(c)(6) (business leagues). The guide sheets relating to specific types of activities conducted by § 501(c)(4) organizations may be relevant for gathering information from these organizations.

2) **Lobbying:**

- Contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or
- Advocating the adoption or rejection of legislation.
- Legislation includes action by the Congress, by a ny State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.
- Lobbying does not include engaging in nonpartisan analysis, study, or research and making the results thereof available to the public.

[§ 1.501(c)(3)-1(c)(3)(ii), (3)(iv); Rev. Rul. 71-530 (applying to § 501(c)(4) organizations)]

PART 2: RULES ON POLITICAL CAMPAIGN INTERVENTION AND LOBBYING[2]

1) **Section 501(c)(3) Organizations:**

- Organized and operated exclusively for charitable, educational, and other specified purposes. [§ 501(c)(3)]
- Do not engage in political campaign intervention. [§ 501(c)(3), § 1.501(c)(3)-1(c)(1), Rev. Rul. 2007-41]
- No substantial part of their activities is lobbying.[4] [§ 501(c)(3)]

2) **Section 501(c)(4) Organizations:**

- Operated exclusively for the promotion of social welfare [§ 501(c)(4)]
- Promotion of social welfare does not include political campaign intervention. [§ 1.501(c)(4)-1(a)(2)] The regulations do not impose a complete ban on such activities, as long as the organization's primary activities promote social welfare.[5] [Rev. Rul. 81-95]
- Lobbying may promote social welfare. [§ 1.501(c)(3)-1(c)(3)(flush); Rev. Rul. 68-656, Rev. Rul. 71-530]

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[2] Organizations described in § 501(c) (other than § 501(c)(3)) are subject to special reporting rules regard ing their political and lobbying activities and may be subject to tax on those activities. *See* § 527 and § 6033(e).
[4] For private foundations, even insubstantial lobbying activities are subject to penalty excise taxes. [§ 4945(e)]
[5] A § 501(c) organization that makes expenditures for political organization "exempt function" activity as defined in § 527(e) is subject to tax on the organization's net investment income, up to the amount of the "exempt function" expenditures. [§ 527(f)]

PART 3: GUIDE SHEETS FOR SPECIFIC ACTIVITIES

Below are separate guide sheets for certain activities that may be political campaign intervention or lobbying. Use the guide sheet only if the organization indicates that it may engage in that specific activity.

The guide sheets will help you screen your applications for organizations that may engage in political campaign intervention or lobbying, decide which activities may require further case development and which facts to develop, and determine whether a particular activity is political campaign intervention or lobbying. The guide sheets each present a specific set of facts in which an activity generally is (or generally is not) political campaign intervention or lobbying. For all other situations, the guide sheets list individual facts for you to consider and develop. The facts are listed by whether they tend to show (or tend not to show) political campaign intervention or lobbying. Each fact contains a citation to revenue rulings or other legal authorities to consult for further information. These authorities contain examples that illustrate how to apply the law on political campaign intervention and lobbying to these activities.

Your determination is based on all the facts and circumstances. No one fact determines whether an activity is political campaign intervention or lobbying. If an organization engages in multiple activities, the interaction among them may affect whether the organization is engaged in political campaign intervention [Rev. Rul. 2007-41]. Questions on case development and applicable law should be directed to Exempt Organizations Technical.

Possible Political Campaign Intervention

- **Guide Sheet 1: Voter Guides**
- **Guide Sheet 2: Candidate Forums**
- **Guide Sheet 3: Other Candidate Appearances**
- **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention**
- **Guide Sheet 5: Individual Activity by Organization Leaders**
- **Guide Sheet 6: Business Activities**

Possible Lobbying : For Section 501(c)(3) Organizations Only

- **Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)**
- **Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)**

Guide Sheet 1: Voter Guides

Certain voter education, including the preparation and di stribution of certain voter guides, conducted in a non-partisan manner, may not constitute political campaign intervention. [Rev. Rul. 2007-41] On the other hand, an organization that publishes a compilation of candidate positions or incumbents' voting records may engage in political campaign intervention if the questionnaire used to solicit candidate positions or the voter guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. [Rev. Rul. 78–248] The timing and manner of the distribution also are relevant to determining whether the organization is engaged in political campaign intervention. [Rev. Rul. 80–282]

Use this guide sheet only if the organization indicates that it may publish or di stribute voter guides. This guide sheet will help you screen the organization's voter guide activities for possible political campaign intervention, decide which voter guide activities require further case development and which facts to develop, and deter mine whether a particular voter guide activity may be political campaign intervention.

Parts A and B present a specific set of facts in which voter guide activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. Voter guide activities generally are not po litical campaign intervention if either:

1. The organization annually prepares and makes generally available to the public a compilation of voting records of all members of a particular legislative body on major issues involving a wide range of subjects, the publication contains no editorial opinion; and the contents and structure of the publication do not imply approval or disapproval of any members or their voting records [Rev. Rul. 78-248, Situation 1]; or

2. The organization sends a questionnaire to all candidates for the same public office soliciting a brief statement of their positions on a wide variety of issues; it publishes all responses in a voter guide it makes generally available to the public; it selects the issues for their impor tance and interest to the electorate as a whole; and neither the questionnaire nor the voter guide, in form or content, shows a bias or preference for any candidate. [Rev. Rul. 78-248, Situation 2]

B. Voter guide activities generally are political camp aign intervention if either:

1. The organization sends a questionnaire evidencing bias on certain issues to candidates for public office, and it uses the responses to prepare a voter guide that it distributes during an election campa ign [Rev. Rul. 78-248, Situation 3]; or

2. The organization publishes a compilation of the voting records of incumbents on a narrow range of issues, and it widely distributes the publication among the electorate during an election campaign. [Rev. Rul. 7 8-248, Situation 4]

C. Voter Guides -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a voter guide activity is (or is not) political campaign intervention. The facts are listed separately for guides on the positions of candidates for public office and guides on the voting records of incumbents. Consider all the facts and circumstances. No one fact determines whether a voter guide activity is political campaign intervention. The legal references in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Positions of Candidates for Public Office

Does the organization indicate that it may prepare and distribute a guide summarizing the positions of one or more candidates for public office? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the candidate position activity is not political campaign intervention:

- The organization sends to all candidates for the same public office a questionnaire that covers a wide variety of issues selected by the organization based on their importance and interest to the electorate as a whole, and publishes all of the responses. [Rev. Rul. 78-248, Situation 2]

- The questionnaire does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

- The questionnaire solicits from all candidates for the same public office a statement of his or her position, and the organization publishes or distributes all candidate responses to the questionnaire in the voter guide. [Rev. Rul. 78-248, Situation 2]

- The voter guide covers a wide variety of issues, which the organization selects based on their importance and interest to the electorate as a whole. [Rev. Rul. 78-248, Situation 2]

- The voter guide does not, in content or structure, show a bias or preference with respect to the views of any candidate or group of candidates. [Rev. Rul. 78-248, Situation 2]

b. Facts tending to show that the candidate position activity is political campaign intervention:

- The organization sends a questionnaire to all candidates for the same public office that covers a narrow range of issues of importance to the organization, and it uses the responses to prepare a voter guide which it widely distributes during an election campaign. [derived from Rev. Rul. 78-248, Situations 2 & 4]

- The questionnaire shows a bias on certain issues, and the organization uses the responses to the questionnaire to prepare a voter guide which it distributes during an election campaign. [Rev. Rul. 78-248, Situation 3]

- The voter guide, in content or structure, shows a bias or preference with respect to the views of any candidate or group of candidates, and the organization distributes the guide during an election campaign. [derived from Rev. Rul. 78-248, Situations 1 & 2]

- The voter guide covers a narrow range of issues of importance to the organization, and the organization widely distributes the voter guide among the general public during an election campaign. [derived from Rev. Rul. 78-248, Situation 4]

2. Voting Records of Incumbents

Does the organization indicate that it may prepare and publish or distribute a report or other compilation of the voting records of incumbents (for example, current Members of Congress)? If no, skip this section. If yes, develop the following facts.

a. Facts tending to show that the voting record activity is not political campaign intervention:

- The organization annually prepares and makes generally available to the public a compilation of voting records of incumbents on major legislative issues involving a wide range of subjects. [Rev. Rul. 78-248, Situation 1]

- The organization usually publishes the voting records after the close of the legislative session, and the distribution is not geared to the timing of any election. [Rev. Rul. 80-282]

- The publication contains no editorial opinion, and its contents and structure do not imply approval or disapproval of any incumbents or their voting records. [Rev. Rul. 78-248, Situation 1]

- The publication presents the voting records of all incumbents, and it does not identify candidates for reelection. [Rev. Rul. 80-282]

- The format and content of the publication is not neutral because it reports on whether the incumbent supported the organization's views, but distribution occurs as soon as practical after the end of each legislative session, is limited to a relatively small group consisting of the organization's normal readership, is not targeted to particular areas in which elections are occurring , and is not timed to coincide with an election campaign. [Rev. Rul. 80 -282]

- The publication does not comment on an individual's overall qualification for public office, or compare candidates who might be competing with the incumbe nts in any political campaign. [Rev. Rul. 80-282]

b. Facts tending to show that the voting record activity is political campaign intervention :

- The publication contains a statement that endorses or rejects any incumbent as a candidate for public office, or identifies candidates for re-election and comments on their overall qualification for public office, or compares candidates that might be competing with incumbents in a political campaign, and the publication is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived from Rev. Rul. 80-282]

- The publication reports on the organization's views on selected legislative issues, indicates whether the incumbent supported or opposed the organization's view, and is widely distributed among the electorate during an election campaign or targeted toward particular areas in which elections are occurring. [derived both from Rev. Rul. 80-282 and Rev. Rul. 78-248, Situation 4]

- The publication covers a narrow range of issues selected for their importance to the organization, and it is widely distributed durin g an election campaign. [Rev. Rul. 78-248, Situation 4]

D. Legal References

- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 78-248, 1978-1 C.B. 154

Guide Sheet 2: Candidate Forums

The presentation of public forums or debates is a recognized method of edu cating the public. [Rev. Rul. 66–256] Providing a forum for candidates does not, in and of itself, constitute political campaign intervention. [Rev. Rul. 74 –574] However, a forum for candidates could be operated in a manner that would show a bias or pr eference for or against a particular candidate, such as through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute political campaign intervention. [Rev. Rul. 86–95] [also cited in Rev. Rul. 2007 -41]

Use this guide sheet only if the organization indicates that it may invite candidates for public office to speak at its events in their capacity as political candidates. This guide sheet will help you screen the organization's candidate forums for possible political campaign intervention, decide which candidate forums require further case developme nt and which facts to develop, and determine whether a particular candidate forum may be political campaign intervention.

Parts A and B present a specific set of facts in which candidate forums generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. Candidate forums generally are not political campaign intervention if :

The organization invites all candidates seeking the same office to participate at the same (or a substantially similar) event, provides each candidate an equal opportunity to address and field questions on a wide variety of topics , and does not comment on their qualifications or indicate a preference for any candidate. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)]

B. Candidate forums generally are political campaign intervention if:

The organization invites one candidate to speak at an organization event in support of the candidate's campaign and does not invite any other candidates for the same public office. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

C. Candidate Forums -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate forum is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate forum i s political campaign intervention. The legal references in Part D will help you make the determination. If your application contains

any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate forum is not political campaign intervention:

- The organization does not comment on the qualifications of, or indicate a preference for, any candidate during the event. [Rev. Rul. 2007 -41 (Candidate Appearances, Situation 7)]

- The topics discussed cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 7); Rev. Rul. 86-95]

- The organization does not indicate support for or opposition to a ca ndidate during the event (such as when the candidate is introduced). [Rev. Rul. 2007 -41 (Candidate Appearances, Situations 7 & 8)]

- The candidates at the event are not asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007 -41 (Candidate Appearances)]

- A nonpartisan, independent panel prepares any questions presented to candidates at the event. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- A nonpartisan, independent panel or moderator presents the questions. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86 -95]

- The moderator does not comment on questions or otherwise imply approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- The moderator states that the views expressed are those of the candidates and not of the organization, and that sponsorship of the forum is not intended as an endorsement of any candidate. [Rev. Rul. 86-95]

- The organization provides an equal opportunity for candidates to use its facilities to speak in support of their respective campaigns. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

2. Facts tending to show that a candidate forum is political campaign intervention:

- The organization comments on the qualifications of, or indicates a preference for, any candidate during the event. [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7)

- The topics discussed at the forum do not cover a broad range of the issues that the candidates would address if elected to the office sought and that are of broad interest to the public. [derived both from Rev. Rul. 2007-41 (Candidate Appearances, Situation 7) and Rev. Rul. 86-95]

- The organization indicates support for or opposition to a candidate during the event (such as when the candidate is introduced). [derived from Rev. Rul. 2007-41 (Candidate Appearances, Situations 7 & 8)]

- The candidates at the event are asked to agree or disagree with positions, agendas, platforms, or statements of the organization. [Rev. Rul. 2007 -41 (Candidate Appearances)]

- Questions to forum participants are not prepared and presented by a nonpartisan, independent panel. [Rev. Rul. 2007-41 (Candidate Appearances); derived from Rev. Rul. 86-95]

- The moderator comments on questions or otherwise implies approval or disapproval of a candidate. [Rev. Rul. 2007-41 (Candidate Appearances); Rev. Rul. 86-95]

- The moderator does not state that the views expressed are those of the candidates and not of the organization , or that sponsorship of the forum is not intended as an endorsement of any candidate . [derived from Rev. Rul. 86-95]

- The organization selectively provides an opportunity for one candidate (but not others) to use its facilities to speak in support of his or her campaign. [Rev. Rul. 2007-41 (Candidate Appearances, Situation 9)]

D. Legal References

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances, Situations 7-9)
- Rev. Rul. 86-95,1986-2 C.B. 73
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 66--256, 1966-2 C.B. 210

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Guide Sheet 3: Other Candidate Appearances

The question whether an activity constitutes political campaign intervention may arise in the context of a candidate appearance at an organization event. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may be involved with any candidate appearance. This guide sheet will help you screen any candidate appearances at organization events for possible political campaign intervention, decide which candidate appearances require further case development and which facts to develop, and determine whether a particular candidate appearance may be politi cal campaign intervention.

Parts A and B present a specific set of facts in which candidate appearances generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situation s. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

Consult **Guide Sheet 2: Candidate Forums** for assistance in evaluating whether inviting candidates for public office to speak at organization events in their capacity as political candidates may be political campaign intervention.

A. Candidate appearances generally are not political campaign intervention if either:

1. The organization invites the individual to speak solely for reasons other than his or her candidacy; neither the individual nor any repres entative of the organization mention the individual's candidacy or the upcoming election; and no political fundraising occurs at the event [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non -Candidate, Situation 11)]; or

2. The individual appears at an organization event only in a non-candidate capacity; the organization only acknowledges the individual's presence and his official title; and the organization makes no reference to the individual's candidacy or the upcoming election. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 10)]

B. Candidate appearances generally are political campaign intervention if:

The individual attends an organization's event that is open to the public; and an official of the organization asks the crowd to support the candidate in the upcoming election. [Rev. Rul. 2007-41, (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

C. Candidate Appearances -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a candidate appearance is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a candidate appearance is political campaign intervention. The legal references in Part D will help you make the deter mination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a candidate appearance is not political campaign intervention:

- The individual was invited to appear or speak at the organization's event for reasons other than his or her political candidacy. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]

- The individual attends or speaks only in a non-candidate capacity. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]

- The organization does not indicate any support for or opposition to the individual's candidacy (including introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-11)]

- No political fundraising or other campaign activity occurs at the event in connection with the candidate's attendance. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 11)]

- The organization makes no mention of the individual's political candidacy or the upcoming election in communications announcing the individual's attendance at the event. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

- The organization maintains a nonpartisan atmosphere at the event at which the candidate is present. [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

2. Facts tending to show that a candidate appearance is political campaign intervention:

- The organization indicates support for or oppos ition to the individual's candidacy (including during introductions). [Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situation 13)]

- There is political fundraising at the event, or other campaign activity occurs at the event in connection with the candidate's attendance. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate. Situation 11)]

- The organization maintains a partisan atmosphere on the premises or at the event where the candidate is present. [derived from Rev. Rul. 2007-41 (Candidate Appearances When Speaking or Participating as a Non-Candidate)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Candidate Appearances When Speaking or Participating as a Non-Candidate, Situations 10-13)

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Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention

Organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, issue advocacy may function as political campaign intervention. [Rev. Rul. 2007-41] Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement may engage in political campaign intervention if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name, but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention. [Rev. Rul. 2007 -41]

A web site is a form of communication. An organization that posts something on its w eb site that favors or opposes a candidate for public office will be treated the same as if it distributed printed materials, oral statements or broadcasts. When an organization establishes a link to another web site, it is responsible for the consequence s of establishing and maintaining that link, even if it does not have control over the content of the linked site. Links to candidate-related material, by themselves, do not necessarily result in political campaign intervention. All facts and circumstanc es must be taken into account when assessing whether a link produces that result. [Rev. Rul. 2007-41]

Use this guide sheet <u>only</u> if the organization indicates that its issue advocacy communications (including on its web site) may support or oppose a candidate for public office. This guide sheet will help you screen the organization's issue advocacy communications for possible political campaign intervention, decide which issue advocacy communications require further case development and which facts to develop, and determine whether a particular issue advocacy communication may be political campaign intervention.

Parts A and B present a specific set of facts in which issue advocacy communications generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains legal references.

A. <u>Issue advocacy communications generally are not political campaign intervention if:</u>

> The communication urges the public to contact an officeholder to support specific legislation, the statement appears immediately before the officeholder is scheduled to vote on that legislation, the statement does not mention the election or the candidacy of the office holder, and the issues that are the subject of the legislation have not been raised as distinguishing the officeholder from any election opponent. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]

B. Issue advocacy communications generally are political campaign intervention if:

The communication is delivered shortly before an election, identifies by name an officeholder who is also a candidate in that election, takes a position on an issue that has been used to distinguish the candidates in the election, is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue, and is not timed to coincide with a non-electoral event (such as a legislative vote or other major legislative action on the issue). [Rev. Rul. 2007-41 (Issue Advocacy, Situation15)]

C. Issue Advocacy Communications -- Facts to Consider and Develop

Below is a list of facts that tend to show whether an issue advocacy communication, including on a website, is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether an issue advocacy communication is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond th ose listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that issue advocacy communications are not political campaign intervention:

- The communication does not identify one or more candidates for a given public office by name or by other means. [Rev. Rul. 2007-41 (Issue Advocacy)]
- The communication does not address any issue that has been raised as an issue distinguishing candidates for a given office. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]
- The communication is timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue . [Rev. Rul. 2007-41 (Issue Advocacy, Situation 14)]
- The communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (Issue Advocacy)]
- The communication is not delivered close in time to an election [Rev. Rul. 2007-41 (Issue Advocacy)]
- The organization has not posted anything on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites)]

- The organization's web site does not provide a direct link to a web page that contains material favoring or opposing a candidate for pub lic office. [Rev. Rul. 2007-41 (Web Sites, Situation 20)]

- The organization's web site links to the website of another entity, the web site link serves an exempt purpose of the organization (such as educating the public), and neither the context for the link nor the relationship between the organization and the other entity indicates that the organization was favoring or opposing an y candidate. [Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]

- The organization establishes on its web site links to the official campaign web sites of all the candidates for a particular office and presents all of the links in a neutral, unbiased manner. [Rev. Rul. 2007-41 (Web Sites, Situation 19)]

2. Facts tending to show that issue advocacy communications are political campaign intervention:

- The communication identifies one or more candidates for a given public office by name or by other means, such as addressing an issue that has been raised as an issue distinguishing the candidates for that office. [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]

- The communication is delivered close in time to an election and is not timed to coincide with a non-electoral event such as a legislative vote or other major legislative action on the issue [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15]

- The communication is delivered close in time to an election and is not part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of an election [Rev. Rul. 2007-41 (Issue Advocacy, Situation 15)]

- The organization posts a message on its web site that favors or opposes a candidate for public office. [Rev. Rul. 2007-41 (Web Sites, Situation 21)]

- The organization's web site provides a direct link to a web page that contains material favoring or opposing a candidate for public office , and the web site link does not serve an exempt purpose of the organization, such as educ ating the public. [derived from Rev. Rul. 2007-41 (Web Sites, Situations 19-20)]

- The organization establishes a link to a candidate's official campaign web site and does not present the link in a neutral, unbiased manner or does not establish similar links for all of the candidates for a particular office. [derived from Rev. Rul. 2007-41 (Web Sites, Situation 19)]

D. Legal Reference

- Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Issue Advocacy, Situations 14-16; Web Sites, Situations 19-20)

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Guide Sheet 5: Individual Activity by Organization Leaders

The question whether an activity constitutes political campaign intervention may arise in the context of political campaign activities by any organization leader. [Rev. Rul. 2007-41]

Use this guide sheet only if any organization leader may engage in any political campaign activity. This guide sheet will help you screen the political campaign activity of any organization leader for possible political campaign intervention by the organization, decide which organization leader activities require further case development and which facts to develop, and determine whether a particular political campaign activity by any organization leader may be political campaign intervention by the organization.

Parts A and B present a specific set of facts in which political campaign activities by any organization leader generally are political campaign intervention by the organization and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

A. Political campaign activity by any organization leader generally is not political campaign intervention if:

The leader makes a statement in the leader's personal capacity supporting the election of a candidate for public office; the statement appears in a publication that is not an official publication of the organization; the organization pays none of the costs of the publication; and the publication states that the leader's title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41, Situation 3.]

B. Political campaign activity by any organization leader generally is political campaign intervention if:

The leader makes an oral statement to vote for a candidate for public office at an official meeting of the organization. [Rev. Rul. 2007-41 (Situation 6).

C. Political Campaign Activity by Organization Leaders -- Facts to Consider and Develop

Below is a list of facts that tend to show whether the political campaign activity by any organization leader is (or is not) political campaign intervention by the organization. Consider all the facts and circumstances. No one fact determines whether political campaign activity by any organization leader is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that political campaign activity by any organization leader is not political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office does not appear in an official publication of, or in a publication paid for by, the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]

- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

- The leader does not say that he is speaking as a representative of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

- The leader personally endorses a candidate in a publication that is not paid for by the organization and is not an official publication of the organization, and the publication states that her title and affiliation with the organization are provided for identification purposes only. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 3)]

- The leader does not make the statement in support of (or in opposition to) a candidate for public office at an official function of the organization or otherwise use the organization's assets, and the leader does not say that he is speaking on behalf of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

2. Facts tending to show that political campaign activity by any organization leader is political campaign intervention:

- The leader's statement in support of (or in opposition to) a candidate for public office appears in an official publication of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 4)]

- The leader makes the statement in support of (or in opposition to) a candidate for public office at an official function of the organization. [Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 6)]

- The organization pays for the publication of the leader's statement in support of (or in opposition to) a candidate for public office. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situations 3 & 5)]

- The leader makes the statement in support of (or in opposition to) a candidate for public office at an event that is not an official function of the organization, and the

leader states that she is speaking on behalf of the organization. [derived from Rev. Rul. 2007-41 (Individual Activity by Organization Leaders, Situation 5)]

D. Legal Reference

Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Individual Activity by Organization Leaders, Situations 3-6)

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Guide Sheet 6: Business Activities

The question whether an activity constitutes political campaign intervention may arise in the context of a business activity of the organization, such as the selling or renti ng of mailing lists, the leasing of office space, or the acceptance of paid political advertising. [Rev. Rul. 2007-41]

Use this guide sheet only if the organization indicates that it may engage in business activities with any candidate for public offi ce. This guide sheet will help you screen the organization's business activities for possible political campaign intervention, decide which business activities require further case development and which facts to develop, and determine whether a particular business activity may be political campaign intervention.

Parts A and B present a specific set of facts in which business activities generally are political campaign intervention and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, political campaign intervention. Part D contains a legal reference.

A. Business activities with candidates generally are not political campaign intervention if:

> The organization sells or rents goods, services, or facilities to the general public, it makes them available to all candidates in the same election on an equal basis, and the fees charged to candidates are at the organization's customary and usual rates. [Rev Rul. 2007-41 (Business Activity, Situation 17)]

B. Business activities with candidates generally are political campaign intervention if:

> The organization does not normally sell or rent goods, services or facilities to the general public, but does so selectively to a candidate for public office, and it does not make its goods, services or facilities available on an equal basis to the other candidates in the same election. [Rev Rul. 2007-41 (Business Activity, Situation 18)]

C. Business Activities – Facts to Consider and Develop

Below is a list of facts that tend to show whether a business activity is (or is not) political campaign intervention. Consider all the facts and circumstances. No one fact determines whether a business activity is political campaign intervention. The legal reference in Part D will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a business activity is not political campaign intervention:

   - The business activity is an ongoing activity of the organization. [Rev. Rul. 2007 -41 (Business Activity, Situation 17)]

   - The organization makes the good, service or facility available to the general public. [Rev. Rul. 2007-41 (Business Activity, Situation 17)]

   - The organization makes the good, service, or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity))]

   - The organization charges all candidates in the same election its usual and customary rates for the good, service, or facility. [Rev. Rul. 2007-41 (Business Activity)]

2. Facts tending to show that a business activity is political campaign intervention:

   - The organization only provides the good, service or facility to a political candidate. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]

   - The organization does not make the good, service or facility available to all candidates in the same election. [Rev. Rul. 2007-41 (Business Activity, Situation 18)]

   - The organization does not make the good, service or facility available to all candidates in the same election on an equal basis. [Rev. Rul. 2007-41 (Business Activity)]

   - The organization does not charge all candidates in the same election its usual and customary rates for the good, service or facility. [Rev. Rul. 2007-41 (Business Activity)]

D. Legal Reference

   - Rev. Rul. 2007-41, 2007-1 C.B. 1421 (Business Activity, Situations 17-18)

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Guide Sheet 7: Communications with the General Public on Legislative Issues (for Section 501(c)(3) Organizations Only)

The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude the organization from qualifying under section 501(c)(3). [§ 1.501(c)(3)-1(d)(2)] However, an organization does not qualify under section 501(c)(3) if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. [§ 1.501(c)(3)-1(c)(3)]

An organization also does not qualify for exemption under section 501(c)(3) if its primary objective may be attained only by legislation (or a defeat of proposed legislation) and it advocates for the attainment of such objective, as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. [§ 1.501(c)(3)-1(c)(3); Rev. Rul. 64-195]

Use this guide sheet <u>only</u> if the organization indicates that it may communicate with the general public on legislative issues. This guide sheet will help you screen the organization's communications with the general public on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with the general public on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

Consult **Guide Sheet 4: Issue Advocacy vs. Political Campaign Intervention** for assistance in evaluating whether a communication on legislative issues functions as political campaign intervention.

A. <u>Communications with the general public generally are not lobbying if either</u>:

1. The communication does not advocate the adoption or rejection of legislation or urge the public to contact one or more legislators to propose, support, or oppose legislation; and the organization's primary objective can be attained other than by the enactment or defeat of legislation. [§ 1.501(c)(3)-1(c)(3)(ii), (iv)] <u>or</u>

2. The organization conducts nonpartisan analysis, study, and research to develop solutions for problems affecting a particular region and publishes the results for the benefit of the public, and does not advocate the adoption of any legislation or legislative action to implement its findings. [Rev. Rul. 70-79]

B. Communications with the general public generally are lobbying if :

The communication urges members of the general public to contact legislators to support or oppose legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

C. Communication with the general public -- Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with the general public on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with the general public is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with the general public is not lobbying :

- The communication does not advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 64-195; Rev. Rul. 70-79]
- The communication does not urge the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization . [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with the general public is lobbying:

- The communication advocates the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The communication urges the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]
- The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

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Guide Sheet 8: Communications with Government Officials on Legislative Issues (for Section 501(c)(3) Organizations Only)

An organization can communicate with government officials on legislative issues without engaging in lobbying. For example, an organization is not engaged in lobbying activity if, at the request of a legislative committee, a representative testifies as an expert witness on pending legislation affecting the organization. [Rev. Rul. 70-449] Similarly, an organization may seek to assist government officials in the study of problems by conducting nonpartisan analysis, study, and research into these problems and publishing the results for the benefit of the general public. Such activities may qualify as educational. However, an organization may be engaged in lobbying if it advocates the adoption of legislation to implement the organization's findings. [Rev. Rul. 70-79]

Use this guide sheet only if the organization indicates that it may communicate with government officials on legislative issues. This guide sheet will help you screen the organization's communications with government officials on legislative issues for possible lobbying, decide which communications require further case development and which facts to develop, and determine whether a particular communication may be lobbying.

Parts A and B present a specific set of facts in which communications with government officials on legislative issues generally are lobbying and generally are not. Part C contains a list of facts to consider and develop for all other situations. The facts are grouped by whether they tend to show, or tend not to show, lobbying. Parts D and E contain legal and other references.

A. Communications with government officials generally are not lobbying if:

1. At the request of a legislative committee, the organization sends a representative to provide expert testimony on pending legislation [Rev. Rul. 70-449]; or

2. The organization's activities are limited to studying, researching, and assembling materials necessary to evaluate legislation, and presenting an objective analysis of the legislation to those who are interested in the issue (both those who favor the legislation and those who oppose it) and to the general public. [Rev. Rul. 64-195]

B. Communications with government officials generally are lobbying if:

The organization contacts legislators to advocate the adoption or rejection of legislation. [§ 1.501(c)(3)-1(c)(3)(ii)].

C. Communications with government officials – Facts to Consider and Develop

Below is a list of facts that tend to show whether a communication with government officials on legislative issues is (or is not) lobbying. Consider all the facts and circumstances. No one fact determines whether a communication with government officials is lobbying. The legal and other references in Parts D and E will help you make the determination. If your application contains any facts beyond those listed below, or if you have questions on case development and applicable law, contact Exempt Organizations Technical.

1. Facts tending to show that a communication with government officials is not lobbying:

   - The communication is in response to a request for technical assistance from a governmental body, such as a Congressional committee. [Rev. Rul. 70-449]

   - The communication makes available to the general public the results of nonpartisan analysis, study, or research conducted by the organization. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 64-195, and Rev. Rul. 70-79]

   - The communication does not advocate the adoption or rejection of any legislation. [§ 1.501(c)(3)-1(c)(3)(iv); Rev. Rul. 64-195; Rev. Rul. 70-79]

2. Facts tending to show that a communication with government officials is lobbying:

   - The organization contacts members of a legislative body for the purpose of proposing, supporting, or opposing legislation. [§ 1.501(c)(3)-1(c)(3)(ii)]

   - The organization's primary objective can be attained only by the enactment (or defeat) of legislation, and the organization advocates for the attainment of that objective. [§ 1.501(c)(3)-1(c)(3)(iv), Rev. Rul. 62-71]

D. Legal References

- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) and (iv)
- Rev. Rul. 62-71, 1962-1 C.B. 85
- Rev. Rul. 64-195, 1964-2 C. B. 138
- Rev. Rul. 70-79, 1970-1 C.B. 127
- Rev. Rul. 70-449, 1970-2 C.B. 111

E. Other legal references

- Treas. Reg. § 56.4911-2 (public charities that have made the § 501(h) election only)
- Treas. Reg. § 53.4945-2 (private foundations only)

SFC 002874

From: Paz Holly O
Sent: Tuesday, April 24, 2012 2:02 PM
To: Kindell Judith E
Cc: Seto Michael C
Subject: Greetings from Cincinnati

Judy -- we've been reviewing the advocacy application files and talking to people. That's helped us identify what would be useful to know from the development letters. We are connecting what's reported in the application with questions asked in the letters, but we aren't looking at every letter. Since you have all the letters there, we are hoping you (with assistance) can review each one of them.

From the review, can you please create a list of what you consider to be the 5-10 most troubling questions, the name of each org that got those questions as well as the agent who sent the letter? I will cc Mike to let him know you will be asking for Susan's time now to help with this.

Thanks!

Holly

SFC 002875

From: Erin Kesler SFC
Sent: Wednesday, July 27, 2011 8:54 AM
To: Erin Kesler
Subject: IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center
Attachments: IRS PETITION JULY 27, 2011.pdf

July 27, 2011

Douglas H. Shulman
Commissioner, Internal Revenue Service
SFC

Dear Commissioner Shulman,

Enclosed is a petition for IRS rulemaking submitted by Democracy 21 and the Campaign Legal Center.

Sincerely,

/s/ Fred Wertheimer

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 <u>not</u> 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 <u>would be set up under a section of the tax code that allows its donors to remain anonymous if they so choose</u> (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 eongressional 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

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July 27, 2011

SFC 002895

20

IRS0000517196

From: Seto Michael C
Sent: Sunday, November 06, 2011 7:06 PM
To: Grodnitzky Steven
Cc: Lieber Theodore R
Subject: FW: Advocacy Orgs - Congressionals Coming! WE NEED TO MOVE ON THIS
Attachments: Advocacy Org Guidesheet 11-3-2011 (2).doc

From: Seto Michael C
Sent: Sunday, November 06, 2011 8:05 PM
To: Thomas Cindy M
Cc: Fish David L
Subject: RE: Advocacy Orgs Congressionals Coming! WE NEED TO MOVE ON THIS

Cindy,

I am attaching the draft document for you/staff to look at. When you are ready to give us feedback, let me know and I will set-up a meeting.

From: Fish David L
Sent: Sunday, November 06, 2011 7:31 PM
To: Seto Michael C; Thomas Cindy M
Subject: RE: Advocacy Orgs Congressionals Coming! WE NEED TO MOVE ON THIS

Based on feedback received, the document won't work in its present form. I think we need to work with Determs to make it a usable document.

Mike will check with Hilary on clarifying the cases that can be approved, etc.

From: Seto Michael C
Sent: Sunday, November 06, 2011 7:18 PM
To: Thomas Cindy M
Cc: Fish David L
Subject: RE: Advocacy Orgs Congressionals Coming! WE NEED TO MOVE ON THIS

This is the follow-up on my e-mail I sent to you a few minutes ago. I read through the list, and I like to have Hilary to make the list a bit more clear on which cases need to be developed, the type of development needed, whether a particular case can be approved without further development and whether the organization is not an advocacy organization (therefore not needed to be included on the list).

The check/guide sheet is with David, Tom Miller and Judy Kindell for review. I can send you a draft copy. Let me know. I think we may have to clear the check/guide sheet with Lois, but I will check with David.

From: Thomas Cindy M
Sent: Sunday, October 30, 2011 2:23 PM
To: Seto Michael C
Cc: Fish David L

SFC 002897

Subject: FW: Advocacy Orgs Congressionals Coming! WE NEED TO MOVE ON THIS
Importance: High

Mike,

It was my understanding from Holly that the cases were going to be put into buckets, i.e., those that can be approved as is, those that require additional development, and those that appear to be denials. Based on the email below from Hiliary, it sounds as though all of those with "General Advocacy" only can be approved as is. Is this your understanding? If so, we can go ahead and get those cases approved right away.

I'm not sure what the hold is on the document/guidance EOT is supposed to be providing for us, but I've received a phone call from an individual who was previously an EO Determinations specialist. He is working with one of these organizations (Cincinnati 912) and is threatening to go to his Congressional Office regarding this organization and others. That is only going to create even more work for us and we need to get letters out to these organizations ASAP,

Please let me know when we can expect to get the document from EOT. Thanks.

From: Goehausen Hilary
Sent: Wednesday, October 26, 2011 1:20 PM
To: Thomas Cindy M
Cc: Lieber Theodore R; Seto Michael C
Subject: FW: Advocacy Orgs Where Do We Stand?
Importance: High

Hi Cindy,

Below are comments that I made explaining some of my notations on the cases in Excel. My understanding from speaking with Mike was that I was to review the cases to determine whether the cases were clearly lobbying or engaging in political campaign activities, or if an organization was not engaged in either and therefore was simply engaging in general advocacy (educational/issue advocacy activities etc). Where I had concerns about whether the c3s and c4s were actually engaging in good c3/c4 activities – and not just making inflammatory, emotionally charged statements without any factual support or educational aspect to their activities – I made notes reflecting such. Where it simply states "general advocacy" or "general advocacy/legislative advocacy" (or lobbying), without comments, those organizations appeared to be fine (no development).

If you would like me to provide a definitive answer on what organizations can go Favorable, I can do that (these would be the cases where I noted "general advocacy." However, many appear to need more information (as noted in the comments in Excel).

-- I have marked asterisked (*) c3's that based on their Form 1023 and/or website are engaging in prohibited political campaign activities.
-- I use political activities/political campaign intervention/candidate election activities interchangeably to denote political activities.
-- While many of the c4 organizations appear to be engaging in general advocacy (issue advocacy/educational activities), many of these "social welfare activities" may need further development because their websites include substantial inflammatory/strong emotional rhetoric, articles, etc. that really do not appear to be educational in most or any aspect, provide any factual background for the viewpoints expressed, and therefore may not qualify as good c4 activities (promotion of social welfare, common good, etc.). Where there are questions relating to this and concerns about the activities (ie development would be needed), I have made comments.
-- Where I commented that a website needs to be verified means that the org didn't provide their website address on their Form 1023/1024 but I located it during a web search and it would need to be confirmed by the taxpayer.
-- Where I denoted the activity of the org as "general advocacy," this means I didn't find any indication the org was engaging in political activities or lobbying at all. However, as mentioned above in #3, I made additional notations on such organizations and whether they were even educational, issue advocacy, etc., or whether the activities appear to be propaganda, based on personal emotions, inflammatory, and without any or little factual basis for statements made (ie generally bad c3/c4 activities).

SFC 002898

If there are any questions, please let me know. Also, we are in the process of drafting the Advocacy Org Guidesheet and it is circulating for review among our group currently. I don't have a date on when we can get that to you, but will speak with Mike and Justin.

Thanks,
Hilary

Hilary Goehausen
Tax Law Specialist
Exempt Organizations
[redacted]
p [redacted]
f: [redacted]
[redacted].

From: Thomas Cindy M
Sent: Tuesday, October 25, 2011 7:17 PM
To: Lieber Theodore R; Seto Michael C
Subject: FW: Advocacy Orgs Where Do We Stand?
Importance: High

Ted/Mike,

Not 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?

Also, where do we stand with the document Justin Lowe or others from D.C. were putting together with lessons learned, suggested developmental questions fo r those applying under c3 and for those applying under c4, sample denial letter, etc.? 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? Thanks.

From: Lieber Theodore R
Sent: Monday, October 24, 2011 1:08 PM
To: Thomas Cindy M
Cc: Seto Michael C
Subject: Advocacy Orgs Cincinnati.xls

Attached are Hillary comments from the screened cases.

Advocacy Organizations Guide Sheet

Many different types of exempt organizations engage in advocacy in compliance with the applicable tax laws. However, it can be challenging to distinguish between permissible and impermissible types of advocacy; analyzing cases involving these issues is extremely fact-intensive.

This guide sheet aids agents working these cases in differentiating between types of advocacy, reminds them of the advocacy rules pertaining to various categories of exempt organizations, and provides a checklist of facts to gather and indicators of various types of advocacy.

PART 1: THREE TYPES OF ADVOCACY:

This guide sheet breaks down the broad concept of advocacy into three categories: political campaign intervention, lobbying, and general advocacy. They are defined as follows.

1) Political Campaign Intervention:

An organization engages in political campaign intervention when it participates or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This includes attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate.

2) Lobbying:

An organization engages in lobbying, or legislative activities, when it attempts to influence specific legislation by directly contacting members of a legislative body (federal, state, or local), or encouraging the public to contact those members, regarding that legislation. An organization also engages in lobbying when it encourages the public to take a position on a referendum. Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

3) General Advocacy:

An organization engages in general advocacy when it attempts to (1) influence public opinion on issues germane to the organization's exempt purposes, (2) influence non-legislative governing bodies (e.g., the executive branch, regulatory agencies), or (3) encourage voter participation through get out the vote drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy generally includes all other types of advocacy other than political campaign activity and lobbying.

Part 2: TYPES OF ADVOCACY ORGANIZATIONS:

The organizations that most commonly engage in advocacy are 501(c)(3), (4), (5), and (6) organizations and 527 organizations. Below are the rules governing which types of advocacy these organizations can engage in, along with a chart summarizing that information.

1) IRC 501(c)(3) organizations:

- Organizations described in 501(c)(3) are organized and operated exclusively for charitable, religious, educational, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals .
- They can engage in an insubstantial amount of lobbying.
- They are absolutely prohibited from engaging in any type of political campaign intervention.
- They can engage in an unlimited amount of general advocacy as long as it is educational.

2) IRC 501(c)(4) organizations:

- Social welfare organizations described in IRC 501(c)(4) are organized and operated exclusively for the promotion of social welfare, which involves promoting the common good and general welfare of people in the community.
- They can not be operated for profit.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(4) purposes; therefore political campaign activity, along with all other non-(c)(4) activities, cannot make up an organization's primary activities.
- They can engage in lobbying as their primary activity if their legislati ve activities are related to their specific exempt purposes.
- They can engage in an unlimited amount of general educational advocacy as long as the activities are related to their exempt purposes.

3) IRC 501(c)(5) organizations:

- Organizations described in IRC 501(c)(5) must be organized and operated for the purpose of bettering the conditions of those engaged in labor, agricultural, or horticultural pursuits.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is conducted with regard to issues that are related to their exempt purpose.

- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(5) purposes; therefore political campaign activity, along with all other non-(c)(5) activities, cannot make up an organization's primary activities.

4) **IRC 501(c)(6) organizations**:

- Business league organizations described in 501(c)(6) are associations of persons with a common business interest and their purposes must be to promote this common interest.
- They can not conduct a regular trade or business for profit.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is on issues related to their exempt purpose.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(6) purposes ; therefore political campaign activity, along with all other non-(c)(6) activities, cannot make up the organization's primary activity.

5) **IRC 527 organizations**:

- Political organizations described in 527 are organized and operated for the primary purpose of engaging in political campaign intervention, including influencing or attempting to influence the selection, nominat ion, 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.
- They can engage in an unlimited amount of political campaign intervention.
- They can engage in lobbying, but would be taxed on that activity.
- They can engage in general advocacy, but would be taxed on that activity.

	IRC 501(c)(3)	**IRC 501(c)(4), (c)(5), and (c)(6)**	**IRC 527**
Receive tax-deductible charitable contributions	**YES**	**NO**	**NO**
Engage in political campaign intervention	**NO**	**LIMITED; Must Not Constitute Primary Activity Of Organization**	**YES**
Engage in lobbying	**LIMITED;**	**YES;**	**LIMITED**

(i.e. legislative activity)	Must Not Be Substantial	Unlimited Amount If In Furtherance of Exempt Purposes	
Engage in general public advocacy not related to legislation or the election of candidates	YES; Permitted As An Educational Activity	YES; Unlimited Amount If In Furtherance of Exempt Purposes	LIMITED

Part 3: ADVOCACY INDICATORS:

Distinguishing between types of advocacy requires knowledge of all the pertinent facts and circumstances. Therefore, careful and full development of a case is often required to gather very specific facts. The following are facts about an organization's activities that can be helpful in distinguishing between different types of advocacy :

- What does the organization consider to be its exempt purpose(s)?
  - How much time is devoted to each purpose?
  - How many financial resources are devoted to each purpose?
  - In what order of importance does the organization consider its exempt purpose? From most important to least important?
- What are the sources of the organization's income?
- Does the organization engage in fundraising activities? If so, what are the specific details, including:
  - Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non -election year.
  - Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
  - How much of the organization's budget is spent on fundraising? Determine the sources of fundraising expenses.
- How does the organization use its income? Are there detailed break-downs of these expenses?
- How many employees does the organization have? How many volunteers?
  - Are employees full-time, part-time, or seasonal? Explain.
  - If employees are part-time, when did/do they work?
  - If employees are seasonal, during what season (months) did/do they work?
- How many employees and volunteers are/were devoted to each activity of the organization throughout the year?
- How many and what sort of resources are devoted to volunteer activities?
- Does the organization conduct educational events, discussion groups or similar events? If so, what are the specific details, including:
  - Copies of all materials distributed with regards to the event.
  - When have the events taken place or plan to take place?
  - How much of the organization's resources and budget are devoted to these activities? What is the breakdown of expenses?

- Does the organization publish or distribute materials or conduct other communications that are prepared by or reviewed b y another organization?
- Is the organization associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, describe in detail the nature of the relationship (s).
    - Does the organization work with those organization(s) regularly? Describe the nature of the contacts.
    - Do you share employees, volunteers, resources, office space, etc. with the organization(s)?
- Does the organization conduct candidate forums or other events at which candidates for public office are invited to speak? If so, what are the details, including the nature of the forums, the candidates invited to participate, the candidates that did participate, the issues discussed, the time and location of the event.
    - Are there copies of all materials distributed regarding the forum and provided at the forum, including any internet material discussing or advertising the forum?
- Have any candidates for public office spoken at a function of the organization? If so, what are the names of the candidates, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any spe eches given by the candidate(s)?
- Does the organization, or has it ever, conducted voter education activiti es, including voter registration drives, get out the vote drives, or publish or distribute voter guides? If so:
    - What is the location, date and time of the events.
    - Who on the organization's behalf has or will conduct the voter registration or get out the vote drives?
    - How many resources (funds/employees/volunteers) are devoted to the activity?
    - Are there copies of all materials published or distributed regarding the activities, including copies of any voter guides?
- Does the organization engage in business deal ings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list? If so, what is the relationship in detail and are there any contracts or other agreements documenting the business relationship?
- Does the organization attempt to influence the outcome of specific legislation ?
    - Are there copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation?
    - Does the organization conduct media advertisements lobbying for or against legislation? Are there copies of any radio, television, or internet advertisements relating to the organization's lobbying activities ?
    - Does the organization directly or ind irectly communicate with members of legislative bodies? If so, determine the amount and nature of the communication.

Below are indicators used when determining whether an IRC 501(c)(3), IRC 501(c)(4), (5) or (c)(6), or IRC 527 organization is engaging in (1) political campaign intervention, (2) lobbying (legislative activities), or (3) general advocacy.

Section I: Political Campaign Intervention

The following are indicators of political campaign intervention:

		Yes	No
A.	Is there a "candidate" for "public office?" This is an individual who: • Offers himself, or • Is proposed by others • As a contestant for elective public office, whether national, state, or local public office. An individual who has not yet announced an intent to seek election to public office may still be considered to have offered himself or herself as a candidate for office. Has the individual taken sufficient steps prior to announcing an intent to seek election, so that he or she may be considered to have offered himself or herself as a candidate for public office? Have others proposed the individual as a candidate for public office, even if the individual has announced an intention of not seeking election to the office? Some action must be taken to make one a candidate, but the action need not be taken by the candidate or require his consent. This would include statements in opposition to a candidate for office, even before that candidate has necessarily declared themselves as a contestant for office.		
B.	Is the candidate seeking an office to which he or she must be elected, as opposed to appointed? The political campaign intervention prohibition applies only to campaigns for offices to which a candidate must be elected. Factors indicating an elective public office include: • The position was created by statute • The position is continuous • The position is not contractual • The position is for a fixed term of office • The office requires an oath of office		
C.	Does the organization publish and/or distribute written or printed statements, including communications made on the internet, in favor of or against a candidate for public office? This includes material prepared by the organization itself or by other organizations or individuals. Do materials distributed by the organization encourage members to vote for or against a candidate?		
	Has the organization criticized or expressed support for a candidate on their website or through links to another website?		
	Has the organization made oral statements in support of or in opposition		

	to a candidate for public office?		
	Does the organization encourage individuals to vote for or against a particular candidate? Organizations are not prohibited from speaking about moral, social, or economic issues during election periods. However, consider the facts and circumstances to determine whether the organization is surreptitiously intervening in a political campaign under the pretext of speaking to moral, social or economic issues by tying its message to the election in a manner that expresses a preference for a candidate or candidate.		
	Does the organization reference a candidate by use of "code words" or other references to identify a candidate, such as "Republican," "Democrat," "pro-life," "pro-choice," etc.? • Are such references coupled with reasonably overt indications that the organization supports or opposes a particular candidate or candidates in an election? • Does the communication contain a relatively clear directive, based on the facts and circumstances, that enables the recipient to understand the organization's position on a candidate or candidate?		
	Has the organization established or does it operate a political action committee (PAC)?		
	Has the organization made contributions to a political action committee (PAC)?		
	Does the organization provide or solicit money or other support for a candidate or a political organization?		
	Does the organization place signs on its property supporting or opposing a candidate?		
	Does the organization rate candidates, even on a nonpartisan basis?		
	Have organization leaders made comments in an official publication of the organization or at official functions of the organization indicating support for or opposition to a candidate?		
	Does the organization conduct business dealings in a manner favoring a candidate or candidates, such as by renting facilities at different rates or providing/denying access to its membership list?		
D.	**Personal Endorsements:** Organization leaders may endorse or oppose a candidate in their personal capacity, and not in their official capacity. The following are indicators that the organization leader is speaking in his or her personal capacity and not in their official capacity: • Do the organization leader's statements appear in a publication that is not an official publication of the organization? • Is the ad or publication paid for by the individual himself or herself, and not by the organization? • Is the organization leader's title and affiliation with the organization used for identification purposes only, and not to		

	indicate support by the organization?		
E.	**Candidate Forums:** The presentation of public forums for candidates to speak or debate is not in and of itself prohibited political campaign intervention, but may be a permissible method of educating the public (See Rev. Rul. 66-256; Rev. Rul. 74-574; Rev. Rul. 86-95). All the facts and circumstances must be considered and the presence or absence of one factor is not determinative. Consider the following factors when determining whether the forum is operated in a manner that may constitute prohibited campaign intervention or a permissible educational event: • Does the organization operate the forum in a manner indicating bias or preference for one candidate or candid ates over others, such as through biased questioning? • Has the organization indicated support for or opposition to a candidate (e.g., such as when the candidate is introduced)? • Does the organization invite only candidates who share the same position as the organization to participate? • Does the organization provide an equal opportunity for all candidates to participate? • Does the organization provide equal amounts of time for each candidate to answer questions and express their views? • Are questions prepared and presented by a nonpartisan, independent panel or moderator? • Does the moderator comment on questions or otherwise make comments that imply approval or disapproval of a candidate? • Does the organization make statements that the views expressed are those of the candidates and not of the organization, and/or that the organization does not endorse any candidate or viewpoint? • Do the topics discussed cover a broad range of issues that are of interest to the public? • Are the candidates asked to agree or disagree with positions, agendas, platforms, or statements of the organization, indicating prohibited campaign intervention?		
F.	**Candidate Appearances:** Has a candidate spoken at an official function of the organization in his or her personal capacity or capacity as a political candidate? Depending on the facts and circumstances an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status (See Rev. Rul. 2007-41). When determining if prohibited political campaign intervention occurred, consider the following: • Was the candidate invited to speak at the organization's event in his or her capacity as a political candidate? • Did the organization provide an equal opportunity to participate to political candidates seeking the same office? (Consider the nature of the event, such as if the organization invites one		

	candidate to speak at a well attended event but invites an opposing candidate to speak at a sparsely attended event. This could constitute prohibited campaign intervention even if the manner of presentation for both speakers is otherwise neutral.) • Did the organization indicate support for or opposition to the candidate (including during candidate introductions, communications concerning the candidate's attendance, including any materials distributed during the event)? • Did any political fundraising occur?		
G.	Did the candidate appear or speak at an organization event in a **non-candidate capacity?** (See Rev. Rul. 2007-41) The candidate's presence at a public event, such as a lecture, concert, or worship service does not by itself indicate the organization is engaged in prohibited political campaign intervention. The following factors should be considered when determining if prohibited political intervention occurred: • Is the candidate publicly recognized by the organization or a representative of the organization during the event as a candidate for public office? • Did the organization clearly indicate the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in any communications announcing the candidate's attendance at the event? • Is the individual chosen to speak solely for reasons other than his or her candidacy, such as their status as a public figure aside from being a political candidate, the individual currently holds or previously held a public office, is considered an expert in a non-political field, is a celebrity, or has led a distinguished military, legal or public service career. • Has any campaign activity occurred in connection with the candidate's attendance?		
H.	**Voter Guides:** Certain "voter education" activities conducted in a non-partisan manner may not constitute prohibited political campaign activity, but may be permissible educational activity. The following are indicators that a voter guide constitutes prohibited political campaign activity, and not permissible educational activity: • Are incumbents identified as candidates for re-election? • Are incumbents' positions compared to the positions of other candidates or the organization's position in a biased manner? • Is the voting guide distributed close in time to an election? • Is the voting guide primarily concerned with a narrow range of issues of importance to the organization (e.g. such as land conservation or abortion) as opposed to reporting on all legislation voted on by the candidates or of importance to the electorate?		

	• Is the voting guide widely distributed among the electorate during an election campaign as opposed to the organization's membership? • Does the voting guide include only the voting records of candidates for office? • Does the voting guide include the voting records of candidates in a partisan manner, such as by ranking them according to whether their vote aligns with the organization's position on the issue? • Does the voting guide contain editorial comments by the organization? • Does the voting guide contain express or implied approval or disapproval of a candidate's voting record?		
I.	**Candidate Questionnaires**: Depending on the facts and circumstances a candidate questionnaire published by an organization may constitute permissible educational activity as opposed to prohibited political campaign intervention. The following are indicators that the organization's questionnaires constitute prohibited campaign intervention: • Does the candidate questionnaire contain editorial comments by the organization? • Does the candidate questionnaire include only issues of importance to the organization itself and not to the general public? • Does the questionnaire contain express or implied approval or disapproval of candidate responses?		

Section II: Lobbying

The following factors are indicative of lobbying (i.e. legislative activities):

		Yes	No
A.	Is the organization attempting to influence legislation or a legislative proposal? • Legislation includes acts, bills, resolutions, referendums, initiatives, legislative confirmation of an appointive office, constitutional amendments by Congress, state legislatures, local councils or similar governing bodies or by the public in a referendum, initiative, constitutional amendment or similar procedure. • Lobbying does not include attempts to influence (1) regulations or (2) administrative matters.		
B.	Is there "action" being taken with reference to the legislation? • Action includes introduction, amendment, enactment, defeat, or repeal by legislative bodies or the public.		

C.	Does the organization engage in "direct lobbying?" • Is the organization trying to influence legislation by directly contacting members or employees of a legislative body? • Does the organization communicate with government officials or employees who can affect legislation? • Do the communications refer to specific legislation? • Do the communications reflect the organization's specific views on legislation? • Does the organization advocate a position on a specific act, bill, or resolution?		
D.	Does the organization engage in "indirect" or "grassroots" lobbying: • Does the organization attempt to influence legislation by influencing the public's opinion on specific legislation? • Does the communication refer to specific legislation? • Does the communication reflect a view or position on the legislation? • Does the communication to the public include a "call to action" such as providing the address for the legislature, using a petition or tear-off postcard to communicate with the legislature or specifically identifying a legislator who will be voting on the proposed legislation and his or her position on it, or encouraging the public to contact members of a legislative body for purposes of supporting, opposing or proposing legislation?		

Section III: General Advocacy

The following are indicators of general advocacy:

		Yes	No
A.	• Is the organization attempting to influence public opinion on issues, rather than attempting to influence the election of candidates for public office or specific legislation? • Is the organization attempting to influence non-legislative governing bodies (e.g., the executive branch, regulators)? • Is the organization engaging in nonpartisan, neutral voter educational activities? These may include get out the vote drives, encouraging voter registration, encouraging voter participation, candidate debates and forums, and the distribution of voter guides if conducted in a nonpartisan and neutral manner. (Refer to the subheads above for criteria when considering whether these voter education activities are conducted in a nonpartisan manner.)		
B.	Does the organization engage in "educational" activities? (See Rev. Proc. 86-43). The term "educational" relates to: • The instruction or training of an individual for the purpose of		

	improving or developing his capabilities, or • The instruction of the public on subjects useful to the individual and beneficial to the community.		
	Is the organization advocating a particular position or viewpoint ? If "Yes" to the following, the activity may qualify as permissible educational activity: • Does the organization present a sufficiently full and fair exposition of the pertinent facts that aid the listener or reader in the learning process? • Does the organization provide a factual background for the viewpoint or position being advocated?		
C.	The organization's presentations should avoid the following factors in order to be considered educational: • Do the organization's presentations avoid expressing conclusions more on the basis of strong emotional feelings than of objective evaluations? • Does the organization avoid presenting viewpoints or positions unsupported by facts and this is a significant portion of the organization's communications? • Does the organization avoid presenting facts purporting to support its viewpoints or position made in a distorted manner?. • Does the organization avoid making substantial use of inflammatory and/or disparaging terms?		

From: Light Sharon P
Sent: Thursday, May 30, 2013 9:03 PM
To: Megosh Andy
Subject: FW: 501(c)(4) Draft Denial 3-29-13.counsel.sg.spl.v.3
Attachments: CROS420253047-501(c)(4) Draft Denial.doc; CROS420253047-Analysis.xls

---

From: Herr Joseph R
Sent: Thursday, May 30, 2013 3:37 PM
To: Light Sharon P
Subject: RE: 501(c)(4) Draft Denial 3 29 13.counsel.sg.spl.v.3

Sharon,

Attached is working draft of the Crossroads denial. I want to emphasis "draft" because I believe there will some additional back and forth on my version. With comments on the document, I have embedded several questions regarding how I have drafted the letter. I also want to bring to your attention a couple of large assumptions I ha ve incorporated into the denial. We will certainly want to discuss the assumptions and their handling.

- As we have discussed with Andy, exemption under (c)(4) is a yearly test. For this denial, I have only considered activity in 2010.
- I have also assumed "candidacy" is general public information, which can be assumed in the facts.

I have also attached a spreadsheet, which I used to analyze the advocacy communications.

I am interested in hearing your feedback.

Joseph

Joseph R. Herr
Revenue Agent Group 7824
Exempt Organizations Determinations
SFC [redacted] fax

From: Light Sharon P
Sent: Tuesday, April 09, 2013 12:35 PM
To: Herr Joseph R
Subject: FW: 501(c)(4) Draft Denial 3 29 13.counsel.sg.spl.v.3

Joseph this version will go back to counsel for one last look, but Andy and I think it is very close to done so we wanted to get it back to you for reference as you work on GPS. The comments you see may not make so much sense because they explain earlier comments and conversations with Counsel. I didn't delete them, though, because maybe you'll find them helpful anyway.

We've used categories of ads here, and that should help with GPS. Andy thinks they are similar situations.

One thought you mentioned using the FEC reports. We can only include what's in the administrative record. Andy said he thinks GPS disclosed the FEC reporting in the application submissions so we can reference that, but we can't use

specifics from the reports themsel ves unless they are also in the record. In the attached denial, we use data from the Form 990, but that counts as in the record since it was submitted to the IRS.

Thanks,
Sharon

From: Light Sharon P
Sent: Monday, April 08, 2013 1:17 PM
To: Megosh Andy; Grodnitzky Steven; Paz Holly O
Subject: 501(c)(4) Draft Denial 3 29 13.counsel.sg.spl.v.3

I've slid a copy under your door or put it in your chair.

This version includes changes based on Counsel's comments, Steve's changes and comments, and my convers ation with Andy and Holly on Friday. I'm not showing changes because that's too messy. Instead, I inserted comments to explain where things have changed (or not) and why.

Once we're done, it goes to counsel to see if they are comfortable with it. Holly do you want to set a deadline for sending it counsel?

Thanks!

From: Herr Joseph R
Sent: Friday, February 17, 2012 6:44 AM
To: Bowling Steven F; Seok Stephen D
Subject: FW: EO Tax Journal 2012-31

Crossroads GPS in the news again

Joseph R. Herr
Revenue Agent Group 7821
Exempt Organizations Determinations
SFC
SFC fax

From: paul streckfu SFC
Sent: Friday, February 17, 2012 5:58 AM
To: paul streckfus
Subject: EO Tax Journal 2012 31

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2012-31 (Friday, February 17, 2012)
Copyright 2012 Paul Streckfus

1 - The *EOTJ* Mailbag

2 - Abuse of (c)(3)s on IRS's Dirty Dozen List

3 - Seven Democratic Senators Ask Whether IRS Investigating Political (c)(4)s

4 - IRS Releases Updated Rules for IRS Communications with Appeals Office

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1 - The *EOTJ* Mailbag

a - Comments of Nancy Marx

Paul, thank you for sending [yesterday] the Panel's outline, "Practical Problems and Practical Solutions for Donor Advised Funds." I have been giving the issue of DAFs and pledges some thought to see if there might be a way to regulate around some legitimate concer ns without having to prohibit the satisfaction of pledges entirely as was done in the case of foundations. Following are my initial thoughts on DAFs and pledges.

1. It would be really nice if pledges could be satisfied from DAFs. It would make charitable giving simpler and encourage donors to make binding pledges.

2. If the individual who funded the DAF is the individual making the pledge, is there any compelling reason to prohibit a grant from the DAF being accepted by a charity in satisfaction of a pl edge made by that individual?

At least to the extent that the historic dollar value of the individual's contributions to the DAF exceeds the amount of that individual's pledges satisfied by DAF grants, there does not appear to be any benefit to the individual. However, if the pledges satisfied exceed the historic dollar value of the individual's contributions to the DAF, then there could be a concern that the individual was using a tax -exempt entity's income to satisfy a personal obligation -- notwithstanding that the obligation is owed to another charity.

3. If the individual who made the pledge is not the individual who contributed to the DAF, satisfying the pledge from the DAF raises other concerns. For example -- When I give my son funds that he uses to pay his pledge to his school, I make a taxable gift to my son, my son makes a charitable gift, and my son receives an income tax deduction. If instead I pay my son's pledge for him, the result is the same -- I make a taxable gift to my son and my son receives an income tax deduction. If instead I fund a DAF and recommend that a grant be made from the DAF that will be used to satisfy my son's pledge to his school, I receive an income tax deduction for funding the DAF, but I avoid making a taxable gift.

4. Similarly, if after funding a DAF, I die and my son becomes the advisor, there is no benefit to my son if he makes a pledge and the DAF satisfies it -- as long as the pledges satisfied were made after my death. To the extent the DAF can be used to sati sfy pledges that my son made prior to my death, it is arguable that estate tax has been avoided if the DAF is used to satisfy the pledges my son made prior to my death.

5. If we allow the contributor's pledges to be satisfied from the DAF during the contr ibutor's life, should we also allow the contributor's pledges outstanding at death to be satisfied with grants made from the DAF? If we do, then do we need to include the DAFs in the contributor's estate at least to the extent of the total of the contributor's outstanding pledges? What if the executor is not the advisor of the DAF or of all the DAFs funded by the contributor? What if the contributor is not the only contributor to a DAF? Can we allow a DAF grant to satisfy the contributor's outstanding pledg es without including the DAF in the contributor's estate? If so, then presumably there is an estate tax deduction only if the estate pays the pledges, but not if the pledges are satisfied by grants made from the DAF.

6. When there are multiple contributor s to a DAF, will each be allowed to have his/her pledges satisfied to the extent of his/her contributions? Who will be responsible for keeping track of contributions received and applied in satisfaction of pledges -- the sponsoring organization, the adviso r, the contributor (who might not be the advisor)?

7. What happens when a business funds a DAF and recommends a grant that satisfies an officer's or other employee's pledge obligation? Does the officer / employee have taxable compensation?

8. The sponsoring organization could permit pledges to be made if the advisor certifies that (i) the grant does not satisfy anyone's legally binding pledge, or (ii) the grant does not satisfy the legally binding pledge of any person or entity other than sole contributor to the DAF, or (iii) the contributions made to the DAF by the individual or entity whose pledge is being satisfied by the recommended grant, and not previously applied to pledges made by that individual or entity, equal or exceed the amount of the current pledge being satisfied.

Best regards,

Nancy Marx
Cummings & Lockwood LLC
Stamford, Connecticut

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b - Comments of Sarah Harlan

Paul, in regard to Elaine Waterhouse Wilson's remarks that appeared Wednesday [email update 2012 -29] under "This is why I hate fiscal sponsorships," I'd like to add to her statement that "I really think that this [fiscal sponsorship] is an area ripe for some study and some educational outreach to the nonprofit sector."

An educational effort has been done and made available for some time in a short book titled *Fiscal Sponsorship: 6 Ways To Do It Right,* now in its 2005 Second Edition, by Greg Colvin of Adler & Colvin, San Francisco. It is available in hard bound and paper cover versions from Study Center Pre ss, telephone: 1-888-281-3757 or e-mail: *info@studycenter.org*.

Ever since its First Edition, and now in its Second Edition, I buy this book six to ten copies at a time and give it to my tax-exempt clients who either want to be a fiscal sponsor or want to be so sponsored. It is written in every-day language, not "legalese," and is only 108 pages in the Second Edi tion, which describes three hypothetical situations and six "models" of fiscal sponsorship that represent legal ways in which a project can derive some benefit from a relationship with a sponsor. The book then applies the models to the three hypothetical situations.

The six models are summarized in a two -page chart with the following information summarized in columns for each "model," with column headings as follows:

• Base characteristics
• Is project legal entity?
• Basic relationship (employer/employee ; project contract; grantor/grantee; subordinate/affiliate; management contract, etc.)
• Charitable donations belong to
• Sponsor's liability to third parties
• Ownership of results
• Payments shown on IRS returns filed by Sponsor
• Payments shown on IRS returns filed by Project
• Comments

A seventh model is at the bottom of this two -page chart, called model X - Payments "for the use of" sponsor. The book says "Model X ... is a concept derived from a 1990 U.S. Supreme Court decision involving Mormon missionaries. The ruling appears to allow donors to make deductible contributions not directly to a charity sponsor, but to a separate account set up by the project in trust for the sponsor."

I can't recommend this book highly enough to any organization which w ishes to learn the possibilities for legally effective fiscal sponsorship programs -- and what to avoid in so doing.

Regards,

Sarah Harlan
Lake Oswego, Oregon

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2 - 'Abuse of Charitable Organizations and Deductions' on IRS List of ' Dirty Dozen Tax Scams for 2012'

The IRS yesterday released its annual "Dirty Dozen" ranking of tax scams (see IR -2012-23). Here's Number 10 on the list:

Abuse of Charitable Organizations and Deductions

IRS examiners continue to uncover the intentional abuse of 501(c)(3) organizations, including arrangements that improperly shield income or assets from taxation and attempts by donors to maintain control over donated assets or the income from donated property. The IRS is investigating schemes that involve the donation of non-cash assets -- including situations in which several organizations claim the full value of the same non -cash contribution. Often these donations are highly overvalued or the organization receiving the donation promises that the donor can repurchase the items later at a price set by the donor. The Pension Protection Act of 2006 imposed increased penalties for inaccurate appraisals and set new standards for qualified appraisals.

Editor's Note: For a somewhat related story, see "IRS Levie s Fine on Food for the Hungry over Drug Valuations," *The Chronicle of Philanthropy,* Feb. 9, 2012.

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3 - Seven Democratic Senators Ask Whether IRS Investigating Political (c)(4)s

February 16, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
SFC [redacted]

Dear Commissioner Shulman:

We write to inquire if the Internal Revenue Service ("IRS") is investigating or intends to investigate whether groups designated as "social welfare" organizations, and thus receiving tax and other advantages under section 501(c)(4) of the Internal Revenue Code (IRC), 26 U.S.C. § 501(c)(4), are improperly engaged in a substantial or even a predominant amount of campaign activity. I n section 501(c)(4), Congress created a tax preference for social welfare organizations because the nation benefits greatly from their social welfare activities. It is contrary to the letter and the spirit of the statute for political organizations formed primarily to advocate for a political candidate or to run attack ads against other candidates to take advantage of section 501(c)(4).

Under the IRC and IRS regulations, section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare to obtain tax-exempt status. Section 501(c)(4) establishes tax -exempt status for nonprofits "operated exclusively for the promotion of social welfare. . . ." 26 U.S.C. § 501(c)(4). IRS regulations state that a nonprofit operates "exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare for the people of the community." 26 U.S.C. § 501(c)(4), 26 C.F.R. § 1.501(c)(4) -1(a)(2)(i). The regulations require that a social welfare organization "is one which is operated primarily for the purpose of bringing about civic betterments and social improvements." *Id.*

Even more to the point is what the regulations say about campaign activities: "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." *Id.* § 1.501(c)(4)-1(a)(2)(ii). This standard is clear, and it appears to preclude the formation of 501(c)(4) organizations for campaign -related purposes.

Courts have interpreted section 501(c)(4) to prohibit a group organized under that section from engaging in more than an insubstantial amount of campaign activity. Courts have consistently found that the presence of a single substantial non-exempt purpose precludes exempt status, regardless of the number or importance of the

exempt purposes. *See Contracting Plumbers Coop. Restor. Corp. v. U.S.,* 488 F.2d 684, 686 (2d Cir. 1973); *see also American Ass'n of Christian Sch. Vol. Emp. v. U.S.,* 850 F.2d 1510, 1516 (11th Cir. 1988). The IRS is tasked with applying this strict statutory interpretation of 501(c)(4) by the courts.

IRS regulations, however, appear more permissive than the statute as interpreted by th e courts. For example, the IRS authorizes section 501(c)(4) social welfare organizations to engage in federal election activities, including electioneering communications, as long as such activities do not constitute the "primary" activity of the organization. 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i). Some political organizations argue that section 501(c)(4) organizations can spend up to forty-nine percent of their total expenditures on campaign activities without such activities constituting the "primary" activi ty of the organization. While this forty-nine percent threshold appears to violate the language of the statute and the subsequent interpretation of several courts, we are concerned that some political organizations may still be violating this exceptionally high threshold.

We are aware that nonprofit organizations have filed a petition for rulemaking with the IRS to revise existing regulations governing whether an organization that intervenes or participates in elections is entitled to obtain or maintain an exemption from taxation under section 501(c)(4). We urge you to investigate these allegations and to seriously consider launching a rulemaking to prevent this type of abuse of the tax code.

We urge you to protect legitimate section 501(c)(4) entities b y preventing non-conforming organizations that are focused on federal election activities from abusing the tax code. We thank you for your prompt attention to this matter and look forward to your response.

Sincerely,

/s/ Michael F. Bennet
U.S. Senator

/s/ Al Franken
U.S. Senator

/s/ Jeff Merkley
U.S. Senator

/s/ Charles E. Schumer
U.S. Senator

/s/ Jeanne Shaheen
U.S. Senator

/s/ Tom Udall
U.S. Senator

/s/ Sheldon Whitehouse
U.S. Senator

Dems Target Nonprofits, Cite Karl Rove
By Dave Levinthal, *Politico,* Feb. 16, 2012

Seven Democratic senators Thursday called on the Internal Revenue Service to investigate -- or acknowledge that it's currently investigating -- nonprofit, "social welfare" organizations heavily engaged in political activities

this election cycle, specifically citing a group run by Karl Rove.

The senators' letter [reprinted above] comes as a small number of such groups, known as 501(c)(4) organizations in IRS parlance, have pumped tens o f millions of dollars into political communications since the 2010 election cycle, when the Supreme Court's *Citizens United v. Federal Election Commission* decision loosened restrictions on how such groups may raise and spend money during elections.

"It is contrary to the letter and the spirit of the statute for political organizations formed primarily to advocate for a political candidate or to run attack ads against other candidates to take advantage of section 501(c)(4)," the senators wrote this afternoo n. "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."

The signatories are Sens. Michael Bennet (D -Colo.), Al Franken (D-Minn.), Chuck Schumer (D -N.Y.), Sheldon Whitehouse (D-R.I.), Jeff Merkley (D -Ore.), Jeanne Shaheen (D -N.H.) and Tom Udall (D -N.M.). No Republicans participated in the letter, which does not recommend specific nonprofit groups to investigate.

But a related joint statement by the senators' staffs refers to Rove, a Republican political operative and Fox News commentator by name, alluding to the Crossroads GPS nonprofit organization he helped establish as existing "to elect and defeat specific political can didates." It continues: "Elections operations such as Mr. Rove's should not be allowed to masquerade as charities to take advantage of their tax -exempt status and hide their donors from the public. It's the IRS's job to enforce the tax code and make sure t hat 'social welfare' organizations are what they say they are."

Crossroads GPS spokesman Jonathan Collegio appeared nonplussed with the senators' letter, musing, "We're referring all calls on this matter to Barack Obama's super PAC and 501(c)(4)." Two for mer Obama staffers, Bill Burton and Sean Sweeney, operate Priorities USA Action, a super PAC, and Priorities USA, a related nonprofit. The Priorities USA groups, which Obama last week personally endorsed, have been struggling to compete with the fundraising juggernaut of Crossroads GPS and sister super PAC American Crossroads, which has set a fundraising goal of $300 million for itself this cycle.

Dan Watson, Udall's spokesman, says the senators' request to the IRS isn't directed at conservative organizations -- or any group in particular. "It's definitely covering all groups. We will definitely not be targeting one party or another," Watson said. "The request is across the board."

The IRS has to date been reluctant to investigate, or at least publicly ack nowledge investigating, political activity by 501(c)(4) organizations. Last year, it initiated, then quickly ended, an investigation into donations made to such groups. An IRS spokesperson could not immediately be reached for comment.

By law, 501(c)(4) groups may engage in political activities so long as politics are not their primary purpose, although campaign reform groups and congressmen alike have previously argued that groups are running afoul of those regulations. Unlike super PACs, which may also ra ise and spend unlimited funds on political communications, politically active nonprofits do not have to publicly disclose their donors.

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4 - IRS Releases Updated Rules for IRS Communications with Appeals Office

IRS News Release, February 15, 2012

WASHINGTON -- The Internal Revenue Service today updated existing rules on permissible communications between the Office of Appeals and other parts of the IRS. The updated rules are in Revenue Procedure 2012 -18, posted today on *IRS.gov.*

The updates are necessary because the IRS has made changes to some of its business practices and adopted new ones since the existing rules were issued in October 2000. These rules address *ex parte* communications, which are communications between the Office o f Appeals and other parts of the IRS that take place without the taxpayer or the taxpayer's representative being given an opportunity to participate in the communication.

These rules implement a provision in the IRS Restructuring and Reform Act of 1998, a imed at ensuring that the Office of Appeals remains an independent and flexible vehicle for settling audit and collection -related disputes between taxpayers and the IRS. A part of IRS, but independent of the agency's compliance functions, Appeals serves as one of the checks and balances built into the U.S. system of tax administration.

"Our mission is to impartially resolve tax disputes, without litigation, in a way that is fair to both the taxpayer and the government," said Chris Wagner, IRS Chief, Appeal s. "Independence is the cornerstone of Appeals, and we believe these new *ex parte* rules will help us carry out our mission more effectively by providing everyone involved with the clear and consistent guidance they need."

IRS Chief Counsel William Wilkins added, "I am pleased that the revenue procedure provides safeguards and procedures to preserve independence, while still ensuring that Appeals has access to the full and frank legal advice that it needs."

In one key change from the 2000 *ex parte* communication rules, Appeals will no longer participate on issue management teams (IMT) but can be briefed by IMTs, as long as the discussion remains generic rather than case specific. IMTs include representatives from various IRS components, typically Compliance and Counsel, and the IMT meetings usually involve general discussions of how to handle technical issues or procedural matters.

In addition, today's revenue procedure includes several changes suggested during a public comment period, following the issuance of a proposed revenue procedure last summer. For example, when there is a breach of the *ex parte* communication rules, Appeals employees will now ask the affected taxpayer or their representative for input on the appropriate remedy and the appropriate reme dy will be determined by a senior management official.

The Office of Appeals resolves more than 100,000 tax cases each year. More information about the Office of Appeals and the appeals process is available on *IRS.gov*.

SFC 002920

From: Waddell Jon M
Sent: Thursday, July 21, 2011 7:36 AM
To: Esrig Bonnie A
Subject: FW: Emailing: 3 Groups Denied Break By I.R.S. Are Named - NYTimes.com
Attachments: B3948326.5;sz=88x31;pc=nyt158514A252821;ord=2011.07.21.12.22.59; nytlogo152x23.gif; ATT33561.dat; 120x60 anotherEarth 002.gif; theater 072111.jpg; nytimes.gif; verticals theater.gif; 11-0220 AudienceDev 86x60 paris.jpg; NYTStore Red 336x79.gif; moth reverse.gif; moth forward.gif; 21moth-vikram-moth.jpg; 21moth townies-moth.jpg; 21moth artofsummer-moth.jpg; 21moth river-moth.jpg; 21moth location-moth.jpg; 7c7d13c1Q2FQ5B-cNNQ2B3N- oQ22w,,, Q7BDWT3 ,.dat; &t=2&s=0&ui=0&r=&u=www.nytimes.com 2011 07 21 business advocacy-groups-denied-tax-exempt-status-are-named.html r=1&sq=Emerge Kentucky&st=cse&scp=1.dat; nojavascript&WT.js=No&WT.tv=1.0.7

Importance: High

Bonnie

I'm elevating some information I received from Donna Abner this morning. Specifically, Donna was questioned by Holly Paz concerning a political case that was recently approved by the name of **Emerge Kentucky, Inc. (EI [redacted]).** The case was approved by a California agent in Status 01 as a 501(c)(4) on 4/27/11

Apparently, there were a few denials recently issued in EO Technical (referenced article below) on some other Emerge applicants that applied under c(4). The denials were based upon the partisan political nature of their activities which would disqualify them even under c(4). As context, 2-3 years ago in my previous group, we had identified some other Emerge cases (**Emerge Massachusetts and Emerge Maine**) that were forwarded to EO Quality Assurance and ultimately to EO Technical due the political nature of their activities. These two applications were recently denied by EO Tech. Apparently five other Emerge Applicants (Including Kentucky) have been approved ---per the article. If possible, some type of TEDS Query should be generated to determine how many other Emerge applications are currently in process as they all appear to be linked with specific state affiliation.

Note: I'm forwarding this information on in the event t hat Holly Paz also asks you or Cindy the same questions she is posing to Donna

thanks

From: Abner Donna J
Sent: Thursday, July 21, 2011 8:23 AM
To: Waddell Jon M
Subject: Emailing: 3 Groups Denied Break By I.R.S. Ar e Named NYTimes.com

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3 Groups Denied Break By I.R.S. Are Named

By STEPHANIE STROM

Published: July 20, 2011

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Reprints

Three nonprofit advocacy groups that were denied tax exemption by the Internal Revenue Service were all units of Emerge America, an organization devoted to cultivating female political leaders for local, state and federal government.

Related

- Political Advocacy Groups Denied Tax -Exempt Status (July 20, 2011)

The I.R.S. denied tax exemption to the groups — Emerge Nevada, Emerge Maine and Emerge Massachusetts — because, the agency wrote in d enial letters, they were set up specifically to cultivate Democratic candidates. Their Web sites ask for evidence that participants in their training programs are Democrats.

News of the I.R.S. decision, which surfaced in heavily redacted denial letters to the groups that were posted to the agency's Web site last Thursday, raised concerns amon g advocacy groups, known as 501(c)(4) organizations after the section of the tax code that governs them, at large.

Crossroads GPS, a conservative advocacy organization with ties to Karl Rove, the Republican strategist, sent an e-mail to supporters on Tues day, assuring them that it was not one of the three groups denied exemption.

Karen Middleton, president of Emerge America, acknowledged on Wednesday that the three state organizations had been denied an exemption. She said the groups were in the process o f converting into 527 organizations, which are also tax -exempt but disclose their donors, unlike 501(c)(4) groups.

"We're all small organizations," Ms. Middleton said. "We train about 25 Democratic women each year in each state where we work, and we don't engage in any work that involved candidates or campaigns."

The I.R.S. has approved five other state Emerge organizations — in California, Arizona, New Mexico, Wisconsin and Kentucky — as advocacy groups.

"It's just bizarre," said Kimberly Ellis, executi ve director of Emerge California. "Nevada has been around and waiting for approval for the last five years, and in the interim, Oregon and Kentucky are established and file for their approval — and Kentucky gets it but Nevada, Maine and Massachusetts don't ."

Michelle Eldridge, an I.R.S. spokeswoman, said the agency could not comment on individual taxpayers.

Paul Streckfus, a former I.R.S. official, said such inconsistency was not unusual. In part, it is because the office that handles approval of tax -exempt groups, he said, receives hundreds if not thousands of applications a day at its office in Cincinnati. Some of the applications are then sent for processing at field offices around the country, and, in some cases, to headquarters in Washington.

"My guess is that the one that recently got approved went to a different office than the ones that were denied, which seem to have been handled in Washington," Mr. Streckfus said.

Ms. Ellis said Kentucky's application was processed in an I.R.S. office in the Wes tern United States. She did not know where the still-pending application of Emerge Oregon ended up.

A version of this article appeared in print on July 21, 2011, on page B4 of the New York edition with the headline: 3 Groups Denied Break By I.R.S. Are Nam ed.

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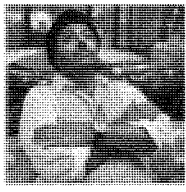
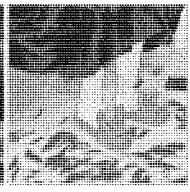


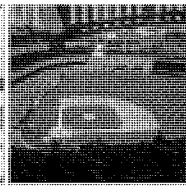
Hotelier, in a Good Place

Opinion »



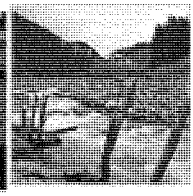
Townies: So Long, Salon

Arts »



Music of the Spheres

U.S. »



Warm Water Fish The Watershed Ahead

Opinion »

Disunion: Where Ignorant Armies Clash

A play-by-play of Bull Run, the first major battle of the Civil War, by Gary Gallagher.

Home & Garden :

In Virginia, a Hot

- Home
- World
- U.S.
- N.Y. / Region
- Business
- Technology
- Science
- Health
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SFC 002925

IRS0000531339

SFC 002926

From: Combs Peggy SFC >
Sent: Monday, May 07, 2012 11:30 AM
To: Combs Peggy L
Subject: FW: Spreadsheet
Attachments: Combined Spreadsheet TAG Final Draftmay6.xls

From: Herr Joseph R
Sent: Monday, May 07, 2012 10:53 AM
To: Combs Peggy L
Cc: Bell Ronald D; Bibb Kenneth B
Subject: FW: Spreadsheet

Peggy,

The email below is a draft of the BOLO/Emerging Issue spreadsheet dated May 6, 2010. This draft is populated with a sample named "tea parties." A sample was incorporated into the draft spreadsheet to help illustrate what information would be contained in the spreadsheet.

Joseph R. Herr

Revenue Agent Group 7821

Exempt Organizations Determinations

SFC

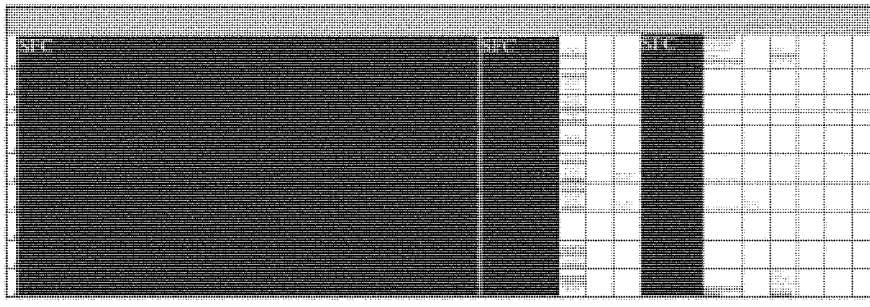
SFC fax

From: Hofacre Elizabeth L
Sent: Thursday, May 06, 2010 9:27 AM
To: Herr Joseph R
Subject: Spreadsheet
Importance: Low

SFC 002927

IRS0000542120

SFC 002928



IRS0000542121

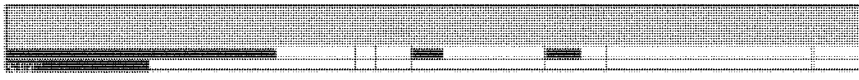
SFC 002929

Tea Parties		2010-1		Coordinate with group 7825	Opened

IRS0000542122

SFC 002930

SFC 002931



IRS0000542124

SFC 002932

From: Mccarty Linda J
Sent: Thursday, February 14, 2013 7:20 AM
To: Vozne Jennifer L
Cc: Aten David Michael; Barre Catherine M
Subject: FW: Elevating to you
Attachments: Lungren 30473[1].pdf; TR-Lungren.30473[1].pdf

Jennifer,

The below case has been sitting open for nearly a year. Treasury gave us a new due date of Feb. 4. The last we heard, Nikole had this. Can you give us any guidance on what we should do? Attached are the case documents. Thank you.

From: Hinton Irma D
Sent: Wednesday, February 13, 2013 5:17 PM
To: Mccarty Linda J
Subject: Elevating to you

Linda,

I am elevating this case to you because I have had absolutely no luck in getting a response. The last thing I heard was this was with Nikole Flax in Commissioner's office. As you see below, this case is very old. I'm not sure what's the hold up.

Thanks

Irma

CCU Case Detail Results: 2012-30473

Type	Due Date	Received Date	Document Date	Closure Date
Legislative Affairs (Treasury)	02/04/2013	03/21/2012	03/08/2012	
Narrative				
TR Field		**TAMIS Field**	**Related Field**	
2012-L-000317				
Other Field		**Legacy System Field**		
Format				
Letter				
Issue				
Exempt Status				
Topic				
TREASURY REFERRAL 2012-L-000317**PLEASE DO NOT EXTEND DUE DATE ON THIS CONTROL**CAL SFC FOR DUE DATE EXTENSIONS**Representative Dan Lungren asked if the Mother Lode Tea Party Patriots qualify for tax exemption in another category other than 501(c)(3).				
Special Instructions				
LEGISLATIVE AFFAIRS IS THE CONTROLLING OFFICE FOR THIS INQUIRY. PLEASE CLEAR DRAFT RESPONSE THROUGH				

SFC 002933

LEGISLATIVE AFFAIRS. EMAIL DRAFT RESPONSE IN MS WORD FORMAT AND INCOMING LETTER TO SFC [redacted]. PLEASE CAL SFC [redacted] IF YOU HAVE QUESTIONS.	
Case Creation Information	By: Ortez, Cumbuka On: 03/21/2012

Assignment History

Added On	Added By	Office	Special Instructions
03/22/2012 07:30	Joan Emerson	EO-Rulings and Agreements	
03/21/2012 04:29	Cumbuka Ortez	Tax Exempt/Government Entities	

Case Event Log History

Date	Type	Action	Comment	Added By
02/01/2013	Action	Comments	Case is still in review.	Laurie Thrasher
01/18/2013	Action	Due Date Revised	The Due Date was revised From: 07/06/2012 To: 02/04/2013	Irma Hinton
01/14/2013	Action	Comments	Case still in review.	Laurie Thrasher
12/28/2012	Action	Comments	Per Andy Megosh case is still in review.	Laurie Thrasher
12/21/2012	Action	Comments	Per Andy Megosh case still in review.	Laurie Thrasher
12/03/2012	Action	Comments	Per Andy megosh case is still in Review.	Laurie Thrasher
08/29/2012	Action	Comments	per Andy megosh case is in review.	Laurie Thrasher
08/08/2012	Action	Comments	Per Andy megosh draft still in review.	Laurie Thrasher
06/22/2012	Action	Due Date Revised	The Due Date was revised From: 05/18/2012 To: 07/06/2012	Irma Hinton
06/22/2012	Action	Extension Request	Received extension from Treasury to 7/6/12.	Irma Hinton
06/12/2012	Action	Comments	Per Andy megosh, Draft in review.	Laurie Thrasher
06/07/2012	Action	Due Date Revised	The Due Date was revised From: 04/13/2012 To: 05/18/2012	Irma Hinton
05/09/2012	Action	Extension Request	Treasury approved new due date of 5/18/2012.	Cumbuka Ortez
04/20/2012	Action	Comments	Cumbuka Ortez has contacted Joan Emerson and Andy Megosh, TEGE, regarding status of overdue case. Final response awaiting Lois Lerner's signature.	Cumbuka Ortez
04/03/2012	Action	Review	Legislative Affairs received draft response on 4/2/12 and returned edits to Jacob Clausen on 4/3/12.	Cumbuka Ortez
04/04/2012	Action	Extension Request	The Treasury Department approved the new due date of 4/13/2012.	Cumbuka Ortez
04/04/2012	Action	Due Date Revised	The Due Date was revised From: 04/04/2012 To: 04/13/2012	Cumbuka Ortez
03/21/2012	Action	Comments	Please do not extend the due date on this control. Please call 202/622 -1313 for due date extension requests.	Cumbuka Ortez

Case From

Salutation	Name	Email	Phone	Fax	Cell Phone	Address	City/State/Zip

Case Addressee

Salutation	Name	Email	Phone	Fax	Cell Phone	Address	City/State/Zip

SFC 002934

Case Contact

Contact Type	Salutation	Name	Email	Home Phone	Work Phone	Fax	Address	City/State/Zip
Congressional	Rep.	Daniel Lungren		SEC [redacted]			U.S. House of Representatives 2262 Rayburn House Office Building	Washington DC 20515

Case Documents

Date	Source	File Name	Description
03/08/2012	Incoming	Lungren_30473.pdf	Incoming correspondence
01/18/2013	Other	TR-Lungren.30473.pdf	Received new profile sheet from Treasury with new due date of 2/4/13

[Close]

eMail Cover Page

Ortez Cumbuka I

From: SFC [redacted]
Sent: Wednesday, March 21, 2012 1:41 PM
To: *C&L Congressional Correspondence
Cc: SFC [redacted]
Subject: 2012-L-000317:
Attachments: 2012-L-000317inc232623.pdf

RECEIVED
MAR 21 2012
CONG. CORR. BR
CL:LA

Profile #: **2012-L-000317**
Created: 3/20/2012

Addressee: Kim N. Wallace
AS, Legislative Affairs

Author: Lungren, Dan
House

Constituent: Mother Lode Tea Party Patriots

Subject: Tax exemption for the Mother Lode Tea Party Patriots

Abstract: Question if the Mother Lode Tea Party Patriots qualify for tax exemption in another category other than 501(c)3

Assignment Information

Assigned To: Internal Revenue Service
Internal Revenue Service
On: 3/21/2012
Date Due: 4/4/2012

Req Action: Direct Reply

Current Loc: IRS (LA)

Internal Revenue Service
Internal Revenue Service
On: 3/21/2012
Interim Due:

Interim Task:

Distribution: Congressionals for Exec Sec
AS, Legislative Affairs
Clearance: **#Item=sClearance#**

3/21/2012

SFC 002936

2012-L-000317

DANIEL E. LUNGREN
3RD DISTRICT, CALIFORNIA

COMMITTEE ON
HOUSE ADMINISTRATION
CHAIRMAN

COMMITTEE ON
HOMELAND SECURITY
Subcommittee on Cybersecurity,
Infrastructure Protection, &
Security Technologies
Chairman

COMMITTEE ON
THE JUDICIARY

Congress of the United States
Washington, DC 20515

WASHINGTON OFFICE
2313 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 226-5716
FAX: (202) 226-1298

DISTRICT OFFICE
2339 GOLD MEADOW WAY, SUITE 220
GOLD RIVER, CA 95670
(916) 859-9906
FAX: (916) 859-9978

E-MAIL: VISIT OUR WEBSITE
www.lungren.house.gov

March 8, 2012

RECEIVED
MAR 21 2012
CONG. CORR. BR
CL:LA

Mr. Timothy Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Secretary:

It has come to my attention the Mother Lode Tea Party Patriots has waited 12 months for the Internal Revenue Service to process their 501(c)3 application.

The cause for the delay, according to the IRS, is because the Mother Lode Tea Party does not fit neatly into a previously established category for 501(c)3 exemption and further development of the application is required to render a determination.

It appears the IRS has been afforded adequate time to formulate the necessary standards to render more expedient decisions on these types of applications. Applicants deserve to receive timely decisions allowing them to move forward with operations or to reorganize themselves in a more appropriate structure to ensure adequate funding for their future viability.

If the Mother Lode Tea Party qualifies for exemption in another category, I respectfully request they are advised accordingly and the application is processed in a timely manner.

Thank you for your assistance in this matter and I look forward to hearing from you soon.

Sincerely

Daniel E. Lungren
Member of Congress

DEL/mp

PRINTED ON RECYCLED PAPER

eMail Cover Page

Hinton Irma D

From: SFC [redacted]
Sent: Friday, January 18, 2013 1:16 PM
To: Hinton Irma D
Cc: SFC [redacted]
Subject: 2012-L-000317:
Attachments: 2012-L-000317inc232623.pdf; 2012-L-000317Assoc232706.pdf

RECEIVED
By Executive Secretariat at 2:24 pm, Jan 18, 2013

Profile #: **2012-L-000317**
Created: 3/20/2012

Addressee: Kim N. Wallace
AS, Legislative Affairs

Author: Lungren, Dan
House

Constituent: Mother Lode Tea Party Patriots

Subject: Tax exemption for the Mother Lode Tea Party Patriots

Abstract: Question if the Mother Lode Tea Party Patriots qualify for tax exemption in another category other than 501(c)3

Assignment Information

Assigned To: Internal Revenue Service
Internal Revenue Service
On: 3/21/2012
Date Due: 2/4/2013

Req Action: Direct Reply

Current Loc: IRS (LA)

Internal Revenue Service
Internal Revenue Service
On: 3/21/2012
Interim Due:

Interim Task:

Distribution: Congressionals for Exec Sec
AS, Legislative Affairs
Clearance: **#Item=sClearance#**

From: Combs Peggy L
Sent: Monday, March 18, 2013 6:49 AM
To: Waddell Jon M
Subject: FW: Follow-up - case in EO Tech

FYI

From: Garrett April
Sent: Friday, March 15, 2013 4:17 PM
To: Combs Peggy L
Subject: RE: Follow up case in EO Tech

You are correct. It was a denial on an advocacy case and the organization was an ACORN successor.

I don't know who it is assigned to in DC. I was sent a follow up email from Jon Waddell last August that said the case was pending in EO Guidance for review and that EO Technical recommended an adverse position. The case was sent with 2 other cases on a Technical Assistance request. When I followed up with QA about 2 weeks ago, they just stated it was still under review in EO Tech.

From: Combs Peggy L
Sent: Friday, March 15, 2013 4:06 PM
To: Garrett April
Subject: FW: Follow up case in EO Tech
Importance: Low

April,

I believe you said this is the political advocacy case dealing with Acorn... please confirm. Also, do you know who in DC is looking at the case? You don't need to find out just if you know, I'd like to include a name. Thanks.

From: Waddell Jon M
Sent: Thursday, March 14, 2013 4:17 PM
To: Combs Peggy L
Subject: RE: Follow up case in EO Tech
Importance: Low

Peggy

No problem. If this is the case I'm thinking of, its related to the political advocacy project. Could you ask April to provide some more details

thanks

From: Combs Peggy L
Sent: Thursday, March 14, 2013 4:15 PM
To: Waddell Jon M
Subject: FW: Follow up case in EO Tech

Jon,

SFC 002939

Can we follow-up with EOT on the status of this case?

From: Garrett April
Sent: Thursday, March 14, 2013 4:14 PM
To: Combs Peggy L
Subject: Follow up case in EO Tech

The following is a case which I denied, which has been in status 31 since 4/10/12. I did follow up with Bill Hartrick, the reviewer assigned, and he said it was still awaiting guidance from EO Tech. The taxpayer has being calling wanting updated status information and I have been told by QA to tell them it's still in the review process.

SFC [redacted]

The last update we got was in August 2012, stating it would be back in a couple weeks.

April Garrett
Group 7830
SFC [redacted]

SFC 002940

Heightened Awareness Issues

IRS0000557291

SFC 002941

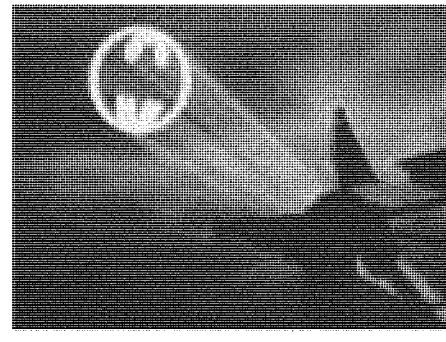
OBJECTIVES

- What Are The Heightened Awareness Issues
- Definition and Examples of Each
- Issue Tracking and Notification
- What Happens When You See One?

IRS0000557292

What are Heightened Awareness Issues?

- TAG
- Emerging Issues
- Coordinated Issues
- Watch For Issues



Your Role

- Per IRM 1.54.1.6.1, a Front Line Employee Should Elevate the Following Matters Concerning Their Work:

  1. Unusual Issues that Prevent them from Completing Their Work.

  2. Issues Beyond Their Current Level of Training.

  3. Issues that Require Elevation in Accordance with Statute, Revenue Procedure, or Field Directive.

What are TAG Issues ?:

- Involves Abusive Tax Avoidance Transactions:
  1. Abusive Promoters
  2. Fake Determination Letters

- Activities are Fraudulent In Nature:
  1. Materially Misrepresented Operations or Finances.
  2. Conducting Activities Contrary to Tax Law (e.g. Foreign Conduits).

- Issues Involving Applicants with Potential Terrorist Connections:
  1. Cases with Direct Hits on OFAC
  2. Substantial Foreign Operations in Sanctioned Countries

- Processing is Governed by IRM 7.20.6

SFC 002945

What Are Emerging Issues?

- Groups of Cases where No Established Tax Law or Precedent has been Established.
- Issues Arising from Significant Current Events (Doesn't Include Disaster Relief)
- Issues Arising from Changes to Tax Law
- Other Significant World Events

IRS0000557296

SFC 002946

Emerging Issue Examples

- Tea Party Cases:
  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

IRS0000557297

Emerging Issue Examples Continued:

- Pension Trust 501(c)(2):
  1. Cases Involved the Same Law Firm
  2. High Dollar Amounts
  3. Presence of an Unusual Note Receivable

SFC 002948

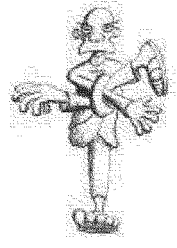
Emerging Issues Examples Continued

- Historical Examples:
  1. Foreclosure Assistance
  2. Carbon Credits
  3. Pension Protection Act
  4. Credit Counseling
  5. Partnership/Tax Credits
  6. Hedge Funds

IRS0000557299

What Are Coordinated Processing Issues?

- Cases with Issues Organized for Uniform Handling
- Involves Multiple Cases
- Existing Precedent or Guidance Does Exist



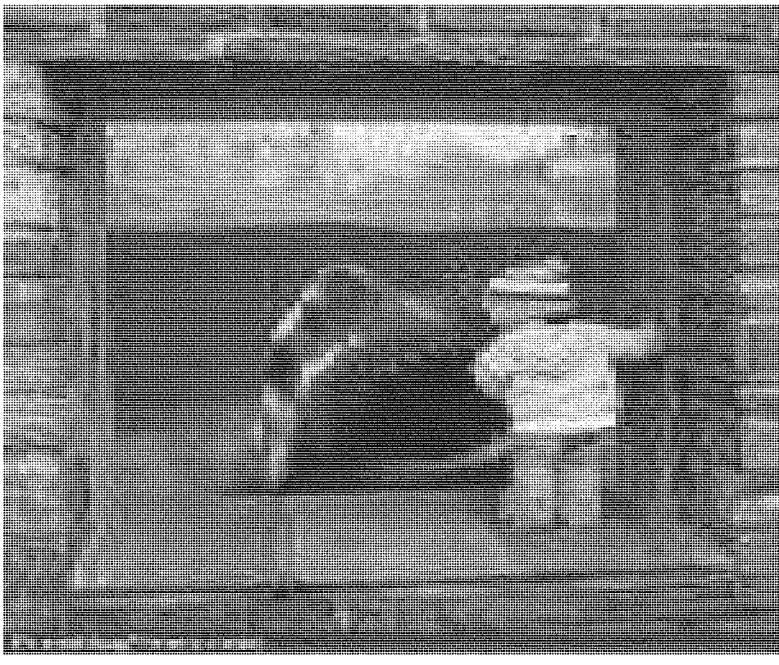
SFC 002950

Coordinated Examples

- Break-up of a Large Group Ruling Where Subordinates are Seeking Individual Exemption.
- Multiple Entities Related Through a Complex Business Structure (e.g. Housing and Management Companies)
- Current Specialized Inventories

IRS0000557301

What is a Watch For Issue?



SFC 002952

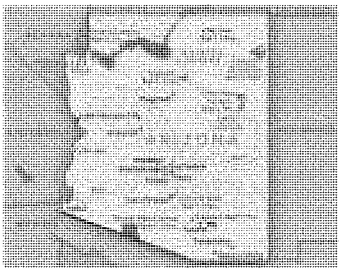
Watch For Issues:

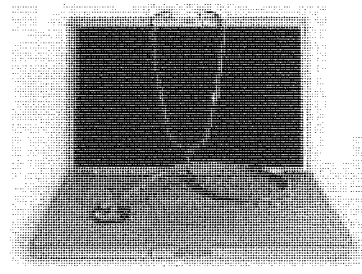
- Typically Applications Not Yet Received
- Issues are the Result of Significant Changes in Tax Law
- Issues are the Result of Significant World Events
- Special Handling is Required when Applications are Received

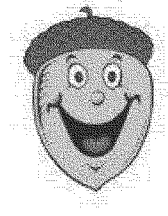
IRS0000557303

SFC 002953

Watch For Examples





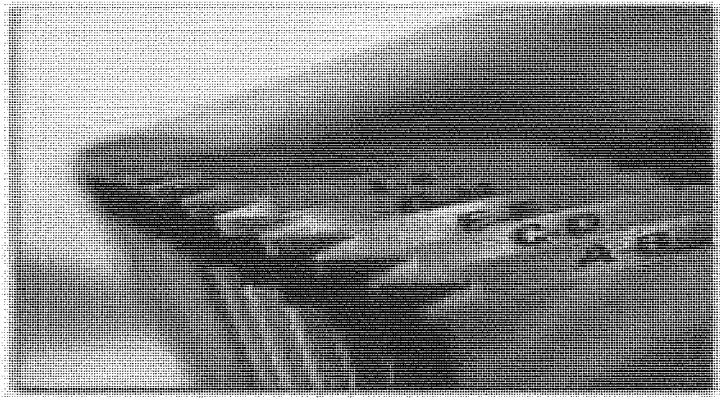


Watch For Examples Continued

- Successors to Acorn
- Electronic Medical Records
- Regional Health Information Organizations
- Organizations Formed as a Result of Controversy---- Arizona Immigration Law
- Other World Events that ***Could*** Result in an Influx of Applications

SFC 002955

Tracking and Notification



IRS0000557306

SFC 002956

Combined Excel Workbook

- Will Include Tabs for TAG, TAG Historical, Emerging Issues, Coordinated, and Watch For
- Tabs Will Include the Various Issues, Descriptions, and Guidance.
- A Designated Coordinator Will Maintain the Workbook and Disseminate Alerts in One Standard E-Mail.
- Mailbox: *TE/GE-EO-Determinations Questions

IRS0000557307

When You Spot Heightened Awareness Issues

- If a TAG Issue, follow IRM 7.20.6.
- If an Emerging Issue or Coordinated Processing Case, Complete the Required Referral Form and Submit to your Manager
- Watch For Issue Cases are Referred to your Manager

From: Flax Nikole SFC [redacted]
Sent: Friday, January 04, 2013 4:34 PM
To: Sterner Christopher B
Cc: Sterner Christopher B
Subject: RE: Unauthorized Disclosure to ProPublica

Follow Up Flag: Follow up
Flag Status: Flagged

I'll have to get that info from EO Monday. Thanks for your help. Have a good weekend.

-----Original Message-----
From: Sterner Christopher SFC [redacted]
Sent: Friday, January 04, 2013 5:22 PM
To: Flax Nikole C
Cc: Sterner Christopher B
Subject: RE: Unauthorized Disclosure to ProPublica

Do we know, or can we find out, what has been subsequently provided to TIGTA? Specifically, have we made TIGTA aware that ProPublica published some of the unauthorized materials ? Whether we did could be pivotal in deciding what further action may be necessary.

-----Original Message-----
From: Flax Nikole SFC [redacted]
Sent: Friday, January 04, 2013 4:36 PM
To: Sterner Christopher B
Subject: FW: Unauthorized D isclosure to ProPublica

Chris - this is what I have. TIGTA has been dealing with EO directly since then.

-----Original Message-----
From: Tucker Beth
Sent: Monday, December 17, 2012 11:23 AM
To: Flax Nikole C
Subject: FW: Unauthorized Disclosure to P roPublica

FYI - documentation of formal TIGTA referral

-----Original Message-----
From: Camus Timothy P TIGT SFC [redacted]
Sent: Friday, December 14, 2012 3:05 PM
To: Tucker Beth
Subject: RE: Unauthorized Disclosure to ProPublica

Beth,

We will get right on it.

Take care,

Tim

Timothy Camus
Deputy Inspector General for Investigations Treasury Inspector General for Tax Administration
SFC [redacted]

-----Original Message-----
From: Tucker Bet SFC [redacted]
Sent: Friday, December 14, 2012 2:45 PM
To: Camus Timothy P TIGTA
Subject: Unauthorized Disclosure to ProPublica

Tim, as we discussed yesterday would appreciate it if you can look into the disclosure of several tax exempt status applications to ProPublica (an on-line media outlet).

ProPublica filed a request with TE/GE to obtain a number of tax exempt applications. Along with those they were authorized to receive because the applications had been approved by IRS and were final determinations, they also received the applications of 9 other organizations which should not have been released as a final determination had not yet been made.

While this very well may have been an oversight in the processing of the request, we would like for you to conduct an independent review to assist in determining cause of the mistake in releasing the information.

Holly Paz (TE/GE executive over the area w here the request was processed/information released) is the TE/GE poc for providing background documents, additional points of contact, etc.

Thanks much....Beth

SFC 002960

From: Gregory L. Colvi SFC [redacted]
Sent: Monday, August 27, 2012 1:29 PM
To: Kindell Judith E
Subject: FW: General Information Letter on 2 Issue Advocacy Revenue Rulings
Attachments: IRS Rev Ruls on Issue Ads - GIL request (00430120).PDF

Judy, I don't know how much you keep your hand in these things these days, but I thought you would at least be intrigued (as well as knowing personally what these two rulings intended to do).
Best regards,
Greg

Gregory L. Colvin
Adler & Colvin
SFC [redacted]
Tel SFC [redacted]
Fax SFC [redacted]
email SFC [redacted].
[redacted].

From: Gregory L. Colvin
Sent: Friday, August 24, 2012 3:36 PM
To: 'Lerner Lois G'
Cc SFC [redacted]
Subject: General Information Letter on 2 Issue Advocacy Revenue Rulings

Lois and Ruth:

You'll recall my May 7, 2012, letter suggesting that the IRS clear up the confusion surrounding how to use the two existing Revenue Rulings to determine, for instance, whether a (c)(4) has done too much political campaign activity to qualify for exemption.

Short of a new, consolidated ruling on issue advocacy vs. political campaign intervention, it seemed to me t hat if the Service could answer a few obvious, pointed questions about how the two Rulings should be construed, in a "general information letter," many recurring misconceptions could be corrected.

In my request, attached, I pose four common questions and the proposed answers. If I'm right, this gives the IRS the opportunity to state, on the record, how these two rulings should be applied without altering them or making any new interpretations of the law.

If you can do this, with all deliberate speed, I believe it will properly focus public attention on the existence of real criteria for determining what is legitimate issue advocacy during the current election and what is not. And it would make real compliance more likely.

I look forward to your reply.

Greg

=====

Any tax advice contained in this email was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. A taxpayer may rely on our advice to avoid penalties only if the

advice is reflected in a more formal tax opinion that conforms to IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.

Gregory L. Colvin
Adler & Colvin
SEC[redacted]
Tel SEC[redacted]
Fax SEC[redacted]
email SEC[redacted].
[redacted].

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Adler and Colvin is a San Francisco Green Business certified by the City and County of San Francisco. Please consider the environment before you print this email. Thank you.

SFC 002962

From: Light Sharon P
Sent: Tuesday, August 28, 2012 2:48 PM
To: Thomas Cindy M
Cc: Paz Holly O; Abner Donna J
Subject: FW: memo re CTP
Attachments: MEMORANDUM CTP.doc

Cindy -- I am attaching a memo for the file of Chattanooga Tea Party SFC [redacted] It was reconciled into Bucket 4. When Judy Kindell got the file to draft the denial development letter, she determined that it should be an approval. I reviewed it, too, and agree that the file supports approval through 2011. In 2012, there may be more non-c/4 activities, but we won't know until the year closes. It should be an approval with a RoO referral. Judy drafted the attached memo to accompany the file. Can you put it in the original file and then send it to QA for review?

Thanks,

Sharon

From: Kindell Judith E
Sent: Monday, August 27, 2012 3:17 PM
To: Light Sharon P
Subject: memo re CTP

SFC 002963

MEMORANDUM

To: File

From: Judith Kindell

Date: August 27, 2012

Re: Chattanooga Tea Party

During the bucketing review of this case, one reviewer recommended approval while the other recommended likely denial. Upon reconciliation, they recommended likely denial. This recommendation is based largely upon materials appearing on the organization's website subsequent to their February 2012 response to our development letter.

Based upon the information currently in the administrative record, the organ ization appears to qualify as a section 501(c)(4) organization. The organization holds monthly meetings and annual rallies where they distribute materials and discuss a variety of issues such as fiscal responsibility, the economy, and positions on local and national legislation. They also host candidate debates and, while they attempt to be inclusive of all candidates for the office, the questions provided from first debate appear to be reflective of the organization's positions on issues and not necessarily neutral. Thus, it appears that the activity might constitute political campaign intervention and therefore not be a section 501(c)(4) activity. Nevertheless, the primary activity of the organization as described in the administrative record appears to be section 501(c)(4) activity.

However, the reviewers did raise a concern because in 2012, the organization appears to have increased its political campaign intervention activity. It hosted an event where one of the candidates for the Republican nomination for President was the keynote speaker and, based upon an online video of the event, the speech was a campaign speech for the upcoming primary election. While their website explains that they did not hold their annual rally this year because they are focusing on the elections and their activities include candidate debates and appearances, their website also indicates that they are continuing to engage in section 501(c)(4) activities (for example, the most recent meeting focused on emergency preparedness). Therefore, the analysis of whether the organization meets the requirements of section 501(c)(4) will be based on weighing the activities and determining whether those that further section 501(c)(4) purposes are primary, which will not be ascertainable until the year is finished.

The current administrative record does not support a denial for this organization. To issue a denial would require further development and would be based on 2012 activities, for which we would not have the complete year to analyze whether the primary activity furthered section 501(c)(4) purposes. Therefore, I recommend we approve the application based on the current administrative record and refer the organization to the ROO for follow-up regarding the 2012 tax year.

SFC 002964

From: Urban Joseph J
Sent: Thursday, August 23, 2012 7:57 AM
To: Lowe Justin
Subject: FW: Political Activity by Corporations

From: Ingram Sarah H
Sent: Monday, January 25, 2010 5:44 PM
To: Livingston Catherine E; Flax Nikole C
Cc: Lerner Lois G; Marks Nancy J; Pyrek Steve J; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

Had to give Doug something if pushed. Specifically asked for. In fact, DS and STM and Frank Keith worked on something this am so Steve told DS to use first two questions and have the Frank keith am one i n back pocket. And no, I do not have a copy of the Frank version. As STM (and Ron?) were there I trust 'em.

From: Livingston Catherine E [mailt SFC [redacted]
Sent: Monday, January 25, 2010 3:40 PM
To: Flax Nikole C
Cc: Lerner Lois G; Ingram Sarah H; Marks Nancy J; Pyrek Steve J; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: FW: Political Activity by Corporations

All, I recommend against including the third question and answer. I think it best for the IRS not to speak to the case directly, particularly as we have not been able to study it in real depth and as there is language in the opinion that raises questions.

From: Flax Nikole C [mailt SFC [redacted]
Sent: Monday, January 25, 2010 2:59 PM
To: Lerner Lois G; Ingram Sarah H; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

"modified" was changed to "address" in the revised version.

From: Lerner Lois G
Sent: Monday, January 2S, 2010 2:57 PM
To: Flax Nikole C; Ingram Sarah H; Ma rks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

How about for the 3rd one--the decision did not specifically address to conditions Congress has applied to organizations as a condition of being exempt from federal tax? This is the danger zone no matter what we say.

Lois G. Lerner

Director, Exempt Organizations

From: Flax Nikole C
Sent: Monday, January 2S, 2010 1:57 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Ingram Sarah H; Grant Joseph H; Kindell Judith E; Urban Joseph J
Subject: RE: Political Activity by Corporations

Joe and I did some minor tweaking. We took the safe approach on the third question - not sure how far we want to go on that one.

Q: Does federal tax law permit a charity or other section 501(c)(3) tax -exempt organizatio n to make political campaign expenditures?

A: Congress imposes certain conditions on tax -exempt status. In order to maintain tax -exempt status under Internal Revenue Code section 501(c)(3), organizations are prohibited from making political campaign expenditures or otherwise intervening in a campaign on behalf of (or in opposition to) any candidate for public office. [The prohibition applies to all campaigns including campaigns at the federal, state and local level. Violation of this prohibition may result in denial

or revocation of tax-exempt status and the imposition of certain excise taxes.] This prohibition applies regardless of whether the organization is a corporation, trust or unincorporated association.

Q: Does federal tax law permit a section 501(c)(4), (5), or (6) tax -exempt organization to make political campaign expenditures?

A: The requirements for tax-exempt status differ based on the type of tax -exempt organization. A section 501(c)(4) organization promotes social welfare; such an organization may make political campaign expenditures as long as its primary purpose remains the promotion of social welfare. A section 501(c)(5) organization is a labor or agricultural organization; such organizat ion may make political campaign expenditures as long as its primary purpose remains to serve labor and agricultural purposes. A section 501(c)(6) organization is a business league or trade association; such organization may make political campaign expendi tures as long as its primary purpose remains to serve collective business interests. If a section 501(c)(4), (5), or (6) organization makes political campaign expenditures, it may be subject to tax on those expenditures under section 527(f).

Q. Does the Citizens United v. Federal Election Commission decision address the requirement for Federal tax -exempt status?

A. The Supreme Court decision addressed the constitutionality of Federal Election Commission restrictions on corporate expenditures. The decision does not modify the conditions that Congress applied on organizations as a condition of being exempt from Federal income tax.

From: Livingston Catherine [redacted]
Sent: Sunday, January 24, 2010 9:56 PM
To: Ingram Sarah H; Lerner Lois G; Marks Nancy J
Cc: Pyrek Steve J; Schultz Ronald J; Flax Nikole C; Ingram Sarah H; Grant Joseph H
Subject: RE: Political Activity by Corporations

To get the ball rolling given th at time is tight and many of you may be in meetings, here is something all can discuss or edit:

Q: Does federal tax law permit a charity or other section 501(c)(3) tax -exempt organization to make political campaign expenditures?

A: Federal tax law prohibits a section 501(c)(3) tax -exempt organization from making political campaign expenditures or otherwise intervening in a campaign for public office. This prohibition applies regardless of whether the organization is a corporation, trust or unincorporated association.

Q: Does federal tax law permit a section 501{c){4}, (5}, or (6) tax -exempt organization to make political campaign expenditures?

A: A section 501(c)(4) organization promotes social welfare. A section 501(c)(4) organization may make political campaign expenditures as long as its primary purpose remains the promotion of social welfare. A section 501(c)(5) organization is a labor or agricultural organization. A section 501(c)(5) organizatino may make politic al campaign expenditures as long as its primary purpose remains to serve labor and agricultural purposes. A section 501(c)(6) organization is a business league or trade association. A section 501(c){6) organization may make political campaign expenditures as long as its primary purpose remains to serve collective business interests. If a section 501(c)(4), (5), or (6) organization makes political campaign expenditures, it may be subject to tax on those expenditures under section 527(f).

I think the quote from the Citizens United opinion that will most likely be used in questions to us appears on page 50 in the majority.

"No sufficient governmental interest justifies limits on the political speech of nonprofit or for -profit corporations."

This leads perhaps to the question of whether the subsidy available through deductible contributions is a sufficient interest -- governmental or otherwise.

I do note that the opinion is quite clear that Hillary, the movie, is the functional equivalent of express advocacy because it is not susceptible to any other reasonable interpretation than opposition to her candidacy. This conclusion may support where we have been on campaign intervention and that it goes beyond magic words.

Glad to be useful or to organize a call to discuss or do whatever else is helpful in moving from this language to whatever you'd like to share with media affairs.

From: Thomas Cindy M
Sent: Tuesday, September 04, 2012 12:52 PM
To: Medina Cheryl J TIGTA
Cc: Paz Holly O
Subject: FW: Tea Party Cases - DUE 5/31/2011
Attachments: AlbuquerqueTeaPartyIncmffc4.doc; AmericanJuntodlc3.doc; Political Cases -- Status? (29.1 KB)

From: Thomas Cindy M
Sent: Wednesday, April 13, 2011 3:46 PM
To: Bowling Steven F
Cc: Combs Peggy L; Melahn Brenda; Brandes James A
Subject: FW: Tea Party Cases DUE 5/31/2011

I spoke with Mike Seto today regarding the tea party cases. He indicated that EOT met with the EO Director's Senior Technical Advisor, Judy Kindell. Judy requested that EOT beef up the c3 denial. She also asked EOT to gather more information regarding the c4 application --- specifically % of time devoted to various activities to ensure the organization was below the 50% level for political activities.

Judy also recommended that all tea party cases be sent to EOT (tell Ron Bell not to get too excited!), but Mike Seto does not believe this should happen. He thinks EOT should give us a template letter for the c3 denials and share developmental questions, etc., for the c4's. Holly will be meeting with Lois to discuss this.

Stay tuned.....

From: Thomas Cindy M
Sent: Thursday, March 31, 2011 7:22 PM
To: Bowling Steven F; Combs Peggy L
Cc: Brinkley Lynn A; Melahn Brenda; Brandes James A
Subject: FW: Tea Party DUE 5/31/2011

Steve/Peggy,

The email below from Mike Seto provides an update on the tea party cases. As he indicates, the information is being provided so that we can see the direction in which EOT is headed. 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 Direc tor, and then with Lois Lerner before they can finalize the guidance for us. I would not expect to receive anything until sometime in May 2011.

Let me know if you have questions/concerns, or any issues with getting the OARs extended until the end of May 2011. Thanks.

From: Seto Michael C
Sent: Thursday, March 31, 2011 5:19 PM
To: Thomas Cindy M

SFC 002969

Cc: Paz Holly O
Subject: RE: Tea Party OARs STATUS and ESTIMATED COMPLETION DATE

Hi Cindy,

Sorry for the belated response. Here is the status of the two cases:

1. Albuquerque Tea Party - (c)(4) application. The TLS and reviewer recommend a favorable ruling.

2. American Junto - (c)(3) application. The TLS and reviewer recommends a denial ruling.

The TLS and reviewer are meeting with Judy Kindell to get her views/approval on both applications, and the meeting is scheduled in Mid-April. I think Lois would want to be briefed before we issue either rulings.

Attached are the memorandum outlining the rationale for the favorable (c)(4) application and the proposed denial ruling on the (c)(3) application. The memo and proposed denial ruling will give you an idea of where we are heading on the two cases. Please note both HAVE NOT BEEN REVIEWED BEYOND THE GROUP level. It is therefore doubtful that either document will remain the same through the various levels of review.

I agree with you ideas and would like to discuss. I also have a suggestion. I like to meet once every two weeks to discuss any issues/matters that you or I may have. This will give me an idea on areas that impact you that I am not aware of. We can meet the second and fourth Wed of the month?

Mike

From: Thomas Cindy M
Sent: Wednesday, March 30, 2011 4:04 PM
To: Seto Michael C; Paz Holly O
Subject: FW: Tea Party OARs STATUS and ESTIMATED COMPLETION DATE
Importance: High

Holly/Mike,

We are now getting OARs (Congressional inquiries) on the tea party cases (refer to emails below). Also, please refer to the attached email for previous status inquiry requests regarding these cases, and let me know the estimated completion date for getting these cases resolved so that we can be responsive to TAS.

My recommendation is that an action plan be prepared specifying what steps need to be completed, who needs to complete them, estimated completion date of action, etc., and that one person be put in charge of this so that individual can make sure actions are being timely completed so that we can make sure these cases get resolved before the OARs turn into TAOs.

If you would like to discuss, please let me know. Thanks.

From: Combs Peggy L
Sent: Wednesday, March 30, 2011 3:47 PM
To: Thomas Cindy M
Subject: FW: Tea Party OARs

Cindy,

This is a follow-up to our conversation. See e-mail below regarding the open OARS on the tea party cases.

Peggy

SFC 002970

From: Slaughter David L
Sent: Tuesday, March 29, 2011 3:14 PM
To: Combs Peggy L
Subject: Tea Party OARs

Peggy, this is a follow-up from our earlier meeting today.

OAR# 1597920 for CF#4944956 KSP TRUE THE VOTE

We have received two OARs that relates to the Tea Party group. The first was received on February 8, 2011. On February 10, 2011 the OAR was e-mailed to the assigned specialist. On March 17, 2011 we were informed by the specialist assigned that the application was being reassigned to group 7822 to Ron Bell. On March 24, 2011 an e-mail was sent to group manager requesting case assignment. I called the case advocate to request an extension to 3/30/2011 to get the OAR reassigned and at that time confirmed by phone that this was a congre ssional inquiry. On March 25, 2011 I was informed of the application assignment and the OAR was sent to the specialist and contact was made with TAS.

OAR# 1634434 for CF#4978504 Patriots Educating Concerned Americans Now

This OAR was received on March 25, 2011. At that time, the application was already assigned to Ron Bell. On March 29, 2011 the OAR was e-mailed to the assigned specialist. Because the OAR came from outside of Cincinnati, it should be a congressional inquiry. However at the time of e-mail I was not certain that this was a congressional inquiry and so stated in the e-ma l. However on subsequent review of the OAR, on page 41 of the 72 pages, I found a congressional privacy act release form for Congressman Wally Herger from California.

Therefore, both the OARrs are in fact congressional inquiries.

David Slaughter
David Slaughter, Group 7846
TE/GE Liaison SFC
Phone: SFC
Fax: SFC

From: Abner Donna J
Sent: Friday, June 08, 2012 8:17 AM
To: Tierney Michael J; Hartrick Willliam M; Manohar Ramachandran; Dragoo Daniel D; Ludwig Michael A; Hofacre Elizabeth L; Sims Rosa L
Cc: Ng Faye H; Perry Lori A
Subject: FW: advocacy cases - next steps - revised

FYI -

From: Paz Holly O
Sent: Friday, June 08, 2012 9:14 AM
To: Thomas Cindy M
Cc: Lerner Lois G; Light Sharon P; Abner Donna J
Subject: advocacy cases - next steps - revised

Set forth below is a summary of the bucketing results. This email outlines the next steps to be taken with regard to each bucket.

83 c/3s bucketed:

16 approval
16 limited development
23 general development
28 likely denial

199 c/4s bucketed:

65 approval
48 limited development
56 general development
30 likely denial

Bucket 1:

C4s

Faye and Janine will make calls to all c4 applicants who were sent development letters but have not yet responded before favorable determination letters are sent using the script already provided. Faye and Janine will send the favorable c4 determinations using the letter already provided.

C3s

Faye and Janine will make calls to make calls to all c3 applicants who were sent development letters but have not yet responded before favorable determination letters are sent. The phone script alre ady provided will be modified accordingly by Faye and Janine. Faye and Janine will send the favorable c3 determinations. Addendum 1 to the c4 letter will be added to our standard favorable c3 letter. The second addendum to the c4 letter referencing the section of the pub re: political activity is not necessary.

Donor Information

C3s and c4s that provided names of their donors in response to an additional information request from the IRS will be sent a letter (to be sent in a separate email) indicating that the request was made in error and we have destroyed that information. This applies to applicants that provided the information in response to a development request specifically requesting a list of all donors, a development request to det ail all sources of revenue or any other additional development request by the IRS. It does not apply to organizations that provided this information in their application. In cases meeting this criteria, this letter must be sent before the favorable deter mination is sent.

Quality Review

In light of the small number of disagreed cases, Quality will now shift from 100% mandatory review of c4s to reviewing one of every 10 c4 cases in bucket 1. All c3s will be sent to Quality, but this will be reduced to a sampling based on the results of the review. Disagreed cases will be discussed by QA, the individuals who completed the bucketing worksheets and/or reconciliation sheet, and Sharon to reach a mutual decision re: the appropriate action on the case. The Determs bucketer will get the complete file back from Donna so they can discuss with the DC bucketer. If a mutual decision cannot be reached, the case will be elevated to me for decision.

Bucket 2:

Jodi, Faye, Grant, Janine, and Ca rly will draft the development letters consisting of the questions listed by the bucketers on the bucketing worksheets. Each letter is to be reviewed by Hilary, Matthew or Andy before it is sent based on the following partnering:

Andy -- Faye (all c/3 cases)

Matthew -- Carly and Grant (c/4 cases)

Hilary -- Jodi and Janine (c/4 cases)

Hilary and Matthew should consult with Andy if they have any questions.

Caveat: In light of the size of the files and the time it would take to get another specialist familiar with the files, Crossroad GPS and Tea Party Patriots will remain assigned to Joseph. He will send the development letters for those two cases to Andy for review.

The DC reviewer will provide any comments or a response indicating no comments within 2 business days. If a response is not received within two business days, the drafter of the development letter should notify Sharon.

If an applicant was previously sent a development letter but has not yet responded, the individual assigned to write the development letter will first call the applicant to direct them to disregard the prior development letter and that a new letter will be coming (modifying phone script provided for bucket 1 cases). The new development letter should also contain such a statement (language can be pulled from first addendum to favorable c4 letter).

The assigned Determinations specialist should email the assigned DC review er the development letter. In reviewing the letter, the DC reviewer will look at the application on TEDS , the bucketing worksheets (and reconciliation worksheet, if applicable) and the organization's website (if available).

Quality will review the the cases once a response has been received and the Determinations specialist has reached a decision on the case - just like a regular mandatory review case. Initially, all bucket 2 cases will be sent to Quality, but this will be reduced to a sampling based on the results of the review. I will send a message to the team when we are ready to shift to a sampling review.

Bucket 3:

Same as bucket 2 except the individual assigned the case will have to draft the questions. Bucket 2 cases should be started before bucket 3 cases. Given the number of c3s in this bucket, c3 cases may have to be assigned to more than one person.

Bucket 4:

Cindy will send me the 10 oldest c4 cases. Judy and Justin will draft a development letter for each case. Tom Miller will review the development letter. Judy and Justin will send the development letter to Ron Bell who will assign the case to either Mitch or Joseph -whichever is available at that time. Mitch and Joseph will send the development letters and coordinate with Judy/Justin on reviewing the responses.

Joseph is in the process of determining whether c3s in this bucket could qualify under c4 and, if so, is contacting the applicant to inform them that we do not believe they qualify under c3 but may under c4 and instruct them to submit 1024 if they are interested in pursuing c4 status.

Bucketing Going Forward:

Mitch and Joseph will each review and bucket all new receipts that meet the definition of advocacy case on the BOLO using the bucketing worksheets. Mitch and Joseph will hold a reconciliation discussion regarding any cases they place in different buckets. If they cannot reach agreement about the appropriate bucket for a case, they will elevate that case to Sharon and the three of them will have a reconciliation meeting.

Tracking Going Forward:

Ron Bell will be responsible for tracking the advocacy cases going forward. He will use a spreadsheet that combines the original tracking sheet created by Determinations and the spreadsheet crea ted by Sharon and may modify it to add new columns as cases move through the process. Everyone should notify Ron when a case is sent to their manager for closing.

SFC 002974

From: Estes Janine L
Sent: Wednesday, July 11, 2012 11:24 AM
To: Goehausen Hilary
Subject: Advocacy case, Bucket 2 - MANA
Attachments: Letter 1312 MANA 071112.doc; Letter 1312 MANA(POA1)071112.doc; Letter 1312 MANA(POA2)071112.doc; Website Jan 10.pdf; Website Oct 30.pdf

Attached is my development letter for Manassas Tea Party. Andy and I were the ones who reviewed this case. He wanted to approve the application. I'm having second thoughts on whether it is necessary to send a development letter. In reviewing the application and the website I'm thinking we might be able to approve it with a ROO referral. Thoughts?

Janine L. Estes
Exempt Organizations,
Determinations, Group 7829
SFC

SFC 002975

From: Kindell Judith E
Sent: Wednesday, July 18, 2012 10:54 AM
To: Lerner Lois G
Cc: Light Sharon P
Subject: Bucketed cases

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 3/4 appear to be conservative leaning while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum.

From: Paz Holly O
Sent: Monday, July 23, 2012 2:32 PM
To: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA
Subject: FW: TIGTA DOCUMENT REQUEST
Attachments: EDS Letter 4587(modified) (3).doc

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 9:07 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST

From: Paz Holly O
Sent: Thursday, March 08, 2012 10:09 AM
To: Thomas Cindy M
Subject: RE: EDS Letter 4587(modified) (3).doc

Yes. But I think they are going to change it to 60 days to respond instead of 90. The theory is 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. I hear you on fairness but I also do what I am told. Thanks for looking at the letter.

From: Thomas Cindy M
Sent: Thursday, March 08, 2012 8:53 AM
To: Paz Holly O
Subject: FW: EDS Letter 4587(modified) (3).doc
Importance: High

Just to make sure I understand, we're giving the organization 90 days to respond and, if the organization doesn't respond, then another 90 days in suspense before closing FTE. Is this correct?

a. If not, please clarify.

b. If so, I don't understand why an organization who is not being compliant is getting special treatment. But obviously, we'll do what we are told to do.

From: Paz Holly O
Sent: Wednesday, March 07, 2012 11:04 PM
To: Thomas Cindy M
Subject: FW: EDS Letter 4587(modified) (3).doc
Importance: High

This supersedes the letter I sent you earlier today. Any comments? Thanks!

SFC 002977

From: Lerner Lois G
Sent: Wednesday, March 07, 2012 7:24 PM
To: Paz Holly O
Subject: EDS Letter 4587(modified) (3).doc

A tiny change

IRS0000593394

SFC 002978

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45202

Department of the Treasury

Employer Identification Number:
[NN-NNNNNNN]

Contact

Person:
Date:

[Agent Name and Number]

Toll Free Telephone Number:
1-877-829-5500

[Organization Name]
[Address]
[Address]

Previous Letter Date: **[8010]**
[Letter Date Field] **(Automatic,**

variable required)

Dear Applicant:

Our previous letter, copy enclosed, requested additional information about your application for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. To be tax-exempt under section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare. When determining whether an organization meets that standard, all the facts and circumstances of that specific organization must be considered .

As indicated in our previous letter, we are unable to make a final determination on your exempt status w ithout additional information. We ask that you provide the previously requested information by [90 days]. . Please contact the individual listed above if you believe that the details required to demonstrate eligibility of section 501(c)(4) status can be provided through alternative information or if you have any other concerns about specific information requested. If you need additional time to provide the requested information or have other questions, please contact the individual listed above Please submit your response to us at:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

If you do not provide the additional information or receive an extension from us by [90 days], your case will be placed in suspense. You may reactivate your case by providing the requested information within 90 days of being placed in suspense. After the 90-day period has passed, we will close your c ase and if you wish to pursue IRS recognition of tax-exempt status you will be required to submit a new application package and new user fee payment .

Please note that if your case is closed and you hold yourself out as a section 501(c)(4) organization, you must file the appropriate Form 990-series return (Form 990-N, Form 990-EZ or Form 990).

We have sent a copy of this letter to your representat ive as indicated in your power of attorney.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:
Previous Letter

SFC 002979

2

IRS0000593396

SFC 002980

From: Seok Stephen D
Sent: Wednesday, February 15, 2012 10:57 AM
To: Bowling Steven F; Bell Ronald D; Herr Joseph R; Perry Lori A; Seok Stephen D
Subject: Template Questionnaires and Development Guide Drafts
Attachments: Structure For Questioning.doc; Advocacy Delvelopment Questions.doc; Advocacy Org Guidesheet 11-3-2011 (EO Tech).doc; Draft adv dev questions 02 03 12.doc

Attached please find materials that we will talk about at our meeting (to be arranged) to forge the drafts for developmental letter questionnaires (Advocacy Development Questions.doc and Draft adv dev questions 02 03 12.doc) and development guidance (Structure For Questions.doc). Advocacy Org Gudidesheet developed by EO Tech is also attached for your reference - this guidance is not part of our discussion since this is the guidance from EO Tech and final, even if it is not formal (not distributed to outside of our Team members).

Once we forge the guidance and the developmental letter during the meeting, I will amend the draft version per our meeting to present to the entire Team at our 2nd full-member team meeting.
At the full meeting, we will also have input and suggestions from all team members before we make them as a final draft - this will be forward to EO Tech for a final version.

I am thinking the meeting time next week sometime. **Please let me know when you will be in office and available time during your in-office time.**
I am expecting it will take more than an hour, depending on input and ideas, so please give some leeway for your time, plus and minus.

Thank you,
Stephen.

1) Please provide the following information for your board of directors and officers :

   a) Provide all copies of your corporate minutes from inception to the present.

   b) Provide the titles, duties, work hours, and compensation amounts of your board members, officers, and employees. If they only work for a certain time yearly, bi -yearly, or quad-yearly, please provide the periods they had (have) worked and will work. Please identify your volunteers.

   c) If you have a board member or officer who has run or will run for a public office in the near future, please describe fully. If none, please confirm by answering "None" to this question.

2) Are you a membership organization? If so, provide the following for your membership:

   a) How many members do you have currently?

   b) What does the memberships consist of? Are they mostly individuals? What is the percentage of the organizational members as they are part of the whole membership ?

   c) Provide member application/registration form

   d) Provide membership agreement and rules that gove rns members.

   e) Provide a membership fee schedule.

   f) What are the membership requirements?

   g) What services and benefits do you provide especially for members only?

   h) What are the roles and duties of your members?

   i) Provide copies of your website that your members can only access.

3) Provide the following information for the income you received and raised for the years from inception to the present. Also, provide the same information for the income you expect to receive and raise for 2012, 2013, and 2014.

   a) Donations, contributions, and grant income for each year which includes the following Information:

      - The names of the donors, contributors, and grantors. If the donor, contributor, or grantor has run or will run for a public office, identify the office. If not, ple ase confirm by answering this question "No".
      - The amounts of each of the donations, contributions, and grants and the dates you received them.
      - How did you use these donations, contributions, and grants? Provide the details.

   If you did not receive o r do not expect to receive any donation, contribution, and grant income, please confirm by answering this question "None received" and/or "None expected".

   b) The amounts of membership income received for each year. If you did not receive or do not expect to receive any membership income, please confirm by answering this question "None received" and/or "None expected".

c) The amounts of fundraising income received for each year. If you did not receive or do not expect to receive any fundraising income, pl ease confirm by answering this question "None received" and/or "None expected".

d) The amounts of any other incomes received for each year. If you did not receive or do not expect to receive any other incomes, please confirm by answering this question "No ne received" and/or "None expected".

NOTE: Please do not attach tax returns or ledgers to respond to the above questions.

4) Provide the following information for the expenses you have incurred for the years from inception to the present. Also, provi de the same information for the expenses you expect to incur for 2012, 2013, and 2014.

a) Donation, contribution, and grant expenses for each year which includes the following Information:

- The names of the donees, recipients, and grantees. If the donee, recipient, or grantee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each of the donations, contributions, and grants and the dates you donated, contributed, or gra nted them.
- The amounts of each of the donations, contributions, and grants and the dates you expect to donate, contribute, or grant them.
- Provide the reasons for issuing the donations, contributions, and grants.

If you did not issue or do not exp ect to issue receive any donations, contributions, and grants, please confirm by answering this question "None to be provided".

b) Compensation, salary, wage and reimbursement expenses for each year with the following information:

- The names of the pa yees. If the payee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No".
- The amounts of each payment and the dates you made or expect to make each payment.
- The services the payee pro vided in return for the payment.
- Provide the reasons for issuing the donations, contributions, and grants?

c) The lists and amounts of any other expenses for each year.

Note: Please do not attach tax returns or ledgers to respond to the above que stions.

5) Provide the following for your fundraising activities:

a) Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non -election year.

b) Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, and webpage solicitations.

c) How much of your organization's budget is spent on fundraising?

d) What are the sources of the fundraising expenses?

e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

6) Provide the following information for all the events and programs you have conducted and participated from the inception to now (other than the events and programs that are questioned below separately). Please answer the following for each event:

a) The time, location, and detailed description of each event or program

b) Copies of handouts you provided to the a udience, participants, and the pub lic

c) The names and credentials of the organizers

d) If speeches or forums were conducted in the event or program, provide detailed contents of the speeches or forums, names of the speakers or panels, and their credentials. If any speakers or panel members were paid, provide the amount were paid for each person. If not, please indicate they volunteered to conduct the event or program.

e) The names of persons from your organization and the amount of time they spent on the event or program. Indicate the name and amount of time they spent on the event or program. Indicate the name and amount of compensation that were paid to each person. If no one were paid, indicate this event were conducted by volunteers to each person.

f) Indicate the percentage of time and resourc es you spent on all the events and programs in relation to 100% of all your activities.

g) Will your near future events and programs remain similar to those you have been conducting recently? If not, explain the changes of your events and programs in the nea r future in terms of contents, time, and resources.

7) Provide the following for your publishing activities including books, CD's, DVD's, newsletters, literatures, flyers, brochures, pamphlets , voter guides, and class handouts (from the inception to now):

a) Copies of all the publications and/or advertising materials that you have distributed .

b) Expense amounts incurred for your publishing activities from the inception to now.

c) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

d) Will your near future publishing activities remain similar to those you have been conducting recently? If not, explain the changes of your publishing activities in the near future in terms of contents, time, and resource s.

8) Provide the following for all of your research and survey activities including researches on the public's social and political views, surveys on the public's choices of political candidates , and exit poll surveys, but not limited to (from the inception to now):

a) The descriptions of your researches and surveys

b) Copies of your research and survey results

c) The details on your research and survey result distributions - please include all distributions.

d) Expense amounts incurred for your research and survey related activities from the inception to now.

e) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

f) Will your near future research and survey activities remain similar to those you have bee n conducting recently? If not, explain the changes of your research and survey activities in the near future in terms of contents, time, and resources.

9) Provide the following information for your web and internet related activities:

a) Copies of your current web pages and your presentations on other web pages such as social networking sites and blog sites. If you are a membership organization, please include all the pages that are accessible only to your membe rs.

If you have not established your website ye t, but you have a plan to have your own website, Provide print-outs and contents of proposed website, including any pages with restricted access.

b) Expense amounts incurred for your web and internet related activities from the inception to now

c) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

10) Have you attempted or will you attempt to influence the outcome of specific legislation (in the near future)? If so, provide the following:

a) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation.

b) Provide copies of any radio, television, or internet advertisements relating to your lobbying activities

c) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

11) Have you or will you directly or indirectly communicat e(d) with members of legislative bodies (in the near future)? If so, provide copies of the written communications and contents of other form of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

12) Have you or will you directly or indirectly participate (d) or intervene(d) in any political campaign on behalf of (or opposition to) any candidate for public office including attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate. If so, provide the following details for each of your all political campaign s and intervention s:

a) The nature of the political campaign or intervention in detail

b) Names and party affiliations of the candidates you support or oppose

c) Date and time of the political campaign or intervention

d) Copies of all handouts, media advertisements, pages of internet ad and other means (to be) provided and distributed for the political campaign or intervention

Please provide your copies in tangible format such as CDs, DVDs, tapes, and paper. Please do not substitute them with web links.

e) If you provided or will provide fun ds to the candidates or the organizations that support them, provide the name of the recipient, the amount and time of the donation, and the source of the funds. Please provide this information for each of your all donations.

f) Indicate the percentage of ti me and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

13) Have you conducted or will you conduct candidate forums or other events at wh ich candidates running for public offices are invited to speak (in the near future)? If so, provide the following details and nature of each of forum including:

a) The names of candidates invited or will be invited to participate

b) The issues that were discu ssed or will be discussed

c) The time and location of the forums or other events held or will be held

d) Copies of all handouts (to be) provided and distributed at the forum s and other events, including any internet or advertising material discussed or used at t he forums and other events.

e) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

14) Have you distributed or will you distribute materials or conduct other communications that are prepared by another organization or person (in the near future)? If so, provide the following:

a) Copies of materials and contents of communications

b) When and where the distribution ha ve been conducted or will be conducted?

c) Who has distributed or will distribute the materials?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

15) Will you, or have you conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides (in the near future)? If so, provide the following:

a) What is or will be the location, date and time of the events?

b) Who on the organization's behalf ha ve conducted or will conduct the voter registration or get out to vote drives?

c) Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this q uestion.

16) Have you engaged or will you engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list (in the near future)?

If so, describe the relationship in detail and copies of any contracts or other agreements documenting the business relationship.

If not, please confirm by answering "No" to this question.

17) Are you associated with any other I RC 501(c)(3), 501(c)(4) or 527 orga nizations? If so, provide the following:

a) Provide the name, employer identification number, and address of the organizations

b) Describe in detail the nature of the relationship(s).

c) Do you work with those organization(s) regularly? Describe the nature of the contacts.

d) List shared employees, volunteers, resources, office space, etc. with the organization(s).

e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

18) If you have conducted or will conduct any activities other than the ones we have already cited above (in the near future), provide answers for the following questions regarding past, present and future activities. If you have not conducted and will not conduct any other activities, please confirm by answering "No" to this question.

a) What does the activity/service entail?

b) Who conducts the activity/service?

c) When and where is the activity/service conducted?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If you have not conducted or will not conduct any activities other than the ones we ha ve already cited, please confirm by answering "No" to this question.

Advocacy Organizations Guide Sheet

Many different types of exempt organizations engage in advocacy in compliance with the applicable tax laws. However, it can be challenging to distinguish between permissible and impermissible types of advocacy; analyzing cases involving these issues is extremely fact-intensive.

This guide sheet aids agents working these cases in differentiating between types of advocacy, reminds them of the advocacy rules pertaining to various categories of exempt organizations, and provides a checklist of facts to gather and indicators of various types of advocacy.

PART 1: THREE TYPES OF ADVOCACY:

This guide sheet breaks down the broad concept of advocacy into three categories: political campaign intervention, lobbying, and general advocacy. They are defined as follows.

1) Political Campaign Intervention:

An organization engages in political campaign intervention when it participates or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This includes attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate.

2) Lobbying:

An organization engages in lobbying, or legislative activities, when it attempts to influence specific legislation by directly contacting members of a legislative body (federal, state, or local), or encouraging the public to contact those members, regarding that legislation. An organization also engages in lobbying when it encourages the public to take a position on a referendum. Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

3) General Advocacy:

An organization engages in general advocacy when it attempts to (1) influence public opinion on issues germane to the organization's exempt purposes, (2) influence non-legislative governing bodies (e.g., the executive branch, regulatory agencies), or (3) encourage voter participation through get out the vote drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy generally includes all other types of advocacy other than political campaign activity and lobbying.

Part 2: TYPES OF ADVOCACY ORGANIZATIONS:

The organizations that most commonly engage in advocacy are 501(c)(3), (4), (5), and (6) organizations and 527 organizations. Below are the rules governing which types of advocacy these organizations can engage in, along with a chart summarizing that information.

1) IRC 501(c)(3) organizations:

- Organizations described in 501(c)(3) are organized and operated exclusively for charitable, religious, educational, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals .
- They can engage in an insubstantial amount of lobbying.
- They are absolutely prohibited from engaging in any type of political campaign intervention.
- They can engage in an unlimited amount of general advocacy as long as it is educational.

2) IRC 501(c)(4) organizations:

- Social welfare organizations described in IRC 501(c)(4) are organized and operated exclusively for the promotion of social welfare, which involves promoting the common good and general welfare of people in the community.
- They can not be operated for profit.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(4) purposes; therefore political campaign activity, along with all other non-(c)(4) activities, cannot make up an organization's primary activities.
- They can engage in lobbying as their primary activity if their legislati ve activities are related to their specific exempt purposes.
- They can engage in an unlimited amount of general educational advocacy as long as the activities are related to their exempt purposes.

3) IRC 501(c)(5) organizations:

- Organizations described in IRC 501(c)(5) must be organized and operated for the purpose of bettering the conditions of those engaged in labor, agricultural, or horticultural pursuits.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is conducted with regard to issues that are related to their exempt purpose.

- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(5) purposes; therefore political campaign activity, along with all other non-(c)(5) activities, cannot make up an organization's primary activities.

4) **IRC 501(c)(6) organizations**:

- Business league organizations described in 501(c)(6) are associations of persons with a common business interest and their purposes must be to promote this common interest.
- They can not conduct a regular trade or business for profit.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is on issues related to their exempt purpose.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(6) purposes ; therefore political campaign activity, along with all other non-(c)(6) activities, cannot make up the organization's primary activity.

5) **IRC 527 organizations**:

- Political organizations described in 527 are organized and operated for the primary purpose of engaging in political campaign intervention, including influencing or attempting to influence the selection, nominat ion, 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.
- They can engage in an unlimited amount of political campaign intervention.
- They can engage in lobbying, but would be taxed on that activity.
- They can engage in general advocacy, but would be taxed on that activity.

	IRC 501(c)(3)	IRC 501(c)(4), (c)(5), and (c)(6)	IRC 527
Receive tax-deductible charitable contributions	YES	NO	NO
Engage in political campaign intervention	NO	LIMITED; Must Not Constitute Primary Activity Of Organization	YES
Engage in lobbying	LIMITED;	YES;	LIMITED

(i.e. legislative activity)	Must Not Be Substantial	Unlimited Amount If In Furtherance of Exempt Purposes	
Engage in general public advocacy not related to legislation or the election of candidates	YES; Permitted As An Educational Activity	YES; Unlimited Amount If In Furtherance of Exempt Purposes	LIMITED

Part 3: ADVOCACY INDICATORS:

Distinguishing between types of advocacy requires knowledge of all the pertinent facts and circumstances. Therefore, careful and full development of a case is often required to gather very specific facts. The following are facts about an organization's activities that can be helpful in distinguishing between different types of advocacy :

- What does the organization consider to be its exempt purpose(s)?
  - How much time is devoted to each purpose?
  - How many financial resources are devoted to each purpose?
  - In what order of importance does the organization consider its exempt purpose? From most important to least important?
- What are the sources of the organization's income?
- Does the organization engage in fundraising activities? If so, what are the specific details, including:
  - Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non -election year.
  - Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
  - How much of the organization's budget is spent on fundraising? Determine the sources of fundraising expens es.
- How does the organization use its income? Are there detailed break-downs of these expenses?
- How many employees does the organization have? How many volunteers?
  - Are employees full-time, part-time, or seasonal? Explain.
  - If employees are part-time, when did/do they work?
  - If employees are seasonal, during what season (months) did/do they work?
- How many employees and volunteers are/were devoted to each activity of the organization throughout the year?
- How many and what sort of resources are devoted to volunteer activities?
- Does the organization conduct educational events, discussion groups or similar events? If so, what are the specific details, including:
  - Copies of all materials distributed with regards to the event.
  - When have the events taken place or plan to take place?
  - How much of the organization's resources and budget are devoted to these activities? What is the breakdown of expenses?

- Does the organization publish or distribute materials or conduct other communications that are prepared by or reviewed b y another organization?
- Is the organization associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, describe in detail the nature of the relationship (s).
    - Does the organization work with those organization(s) regularly? Describe the nature of the contacts.
    - Do you share employees, volunteers, resources, office space, etc. with the organization(s)?
- Does the organization conduct candidate forums or other events at which candidates for public office are invited to speak? If so, what are the details, including the nature of the forums, the candidates invited to participate, the candidates that did participate, the issues discussed, the time and location of the event.
    - Are there copies of all materials distributed regarding the forum and provided at the forum, including any internet material discussing or advertising the forum?
- Have any candidates for public office spoken at a function of the organization? If so, what are the names of the candidates, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any spe eches given by the candidate(s)?
- Does the organization, or has it ever, conducted voter education activiti es, including voter registration drives, get out the vote drives, or publish or distribute voter guides? If so:
    - What is the location, date and time of the events.
    - Who on the organization's behalf has or will conduct the voter registration or get out the vote drives?
    - How many resources (funds/employees/volunteers) are devoted to the activity?
    - Are there copies of all materials published or distributed regarding the activities, including copies of any voter guides?
- Does the organization engage in business deal ings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list ? If so, what is the relationship in detail and are there any contracts or other agreements documenting the business relationship?
- Does the organization attempt to influence the outcome of specific legislation ?
    - Are there copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legi slation?
    - Does the organization conduct media advertisements lobbying for or against legislation? Are there copies of any radio, television, or internet advertisements relating to the organization's lobbying activities ?
    - Does the organization directly or ind irectly communicate with members of legislative bodies? If so, determine the amount and nature of the communication.

Below are indicators used when determining whether an IRC 501(c)(3), IRC 501(c)(4), (5) or (c)(6), or IRC 527 organization is engaging in (1) political campaign intervention, (2) lobbying (legislative activities), or (3) general advocacy.

Section I: Political Campaign Intervention

The following are indicators of political campaign intervention:

		Yes	No
A.	Is there a "candidate" for "public office?" This is an individual who: • Offers himself, or • Is proposed by others • As a contestant for elective public office, whether national, state, or local public office. An individual who has not yet announced an intent to seek election to public office may still be considered to have offered himself or herself as a candidate for office. Has the individual taken sufficient steps prior to announcing an intent to seek election, so that he or she may be considered to have offered himself or herself as a candidate for public office? Have others proposed the individual as a candidate for public office, even if the individual has announced an intention of not seeking election to the office? Some action must be taken to make one a candidate, but the action need not be taken by the candidate or require his consent. This would include statements in opposition to a candidate for office, even before that candidate has necessarily declared themselves as a contestant for office.		
B.	Is the candidate seeking an office to which he or she must be elected, as opposed to appointed? The political campaign intervention prohibition applies only to campaigns for offices to which a candidate must be elected. Factors indicating an elective public office include: • The position was created by statute • The position is continuous • The position is not contractual • The position is for a fixed term of office • The office requires an oath of office		
C.	Does the organization publish and/or distribute written or printed statements, including communications made on the internet, in favor of or against a candidate for public office? This includes material prepared by the organization itself or by other organizations or individuals. Do materials distributed by the organization encourage members to vote for or against a candidate?		
	Has the organization criticized or expressed support for a candidate on their website or through links to another website?		
	Has the organization made oral statements in support of or in opposition		

	to a candidate for public office?		
	Does the organization encourage individuals to vote for or against a particular candidate? Organizations are not prohibited from speaking about moral, social, or economic issues during election periods. However, consider the facts and circumstances to determine whether the organization is surreptitiously intervening in a political campaign under the pretext of speaking to moral, social or economic issues by tying its message to the election in a manner that expresses a preference for a candidate or candidate.		
	Does the organization reference a candidate by use of "code words" or other references to identify a candidate, such as "Republican," "Democrat," "pro-life," "pro-choice," etc.? • Are such references coupled with reasonably overt indications that the organization supports or opposes a particular candidate or candidates in an election? • Does the communication contain a relatively clear directive, based on the facts and circumstances, that enables the recipient to understand the organization's position on a candidate or candidate?		
	Has the organization established or does it operate a political action committee (PAC)?		
	Has the organization made contributions to a political action committee (PAC)?		
	Does the organization provide or solicit money or other support for a candidate or a political organization?		
	Does the organization place signs on its property supporting or opposing a candidate?		
	Does the organization rate candidates, even on a nonpartisan basis?		
	Have organization leaders made comments in an official publication of the organization or at official functions of the organization indicating support for or opposition to a candidate?		
	Does the organization conduct business dealings in a manner favoring a candidate or candidates, such as by renting facilities at different rates or providing/denying access to its membership list?		
D.	**Personal Endorsements:** Organization leaders may endorse or oppose a candidate in their personal capacity, and not in their official capacity. The following are indicators that the organization leader is speaking in his or her personal capacity and not in their official capacity: • Do the organization leader's statements appear in a publication that is not an official publication of the organization? • Is the ad or publication paid for by the individual himself or herself, and not by the organization? • Is the organization leader's title and affiliation with the organization used for identification purposes only, and not to		

	indicate support by the organization?		
E.	**Candidate Forums:** The presentation of public forums for candidates to speak or debate is not in and of itself prohibited political campaign intervention, but may be a permissible method of educating the public (See Rev. Rul. 66-256; Rev. Rul. 74-574; Rev. Rul. 86-95). All the facts and circumstances must be considered and the presence or absence of one factor is not determinative. Consider the following factors when determining whether the forum is operated in a manner that may constitute prohibited campaign intervention or a permissible educational event: • Does the organization operate the forum in a manner indicating bias or preference for one candidate or candid ates over others, such as through biased questioning? • Has the organization indicated support for or opposition to a candidate (e.g., such as when the candidate is introduced)? • Does the organization invite only candidates who share the same position as the organization to participate? • Does the organization provide an equal opportunity for all candidates to participate? • Does the organization provide equal amounts of time for each candidate to answer questions and express their views? • Are questions prepared and presented by a nonpartisan, independent panel or moderator? • Does the moderator comment on questions or otherwise make comments that imply approval or disapproval of a candidate? • Does the organization make statements that the views expressed are those of the candidates and not of the organization, and/or that the organization does not endorse any candidate or viewpoint? • Do the topics discussed cover a broad range of issues that are of interest to the public? • Are the candidates asked to agree or disagree with positions, agendas, platforms, or statements of the organization, indicating prohibited campaign intervention?		
F.	**Candidate Appearances:** Has a candidate spoken at an official function of the organization in his or her personal capacity or capacity as a political candidate? Depending on the facts and circumstances an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status (See Rev. Rul. 2007-41). When determining if prohibited political campaign intervention occurred, consider the following: • Was the candidate invited to speak at the organization's event in his or her capacity as a political candidate? • Did the organization provide an equal opportunity to participate to political candidates seeking the same office? (Consider the nature of the event, such as if the organization invites one		

	candidate to speak at a well attended event but invites an opposing candidate to speak at a sparsely attended event. This could constitute prohibited campaign intervention even if the manner of presentation for both speakers is otherwise neutral.) • Did the organization indicate support for or opposition to the candidate (including during candidate introductions, communications concerning the candidate's attendance, including any materials distributed during the event)? • Did any political fundraising occur?		
G.	Did the candidate appear or speak at an organization event in a **non-candidate capacity?** (See Rev. Rul. 2007-41) The candidate's presence at a public event, such as a lecture, concert, or worship service does not by itself indicate the organization is engaged in prohibited political campaign intervention. The following factors should be considered when determining if prohibited political intervention occurred: • Is the candidate publicly recognized by the organization or a representative of the organization during the event as a candidate for public office? • Did the organization clearly indicate the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in any communications announcing the candidate's attendance at the event? • Is the individual chosen to speak solely for reasons other than his or her candidacy, such as their status as a public figure aside from being a political candidate, the individual currently holds or previously held a public office, is considered an expert in a non-political field, is a celebrity, or has led a distinguished military, legal or public service career. • Has any campaign activity occurred in connection with the candidate's attendance?		
H.	**Voter Guides:** Certain "voter education" activities conducted in a non-partisan manner may not constitute prohibited political campaign activity, but may be permissible educational activity. The following are indicators that a voter guide constitutes prohibited political campaign activity, and not permissible educational activity: • Are incumbents identified as candidates for re-election? • Are incumbents' positions compared to the positions of other candidates or the organization's position in a biased manner? • Is the voting guide distributed close in time to an election? • Is the voting guide primarily concerned with a narrow range of issues of importance to the organization (e.g. such as land conservation or abortion) as opposed to reporting on all legislation voted on by the candidates or of importance to the electorate?		

	• Is the voting guide widely distributed among the electorate during an election campaign as opposed to the organization's membership? • Does the voting guide include only the voting records of candidates for office? • Does the voting guide include the voting records of candidates in a partisan manner, such as by ranking them according to whether their vote aligns with the organization's position on the issue? • Does the voting guide contain editorial comments by the organization? • Does the voting guide contain express or implied approval or disapproval of a candidate's voting record?		
I.	**Candidate Questionnaires**: Depending on the facts and circumstances a candidate questionnaire published by an organization may constitute permissible educational activity as opposed to prohibited political campaign intervention. The following are indicators that the organization's questionnaires constitute prohibited campaign intervention: • Does the candidate questionnaire contain editorial comments by the organization? • Does the candidate questionnaire include only issues of importance to the organization itself and not to the general public? • Does the questionnaire contain express or implied approval or disapproval of candidate responses?		

Section II: Lobbying

The following factors are indicative of lobbying (i.e. legislative activities):

		Yes	No
A.	Is the organization attempting to influence legislation or a legislative proposal? • Legislation includes acts, bills, resolutions, referendums, initiatives, legislative confirmation of an appointive office, constitutional amendments by Congress, state legislatures, local councils or similar governing bodies or by the public in a referendum, initiative, constitutional amendment or similar procedure. • Lobbying does not include attempts to influence (1) regulations or (2) administrative matters.		
B.	Is there "action" being taken with reference to the legislation? • Action includes introduction, amendment, enactment, defeat, or repeal by legislative bodies or the public.		

C.	Does the organization engage in "direct lobbying?" • Is the organization trying to influence legislation by directly contacting members or employees of a legislative body? • Does the organization communicate with government officials or employees who can affect legislation? • Do the communications refer to specific legislation? • Do the communications reflect the organization's specific views on legislation? • Does the organization advocate a position on a specific act, bill, or resolution?		
D.	Does the organization engage in "indirect" or "grassroots" lobbying: • Does the organization attempt to influence legislation by influencing the public's opinion on specific legislation? • Does the communication refer to specific legislation? • Does the communication reflect a view or position on the legislation? • Does the communication to the public include a "call to action" such as providing the address for the legislature, using a petition or tear-off postcard to communicate with the legislature or specifically identifying a legislator who will be voting on the proposed legislation and his or her position on it, or encouraging the public to contact members of a legislative body for purposes of supporting, opposing or proposing legislation?		

Section III: General Advocacy

The following are indicators of general advocacy:

		Yes	No
A.	• Is the organization attempting to influence public opinion on issues, rather than attempting to influence the election of candidates for public office or specific legislation? • Is the organization attempting to influence non-legislative governing bodies (e.g., the executive branch, regulators)? • Is the organization engaging in nonpartisan, neutral voter educational activities? These may include get out the vote drives, encouraging voter registration, encouraging voter participation, candidate debates and forums, and the distribution of voter guides if conducted in a nonpartisan and neutral manner. (Refer to the subheads above for criteria when considering whether these voter education activities are conducted in a nonpartisan manner.)		
B.	Does the organization engage in "educational" activities? (See Rev. Proc. 86-43). The term "educational" relates to: • The instruction or training of an individual for the purpose of		

	improving or developing his capabilities, or • The instruction of the public on subjects useful to the individual and beneficial to the community.		
	Is the organization advocating a particular position or viewpoint ? If "Yes" to the following, the activity may qualify as permissible educational activity: • Does the organization present a sufficiently full and fair exposition of the pertinent facts that aid the listener or reader in the learning process? • Does the organization provide a factual background for the viewpoint or position being advocated ?		
C.	The organization's presentations should avoid the following factors in order to be considered educational: • Do the organization's presentations avoid expressing conclusions more on the basis of strong emotional feelings than of objective evaluations? • Does the organization avoid presenting viewpoints or positions unsupported by facts and this is a significant portion of the organization's communications ? • Does the organization avoid presenting facts purporting to support its viewpoints or position made in a distorted manner?. • Does the organization avoid making substantial use of inflammatory and/or disparaging terms?		

SFC 003000

Subject:	To review BOLO Advocacy case template questionnaires and development aids
Location:	7116C
Start:	Wed 2/22/2012 9:00 AM
End:	Wed 2/22/2012 10:00 AM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Seok Stephen D
Required Attendees:	Bowling Steven F; Bell Ronald D; Perry Lori A; Herr Joseph R; Seok Stephen D

IRS0000594936

From: Bowling Steven F
Sent: Tuesday, February 28, 2012 10:47 AM
To: Thomas Cindy M
Subject: RE: Guidance on developing advocacy cases
Attachments: Advocacy Team.xls

Attached is a list of the team and the number of cases assigned to each individual in the ( ). Mitch Steele has been removed but is working what he already had and Lori Perry has been added.

Per Stephen's numbers;

EDS cases total 169 and 141 are assigned. Oldest control date is 6/6/2011.

TEDS cases total 60 and 0 are assigned. Oldest control dates are 2/8/2011, 3/18/2011, 4/28/2011, 5/28/2011, these will be assigned next.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
550 Main Street, Room SFC
Cincinnati, OH 45202
Te SFC
Fa SFC

From: Bowling Steven F
Sent: Tuesday, February 28, 2012 8:47 AM
To: Thomas Cindy M
Subject: RE: Guidance on developing advocacy cases

I told Stephen to hold off on any further development of template questions, not to stop developing cases. I'll straighten it out. I understood that Washington is looking at the letters that went public and would provide guidance.

I've asked Stephen for the other information you requested, I'll respond as soon as I can.

Also, Stephen has a meeting set up today @ 1:00 with the entire to team to discuss their cases and current events. I'm going to try and make it, I'm scheduled for a DQMP meeting @ 9:00 which could last all day.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
550 Main Street, Room SFC
Cincinnati, OH 45202
Tel SFC
Fax SFC

SFC 003002

From: Thomas Cindy M
Sent: Monday, February 27, 2012 9:56 PM
To: Bowling Steven F
Subject: RE: Guidance on developing advocacy cases
Importance: High

I'll elevate the information provided by Joseph regarding the respo nses for the 2 organizations.

A question though: Why are we not issuing development letters? Who instructed folks to stop? The only thing I heard from Holly is that we shouldn't be asking organizations to submit their entire website. Instead, we should be printing pages of concern and send them to the organization with questions that cause us concern.

Please send me a list of the folks who are working the advocacy cases. Also, please let me know if they are working the cases 100% of the time or a re requesting other cases be assigned. If you or Stephen don't know, just let me know and I'll have Bonnie ask their managers. Finally, what is the control date of the oldest unassigned case?

From: Bowling Steven F
Sent: Monday, February 27, 2012 10:43 AM
To: Thomas Cindy M
Subject: FW: Guidance on developing advocacy cases
Importance: High

Cindy,

Please read Joseph's email directly below Stephen's.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
550 Main Street, Room SFC
Cincinnati, OH 45202
Tel SFC
Fax SFC

From: Seok Stephen D
Sent: Monday, February 27, 2012 10:20 AM
To: Bowling Steven F
Cc: Herr Joseph R
Subject: FW: Guidance on developing advocacy cases
Importance: High

Steve,

Please see the below.
Joseph received a n important response that is related to the resent advocacy issue.

Thank you,
Stephen.

From: Herr Joseph R
Sent: Monday, February 27, 2012 10:15 AM
To: Seok Stephen D
Subject: RE: Guidance on developing advocacy ca ses

SFC 003003

Stephen,

Regarding my fourth bullet below, I received a response from the Sidney Shelby County Liberty Group, which I want to elevate. I believe they are working with their Congressman along with Ohio Liberty Council. In their response, they state:

> "Your recent questionnaire for additional information of February 7, 2012, is excessive, extreme, and forces us to choose between First Amendment rights and Freedom of Assembly and the non -profit status we are entitled to under IRS regulations.
>
> We answered all pertinent questions in the initial detailed 18 page Form 1024 request for Non -profit status as a 501(C)4 [sic], and fail to understand why more of *the same* [sic] information changes the situation. Therefore, we request that our original application be granted without further delay."

Joseph

Joseph R. Herr
Revenue Agent Group 7821
Exempt Organizations Determinations
SFC[redacted]
SFC[redacted] fax

From: Herr Joseph R
Sent: Monday, February 27, 2012 9:57 AM
To: Seok Stephen D
Subject: Guidance on developing advocacy cases

Stephen,

I have a few items to run by you regarding the advocacy cases.

- I have received a response on one of my advocacy cases. I have reviewed the response. It appears the organization will be engaging in some political activity at a level less than half. I know you want to review the response. It is a large response. Instead of making a copy, do you just want to look at the original?

- Do we have any idea on when we might be able to issue developmental letters again? I have four un-reviewed cases. It does not make sense to review them if we cannot issue letters. If it will be a while, I should request some non-advocacy case to work.

- Regarding developmental questions in general, I am wondering if we should tweak our line of questioning. We are currently asking questions which will answer whether individual actions by the applicants would be considered social welfare or political. That method of questioning does not necessarily answer the question whether social welfare is the primary activity. I am wondering if we should add to the questioning a line of inquiry to see if the organization is proactively monitoring their political activity. We could ask the organizations if they have any policies and procedures to track and monitor the amount of political activity and political expenditure. We could think about drafting some suggested policy and control guidance for them to adopt. This suggestion would need to be elevated, but it could be a way to be a way to approve cases especially if the organization's have not had any past activities.

- I need to make a follow-up call to Ohio Liberty Council. Do you know if Steve has heard anything regarding t his case? I do not want to follow-up until I know what is happening regarding this case.

Thank you,
Joseph

Joseph R. Herr
Revenue Agent Group 7821
Exempt Organizations Determinations
SFC[redacted]

SFC [redacted] fax

From: Bowling Steven F
Sent: Thursday, March 01, 2012 11:46 AM
To: Thomas Cindy M
Subject: RE: Congressional Follow Up - updated instructions and need for info

Cindy,

Stephen verified that everyone understands that their questioning is modified to the particular issues in their cases and they understand not to ask something that is already answered.

He also added: "our questions are geared towards the details of activities that are not in the applications, which is pretty normal development for complex cases."

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC
Cincinnati, O SFC
Tel SFC
Fa SFC

From: Thomas Cindy M
Sent: Wednesday, February 29, 2012 10:05 PM
To: Bowling Steven F
Subject: Congressional Follow Up updated instructions and need for info
Importance: High

Steve,

I just received the emails below. Lois wants us to discontinue sending development letters to the advocacy organizations until EO R&A in D.C. has a chance to revise questions. In light of this, we shouldn't assign anymore of these cases until we have the template questions from D.C.

Also, Lois received copies of additional information letters for Ohio Liberty and Sidney Shelby. Both of these cases are assigned to Joseph Herr. Lois has been telling folks that not all the additional information letters are the same because it depends on the facts in the case. However, what she saw in the 2 cases (Ohio Liberty and Sidney Shelby) is that the letters were identical. She wants us to verify that we're not asking a question if the organization fully and clearly answered the information in their application and that we're only asking questions when the organizations haven't given us details that we need regarding things like candidate forums, etc. Please check into this and let me know what you find out.

If you have questions/concerns, please let me know. Thanks, and I too apologize for the stop and go on the additional information letters.

From: Paz Holly O
Sent: Wednesday, February 29, 2012 9:23 PM
To: Thomas Cindy M
Subject: FW: updated timeline
Importance: High

Sorry for the stop and go on this. The situation is evolving rapidly. Was not clear to me that Lois did not want anymore letters going out until we changed the template letter.

On the last question in her email , I assume it is like any other template development letter and the agents modify as needed - i.e., they would not ask a question if the org had fully and clearly answered it in their app but most are not giving us the detail we need re: things like candidate forums, etc. Can you please confirm?

Thanks,

Holly

From: Paz Holly O
Sent: Wednesday, February 29, 2012 9:19 PM
To: Lerner Lois G
Cc: Fish David L; Thomas Cindy M
Subject: RE: updated timeline

Andy and Justin are working on revising the letter. That should be done soon. In the meantime, Cindy and I discussed having specialists print the relevant parts of applicants' websites and asking the orgs to verify the pages since that seemed to be the most burdensome request. We can hold off on sending anymore development letters until we have the revised version.

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 6:30 PM
To: Paz Holly O
Cc: Fish David L; Thomas Cindy M
Subject: RE: updated timeline
Importance: High

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 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

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 29, 2012 3:56 PM
To: Lerner Lois G
Cc: Fish David L
Subject: FW: updated timeline

doc attached to my last email had some highlighting in it. I have removed that. A clean version is attached.

From: Paz Holly O
Sent: Wednesday, February 29, 2012 3:53 PM
To: Lerner Lois G
Cc: Fish David L
Subject: updated timeline

SFC 003007

Lois,

EO Determinations noticed an uptick in applications from advocacy organiz ations early in 2010.

The first case was referred to EO Technical in March 2010. That case was an application for 501(c)(3) status. It closed failure to establish in late May 2010 when the organization failed to respond to our first request for additional information.

At that time, EO Technical requested another 501(c)(3) application from an advocacy organization be transferred to EO Technical. Such a case was transferred in June 2010. That case also closed failure to establish in January 2012 after the organization failed to respond to our request for additional information.

EO Technical also requested an application from a 501(c)(4) advocacy organization be transferred from Determinations. A case was transferred in April 2010. It is still being developed by EO Technical.

To give you a sense of the growth in the number of these cases, in October 2010, we had identified approximately 40 advocacy cases.
As of about 10:00 a.m. on 2/28/2012, we h ad 229 of these cases .

Of the 229 cases, 141 have been assigned. Development letters have been sent to the majority of the 141 assigned cases. The oldest control dates of those cases that are still unassigned are 2/8/2011, 3/18/2011, 4/28/2011, and 5/28/2011. These will be assigned next. Otherwise, we're at approximately 6/6/2011 control date for these cases.

EO Technical provided guidance regarding the development of applications by advocacy organizations to EO Determinations in November 20 11.

The case assignment matrix is attached.

Holly

From: Lerner Lois G
Sent: Friday, February 24, 2012 3:46 PM
To: Spellmann Don R; Cook Janine; Paz Holly O
Cc: Kindell Judith E; Lowe Justin; Flax Nikole C; Urban Joseph J
Subject: Congressional Follow Up
Importance: High

Just came back from the meeting and they have asked for several things.

1. Don/Janine-- The guidance provided to Cincy that Don reviewed -- I"m hoping you can let us know your concerns as soon as possible so we can finalize the draft. We will be sending it over to them and putting it out on the web with other check sheets/guide sheets.

2. Holly--a timeline relating to the uptick --that is, about when did we notice there were enough of these that we needed guidance from R & A and then when did we get cases up here to look at. If there is info regarding development and FTEs and replacement cases, give me that too.

3. Case Grading Guide --I think it is not disclosable, but please confirm and if not, let me know the basis.

Thanks to all who got me ready for today --I think it went as well as it could.

Lois G. Lerner
Director of Exempt Organizations

SFC 003008

From: Thomas Cindy M
Sent: Monday, March 05, 2012 2:08 PM
To: Bowling Steven F
Subject: FW: Advocacy team in EOD

Steve,

The emails below include information regarding coordination efforts with D.C. involving the advocacy cases. If you have questions/concerns, please let me know. Thanks.

From: Thomas Cindy M
Sent: Monday, March 05, 2012 2:51 PM
To: Seto Michael C
Cc: Megosh Andy; Lowe Justin; Grodnitzky Steven; Fish David L; Goehausen Hilary
Subject: RE: Advocacy team in EOD

Thanks Mike. It wasn't our intent to send every advocacy case. We just thought it would be a good idea to make sure we're all on the same page regarding the first couple.

Also, I believe we have a c3 that we're going to be denying. I recommended to Steve Bowling that he have Stephen contact Hilary/Justin for a sample copy of the denial EOT completed. When we're finished with the draft denial, I believe it would be a good idea for D.C. folks and EODQA to review that as well before it is sent forward. If you/David have any concerns with this, please let me know. Again, thanks for your help.

From: Seto Michael C
Sent: Monday, March 05, 2012 1:55 PM
To: Lowe Justin; Grodnitzky Steven; Fish David L; Goehausen Hilary
Cc: Megosh Andy; Thomas Cindy M
Subject: RE: Advocacy team in EOD
Importance: High

Re:Proposed Favorable Exemption - informal review

EOT and EOG (Hilary and Justin) will review the proposed favorable exemption application informally, as requested by EOD. Here is the process:

- EOD will send the application up;
- Hilary will look it first then Justin;
- Once EOG/EOT review is completed and recommendation 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;
- This is a priority case, first on the list.

Andy will ask EOD for the case to be sent.

From: Lowe Justin
Sent: Monday, March 05, 2012 9:33 AM
To: Grodnitzky Steven; Seto Michael C; Fish David L

Cc: Megosh Andy
Subject: RE: Advocacy team in EOD

I'm referring specifically to his request that we review the case file for their first proposed favorable determination.

From: Grodnitzky Steven
Sent: Monday, March 05, 2012 9:31 AM
To: Seto Michael C; Fish David L
Cc: Megosh Andy; Lowe Justin
Subject: RE: Advocacy team in EOD

My two cents is -- I think we need more information. What template questions and developmental guidance are they referring to? We sent them a guide sheet along with comments on 160 individual cases. How is this different? Are they looking to send us questions and look for our input on all the cases, etc.. ..?

Steven Grodnitzky
Manager, Technical Group 1
Exempt Organizations, Rulings and Agreements
Tax Exempt and Government Entities Division
U.S. Internal Revenue Service
Phone: SEC
fax: SEC

From: Lowe Justin
Sent: Sunday, March 04, 2012 5:04 PM
To: Seto Michael C; Fish David L
Cc: Megosh Andy; Grodnitzky Steven
Subject: FW: Advocacy team in EOD

Is this something we want to be doing?

From: Seok Stephen D
Sent: Friday, March 02, 2012 11:41 AM
To: Lowe Justin; Goehausen Hilary
Subject: RE: Advocacy team in EOD
Importance: High

Hi, Justin and Hilary,

Could you give me your mailing address? We have first favorable determination proposal for a BOLO Advoc acy case. I would like send you copy of the case file by UPS with our write -up for approval for your input and guidance as soon as possible. If you need two sets of copies, please let me know.

Thank you,
Stephen.

From: Lowe Justin
Sent: Tuesday, January 31, 2012 11:19 AM
To: Seok Stephen D; Goehausen Hilary
Cc: Bowling Steven F
Subject: RE: Advocacy team in EOD

Hi Stephen, good to meet you. Yes, please send us your template questions, developmental guidance, and other materials when you've developed them and we'll be happy to take a look.

Thanks,

Justin

From: Seok Stephen D
Sent: Tuesday, January 31, 2012 10:18 AM
To: Lowe Justin; Goehausen Hilary
Cc: Bowling Steven F
Subject: Advocacy team in EOD

Hello, Justin and Hilary,

My name is Stephen Seok in Group 7822 in C incinnati. Steve graciously put me in charge of Advocacy Team recently formed in EOD.
As you are our contacts in EOT, I would like to introduce myself to you.
So far, we are in stage of developing cases and forging template questions and developmental guidance.
Once they are done, I would like to send them to you for your input and feedback. Please let me know that is ok with you.

Thank you,

Stephen
SFC

From: Combs Peggy L
Sent: Wednesday, May 09, 2012 10:36 AM
To: Bibb Kenneth B; Chumney Tyler N
Subject: FW: Advocacy Cases - Next Steps

Importance: High

Please read the e-mail below and share with impacted employees (advocacy team members). If you have any questions or would like to discuss, please let me know.

From: Thomas Cindy M
Sent: Tuesday, May 08, 2012 11:41 PM
To: Esrig Bonnie A; Combs Peggy L
Cc: Bowling Steven F; Sheer Mary
Subject: Advocacy Cases Next Steps
Importance: High

I spoke with Holly late today (5 /8) and she indicated that folks from D.C. plan to fly into Cincinnati on 5/14 in the a.m. and would like to have a training session for the advocacy team members physically located in Cincinnati starting at 1:00 p.m. that day. The training will go throug h the end of the day on 5/15. To prepare for the training, the folks from D.C. would like for Joseph Herr and Mitch Steele to be available via phone on 5/10 and 5/11; they will be receiving an email from Sharon Light regarding the planning sessions. If Joseph and/or Mitch have any cases that they believe would be good for training purposes, they may want to let us know so that we can pull them out of the pile.

Starting on 5/16, Holly would like for the training team (Joseph Herr, Mitch Steele, Judy Kin dell, Justin Lowe, Sharon Light), along with Stephen Seok, Carly Young, a representative(s) from Quality, and a few additional folks from D.C. to start to put the advocacy cases into buckets:

1. Favorable (no further substantive development needed),

2. Favorable (limited development with approx. 2 or 3 questions to ask that may involve technical issues ---- a list of questions would be jotted down by the team),

3. Significant Development, and

4. Probable Adverse.

Most likely, we'll try to get those cases in Bucket 1 closed quickly and then move to Bucket 2. The Washington Office will prepare template denial letters for Bucket 4 and will share those letters with EO Determinations to issue.

I've tentatively reserved Room 7106 for the training on 5/14 and 5/15, and have reserved Room 7112 -B from 5/16 through 6/11 for those who will be identifying cases for the various buckets. Hubs are available in both of these rooms to allow for Internet connectivity.

Holly indicated that those folks from D.C. who will be assisting with this project will most likely be working overtime while in Cincinnati and overtime is available for our folks who are working on this project as well, if they choose to work it.

After these steps are taken, we'll fig ure out how to fold in those specialists from outside of Cincinnati who are currently on the Advocacy Team.

As I hear more, I'll pass on the information. In the meantime, please let me know ASAP if you have questions/concerns, or if there are concerns/conflict for anyone who will be involved in this project and/or training. Thanks.

From: Herring Donald Grant
Sent: Thursday, April 05, 2012 7:00 AM
To: Brinkley Lynn A; Seok Stephen D
Subject: RE: Advocacy Cases -- ACTION REQUIRED

Only one letter needed to be sent. I have responses on the others. The extension letter went out this morning.

Grant Herring
Exempt Organizations Specialist
Phon SFC
Fax SFC

From: Brinkley Lynn A
Sent: Wednesday, April 04, 2012 10:02 AM
To: Seok Stephen D
Cc: Herring Donald Grant
Subject: RE: Advocacy Cases ACTION REQUIRED

Thank you! I'll let you know if anything comes up

From: Seok Stephen D
Sent: Wednesday, April 04, 2012 10:00 AM
To: Brinkley Lynn A
Cc: Chumney Tyler N; Combs Peggy L; Esrig Bonnie A; Thomas Cindy M
Subject: RE: Advocacy Cases ACTION REQUIRED

Hi, Lynn,

Unfortunately, all of his cases are EDS cases. Since he will be in tomorrow, it seems to be the plausible option that he sends the c3 Extension Letters out the next morning at this point.

Thank you,
Stephen.

From: Brinkley Lynn A
Sent: Wednesday, April 04, 2012 9:31 AM
To: Seok Stephen D
Subject: RE: Advocacy Cases ACTION REQUIRED

Good morning Stephen -

Grant is on leave today, but I expect him back tomorrow. If you'll let me know what cases he has, I can try to get the letters out on any TEDS cases that don't have responses on them. As for any paper cases - he has those at home with him since he works occupational flexiplace and I won't be able to get letters out on those.

Thanks,
Lynn

From: Seok Stephen D
Sent: Wednesday, April 04, 2012 8:02 AM
To: Bell Ronald D; Estes Janine L; Garuccio Jodi L; Marquez Elizabeth J; Morris Annetta R; Steele Mitchell P; Seok Stephen D; Woo Gregory; Young Carly; Herr Joseph R; Herring Donald Grant
Cc: Berry Daniel W; Bibb Kenneth B; Brinkley Lynn A; Haley Philip H; Jefferson White Beverly J; Lahey Victoria; Lewis Jovonnie; Shankling Lonnie; Waddell Jon M; Chumn ey Tyler N; Combs Peggy L; Esrig Bonnie A; Thomas Cindy M
Subject: FW: Advocacy Cases ACTION REQUIRED
Importance: High

Good morning Team,

As indicated in the email below from 3/15, the Washington Office developed an extension letter to be issued to the advocacy organizations that applied for c3. Refer to the third attachment (Extension Letter for would-be c3 Advocacy Cases.doc). **Please send the Extension Letter for Advo c3 cases immediately that have not responded to your inquiry letter, and let me know by COB today (negative responses also).** Again, no modifications should be made to the letter other than to fill in the missing fields. Please let me know if there are questions/concerns. I will elevate them.

To managers: If a team member is on l eave, let me know ASAP. I will give you a list of c3 cases that the team member has, so that you can retrieve the cases.

Thank you,
Stephen.

Note: If you have Advo c3 suspended cases, please let me know now before you send the Extension Letter.

From: Seok Stephen D
Sent: Thursday, March 15, 2012 3:25 PM
To: Bell Ronald D; Estes Janine L; Garuccio Jodi L; Herr Joseph R; Herring Donald Grant; Hofacre Elizabeth L; Marquez Elizabeth J; Morris Annetta R; Steele Mitchel l P; Seok Stephen D; Woo Gregory; Young Carly
Cc: Thomas Cindy M; Esrig Bonnie A; Bowling Steven F; Abner Donna J; Angner William J; Bibb Kenneth B; Brinkley Lynn A; Haley Philip H; Jefferson White Beverly J; Lahey Victoria; Lewis Jovonnie; Shankling Lonni e; Waddell Jon M
Subject: Advocacy Cases ACTION REQUIRED
Importance: High

Team,

We have guidance by scenarios how we process BOLO Advocacy cases as follows:

Important Note: 1) Lois Lerner and Holly Paz worked with Steve Miller's office to develop the attached letters. Therefore, they shouldn't be modified, other than to fill in the missing fields.
2) If you have scenarios that aren't covered in the information below or have any questions/concerns, please let me know and I will elevate them.
3) Make sure you get all suspended cases back asap. Let me know your cases suspended and withdrawn - I will check with my record to make sure we do not miss any.

Scenarios

1. Cases Where an Additional Information Letter Was Issued and No Response Has Been Received: All of these organizations will be given a 60-day extension. Please refer to Attachment 1 which is a letter prepared for the c4 applicants. This letter must be issued to each of the c4 applicants, today if possible. If the specialist to whom the case is assigned isn't available and his/her manager or another specialist doesn't have access to the information needed to

send the letter, we'll need to wait until the specialist returns. If the specialist hasn't returned by Monday (3/19/2012), however, we will need to come up with an alternative approach to make sure the letter is sent by then. For c3 applicants, the Washington Office will be preparing a letter to be issued to these organizatio ns.

2. Cases Where an Additional Information Letter Was Issued and the Applicant Requested an Extension: Follow the same procedures as under item 1 above.

3. Cases Where an Additional Information Letter Was Issued, the Applicant Has Responded, and More Information is Needed: These cases should continue to be held with no action taken. EO R&A in the Washington Office is in the process of revising the Guide sheet previously sent to us, based on feedback they received from Counsel. After we receive the revised Guidesheet, the cases will need to be revisited to determine whether additional information is still needed.

4. Cases Where the Applicant Has Submitted a Written Request to have its Application Withdrawn: These cases can be processed and closed as a withdrawal.

5. Cases Where the Specialist Determines the Application should be Approved: Normal case closing procedures should be followed, except that the cases must be transferred to the Group 7822 manager to be reviewed, with the assistance of the advocacy case coordinator.

6. Cases Where the Specialist Determines the Application should be Denied: Coordination will take place with the Advocacy Case Coordinator, who will be working with EO R&A in the Washington Office and with E ODQA.

7. **Unassigned Cases or Those Assigned to a Specialist Where no Additional Information Letter has been Issued:** These cases should continue to be held with no action taken. EO R&A in the Washington Office is in the process of revising the templ ate questions and will send them to us as soon as they are finalized.

8. **Cases Already Placed in Suspense:** These cases will be taken out of suspense and reassigned back to the specialist. Attachment 2 is a letter that was prepared for the c4 applica nts. This letter must be issued to each of the c4 applicants, whose case was already placed in suspense, today if possible. If the specialist to whom the case is assigned isn't available and his/her manager or another specialist doesn't have access to th e information needed to send the letter, we'll need to wait until the specialist returns. If the specialist hasn't returned by Monday (3/19/2012), however, we will need to come up with an alternative approach to make sure the letter is sent by then. For c3 applicants whose case was already placed in suspense, the Washington Office will be preparing a letter to be issued to these organizations.

Thank you for implementing the guidance immediately in advance.
Stephen

From: Herring Donald Grant
Sent: Wednesday, May 16, 2012 8:31 AM
To: Light Sharon P
Cc: Garuccio Jodi L; Ng Faye H
Subject: RE: Advocacy Cases - Next Steps - UPDATE

OK. I will be in on Friday to collect the cases and get you the response and the 2848s.

Grant Herring
Exempt Organizations Specialist
Phon SFC
Fax SFC

From: Light Sharon P
Sent: Wednesday, May 16, 2012 9:00 AM
To: Herring Donald Grant
Subject: RE: Advocacy Cases Next Steps UPDATE

Grant -- we expect to give you cases to work by Friday. I don't know whether you want to get other cases in the meantime -- you're a better judge of that.

Can you give me the responses you are receiving? The case files will all come through the bucketing process, and we will incorporate new materials then. We are working in 7112-B. Stop by anytime with the files. And can you forward this email to Jodi and Faye so they will know, too. And please cc me so I will have their email addresses going forward?

Thanks!

Sharon

From: Herring Donald Grant
Sent: Wednesday, May 16, 2012 8:15 AM
To: Light Sharon P
Subject: FW: Advocacy Cases Next Steps UPDATE
Importance: High

Sharon,

The question should have been asked in the workshop, I guess. I presume that Faye, Jodi and I not going to have to wait for the Bucket Brigade to finish their work before we have cases to work or calls to make. When can we expect to get started? Will I need to order a few new non-Advocacy cases to tide me over?

I have a response (from RightChange.com) and a few Ame rican Center for Law and Justice 2848s that need to be added to my (former) case files.

Grant Herring
Exempt Organizations Specialist
Phon SFC
Fax SFC

From: Brinkley Lynn A
Sent: Thursday, May 10, 2012 5:47 PM
To: Herring Donald Grant
Subject: FW: Advocacy Cases Next Steps UPDATE
Importance: High

FYI

From: Thomas Cindy M
Sent: Thursday, May 10, 2012 5:45 PM
To: Lahey Victoria; Lewis Jovonnie; Brinkley Lynn A; Waddell Jon M; Bibb Kenneth B; Berry Daniel W
Cc: Haley Philip H; Shankling Lonnie; Jefferson White Beverly J; Angner William J; Shafer John H; Muthert Gary A; Bowling Steven F; Combs Peggy L; Esrig Bonnie A; Sheer Mary; Chumney Tyler N; Abner Donna J
Subject: FW: Advocacy Cases Next Steps UPDATE
Importance: High

I spoke with Holly today regarding the advo cacy team, training, etc. Following are the updates:

1. Training -- will be held in Room 7106 from 2:00 - 4:30 on 5/14 and 8:00 - 4:30 on 5/15

2. Participants for training:

EO Determinations

Janine Estes
Jodi Garuccio
Joseph Herr
Grant Herring
Faye Ng
Mitch Steele
Carly Young

EODQA

Daniel Dragoo
Mike Ludwig

EO Washington Office

Matthew Giuliano
Hilary Goehausen
Judy Kindell
Sharon Light
Justin Lowe
Andy Megosh

3. Holly Paz and Nan Marks will be in Cincinnati on 5/14 and 5/15 and will be kicking off the training.

4. Sharon Light will take over coordination of the Advocacy Team until further notice.

5. Those from the Washington Office, along with Daniel and Mike from EODQA, and Joseph, Mitch, Carly and Janine from EOD will start bucketing all of the advocacy cases on 5/16 until completed. Room 7112-B has been reserved for this. Those from the Washington Office will provide more details about the bucketing process once the team meets.

Please be certain that those folks who are scheduled for training and bucketing know where to be and when. If you have any questions regarding this, please let me know. Thanks.

From: Thomas Cindy M
Sent: Tuesday, May 08, 2012 11:41 PM
To: Esrig Bonnie A; Combs Peggy L
Cc: Bowling Steven F; Sheer Mary
Subject: Advocacy Cases Next Steps
Importance: High

I spoke with Holly late today (5/8) and she indicated that folks from D.C. plan to fly into Cincinnati on 5/14 in the a.m. and would like to have a training session for the advocacy team members physically located in Cincinnati starting at 1:00 p.m. that day. The training will go through the end of the day on 5/15. To prepare for the training, the folks from D.C. would like for Joseph Herr and Mitch Steele to be available via phone on 5/10 and 5/11; they will be receiving an email from Sharon Light regarding the planning sessions. If Joseph and/or Mitch have any cases that they believe would be good for training purposes, they may want to let us know so that we can pull them out of the pile.

Starting on 5/16, Holly would like for the training team (Joseph Herr, Mitch Steele, Judy Kindell, Justin Lowe, Sharon Light), along with Stephen Seok, Carly Young , a representative(s) from Quality, and a few additional folks from D.C. to start to put the advocacy cases into buckets:

1. Favorable (no further substantive development needed),

2. Favorable (limited development with approx. 2 or 3 questions to ask that may involve technical issues ---- a list of questions would be jotted down by the team),

3. Significant Development, and

4. Probable Adverse.

Most likely, we'll try to get those cases in Bucket 1 closed quickly and then move to Bucket 2. The Washington Office will prepare template denial letters for Bucket 4 and will share those letters with EO Determinations to issue.

I've tentatively reserved Room 7106 for the training on 5/14 and 5/15, and have reserved Room 7112 -B from 5/16 through 6/11 for those who will be identifying cases for the various buckets. Hubs are available in both of these rooms to allow for Internet connectivity.

Holly indicated that those folks from D.C. who will be assisting with this project will most likely be working overtime while in Cincinnati and overtime is available for our folks who are working on this project as well, if they choose to work it.

After these steps are taken, we'll figure out how to fold in those specialists from outside of Cincinnati who are currently on the Advocacy Team.

As I hear more, I'll pass on the information. In the meantime, please let me know ASAP if you have questions/concerns, or if there are concerns/conflict for anyone who will be involved in this project and/or training. Thanks.

From: Lowe Justin
Sent: Thursday, March 01, 2012 8:07 AM
To: Megosh Andy
Subject: FW: updated timeline - template questions
Attachments: Advocacy Delvelopment Questions 030112 JJL comments.doc

My initial thoughts on the list of questions.

Also, the latest version of the guidesheet I have is dated 11 -3, is there a more recent version?

From: Thomas Cindy M
Sent: Thursday, March 01, 2012 8:16 AM
To: Megosh Andy; Lowe Justin
Cc: Paz Holly O
Subject: FW: updated timeline - template questions

A subteam from those working the advocacy cases in Cincinnati put together a draft list of template questions. Holly mentioned that you are working on revising questions and asked that I send these to you. You may or may not find them helpful.

-----Original Message-----

From: Paz Holly O

Sent: Thursday, March 01, 2012 5:51 AM

To: Thomas Cindy M

Subject: Re: updated timeline - template questions

Thanks for verifying re: development letters. Please do send the letter to Andy/Justin. Not sure I can do from bb.

From: Thomas Cindy M
Sent: Wednesday, February 29, 2012 10:29 PM
To: Paz Holly O
Subject: updated timeline - template questions

Holly,

I just read the email below. A subteam from those working the advocacy cases put together a draft list of template questions. Andy and Justin may find this helpful. I know you're not available on 3/1 and 3/2 and not sure you're still on computer. If I don't hear back from you by 3/1 in the a.m., I'll pass the attachment off to Andy and Justin.

Also, based on information in the attached document, I believe it is clear that our folks were in structed not to ask questions if information is in the case file. But, I'm still going to verify with Steve Bowling that this was accurate for p rior cases and will let you know what he says.

From: Bowling Steven F
Sent: Wednesday, February 29, 2012 8:22 AM
To: Thomas Cindy M
Subject: FW: Advocacy template questions

Cindy,

Attached are some template questions the team has developed. I told Stephen to hold off on sending them to our EOT contacts (Justin Lowe and Hilary Goehausen) as I'm not sure who all is involved now. I didn't want to duplicate our efforts.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]
Cincinnati, O SFC
Te SFC
Fa SFC

From: Seok Stephen D
Sent: Tuesday, February 28, 2012 4:56 PM
To: Bowling Steven F
Subject: Advocacy template questions

Steve,

Attached please find the template questions we drafted and talked ab out this afternoon.

Thank you,
Stephen.

The questions that appear in regular text are standard template questions that need to be asked of every organization. The questions in italics highlighted in yellow are supplemental questions that may be asked in this letter or subsequent letter depending on the facts and circumstances.

Note: If the answer to a template question is in the case file, then do not ask the question.

1) Please provide the following information for your board of directors and officers:

   a) Provide all copies of your minutes from inception to the present.

   b) Provide the titles, duties, work hours, and compensatio n amounts of your board members and officers. If they only work for a certain time yearly, bi -yearly, or quad-yearly, please provide the periods they had (have) worke d and will work. Please identify your volunteers.

   c) If you have a board member or officer who has run or will run for a public office in the near future, please describe fully. If none, please confirm by answering "None" to this question.

   d) Describe the qualifications of your board of directors and officers. Your response may include resumes.

2) Describe your donation, contribution, and grant expenses for each year of existence and near future years which includes the information below. If no such activity, please confirm by answering this question "None to be provided."

   a) The names of the donees, recipients, and grantees. If the donee, recipient, or grantee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No."

   b) The amount of each of the donations, contributions, and grants and the dates you donated, contributed, or granted them.

   c) State how your donations, contributions, and grants fulfill your exempt purpose.

3) Provide the following for your fundraising activities:

   a) Copies of all solicitations including pamphlets, flyers and brochures your organization has made regarding fundraising.

   b) State your fundraising expenses and income for each year of existence and near future years.

   c) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

4) Provide the following information for all the events and programs (which may include meetings, forums, rallies, etc.) you have conducted and participated in from your inception to now (other than the events and programs that are questioned below separately). Please answer the following for each event:

   a) The time, location, and detailed description of each event or program.

   b) What was the purpose of each event or program?

   c) Who was invited to speak at the event and why were they invited? Of the invitees, who actually spoke at the event?

   d) Provide copies of all handouts or other materials you provided to the audience, participants, and the public.

   e) Provide a copy of the transcript for each speaker (you may provide in written form or electronic media format).

   f) Indicate the percentage of time and resources you spent on each of the events and programs in relation to 100% of all your activities.

   g) Will your near future events and programs remain similar to those you have been conducting recently? If not, explain the changes in your events and programs for the near future in terms of content, time, and resources.

5) Provide the following for your publishing activities including books, CD's, DVD's, newsletters, literature, flyers, brochures, pamphlets, voter guides, and class handouts from your inception to now:

   a) Copies of all the publications and/or advertising materia ls that you have distributed.

   b) Expense amounts incurred for your publishing activities from your inception to now.

   c) If you are distributing materials prepared by another organization or person, please identify those organizations or persons.

   d) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

   e) Will your near future publishing activities remain similar to those you have been conducting recently? If not, explain the changes in your publishing activities for the near future in terms of content, time, and resources.

6) Please confirm that the information contained in Attachment A is from your website .

7) Have you attempted or will you attempt to influence the outcome of sp ecific legislation? If so, provide the following:

   a) Provide a list of the legislation and how you influenced the legislation.

b) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by your organization regarding the legislation.

c) Provide copies of any radio, television, or internet advertisements relating to your lobbying activities.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

8) Have you or will you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and the content of other forms of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

9) Have you or will you support or oppose candidates for public office? If so, provide the following details for each of support or opposition:

a) Please describe the nature of the support or oppositon in detail which may include candidate ratings or endorsements. Provide your endorsement criteria in your description.

b) Names and party affiliations of the candidates you support or oppose .

c) Date and time of the support or opposition.

d) Copies of all handouts, media advertisements, pages of internet advertisements and other means (to be) provided and distributed in support of or opposition to candidates for public office.

Please provide your copies in tangible format such as CDs, DVDs, tapes, and paper. Please do not substitute them as web links.

e) If you provided or will provide funds to the candidates or the organizations that support them, provide the name of the recipient, the amount and time of the donation, and the source of the funds. Please provide this information for each of your donations.

f) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

10) Are you associated with any candidates for public office or any other entities such as IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

a) Provide the name, employer identification number, and address of the organization (s).

b) Describe in detail the nature of the relationship(s).

c) Do you work with those organization(s) regularly? Describe the nature of the contacts.

d) List shared employees, volunteers, resources, office space, etc. with the organization(s).

e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

11) *If you have conducted or will conduct any activities other than the ones we have already cited above (in the near future), provide answers for the following questions regarding past, present and future activities. If you have not conducted and will not conduct any other activities, please confirm by answering "No" to this question.*

a) What does the activity/service entail?

b) Who conducts the activity/service?

c) When and where is the activity/service conducted?

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

12) *Please identify any advocacy communications prepared and financed by your organization. For each of those communications, provide the following information:*

a) Provide a copy of the print communication or a transcript of the broadcast communication.

b) Provide the date when the communication was first disseminated to the public; the period of time it was made available to the public; and the frequency the communication was printed or broadcast during that period.

c) Describe the geographic area where the communication was disseminated to the public.

d) State whether the communication was part of an ongoing series of substantially similar advocacy communications by your organization on the same issue. If so, identify the other communications in the series with the dates those communications were first disseminated to the public.

e) State whether the communication identifies specific legislation, or a specific event outside your organization's control, that your organization hopes to influence.

f) *Describe any considerations that influenced the timing of the communication and whether those considerations were tied to events outside the control of your consideration.*

g) *State the total expenses used to prepare and disseminate the communication.*

13) *Will you, or have you conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides (in the near future)? If so, provide the following:*

a) *What is or will be the location, date and time of the events?*

b) *Who on the organization's behalf has conducted or will conduct the voter registration or get out to vote drives?*

c) *Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.*

d) *Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.*

14) *Provide the following for all of your research and survey activities including research on the public's social and political views, surveys on the public's choice of political candidates, and exit poll surveys, but not limited to (from your inception to now):*

a) *The descriptions of your research and surveys.*

b) *Copies of your research and survey results.*

c) *The details on your research and survey result distributions - please include all distributions.*

d) *Expense amounts incurred for your research and survey related activities from your inception to now.*

e) *Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.*

f) *Will your near future research and survey activities remain similar to those you have been conducting recently? If not, explain the changes in your research and survey activities for the near future in terms of content, time, and resources.*

15) *Are you a membership organization? If so, provide the following for your membership:*

a) *How many members do you have currently?*

b) *What does your membership consist of? Are they mostly individuals? What is the percentage of the organizational members as they are part of the whole membership?*

c) *Provide member application/registration form.*

d) Provide membership agreement and rules that governs members.

e) Provide a membership fee schedule.

f) What are the membership requirements?

g) What services and benefits do you provide especially for members only?

h) What are the roles and duties of your members?.

16) Describe your organization's employees, paid consultants, and any volunteers in further detail.

a) How many employees has your organization hired? How many employees are currently employed? Describe the activities on which the employees worked. State whether the employees were full-time or part-time and whether they are seasonal. If part-time or seasonal employees, describe the dates which they were employed.

b) How many paid consultants has your organization hired? Describe the dates which they were hired and the activities on which the consultants worked

c) Has your organization used volunteers? If so, describe the number of volunteers used, the dates for which they were used, and the activities on which the volunteers worked.

17) Please provide updated financial data for page 5 of Form 1024 or page 9 of Form 1023 enclosed.

18) Upon review of the organization's website at www., it shows that a section of the website is accessible to members only. In order to get a better understanding of the organization's activities though its website, please provide a temporary login and password.

From: Megosh Andy
Sent: Tuesday, February 21, 2012 11:17 AM
To: Fish David L
Subject: RE: Request for Briefing on section 501(c)(4) Application Process
Attachments: Development Process for (c)(4) Orgs (2).doc

David,

Here's a draft explanation of the c4 development process.

Andy

From: Fish David L
Sent: Friday, February 17, 2012 12:15 PM
To: Megosh Andy; Park Nalee; Lowe Justin
Cc: Paz Holly O
Subject: Fw: Request for Briefing on section 501(c)(4) Application Process

Is someone looking at the questions yet? We'll get asked soon.

From: Keith Frank
Sent: Friday, February 17, 2012 12:03 PM
To: Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Norton William G Jr; Landes Scott S; Lemons Terry L; Eldridge Michelle L
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Rep. Jordan is from Ohio. I would bet that this is the organization he has heard about.

In 2010, *American Thinker* posted an interesting defense of a flat tax, noting that it would help preserve privacy and freedom of speech by eliminating the need for the federal government to know virtually every aspect of a taxpayer's financial assets. Two years later, som e people are seeing truth in the magazine's assessment that the administration may be using the Internal Revenue Service to silence its opposition.

Ohio Liberty Council, for instance, says they are being made to jump through hoops by the IRS, which has demanded certain documents in order for the group's process of acquiring non -profit status to move forward. OLC President Tom Zawistowski posted a letter on the organization's website detailing the difficulties:

> My own Portage County TEA Party has been waiting for over a year just to get a response from the IRS so we can file our 2010 tax return! In the attached PDF I share with you, the "Additional Information Requested" of the Ohio Liberty Council from our June 30th, 2010 application w hich we just received on January 30, 2012. Yes, they took a year and a half to respond to our application and they are giving us two weeks to respond back. As you will see, this is no simple request.

Besides its 19-month delay in answering the OLC, the IRS is requiring such a large amount of documents and information that a small organization such as the OLC would likely have to stop all other operations in order to comply.

The following are the IRS demands of the OLC:

- A hard copy printout of the website — A pdf file emailed to the IRS will not suffice

- A list of all social media outlets being used (Facebook, Twitter, etc.) including hard copy printouts of every posting

- A narrative description of every activity of [the] organization since June 30, 2010 (filing date). [The IRS does not want a mere description of an event, but full details, including who conducted it, their qualifications, who was allowed to take part in the activities and how they were selected, and if there was a fee, how much it was.]

- Details of the [OLC's] members, including their names, addresses, roles, plus a corporate federal ID of all organizations which are members of the Ohio Liberty Council.

Additionally, the IRS required the following from the OLC:

- Time, location and content schedule of each scheduled public event

- Copies of any and all handouts

- Names and credentials of all instructors and copies of any workshop materials used

- Identification of all speakers and copies of every speech

The letter sent to the OLC also indicates that the IRS will make public and post on the Internet all information received from the OLC. *The Blaze* views this statement as a threat: "Anyone who is part of a non-profit or even has attended a gathering held by a non-profit will have their information posted on the internet by the government. It makes you wonder if the same information will be asked of other non-profits?"

Zawistowski notes that by the same logic, names of all buyers of Girl Scout cookies as well as all who attend church each week would have to be posted online.

According to *The Blaze*, the OLC's ordeal with the IRS is not an isolated incident:

> Tea Party groups across the country have written to us sharing similar information. One Texas group filed their application for non-profit status in late 2007, but only received the information demand letter last month. As stated above, the Ohio Liberty Council submitted paperwork over 18 months ago[;] their demand was received at the end of January. Florida groups (who we have spoken with, but have requested anonymity) report similar experiences.
>
> Many different groups applied for non-profit status at very different times — (over a three year period) and yet, they all seem to have gotten the IRS replies within the last month.

As mentioned earlier, some critics charge that the Obama administration is attempting to silence its opposition — opposition, for instance, to the ObamaCare contraceptive mandate. In a recent press release, the OLC indicated that it stands with the Catholic Church in that battle:

> The Ohio Liberty Council (OLC) announced today that it supports the decision of the Catholic Church to refuse to comply with the ruling by the Health and Human Services Department concerning mandator y insurance coverage. The ruling says that under ObamaCare, Catholic institutions — including charities, hospitals and schools — will be required by law, to provide and pay for insurance coverage that includes contraceptives, abortion -inducing drugs and st erilization procedures. If they do not, they will face fines in the millions of dollars which will put organizations like catholic hospitals and schools out of business. This decision has the full support of President Obama and his Administration.

Meanwhile, the timing of the IRS's seemingly absurd requests for documentation coordinates with the announcement of the Obama campaign's plans to mobilize its "Truth Team" members across the country, who will also seek to silence opposing voices.

During Obama's 2008 presidential campaign, a similar group of his supporters in Missouri took their agenda too far, vowing to arrest anyone who told "lies" about Obama, and did what they could to intimidate anyone who criticized him or his policies.

The *Detroit Free Press* reported on September 30, 2008,

> A local television station's coverage of a Missouri campaign "truth squad" on behalf of Democratic presidential nominee Barack Obama has touched off a national Internet frenzy. What has prompted all the furor is that several members of the Obama's "truth squad" in Missouri are prosecutors or members of law enforcement. They include St. Louis Circuit Attorney Jennifer Joyce, Jefferson Co unty Sheriff Glenn Boyer and St. Louis County Prosecuting Attorney Bob McCulloch. All are Democrats.

Missouri's then-Governor Matt Blunt responded,

> What Senator Obama and his helpers are doing is scandalous beyond words. The party that claims to be the party of Thomas Jefferson is abusing the justice system and offices of public trust to silence political criticism with threats of prosecution and crimina l punishment. This abuse of the law for intimidation insults the most sacred principles and ideals of Jefferson. I can think of nothing more offensive to Jefferson's thinking than using the power of the state to deprive Americans of their civil rights.

Because of possible political retribution — by way of an IRS audit — by the administration against its foes, *American Thinker* believes the federal tax code should be abolished in favor of a simple flat tax:

> The fact that we have a tax system so vast and compl ex that it may be vindictively used as a political tool is unconscionable. Couple that with the fact that we have a president with a Chicago -brass-knuckles political background, and we have an environment chilling to free speech.
>
> How many of Obama's politi cal "enemies" have been cowed into silence due to fear of retribution via an unfriendly IRS tax audit? How many signatures are missing from petitions against the administration out of fear of arbitrary retribution? The IRS can ruin a completely innocent pe rson by forcing an expensive and time-consuming defense against a vindictive audit.

From: Williams Floyd L
Sent: Friday, February 17, 2012 11:06 AM
To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L

SFC 003030

Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: Request for Briefing on section 501(c)(4) Application Process

I just received a call from Kristina Moore, Senior Counsel to House Committ ee on Oversight and Government Reform. She wants a briefing on the section 501(c)(4) determination process. This request is prompted by a concern that was brought to the attention of Rep. Jim Jordan, who is Chair of the Subcommittee on Regulatory Affairs , Stimulus, and Government Spending. The specific concern involved an organization that applied for exemption about one and one-half years ago and only just recently heard anything about the status of its application. When it did finally hear from us, we apparently asked some fairly detailed questions and gave the organization a short deadline to respond.

Kristina would like to understand why this should take so long and wants to know more, in general, about the determination process.

I want to be as responsive as possible here and would like to be able to get back to her next week. I think Lois and her team are probably the key people here. Can I get some times to offer her a briefing next week?

SFC 003031

From: Thomas Cindy M
Sent: Tuesday, March 06, 2012 9:01 PM
To: Seto Michael C
Subject: c4 Advocacy Case for Approval

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Mike,

Per our conversation from earlier today, the c4 case that we believe should be approved is: First Coast Tea Party, EIN: SFC. A copy of this case is being sent on 3/7 via overnight mail.

Also, I asked Steve Bowling about the c3 denial. He doesn't think we have one ready to deny yet. Stephen Seok was trying to be proactive by asking for a copy of a c3 template denial so he could be prepared for when we do get one of these. I explained to Steve that the c3 advocacy case you had was ulti mately FTE'd and that D.C. doesn't have a c3 template denial letter for these cases. Finally, I explained to Steve that when we do get a c3 denial, we need to make a copy and send it to you so that D.C. can write the denial.

When you see Holly, would you mind mentioning to her that we don't have a c3 denial yet. I don't want her to be mislead with inaccurate information. Thanks.

From: Bowling Steven F
Sent: Tuesday, March 06, 2012 3:31 PM
To: Thomas Cindy M
Subject: FW: Advo case to be sent to QA and EO Tech with approval recommendation

Cindy, per our conversation, this is the proposed approval case, 501(c)(4).

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC
Cincinnati, O SFC
Tel SFC

From: Seok Stephen D
Sent: Tuesday, March 06, 2012 3:27 PM
To: Bowling Steven F
Subject: Advo case to be sent to QA and EO Tech with approval recommendation

Steve,

The copies of the following case will be sent to QA and EO Tech by UPS Next Day Air tomorrow.

First Coast Tea Party, EIN: SFC[redacted], Case #: 420523048

Thank you,
Stephen.

SFC 003033

From: Bell Ronald D
Sent: Monday, July 11, 2011 6:31 PM
To: &TEGE:EO:RA Determ Ees
Subject: BOLO ALERT 7/11/11
Attachments: BOLO Spreadsheet 07 11 11.xls

Importance: High

All,

Attached is the latest BOLO update. Be on the lookout for applications applying for 501(c)(3) status that are providing "green" energy (electricity/power) to other organizations. Please coordinate case processing with Mitch Steele, Group 7824. Please contact me with any questions or concerns.

Ron Bell
BOLO Coordinator
SEC

IRS0000618365

SFC 003034

SFC

[redacted]

IRS0000618366

SFC

[redacted]

SFC 003036

Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech- Chip Hull.	Open

SFC 003037

[redacted]	[redacted]	[redacted]	[redacted]	SFC [redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

IRS0000618369

SFC 003038

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SFC 003039

From: Seto Michael C
Sent: Friday, September 16, 2011 1:05 PM
To: Paz Holly O; Letourneau Diane L; Light Sharon P; Kindell Judith E
Cc: Neuhart Paige; Trilli Darla J; Lerner Lois G; Abner Donna J; Thomas Cindy M; Fish David L
Subject: SCR Report for August 2011
Attachments: SCR Report Table Aug 2011.doc

The cases are moving but no closings in August. The processing of two major SCR cases, Imagine Schools Non -Profit and Harvard Medical Collaborative, Inc., is on hold pending discussion between the EO Director and Counsel in the former and discussion between the TE/GE Acting Commissioner and the POA in the latter.

SFC 003040

EO Technical
Significant Case Report
(August 31, 2011)

- ***21 open SCs***

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	S E C	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting exc essive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goehausen	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/30/2011 (Rev) 12/31/2011 (Rev)	Developing both a (c)(3) and (c) (4) cases. Proposed (c)(4) favorable is currently being reviewed. Proposed denial currently being reviewed on (c)(3). Cases were discussed with Judy Kindell on 04/06/11. Judy requested staff to get additional information from taxpayers regarding certain activities. Development letters were sent. Proposed favorable (c)(4) ruling forwarded to Chief Counsel for comments on 05/04/11. Information from (c)(3) organization regarding activities due on 05/18/2011.Waiting on taxpayer response. : Met with Director EO on June 29, 2011. Met with Counsel on 8/10/11 to discuss the cases; Counsel recommended further development of the cases by getting information on the organizations' 2010 activities. Counsel gave us directions on the type of information needed. Development letter for Albuquerque being prepared. **Next Action:** Proposed denial for SFC SFC is in review.	No

IRS0000618549

SFC 003041

2

IRS0000618550

SFC 003042

3

IRS0000618551

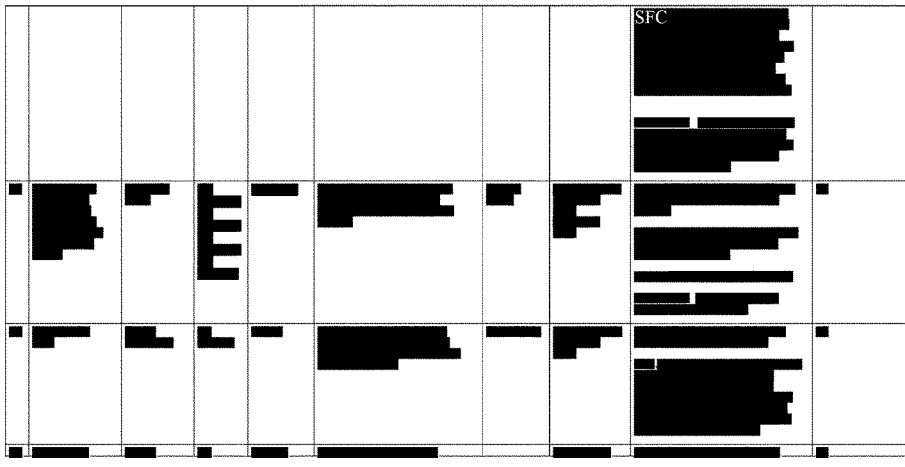
SFC 003043

4

IRS0000618552

SFC 003044

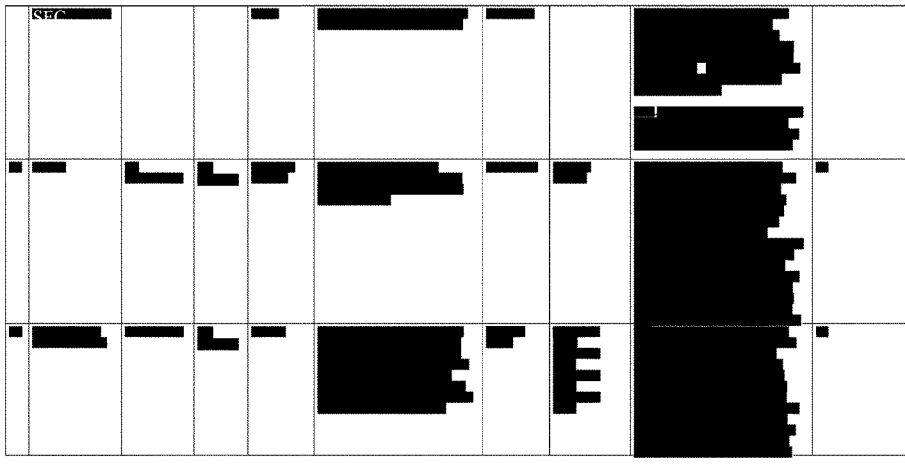
5



IRS0000618553

6

7



SFC 003047

8

IRS0000618556

SFC 003048

B. Closed SCs- None

IRS0000618557

From: Angner William J
Sent: Friday, July 15, 2011 3:06 PM
To: Conle [redacted]; Fletcher [redacted]; Gerity [redacted]; Woeste [redacted]; Davenport [redacted]; Jennewein [redacted]; Sutfield [redacted]; Franczak [redacted]; McLaughlin [redacted]; Gentry [redacted]; Luk [redacted]; Seok [redacted]
Subject: FW: Emerging Issue Cases
Attachments: BOLO Spreadsheet 05 10 11.xls

Importance: High

See how there are no longer "Tea Party" cases but "advocacy" cases instead.

From: Melahn Brenda
Sent: Wednesday, July 06, 2011 7:37 AM
To: Angner William J; Bibb Kenneth B; Brinkley Lynn A; Herr Joseph R; Jefferson White Beverly J; Lahey Victoria; Lewis Jovonnie
Subject: FW: Emerging Issue Cases

Please see email below regarding the "labeling" of certain cases. Ensure your staff is aware of the new name and description for these f/k/a "tea party cases". More information to be coming on how to develop these cases.

From: Thomas Cindy M
Sent: Tuesday, July 05, 2011 5:10 PM
To: Bowling Steven F; Shafer John H
Cc: Esrig Bonnie A; Melahn Brenda; Combs Peggy L; Brandes James A; Waddell Jon M
Subject: FW: Emerging Issue Cases

Please refer to the email below. During the call, 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 into 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. I do understand her concern and is sim lar to those raised in the past regarding TAG 18 cases. We need to try to keep this in mind in the future.

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.

As indicated in the email below, the Washington Office is in the process of putting a document together for us with recommended actions for working these cases. Before the document can be finalized, however, Lois wants to discuss with Nan Downing. NOTE: One of the recommended actions is going to be to send ROO referrals for those cases that cause us concern resulting from organizations making changes after being questioned during our case development.

Stay tuned... In the meantime, if you have any concerns regarding this, please be certain to elevate them. Thanks.

From: Thomas Cindy M
Sent: Tuesday, July 05, 2011 4:46 PM
To: Bell Ronald D

SFC 003050

Cc: Bowling Steven F; Esrig Bonnie A
Subject: Emerging Issue Cases

Ron,

I changed reference from "tea party cases" to "advocacy orgs" on the BOLO l ist that is housed on the NERD. Also, I changed the description. These actions were completed as a result of a conference call that was held today with EOT and Lois Lerner. The EOT contact person may be changing as well. I'm waiting to hear from D.C. o n this. After this is finalized, I'll get with you so that a revised BOLO list can be sent.

Also, the Washington Office will be putting a document together with recommended actions that should be taken regarding these cases. After we get this document, we'll figure out next steps.

In the meantime, please let me know if you have any questions/concerns regarding this.

From: Bowling Steven F
Sent: Wednesday, March 02, 2011 12:23 PM
To: Thomas Cindy M
Cc: Brinkley Lynn A
Subject: RE: Political Cases -- Status?

Importance: Low

Follow Up Flag: Follow up
Flag Status: Completed

Cindy,

Your reminder that another month has past.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]

From: Thomas Cindy M
Sent: Thursday, February 03, 2011 5:15 PM
To: Bowling Steven F
Cc: Brinkley Lynn A
Subject: FW: Political Cases Status?

Refer to Mike's email below. Follow up with me again in another month. If I hear anything differently from Holly, I'll let you know. Thanks.

From: Thomas Cindy M
Sent: Thursday, February 03, 2011 5:12 PM
To: Seto Michael C
Subject: RE: Political Cases Status?

Thanks --- we'll just put this in follow up and check back in another month.

From: Seto Michael C
Sent: Thursday, February 03, 2011 3:50 PM
To: Thomas Cindy M
Subject: RE: Political Cases Status?

Hi Cindy,

Here is the status:

The memo recommending approval of c4 is done and will be sent to Judy shortly and thereafter Counsel for review. The c3 application is still being worked on by our TLS. The timeline with the c3 application is near the end of Feb. if not sooner. I think Holly will probably talk to you about these case later.

Mike

From: Thomas Cindy M
Sent: Friday, January 28, 2011 4:13 PM
To: Seto Michael C
Cc: Paz Holly O
Subject: FW: Political Cases Status?
Importance: High

Any update on the tea party cas es? TAS has contacted us regarding 1 case.

From: Paz Holly O
Sent: Monday, December 13, 2010 4:54 PM
To: Thomas Cindy M
Cc: Trilli Darla J
Subject: RE: Political Cases Status?

We will be going to Judy shortly with the proposal to grant exemption to the c4 applic ant we have here; the memo recommending approval of c4 is being finalized this week. The c3 application is not yet ready for discussion with Judy - TP's response to development letter is under review. We expect to move that to Judy sometime in January.

From: Thomas Cindy M
Sent: Monday, December 13, 2010 11:33 AM
To: Paz Holly O
Cc: Trilli Darla J
Subject: FW: Political Cases Status?

Holly,

Has there been any update regarding th e tea party cases as far as the discussion with Judy Kindell?

From: Thomas Cindy M
Sent: Saturday, November 20, 2010 9:59 AM
To: Camarillo Sharon L; Bowling Steven F
Subject: FW: Political Cases Information
Importance: High

Sharon/Steve,

I had a discussion with Holly Paz on Wednesday (11/17) afternoon to again discuss the tea party cases. She advised me that we were sending applicable parts of the application package to EOT along with the additional information letter and that based on this information they are finding that not all of the tea party cases have the same issues. This is why they have not been able to prepare a template letter with additional information questions. EOT is putting together a briefing paper and going to discuss the various issues in these cases with Judy Kindell (Senior Technical Advisor to EO Director). 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. If this has not been finalized by 12/13/2010, please follow up with me and I will ask for a status report from Holly. Also, if we are not sending applicable parts of the application package to EOT and

are just sending the additional information letter, I need to know so that I can get back with Holly to find out what basis they are using to determine cases are different.

If you have questions/concerns regarding this, please let me know. Thanks.

From: Thomas Cindy M
Sent: Tuesday, October 26, 2010 3:57 PM
To: Paz Holly O
Subject: Political Cases Need to Discuss
Importance: High

Holly,

This is a follow up to my voice message. I have a concern with the approach being used to develop the tea party cases we have here in Cincinnati. Apparently, an additional information le tter 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 C hip needs to look at each and every additional information letter. It seems to me that if he reviewed a template letter and approved it, we should be good to go. Then, when we get responses, we need to coordinate these cases as a group and not try to wor k them one by one. Right now, I believe we have approximately 45 or more of these cases.

Should these cases be transferred to EOT? If not, could we schedule some time to discuss the approach that is being used and come up with a process so we can ge t these cases moving? Thanks.

From: Thomas Cindy M
Sent: Tuesday, July 05, 2011 4:10 PM
To: Bowling Steven F; Shafer John H
Cc: Esrig Bonnie A; Melahn Brenda; Combs Peggy L; Brandes James A; Waddell Jon M
Subject: FW: Emerging Issue Cases
Attachments: BOLO Spreadsheet 05 10 11.xls

Please refer to the email below. During the call, 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 into 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. I do understand her concern and is similar to those raised in the past regarding TAG 18 cases. We need to try to keep this in mind in the future.

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.

As indicated in the email below, the Washington Office is in the process of putting a document together for us with recommended actions for working these cases. Before the document can be finalized, however, Lois wants to discuss with Nan Downing. NOTE: One of the recommended actions is go ing to be to send ROO referrals for those cases that cause us concern resulting from organizations making changes after being questioned during our case development.

Stay tuned... In the meantime, if you have any concerns regarding this, please be certain to elevate them. Thanks.

From: Thomas Cindy M
Sent: Tuesday, July 05, 2011 4:46 PM
To: Bell Ronald D
Cc: Bowling Steven F; Esrig Bonnie A
Subject: Emerging Issue Cases

Ron,

I changed reference from "tea party cases" to "advocacy orgs" on the BOLO list that is housed on the NERD. Also, I changed the description. These actions were completed as a result of a conference call that was held tod ay with EOT and Lois Lerner. The EOT contact person may be changing as well. I'm waiting to hear from D.C. on this. After this is finalized, I'll get with you so that a revised BOLO list can be sent.

Also, the Washington Office will be putting a docume nt together with recommended actions that should be taken regarding these cases. After we get this document, we'll figure out next steps.

In the meantime, please let me know if you have any questions/concerns regarding this.

SFC

[redacted]

SFC

[redacted]

SFC 003056

IRS0000620737

SFC 003057

Issue Name	Issue Description	Issue Number	Alerts (Year and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
Advocacy Orgs	Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).	EI-1	x	Forward case to Group 7822. Ron Bell is coordinating cases with EO Tech- Chip Hull.	Open

SFC 003058

[redacted]	[redacted]	[redacted]	[redacted]	SFC [redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

IRS0000620739

SFC 003059

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

From: Thomas Cindy M
Sent: Tuesday, January 24, 2012 8:19 PM
To: Bowling Steven F
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)
Attachments: BOLO.doc

Follow Up Flag: Follow up
Flag Status: Completed

Steve,

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.

Also, if Stephen is now coordinating the advocacy cases, you'll need to update that informat ion on the Emerging Issues tab.

-----Original Message-----
From: Bowling Steven F
Sent: Tuesday, January 24, 2012 8:57 PM
To: Thomas Cindy M
Subject: RE: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

Cindy,

Stephen was still on leave Monday. I had a meeting today with Stephen, Ron Bell, and Sherri Royce to get some ideas of how we could capture these cases without getting everything dumped on us. I also solicited Jon Waddell's opinion which gave us some good ideas. Although eve ryone agreed it is impossible to expect every screener to view the issues the same , we came up with a couple of possibilities (see enclosed) that may help with consistency.
The 1st scenario is very general but we think it is better than what we currently have. The 2nd 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. When considering the second scenario; we are not focusing on any individual's religion, rac e, age, gender, etc. Also, since these entities are already in the public eye we don't think there is an issue listing them on the BOLO as scenario 2.

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]

SFC [redacted]

-----Original Message-----
From: Thomas Cindy M
Sent: Friday, January 20, 2012 1:10 PM
To: Bowling Steven F
Cc: Combs Peggy L
Subject: Re: Potential Watch List/ BOLO item - Occupy Groups Applying for
(c)(3)

The BOLO change can wait until Monday when Stephen is back.

I don't have any suggestions. After you talk with Stephen on Monday, it might be best to ask a few managers if they have any ideas.

Peggy -- do you have any suggestions for wording?

Sent using BlackBerry

------Original Message------
From: Steve Bowling
To: Cindy M Westcott
Cc: Peggy Combs
Subject: RE: Potential Watch List/ BOLO item - Occupy Groups Applying for
(c)(3)
Sent: Jan 20, 2012 12:29 PM

Cindy,

The only email that came through is yours but I agree we should work them with the advocacy cases. I think we need to update the Issue Description to capture these as well as to try and weed out the ones that we do not want in this inventory.

Currently the spreadsheet states;

"Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

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. If the BOLO can wait, I'd like to run this by Stephen when he is back on Monday to see what we can come up with (any suggestions?).

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]

SFC [redacted]

-----Original Message-----
From: Thomas Cindy M
Sent: Friday, January 20, 2012 11:24 AM
To: Bowling Steven F
Cc: Combs Peggy L
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for
(c)(3)

Steve,

Please read emails below. We should probably say these should be referred to your group (can work them with the advocacy cases). Your thoughts?

Cindy M. Thomas
---- Original Message ----
From: Combs Peggy L
Sent: Fri 1/20/12 11:1S AM
To: Thomas Cindy M
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for
(c)(3)

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 a re 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.

SFC 003064

From: Hofacre Elizabeth L
Sent: Tuesday, July 27, 2010 1:23 PM
To: Angner William J; Bibb Kenneth B; Bowling Steven F; Brandes James A; Brinkley Lynn A; Calvin Juliette; Combs Peggy L; Fierro Gerardo; Haley Philip H; Herr Joseph R; Jefferson-White Beverly J; Lewis Jovonnie; Shafer John H; Shankling Lonnie
Cc: Camarillo Sharon L; Melahn Brenda
Subject: Combined Issue Spreadsheet
Attachments: Copy of Combined Spreadsheet TAG 7 27.xls

Importance: Low

Distributions Recipients:

Attached is the Combined Issue Spreadsheet. Please contact me if you have any questions.

Thank you,

Liz Hofacre
TEGE EOD Emerging Issues Coordinator
SFC

SFC 003065

SFC

[redacted]

IRS0000621838

SFC 003066

[redacted] [redacted] [redacted]

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

IRS0000621839

SFC 003067

SFC

170 Progressive

Political activities

SFC

SFC

SFC

SFC 003068

Issue 2	Issue 3	Test Lab Notes	Number of Downloads Depositions 1	FDA Name and Title	Administrator Address

SFC [redacted]

[redacted]

[redacted]

[redacted]

SFC 003069

SFC [redacted]

[redacted]

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" When they get involved in an activity they try to set up a corporation to run it. For example, they authored a book so they set up a publishing company to do the publishing. Using Hood's name on the

Mrs. Hood is agent for at least 40 corporations.

Applicants submit Form 1023. Their "progressive " activities

Inurement

The address i SF [redacted] C [redacted]

SFC [redacted]

[redacted]

[redacted]

IRS0000621842

SFC 003070

Promoter Name and	Person to Contact (Organization)	Related Organization(s)	TAG Group Contact Name	Open Cases	Tag Category ID	Disposition
SFC [redacted]	[redacted]	[redacted]				[redacted]
	[redacted]					[redacted]
[redacted]	[redacted]					[redacted]
[redacted]	[redacted]					[redacted]
		[redacted]				[redacted]
		[redacted]				[redacted]
[redacted]	[redacted]	[redacted]	[redacted]			[redacted]
	[redacted]					[redacted]
[redacted]	[redacted]					[redacted]
	[redacted]	SFC [redacted]				[redacted]

[redacted]

SFC 003071

SFC

SFC

IRS0000621844

SFC 003072

Issue Name	Issue Description		Issue Number	Alerts (Year and number)
[redacted]	SFC [redacted]		[redacted]	[redacted]
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

Disposition of Emerging Issue	Current Status (Opened or closed)	
SFC [redacted]	[redacted]	
Any cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open	

SFC 003074

SFC

IRS0000621847

SFC 003075

IRS0000621848

SFC 003076

Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue
	SFC [redacted]			[redacted]	[redacted]
	SFC [redacted]			[redacted]	[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]			[redacted]	[redacted]
	[redacted]			[redacted]	[redacted]
	[redacted]			[redacted]	[redacted]
	[redacted]			[redacted]	[redacted]
	[redacted]			[redacted]	[redacted]

SFC 003077

SFC [redacted]

IRS0000621850

SFC 003078

SFC [redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	
[redacted]	

IRS0000621851

SFC 003079

IRS0000621852

From: Combs Peggy L
Sent: Tuesday, July 27, 2010 12:16 PM
To: Melahn Brenda
Subject: RE: Elevated Issue

Importance: Low

Here is the information Grant provided with his inventory report for July:

This was the ACORN-successor case, that included a 4945(f) request in the Form 1023. The case was elevated, and I was instructed on 6/25 to process the 4945(f) request normally. A letter was sent on 7/15, with response due 8/4. I asked very detailed questions about how they are conducting 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 biassed 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.

From: Melahn Brenda
Sent: Tuesday, July 27, 2010 1:05 PM
To: Combs Peggy L
Subject: FW: Elevated Issue

Any update on this case?

From: Melahn Brenda
Sent: Friday, June 25, 2010 9:34 AM
To: Thomas Cindy M
Subject: RE: Elevated Issue

Cindy wanted to update you Peggy has instructed Grant: (in the attached encryted email)

go ahead and work the 4945(f) case. If there is additional information you need to make the determination on 4945(f), go ahead and send out an additional information letter ASAP. We will then issue the 6110 letter - a sample redacted letter is in the IRM 7.20.2 you received at CPE this week .

We will keep you updated on the progress of this case.

Brenda

From: Melahn Brenda
Sent: Wednesday, June 23, 2010 12:16 PM
To: Combs Peggy L
Subject: FW: Elevated Issue

Peggy see Cindy's message. She's right (again) she did say this was not a Steve G. issue she did talk with Rob about it bottom line she shows 2 options in her draft email which are we going to follow as to closing this "A" case? Is Grant going to develop the 4945f issue (additional information letter) will we be issuing a new 947 letter? Keep me posted.

Brenda

From: Thomas Cindy M
Sent: Wednesday, June 23, 2010 11:37 AM
To: Melahn Brenda
Subject: RE: Elevated Issue

If based on the group's review they believe issues need to be developed, then we need to send an additional information letter.

NOTE: Remember that I said this was not a Steve G. issue, but rather a decision that needed to be made as to what we wanted to do because an error was made and that was Rob's call. Then, I indicated that I was on phone with Rob regarding another issue and raised this with him. Rob said we should develop the issue since the POA is specifically asking us if the determination includes 4945(f) determination. He said it is bad that we did not initially develop and if something blows up regarding this down the road we would look even worse if we ignored the second request (meaning the A case).

From: Melahn Brenda
Sent: Wednesday, June 23, 2010 6:49 AM
To: Thomas Cindy M
Subject: RE: Elevated Issue

We were waiting based on your draft email below 2 options which does DC want us to pursue? Do you want me to forward to Steve? I thought in our conversation that you were elevating to Rob? I may have remembered incorrectly sorry if I misunderstood.

Brenda

From: Thomas Cindy M
Sent: Tuesday, June 22, 2010 9:51 PM
To: Melahn Brenda
Subject: FW: Elevated Issue

So what is being done with the case???

From: Melahn Brenda
Sent: Monday, June 21, 2010 2:23 PM
To: Thomas Cindy M
Subject: RE: Elevated Issue

Cindy to ensure we covered all bases with the "I" case on the 4945f case Grant has, Peggy had Grant draw up a paper as if he were a reviewer, reviewing what was done on the I case by Mr. Neitzel. Attached is his write-up. Briefly bottom line is:

1. No development of voter registration activities (which are primary activities); 6038 i ndicates almost exclusively educational and minor voter turnout activities; no description of the canvassing or samples of literature were requested; no indication 4945f was addressed.
2. Publicly supported organization appears warranted
3. Does appear that organization does meet 4945f if they do in fact conduct their voter registration activities in a non-partisan manner

See you next week if you want to discuss further.

Brenda

From: Melahn Brenda
Sent: Monday, June 07, 2010 7:48 AM
To: Thomas Cindy M
Subject: RE: Elevated Issue

Yes, you are correct Peggy believes the 4945f issue was not developed in the initial working of the application. There was no indication in the case file that Neitzel addressed 4945f when he made a PC and the case file was with Grant Herring when the 947 with addendum was issued on or about 5/15/2010 (the date on the 947 letter was not changed). The POA also is asking Grant if the addendum as written is "approval" of 4945f the wording on the addendum reads as if he quoted directly out of the Code or Regulations. They are now more or less asking us for a confirmation letter.

Couple minor changes below.

From: Thomas Cindy M
Sent: Saturday, June 05, 2010 7:09 PM
To: Melahn Brenda
Subject: RE: Elevated Issue
Importance: High

Brenda,

First, I understand that the issue needs to be elevated to D.C. I have no problem with that. The concern I am having is that the information presented is confusing and I am trying to sort it out so that I can present factual information to the Washington Office in a concise manner. The one outstanding concern I have is that the emails below indicate there is no concern with the initial determination letter dated 3/31/2010 having been issued. The emails below also indicate the 4945(f) issue was included in the initial determination request. If the issue was included and Jon and Peggy believe the initial determination was okay, then why do they believe the 4945(f) issue needs to be addressed now? This is contradictory information. If the 4945(f) issue was in the initial determination application, was not addressed by Neitzel, and Peggy believes the 4945(f) issue needs to be worked, then isn't she saying that the 3/31/2010 determination letter was issued in error and should not have been issued without th e 4945(f) issue being developed? After getting clarification from you, I plan to send an email to Rob with a cc: to Steve G. The email I drafted is directly below highlighted in blue. Please make any necessary changes to the draft email.

We have an open Amendment "A" case involving an organization SFC located in Washington, DC) that has close affiliation with ACORN, is expecting income in the neighborhood of $9 million dollars in the 2010 election cycle,

SFC 003083

and is the predecessor of an organization [redacted] located in Louisiana) currently under Exam based on a what appears per IDRS to be a congressional referral/inquiry. The predecessor was involved with ACORN as well. The "A" case is a request for a determination letter that the organization is described in section 4945(f) of the Code.

BACKGROUND

An Initial "I" case was approved under section 501(c)(3) and a determination letter issued 3/31/2010 classifying the organization as a public charity. The 4945(f) information was disclosed in the Form 1023 application but not addressed by the agent who worked the case. Because the issue was not addressed, the POA submitted correspondence dated 4/15/2010 requesting confirmation that the determination letter included the section 4945(f) request. The correspondence dated 4/15/2010 prompted the "A" case to be established. To complicate matters, the agent who worked the "I" case issued an amended determination letter dated 5/15/2010 to add an addendum addressing/approving the 4945(f) issue.

OPTIONS

1. Contact the organization and advise that the 3/31/2010 and 5/15/2010 letters were issued in error and work the 4945(f) issue through the open "A" case and if warranted complete an Exam referral, OR
2. Close the "A" case as Status 12 (other), verbally confirm the 5/15/2010 Letter 947 is in effect, AND submit an Exam referral.

Please advise how you would like for us to proceed.

From: Melahn Brenda
Sent: Friday, June 04, 2010 10:54 AM
To: Thomas Cindy M
Subject: RE: Elevated Issue

Cindy let me see if I can be clearer then we can discuss if you want.

From: Thomas Cindy M
Sent: Thursday, June 03, 2010 10:12 PM
To: Melahn Brenda
Subject: RE: Elevated Issue

If the "A" case was received prior to the addendum, are we sure that the organization wants to pursue the "A" case? The POA wants confirmation that the amended 947 letter they received on or about 5/15 from Neitzel approves their 4945f request that wasn't address with their initial application.

If the addendum was included when the original determination letter went out it was not – original 947 was dated 3/31/2010 and case closed 3/31/2010 in EDS, agent went back in and re -did the 947 letter with the addendum but same 3/31/2010 date on 5/15/2010 and the organization never submitted an "A" case, do we: 1) have a problem with the fact that the organization received an initial exemption, No – both Peggy and Jon agree organization meets c3 and 2) have a problem with the addendum that was included Yes, per Peggy the agent did not address the 4945f issues as advised by IRM – nothing in the case file regarding the addendum (now there is since POA faxed to Grant) – Peggy would like Grant to ask the right questions to ensure 4945f should be approved because of the attention this organization probably will get AND the large dollar amounts expected to be received from Private Foundations that will not be taxable ? Bottom line, are we suggesting that the original determina tion was issued incorrectly?

The reasons we wanted you (and probably EOT) to be aware of this case are (1) this org is a successor to a c3 currently under Exam for "Congressional Referral" as shown in IDRS; (2) This org and the predecessor have/had close affiliation with ACORN (EOT is currently looking at all of these ACORN affiliated orgs); and (3) High dollars (expecting $9M in 2010 election cycle).

I feel the options as to how we should process this request (case) if EOT doesn't have a problem with u s doing this are: (1) Work the 4945f issue based on the POA wanting "confirmation" of the amended 947 ltr and issue a corrected letter if warranted AND do an Exam Referral; OR (2) close case Status 12, verbally confirm 947 ltr issued, AND do an Exam refer ral.

Cindy I'm a little gun-shy since I know Lois is involved sometimes in these cases who are under Exam this just sounds like a very high profile deal.

NOTE: I'm not sure a white paper is needed. I just need to understand the real issue with this.

From: Melahn Brenda
Sent: Thursday, June 03, 2010 3:24 PM
To: Thomas Cindy M
Subject: RE: Elevated Issue

I have asked Peggy to do a white paper so we have all the facts of the case but the A case was received here *prior* to the addendum to the 947 see below.

From: Combs Peggy L
Sent: Thursday, June 03, 2010 3:21 PM
To: Melahn Brenda
Subject: RE: Elevated Issue
Importance: Low

Will do, but the request was sent to us on April 15, 2010 and the letter wasn't amended until mid -May.

From: Thomas Cindy M
Sent: Thursday, June 03, 2010 2:29 PM
To: Melahn Brenda
Subject: RE: Elevated Issue

I'm not getting something. I do not understand why the organization submitted an "A" case if the addendum to the Letter 947 covered the issue. Please clarify.

From: Melahn Brenda
Sent: Thursday, June 03, 2010 1:13 PM
To: Thomas Cindy M
Cc: Combs Peggy L; Camarillo Sharon L
Subject: FW: Elevated Issue
Importance: High

Cindy I think this needs to go to EOT also let me know if you want me to do anything or if we should contact EOT directly.

Thanks
Brenda

From: Combs Peggy L
Sent: Thursday, June 03, 2010 12:45 PM
To: Melahn Brenda
Cc: Herring Donald Grant; Waddell Jon M; Camarillo Sharon L
Subject: Elevated Issue

Brenda,

Grant was assigned an "A" case fo SFC [redacted] located in Washington DC (the DC organization). The request is for a determination that the organization is described in section 4945(f) of the Code. It was received on April 15, 2010.

The "I" case for the DC organization was approved in March by another agent. The organization is conducting voter registration activities. The 4945(f) request was included in the Form 1023 application, but it appears the agent issued a straight determination letter in March 2010, then revised the 947 letter to add an addendum addressing/approving the 4945(f) issue in mid-May. The organization is expecting income in the neig hborhood of $9 million dollars in the 2010 election cycle.

The organization is a successor to a Louisiana organization SFC [redacted]. The predecessor is currently under examination based on a what appears (per AMDIS) to be a cong ressional referral/inquiry . The organization has close affiliations with ACORN. The predecessor appears to have transferred their voter registration and related activities to the DC organization.

We referred the case to TAG based on the affiliation to ACORN that Grant identified. Below are Jon's comments.

We are elevating this issue for discussion at a higher level to determine the appropriate action on this case, due to the ongoing examination and the fact EO Technical is currently looking at AC ORN.

Note: When 4945(f) approval is issued to a public charity like this one, PFs can donate to them without having a taxable expenditure under section 4945 . The application did not refer to a specific grant, but much of its support will probably be coming from private foundations.

Let me know if you need additional facts or clarification.

Please advise.

Peggy

From: Waddell Jon M
Sent: Thursday, June 03, 2010 8:24 AM
To: Combs Peggy L
Subject:
Importance: Low

Peggy,

I reviewed the approved application and admn file for SFC [redacted] The following are my observations:

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1. It proposes to be a successor to an existing 501(c)(3) SFC [redacted], which was granted exemption in 1982

2. Per review of the admn file SFC [redacted] main activity is to mobilize low -income residents in various parts of the country to register to vote. Per the admn file, their stated activities appear to be in compliance with c(3). Additionally, they state they will be conducting the same activities as their predecessor organization -- SFC [redacted]

3. Per public record research. their predecessor organization SFC [redacted]) has been described as a close affiliate of ACORN as well as ACORN's Voter Mobilization arm.

4. The predecessor organization SFC [redacted], shared the same address as ACORN in New Orleans, LA. The address was the following:

SFC [redacted]

The address of the successor organization SFC [redacted], is now in Washington D.C. as their approved application makes specific reference that they are not involved with the New Orleans Office (refe rred to above).

5. It appears that the approved applicant SFC [redacted]) as well as its predecessor 501(c)(3 SFC [redacted]) have had extremely close ties with ACORN and share many common activity agendas ---- i.e. low income voter registration and mobilization.

Overall, I would suggest elevating the issue for EO Tech Advice. Since EO Tech is currently studying the Successor to Acorn issue and this organization appears somewhat related, they should be made aware of the issue.

thanks

From: Thomas Cindy M
Sent: Wednesday, April 13, 2011 2:46 PM
To: Bowling Steven F
Cc: Combs Peggy L; Melahn Brenda; Brandes James A
Subject: FW: Tea Party Cases
Attachments: AlbuquerqueTeaPartyIncmffc4.doc; AmericanJuntodlc3.doc; Political Cases -- Status? (29.1 KB)

I spoke with Mike Seto today regarding the tea party cases. He indicated that EOT met with the EO Director's Senior Technical Advisor, Judy Kindell. Judy requested that EOT beef up the c3 denial. She also asked EOT to gather more information regarding the c4 application --- specifically % of time devoted to various activities to ensure the organization was below the 50% level for political activities.

Judy also recommended that all tea party cases be sent to EOT (tell Ron Bell not to get too excited!), but Mike Seto does not believe this should happen. He thinks EOT should give us a template letter for the c3 denials and share developmental questions, etc., for the c4's. Holly will be meeting with Lois to discuss this.

Stay tuned.....

From: Thomas Cindy M
Sent: Thursday, March 31, 2011 7:22 PM
To: Bowling Steven F; Combs Peggy L
Cc: Brinkley Lynn A; Melahn Brenda; Brandes James A
Subject: FW: Tea Party DUE 5/31/2011

Steve/Peggy,

The email below from Mike Seto provides an update on the tea party cases. As he indicates, the information is being provided so that we can see the direction in which EOT is headed. 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 with Lois Lerner before they can fin alize the guidance for us. I would not expect to receive anything until sometime in May 2011.

Let me know if you have questions/concerns, or any issues with getting the OARs extended until the end of May 2011. Thanks.

From: Seto Michael C
Sent: Thursday, March 31, 2011 5:19 PM
To: Thomas Cindy M
Cc: Paz Holly O
Subject: RE: Tea Party OARs STATUS and ESTIMATED COMPLETION DATE

Hi Cindy,

Sorry for the belated response. Here is the status of the two cases:

1. Albuquerque Tea Party - (c)(4) application. The TLS and reviewer recommend a favorable ruling.

2. American Junto - (c)(3) application. The TLS and reviewer recommends a denial ruling.

The TLS and reviewer are meeting with Judy Kindell to get her views/approval on both applications, and the meeting is scheduled in Mid-April. I think Lois would want to be briefed before we issue either rulings.

Attached are the memorandum outlining the rationale for the favorable (c)(4) application and the proposed denial ruling on the (c)(3) application. The memo and proposed denial ru ling will give you an idea of where we are heading on the two cases. Please note both HAVE NOT BEEN REVIEWED BEYOND THE GROUP level. It is therefore doubtful that either document will remain the same through the various levels of review.

I agree with you ideas and would like to discuss. I also have a suggestion. I like to meet once every two weeks to discuss any issues/matters that you or I may have. This will give me an idea on areas that impact you that I am not aware of. We can meet the second and fourth Wed of the month?

Mike

From: Thomas Cindy M
Sent: Wednesday, March 30, 2011 4:04 PM
To: Seto Michael C; Paz Holly O
Subject: FW: Tea Party OARs STATUS and ESTIMATED COMPLETION DATE
Importance: High

Holly/Mike,

We are now getting OARs (Congressional inquiries) on the tea party cases (refer to emails below). Also, please refer to the attached email for previous status inquiry requests regarding these cases, and let me k now the estimated completion date for getting these cases resolved so that we can be responsive to TAS.

My recommendation is that an action plan be prepared specifying what steps need to be completed, who needs to complete them, estimated completion dat e of action, etc., and that one person be put in charge of this so that individual can make sure actions are being timely completed so that we can make sure these cases get resolved before the OARs turn into TAOs.

If you would like to discuss, please let me know. Thanks.

From: Combs Peggy L
Sent: Wednesday, March 30, 2011 3:47 PM
To: Thomas Cindy M
Subject: FW: Tea Party OARs

Cindy,

This is a follow-up to our conversation. See e-mail below regarding the open OARS on the tea party cases.

Peggy

From: Slaughter David L
Sent: Tuesday, March 29, 2011 3:14 PM
To: Combs Peggy L
Subject: Tea Party OARs

Peggy, this is a follow-up from our earlier meeting today.

OAR# 1597920 for CF#4944956 KSP TRUE THE VOTE

SFC 003089

We have received two OARs that relates to the Tea Party group. The first was received on February 8, 2011. On February 10, 2011 the OAR was e-mailed to the assigned specialist. On March 17, 2011 we were informed by the specialist assigned that the application was being reassigned to group 7822 to Ron Bell. On March 24, 2011 an e-mail was sent to group manager requesting case assignment. I called the case advocate to request an extension to 3/30/2011 to get the OAR reassigned and at that time confirmed by phone that this was a congressional inquiry. On March 25, 2011 I was informed of the application assignment and the OAR was sent to the specialist and contact was made with TAS.

OAR# 1634434 for CF#4978504 Patriots Educating Concerned Americans Now

This OAR was received on March 25, 2011. At that time, the application was already assigned to Ron Bell. On March 29, 2011 the OAR was e-mailed to the assigned specialist. Because the OAR came from outside of Cincinnati, it should be a congressional inquiry. However at the time of e-mail I was not certain that this was a congressional inquiry and so stated in the e-mal. However on subsequent review of the OAR, on page 41 of the 72 pages, I found a congressional privacy act release form for Congressman Wally Herger from California.

Therefore, both the OARrs are in fact congressional inquiries.

David Slaughter
David Slaughter, Group 7846
SFC
Phone: SFC
Fax: SFC

SFC 003090

MEMORANDUM FOR FILE

Re: Albuquerque Tea Party, Inc.

The organization applied for recognition of exemption from federal income tax as a social welfare organization described in IRC 501(c)(4) on December 30, 2009. It was incorporated effective August 5, 2009 under the laws of the State of New Mexico. Its stated purpose is "issue education and advocacy." In its application, the organization states that all of its activities are intended to "inform and educate the community on political issues which have significant and far-reaching repercussions regarding the general prosperity and will-being of the American public." With regard to political activity, the organization states that no monies have been spent in the past on influencing the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization, but that approximately 20% of its budget "will be set aside for future (political) considerations." The organization appears to be very Conservative in its outlook and activities, but is not aligned with any particular political party.

To effectuate its purposes, the organization states that it conducts educational forums SFC of its activities), advocacy training SFC t SFC of its activities), candidate forums SFC of its activities), and event rallies SFC of its activities). The organization's budget shows that funds will be used i SF SFC percentages for each activity.

(1) The educational forums inform the public on current "political" issues, such as how legislation will affect small businesses and private persons. At one forum, for instance, the organization stated that it believes that the public must be engaged in the debate over health care reform. These forums are planned to be held every one or two months.

(2) The advocacy training will show people how they can become more active in the "political" process (i.e., how to support particular positions) and are expected to be held every one or two months.

(3) The candidate forums will provide non-partisan access of local and state candidates for public office, where all the candidates can present their political platforms and allow the public to make informed decisions of support or non-support of said candidates. The organization's flyer states that it extends an invitation to all congressional candidates to attend in order that people can get to know them. These forums are planned for February and March in years of elections.

(4) Event rallies are non-partisan gatherings, open to the general public, to present informational events in order to educate and motivate people.

With regard to the educational forums, the organization is not promoting particular individuals for political office, but rather is promoting a conservative philosophy. This would be considered as useful information to the general public and the community within the meaning of IRC 501(c)(4). Similarly, the non-partisan

candidate forums are open to all candidates to present their views, which d oes not constitute participation in any political campaign. See Rev. Rul. 86 -95, 1986-2 C.B. 73, which amplifies Rev. Rul. 66 -256, 1956-2 C.B. 210. See also Rev. Rul. 74 -574, 1974-2 C.B. 160. The non-partisan event rallies are also not considered to be engaging in political activity as discussed in Rev. Rul. 60 -193, 1960-1 C.B. 195, as modified by Rev. Rul. 76-456, 1976-2 C.B. 151.

With regard to overt political activity, only portions of the organization's "advocacy training," appear to meet the definition under IRC 527(f)(1) to be subject to the tax on political organizations imposed under IRC 527(b) . The activity is carried on under one of the organization's various committees: the Community Outreach Team (COT). The organization's leadership approv es the annual COT plan. The particular goal of COT is to elect/retain the maximum number of conservative/moderate Democrats, Republicans, and Independents in local, state, and federal elected positions ; COT leadership creates the annual COT plan, provid es updates, and manages Group Leaders; Group Leaders create and submit annual Group plans to COT leadership , provide updates, and manage Group Members; Group Members implement approved activities. There are 18 groups under the auspices of COT, only four or five of which appear to be actively engaging in political activity by identifying and educating members regarding conservation/moderate candidates at the State and federal levels, and communicating the results of their activities to all members of the organization.

The other groups under COT are engaged in attending every School Board meeting, City Council meeting, and County Commission meeting in order to influence elected officials to vote for conservative/moderate activities/laws and vote against ultra-liberal progressive activities/laws . COT workers call, write, and email local, State, and federal elected officials to influence them to vote for conservative/moderate activities/laws and vote against ultra -liberal progressive activities/laws. This would be considered as legislative activity, an exempt IRC 501(c)(4) activity.

Although the organization states that its activities under COT are nonpartisan, values oriented education, and advocacy, its stated policy of evaluating public officials, candidates, and issues based on the degree they are consistent with the organization's values of limited government, constrained spending and taxation, and advancement of a free market economy are considered to be political in nature , which is not an IRC 501(c)(4) activity. See Rev. Rul. 67-368, 1967-2 C.B. 194.

Exemption under IRC 501(c)(4) is not precluded even when an organization engages in non-(c)(4) activities, as long as the non -(c)(4) activities are not the primary activity of the organization. As di scussed in Rev. Rul. 81-95, 1981-1 C.B. 332, although the applicant organization in this case is engaged in a substantial amount of political activity, within the meaning of Regs. 1.501(c)(3) -1(c)(3)(i), its primary activity appears to be educational and legislative. Thus, the organization is promoting social welfare within the meaning of IRC 501(c)(4) as a result. Therefore, exemption under IRC 501(c)(4) may be recognized.

Carter C. Hull
SE:T:EO:RA:T:2
January 10, 2011

SFC 003092

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

American Junto, Inc.
SFC
SFC

Contact Person:
Carter C. Hull
Identification Number:
SFC
Contact Number:
FAX Number:
SFC
Employer Identification Number:
SFC

Legend:

M = American Junto, Inc.
Date 1 = July 6, 2009
Date 2 = February 9, 2010
Date 3 = July 28, 2010
State = Ohio
N = Cincinnati Tea Party
P = Ohio Liberty Council
B = Ron Paul
C SFC
D SFC

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code. Based on the informatio n provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

You (M) were incorporated on Date 1 under the laws of State. Your Initial Articles of Incorporation state that you are Non-Profit, and that the purpose for which you are formed is for civic education and organization in developing social and political ideology and methods of change and for any other activities furthering not -for-profit purposes permitt ed by law.

Your submitted bylaws state that you are organized and operated for the following general purpose:

> "To include but not limited to, promoting education of the general public in constitutional principles as it pertains to the social -political aspects of legislation and the political process to effect progress in the preservation/restoration of natural rights, liberty, free enterprise and limited government within the meaning of 501c3 non-profit corporation of the Internal Revenue Code of 1986 (as

amended) or the corresponding provision of any future United States internal revenue law, including for such purposes, the making of distributions to organizations which are recognized as exempt from tax under such 501c3 non - profit corporation."

Your submitted bylaws also state, among other matters, the following:

(1) That you shall not carry on a business with the general public in a manner similar to organizations operated for profit. Further, you shall not operate primarily as a social club for the benefit, pleasure, or recreation of your members although social functions for the benefit of your members may be carried out if they are incidental to your primary purposes.
(2) That you shall have no members other than the persons elected or appointed as members of your Board of Directors, who shall be considered to be your members for the purposes of any statutory provision or rule of law relating to members of a non-stock nonprofit corporation. Directors shall be nominated and approved by a quorum of th e standing Board of Directors.
(3) That all directors shall be nominated and elected by your voting members.
(4) That your Board of Directors shall hold an annual meeting for the purpose of filling vacancies on the Board and the election of officers.
(5) That special meetings of the Board of Directors for any purpose(s) may be called at any time by the President, or, if the President is absent, or unable or refuses to act, by one-third of the directors then in office. A quorum will consist of at least one-third of the total number of directors. Every act of decision done or made by a majority of the directors present at a meeting duly held, at which a quorum was present, shall be regarded as the act of the Board of Directors , unless a greater number is required by law or by the Articles of Incorporation or your bylaws. Each director present shall be entitled to one (1) vote.
(6) That your Board of Directors shall appoint a President, a Secretary and a Treasurer, Executive Vice President and one or more Vice -Presidents, Assistant Secretaries, Assistant Treasurers, and other such officers as they may determine; any two or more offices may be held by the same person except the offices of President, Secretary, and Treasurer.
(7) That your Board of Directors may provide for the cre ation and recognition of "Associate Members," who will have no authority to act for or incur any liability against you, and will have no vote in your corporate affairs.
(8) That the number of your Directors shall be a minimum of two and a maximum of 12, as fixed by a resolution of your Board of Directors.
(9) That you may devote a substantial part of your activities for lobbying purposes (including the publishing of distribution of statements) or otherwise attempting to influence legislation. You may participate o r intervene in (including the publishing or distribution of statements) any political or judicial campaign on behalf of any candidate for public office only to an insubstantial degree.
(10) That upon your dissolution or winding up, all of your business, propert ies, assets, and income remaining shall be distributed to a nonprofit fund, association, or corporation which is organized and operated exclusively for tax exempt purposes which are reasonably related to your purposes and goals .

(11) That a conflict of interest occurs when a person under a duty to promote your interests (a "fiduciary') is in a position to promote a competing interest instead. Fiduciaries include all your employees, directors o r officers, and members of any committee of yours. Undisclosed or un resolved conflicts of interest are a breach of the duty to act in your best interests and work to your detriment. Conflicts of interest are likely to arise whenever : a) a fiduciary has a personal interest in a vendor of goods or services to you; or b) you r employees are loaned to other organizations, or the employees of another organization are loaned to you. All conflicts of interest must be disclosed to the Board of Directors. After disclosure is made, the individual with a conflicting interest must not participate in judging the merits of that interest. That is, such individual must abstain from voting on, or recommending a course of action with respect to, the situation giving rise to the conflict. When these are done, the conflict of interest has been properly discharged.

Your submitted bylaws were neither signed nor dated.

In your application, filed on Date 2, you state that you have two Board Members and no membership opportunities. In a subsequent letter, received by this office on Date 3, you state that you do not intend to expand beyond a two-person Board, and that you have not appointed any officers as listed in your bylaws.

In your application you checked the block stating that you intend to support or oppose candidates in political ca mpaigns. You also checked the block stating that you would attempt to influence legislation, and that you have made an election to have your legislative activities measured by expenditures by filing Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation. In your Date 3 letter, you state that your bylaws account for limited, not substantial, lobbying and legislative activity and that you intend to participate less than the prescribed degree for any legislative or candidate activity. You also state that your intent is to provide educational services to the community, as well as candidate forums, nonpartisan voter guides, get out the vote activities, precinct education, and voter registration. You state that you do not urge your constituents to make contact with legislative bodies to support or oppose specific legislation, nor will you support or oppose specific candidates.

In your application, you state that your present and p lanned activities include raising funds for all forms of voter education in State. The activities will consist of nonpartisan county precinct member organization s, educational speakers, nonpartisan governmental accountability, and other activities related to educating voters of current events. You state that your contracted associates will complete the public education process, while your members will complete the remaining activities. The activities are to be conducted year-round. In response to an Internal Revenue Service (IRS) query, you stated in your Date 3 letter that you sponsored a Climate Change Education Forum, where a number of community groups were invited to participate. The event was cancelled due to snow. You stated that this forum was yo ur only public event. A second event, a seminar, was held for a group at State University, which featured B as a

speaker. No flyers were created, but a video of the event was made. The video was not submitted with the application, and your cites to such video did not show the event. A third event featured a speaker, C, at five locations on five different dates around State. C's website states that he lectures and gives seminars "on constitutional issues relating to gun control, law enforcement, States' rights, the farce, otherwise known as the drug war, and the oath of office." C's website also states that in recent years C has been a speaker to more that 70 different Tea Party rallies across the country. You state that no other events were held or pl anned as of Date 3.

In response to an IRS query asking for a detailed description of your statement in your application that you would utilize nonpartisan county precinct member organizations, educational speakers, and nonpartisan government accountabili ty to educate voters on current events, you stated the following in your Date 3 letter:

> "Becoming active, educated, and involved in political happenings requires more than an active voter. Taking an involved role in the system in either party by becoming a precinct member provides a d eeper layer of education, so whether it be educa ting people on the process of being elected to county precinct, or having party leaders give a general update of the county status we rely on the precinct structure to provide insight that is not provided from other formats.
>
> Educational speakers provide a deeper dive into material that may be cumbersome or confusing. Constitutional lawyers, climate change experts, individual rights and the like are topics with a nearly unending level of information and education. Providing these speakers to the community can provide increased opportunities to education.
>
> Nonpartisan government accountability is tying information to typical party free elements of politics. Groups nationally or locally, whose goal is to develop nonpartisan information, can utilize our educational forums to provide their research and expertise to a wider range of the community. "

In your application, you state that you will raise funds to be utilized under a gran t process for other organizations. These organizations will apply for grants to complete educational activities with their c urrent organization. You further explain that all organizations have access to a similar pool of educational resources. However, in many cases, some organizations would like to utilize their organization's name to host and create an educational opportunity for the community. You state that you will be able to provide the specific shelter for organizations seeking to create educatio nal opportunities under tax exempt status. In your Date 3 letter you state that with this activity you seek to centralize the accounting functions of member groups by providing a central tax - deductible donation vehicle for educational opportunities. Memb er groups can solicit donations for an educational event to be made through you and held for a planned nonpartisan educational event.

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In your application, you state that your grant form to be utilized under the grant process for other organizations will specify the recipient organization's obligations and requirements related to the funds received from you. The recipient organization will be held accountable for providing an overview of the expenses and account for each expense utilized with your tax-exempt funds. Your one-page Grant Application requests the requesting organization's name, organizational contact, phone number, resource request amount, educational purpose of the request, venue, total cost and name of each speaker (including speaking fee, travel, lodging, and reasonable per diem), and any additional information. The Grant Application contains the following statement:

> "By signing below you agree that all funds requested and received will be used for educational purposes. In addition, you will also return unused funds to the organization. You will also provide a complete expense list for each item within 30 days of the event. Failure to complete a detailed expense overview, or misuse of resources will result in legal action. "

In your application, you state that your directors are active board members for N, an organization described in section 527 of the Code. You also state that N does not provide any compensation to their board members; however, both of your directors have voting rights with N. You state that there are seven N board members, two of whom are your directors. Your further state that any board votes of N involving your resources will require your directors to exclude themselves.

In your application, you state that one of your directors is also a board member of P, and that and your other director serves on P's advisory board. One part of your application identifies P as a section 527 organization, and one part identifies P as an "IRS 501c4 organization." A search of the Exempt Organization Master File does not list P as being recognized by the Service as exempt from federal income tax under any part of section 501(c) of the Code.

In your Date 3 letter, you explain that you are present to serve N, as a member group of P, through educational opportunities that either you or N member groups present. You state that N has no direct control over you, nor *vice versa* based on the structure of the bylaws of both organizations, as your two board members will exclude themselves in voting decisions related to events involving you and N.

In your Date 3 letter, you state that your connection with N and P provides the ability for the members of these groups, as well as other members of the community, to receive ongoing educational material from nonpartisan sources .

Your website is entitled M – a P Foundation. You state that you are the educational arm of P and therefore servant to member groups throughout State. In your Date 3 letter, you state that P has no direct control over you, nor *vice versa* based on the structure of the bylaws of both organizations. The member groups of P can utilize other options to meet their educational needs. You state that your services include planning, facilitating, and executing educational events for P or other groups seeking educational opportunities. You will also serve and the centralized account for funding educational

specific events. Your website states that if a reader is a P member group needing help with educational content or ev ent planning, it should contact you.

In your Date 3 letter, you provided the website address of P. P's website shows that D, your director and chief executive officer, is the President of P. D has written items for inclusion on P's website, including one concerning a State candidate for Governor. P's website also indicates that many of its members would be considered to be political organizations described in section 527 of the Code.

Law:

Section 501(a) of the Code exempts organizations describ ed in section 501(c) from federal income taxation.

Section 501(c)(3) of the Code describes corporations, trusts, and association organized and operated exclusively for charitable, educational, and other exempt purposes, so long as no part of the organiz ation's net earnings inures to the benefit of any private shareholder or individual.

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), CT. D. 16 50, C.B. 1945, 375, the Supreme Court of the United States said, "This plainly means 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 pur poses." This rationale applies equally to any category of charitable purpose under section 501(c)(3) of the Code.

Section 501(h) of the Code provides, in general, that in the case of an organization to which this subsection applies, exemption from taxati on under section 501(a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting , to influence legislation, but only if such organization normally (A) makes lobbying expe nditures in excess of the lobbying ceiling amount for such organization for each taxable year, or (B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

Section 527(e)(1) of the Code def ines "political organization" as a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both for an exempt function.

Section 527(e)(2) of the Code, in part, defines the term "exempt function" as the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or lo cal public office or office in a political organization.

Section 4911(a) of the Code provides for a tax on excess expenditures to influence legislation. This section applies to any organization with respect to which an election under section 501(h) (rela ting to lobbying expenditures by public charities) is in effect for the taxable

year. Form 5768, Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation is used for making this election.

Section 4911(c) of the Code provides , in part, that the term "lobbying expenditures" means expenditures for the purpose of influencing legislation, and that the lobbying nontaxable amount for any organization for any taxable year is 20 percent of the ex empt purpose expenditures if organization's exempt purpose expenditures are not over $500,000.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations (regulations) provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt,

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and do not ex pressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(ii) of the regulations provides, i n part, that in meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3) of the Code. Therefore, an organization which, by the terms of its articles is formed "for literary and scientific purposes within the meaning of section 501(c)(3) of the Code" shall, if it is otherwise meets the requirements of this paragraph, be considered to have met the organizational test.

Section 1.501(c)(3)-1(b)(4) of the regulations provides, in part, that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a pub lic purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt activities specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(3)(i) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

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Section 1.501(c)(3)-1(c)(3)(ii) of the regulations provides that an organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be retarded as attempting to influence legislation if the organization: (a) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or (b) advocates the adoption or rejection of legislation.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations provides that an organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements under this section of the regulations, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the corporation, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides, in part, that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax -exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes advancement of education or science, and erection or maintenance of public buildings, monuments, or works.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that, in general, the term "educational", as used in section 501(c)(3) of the Code, relates to the instruction or training of the individual for the purpose of improving or developing his capabilities; or the instructi on of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the per tinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations provides examples of educational organizations to include an organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs.

Rev. Rul. 66-256, 1966-2 C.B. 210, provides that a nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 78-248, 1978-1 C.B. 154, provides that certain 'voter education' activities conducted in a nonpartisan manner by an organization recognized as exempt under section 501(c)(3) of the Code will not constitute prohibited political activity disqualifying the organization from exemption. The Revenue Ruling provides four Situations to illustrate this point. In Situation 3, the organization sends a questionnaire to candidates for major public offices and uses the responses to prepare a voters guide which is distributed during an election campaign. Some questions evidence a bias on certain issues. By using a questionnaire structured in this way, the organization is participating in a political campaign in contra vention of the provisions under section 501(c)(3).

Rev. Rul. 2007-41, 2007-1 C.B. 1421, provides 21 situations as to whether an organization participated or intervened in a political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3) of the Code. Situation 13 describes an organization holding a concert which is attended by the Mayor who is a candidate for reelection. As a result of remarks by the organization's chairman, the organization engaged is political campaign intervention.

Rev. Proc. 86-43, 1986-2C.B. 729, provides criteria used to determine whether advocacy by an organization is educational. Section 3.03 of the Revenue Procedure states that the presence of any of the following factors in the presentations made by an organization is indicative that the metho d used by the organization to adv ocate its viewpoints or positio ns is not educational.

1 The presentation of viewpoints or positions unsupported by facts is a significant portion of the organization's communications.

2 The facts that purport to support the vie wpoints or positions are distorted.

3 The organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis or strong emotional feelings than of objective evaluations.

4 The approach used in the o rganization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter.

Section 3.04 of the Revenue Procedure states that th ere may be exceptional circumstances, however, where an organization's advocacy may be educational even if one or more of the factors listed in Section 3.03 (above) are present. The IRS will look to all the facts and circumstances to determine whether an organization may be considered educational despite the presence of one or more of such factors.

Rev. Proc. 2011-9, 2011-2 I.R.B. 283, sets out the procedures for issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. Generally, the Internal Revenue Service (IRS) issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax.

American Junto, Inc.

Section 4.03 of this Revenue Procedure states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. W here the organization cannot demonstrate to the satisfaction of the IRS that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the IRS will generally issue a proposed adverse determination letter or ruling.

Analysis:

Your Articles of Incorporation do not meet the organizational test requirements set out in section 1.501(c)(3)-1(b)(1)(ii) or (b)(4) of the regulations. Your Articles state only that you are non-profit and that you were formed for civic education and organization in developing social and political ideology and methods of c hange and any other activities furthering not-for-profit purposes permitted by law. This provision in your Articles, however, does not limit your purposes to one or more exempt purposes within the meaning of section 501(c)(3) of the Code. Nor do you have any provision in your Articles regarding your assets upon dissolution. Although the laws of State have a statute to provide for proper dissolutio n for nonprofit charitable corporations by operation of law, you are not considered as "charitable," and thus such statute is not applicable to you. The statement in your bylaws concerning your purposes and dissolution does not affect the purposes section of your Articles.

Section 501(c)(3) of the Code precludes exemption for an organization that participates in or intervenes in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidat e for public office. You have stated that you will participate or intervene in (including the publishing or distribution of statements) any political or judicial campaign on behalf of any candidate for public office only to an insubstantial degree. The prohibition under section 501(c)(3) regarding engagement in political activities , however, is an absolute prohibition. There is no requirement that such activity has to be substantial in order to preclude exemption under section 501(c)(3). For this reason, because you are considered to be an "action" organization as described in section 1.501(c)(3) -1(c)(3)(iii) of the regulations , you are not operated exclusively for one or more exempt purposes pursuant to section 1.501(c)(3) - 1(c)(3)(i).

Although you state in your Date 3 letter that your bylaws account for limited, not substantial, lobbying and legislative activity, and that you intend to participate less than the prescribed degree for any legislative activity, your bylaws specifically state that you may devote a substantial part of your activities for lobbying purposes (including the distribution of statements) or otherwise attempting to influence legislation. Section 4911 of the Code does not define "substantial" or "insubstantial" lobbying, but rather imposes a tax when lobbying expenditures exceed a certain monetary amount based on exempt purpose expenditures. For an organization with less than $500,000 of exempt purpose expenditures, 20 percent of the exempt purpose expenditures would be considered as the lobbying nontaxable amount.

Your bylaws provide that you shall not operate primarily as a social club for the benefit, pleasure, or recreation of your members although social functions for the benefit of your members may be carried out if they ar e incidental to your primary purposes. You have provided

no information about your carrying out such social functions for the benefit of your two members. Although you may consider such an activity incidental to your stated organizational primary purpose of civic education and organization in developing social and political ideology and methods of change, when a social function is for the benefit of only two persons, who are your sole members, the possibility of benefit ing private interests increases.

Because you only have two Board of Director members, who are your sole members, with no other membership opportunities, no intention of expanding your two -person Board, and no appointed officers, you do not have any checks and balances to ensure that you wi ll not engage in activities detrimental to the community or to your organizational purposes. Operating under the control of one person or a small, related group suggests that the organization operates primarily for non-exempt private purposes, rather than exclusively for public purposes. See, for example, Situation 2 in Rev. Rul. 69 -545, 1969-2 C.B. 177. For instance, i t would take only one of your directors to call a Board of Directors meeting, since your bylaws state that one -third of your directors may do so. Since you have only two directors, one director would be more than one-third of the total number of directors. Since such a Board of Directors meeting would also have a quorum, again the one-third of your directors, any and all decisions would be made by the single member, including a social function for the benefit of that single member. This would constitute operating for the benefit of private interests within the meaning of section 1.501(c)(3) - 1(d)(1)(ii) of the regulations. Your conflict of interest provision in your bylaws would not preclude such activity.

You have stated that your present and planned activities with regard to raising funds for all forms of voter education in State consist of year-round educational events for voters. However, you have sponsored only three such opportunities, one of which was cancelled due to snow. While the presentation of public forums or debates is a recognized method of educating the public, as described in Rev. Rul. 66 -256, supra, you have not provided sufficient information for a determination to be made as to the educational content, within the meaning of section 1.501(c)(3)-1(d)(3)(i) or (ii) of the regulations, of the other two events. See, for example, Rev. Proc. 86-43, supra.

As stated in section 1.501(c)(3)-1(d)()3)(i) of the regulations, an organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individua l or the public to form an independent opinion or conclusion. The information in C's website indicates that C engages in seminars that provide possibly distorted facts and inflammatory and disparaging terms, presented on the basis of strong emotional feel ings rather than objective evaluations. C also apparently makes presentations to a number of political organizations which have strong feelings for particular political viewpoint. You have not provided information showing that C's presentations, which re present approximately one-half of your educational events, would be considered to be educational within the meaning of section 1.501(c)(3) -1(d)(3)(i).

You have stated that your contracted associates would complete your public education process, while yo ur members would complete the remaining activities. You also state that you are the educational arm of P and therefore servant to member groups throughout State. Since P's Website states that many of its members would be considered to be political organi zations described in section 527 of the Code, you are providing services to political organizations. As

such, you would be considered to be "action" organizations as described in section 1.501(c)(3) - 1(c)(3)(iii) of the regulations. Further, since D, your director and chief executive officer, is also the President of P, it would appear that your chief executive officer spends the majority of his time working for political causes and purposes. Since both of your members are entwined with political organizations, the activities carried on by both of your members would be presumed to be political.

When you were asked by the Service to provide a detailed description of your activities with regard to your utilization of nonpartisan county precinct member organizations, you provided a statement that by becoming a precinct members, a person would be provided a "deeper layer of education." You gave no explanation of how this utilization provided education or what kind of education was being contemplated. Activities with regard to possible recruitment of people to become active in local politics at the precinct level would appear to be identical to the recruitment and organization that takes place in a political party. This organizational basis has primarily been used to mobilize targeted voters to get to the polls on Election Day. It has also been used to identify and encourage religious activists to run for local office. Using the facts and circumstances test, the conclusion is that your precinct organiza tional basis would be implemented primarily to intervene in political campaigns. Thus, through this activity, you would be described as an "action" organization in section 1 .501(c)(3)- 1(c)(3)(iii)

You have not provided any copies of voter education gui des, which you stated that you would produce, to enable a determination to be made that you meet the gu idelines set forth in Rev. Rul. 78-248, supra.

You have described an activity whereby you would raise funds for other organizations under a grant process. You state that in this manner, any funds you raised would be under your auspices as a charitable organization, and contributions would be considered to be deductible by donors. You have provided no evidence or proof that any of the organizations soliciting you to raise funds have purposes that would be considered as charitable or educational purposes within the meaning of section 1.501(c)(3) -1(d)(3) of the regulations and Rev. Proc. 86 -43, supra. Although you require organizations to sign a stateme nt that the funds will be used for educational purposes, you have not provided any evidence concerning how you would be assured that the educational activities of the recipient would be educational within the meaning of section 1.501(c)(3)-1(d)(3)(i).

For these reasons, you have not met your burden of establishing that you operate exclusively or can be considered as operating exclusively for educational purposes within the meaning of section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(3)(i) of the regulations. See Rev. Proc. 2011-9, supra. As stated in Better Business Bureau of Washington, D.C., Inc. v. U.S., supra, a single non-educational purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly e ducational purposes.

Both of your directors are active board members of N, a political organization described in section 527 of the Code. You intimate in your application that N has no direct control over you, nor *vice versa* because your members only constitute two out of N's seven directors, the directors of N are not compensated, and any board votes of N involving your resources will require your directors to exclude themselves. In your Date 3 letter, you explain that N has no

direct control over you, nor *vice versa,* based on the structure of your and N's bylaws, and because your two board members will exclude themselves in voting decisions related to events involving you and N. Inasmuch as you state that you are present to serve N as a member group of P, it would appear that N could vote on your resources and events involving you without needing the vote of your directors. You have not explained how the structure of the bylaws of you and N would preclude control.

In the same manner with N, you have not explained how the structure of the bylaws of you and P would preclude control, especially since you describe yourself as the educational arm of P and therefore servant to member groups throughout State. As stated above, by serving members, many of which are identified as political organizations within the meaning of section 527 of the Code, you are engaging in political activities as described in section 1.501(c)(3) - 1(c)(3)()iii) of the regulations.

Your activities as described are not necessarily considered to be charitable or educational within the meaning of section 501(c)(3) of the Code. As discussed in Rev. Proc. 2011-9, supra, organizations exempt under section 501(c)(3) may take positions of public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. D's statement regarding a State candidate for Governor indicated that the candidate signed an initiative petition on State's Constitution sponsored by P, and thanked the candidate for making a very clear statement about state sovereignty. By identifying the candidate for a given public office, expressing approval for the candidate's position and action, and delivering the statement close in time to the election, D's statement results in P's intervention in a political campaign as well as your indirect intervention since D is both P's president and your director and chief executive officer. See Rev. Rul. 2007-41, supra. Such activity defines you as an "action" organization as described in section 1.501(c)(3) -1(c)(3)(iii) of the regulations.

For these reasons, you have not met your burden of establishing that you operate exclusively for exempt purposes. Therefore, you are precluded from recognition of exemption under section 501(c)(3) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

American Junto, Inc.

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney.* All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:2)
Carter C. Hull, 3N3
SFC [redacted]

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations

SFC 003106

From: Williams Grant
Sent: Wednesday, July 20, 2011 2:23 PM
To: Eldridge Michelle L
Subject: FW: Bazinga

Follow Up Flag: Follow up
Flag Status: Flagged

From: Strom, Stephanie [SEC [redacted]]
Sent: Wednesday, July 20, 2011 3:19 PM
To: Williams Grant
Subject: Bazinga

Hi, Grant,

So, as I said, I have identified and gotten confirmation that the three organizations denied exemption were Emerge Maine, Emerge Massachusetts and Emerge Nevada.

These organizations are state affiliates of Emerge America, and I believe there are six other Emerges around the country -- some of which have been granted tax exemption as c4s. Emerge California, for example, has I.R.S. approval for tax exemption.

And while Maine, Massachusetts and Nevada were waiting for approval, another Emerge, in Kentucky, which was formed two years after them, was given approval, and Oregon, which also applied a couple of years later, is still pending.

The question, obviously, is why have some of these groups been approved and others not?

I am on a tight deadline so would like to talk to someone or have an answer to the question ASAP.

Many thanks, Stephanie

Stephanie Strom
The New York Times
SEC [redacted]
[redacted]

[redacted]

IRS0000623704

From: Seok Stephen D
Sent: Wednesday, February 08, 2012 1:59 PM
To: Estes Janine L
Subject: RE: Advocacy - Related cases

Thank you again, Janine.

Stephen.

From: Estes Janine L
Sent: Wednesday, February 08, 2012 2:54 PM
To: Seok Stephen D
Subject: RE: Advocacy Related cases

Attached is the letter for the related 501(c)(4).

From: Seok Stephen D
Sent: Wednesday, February 08, 2012 1:59 PM
To: Estes Janine L
Subject: RE: Advocacy Related cases

Thank you.

From: Estes Janine L
Sent: Wednesday, February 08, 2012 1:57 PM
To: Seok Stephen D
Subject: RE: Advocacy Related cases

Attached is my letter. This is the first time we have made contact with the organization through the advocacy program.

From: Seok Stephen D
Sent: Wednesday, January 25, 2012 4:20 PM
To: Estes Janine L
Subject: RE: Advocacy Related cases

Janine,

The case is in your mailbox. Please send out your letters once they are done - just copying me your letters is fine. Let me also have copies of responses when you receive.

Thank you,
Stephen.

SFC 003108

			Control			Current	Lobbying	General Advocacy (i.e. issue advocacy and/or educational activities)	Propaganda/Inflammatory (little to no educational aspects)	Political Activities	Develo
Organization Name	**Assigned to**	**Date**	**Date**	**EIN**	**Subsection**	**EDS Status**					
KSP True the Vote	Janine	1/25/12	09/20/10	S [redacted]	c 3	52		X		X	Yes

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From: Estes Janine L
Sent: Wednesday, January 25, 2012 3:43 PM
To: Seok Stephen D
Subject: RE: Advocacy Related cases

You can go ahead and have it assigned to me now that way I can work on the letter s together.

From: Seok Stephen D
Sent: Wednesday, January 25, 2012 3:40 PM
To: Estes Janine L
Subject: RE: Advocacy Related cases

Thank you for bring it to my attention. The case is not assigned to Ron currently, just in his number. I will reserve the case for you and assign to you when you need cases, so that the cases are worked together.

Stephen.

From: Estes Janine L
Sent: Wednesday, January 25, 2012 3:04 PM
To: Seok Stephen D
Subject: Advocacy Related cases

I've began researching the advocacy case you assigned me last week - King Street Patriots EIN [redacted], there is a related case - KSP True the Vote EIN [redacted]. It's currently being shown in Ron Bell 's number. I'm sure weather he's begun developing the case or if it's simply being held in his number. Do you want these cases to be worked currently? If so, please let me know how to proceed.

Janine L. Estes
Exempt Organizations,
Determinations, Group 7829
[redacted]

SFC 003109

SFC 003110

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: Emerge SF, Emerge SFC, and Emerge SFC **TIN/EI** SFC **POA:** N/A	**TAX PERIODS:** **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Cincinnati, OH	☐ **INITIAL REPORT** ☒ **FOLLOW-UP REPORT** ☐ **FINAL REPORT**
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Unique or novel issue ☒ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☒ Other (explain in Case Summary)
FORM TYPE(S): 1024	**START DATE:** 7/28/2008
POTENTIAL DOLLARS INVOLVED (IF > $10M) :	**CRIMINAL REFERRAL?** No **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:

Two organizations from two 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 fundraising activities. The applications appear to repres ent partisan political activity.

CURRENT SIGNIFICANT ACTIONS ON CASE:

In August 2008, cases were referred to the Quality Office where research revealed that four "Emerge" organizations had already been approved with the oldest approval dating back to September 2004.

In October 2008, the two cases were transferred to EO Technical for review.

In November 2008, another "Emerge" case was received. After consultation with Quality Assurance and EO Technical, EO Determinations sent an additional information letter to the o rganization.

On March 13, 2009, EO Determinations and EO Technical agreed t hat EO Technical would make a decision during the week of March 16th as to whether the third "Emerge" case will be transferred to EO Technical or retained in Cincinnati with ins truction on how to possibly deny exemption.

On March 20, 2009, Emerge SFC was sent to EO Technical for review in conjunction with Emerge SFC and Emerge SF . I have drafted a memorandum for Ted Lieber's review with a recommendation as to Emerge SFC and Emerge SF . He suggested that we review the case file of a similar case that we

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003111

TEGE Division Sensitive Case Report
(revised January 2007)

SIGNIFICANT NEXT STEPS, IF ANY:	**ESTIMATED CLOSURE DATE:** Unknown
BARRIERS TO RESOLUTION, IF ANY: Outstandanding court case between IRS and the DLC and fact that four "Emerge" organizations were already approved for exemption.	
SUBMITTED BY: Siri Buller	**MANAGER:** STEVE GRODNITZKY
DATE: 5/4/2009	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

From: Herr Joseph R
Sent: Tuesday, April 13, 2010 5:33 PM
To: Hofacre Elizabeth L; Herring Donald Grant; Hanson Michael J
Subject: FW: TAG Spreadsheet
Attachments: TAG Database March 2010 (2)april 2.xls; Emerging Issues Procedures revision 0413.doc; EMERGING ISSUE OR COORDINATION OF RELATED CASES FORM (2).doc

Follow Up Flag: Follow up
Due By: Wednesday, April 21, 2010 7:30 AM
Flag Status: Flagged

Liz, Grant, and Mike,

Per below, we need to tweak our materials. Luckily, it is just tweaking; I think we are in good shape.

All, we need to think of new names for "emerging issues" and "consistency." I think a new name for "emerging issues" could be "novel issues." I think we are already on the right track with changing "consistency" to "coordination." I think we can still maintain one form for both items.

Liz, we will need to separate our one sheet into two; emerging issues and coordination.

Grant, please review the outline and edit to reflect two spreadsheets where needed.

Please have the updates completed by Wednesday, April 21st.

Joseph

Joseph R. Herr
Manager Group 7825
Exempt Organizations Determinations
SEC [redacted]

From: Herr Joseph R
Sent: Tuesday, April 13, 2010 6:20 PM
To: Melahn Brenda
Subject: FW: TAG Spreadsheet

Brenda,

Per our conversation, attached are some of the draft procedural items for "emerging issues."

Please note, we need to add a separate "consistency" tab yet and find new names for "emerging issues" and "consistency." We will get an updated drafts to you by April 23rd.

Joseph

Joseph R. Herr
Manager Group 7825
Exempt Organizations Determinations
SEC [redacted]

SFC 003113

From: Melahn Brenda
Sent: Monday, April 12, 2010 1:45 PM
To: Herr Joseph R
Subject: FW: TAG Spreadsheet RESPONSE DUE 4/30/2010
Importance: High

From: Camarillo Sharon L
Sent: Monday, April 12, 2010 1:41 PM
To: Thomas Cindy M
Cc: Melahn Brenda; Waddell Jon M
Subject: FW: TAG Spreadsheet RESPONSE DUE 4/30/2010
Importance: High

Cindy: Having this TAG spreadsheet reworked and completed by April 30 should not be a problem. Jon and Joseph are going to meet this week to finalize the changes.

We have considered several name changes, but have not made any changes so far. Some of the ideas for the new title:

Sensitive Issues (Rejected - it would be confused with the Sensitive Case Report)
Emerging Issues (Rejected - redundancy)
Consistency (Rejected - to limited in scope/duplicates what we just removed from the spreadsheet)

Let me know if you have any ideas as to what to call this spreadsheet.

Thanks

Sharon L. Camarillo
EO Determinations Manager, Area 1

SFC [redacted]

Telephone: SFC [redacted]
Fax: SFC [redacted]

From: Thomas Cindy M
Sent: Saturday, April 10, 2010 7:32 AM
To: Melahn Brenda; Camarillo Sharon L

SFC 003114

Subject: TAG Spreadsheet RESPONSE DUE 4/30/2010
Importance: High

Sharon/Brenda,

1. The name of the spreadsheet will need to be changed since this is no longer limited to TAG issues.

2. I recommend having a "Consistency" tab for those cases where we want to ensure consistent treatment of cases (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.

3. The spreadsheet needs to be finalized by the end of April 2010 and shared with me. It cannot wait until the end of May 2010. This document can be introduced during CPE since the Emerging Issues procedures are going to be shared at that time as well. I need time to review it and the instructors need time to prepare for CPE --- it is scheduled throughout June and July.

Please let me know if you want to discuss. Thanks.

From: Camarillo Sharon L
Sent: Tuesday, April 06, 2010 9:37 AM
To: Thomas Cindy M
Subject: TAG Spreadsheet
Importance: Low

Cindy: I have asked Jon to have this spreadsheed finalized by the end of May, 2010. At that time I would also like to have this spreadsheet placed on a shared drive that can be accessed by designiated people, such as the EO Determ. specialists, EO Exam and ROO managers and designated SBSE managers.

Sharon L. Camarillo
EO Determinations Manager, Area 1

SFC [redacted]

Telephone: SFC [redacted]
Fax: SFC [redacted]

From: Waddell Jon M
Sent: Tuesday, April 06, 2010 4:48 AM
To: Camarillo Sharon L; Melahn Brenda
Cc: Herr Joseph R
Subject:
Importance: Low

Sharon and Brenda,

SFC 003115

As a follow-up to last month's meeting, attached is the latest draft of the Joint TAG/Emerging Issues Spreadsheet. The following are the details:

1. As indicated previously, the spreadsheet has been divided into three tabs (TAG, Emerging Issues, and Wat ch For List)

2. The TAG Tab has been reduced to solely the issues the TAG Group has seen over the past 2 -3 years. Additionally, the issues have been renumbered 1 -9 with TAG #18 remaining its own separate category

3. Joseph and I have been meeting to d iscuss the methods of updates to the spreadsheets(possibly on a monthly basis). Its likely that John McGee and Liz Hofacre will be coordinating joint updates likely in the form of a monthly e-mail with a related Issue Update # that will coincide with new entries on the spreadsheet.

4. Lastly, 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 former TAG Issues. We will, however, keep historical record of these issues within the TAG Group

Note: Joseph, John, Liz and I will continue to meet over the next 2 -3 weeks to finalize a proposal as to how and when updates can be made to the spreadsheet. When we have these details, we could have a follow -up meeting to discuss our ideas

thanks

From: Herring Donald Grant
Sent: Wednesday, April 28, 2010 9:56 AM
To: Melahn Brenda; Waddell Jon M; Camarillo Sharon L
Cc: Kowalczyk Chad A; Herr Joseph R
Subject: TAG/EI spreadsheet

Importance: High

Brenda,

I think that I can answer your questions, up to a point. Liz, who is, as Coordinator, going to be responsible for maintaining the spreadsheet, designed it.

1. The order of the columns Liz chose is admittedly conventional -- what people would expect to see -- first the issue numbers, corresponding to the order in which the issues were identified, with the next columns containing progressively more complex information. My personal opinion is that conventionality of presentation can be an advantage. If the Emerging Issues were likely to ever become very numerous, I do not think there would be much advantage in putting the description column first: I don't think that we are thinking of having one key word heading up the description, so that the descriptions can be sorted alphabetically. However, if we anticipate that there will never be more than a few Emerging issues at any given time, putting the descriptions first might be a good idea.
2. It is my understanding that "Current Status" is meant to include "Disposition". The name, especially followed as it is by "Opened or Closed" is misleading. A better name for the column would be "Disposition".

3. "Coordinated Cases" is for the situation when you don't have a TAG case o r Emerging Issue case, but a group of related cases has been identified which is fairly large and it is decided to coordinate their processing to ensure uniformity of handling. (We have been making a conscious effort to avoid using the word "consistency" in connection with this, but it is the word that immediately comes to mind!). This tab would contain instructions about how these cases are coordinated, rannging from assignment to specific specialist or group to attention to certain issues. The establishment of a "Coordinated Cases" category would start with the identification of a group of related cases in a group by a specialist. His or her manager would make a referral to the Coordinator, if in his opinion, the processing of this group of cases ought be coordinated. I wasn't in on the decision to add a sparate tab for Coordinated Cases, and I don't know at what level it was made. Jon can probably tell you.

4. Yes, my understanding of the "Watch" categories is the same as yours. Like the Emergin g Issues, the unifying thread in a category of "Watch" cases would be the "type of case", or "Issue", but "Watch" categories are for the cases we think we will be seeing, but haven't seen yet. We think we will be seeing them because there have been recent events, like a change in the law, which we anticipate will result in the filing of a significant number of applications for exemption. I think the passage of the health care bills are a perfect example. Rob Choi's 4/20 "PPACA Impact Memo" illustrates how it is possible to project the receipt of certain types of applications before it actually happens. The possibilities listed in the memo are the kinds of things that would go on the Watch list. The "Watch" tab seems to be based on the TAG tab, although a "Watch" category more closely resembles an Emerging Issue. I don't know for sure that Liz proposed this format.

Grant

From: Melahn Brenda
Sent: Wednesday, April 28, 2010 7:20 AM
To: Waddell Jon M; Camarillo Shar on L
Cc: Kowalczyk Chad A; Herr Joseph R; Herring Donald Grant
Subject: RE:
Importance: High

I have questions/comments on attached these are strictly for 7825 I am fine with the TAG portion of the sheet if it works for you all. Grant, take a look at my comments/questions/etc. Jon I'd appreciate your input as well since Joseph isn't here to look before we're supposed to have draft to Cindy.

Thanks!
Brenda

From: Waddell Jon M
Sent: Tuesday, April 27, 2010 12:42 PM
To: Camarillo Sharon L; Melahn Brenda
Cc: Kowalczyk Chad A; Herr Joseph R; Herring Donald Grant
Subject:
Importance: Low

Sharon and Brenda,

Attached are the documents concerning Emerging Issues and TAG for review and elevation. Documents are as follows:

1. Revised Joint Spreadsheet containing tabs for TAG, Emerging Issues, Coordinated Cases, and Watch For List

2. Emerging/Coordinated Issues Referral Form

3. Draft Emerging Issues Coordination Protocol

4. White Paper Template

thanks

From: Waddell Jon M
Sent: Wednesday, April 28, 2010 4:17 PM
To: Melahn Brenda
Cc: Camarillo Sharon L; Herr Joseph R; Herring Donald Grant
Subject: RE:

Importance: Low

Brenda,

I reviewed the comments and suggestions. Below are my thoughts

1. **For comment j2**, agree on the switching of the first two bullet points

2. **For comment j3**, we can eliminate the paragraph concerning referrals to the TAG Group from Emerging Issues. We don't want to give the impression that their is a secondary way to forward cases to TAG that isn't covered in the IRM.

3. **For comment j4**, the first Alert on the Emerging Issue should come at the end of this section (i.e. after paragraph 10). The intial alert to everyone should be after everything else has occurred (i.e. white paper submitted and managment deciding on handling etc). After all that, the alert should be issued. The other verbage concerning the Action Section of the Tab being updated can be eliminated **(i,e comment j5)**.

4. **Comment j6**, agreed that we should renumber.

5. **Comment j7**, agree, see response to comment j4. Initial alert should be after everything else has been vetted.

6. **Comment j8**, the inference was that Upper Management would communicate its decision as to case handling. That could be changed to defintively state upper management.

7. **Comment j9**, we can change to state all EO Determination Speci alists

8. **Comment j10**, see draft below on Watch For Section. I would insert this between the sections (**Coordinated Processing** and **Combined Spreadsheet and E-mail Alerts**)

Watch For Issues

(1) A Watch For Issue involves the potential for a pplication receipts as a result of significant world events, passage of substantial legislation, or as the result of other signficant factors.

- Watch For Issues will be added to its respective tab on the combined spreadsheet
- Watch For Issues will be added to the standard alert by the Emerging Issue Coordinator.

9. **Comment j11**: Suggest Program Manager approve alerts

thanks

From: Melahn Brenda
Sent: Wednesday, April 28, 2010 9:06 AM
To: Waddell Jon M
Cc: Camarillo Sharon L; Herr Joseph R; Herring Donald Grant
Subject: RE:

I am including this IRM section with my comments/suggestions/ques tions I would appreciate anyone else's feedback before sending to Cindy.

Thanks!

Brenda

From: Waddell Jon M
Sent: Wednesday, April 28, 2010 8:48 AM
To: Melahn Brenda
Cc: Camarillo Sharon L; Herr Joseph R ; Herring Donald Grant
Subject: RE:
Importance: Low

Brenda,

Here are my throughts:

1. The suggested changes for the Emerging Issues TAB look fine to me.

2. The Coordination Tab is in response to the previous request that Cindy had to add a 4th tab termed "Consistency"--- which would emphasize that certain issues would be worked and/or coordinated in certain groups. I believe it was decided to name this tab as **Coordination** as opposed to **Consistency** as the later had an Historical TAG Meaning that we wanted to get away from.

3. The Watch For Tab would simply be for an alert to agents to Watch For certain case types that **could** come in related to current events--- for example. Examples of Watch For Issues could be the following:

a. Applications associated with the recent turmoil in Arizona due to the new immigration law

b. Applications involving previous politically motivated organizations coming in under a different legal name, etc.

From: Melahn Brenda
Sent: Wednesday, April 28, 2010 7:20 AM
To: Waddell Jon M; Camarillo Sharon L
Cc: Kowalczyk Chad A; Herr Joseph R; Herring Donald Grant
Subject: RE:
Importance: High

SFC 003120

I have questions/comments on attached these are strictly for 7825 I am fine with the TAG portion of the sheet if it works for you all. Grant, take a look at my comme nts/questions/etc. Jon I'd appreciate your input as well since Joseph isn't here to look before we're supposed to have draft to Cindy.

Thanks!
Brenda

From: Waddell Jon M
Sent: Tuesday, April 27, 2010 12:42 PM
To: Camarillo Sharon L; Melahn Brenda
Cc: Kowalczyk Chad A; Herr Joseph R; Herring Donald Grant
Subject:
Importance: Low

Sharon and Brenda,

Attached are the documents concerning Emerging Issues and TAG for review and elevation. Documents are as follows:

1. Revised Joint Spreadsheet containing tabs for TA G, Emerging Issues, Coordinated Cases, and Watch For List

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3. Draft Emerging Issues Coordination Protocol

4. White Paper Template

thanks

SFC 003121

From: Herring Donald Grant
Sent: Tuesday, May 18, 2010 11:14 AM
To: Herr Joseph R
Subject: 4945(f) case

Joseph,

I remember an alert issued not too long ago about the possibility of receiving applications from successors to ACORN affiliated organizations. I can't find the alert any more, but I am sure someone is monitoring such applications. Well, the org requesting the 4945(f) ruling is a certai SEC SEC a DC corporation, which is the successor to another SEC SEC a LA corporation, which many internet sources allege is an ACORN affiliate or front. The predecessor is currently under examination, by the way.

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. The agent's manager didn't sign off on the 8670, by the way.

Grant

SFC 003122

Internal Revenue Service
P.O. Box 2508 - Room 4511
Cincinnati, Ohio 45201

Date: November 29, 2010

Department of the Treasury

Employer Identification Number:
SFC
Person to Contact – Group #:
Grant Herring - 7824
ID SFC
Contact Telephone Numbers:
SFC Phone
SFC Fax
Response Due Date:
December 19, 2010

SFC
SFC
SFC

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosure by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

> *Under penalties of perjury, I dec lare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and co mplete.*

To facilitate processing of your application, **please attach a copy of this letter to your response.** This will enable us to quickly and accurately associate the additional documents with your case file.

If we do not hear from you within that ti me, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

In addition, if you do not respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Grant Herring
Exempt Organizations Specialist

Enclosure: Information Request

Letter 1312

SFC [redacted]

Note: In the following the pronoun "you", refers to the applicant organization, SFC [redacted]

Additional Information Requested:

Assistance to other charitable organizations: You have indicated that, apart from carrying out your various programs directly using your own staff and facilities, you will provide training and technical assistance to other 501(c)(3) organizati ons to carry on voter registration and turnout activities in their own commu nities.

1. Please break out the time and resources you will devote to each of the following:
   i. Voter registration programs that you carry on directly
   ii. Voter education and other activit ies that you also carry on directly.
   iii. Assistance to other organizations.

2. Will you provide funding to the other organizations to help them defray the expenses related to voter registration and turnout activities? Please describe in detail your grant program.

3. Provide a detailed description of your training programs and technical assistance program. A satisfactory description answers the questions, who, for whom, how, when, where. Who conducts each activity? How is each activity conducted? When and where is each activity conducted? Who are the participants and beneficiaries of each activity? How is the activity paid for?

4. Provide a list of all the topics covered in your training programs, and furnish copies of all recruitment materials, training materials and manuals you will create and employ for this purpose.

5. Describe the process by which an organization applies to you and is approved for training or assistance. Provide copies of application materials, and describe any conditions that the organizations have to meet or stipulations they have to make before you will consent to help them.

6. Provide copies of your agreements with the organizations you are assisting .

7. Provide a copy of the Code of Conduct which you require your partners to observe in registering voters. What subjects are their workers permitted to discuss with potential voters? What subjects are they forbidden to discuss?

8. Explain how you will ensure that the persons who conduct the voter registration activities for the other organizations will conduct them impartially, without favoring a particular candidate or political party, if they are not acting under your immediate control and supervision.

9. Describe what actions you will take if you become aware that one of the organizations or its representatives, while registering voters under its auspices, is endorsing or opposing particular candidates, slates of candidates, or a political party.

SFC [redacted]

10. Describe what actions you will take if you become aware that a local association or its representatives, while registering voters under its auspices, are helping persons to register who are favorably inclined to a particular candidate, slate of candidates, or political party, but not persons inclined to other candidates, slates of candidates, or political par ties.

11. Will you provide training, funding, or technical or operational support to organizations affiliated with a political party, or which has publicly endorsed particular candidates, slates of candidates, or a political party?

12. Please list the types of contacts a volunteer may have with a voter, where they will occur, and in the order in which they will occur. Include follow -up contacts after the person is registered. What factors will determine whether an individual receives post -registration contacts?

13. Describe in detail how it is determined whom they contact about registering to vote. From what sources are the lists compile

Voter registration activities you carry on directly:

1. Furnish copies of all recruitment materials, training materials and man uals you will create for your own staff and volunteers.

2. Provide a copy of the Code of Conduct which you require your workers to follow in registering voters. What subjects do you permit your workers to discuss with potential voters? What subjects do you forbid them to discuss?

3. Provide copies of any brochures, pamphlets, flyers, or other literature that will be distributed by your workers in the course of their contacts with registered and unregistered voters.

4. Please list the types of contacts a worker may have with a voter -- including registration canvassing, telephone and other kinds of voter follow -up, getting out the vote communications, other types of get out the vote assistance, and post -election contacts, if any -- where they will occur, and in the order in which they will occur.

5. What factors will determine whether an individual receives post -registration contacts? Will all voters you have contacted be treated the same? If not, explain under what circumstances their treatment may vary.

6. Describe in detail how you will determine whom to contact about registering to vote. From what sources are the lists compiled? What are the specific criteria you will use in determining where to target your voter registration efforts?

7. Will you conduct voter registration campaigns in conjunction with public issue advocacy campaigns, in which public policy changes or changes in the laws are advocated? Will you take positions on ballot initiatives? Please describe in detail all such activities.

8. Do your workers ask the potential voters about their political affiliation ? If so, did they refuse to enroll persons who identified themselves as members of a particular political party?

SFC [redacted]

9. Do your workers ask the potential voters about their position on ballot initiatives, pending legislation, or their positions on certain specific public policy issues? If so, did they refuse to enroll persons who se positions do not coincide with your own?

10. Do your workers talk to potential voters about particular candidates or slates of candidates? If so—
    a. Did they urge the potential voters to vote for or against the candidate(s).
    b. Did they describe the position of the candidate(s) on the ballot initiative or other issues, and compare it with your own position? Did they compare the positi on of the candidate with your position and that of rival candidates for public office?

11. What criteria do you use in recruiting volunteers or staff? Do you seek persons with a particular political orientation? Do you recruit among activist groups of a parti cular type?

12. Describe what actions you will take if you become aware that one of your workers is endorsing or opposing particular candidates, slates of candidates, or a political party while registering voters for you.

13. Describe what actions you will tak e if you determine that one of your workers are helping persons to register who are favorably inclined to a particular candidate, slate of candidates, or political party, but not persons inclined to other candidates, slates of candidates, or political parties.

14. Describe any other means you will employ to ensure that your workers will conduct voter registrations impartially, without favoring a particular candidate or political party.

Participation in Alliances:

1. Our research indicates that you are affiliat ed wit SFC [redacted], of which one of your officer SFC [redacted], is Director SFC [redacted] appears to be affiliated in turn with an organization calle SFC [redacted]. Please describe in detail your role in these alliances of like-minded organizat ions.

2. SFC [redacted] has an annual Plan and an annual Census Outreach Plan. Have you adopted such written Plans? If so, please furnish copies. What role do th SFC [redacted] Plans envision for you?

Voter Education and Civic Participation:

1. Please explain how your educational programs for voters increase voter registration and turnout. Provide copies of any materials you use as part of voter education program s.

2. The programs "raise awareness". Awareness of what?

3. You will "work on separate and d istinct programs that will educate these communities on the importance of continuing their involvement in the public process beyond elections. These educational efforts will increase awareness of the need to establish an ongoing dialogue with public offici als on public policy matters at the various levels of government."
    a. Describe each of the "separate and distinct programs." What consideration will

determine the objectives and design of each program?

b. Are the programs targeted to all newly registered voter s, or are they intended to encourage persons whom you have identified as interested in becoming more deeply involved in advancing certain specific issues? If the latter, what are the specific agendas which you desire to advance?
c. How will the participants in these programs be urged to continue their involvement after the elections are over?
d. Will you communicate with individuals you registered after the elections? If so, will you communicate with them about public policy issues? Describe any other means by which you will maintain a relationship with these persons.
e. Will you refer the participants in the programs to certain other organizations engaged in issue advocacy? If so, what sorts of organizations are you interested in building up in this way?
f. What means will you teach participants to employ to carry on a continuing dialogue with public officials?
g. What means will you teach other organizations to employ to carry on a continuing dialogue with public officials?

4. Explain what exactly is meant by "civic engagement" as you use the term. What does civic engagement entail, apart from voting in elections? Does it involve active membership and participation, perhaps in a leadership role, in community organizations ? Political action?

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: Grant Herring
Room 4511
Group 7824

Street Address:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: Grant Herring
Room 4511
Group 7824

From: Herring Donald Grant
Sent: Tuesday, November 29, 2011 7:41 AM
To: Maloney Susan
Subject: RE: voter registration questions
Attachments: Voter registration questions.doc

If we are talking a lot of money they want c3 because they are depending on receiving heavy private foundation funding. 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 PF money and seem to lean to the left, make sure it isn't an ACORN successor.

Grant Herring
Exempt Organizations Specialist
Phon SFC
Fax SFC

From: Maloney Susan
Sent: Monday, November 28, 2011 4:25 PM
To: Mayi Sirijun; Herring Donald Grant
Subject: voter registration questions
Importance: Low

If you have any voter registration questions, could you please send them to me?

Also, I have an applicant that is applying as c3. Are these orgs generally c3 or c4 or another subsection?

Thanks,

Susan

SFC 003128

From: Shoemaker Ronald J
Sent: Wednesday, March 17, 2010 9:34 AM
To: Berick Ellen S; Gitterman Janet E; Henzke Leonard J; Hull Carter C; Manasterli Jacqueline B; Kastenberg Elizabeth C; Mackay James R; Orcino Leonardo M; Patton John M; Paul Susan L; Phaup Lee T; Strelka Andrew C; Wrathall Meghan R; Zelasko James
Subject: lookout

Be on the lookout for a tea party case. If you have received or do receive a case in the future involving an exemption for an organization having to do with tea party let me know.

Thanks.

From: Grodnitzky Steven
Sent: Monday, May 17, 2010 11:14 AM
To: Hull Carter C
Cc: Shoemaker Ronald J
Subject: RE: Tea Party

Thank you very much.

From: Hull Carter C
Sent: Monday, May 17, 2010 11:52 AM
To: Grodnitzky Steven
Subject: RE: Tea Party

Steve,

I spoke to Liz Hofacre in Cincinnati. She has about 20 "Tea Party" cases in her inventory. She has copies of my development letters to help guide her with her development letters. She will send copies of her development letters to me prior to mailing them to organizations. She has advised her manager, Joseph R. Herr, that she will be doing this for coordination purposes.

I will keep you informed of any actions.

Chip

From: Grodnitzky Steven
Sent: Monday, May 17, 2010 11:03 AM
To: Hull Carter C
Cc: Shoemaker Ronald J
Subject: RE: Tea Party

Chip,

Have you spoken to the Cincy folks working the Tea Party cases before you sent the development letters to them? It would be a good idea to sit down with them on a conference call and discuss the letters and how the questions you asked applied to the facts of your cases. My concern is that they will take the letters and send them to the taxpayer without tailoring them to their own cases. We also want to point out to them the relevant issues that you find possibly problematic and want to explore.

Also, you asked the following question in the Prescott case:

1. State whether you will be willing at amend your Articles of Organization to meet the organizational test requirements under section 1.501(c)(3) -1(b) of the Income Tax Regulations in the event you otherwise qualify for recognition of exemption under section 501(c)(3) of the Code.

Going forward, I would stay away from putting the taxpayer on notice that their AOIs are deficient for purposes of the organizational test before we get all the information about thei r operations. If we want to go adverse, and they amend their AOIs in the meantime, then we lose an argument to make in the denial.

Thanks.

SFC 003130

Steve

From: Hull Carter C
Sent: Monday, May 17, 2010 9:42 AM
To: Hofacre Elizabeth L
Cc: Grodnitzky Steven
Subject: Tea Party

Attached are the two development letters I have sent out on the "Tea Party" cases.

Please send me a copy of the letter to Ellas Tea Party, which organization turns out NOT to be a "Tea Party" organization.

SFC 003131

From: McGee John J
Sent: Friday, March 04, 2011 8:27 AM
To: Hull Carter C
Cc: Waddell Jon M
Subject: political and legislative cases

Mr. Hull,

My Manager, Jon Waddell, asked me to contact you and see if we could discuss some of our political cases with you. We currently work the applications for exemption with political case issues here in Cincinnati EO Determinations, Group 7830. Presently, 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? We could call you from our Manager's office. Thank you.

John McGee, Revenue Agent
EO R&A Determinations Group 7830
SEC

SFC 003132

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: Emerge SF, Emerge SFC, and Emerge SFC **TIN/EI** SFC **POA:** N/A	**TAX PERIODS:** **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, DC	☐ **INITIAL REPORT** ☒ **FOLLOW-UP REPORT** ☐ **FINAL REPORT**
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congress ional attention ☐ Unique or novel issue ☒ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☒ Other (explain in Case Summary)
FORM TYPE(S): 1024	**START DATE:** 7/28/2008
POTENTIAL DOLLARS INVOLVED (IF > $10M) :	**CRIMINAL REFERRAL?** No **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:

Three organizations from three 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 fundraising activities. The organizations appear to provide a private benefit to a narrow class within a political party.

CURRENT SIGNIFICANT ACTIONS ON CASE:

In August 2008, two cases (Emerge SF and Emerge SFC) were referred to Cincinnati's Quality Office where research revealed that four "Emerge" organizations had already been a pproved with the oldest approval dating back to September 2004. The SF and SFC cases were ultimately transferred to EO Technical.

Another "Emerge" exemption application case, Emerge SFC, was submitted to IRS. The agent developed the case and explained the principles of American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), and how it prevented the organization from qualifying for exemption. The information letter requested that the organization support its position that it quali fied for exemption under section 501(c)(4) with court cases and IRS regulations. Emerge SFC responded by citing its activities and the fact that it was modeled after an established 501(c)(4) organization, Emerge America. EO Technical requested that Emerge SFC be transferred to EO Technical so that all three Emerge cases would be worked by one specialist.

EO Technical requested the case file of Susan B. Anthony List, Inc ., which is an organization that also applied for exemption unde r section 501(c)(4) and had similar activities of recruiting women with certain views to run for federal office and training them and their staff through campaign schools. Because it was granted exemption, EO Technical wanted to review the case file to det ermine how, if at all, the Emerge cases are different from the Susan B. Anthony organization.

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003133

TEGE Division Sensitive Case Report
(revised January 2007)

Recommendations for denial of exemption on Emerge Maine and Nevada cases have been made.	
SIGNIFICANT NEXT STEPS, IF ANY: • Receive Susan B. Anthony case file and review. • Prepare proposed denial and submit for review.	**ESTIMATED CLOSURE DATE:** Unknown
BARRIERS TO RESOLUTION, IF ANY: The fact that four other "Emerge" organizations were already appro ved for exemption.	
SUBMITTED BY: Siri Buller	**MANAGER:** STEVEN GRODNITZKY
DATE: June 22, 2009	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003134

From: Lerner Lois G
Sent: Thursday, September 16, 2010 8:58 AM
To: Chasin Cheryl D; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: Re: EO Tax Journal 2010-130

Ok guys. We 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. Cheryl - I assume none of those came in with a 1024?
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Sent: Wed Sep 15 14:54:38 2010
Subject: RE: EO Tax Journal 2010 130

It's definitely happening. Here are a few organizations (501(c)(4), status 36) that sure sound to me 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

I've also found (so far) 94 homeowners and condominium associations, a VEBA, and legal defense funds set up to benefit specific individuals.

Cheryl Chasin
SFC [redacted] (phone)
SFC [redacted] (fax)

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 1:51 PM
To: Kindell Judith E; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010 130

I'm not saying this is correct--but there is a perception out there that that is what is happening. My guess is most who conduct political activity never pay the tax on the activity and we surely should be looking at that. Wouldn't that be a surprising turn of events. My object is not to look for political activity --more to see whether self-

declared c4s are really acting like c4s. Then we'll move on to c5,c6,c7 --it will fill up the work plan forever!

Lois G. Lerner
Director, Exempt Organizations

From: Kindell Judith E
Sent: Wednesday, September 15, 2010 1:03 PM
To: Lerner Lois G; Chasin Cheryl D; Ghougasian Laurice A
Cc: Lehman Sue
Subject: RE: EO Tax Journal 2010 130

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. I think that Cindy's people are keeping an eye out for (c)(4)s set up to influence political campaigns, but we might want to remind them. I also agree that it is about time to start looking at some of those organizations th at file Form 990 without applying for recognition -whether or not they are involved in politics.

From: Lerner Lois G
Sent: Wednesday, September 15, 2010 12:27 PM
To: Chasin Cheryl D; Ghougasian Laurice A; Kindell Judith E
Cc: Lehman Sue
Subject: FW: EO Tax Journal 2010 130

Not sure you guys get this directly. I'm really thinking we do need a c4 project next year

Lois G. Lerner
Director, Exempt Organizations

From: paul streckfus [SFC[redacted]]
Sent: Wednesday, September 15, 2010 12:20 PM
To: paul streckfus
Subject: EO Tax Journal 2010 130

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2010-130 (Wednesday, September 15, 2010)
Copyright 2010 Paul Streckfus

Yesterday, I asked, "Is 501(c)(4) Status Being Abused?" I can hardly keep up with the questions and comments this query has generated. As noted yesterday, some (c)(4)s are being set up to engage in political activity, and donors like them because they remain anonymous. Some commenters are saying, "Why should we care?", others say these organizations come and go with such rapidity t hat

the IRS would be wasting its time to track them down , others say (c)(3) filing requirements should be imposed on (c)(4)s, and so it goes.

Former IRSer Conrad Rosenberg seems to be taking a leave them alone view:

"I have come, sadly, to the conclusion that attempts at revocation of these blatantly poli tical organizations accomplish little, if anything, other than perhaps a bit of i*n terrorem* effect on some other (usually much smaller) organizations that may be contemplating similar behavior. The big ones are like balloons squeeze them in one place, a nd they just pop out somewhere else, largely unscathed and undaunted. The government expends enormous effort to win one of these cases (on very rare occasion), with little real world consequence. The skein of interlocking 'educational' organizations woven by the fabulously rich and hugely influential Koch brothers to foster their own financial interests by political means ought to be Exhibit One. Their creations operate with complete imp unity, and I doubt that potential revocation of tax exemption enters in to their calculations at all. That's particularly true where deductibility of contributions, as with (c)(4)s, is not an issue. Bust one, if you dare, and they'll just finance another with a different nam e. I feel for the IRS's dilemma, especially in this w ildly polarized election year."

A number of individuals said the requirements for (c)(4)s to file the Form 1024 or the Form 990 are a bit of a muddle. My nnderstanding is that (c)(4)s need not file a Form 1024, but generally the IRS won't accept a Form 99 0 without a Form 1024 being filed. The result is that attorneys can create new (c)(4)s every year to exist for a short time and never file a 1024 or 990. However, the IRS can claim the organization is subject to tax (assuming it becomes aware of its existe nce) and then the organization must prove it is exempt (by essentially filing the information required by Form 1024 and maybe 990). Not being sure of the correctness of my understanding, I went to the only person who may know more about EO tax law than Bru ce Hopkins, and got this response from Marc Owens:

"You are sort of close. It's not quite accurate to state that a (c)(4) 'need not file a Form 1024.' A (c)(4) is not subject t o IRC 508, hence it is not required to file an application for tax exempt status within a particular period of time after its formation. Such an organization is subject, however, to Treas. Reg. Section 1.501(a) 1(a)(2) and (3) which set forth the general requirement that in order to be exempt, an organization must file an applica tion, but for which no particular time period is specified. Once a would be (c)(4) is formed and it has completed one fiscal year of life, and assuming that it had revenue during the fiscal year, it is required to file a tax return.

"There is no exemption from the return filing requirement for would be (c)(4)s and failing to file anything is flirting with serious issues. Obviously, few, if any, organizations elect to file a Form 1120 and so file a Form 990 as an alternative and because it comports with the intended tax exempt status. When such a Form 990 arrives in Ogden, it goes 'unpostable,' i.e., there is no pre existing master file account to which to 'post' receipt of the return.

"Master file accounts for tax exempts are created by Cincinnat i when an application is filed, hence no prior application, no master file account and no place for Ogden to record receipt of the subsequent 990. Such unpostable returns are kicked out of the pr ocessing system and sent to a resolution unit that analyzes t he problem (there are many reasons a return might be unpostable, such as a typo in an EIN). The processing unit might create a 'dummy' master file account to which to post the return, it might correspond with the filing organization to ascertain the correc t return to be filed, or it might refer the matter to TE/GE where it would be assigned to an agent to analyze, essentially instigating the process you describe."

My query today: So where are we? Should the IRS ignore the whole mess? Or should the IRS be concerned with the integrity of the tax exemption system?

I think the IRS needs to keep track of new (c)(4)s as they appear. I'm assuming most political ads identify who is bringing t hem to you. That's true of the ones I've seen. When the IRS can not identify on its master file a new organization engaged in politicking, it should send a letter of inquiry, saying "Who are you? What is your claimed tax status?" In other words, what I'm saying is th at the IRS needs to be more pro active, and not await the filing of a Form 1024 or 990. I recognize that most of these (c)(4)s may have little income if they spend what they take in, but the EO function has never been about generating revenue. If (c)(4) status is bein g abused, the IRS needs to take action. If the IRS does not have the tools to get at the problems, then we need for Congress to step in and strengthen the filing requirements.

My biggest concern is that these political (c)(4)s are operating in tandem with (c) (3)s so that donors can claim 170 deductions. Here the IRS needs to have an aggressive audit program in coordination with the Income Tax Division so that 170 deductions are disallowed if a (c)(3) is being used as a conduit to a (c)(4).

I've probably raised new issues, and I've said nothing about section 527. Anyone who wants to fill in some of the blanks, please do so.

From: Lerner Lois G
Sent: Wednesday, March 02, 2011 6:23 PM
To: Kindell Judith E; Paz Holly O; Light Sharon P
Cc: Fish David L
Subject: RE: Proposal from California Delegation
Attachments: sfgb-logo color-horizontal-125px.gif

Then let's ask

Lois G. Lerner
Director, Exempt Organizations

From: Kindell Judith E
Sent: Wednesday, March 02, 2011 1:41 PM
To: Paz Holly O; Lerner Lois G; Light Sharon P
Cc: Fish David L
Subject: RE: Proposal from California Delegation

I think this is a pre-meet before the official meeting - if we want Counsel there we need to ask them

---

From: Paz Holly O
Sent: Wednesday, March 02, 2011 1:38 PM
To: Kindell Judith E; Lerner Lois G; Light Sharon P
Cc: Fish David L
Subject: FW: Proposal from California Delegation

Counsel sets up these meetings so they will have representation, correct?

From: Fish David L
Sent: Wednesday, March 02, 2011 1:11 PM
To: Paz Holly O
Cc: Megosh Andy
Subject: RE: Proposal from California Delegation

Andy and Justin can go and listen. This pre-presentation stuff is not particularly tough or fascinating. Our reaction still might be bleh-guessing they would do it anyway. Do we want someone from counsel?

From: Paz Holly O
Sent: Wednesday, March 02, 2011 12:59 PM
To: Fish David L
Subject: FW: Proposal from California Delegation

Who would you want to put on this?

From: Kindell Judith E
Sent: Wednesday, March 02, 2011 8:37 AM
To: Lerner Lois G; Paz Holly O; Light Sharon P
Cc: Letourneau Diane L
Subject: FW: Proposal from California Delegation

I'm happy to talk with them, but s omebody from Holly's shop should be part of the discussion as well. As background, we explored the possibility of an expedited review process for ballot -measure committees about 20 years ago - it went nowhere.

From: Eric K. Gorovitz [redacted]
Sent: Tuesday, March 01, 2011 7:13 PM
To: Kindell Judith E
Cc: Nancy McGlamery
Subject: Proposal from California Delegation

Ms. Kindell,

We are contacting you at the suggestion of our colleagues Greg Colvin and Rosemary Fei, and our reviewer, John Pomeranz.

In May of this year, my colleague Nancy McGlamery and I will be traveling to Washington as part of the California State and Los Angeles County Bar Associations' Tax Sections' annua l DC Delegation to the IRS, Treasury, Congress, and Tax Court. We will be presenting a proposal to the Service as part of that Delegation. As you may know, the Delegation's procedures require contact with the Service about each proposal before the Delegation makes a formal presentation in person.

Our proposal concerns an expedited Form 1024 exemption application and review process for 501(c)(4) ballot measure organizations whose activities are regulated by state and/or local campaign finance laws, a topic about which you have written on behalf of the Service. Because of your knowledge of the issues involved, we believe you are the appropriate person to discuss the matter with us. We are hoping you will be willing to talk briefly with us in the next we ek or so about the proposal so that we may have the benefit of your insight and can further tailor our proposal to accommodate the Service's concerns before the proposal is finalized later this month.

Please let us know when you are available to talk wi th us. We will follow up with you by phone in the next day or so. We would be happy to forward the current draft of the proposal to you if that would be useful.

Best regards,

Eric Gorovitz & Nancy McGlamery

Any tax advice contained in this email was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. A taxpayer may rely on our advice to avoid penalties only if the advice is reflected i n a more formal tax opinion that conforms to

IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.

Eric Gorovitz
Adler & Colvin
SFC [redacted]
Phone: SFC [redacted]
Fax: SFC [redacted]
Email: SFC [redacted]
Web: SFC [redacted]

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SFC 003140

From: Lerner Lois G
Sent: Thursday, April 07, 2011 12:48 PM
To: Paz Holly O; Kindell Judith E
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applications

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 G. Lerner
Director, Exempt Organizations

From: Paz Holly O
Sent: Thursday, April 07, 2011 10:26 AM
To: Kindell Judith E; Lerner Lois G
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: RE: sensitive (c)(3) and (c)(4) applic ations

The last information I have is that there are approx. 40 Tea Party cases in Determs. 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.

From: Kindell Judith E
Sent: Thursday, April 07, 2011 10:16 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Letourneau Diane L; Neuhart Paige
Subject: sensitive (c)(3) and (c)(4) applications

I just spoke with Chip Hull and Elizabeth Kastenberg about two cases they have that are related to the Tea Party - one a (c)(3) application and the other a (c)(4) application. 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 Part y that are currently in Cincinnati. Apparently the plan had been to send one of each to DC to develop a position to be applied to the others. Given the sensitivity of the issue and the need (I believe) to coordinate with Counsel, I think it would be bene ficial to have the other cases worked in DC as well. I understand that there may be TAS inquiries on some of the cases.

From: Paz Holly O
Sent: Wednesday, August 03, 2011 8:49 AM
To: Spellmann Don R
Cc: Lowe Justin
Subject: FW: Mtg on Advocacy Cases

Don,

This meeting was set up at the request of David Marshall (prior to yours and my meeting with Lois, Janine and Nan last week) , so that Counsel could get a better idea of the factual situation in Determs . Because there are several moving pieces connected to this issue, my folks think it would still be helpful to have this meeting to coordinate as to:

1. The 2 cases sent to Counsel that are being sent back for further development.

2. The checksheet (not a model development letter) EOT is writing for Determs specialists working the advocacy cases. It will explain the different types of advocacy, the types permitted by different types of orgs., and questions to assist in identifying, and distinguishing between, types of advocacy.

3. A research paper on the definition of "exclusively" under (c)(4), exploring why the (c)(3) regs include both the "primarily" and the "no substantial part" language, but the (c)(4) regs only include the "primarily" language. It also includes a discussion of other IRS guidance and case law.

Given the shift in the focus of the meeting to overall coordination - ensuring that folks are on the same page at the staff level- we could probably shorten the length and hold it by phone rather than having you all come ov er.

Let me know what you think.

Thanks,

Holly

From: Spellmann Don [redacted]
Sent: Tuesday, August 02, 2011 2:15 PM
To: Paz Holly O
Subject: Mtg on Advocacy Cases

Hi Holly,

We have a meeting on Thursday afternoon (scheduled several weeks ago) with Justin Lowe and the TLS's that are working on the advocacy cases. The invited guests are: Lowe Justin; Mego sh Andy; Kastenberg Elizabeth C; Hull Carter C; Goehausen Hilary; and (from counsel) Griffin Kenneth M; Marshall David L; and Franklin Amy B. The CC's were Seto Michael C; Fish David L; Shoemaker Ronald J.

I understand the original agenda was exchanging ideas and developing an overall game plan for working the advocacy cases. It was not about any particular case. We now are wondering if the agenda or purpose of this meeting has changed in light of our meeting last week with Lois, Nan, and Janine. Is th is the EO group that will be working on the

model development letter we talked about? Or is there another group undertaking that task? We had assumed that the two c4 cases we are sending back, with the advice to factually develop the election year of 201 0, would be further worked using the model letter that is to be prepared.

We are of course always happy to come over and exchange ideas on case development, help draft the model development letter, and discuss the particular facts and issues of individual cases. We just were unclear about how this previously scheduled meeting now fits into the overall schedule and game plan. And we didn't want to come over unprepared for whatever people were expecting. So I thought I would check with you.

Thanks!

Don

Don R. Spellmann
Senior Counsel
Office of Division Counsel/Associate C hief Counsel (Tax Exempt and Government Entities)
SFC [redacted]
[redacted]
[redacted] (Fax)

SFC 003143

From: Goehausen Hilary
Sent: Wednesday, September 21, 2011 3:30 PM
To: Kindell Judith E; Miller Thomas J; Hull Carter C; Kastenberg Elizabeth C
Cc: Seto Michael C; Fish David L; Grodnitzky Steven; Lowe Justin
Subject: Advocacy Org Guidesheet draft
Attachments: Advocacy Org Guidesheet 9-21-2011.doc

Hello,

Attached please find a draft of the Advocacy Org Guidesheet that Justin and I have been putting together. Please review and provide us with any and all comments and suggestions you have.

If you have any questions, please let me know.

Thanks,

Hilary

Hilary Goehausen

Tax Law Specialist

Exempt Organizations

Technical Group 1

SFC [redacted]

Advocacy Organizations Guide Sheet

Many different types of exempt organizations engage in advocacy in compliance with the applicable tax laws. However, it can be challenging to distinguish between permissible and impermissible types of advocacy; analyzing cases involving these issues is extremely fact-intensive.

This guide sheet aids agents working these cases in differentiating between types of advocacy, reminds them of the advocacy rules pertaining to various categories of exempt organizations, and provides a checklist of facts to gather and indicators of various types of advocacy.

PART 1: THREE TYPES OF ADVOCACY:

This guide sheet breaks down the broad concept of advocacy into three categories: political campaign intervention, lobbying, and general advocacy. They are defined as follows.

1) Political Campaign Intervention:

An organization engages in political campaign intervention when it participates or intervenes in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. This includes attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate.

2) Lobbying:

An organization engages in lobbying, or legislative activities, when it attempts to influence specific legislation by directly contacting members of a legislative body (federal, state, or local), or encouraging the public to contact those members, regarding that legislation. An organization also engages in lobbying when it encourages the public to take a position on a referendum. Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

3) General Advocacy:

An organization engages in general advocacy when it attempts to (1) influence public opinion on issues germane to the organization's exempt purposes, (2) influence non-legislative governing bodies (e.g., the executive branch, regulatory agencies), or (3) encourage voter participation through get out the vote drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy generally includes all other types of advocacy other than political campaign activity and lobbying.

Part 2: TYPES OF ADVOCACY ORGANIZATIONS:

The organizations that most commonly engage in advocacy are 501(c)(3), (4), (5), and (6) organizations and 527 organizations. Below are the rules governing which types of advocacy these organizations can engage in, along with a chart summarizing that information.

1) IRC 501(c)(3) organizations:

- Organizations described in 501(c)(3) are organized and operated exclusively for charitable, religious, educational, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals .
- They can engage in an insubstantial amount of lobbying.
- They are absolutely prohibited from engaging in any type of political campaign intervention.
- They can engage in an unlimited amount of general advocacy as long as it is educational.

2) IRC 501(c)(4) organizations:

- Social welfare organizations described in IRC 501(c)(4) are organized and operated exclusively for the promotion of social welfare, which involves promoting the common good and general welfare of people in the community.
- They can not be operated for profit.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(4) purposes; therefore political campaign activity, along with all other non-(c)(4) activities, cannot make up an organization's primary activities.
- They can engage in lobbying as their primary activity if their legislati ve activities are related to their specific exempt purposes.
- They can engage in an unlimited amount of general educational advocacy as long as the activities are related to their exempt purposes.

3) IRC 501(c)(5) organizations:

- Labor organizations described in IRC 501(c)(5) must be organized and operated for the purpose of bettering the conditions of those engaged in labor, horticultural or agricultural pursuits .
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so lon g as the lobbying is conducted with regard to issues that are related to their exempt purpose.

- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(5) purposes; therefore political campaign activity, along with all other non-(c)(5) activities, cannot make up an organization's primary activities.

4) **IRC 501(c)(6) organizations**:

- Business league organizations described in 501(c)(6) are associations of persons with a common business interest which promote the common interest and do not conduct a regular trade or business for profit.
- They can engage in unlimited general advocacy.
- They can engage in unlimited lobbying, so long as the lobbying is on issues related to their exempt purpose.
- They can engage in limited political campaign intervention. Political campaign intervention does not further (c)(6) purposes ; therefore political campaign activity, along with all other non-(c)(6) activities, cannot make up an organization's primary activities.

5) **IRC 527 organizations**:

- Political organizations described in 527 are organized and operated for the primary purpose of engaging in political campaign intervention, including 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.
- They can engage in an unlimited amount of political campaign intervention.
- They can engage in lobbying, but would be taxed on that activity.
- They can engage in general advocacy, but would be taxed on that activity.

	IRC 501(c)(3)	IRC 501(c)(4), (c)(5), and (c)(6)	IRC 527
Receive tax-deductible charitable contributions	YES	NO	NO
Engage in political campaign intervention	NO	LIMITED; Must Not Constitute Primary Activity Of Organization	YES
Engage in lobbying (i.e. legislative	LIMITED; Must Not Be	YES; Unlimited Amount If	LIMITED

activity)	Substantial	In Furtherance of Exempt Purposes	
Engage in general public advocacy not related to legislation or the election of candidates	**YES; Permitted As An Educational Activity**	**YES; Unlimited Amount If In Furtherance of Exempt Purposes**	**LIMITED**

Part 3: ADVOCACY INDICATORS:

Distinguishing between types of advocacy requires knowledge of all the pertinent facts and circumstances. Therefore, careful and full development of a case is often required to gather very specific facts. The following are facts about an organization's activities that can be helpful in distinguishing between different types of advocacy :

- What does the organization consider to be its exempt purpose(s)?
  - How much time is devoted to each purpose?
  - How many financial resources are devoted to each purpose?
  - In what order of importance does the organization consider its exempt purpose? From most important to least important?
- What are the sources of the organization's income?
- Does the organization engage in fundraising activities? If so, what are the specific details, including:
  - Copies of all solicitations the organization has made regarding fundraising, including fundraising that occurs in an election year and non -election year.
  - Copies of all documents related to the organization's fundraising events, including pamphlets, flyers, brochures, webpage solicitations.
  - How much of the organization's budget is spent on fundraising? Determine the sources of fundraising expenses.
- How does the organization use its income? Are there detailed break-downs of these expenses?
- How many employees does the organization have? How many volunteers?
  - Are employees full-time, part-time, or seasonal? Explain.
  - If employees are part-time, when did/do they work?
  - If employees are seasonal, during what season (months) did/do they work?
- How many employees and volunteers are/were devoted to each activity of the organization throughout the year?
- How many and what sort of resources are devoted to volunteer activities?
- Does the organization conduct educational events, discussion groups or similar events? If so, what are the specific details, including:
  - Copies of all materials distributed with regards to the event.
  - When have the events taken place or plan to take place?
  - How much of the organization's resources and budget are devoted to these activities? What is the breakdown of expenses?

- Does the organization publish or distribute materials or conduct other communications that are prepared by or reviewed by another organization ?
- Is the organization associated with any other IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, describe in detail the nature of the relationship (s).
    - Does the organization work with those organization(s) regularly? Describe the nature of the contacts.
    - Do you share employees, volunteers, resources, office space, etc. with the organization(s)?
- Does the organization conduct candidate forums or other events at which candidates for public office are invited to speak? If so, what are the details, including the nature of the forums, the candidates invited to participate, the candidates that did participate, the issues discussed, the time and location of the event.
    - Are there copies of all materials distributed regarding the forum and provided at the forum, including any internet material discussing or advertising the forum?
- Have any candidates for public office spoken at a function of the organization? If so, what are the names of the candidates, the functions at which they spoke, any materials distributed or published with regard to their appearance and the event, any video or audio recordings of the event, and a transcript of any speeches given by the candidate(s)?
- Does the organization, or has it ever, conducted voter education activities, including voter registration drives, get out the vote drives, or publish or distribute voter guides? If so:
    - What is the location, date and time of the events.
    - Who on the organization's behalf has or will conduct the voter registration or get out the vote drives?
    - How many resources (funds/employees/volunteers) are devoted to the activity?
    - Are there copies of all materials published or distributed regarding the activities, including copies of any voter guides?
- Does the organization engage in business dealings with any candidate(s) for public office or an organization associated with the candidate, such as renting office space or providing access to a membership list? If so, what is the relationship in detail and are there any contracts or other agreements documenting the business relationship?
- Does the organization attempt to influence the outcome of specific legislation ?
    - Are there copies of all communications, pamphlets, advertisements, and other materials distributed by the organization regarding the legislation?
    - Does the organization conduct media advertisements lobbying for or against legislation? Are there copies of any radio, television, or internet advertisements relating to the organization's lobbying activities ?
    - Does the organization directly or indirectly communicate with members of legislative bodies? If so, determine the amount and nature of the communication.

Below are indicators used when determining whether an IRC 501(c)(3), IRC 501(c)(4), (5) or (c)(6), or IRC 527 organization is engaging in (1) political campaign intervention, (2) lobbying (legislative activities), or (3) general advocacy.

Section I: Political Campaign Intervention

The following are indicators of political campaign intervention:

		Yes	No
A.	Is there a "candidate" for "public office?" This is an individual who: • Offers himself, or • Is proposed by others • As a contestant for elective public office, whether national, state, or local public office. An individual who has not yet announced an intent to seek election to public office may still be considered to have offered himself or herself as a candidate for office. Has the individual taken sufficient steps prior to announcing an intent to seek election, so that he or she may be considered to have offered himself or herself as a candidate for public office? Have others proposed the individual as a candidate for public office, even if the individual has announced an intention of not seeking election to the office? Some action must be taken to make one a candidate, but the action need not be taken by the candidate or require his consent. This would include statements in opposition to a candidate for office, even before that candidate has necessarily declared themselves as a contestant for office.		
B.	Is the candidate seeking an office to which he or she must be elected, as opposed to appointed? The political campaign intervention prohibition applies only to campaigns for offices to which a candidate must be elected. Factors indicating an elective public office include: • The position was created by statute • The position is continuous • The position is not contractual • The position is for a fixed term of office • The office requires an oath of office		
C.	Does the organization publish and/or distribute written or printed statements, including communications made on the internet, in favor of or against a candidate for public office? This includes material prepared by the organization itself or by other organizations or individuals. Do materials distributed by the organization encourage members to vote for or against a candidate?		
	Has the organization criticized or expressed support for a candidate on their website or through links to another website?		
	Has the organization made oral statements in support of or in opposition		

	to a candidate for public office?		
	Does the organization encourage individuals to vote for or against a particular candidate? Organizations are not prohibited from speaking about moral, social, or economic issues during election periods. However, consider the facts and circumstances to determine whether the organization is surreptitiously intervening in a political campaign under the pretext of speaking to moral, social or economic issues by tying its message to the election in a manner that expresses a preference for a candidate or candidate.		
	Does the organization reference a candidate by use of "code words" or other references to identify a candidate, such as "Republican," "Democrat," "pro-life," "pro-choice," etc.? • Are such references coupled with reasonably overt indications that the organization supports or opposes a particular candidate or candidates in an election? • Does the communication contain a relatively clear directive, based on the facts and circumstances, that enables the recipient to understand the organization's position on a candidate or candidate?		
	Has the organization established or does it operate a political action committee (PAC)?		
	Has the organization made contributions to a political action committee (PAC)?		
	Does the organization provide or solicit money or other support for a candidate or a political organization?		
	Does the organization place signs on its property supporting or opposing a candidate?		
	Does the organization rate candidates, even on a nonpartisan basis?		
	Have organization leaders made comments in an official publication of the organization or at official functions of the organization indicating support for or opposition to a candidate?		
	Does the organization conduct business dealings in a manner favoring a candidate or candidates, such as by renting facilities at different rates or providing/denying access to its membership list?		
D.	**Personal Endorsements:** Organization leaders may endorse or oppose a candidate in their personal capacity, and not in their official capacity. The following are indicators that the organization leader is speaking in his or her personal capacity and not in their official capacity: • Do the organization leader's statements appear in a publication that is not an official publication of the organization? • Is the ad or publication paid for by the individual himself or herself, and not by the organization? • Is the organization leader's title and affiliation with the organization used for identification purposes only, and not to		

	indicate support by the organization?		
E.	**Candidate Forums:** The presentation of public forums for candidates to speak or debate is not in and of itself prohibited political campaign intervention, but may be a permissible method of educating the public (See Rev. Rul. 66-256; Rev. Rul. 74-574; Rev. Rul. 86-95). All the facts and circumstances must be considered and the presence or absence of one factor is not determinative. Consider the following factors when determining whether the forum is operated in a manner that may constitute prohibited campaign intervention or a permissible educational event: • Does the organization operate the forum in a manner indicating bias or preference for one candidate or candidates over others, such as through biased questioning? • Has the organization indicated support for or opposition to a candidate (e.g., such as when the candidate is introduced)? • Does the organization invite only candidates who share the same position as the organization to participate? • Does the organization provide an equal opportunity for all candidates to participate? • Does the organization provide equal amounts of time for each candidate to answer questions and express their views? • Are questions prepared and presented by a non partisan, independent panel or moderator? • Does the moderator comment on questions or otherwise make comments that imply approval or disapproval of a candidate? • Does the organization make statements that the views expressed are those of the candidates and not of the organization, and/or that the organization does not endorse any candidate or viewpoint? • Do the topics discussed cover a broad range of issues that are of interest to the public? • Are the candidates asked to agree or disagree with positions, agendas, platforms, or statements of the organization, indicating prohibited campaign intervention?		
F.	**Candidate Appearances:** Has a candidate spoken at an official function of the organization in his or her personal capacity or capacity as a political candidate? Depending on the facts and circumstances an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status (See Rev. Rul. 2007-41). When determining if prohibited political campaign intervention occurred, consider the following: • Was the candidate invited to speak at the organization's event in his or her capacity as a political candidate? • Did the organization provide an equal opportunity to participate to political candidates seeking the same office? (Consider the nature of the event, such as if the organization invites one		

	candidate to speak at a well attended event but invites an opposing candidate to speak at a sparsely attended event. This could constitute prohibited campaign intervention even if the manner of presentation for both speakers is otherwise neutral.) • Did the organization indicate support for or opposition to the candidate (including during candidate introductions, communications concerning the candidate's attendance, including any materials distributed during the event)? • Did any political fundraising occur?		
G.	Did the candidate appear or speak at an organization event in a **non-candidate capacity?** (See Rev. Rul. 2007-41) The candidate's presence at a public event, such as a lecture, concert, or worship service does not by itself indicate the organization is engaged in prohibited political campaign intervention. The following factors should be considered when determining if prohibited political intervention occurred: • Is the candidate publicly recognized by the organization or a representative of the organization during the event as a candidate for public office? • Did the organization clearly indicate the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in any communications announcing the candidate's attendance at the event? • Is the individual chosen to speak solely for reasons other than his or her candidacy, such as their status as a public figure aside from being a political candidate, the individual currently holds or previously held a public office, is considered an expert in a non-political field, is a celebrity, or has led a distinguished military, legal or public service career. • Has any campaign activity occurred in connection with the candidate's attendance?		
H.	**Voter Guides:** Certain "voter education" activities conducted in a non-partisan manner may not constitute prohibited political campaign activity, but may be permissible educational activity. The following are indicators that a voter guide constitutes prohibited political campaign activity, and not permissible educational activity: • Are incumbents identified as candidates for re-election? • Are incumbents' positions compared to the positions of other candidates or the organization's position in a biased manner? • Is the voting guide distributed close in time to an election? • Is the voting guide primarily concerned with a narrow range of issues of importance to the organization (e.g. such as land conservation or abortion) as opposed to reporting on all legislation voted on by the candidates or of importance to the electorate?		

	• Is the voting guide widely distributed among the electorate during an election campaign as opposed to the organization's membership? • Does the voting guide include only the voting records of candidates for office? • Does the voting guide include the voting records of candidates in a partisan manner, such as by ranking them according to whether their vote aligns with the organization's position on the issue? • Does the voting guide contain editorial comments by the organization? • Does the voting guide contain express or implied approval or disapproval of a candidate's voting record?		
I.	**Candidate Questionnaires**: Depending on the facts and circumstances a candidate questionnaire published by an organization may constitute permissible educational activity as opposed to prohibited political campaign intervention. The following are indicators that the organization's questionnaires constitute prohibited campaign intervention: • Does the candidate questionnaire contain editorial comments by the organization? • Does the candidate questionnaire include only issues of importance to the organization itself and not to the general public? • Does the questionnaire contain express or implied approval or disapproval of candidate responses?		

Section II: Lobbying

The following factors are indicative of lobbying (i.e. legislative activities):

		Yes	No
A.	Is the organization attempting to influence legislation or a legislative proposal? • Legislation includes acts, bills, resolutions, referendums, initiatives, legislative confirmation of an appointive office, constitutional amendments by Congress, state legislatures, local councils or similar governing bodies or by the public in a referendum, initiative, constitutional amendment or similar procedure. • Lobbying does not include attempts to influence (1) regulations or (2) administrative matters.		
B.	Is there "action" being taken with reference to the legislation? • Action includes introduction, amendment, enactment, defeat, or repeal by legislative bodies or the public.		

C.	Does the organization engage in "direct lobbying?" • Is the organization trying to influence legislation by directly contacting members or employees of a legislative body? • Does the organization communicate with government officials or employees who can affect legislation? • Do the communications refer to specific legislation? • Do the communications reflect the organization's specific views on legislation? • Does the organization advocate a position on a specific act, bill, or resolution?		
D.	Does the organization engage in "indirect" or "grassroots" lobbying: • Does the organization attempt to influence legislation by influencing the public's opinion on specific legislation? • Does the communication refer to specific legislation? • Does the communication reflect a view or position on the legislation? • Does the communication to the public include a "call to action" such as providing the address for the legislature, using a petition or tear-off postcard to communicate with the legislature or specifically identifying a legislator who will be voting on the proposed legislation and his or her position on it, or encouraging the public to contact members of a legislative body for purposes of supporting, opposing or proposing legislation?		

Section III: General Advocacy

The following are indicators of general advocacy:

		Yes	No
A.	• Is the organization attempting to influence public opinion on issues, rather than attempting to influence the election of candidates for public office or specific legislation? • Is the organization attempting to influence non-legislative governing bodies (e.g., the executive branch, regulators)? • Is the organization engaging in nonpartisan, neutral voter educational activities? These may include get out the vote drives, encouraging voter registration, encouraging voter participation, candidate debates and forums, and the distribution of voter guides if conducted in a nonpartisan and neutral manner. (Refer to the subheads above for criteria when considering whether these voter education activities are conducted in a nonpartisan manner.)		
B.	Does the organization engage in "educational" activities? (See Rev. Proc. 86-43). The term "educational" relates to: • The instruction or training of an individual for the purpose of		

	improving or developing his capabilities, or • The instruction of the public on subjects useful to the individual and beneficial to the community.		
	Is the organization advocating a particular position or viewpoint ? If "Yes" to the following, the activity may qualify as permissible educational activity: • Does the organization present a sufficiently full and fair exposition of the pertinent facts that aid the listener or reader in the learning process? • Does the organization provide a factual background for the viewpoint or position being advocated?		
C.	The organization's presentations should avoid the following factors in order to be considered educational: • Do the organization's presentations avoid expressing conclusions more on the basis of strong emotional feelings than of objective evaluations? • Does the organization avoid presenting viewpoints or positions unsupported by facts and this is a significant portion of the organization's communications? • Does the organization avoid presenting facts purporting to support its viewpoints or position made in a distorted manner?. • Does the organization avoid making substantial use of inflammatory and/or disparaging terms?		

SFC 003156

From: Park Nalee
Sent: Friday, October 21, 2011 3:07 PM
To: Nair Vasu T
Cc: Fish David L; Lowe Justin
Subject: RE: previously referred cases

Vasu,

I believe David already emailed you about an hour ago regarding the Emerge cases - to check on whether they entered the exam stream. Revocation letters for 5 cases were sent out today...WI will likely be sent out by COB today or early next week. Here are the list of cases with EIN:

SFC [redacted]

SFC [redacted]

SFC [redacted]

SFC [redacted]

SFC [redacted]

SFC [redacted]

We appreciate you checking on these orgs. Thanks!

NaLee
SFC [redacted]

From: Fish David L
Sent: Friday, October 21, 2011 3:10 PM
To: Lowe Justin; Park Nalee
Subject: FW: previously referred cases

From: Fish David L
Sent: Friday, October 21, 2011 3:06 PM
To: Downing Nanette M; Nair Vasu T; Grissom Jackie R
Cc: Paz Holly O; Kall Jason C
Subject: previously referred cases

A few months ago we sent 5 or 6 Emerge cases, that had been approved by Determinations, for examination. After discussing it, we figured out that no exam was necessary because we were allowed to revoke our own letters based on the record in the file. (We did denials on several of the Emerge cases up here and there is no difference between those cases and the ones that had been approved earlier by Determs). We wanted to make sure those cases had not entered the exam stream, because we are sending out prop osed revocations today. We can send the list of cases if you are not familiar with them.

From: Park Nalee
Sent: Wednesday, November 16, 2011 7:38 AM
To: Lowe Justin
Subject: RE: Revocation Letters
Attachments: Emerge SFC [redacted] Proposed Denial - clean.doc; Emerg SFC [redacted] Proposed Denial - clean.doc; Emerge SFC [redacted] Proposed Denial.doc; Emerge SFC [redacted] Proposed Denial.doc; Emerg SFC [redacted] Proposed Denial.doc; Emerge SFC [redacted] Proposed Denial.doc

Attached.

NaLee
202.283.9453

From: Lowe Justin
Sent: Tuesday, November 15, 2011 2:15 PM
To: Park Nalee
Subject: Revocation Letters

Hi Nalee, can you please send me electronic copies of the emerge revocation letters?

Thanks,

Justin

SFC 003159

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: Emerge SF, Emerge SFC, and Emerge SFC, Emerge SFC **TIN/EI** SFC **POA:** N/A	**TAX PERIODS:** **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, DC	☐ **INITIAL REPORT** ☒ **FOLLOW-UP REPORT** ☐ **FINAL REPORT**
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Unique or novel issue ☒ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☒ Other (explain in Case Summary)
FORM TYPE(S): 1024	**START DATE:** Emerge SFC: • Determinations: 8/15/08 • Technical: 4/16/09 Emerge SF: • Determinations: 1/11/08 • Technical: 10/9/08 Emerge SFC: • Determinations: 12/31/07 • Technical: 10/9/08 Emerge SFC • Determinations: 2/9/2010 • Technical:4/14/2010
POTENTIAL DOLLARS INVOLVED (IF > $10M) :	**CRIMINAL REFERRAL?** No **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:

The Emerge cases involve applications filed by four state chapter organizations who recruit women belonging to the Democratic Party to schools that teach campaign -related skills, such as fund-raising, public speaking, etc.

The proposed denial for Emerge SFC is based on the organization's failure to promote social welfare because of substantial private benefit to the Democratic Party. It is similar to the denial to the DLC case, and is based on the rationale in the American Campaign Academy decision. The Emerge SFC proposed denial letter has been reviewed and approved by the group reviewer, EO Tech Group 1 manager, EO Tech acting manager, EO Guidance, and Judy Kindell. After making the revisions directed by Kindell, it will be submitted to TEGE Counsel to ensure a consistent rationale as to litigation strategies. Once the Emerge SFC proposed denial is finalized, the other three cases can be completed based on the template from Emerge SFC.

CURRENT SIGNIFICANT ACTIONS ON CASE:

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003160

TEGE Division Sensitive Case Report
(revised January 2007)

SIGNIFICANT NEXT STEPS, IF ANY: Send Emerge SF to TEGE Counsel for concurrence.	**ESTIMATED CLOSURE DATE:** June 30, 2010
BARRIERS TO RESOLUTION, IF ANY: None.	
SUBMITTED BY: Siri Buller	**MANAGER:** ELLEN BERICK (ACTING)
DATE: April 16, 2010	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003161

From: Tierney Michael J
Sent: Friday, January 22, 2010 7:38 AM
To: Hartrick William M; Manohar Ramachandran; Ng Faye H; Nguyen Kim Thoa T; Pepper Dale A; Perry Lori A
Cc: Abner Donna J
Subject: Supreme Court's Ruling
Attachments: (c)(4)s & 527s re Citizens United v FEC.doc

Good morning:

Looks like yesterday's Supreme Court ruling is going to result in more (c)(4)s engaging in political activities and the death of 527s. See attachment.

Quality Assurance Reviewer
SE:T:EO:RA:QA
Cincinnati
SFC

SFC 003162

Excerpt from the Politico:

January 21, 2010

Categories:

- Campaign finance

Ginsberg et al.: A drastically altered landscape

Leading Republican election lawyer Ben Ginsberg and four colleagues at Patton Boggs are circulating a memo today with the clearest outline I've seen of the consequences of a ruling that, they write, will "drastically alter the landscape for candidates and political parties."

They argue that, in particular, message control and coordination will be hard for candidates, amid an avalanche of outside spending; and that "the polit ical party as we know it is threatened with extinction," because it will face spending limits outside groups don't.

From the memo's analysis of what the ruling means for key electoral players:

Candidates: The limits placed on the size of contributions to c andidates places them at a significant disadvantage compared to corporations and unions that will now be able to spend unlimited amounts on express advocacy right through Election Day. Controlling the issues they want to run on will become a real challenge , as will having sufficient funds to portray their positions and images.

Political Parties: Unless the laws change, the political party as we know it is threatened with extinction. The parties do several things for their candidates and supporters -- raise money and conduct independent expenditures, conduct voter contact programs and describe the party's position on issues, often through issue advocacy. With the limits on the amounts and sources of funds they can accept, the parties will be bit players compa red to outside groups that can now conduct those core functions with unlimited funds from any source.

Corporations and Unions: Freed from their First Amendment shackles, corporations and unions can now engage fully in the political process. The reality of what this means is sure to be hotly debated depending on the speaker's outlook. Republicans see a coordinated and extremely well - funded union effort that gives over 98 percent of its funds to Democrats, while corporations' political giving tends to incumb ent heavy and more evenly divided. Democrats see the size of corporate treasuries compared to unions and believe they are about to get swamped.

501c4s and 501c6s: Likely to emerge as the biggest players in the 2010 and 2012 elections, ideological groups a nd 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 .

Wealthy Individuals : Ever since the 2004 elections when McCain -Feingold took effect, wealthy individuals have engaged in considerable spending. The Court's opinion has significantly loosened what they may say. The decision, combined with the D.C. Circuit's Emily's List opini on of last fall, also eliminates the chances of Federal Election Commission enforcement actions that harassed many conservative donors off the playing field in the last two cycles. See Ginsberg, **Politico op-ed** from Jan. 21. The decision will also lead to a number of new outlets who can

carry the messages that these donors have wanted carried.

527s: This vehicle of choice for many outside, independent communications in the last three cycles has been rendered obsolete for this purpose by the Court's decision.

Vendors: The opinion should drastically increase the number of voices singing in the First Amendment choir. This is very good news for those who assist those efforts.

Full memo after the jump.

MEMORANDUM

To: Interested Parties

From: Benjamin L. Ginsberg, William McGinley, Glenn Willard, Kathryn E. Biber and John Hilton

Date: January 21, 2010

Subject: Citizens United v. FEC Opportunities for Participation Grow

American campaigns and elections will change dramatically as a result of today's Supreme Court decision in Citizens United v. FEC. The opinion provides new opportunities for many players in the process, but includes some large pitfalls for candidates and the political pa rties.

The most immediate and basic implication of the decision is that corporations and unions may now pay for unlimited independent expenditures directly from their general treasuries. And by invalidating a key portion of the McCain Feingold law that bar red such expenditures within 60 days of a general election and 30 days of a primary, all entities will be able to directly advocate the election or defeat of specific federal candidates right through Election Day.

This affirmation of corporate and union F irst Amendment rights will also apply to state and local laws currently restricting corporations and unions from engaging in independent expenditures. Whether these provisions are in state law or in state constitutions, they are now unconstitutional under the First Amendment.

The Court left in place the prohibition on direct corporate or union contributions to candidates, as well as the current disclaimer and disclosure requirements on communications (although the precise level of reporting detail that will be required for corporate or union independent advocacy, including through 501c4 social welfare organizations and 501c6 trade associations is unclear).

The decision will drastically alter the landscape for candidates and political parties. While the lim its and prohibitions on contributions to them remain in place, much more spending by outside groups throughout the election cycle specifically praising or criticizing candidates should be expected. There is no language in the opinion suggesting support on the Court for overturning the ban on the political parties raising non federal funds, so parties, too, stand to be considerably outspent.

That means there will be extensive pressure in Congress to revisit those limits and prohibitions legislatively so that candidates are not drowned out in their campaigns and the public debate.

Here's a quick analysis of what the decision means for key players in the political process:

Candidates: The limits placed on the size of contributions to candidates places them a t a significant disadvantage compared to corporations and unions that will now be able to spend unlimited amounts on express advocacy right through Election Day. Controlling the issues they want to run on will become a real challenge, as will having suffic ient funds to portray their positions and images.

Political Parties: Unless the laws change, the political party as we know it is threatened with extinction. The parties do several things for their candidates and supporters raise money and conduct indep endent expenditures, conduct voter contact programs and describe the party's position on issues, often through issue advocacy. With the limits on the amounts and sources of funds they can accept, the parties will be bit players compared to outside groups t hat can now conduct those core functions with unlimited funds from any source.

Corporations and Unions: Freed from their First Amendment shackles, corporations and unions can now engage fully in the political process. The reality of what this means is sur e to be hotly debated depending on the speaker's outlook. Republicans see a coordinated and extremely well funded union effort that gives over 98 percent of its funds to Democrats, while corporations' political giving tends to incumbent heavy and more even ly divided. Democrats see the size of corporate treasuries compared to unions and believe they are about to get swamped.

501c4s and 501c6s: Likely to emerge as the biggest players in the 2010 and 2012 elections, ideological groups and trade associations a lso 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.

Wealthy Individuals: Ever since the 2004 e lections when McCain Feingold took effect, wealthy individuals have engaged in considerable spending. The Court's opinion has significantly loosened what they may say. The decision, combined with the D.C. Circuit's Emily's List opinion of last fall, also e liminates the chances of Federal Election Commission enforcement actions that harassed many conservative donors off the playing field in the last two cycles. See Ginsberg, Politico op ed from Jan. 21. http://www.politico.com/news/stories/0110/31669.html Th e decision will also lead to a number of new outlets who can carry the messages that these donors have wanted carried.

527s: This vehicle of choice for many outside, independent communications in the last three cycles has been rendered obsolete for this p urpose by the Court's decision.

Vendors: The opinion should drastically increase the number of voices singing in the First Amendment choir. This is very good news for those who assist those efforts.

We will provide further analysis and updates in the co ming days. Please feel free to contact any of us with any additional questions.

Posted by Ben Smith 02:50 PM

SFC 003166

From: Fierro Gerardo
Sent: Monday, May 16, 2011 12:49 PM
To: Paz Holly O
Cc: Lieber Theodore R
Subject: FW: TAM

Holly,

Per Donna, the case will be assigned to a QA reviewer by the end of the week. Please let me know if you need anything else.

Thanks,

Jerry Fierro
Manager, Group 7825
SFC [redacted]
[redacted] Fax

From: Abner Donna J
Sent: Monday, May 16, 2011 10:54 AM
To: Fierro Gerardo
Subject: RE: TAM

The case should be assigned to a reviewer this week.

From: Fierro Gerardo
Sent: Monday, May 16, 2011 8:50 AM
To: Abner Donna J
Subject: FW: TAM

Good morning Donna,

I received the email below from Holly more than a week ago. I was on leave and did not see it until yesterday. Holly wants a status update on Project Vote, case #200112002 . I responded letting her know that the case is currently in status 31. I was wondering if you could let me know how soon one of your agents could review the case so I can give Holly an update.

A brief history, late last year Grant Herring had some c oncerns regarding the case and he spoke to Dale Pepper. They thought it would be appropriate to get EO Tech involved since it involved voter registration and a possible link to ACORN. EO Tech reviewed the case and had some concerns. We addressed those concerns and approved the case on March 29.

Thanks,

Jerry Fierro
Manager, Group 7825
SFC [redacted]

SFC [redacted] Fax

From: Paz Holly O
Sent: Friday, May 06, 2011 2:23 PM
To: Fierro Gerardo
Cc: Lieber Theodore R
Subject: RE: TAM

Hi Jerry! Where do we stand on this case? POA approached me at ABA meeting today to say that the org sti ll has not received the letter.

Thanks!

Holly

From: Fierro Gerardo
Sent: Wednesday, March 23, 2011 4:29 PM
To: Paz Holly O
Cc: Lieber Theodore R
Subject: RE: TAM

Holly,

I followed up with EO Exam. I still have not heard if there is an open exam on this entity. As soon as I find out, I will follow your recommendations.

Thanks for your help,

Jerry Fierro
Manager, Group 7824
SFC [redacted]
[redacted] Fax

From: Paz Holly O
Sent: Wednesday, March 23, 2011 4:24 PM
To: Fierro Gerardo
Cc: Lieber Theodore R
Subject: RE: TAM

Gerry,

I understand from Ted that the only issue outstanding on this case at this time is that of ACORN affiliation. I discussed that aspect with Joe Urban of Joseph Grant's staff who was intimately involved in a study of the universe of ACORN entities. His opinion was that, unless this particular entity is currently under exam (in which case we can choose not to act on the request pursuant to Rev Proc 2011-4), we have no legal basis for ruling adversely or delaying issuing a ruling. I agree with Joe's recommendation. We should proceed to issue our standard favorable 4945(f) letter as soon as possible. However, Project Vote should be referred to the ROO for a later year follow -up to make sure it is operating consistent with its tax-exempt status. Please let me know if there are any additional questions/issues.

Thanks,

SFC 003168

Holly

From: Fierro Gerardo
Sent: Tuesday, March 15, 2011 12:27 PM
To: Lieber Theodore R
Subject: RE: TAM

Ted,

Jon Waddell was asked to research any connection between Project Vote and ACORN. He did indentify a possible link. I'll let you determ ine if the information provided by Jon warrants additional development. I don't have an electronic copy of his email, but here's what he said:

I reviewed the approved application and admin file for Project Vote. The following are my observations:
1. It proposes to be a successor to an existing 501(c)(3) Project Vote/Voting for America, which was granted exemption in 1982.
2. Per review of the admin file, Project Vote's main activity is to mobilize low -income residents in various parts of the country to register to vote. Per the admin file, their stated activities appear to be in compliance with c(3). Additionally, they state they will be conducting the same activities as their predecessor organization -- Project Vote/Voting for America.
3. Per public record research, their predecessor organization (Project Vote/Voting for America) has been described as a close affiliate of ACORN as well as ACORN's Voter Mobilization arm.
4. The predecessor organization, Project Vote/Voting for America, shared the s ame address as ACORN in New Orleans, LA. The address was the following:
2609 Canal Street
Suite 500
New Orleans, LA 70119
The address of the successor organization, Project Vote, is now in Washington D.C. as their approved application makes specific reference that they are not involved with the New Orleans Office (referred to above).
5. It appears that the approved applicant (Project Vote) as well as its predecessor 501(c)(3) (Project Vote/Voting for America) have had extremely close ties with ACORN and share many common activity agendas -- i.e. low income voter registration and mobilization.
Overall, I would suggest elevation the issue for EO Tech Advice. Since EO Tech is currently studying the Success or to ACORN issue and this organization appears somewhat related, they should be made aware of the issue.

Jerry Fierro
Manager, Group 7824
SFC [redacted]
[redacted] Fax

From: Lieber Theodore R
Sent: Tuesday, March 15, 2011 10:02 AM
To: Fierro Gerardo
Subject: RE: TAM

Jerry,

I agree with your recommendations. Relating to the Acorn relationship. If the organization is clearly a suc cessor to ACORN, then we should talk some more.

Theodore R. Lieber
Manager

SFC 003169

EO Technical Group 3
SFC [redacted]

From: Fierro Gerardo
Sent: Monday, March 14, 2011 4:22 PM
To: Lieber Theodore R
Subject: TAM

Good afternoon Ted,

A Technical Advice Memo (TAM) was requested regarding an A-Case established for the organization Project Vote. The organization requested approval of their voter registration activities under section 4945(f) of the Code. There were two issues you and I discussed regarding this case. First, did the organization's activities meet the requirements under section 4945(f) of the Code. After reviewing the original application and subsequent request from Project Vote, we both agreed that the organization is directly involved with voter registration and meets all five requirements under section 4945(f). The second issue is whether or not a TAM is required to address the organization's possible relationship with ACORN as an affiliate or successor. As we discussed, the information provided by the organization is sufficient to make a determination and there is no need for a TAM.

Please respond to this email as to whether or not you agree that the organization has met the requirements under section 4945(f) of the Code and that there is no need for a TAM. If you agree, then I will approve the case and forward it to EODQA for review.

Thanks for all your help.

Sincerely,

Jerry Fierro
Manager, Group 7824
SFC [redacted]
SFC [redacted] Fax

SFC 003170

From: Lerner Lois G
Sent: Friday, September 30, 2011 6:14 PM
To: Paz Holly O; Fish David L
Cc: Letourneau Diane L
Subject: Status

Can I get a status of where we are on revoking the determ letters of the other Emerge cases?

Lois G. Lerner
Director of Exempt Organizations

IRS0000640620

From: Seto Michael C
Sent: Sunday, July 24, 2011 10:25 AM
To: Thomas Cindy M
Subject: FW: Drafting the list of items for EOD to look for on Political Advocacy Cases

Follow Up Flag: Follow up
Flag Status: Completed

Hi Cindy,

We will be working on the list.

Mike

From: Seto Michael C
Sent: Sunday, July 24, 2011 11:22 AM
To: Goehausen Hilary; Lowe Justin
Cc: Ghougasian Laurice A; Megosh Andy; Grodnitzky Steven
Subject: Drafting the list Contact Person for EOD Political Advocacy C ases

Hilary and Justin,

As part of that discussion, we also concluded that we should draft a list of things for EOD agents to look for when working these types of advocacy cases.

Hilary, can you work with Justin, i.e. you draft and Justin reviews. When you both are done, I like to look at it, and your managers (Andy and Laurice/Steve) should also look at it too. Thanks, Mike

---

From: Seto Michael C
Sent: Saturday, July 23, 2011 4:58 PM
To: Lowe Justin; Goeha usen Hilary; Hull Carter C
Cc: Megosh Andy; Kastenberg Elizabeth C; Lieber Theodore R; Salins Mary J; Ghougasian Laurice A; Grodnitzky Steven; Shoemaker Ronald J
Subject: Contact Person for EOD Political Advocacy Cases

Hi Everyone,

Per our discussion several weeks ago, the contact person for EOT for all political advocacy cases pending in EOD is Justin Lowe. Justin will work with Hilary Goehausen and Chip Hull, who are initiators on political advocacy cases pending in EOT. I will notify Cindy. If you have any questions, let me know.

Thanks,

Mike

SFC 003172

CASE NAME: (1) Prescott Tea Party, LLC (501(c)(3) applicant), (2) Albuquerque Tea Party, Inc. (501(c)(4) applicant), (3) American Junto (501(c)(3) applicant) **TIN/EIN** SFC [redacted] **POA:** None	**TAX PERIODS:** 2009 and forward **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: **POD:** Washington, D.C.	**INITIAL REPORT** **X FOLLOW-UP REPORT** **FINAL REPORT**
SENSITIVE CASE CRITERIA: Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers	Potentially involves large dollars ($10M or greater) Other (explain in Case Summary)
FORM TYPE(S): (1) Form 1023. (2) Form 1024	**START DATE:** 04/02/2010
POTENTIAL DOLLARS INVOLVED (IF > $10M) : Unknown	**CRIMINAL REFERRAL?** Unknown **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:
Organization 1 was closed FTE for failure to respond to a development letter . Organization 2's case has been returned to EOT in order to prepare another development letter. Upon receiving additional information from Organization 3, the proposed denial was revised and forwarded to Chief Counsel for review 07/19/2011 . These organizations are "advocacy organizations" and although are separately organized, appear to be a part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are being followed closely in national newspapers (such as The Washington Post) almost on a r egular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and approximately twenty -two applications from organizations which h ave applied for recognition of exemption under section 501 (c)(4) as social welfare organizations. Two organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

CURRENT SIGNIFICANT ACTIONS ON CASE:
Met with Chief Council on August 10, 2011 to discuss further development of Organization (2). Case returned to EOT for
Additional development.
Organization (1) – closed FTE for failure to respond to a development letter.
Organization (2) – case returned to EOT for additional information; preparing another development letter.
Organization (3) – additional information was received. Proposed denial was revised and forwarded to Chief Counsel for review 07/19/2011.
Coordination between HQ and Cincinnati is continuing regarding information letters to applicants for

exemption under 501(c)(3) and 501(c)(4).	
SIGNIFICANT NEXT STEPS, IF ANY: Organization (3) Await the results of review on the revised proposed denial. Continue coordinated review of applications in EO Determinations.	**ESTIMATED CLOSURE DATE:** December 31 , 2011
BARRIERS TO RESOLUTION, IF ANY: Concerns whether the organizations are involved in political activities.	
SUBMITTED BY: Carter C. Hull, SE:T:EO:RA:T:2	**MANAGER:** RONALD SHOEMAKER, SE:T:EO:RA:T:2
DATE: October 19, 2011	

SFC 003174

From: Waddell Jon M
Sent: Thursday, April 14, 2011 6:19 AM
To: McGee John J; Pomerantz Edward J; Kallman Thomas M
Cc: Abner Donna J; Pepper Dale A; Bowling Steven F
Subject: Political Organizations from Streckfus Column

Importance: Low

Good Morning,

Below is an excerpt from Streckfus's Column concerning political organization's applying as c(4)'s. It appears very topical to what we have recently seen:

If You Can't Beat Them, Join Them

That appears to be the strategy of Democrats, according to recent articles in the *Los Angeles Times* and the *Washington Post.* Democrats are in the process of setting up section 501(c)(4) organizations that, like their Republican counterparts, will be able to raise campaign cash from undisclosed donors. The result will be little or no disclosure about who is behind attack ads and greater power to outside groups who finance these ads.

My take: Since the IRS has little or no control over these section 501(c)(4) groups, it would appear that "anything goes " is what we can expect in 2012 and future election years.

SFC 003175

From: Lerner Lois G
Sent: Saturday, August 06, 2011 7:49 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Thanks for trying. I really do appreciate the effort. Sometimes stuff just happens.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Wilburn Lillie V
Sent: Friday, August 05, 2011 07:38 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Hello Ms Lerner, I was just about to send you an update.

Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecover able.

I am very sorry. Everyone involved tried their best.

Lillie Wilburn
Field Director, HQ CSSC
SFC[redacted]

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, August 05, 2011 07:06 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Thanks! just saw this--any further word/

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Monday, August 01, 2011 7:57 PM
To: Lerner Lois G

SFC 003176

Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Ms Lerner,

As a last resort, we sent your hard drive to CI's forensic lab to attempt data recovery. The CI tech working on the recovery is unexpectedly out until Aug 3rd and promised to update me when he returns.

I will send you a status on Friday morning.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
SFC [redacted]

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4: 40 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Thanks for the update--I'll keep my fingers crossed

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Wednesday, July 20, 2011 12:10 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Ms. Lerner,

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.

I do have one other possibility that I am looking into and I hope to update you on the progress soon.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division

SFC 003177

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 10:46 AM
To: Froehlich Carl T
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: RE: Careful What You Ask For

We can only try--but it may be too late--don't they send them off to the hard drive cemetery? In any event, thanks to all.

Lois G. Lerner
Director of Exempt Organizations

From: Froehlich Carl T
Sent: Tuesday, July 19, 2011 6:43 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: Re: Careful What You Ask For

Lois,

Lillie Wilburn will call Diane in the morning. If she can't fix it nobody can.

Carl

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 05:21 PM
To: Froehlich Carl T
Cc: Letourneau Diane L
Subject: Careful What You Ask For

It was nice to meet you this morning--although I would have preferred it was under different circumstances. I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy --but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated. I've cced my exec assistant. It's always a good idea to include her emails to me because she gets to my emails far faster than I do. Thanks!

Lois G. Lerner
Director of Exempt Organizations

SFC 003178

From: Lerner Lois G
Sent: Tuesday, April 09, 2013 2:52 PM
To: Partner Melaney J
Cc: Paz Holly O; Downing Nanette M
Subject: FW: OCS

I was asked this question during a town hall with managers. maybe we can put it in the pot of things to share with staff in our communications?

Lois G. Lerner
Director of Exempt Organizations

From: Hooke Maria D
Sent: Tuesday, April 09, 2013 2:45 PM
To: Lerner Lois G
Cc: Downing Nanette M
Subject: RE: OCS

Hello,

OCS messages are not set to automatically save as the standard; however the functionality exists within the software. That being said the parties involved in an OCS conversation can copy and save the contents of the conversation to an email or file.

To date OCS conversations are not specifically identified as part of the Electronic Data Request (EDR) for information, however, if one of the parties saved the conversation as an email or file they would become part of the electronic search.

My general recommendation is to treat the conversation as if it could/is being saved somewhere, as it is possible for either party of the conversation to retain the information and have it turn up as part of an electronic search.

Make sense?

From: Lerner Lois G
Sent: Tuesday, April 09, 2013 1:50 PM
To: Hooke Maria D
Cc: Downing Nanette M
Subject: OCS

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 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?

SFC 003179

Lois G. Lerner
Director of Exempt Organizations

IRS0000659346

SFC 003180

From: Lerner Lois G
Sent: Friday, May 03, 2013 3:00 PM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: TP

Just got off the phone with the applicant --set up a meeting for Monday --she was pretty antagonistic. 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 situa tions 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 incoporporate the same rules here. She sounded like she wasn't taking no for an answer.

Lois G. Lerner
Director of Exempt Organizations

SFC 003181

From: Roady, Celi SFC
Sent: Friday, May 10, 2013 10:03 AM
To: Lerner Lois G
Subject: Fw: Our TEO speaker Lois Lerner makes the news for the wrong reason

Fyi

Celia Roady
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW | Washington, D.C. 20004 -2541
Direct SFC | Fax SFC
SFC S. SFC .
Assistant SFC SFC SFC

IRS Circular 230 Disclosure
To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. For information about why we are req uired to include this legend in emails, please see http://www.morganlewis.com/circular230 .

Sent by Blackberry

From: Larry Center [mailt SFC]
Sent: Friday, May 10, 2013 11:02 AM Eastern Standard Time
To: Zakiya N. Boyd SFC .>; Lynn A. Adams SFC .>; Lisa M. Fthenakis SFC .>; Jill Castleman <SFC .>; Marc A. Dizon SFC .>; Brittany E. Cain <SFC .> SFC SFC >
Cc: Roady, Celia
Subject: Our TEO speaker Lois Lerner makes the news for the wrong reason

National News Alert

IRS apologizes for inappropriately targeting conservative political groups

The Internal Revenue Service is apologi zing for inappropriately flagging conservative political groups for additional reviews during the 2012 election to see if they were violating their tax -exempt status.

Lois Lerner, who heads the IRS unit that oversees tax -exempt groups, said organizations that included the words "tea party" or "patriot" in their applications for tax -exempt status were singled out for additional reviews.

Lerner said the practice, initiated by low -level workers in Cincinnati, was wrong and she apologized while speaking at a conference in Washington.

Lawrence Center | Assistant Dean | Georgetown Law
600 New Jersey Avenue NW | Washington, DC 20001
Office SFC | Facsimile SFC
SFC SFC.

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SFC 003183

From: Miller Steven T
Sent: Friday, May 10, 2013 1:47 PM
To: Lemons Terry L; Lerner Lois G; Flax Nikole C
Cc: Grant Joseph H
Subject: Re: first thought

An extra of in sentence 2

Sent using BlackBerry

From: Lemons Terry L
Sent: Friday, May 10, 2013 02:45 PM Eastern Standard Time
To: Lerner Lois G; Miller Steven T; Flax Nikole C
Cc: Grant Joseph H
Subject: RE: first thought

Let's go with this... NTEU press person just called; they are hearing from employees as well...

Hi, this is Lois Lerner. I'm sure you've seen some of the press coverage about our determination process, and I wanted to share a few thoughts. First, I want to emphasize of how proud I am of the hard work and personal dedication of our EO workers. This issue arose quickly following a conference today, and I wish I had had a chance to talk to you before the press coverage emerged. The importa nt point is that while mistakes were made, we've fixed them and addressed them. I take great pride in the integrity of you and your colleagues. I feel confident that all of our employees are guided by public service and make decisions based upon tax law and our rules and procedures nothing else. I want you to know how proud I am of your work and how committed I am to make sure we continue to strengthen our processes. I look forward to continuing to work together.

From: Lemons Terry L
Sent: Friday, May 10, 2013 2:14 PM
To: Lerner Lois G; Miller Steven T; Flax Nikole C
Cc: Grant Joseph H
Subject: RE: first thought

Steve / Nikole -- How about this as a VMS from Lois to the staff? Might help avoid some Austin -like issues. Need to get out quickly; folks are leaving soon.

Hi, this is Lois Lerner. I'm sure you've seen some of the press coverage about our determination process, and I wanted to share a few thoughts. First, I want to emphasize of how proud I am of the hard work and personal dedication of ou r EO workers. This issue arose quickly following a conference today, and I wish I had had a chance to talk to you before the press coverage emerged. The important point is that while mistakes were made, we've fixed them and addressed them. I take great pride in the integrity of you and your colleagues. I feel confident that all of our employees are guided by public service and make decisions based upon tax law and our rules and procedures nothing else. This will be a tough period for us during the next couple of weeks, but I want you to know how proud I am of your work and how committed I am to make sure we continue to strengthen our processes. I look forward to continuing to work together.

SFC 003184

From: Lerner Lois G
Sent: Friday, May 10, 2013 2:18 PM
To: Lemons Terry L; Miller Steven T; Flax Nikole C
Cc: Grant Joseph H
Subject: Re: first thought

Just spoke to Cindy. She said employees are especially upset with RAs being referred to as "lower level" employees. In my ABA remarks I referred to them as front line employees. Can I add a line that clarifies my remarks were about front line employees. She seemed to think that was very important
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Lemons Terry L
Sent: Friday, May 10, 2013 02:45 PM Eastern Standard Time
To: Lerner Lois G; Miller Steven T; Flax Nikole C
Cc: Grant Joseph H
Subject: RE: first thought

Let's go with this... NTEU press person just called; they are hearing from employees as well...

Hi, this is Lois Lerner. I'm sure you've seen some of the press coverage about our determination process, and I wanted to share a few thoughts. First, I want to emphasize of how proud I am of the hard work and personal dedication of our EO workers. This issue arose quickly following a conference today, and I wish I ha d had a chance to talk to you before the press coverage emerged. The important point is that while mistakes were made, we've fixed them and addressed them. I take great pride in the integrity of you and your colleagues. I feel confident that all of our employees are guided by public service and make decisions based upon tax law and our rules and procedures nothing else. I want you to know how proud I am of your work and how committed I am to make sure we continue to strengthen our processes. I look forward to continuing to work together.

From: Lemons Terry L
Sent: Friday, May 10, 2013 2:14 PM
To: Lerner Lois G; Miller Steven T; Flax Nikole C
Cc: Grant Joseph H
Subject: RE: first thought

Steve / Nikole -- How about this as a VMS from Lois to the sta ff? Might help avoid some Austin -like issues. Need to get out quickly; folks are leaving soon.

Hi, this is Lois Lerner. I'm sure you've seen some of the press coverage about our determination process, and I wanted to share a few thoughts. First, I want t o emphasize of how proud I am of the hard work and personal dedication of our EO workers. This issue arose quickly following a conference today, and I wish I had had a chance to talk to you before the press coverage emerged. The important point is that whi le mistakes were made, we've fixed them and addressed them. I take great pride in the integrity of you and your colleagues. I feel confident that all of our employees are guided by public service and make decisions based upon tax law and our rules and pr ocedures nothing else. This will be a tough period for us during the next couple of weeks, but I want you to know how proud I am of your work and how committed I am to make sure we continue to strengthen our processes. I look forward to continuing to w ork together.

SFC 003185

From: Lerner Lois G
Sent: Friday, May 10, 2013 5:40 PM
To: Thomas Cindy M; Abner Donna J
Cc: Paz Holly O
Subject: Today's Press

I sent you both a voice mail message I'd like you to share with your direct reports, and ask them to share with their employees. I know the press that came out today is upsetting, and I'm guessing there will be more to come. I know a voice mail isn't the best way to let folks know I care, but it is the only tool I have at this time. I am upset that so many of our great folks are feeling unappreciated and insulted. We need to do all we can to support them and each other. I know I can count on both of you to help our people get through this. Thanks

Lois G. Lerner
Director of Exempt Organizations

SFC 003186

From: msab SFC
Sent: Sunday, May 12, 2013 2:49 PM
To: Lerner Lois G
Subject: knowing famous people

>Lois,

I'm not sure if this is still your email address, but I guess I'll find out if it bounces back.

You have been quoted the last two days in the Albuquerque Journal --it was so amazing for me to know this famous person who is probably being quoted all over the country, if it is in the ABQ paper. I think you're famous, not infamous, so I just wanted to let you know how wide your fame has spread. You must still be working if what the paper says is true, and hopefully, you are enjoying it. 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.

Hope all is well,

Marsha

Thank you again. Can't believe it took me 10 years to get it fixed!
> Ghost Ranch sounds wonderful--focus on the good vibes.
>
> Lois G. Lerner

>
>
>
>
>

IRS0000662634

From: Lerner Lois G
Sent: Thursday, February 07, 2013 9:30 AM
To: Kennedy, Kevin - GAB
Subject: RE: Some braggin about the report, but see Professor Gerken's comments in the NYT

Good Job!! Of course it means nothing if the pols don't want it to mean anything! (-:

Lois G. Lerner
Director of Exempt Organizations

From: Kennedy, Kevin GAB [redacted]
Sent: Wednesday, February 06, 2013 7:15 PM
To: Lerner Lois G
Subject: Some braggin about the report, but see Professor Gerken's comments in the NYT

Pew: Wisconsin ranks high among states in running elections
By Bill Glauber of the Journal Sentinel
Feb. 5, 2013

When it comes to the mechanics of holding elections, Wisconsin ranks among the nation's best, according to a report released Tuesday by the Pew Charitable Trust.

Pew helped develop what it called the Elections Performance Index, which ranked the 50 states and the District of Columbia in 17 areas that included voting wait time, voter registration rate as well as turnout.
Wisconsin was among the highest-performing states in the 2008 and 2010 election cycles - the first period to be evaluated by Pew.
Wisconsin ranked No. 1 in 2008 and No. 8 in 2010, according to the study.
The state's Government Accountability Board said in a separate news release that two of the areas where Wisconsin received high scores in 2008 were not included in the 2010 report. Those areas were voting technology accuracy and voting wait times.
Other high performers included Colorado, Delaware, Michigan, Minnesota, North Dakota and Washington.
The list of low-performing states included Alabama, California, Mississippi, New York, Oklahoma, South Carolina and West Virginia.
"There are states that get a lot of scrutiny during election time, Wisconsin is one of them. That means the media and others will pay close attention," said David Becker, who directs Pew's election initiatives project. "One of the things we sought to do was get the good hard data on how states are performing."
Becker said Wisconsin did well "across a broad range of the 17 objective indicators we look at. They do consistently well on things like turnout, on having low numbers of provisional ballots and relatively low number of absentee ballots rejected. They have a lot of online look-up tools on the state website."
Becker added: "There does appear to be a correlation of some sort between high performance and states (like Wisconsin) that have election-day registration." North Dakota, a highly ranked state, does not require voter registration.

Becker added that "this index does not measure the potential for fraud. There are no good indicators out there. Most studies conclude that fraud is a very, very rare occurrence if it occurs at all. The ability to get data on that is rare."
Kevin Kennedy, director of the Wisconsin Government Accountability Board, said the study reflected well on the state.
"We have, structurally, a very sound set of election laws," Kennedy said, adding "the nature of our elections" leads to high turnout.

http://www.isonline.com/news/statepolitics/pew -wisconsin-ranks-high-among-states-in-running-elections-288lp9i-189915671.html

NY Times

http://nytimes.com/2013/02/06/us/politics/us -voting-flaws-are-widespread-study-shows.html

U.S. Voting Flaws Are Widespread, Study Shows
By ADAM LIPTAK
Published: February 5, 2013

WASHINGTON The flaws in the American election system are deep and widespread, extending beyond isolated voting issues in a few locations and flaring up in states rich and poor, according to a major new study from the Pew Charitable Trusts.
The group ranked 50 states based on more than 15 criteria, including wait times, lost votes and problems with absentee and provisional ballots, and the order often confounds the conventional wisdom.
In 2010, for instance, Mississippi ranked last overall. But it was preceded by two surprises: New York and California.
"Poor Southern states perform well, and they perform badly," said Heather K. Gerken, a law professor at Yale and a Pew adviser. "Rich New England states perform well and badly mostly badly."
A main aim of the exercise, which grew out of Professor's Gerken's 2009 book, "The Democracy Index," was to shame poor performers into doing better, she said.
"Peer pressure produces horrible things like Britney Spears and Justin Bieber and tongue rings," she said. "But it also produces professional peer pressure."
The project includes an interactive tool that allows rankings by individual criteria or clusters of them.
Some states, for instance, lost very few votes thanks to shortcomings in voting technology and voter confusion, with the best 10 reporting failure rates of 0.5 percent or less in 2008. In West Virginia, by contrast, the rate was 3.2 percent.
Natalie Tennant, West Virginia's secretary of state, said that she was not happy with that result and that she would look hard at Pew's data and methodology. But she added that "2012 went really well, even with Sandy," referring to the hurricane that disrupted early voting in the last election. "We were humming."
"You're only as good as your next election," she said.
The Pew study is based on data from the 2008 and 2010 elections, the most recent for which comprehensive data were available.
The study also found wide variation in how easy registering to vote can be. North Dakota does not even require it, and Alabama and Kansas reported rejecting less than 0.05 percent of registration applications in 2008. But Pennsylvania and Indiana each rejected more than half of the registration applications they received in 2010.
On election day, the voting experience can also vary. The 10 states with the shortest waiting times to vote in 2008 averaged six minutes, the study found. In South Carolina, the wait was more than an hour.
The shift to voting by mail, which now accounts for some 20 per cent of all ballots cast, tends to eliminate lines. But it has also produced new problems, especially in places where mail voting has soared because the state does not require an excuse or a new ballot request for each election. Arizona and California, where voting by mail is commonplace, had among the highest rates of problems with voter registration and absentee ballots.
In 2010, California rejected absentee ballots 0.7 percent of the time, a higher rate than any other state.
Dean C. Logan, the registrar for Los Angeles County, said the rate was partly a byproduct of the popularity of voting by mail in California and partly a function of how the state defines rejected ballots. Its definition includes ballots that voters requested but that the Postal Service returned to election officials as undeliverable.
"Voter behavior is changing and evolving," Mr. Logan added. Young people do not sign their names as consistently as older ones, he said, and mail delivery is becoming less reliable.
He also cautioned that statewide results can mask the fact that "the elections process is extremely decentralized."

Colorado, where some 70 percent of voters cast their ballots by mail in 2012, rejected absentee ballots 0.4 percent of the time in 2010.
Pam Anderson, the clerk of Jefferson County, Colo., defended that rejection rate. "It's not 10 percent and it's not zero," she said. "We do a very rigorous signature verification process."
Charles Stewart III, a political scientist at the Massachusetts In stitute of Technology and a Pew adviser, said that high provisional ballot rates were an important signal of potential trouble.
"Nationwide, a bit over 1 percent of voters are given a provisional ballot," he said. "In Arizona in 2008, the rate was 6.5 percent. In the battleground state of Ohio, it was 3.6 percent. While these numbers may seem small, in a recount or election dispute, they would be huge."
In both 2008 and 2010, Arizona had the highest rate of rejected provisional ballots, though the rate dr opped to 0.8 percent in 2010 from 1.9 percent in 2008.
Tammy Patrick, an elections official in Maricopa County, Ariz., said that in 2012 "sixty -five percent of people voted by mail, which is grand."
She said that voting by mail gave voters the benefit of convenience, and also the ability to reflect on their choices. "We have a fairly long ballot, and this allows the voter a full month to vote that ballot."
But the trend also created problems, she said, partly as a result of grass -roots misinformation abo ut whether and how such votes would be counted.
Many people voted by mail and nonetheless turned up at polling places just in case, where they would often cast provisional ballots. "We had a 20 percent increase in our provisional ballots over all," Ms. Pa trick said, and many of those ballots were rejected.
She said the Pew data reflected "a piece of what we do," but that the local political culture also played a role. "Arizonans don't feel their elected officials represent them," she said. "They don't par ticipate in their neighborhoods and civic activities. There's a detachment in the sprawl."
Professor Gerken said that other cultural factors may affect voting rates. "States in the Deep South with high obesity problems seem to be having a problem getting people to the polling place," she said.
Absentee ballots from members of the military and Americans living overseas were also rejected at hugely varying rates, the study found. In 2010, New York rejected a quarter of the 22,000 such ballots it received. P ennsylvania rejected just 2 percent of the 8,000 ballots it received.
Professor Stewart said the study should help focus attention on the infrastructure of democracy.
"Among all important areas of public policy, election administration is probably the mo st episodic and prone to the problem of short attention spans," he said. "What would the world be like if we only gave intense attention to education, corrections, transportation and public health problems for a one -week period every four years?"

WisPolitics

The Pew Center on the States ranked Wisconsin's 2008 and 2010 elections among the best administered in the country.

The state ranked No. 1 in 2008 and eighth in 2010.

The rankings were based on 17 factors, including wait times at polling sites, t he availability of voting information online, the number of rejected voter registrations, the percentage of voters with registration or absentee ballot problems, how many military and overseas ballots were rejected and voter turnout.

*See the GAB release:
http://www.wispolitics.com/index.iml?Article_289157

*See the full report:
http://www.pewstates.org/epi

SFC 003190

From: Lerner Lois G
Sent: Friday, August 17, 2012 2:38 PM
To: Noble, Lawrence M
Subject: RE: Congratulations! You sure do sound impressive

LOL!

Lois G. Lerner
Director of Exempt Organizations

From: Noble, Lawrence [SFC [redacted].]
Sent: Friday, August 17, 2012 2:29 PM
To: Lerner Lois G
Subject: RE: Congratulations! You sure do sound impressive

I've always looked better on paper than I am.

Lawrence M. Noble
Skadden, Arps, Slate, Meagher & Flom LLP
[redacted]
Washington, D.C. [redacted]
T [redacted]
F [redacted]
[redacted].

From: Lerner Lois G [SFC [redacted].]
Sent: Friday, August 17, 2012 1:11 PM
To: Noble, Lawrence M (WAS)
Subject: Congratulations! You sure do sound impressive

You sure do sound impressive. Jus goes to show you what a good PR firm can do ! (-:

Lois G. Lerner
Director of Exempt Organizations

From: 4317 Americans for Campaign Reform, President and CEO [SFC [redacted]]
Sent: Friday, August 17, 2012 1:04 PM
To: Lerner Lois G
Subject: Americans for Campaign Reform Selects New President

Dear Ms. Lerner,

SFC 003191

We are pleased to write you with the news of the completion of our search for the President and CEO of Americans for Campaign Reform (ACR). From a pool of highly accomplished, talented candidates, ACR has selected Larry Noble to lead. He will begin his tenure August 27, 2012.

Larry Noble is a nationally recognized authority on campaign finance, ethics and lobbying issues. Since 2006, he has practiced political law at Skadden, Arps, Slate, Meagher & Flom, LLP, advising clients on matters relating to the regulation of political activity. Prior to that, Mr. Noble served as Executive Director and General Counsel of the Center for Responsive Politics, a non-partisan research group which tracks money in politics. Before that, he was with the Federal Election Commission for more than twenty years, serving as General Counsel from 1987 until 2000. He has argued before the Supreme Court of the United States and t estified before Congress. He is frequently interviewed by the press on campaign finance, lobbying and ethics issues and has appeared on a variety of television and radio news and public affairs programs. Mr. Noble has a JD from The George Washington University Law School and a Bachelor's degree in political science from Syracuse University.

On behalf of ACR and Isaacson, Miller, we want to thank you for your contribution to this search. We relied extensively on the networks and judgments of informed sources in the field, as well as the involvement of strong candidates. We are grateful for your assistance. Please stay in touch and let us know if we can be of help to you in the future.

Sincerely,
Tim McFeeley
Vice President
Natalie Leonhard
Senior Associate
Isaacson, Miller
Recruiting Exceptional Leaders for
Mission-Driven Organizations
www.imsearch.com

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To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax -related matters addressed herein.
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This email (and any attachments thereto) is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email , you are hereby notified that any dissemination, distribution or copying of this email (and any attachments thereto) is strictly prohibited. If you receive this email in error please immediately notify me at (212) 735 -3000 and permanently delete the original email (and any copy of any email) and any printout thereof.

Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.
****
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From: Lerner Lois G
Sent: Monday, February 13, 2012 2:50 PM
To: Urban Joseph J; Fish David L; Miller Thomas J; Light Sharon P; Kindell Judith E; Grant Joseph H; Daly Richard M; Medina Moises C; Giosa Christopher P; Malone Robert; Paz Holly O; Marks Nancy J; Lowe Justin
Cc: Zarin Roberta B
Subject: Re: #10 2012 TNT 29-10 LEGISLATION WOULD REQUIRE DONOR DISCLOSURE BY POLITICALLY ACTIVE EXEMPT ORGANIZATIONS.

Wouldn't that be great? And I won't hold my breath.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Urban Joseph J
Sent: Monday, February 13, 2012 07:25 AM
To: Lerner Lois G; Fish David L; Miller Thomas J; Light Sharon P; Kindell Judith E; Grant Joseph H; Daly Richard M; Medina Moises C; Giosa Christopher P; Malone Robert; Paz Holly O; Marks Nancy J; Lowe Justin
Cc: Zarin Roberta B
Subject: #10 2012 TNT 29 10 LEGISLATION WOULD REQUIRE DONOR DISCLOSURE BY POLITICALLY ACTIVE EXEMPT ORGANIZATIONS.

ABSTRACT: Tax-exempt organizations that engage in political campaign activities would face new disclosure requirements -- including identification of donors -- under legislation Rep. Chris Van Hollen, D -Md., and other House Democrats introduced February 9.

AUTHOR: van den Berg, David
Tax Analysts

Release Date: FEBRUARY 10, 2012

Published by Tax Analysts(R)

Tax-exempt organizations that engage in political camp aign activities would face new disclosure requirements -- including identification of donors -- under legislation Rep. Chris Van Hollen, D -Md., and other House Democrats introduced February 9.

H.R. 4010 would require EOs that spend more than $ 10,000 on campaign advertisements or other activities in an election cycle to report those expenditures and to identify donors who contribute $ 10,000 or more to the organization. Donors could avoid disclosure of their identities by barring use of their gifts for ca mpaign activities. Organizations would also be required to have executives approve content of advertisements, and commercials would have to identify the organization's largest donors. (The legislation and a summary of its provisions are available at http://www.vanhollen.house.gov/News/DocumentSingle.aspx?DocumentID=279166 .)

"The American people deserve a political system that is fair, transparent, and acc ountable," Van Hollen said in a statement. "They have a right to know who is spending hundreds of millions of dollars to influence them."

Currently, EOs not described in section 501(c)(3) can engage in campaign activities -- so long as campaign intervention is not their primary activity -- and avoid disclosure of their donors.

Some EOs, including 501(c)(4) social welfare groups, played a significant role in funding the 2010 congressional elections. Democracy 21, a campaign finance watchdog group, said in a statement supporting the bill that EOs made more than $ 135 million in "secret contributions" to influence the elections.

Van Hollen's legislation has 85 cosponsors, all Democrats. And the proposal's reach isn't limited to EOs; it covers all corporations and section 501(c) exempt organizations (except those described in section 501(c)(3)). Section 527 organizations and so-called "super PACs" are covered as well.

If the bill becomes law, it would apply to all expenditures made on or after July 1. All expenditures of $ 10,000 or more or money transfers to other groups that can then be used for campaign-related activity would have to be reported to the Federal Election Commission within 24 hours, according to a summary of the legislation on Van Hollen's website. Corporations, unions, and other outside groups would have to disclose their campaign-related spending to shareholders and members through periodic and annual financial reports, and information about campaign spending would also have to be made available to the public online through hyperlinks to the FEC, the summary said.

A campaign finance law proposed in 2010 passed the House but failed to get cloture in the Senate, according to a Sunlight Foundation blog post.

Prof. Donald Tobin, associate dean for faculty at the Moritz College of Law at The Ohio State University, said that in a sense, the new disclosure bill is a step forward.

"This significantly broadens the current disclosure requirements and makes sure the citizenry is aware of large contributions to independent organizations involved in political campaigns," he said. "This would clearly capture a lot of the activity that (c)(4)s and other entities are engaged in."

Ofer Lion of Mitchell Silberberg & Knupp LLP also praised Van Hollen's proposal. "This year's version of the DISCLOSE Act seems to part with all of the provisions that seemed objectionable to the Republican Senators that held up the 2010 version," Lion said. "I think this bill takes a fair shot at closing the loopholes brought to the fore by the *Citizens United* case, and does so only in ways that the *Citizens United* court seemed to invite -- namely, through disclosure."

Lion noted that the just-released IRS Exempt Organizations 2012 Work Plan says the IRS will focus on serious allegations of impermissible campaign intervention. Should the bill become law, the IRS may use information garnered via the law to try to enforce the campaign expenditure limitations on exempts, he said.

"It would certainly give them relevant information as to whether the organizations comply with the political activity limitations on a much more timely basis than tax returns," he said.

However, there is a complication to requiring disclosure for 501(c)(4) organizations, said Greg Colvin of Adler & Colvin, San Francisco. "The biggest problem with donor disclosure for (c)(4)s, so long as they are permitted to make substantial political expenditures, is how to allocate their general support donations to their mix of multiple, mostly nonpartisan, activities over time," he said.

The Center for Competitive Politics, an Alexandria, Va.-based 501(c)(3) organization that calls itself the only organization dedicated solely to protecting First Amendment political rights, dislikes the bill, said Allen Dickerson, the organization's legal director. The bill is "a solution in search of a problem," and is an end run around hard-fought rights EOs have won not to disclose their membership lists, he said.

"It's an opportunity for the government to inject itself into the internal runnings of nonprofit groups," he said.

From: Blumenfeld Michael B
Sent: Thursday, February 18, 2010 6:33 AM
To: Flax Nikole C; Griffin Kenneth M; Kindell Judith E; Miller Thomas J
Cc: Rosenbaum Monice L
Subject: FW: FEC Supplemental Proposed Rules: Coordinated Communications
Attachments: 2010-01 Coordinated Communications SNPRM.pdf

Categories: NUUU

All

As I mentioned yesterday, I am attaching the FEC's Supplemental NPRM on Coordinated Communication. In the supplemental NPRM, the FEC is asking whether the proposed safe harbor for certain 501(c)(3) communications is consistent with the Citizens United decision. In addition, the FEC now asks whether the safe harbor should be extended to all entities in light because the Citizens United opinion provides that "[p]rohibited too, are restrictions distinguishing among different speakers, allowing speech by some, but not others." See the slip opinion, p 24.

As I mentioned, the FEC is requesting comments by February 24 and holding a public hearing on March 2 & 3.

Michael B. Blumenfeld
Senior Technician Reviewer
IRS Chief Counsel
Tax Exempt and Government Entities
CC:TEGE
SFC[redacted]

From: ELync [redacted]. [mailto:ELync [redacted]]
Sent: Wednesday, February 17, 2010 4:49 PM
To: Blumenfeld Michael B
Cc: rsmit [redacted]; ARothstei [redacted]; rkno [redacted]; JSelinko [redacted]; mjohnso [redacted].
Subject: FEC Supplemental Proposed Rules: Coordinated Communications

Dear Mr. Blumenfeld,

Please find attached the Commission's Supplemental Notice of Proposed Rulemaking on Coordinated Communications, which was published in the *Federal Register* on February 10, 2010 (75 FR 6590). The Commission seeks comment as to the effect of the Supreme Court's recent decision in *Citizens United v. FEC* on the proposed changes to the "coordinated communications" regulations at 11 CFR 109.21 as published in the Notice of Proposed Rulemaking on Coordinated Communications, 74 FR 53893 (Oct. 21, 2009). The Commission will hold a public hearing on March 2 and 3, 2010.

Pursuant to 2 U.S.C. 438(f), the Commission and the Internal Revenue Service are to "consult and work together to promulgate rules, regulations, and forms which are mutually consistent." The Commission invites your agency's comments on this Notice, particularly with respect to any possible conflict between it and the Internal Revenue Code or regulations.

Please contact me a SFC [redacted] if you have any questions about the Notice.

Eugene Lynch
Office of General Counsel, Policy Division
U.S. Federal Election Commission
999 E Street, NW
Washington, DC 20463

From: Lerner Lois G
Sent: Tuesday, April 20, 2010 3:40 PM
To: Ingram Sarah H
Subject: RE: Extremely Sensitive NRP case

Sensitivity: Private

Thanks--will do

Lois G. Lerner
Director, Exempt Organizations

From: Ingram Sarah H
Sent: Monday, April 19, 2010 7:31 PM
To: Lerner Lois G
Subject: RE: Extremely Sensitive NRP case
Sensitivity: Private

I think we have to, don't we? But I think that the very first conversation has to be the methodology for how cases selected and the importance of not taking cases out because it erodes the stat sample. What other ones have we delayed to next year? There were a few ... and I can see that it is hard to audit after it will go out of existence after January. The only thing I can see is to talk with Jeff and Pat McGuire and ask what NRP does with taxpayers going out of business do they ever toss them out? We are asking about an old year but we probably should ask.

From: Lerner Lois G
Sent: Monday, April 19, 2010 7:06 PM
To: Ingram Sarah H
Subject: FW: Extremely Sensitive NRP case
Sensitivity: Private

I think I know your response, but just to be sure --if his org was selected, we go forward with the exam --?

SFC 003199

Lois G. Lerner

Director, Exempt Organizations

From: Downing Nanette M
Sent: Monday, April 19, 2010 12:41 PM
To: Lerner Lois G
Subject: FW: Extremely Sensitive NRP case
Sensitivity: Private

Lois,

Would like your thoughts on this. I don't know that I would delay just for fear that it might be questioned as to why it came up in our exam. What are your thoughts on this? The EO folks seem to be hesitant and want to delay starting it. Am I being too much of a renegade here? Case has not yet been opened and contact has not yet been made.

Not sure how closely either or both of you followed the recent health care debates but one of the major players was Michigan Congressman Bart Stupak. He was an anti-abortion Democrat who changed his position in the last few days and voted for the health care bill. As such, he was somewhat of a lightning rod for the Republicans and anti -abortion crowd. He was physically threatened and probably appeared on every Su nday talk show and news hour in the country. He also announced his retirement from Congress with the expiration of his current term. His office was picketed by the Tea Party folks. Wouldn't you know that one of the NRP cases that came to the group was Stup ak for Congress Inc. Obviously, this was totally coincidental but it may not appear that way to a lot of folks, including the Congressman. My propensity is to go forward w the exam in order to preserve the purity of the scientific sample but I wanted to alert you to the sensitivity. Let me know if you feel that we should not proceed with the exam.

From: Dorling Joanne
Sent: Monday, April 19, 2010 11:S4 AM
To: Edwards Michael W; Downing Nanette M
Cc: Fleming Janice L; Bagley Michael E; Wells Renee B; Fitch Karen L
Subject: RE: Extremely Sensitive NRP case
Sensitivity: Private

Okay - that is a very good thought Mike E. So I am thinking just wait a couple months and then start - Nan - what is your vote?

From: Edwards Michael W
Sent: Monday, April 19, 2010 11:41 AM
To: Dorling Joanne; Downing Nanette M
Cc: Fleming Janice L; Bagley Michael E; Wells Renee B; Fitch Karen L
Subject: RE: Extremely Sensitive NRP case
Sensitivity: Private

One other thing to consider.. I believe this Congressman will not be running for re -election, so thie EO will cease to exist and anyone working within it will move on, so if we would need to interview any workers, it might prove more difficult.

Just a thought.

Mike Edwards

Senior Project Analyst

TEGE-Exempt Org-CSCI

Louisville, Ky

Phone SFC [redacted]

Fax: SFC [redacted]

From: Dorling Joanne
Sent: Monday, April 19, 2010 11:26 AM
To: Downing Nanette M
Cc: Fleming Janice L; Bagley Michael E; Wells Renee B; Edwards Michael W; Fitch Karen L; Edwards Michael W
Subject: RE: Extremely Sensitive NRP case
Sensitivity: Private

Nan - NRP folks are very reluctant to exclude cases from the NR P study, but Mike B raises a very valid point. So my thoughts would be to delay the start of this particular case until next fiscal year until the dust settles so we can balance any bad press with not having to request an exclusion. If the case is alread y in status 12, maybe we could put in a suspense code until next year so as to not impact cycle time.

Are you okay with that decision?

From: Fitch Karen L
Sent: Monday, April 19, 2010 11:08 AM
To: Dorling Joanne
Cc: Fleming Janice L; Bagley Michael E; Wells Renee B; Edwards Michael W
Subject: RE: Extremely Sensitive NRP case
Importance: High
Sensitivity: Private

Joanne, as our illustrious leader for this project, what are your thoughts on examining the potentially sensitive case below??

Karen Fitch

Group manager 7938

Exempt Organizations

Internal Revenue Service

1500 Ormsby Station Court

Louisville KY 40223, Stop 700

[redacted] fa [redacted]

From: Bagley Michael E
Sent: Monday, April 19, 2010 9:55 AM
To: Wells Renee B; Fitch Karen L
Cc: Fleming Janice L
Subject: Extremely Sensitive NRP case

Renee, Karen - Not sure how closely either or both of you followed the recent health care debates bu t one of the major players was Michigan Congressman Bart Stupak. He was an anti -abortion Democrat who changed his position in the last few days and voted for the health care bill. As such, he was somewhat of a lightning rod for the Republicans and anti - abortion crowd. He was physically threatened and probably appeared on every Sunday talk show and news hour in the country. He also announced his retirement from Congress with the expiration of his current term. His office was picketed by the Tea Party folks. Wouldn't you know that one of the NRP cases that came to the group was Stupak for Congress Inc. Obviously, this was totally coincidental but it may not appear that way to a lot of folks, including the

Congressman. My propensity is to go forward w the exa m in order to preserve the purity of the scientific sample but I wanted to alert you to the sensitivity. Let me know if you feel that we should not proceed with the exam. Thanks.

Mike Bagley

Internal Revenue Service

TE/GE Exempt Organizations Manager - Michigan

SFC [redacted] [redacted] (FAX)

From: Todd Nancy M
Sent: Thursday, July 08, 2010 3:01 PM
To: Ingram Sarah H; Grant Joseph H
Cc: Urban Joseph J; Lerner Lois G; Downing Nanette M; Todd Nancy M
Subject: Summary of Cross-Divisional Investigation
Attachments: MEMORANDUM FOR DIRECTORS -Investigation JUNE 2010 .doc; Investigation Report Final-3.doc

Importance: High

Hi Sarah and Joseph,

The original message involving ACORN was sent to the following individuals on July 2, 2010:

* Nan Downing - EO
* Monika Templeman - EP
* Paul DeNard - LMSB
* Monica Baker - SBSE

With copies to:

* Joe Urban - TEGE
* Don McPartland - LMSB
* Dave Thurber SBSE

I have attached the investigation report and the memo to the Directors/Deputy Commissioner LMSB for your information. Included in the original message were congressional referrals. I have not included the m here. If you would like a copy, please let me know. Thanks!

Nancy Todd

Phone SFC [redacted]

ACORN Research Activities
Summary Report
April 28, 2010

Background

In the latter half of 2009, the IRS became aware of allegations that the Association of Community Organizations for Reform Now (ACORN) and a number of individuals and organizations associated with ACORN, may have operated in a fashion that was not in compliance with the Internal Revenue laws. Among the items that came to the attention of the IRS were a letter from Senator Charles Grassley, Ranking Member, Senate Finance Committee, attaching a staff report captioned "Review of ACORN Tax-Exempt Status"; a letter from Congressman Darrell Issa, Ranking Member, House Committee on Oversight and Government Reform, which referenced a staff report captioned "Is Acorn Intentionally Structured As a Criminal Enterprise?," and a letter from Congresswoman Michele Bachmann, expressing concern about the activities of ACORN and whether it is a tax -exempt organization.

The allegations included both specific acts of potential noncompliance by individuals a nd organizations as well as patterns of noncompliant activities that were conducted through a systematic commingling of funds between taxable and tax -exempt entities and individuals associated with ACORN.

Because of the complex organizational structures involved, and because the allegations involved coordinated operations involving areas of responsibility handled by a number of operational divisions in the IRS, it became apparent that the divisions should conduct coordinated research into the allegations. As a result, TE/GE Commissioner requested that W&I, LMSB, SBSE and TE/GE provide staff to work together to research the allegations so the divisions could determine what compliance steps to take, if any, and whether those compliance steps should be taken in a coordinated fashion that would allow us to better understand the nature of the transactions and determine if additional compliance activities may be warranted.

A research team comprised of LMSB, SBSE and TE/GE personnel was formed. Members included LMSB Research and Workload Identification (RWI), SBSE Abusive Transactions Support Unit (ATSU), and TE/GE Review of Operations (ROO). W&I stated that they would not provide a participant for the research team unless there are indications that they need to become involved. If so, they will become involved at that time. Since many of the allegations related to taxable entities' transactional and financial relations with tax-exempt entities, TE/GE took responsibility for coordinating the research activities, and TE/GE employee Nancy Todd was charged with leading the research team and TE/GE employee Joseph Urban was assigned to assist.

Research Procedures

Upon reviewing the information provided to the IRS in the referrals, the allegations appeared to indicate that funds were flowing between taxable and tax -exempt entities in unusual manners that may have resulted in potential illegal and non -compliant activities including allegations of

embezzlement. The IRS research team therefore followed the emerging issue procedures located in IRM sections, 4.32.1 - Process Guide for Combating Abusive Tax Avoidance Transactions; 4.32.2 - The Abusive Tax Avoidance Transactions (ATAT) Process; and 4.32.3 - Coordination and Roles of Cross Functional Units for the authori ty to conduct research as an "emerging issue team" for this cross -divisional issue.

Simultaneous with the research effort, TE/GE employees Nancy Todd and Joseph Urban were tasked with reviewing the adequacy of procedures applicable for cross -divisional research and case coordination. Although the research team was not assigned to this task, they were asked to highlight any gaps in procedures or guidelines which they identified during their work so the gaps could be addressed where appropriate.

Scope of Duties of Research Team

The research team was directed to identify specific relationships, nature of transactions and money flows between the taxable and tax -exempt entities. To do this the team reviewed publicly available information as well as infor mation available from IRS resources to assist in the identification of entities and individuals having a relationship with ACORN and to determine if there were unusual transactions that indicated additional compliance activities may be warranted. This included the nature of the transactions, and money flows, between these entities and individuals.

When reviewing the data from both internal and external sources, the research team was to capture indications of any activities that could possibly suggest non compliance with Internal Revenue laws. The research team would accomplish this by analyzing tax returns of entities and individuals including balance sheet items, income statements, accompanying schedules, and note any large, unusual or questionable item(s) from either the tax return or other sources that may indicate noncompliance with tax laws. When its research was completed, the team would summarize its findings and present recommendations as appropriate including whether or not further compliance act ivities may be warranted.

Research Methodology

Each of the research functions on the team performed research using internal IRS systems and software as well as external systems and software to identify and "spider" related entities and individuals. Information received from the Congressional referrals was used as a starting point. The team used products that included the following:

- SFC [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Data from tax returns was used to identify both for-profit and tax-exempt entities and understand their relationships between ACORN and other affiliated organizations. Team members held frequent conference calls to discuss th e information obtained. The research team was able to identify board members, salary and payer history, filing history, common addresses and other flows of funds that helped develop relationships between ACORN and other affiliated organizations and indivi duals.

No contact was made with individuals or organizations outside of the IRS.

Summary of Research Findings

Because of the complex organizational structures involved in this matter, the team took a holistic approach to its research in order trace the flow of monies and services. In doing so, the team found evidence that there were substantial money flows between and among ACORN, a taxable entity, and the taxable and tax -exempt organizations and individuals associated with it. The research team al so found that Citizens Consulting Inc, (CCI), a taxable entity, appears to be the financial hub for ACORN and all its affiliates and maintain ed the books and records. CCI shares the same address as many of the ACORN affiliated entities.

An analysis of the balance sheets from on Forms 1120 and 990 showed that some inter-company balances remained unchanged, while others had large fluctuations. Additionally, further analysis of tax returns showed large sums of money flowing from tax -exempt organizations to the "taxable" entities ACORN and Citizens Consulting Inc. in the form of grants and payments for services. Form 1120 and 990 returns show funds "due from affiliates" and "due to affiliates." The team also noted un -filed returns, potentially unreported in come, potentially unallowable grant making transactions, and possible excess benefit transactions.

When the team reviewed the corporate tax returns of Citizens Consulting, Inc. , ACORN Fund, Inc., ACORN Beneficial Association, and ACORN, they noted that the signatures of the Assistant Treasurer were all the same. Additionally they noted that each return had a balance sheet item regarding "other assets – due from related parties", loans and interest receivable as well as intercompany payables and receivables. Some items on the balance sheets did not appear to change. A review of Forms 1120 and Forms 990 show that large sums of money are flowing from tax-exempt organizations to the taxable entities ACORN and Citizens Consulting Inc. in the form of grants and payments for services. CCI has not filed its 2008 tax return that was due on 9-15-2009. Each of these entities has reported salaries and wages in excess of $1 million with one entity having over $21 million in 2008.

The team located a report dated June 19, 2008, b SFC [redacted], a firm that was engaged by ACORN to review its operations. The firm specializes in providing legal advice to nonprofit organizations and individuals in the areas of Nonprofit Organization Tax law, Election law, Employment law, and Environmental law. The report indicates loose governance indicating there is a lack of board members for CCI, a lack of BOD meetings or minutes of the such meetings, a lack of respect for corporate structure and a lack documentation for §501(c)(3) expenditures including how grants to taxable entities were used .

Research indicates that many of the entities are housed at the same address and have the same core group serving as the Board of Directors. However, research indica ted a lack of meetings and minutes to support those meetings, therefore the board members may be members in name only. Research also indicates that many of the Board of Directors have little to no wages, are on social security, appear to have no real asse ts and do not live in the vicinity of ACORN's place of business.

Research also reveals that Drummond Pike, the CEO of Tides Foundation entered into an agreement to provide funds to cover up an embezzlement that was committed by one of the board members. Research further indicates the possibility of potential conflicts created by employees working for multiple affiliates, staffers and members serving on the Board of Directors, money transfers among the affiliates and without proper documentation as cited by Harmon, Curran, Spielberg & Eisenberg, LLP there is doubt as to the proper use of donations, pension and health care benefit funds.

These items, coupled with apparent lax governance, indicate a closer review is warranted of the financial practices of ACORN and its affiliates.

Conclusions and Recommended Actions

Based on the information reviewed, there appears to be sufficient evidence to warrant further investigation of the activities of ACORN and associated individuals and organizations. It al so appears that a coordinated service-wide approach would be appropriate. The types of returns that appear to merit further investigation include the following:

- Form 1120
- Form 1040
- Form 990
- Form 5500
- Form 941

To accomplish this, the research team re cognized the need for a cross-divisional team, consisting SFC [redacted] to conduct the following activitie SFC [redacted]

If it was determined to conduct examinations, the research team also recommended that periodic research be conducted during the examinations to determine if ACORN is re -inventing itself through new corporations, tax-exempts and other entities. This will allow the examination team(s) to have the most up to date information, be able to locate the correct entity for examination(s) and trace funds from entity to entity.

The research team also recognize SFC [redacted] the need to request assistance from SBSE. SBSE's assistance is likely as the financial hub for ACORN and its affiliates (both taxable and non-taxable) appears to be Citizen s Consulting, Inc. (CCI) is a taxable entity and in order to understand the transactions and trace the money flows, documentation from CCI would be necessary.

Other Supportive Information

Information that was received from Congressional members and sum maries of research are contained in the attachments. The research team has set up a shared network drive and loaded their research on this drive for access only by those on the research team and subsequent team(s) that will be classifying, triaging and examining returns. This report summary will also be posted to the shared drive.

If questions arise with respect to the research that was conducted or information contained in this report summary please contact one of the following:

Nancy To SFC [redacted]
Joseph Urba SFC [redacted]

SFC 003209

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

June 21, 2010

MEMORANDUM FOR DEPUTY COMMISSIONER, OPERATIONS, LMSB
DIRECTOR, EO EXAMINATIONS, TE/GE
DIRECTOR, EXAMINATION, SBSE
DIRECTOR, EP EXAMINATIONS, TE/GE

FROM: Nancy Todd, TLS, Office of Senior Advisor, TE/GE
Joe Urban, Technical Advisor to TE/GE Commissioner

SUBJECT: Investigative Research Findings

In the latter half of 2009 the IRS became aware of allegations that the Association of Community Organizations for Reform Now (ACORN) and a number of affiliate organizations and individuals may have operated in a fashion that was not in compliance with the Internal Revenue Laws. A research team was established in November 2009 to review available information that would identify and understand relationships, nature of transactions and money flows between ACORN and its affiliate organizations and individuals. Further the team would summarize its findings and present recommendations as appropriate including whether or not further compliance activities were warranted.

The research team was able to conduct electronic research that included internal and public sources to develop an understanding of the transactions, including money flows, between the entities and individuals. At no time did the team communicate with anyone outside of IRS.

The team completed its research and finalized the report in April, 2010. The purpose of this memorandum is to convey the team's research findings and provide recommendations for your consideration.

Attached to the memorandum are the research team's report, referrals from Senator Charles Grassley, Congressman Darrell Issa and Congresswoman Michelle Bachmann, as well as a subsequent June 2010 report from Congressman Darrell Issa. Since the research team had completed its duties and finalized the report in April 2010, the subsequent June 2010 report from Congressman Issa was not considered by the team.

Based upon the information reviewed, there appears to be sufficient evidence to warrant further investigations of the activities of ACORN and associated individuals and organizations. The research team recommends that a cross-divisional examination team be established to develop strategy, identify specific returns for examination, and share expertise to obtain an optimal outcome.

If you have any questions or which to discuss the report please contact us at:
Nancy Todd [redacted]
Joseph Urban [redacted]

SFC 003210

From: Simmons, Nancy [redacted]>
Sent: Monday, November 21, 2011 7:56 AM
To: Jane S. Ley; JANSON Bjorn; RAU Wolfgang
Cc: Lerner Lois G; Lowe Justin; Kindell Judith E; TLut [redacted] AHerma [redacted]; CHughe [redacted]; rsmit [redacted]; Wendy G. Pond; Rodriguez, Mary; Leventhal, Robert
Subject: RE: Example of a criminal case involving a 501(c)

We are familiar with this case, as Department procedures require our approval before campaign financing changes can be brought. The USAO also worked with the Tax Division and the IRS on the investigation.

From: Jane S. Ley [mailto [redacted]]
Sent: Saturday, November 19, 2011 1:05 PM
To: 'JANSON Bjorn'; 'RAU Wolfgang'
Cc: 'Lerner Lois G'; 'Lowe Justin'; 'Kindell Judith E'; 'TLu [redacted]'; 'AHerma [redacted]'; 'CHughe [redacted]'; 'rsmit [redacted]'; Simmons, Nancy; Wendy G. Pond; Rodriguez, Mary; 'Leventhal, Robert'
Subject: Example of a criminal case involving a 501(c)

Here is some press coverage of a criminal case showing what all can happen if a 501(c) does engage in activity it shouldn't. FYI, the Fiesta Bowl is one of the big post season college fo otball (American style football) games. These Bowls are quite the extravaganzas for the teams and the host city/state and require substantial planning and organizational infrastructure. Thought this might be of interest.

By William H. Carlile

PHOENIX – A federal grand jury here on Nov. 15 indicted Natalie Wisneski, a former officer and highly paid employee of the Fiesta Bowl, on nine counts alleging conspiracy, filing false nonprofit tax returns, making campaign contributions in the name of others, and causing false statements to be made to the Federal Election Commission.
According to the indictment, Wisneski—as a Fiesta Bowl officer beginning in 2004 —solicited campaign contributions from Fiesta Bowl employees for federal, state, and local candidates fo r elective office, and arranged to reimburse the employees for their contributions with Fiesta Bowl money.

Among the federal campaigns that received funding was the 2008 presidential campaign of Sen. John McCain (R -Ariz.), the indictment states. McCain's c ampaign received more than $10,000.

Also named as recipient of funds was the 2006 re -election campaign of Sen. Jon Kyl (R -Ariz.), according to the indictment.

According to the U.S. Attorney's Office, the federal campaigns identified in the indictment have cooperated in the investigation. No evidence suggests that the campaigns knew that the Fiesta Bowl reimbursed its employees, the office said in a statement.

The indictment was made public Nov. 16. Wisneski, of Tempe, Ariz., is scheduled for arraignment in U.S. District Court for the District of Arizona on Nov. 30 (*United States v. Wisneski,* D. Ariz., 2:11-cr-02216-JAT, *indictment* 11/15/11).

She was hired by the organization in 1989 as an accounting clerk, and by about 2006 was chief operating officer, one o f five highest-paid officers in the organization. She resigned in March 2011, according to the indictment.

Bowl Organization Cooperating With Prosecutors

The overall investigation continues, and the Fiesta Bowl organization continues to cooperate with the investigation, according to prosecutors.

The indictment also alleges that Wisneski filed false tax returns on behalf of the Fiesta Bowl when she denied in the returns that the Fiesta Bowl had any lobbying expenses or political expenditures.

Reimbursement for federal campaign contributions is barred under the Federal Election Campaign Act. It also causes political campaigns to file false information with FEC as to the identity of the true donor, the U.S. Attorney's Office state s.

The Fiesta Bowl is one of three bowl committees that have been targeted by a watchdog group accusing the bowl committees of violating their nonprofit statuses by making contributions to political campaigns.

In September 2010, PlayoffPAC wrote to IRS to complain that the Arizona Spor ts Federation (known as the Fiesta Bowl), the Orange Bowl Committee, and the Sugar Bowl used charitable donations to give "excessive compensation to their executives, make undisclosed lobbying expenditures, intervene in political campaigns, and provide sub stantial private benefit to organizational insiders." All three bowl organizations claim the Section 501(c)(3) tax exemption(185 DTR G -5, 9/27/10).

The federal prosecution is being handled by Frank T. Galati and Gary M. Restaino, assistant U.S. attorneys f rom the District of Arizona's Phoenix office.

Text of the indictment is in TaxCore.

From: Lerner Lois G
Sent: Monday, November 21, 2011 12:01 PM
To: Lowe Justin; Kindell Judith E
Cc: Letourneau Diane L; Jackson Marshalle C
Subject: FW: Party Funding theme II

Just making sure all of what has gone is in one place so I can have a folder when I go.

Lois G. Lerner
Director of Exempt Organizations

From: Jane S. Ley [mailt [redacted]]
Sent: Monday, November 21, 2011 11:49 AM
To: 'TLut [redacted]; CHughe [redacted]; AHerma [redacted]; rsmit [redacted]; Lerner Lois G; Lowe Justin; Kindell Judith E; 'Simmons, Nancy'; Rodriguez, Mary
Subject: FW: Party Funding theme II

FYI. Clarification to the cover e-mail for party financing..

From: Jane S. Ley
Sent: Monday, November 21, 2011 11:44 AM
To: 'JANSON Bjorn'
Cc: 'RAU Wolfgang'; 'Leventhal, Robert'; Wendy G. Pond
Subject: RE: Party Funding theme II

Bjorn, Wolfgang,

This is what comes of being very tired. In my cover e-mail I put the following sentence in: And, simply because the Commission votes evenly on a matter may affect administrative or civil enforcement possibi lities, it does not affect the DOJ's ability to enforce applicable criminal statutes

This sentence is overbroad. The DOJ can initiate an investigation on its own at any time. If the Commission is also looking into the same conduct and reaches a split de cision, then there is one case that has held that the DOJ can't proceed to prosecute under FECA. However, if the DOJ, as a part of its investigation, finds violations of laws, other than FECA, then it still can proceed on those.

Sorry,

Jane

From: Jane S. Ley
Sent: Saturday, November 19, 2011 12:48 PM
To: 'JANSON Bjorn'
Cc: 'RAU Wolfgang'; 'Leventhal, Robert'; Wendy G. Pond
Subject: Party Funding theme II

SFC 003213

Bjorn/Wolfgang,

Attached is a copy of the draft report. We have taken the liberty of providing o ur comments by editing the document with track changes and providing comments boxes when we thought that the reason for the edit was not obvious. Overall we were very pleased with the report and in any case certainly appreciate the work of the evaluators and the Secretariat. Campaign finance in the US is not the easiest topic to tackle in a short piece.

That said, we believe there was a misunderstanding about the holding in *Citizens United* and the reports that are made public by the IRS, the role of the IRS and the requirements for some 527's and 501(c) organizations. We tried to clarify that issue in the DDP and to some degree in the analysis when it was appropriate. Unfortunately, however, we believe that this misunderstanding lea d to recommendations in original paragraphs 145 and 151. All 527s engaged in political activity at the federal level (as opposed to only the state level) report publicly their contributions received and their expenditures. Those that qualify as "politica l committees" file with the FEC; those that don't file with the IRC. It's all public information. All 501(c) organizations file an annual report on their income and expenses. Only the contributor information on those reports is not made public. That is tax information related to the contributor. While we believe the evaluators can certainly comment on the role of 501(c) (non -profit organizations) because they did hear from interlocutors that there was a growing unease that some of these organizations we re becoming very important in the campaign finance process, we also believe that given the nature of these organizations and given the fact that the 501(c)s, while possibly aligned with the political philosophy of one party or the other, are not under the control of a political party/candidate. Consequently, recommendations directed at this issue are not within the scope of this review. If these recommendations remain in the report, we will have to raise our objections at the plenary. As I recall some GRECO members are already concerned about the privacy issues arising from disclosing the names of individuals who contribute directly to the parties, let alone those who make contributions to non -profit organizations who must, in order not to violate tax and the FECA restrictions, be primary engaged in activities that do not include political campaign activity or lobbying. We hope that a discussion in the report of this perceived issue in US campaign financing, rather than recommendations which we believe a re outside of the scope of the review, will suffice to bring the attention to the issue that the evaluators wish to accomplish. (As a separate e-mail I am going to forward a recent criminal enforcement case that I believe everyone will find interesting.)

With regard to the second half of the recommendation in 140, the evaluators will have to be more specific as to what they thought the problem was or, as we have suggested, the second half of the recommendation must be deleted. All of the "who gave what to whom" and "who took what from whom" and "who in what postal zip code gave money to anyone and whom" is very public and interactive. We know of no other GRECO member who has such an advanced system of transparency. If this recommendation is requiring that, although all the full information found on committee reports is available publicly on the FEC website (like a library full of books) the FEC should do something more, then they need to be more specific about what is the problem and what they expect as a fix. And if this is a recommendation to change the software (or whatever the proper IT word is here) of the FEC, then this has to be at least a "to consider" recommendation with more specifics; records on the FEC website more than meet the transparency standards under review. Any substantial changes to the posting regime are not going to come cheap and we do not believe that GRECO should be making a "must" recommendation in an area that is a "really would be nice if . . .". In the alternative the GET could provide a more full discussion of what they heard to be the problem and make no recommendation. It would still bring the issue to the attention of readers.

With regard to the recommendation in original 151, as you know this issue has been the subj ect of attention for sometime both in Congress and the press. No proposed "fix" has been successful in the Congress. The legal makeup of the Commission is a delicate balance. The matters on which the Commission "deadlocks" (a loaded term we feel is reasonable to use once but would prefer that the report thereafter refer to evenly -divided votes which is a clearer description for most readers) are all public and each of the Commissioners can and often do publish on the FEC website his or her own comments on the decision. And, simply because the Commission votes evenly on a matter may affect administrative or civil enforcement possibilities, it does not affect the DOJ's ability to enforce applicable criminal statutes. The GET certainly heard from interloc utors that there is a public perception that these evenly -divided votes are inhibiting the Commission from addressing the issues the public believes it should address. Therefore, we would like

the evaluators to consider recommending something that we beli eve could be useful to the US in this area and which could be accomplished. The text of that proposed alternative recommendation is set out in the document.

Please thank everyone for their patience in getting these comments. As you know the draft report came to the US at a time that when I have been out of the country far more than in the office. (3 of the last 5 weeks). Technology is wonderful but it doesn't always work from afar and the personal touch in getting comments together is, I have found, crucial. If anyone has any questions, I am actually in the country until I come to the GRECO meeting, so I will try to gather answers as quickly as possible. I should note, however, that next Thursday is Thanksgiving in the US which is the major family holiday of the year. Many individuals take off from Wednesday through the end of the week. I will have my BB but I can fairly guarantee that questions that come after noon Wednesday will not be answered before Friday. (Unless of course it is something I can answer on my own.) We can also do a conference call the following week if you like, although I understand that any decisions coming out of that may not appear in the translated copies of the reports going to the plenary.

We look forward to seeing everyone in Strasbourg for any necessary pre -meeting on the 4th and certainly on the 5th.

Assuming there is time and the technology in the room would accommodate it, do you think it might be interesting to the plenary to see a demonstration of the interacti ve map of the FEC? We could make it short. Since we are the last of the "old" members of GRECO to be reviewed this round, it might be an interesting end without its looking as if anyone was trying to set the transparency bar for anyone else.

Jane

From: Lerner Lois G
Sent: Tuesday, April 09, 2013 2:51 PM
To: Hooke Maria D
Cc: Downing Nanette M
Subject: RE: OCS

Perfect

Lois G. Lerner
Director of Exempt Organizations

From: Hooke Maria D
Sent: Tuesday, April 09, 2013 2:45 PM
To: Lerner Lois G
Cc: Downing Nanette M
Subject: RE: OCS

Hello,

OCS messages are not set to automatically save as the standard; however the functionality exists within the software. That being said the parties involved in an OCS conversation can copy and save the contents of the conversation to an email or file.

To date OCS conversations are not specifically identified as part of the Electronic Data Request (EDR) for information, however, if one of the parties saved the conversation as an email or file they would become part of the electronic search.

My general recommendation is to treat the conversation as if it could/is being saved somewhere, as it is possible for either party of the conversation to retain the information and have it turn up as part of an electronic search.

Make sense?

From: Lerner Lois G
Sent: Tuesday, April 09, 2013 1:50 PM
To: Hooke Maria D
Cc: Downing Nanette M
Subject: OCS

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 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?

Lois G. Lerner

SFC 003216

Director of Exempt Organizations

IRS0000726248

SFC 003217

From: Lerner Lois G
Sent: Thursday, November 01, 2012 6:28 PM
To: Kevin J. Kennedy
Subject: RE: Kevin Kennedy profile in Isthmus

So sorry--I leave for London Saturday and have a ton to do before I can go. It was made even worse by the storm because everything got backed up two days. Just got an invite to speak in Chicago on June 6--so put it on the calendar--MAYBE we can have dinner!

Very nice article--can I use your quote? If you have a problem with what I'm doing, you really have a problem with the law--so very true!

I'll try and touch base when I get back

Lois G. Lerner
Director of Exempt Organizations

From: Kevin J. Kennedy SFC [redacted]
Sent: Thursday, November 01, 2012 7:02 PM
To: Lerner Lois G
Subject: Kevin Kennedy profile in Isthmus

Since we don't talk anymore, here is what I look like and w hat our porgessive press is saying about me. I know we will catch up eventually as always .

From my PIO

Please find attached a PDF scan of today's profile of Kevin Kennedy in the weekly Isthmus newspaper.

The story is generally positive, and Kevin gives a lot of credit to the staff. Judge Myse is extensively quoted.

The story itself is not online yet. It may be later at http://www.thedailypage.com/.

EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143

Majority (202) 225–5051
Minority (202) 225–5074

June 3, 2010

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224

Dear Commissioner Shulman:

I have written to you previously concerning the Association of Community Organizations for Reform Now ("ACORN") and its alleged fraudulent activities. Press reports claim ACORN is rebranding itself after apparently shutting down its offices. Because of your vested interest in investigating ACORN, I have enclosed in this letter the Committee on Oversight and Government Reform's report detailing the changed names of various ACORN affiliates.

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 also ask that you maintain oversight over ACORN's rebranded affiliates.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Thank you for your attention to this matter. If you have any questions regarding this request, please contact Daniel Epstein, Committee Counsel, at (202) 225-5074.

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Mr. Douglas Shulman
June 3, 2010
Page 2

Sincerely,

Rep. Darrell Issa
Ranking Member

cc: Chairman Edolphus Towns
Encl.: Primer on ACORN Rebranding

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Ranking Member

ACORN Political Machine Tries to Reinvent Itself

Staff Report
U.S. House of Representatives
111th Congress
Committee on Oversight and Government Reform
June 3, 2010

I. The Myth of ACORN's Dissolution

On February 18, 2010, the House Oversight and Government Reform Committee Republicans, in a staff report, described ACORN's financial management as a "shell game . . . designed to conceal illegal activities, to use taxpayer and tax-exempt dollars for partisan political purposes, and to distract investigators."[1] ACORN officials, however, appear to be trying to dupe government officials and the American public through false and misleading claims about ending operations. ACORN officials told the *New York Times* that "at least 15 of the group's 30 state chapters have disbanded and have no plans of re-forming".[2] On Sunday March 21, 2010, it was reported that the ACORN Board met to discuss the closing of state affiliates and field offices.[3]

However, claims that ACORN is disbanding have been greatly exaggerated. As ACORN CEO Bertha Lewis told *National Public Radio*, "[ACORN is] not dead, yet."[4] ACORN's new affiliates have filed corporate registrations in Secretary of State offices throughout the country. Based upon its review of these corporate filings, Committee investigators have discovered that Affordable Housing Centers of America, Inc. maintains the same Tax Identification Number as ACORN Housing, Inc., its predecessor. This means that, for tax purposes, Affordable Housing Centers of America and ACORN Housing are the same. Additionally, Committee investigators found that several new ACORN affiliates maintain the same boards, staff and Employer Identification Numbers as former ACORN offices. This reflects the lack of true change or reform between these new organizations and their predecessors.[5]

ACORN affiliates in various states are also changing their names in what has been described as, "a desperate bid to ditch the tarnished name of their parent organization and restore federal grants and other revenue streams."[6] In California, ACORN is now the Alliance of Californians for Community Empowerment ("ACCE"). In Massachusetts, Rhode Island, and Connecticut, ACORN is New England United for Justice. In New York, ACORN is New York Communities for Change. In Arkansas, ACORN has become Arkansas Community Organizations ("ACO"). In Louisiana,

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[1] Minority staff report, *Follow the Money: ACORN, SEIU, and their Political Allies*, COMM. OVERSIGHT AND GOV'T REFORM (2010) at *passim*, *available at*: http://republicans.oversight.house.gov/images/stories/Reports/20100218followthemoneyacornseiuandtheirpoliticalallies.pdf.

[2] Ian Urbina, *Acorn on Brink of Bankruptcy, Officials Say*, N.Y. TIMES, Mar. 19, 2010, *available at*: http://www.nytimes.com/2010/03/20/us/politics/20acorn.html?src=me (last visited Mar. 24, 2010).

[3] Kate Rogers, *ACORN Closing Its Doors, Chapters Might Re-Emerge*, NONPROFIT TIMES, Mar. 23, 2010, *available at*: http://www.nptimes.com/10Mar/news-100323-1.html (last visited Mar. 26, 2010)

[4] Deborah Tedford, *CEO Says ACORN 'Isn't Dead Yet'*, NPR, Mar. 23, 2010, *available at*: http://www.npr.org/templates/story/story.php?storyId=125073113 (last visited Mar. 24, 2010).

[5] PRESS RELEASE, *What's In a Name? Reports of ACORN's Demise Just Another Deceptive Act by Criminal Organization*, Mar. 23, 2010, *available at*: http://republicans.oversight.house.gov/index.php?option=com_content&view=article&id=623%3Awhats-in-a-name-reports-of-acorns-demise-just-another-deceptive-act-by-criminal-organization&catid=22&Itemid=29.

[6] Michael Tarm, *ACORN branches rename, rebrand after video scandal*, AP, Mar. 15, 2010, *available at*: http://www.google.com/hostednews/ap/article/ALeqM5gUiGsBtx2MUMlFmLr_mcl0fAZA6AD9EEVUT80 (last visited Mar. 15, 2010).

ACORN is "A Community Voice". In Missouri, ACORN is Missourians Organizing for Reform and Empowerment ("MORE"). In Washington state, ACORN is Organization United for Reform ("OUR") Washington. In Minnesota, ACORN is Minnesota Neighborhoods Organizing for Change. In Pennsylvania, ACORN has become the Pennsylvania Communities Organizing for Change ("PCOC") and Pennsylvania Neighborhoods for Social Justice, Inc. In Texas, ACORN is now the Texas Organizing Project. In Maryland and Washington, D.C., ACORN is Communities United, Inc. ACORN Housing Corporation ("AHC") has renamed itself Affordable Housing Centers of America, Inc. According to Marcel Reid, a former ACORN Board member and director of the ACORN 8, the reform group composed of former ACORN members, ACORN has also formed new offices in North Carolina.[7]

Finally, the ACORN 8 – a group of former ACORN members that sought to bring accountability and transparency to ACORN – has reported that while ACORN has ceased operations in Kentucky, Ohio, and Maryland, there are no reports that ACORN offices in Kansas, Oregon or Tennessee have shut down.[8] According to their respective Secretary of State offices, ACORN is still active in Alabama, Delaware, Florida, Georgia, Oklahoma, and Texas. ACORN's corporate registrations have been revoked in Arizona and Indiana.[9]

II. The Motives behind ACORN's Rebranding

On November 12, 2009, *Politico* reported that "[a]n internal memo from the Republican staff of the House Oversight and Government Reform committee claims that ACORN has serious financial problems and may be 'ready to file for bankruptcy.'"[10] Brian Kettenring, the Deputy Director of National Operations for ACORN, called the Oversight Committee's findings a "partisan slap" and that the "bankruptcy claims by Rep. Darrell Issa . . . are inaccurate."[11] *Politico* also reported that the Committee found Bertha Lewis had "taken custody of hundreds of bank accounts with funds totaling roughly $20 million[,]" On February 22, 2010, *Politico* reported "ACORN is in the process of dissolving its national structure".[12] The motives behind this decision by ACORN appear to be an effort to protect the survival of the organization as well as a consolidated effort by senior ACORN officials to consolidate resources.

The Louisiana Department of Justice has been actively investigating ACORN for several months, filing subpoenas against the organization in October 2009 and raiding the

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[7] Email from Marcel Reid to Committee Staff, Mar. 24, 2010 (on file with author).
[8] *Id.*
[9] *See* ARIZONA CORPORATION COMMISSION, State of Az. Public Access System, *available at: starpas.azcc.gov/. See also* ACCESS INDIANA, Business Services Online, *available at:* https://secure.in.gov/sos/bus_service/online_corps/name_search.aspx.
[10] Jake Sherman, *GOP claims ACORN in financial trouble*, POLITICO, Nov. 12, 2009, *available at:* http://www.politico.com/news/stories/1109/29468.html (Last visited Mar. 25, 2010).
[11] *Id.*
[12] Ben Smith, *ACORN 'dissolved as a national structure'* Politico, Feb. 22, 2010, *available at:* http://www.politico.com/blogs/bensmith/0210/ACORN_dissolved_as_a_national_structure.html (last visited Mar. 25, 2010).

national headquarters for documents and records.[13] According to the Louisiana Department of Justice, there is a power struggle and an apparent "civil war," between the three national ACORN chapters in New York City, Washington D.C., and New Orleans.[14] At the center is Bertha Lewis, residing at the National Chapter in New York City, "who has forcefully taken control over all ACORN accounts and is trying to consolidate whatever assets exist."[15]

Bertha Lewis's consolidation of ACORN finances has been a catalyst driving the shutdown of some local and state chapters, which have lost their operating budgets as a result of Lewis hoarding ACORN's remaining assets. Louisiana investigators believe there is approximately $20 million in cash in 800 bank accounts, ACORN entities own $10 million worth of property, and the majority of the leftover ACORN assets are donor funds that have been consolidated by Bertha Lewis and undoubtedly commingled with other funds against the intent of the donors.[16]

A subpoena from Louisiana Attorney General Buddy Caldwell reported $5 million were embezzled by Dale Rathke from ACORN in 2008. According to Scott Bailey, an investigator in the Louisiana Department of Justice, "federal grant money was embezzled by Dale Rathke between 2000 and 2008."[17] Mr. Bailey discovered this information from audit information subpoenaed from William Stamm, ACORN's accountant at the Duplantier firm in New Orleans. Louisiana investigators believe ACORN chapters were shutdown so that Bertha Lewis could funnel assets to herself in order to further consolidate power and control over ACORN.[18]

Rebranding is an important legal strategy for ACORN to survive. By changing the names of its state and local affiliates, ACORN can rebuild its tax-exempt contributions under the guise of its superficially new and separate corporations as well as its public image. Additionally, because the 2010 Continuing Appropriations Resolution that banned federal funding to ACORN did not include a list of ACORN's newly formed affiliates, federal agencies will be more likely to provide grants to these organizations and will not engage in the scrupulous monitoring processes that would be expected concerning ACORN and ACORN affiliated corporations.

A document detailing the sale by Bertha Lewis on behalf of ACORN to the newly formed Alliance of Californians for Community Empowerment ("ACCE") in return for cash shows how a rebranded ACORN chapter is essentially an ACORN chapter reborn with the same assets, same membership lists, and without real reform.[19] The document, titled "Asset Transfer and License Agreement" states, "ACORN owns certain valuable

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[13] Michael Kunzelman, *La. Prosecutor Probes ACORN After Embezzlement*, AP, Oct. 6, 2009, *available at*: http://abcnews.go.com/US/wirestory?id=8762542&page=3 (last visited Mar. 25, 2010).
[14] Testimony of David Caldwell, Comm. Oversight and Gov't Ref & Comm. Jud., ACORN Forum, Dec. 1, 2009, at 1.
[15] *Id.*
[16] *Id.*.
[17] Telephone interview of Scott Bailey, Louisiana Department of Justice, by Committee staff, Mar. 24, 2010.
[18] *Id.*
[19] Email from Scott Bailey to Committee Staff, Mar. 30, 2010, 11:40 A.M. E.S.T. (on file with author).

assets associated with its activities in California ('the assets') and desires to dispose of the Assets by selling them for fair market value to another organization that will use them to conduct similar charitable or social welfare activities in California."[20] According to the agreement, ACCE has hired former ACORN employees, purchased the ACORN database of dues-paying members, and purchased a database with "e-mail contact information for approximately 16,202 potential contributors residing in California."[21] Moreover, the agreement reveals that ACORN has not closed: "[a]s of the date of this Agreement, ACORN is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of Arkansas, and has full power and authority to carry on its operations as now conducted[.]"[22] The agreement was signed on March 24, 2010 by Bertha Lewis and March 25, 2010 by Amy Schur.[23]

These rebrandings and transactions indicate that local chapters are not forcibly separating themselves from ACORN, but are attempting to reinvent themselves through a process done in full coordination with ACORN and its national senior leadership including Bertha Lewis. The close coordination of the rebranding process signals a level of continued control that ACORN's senior officials exert over newly rebranded affiliates. ACORN and its affiliates appear to be following a strategy that will allow it to rehabilitate important state and local chapters under new names and then solicit private donations and public grants. In fact, on May 15, 2010, ACORN's lawyers claimed "ACORN has not dissolved its organization. ACORN may reorganized through bankruptcy[.]"[24] ACORN is clearly reeling from public and official scrutiny of its many misdeeds. Documents and investigation, however, reveal that changes taking place at ACORN are the result of financial hardship and a desire to rebrand without real reform. Rebrandings should not be mistaken for real reforms which would, at a minimum, have to include a house cleaning of ACORN leadership, organizational transparency, and an exclusive focus on charitable work and services.

[20] Asset Transfer and License Agreement at 1 (Mar. 1, 2010).
[21] *Id.*
[22] *Id.* at 3.
[23] *Id.* at 6.
[24] Walter F. Roche Jr., *ACORN leaves door open to rebuilding organization*, PITT TRIBUNE-REV, May 15, 2010, *available at*: http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_681320.html (last visited May 17, 2010).

ACORN Rebranding		
Then		**Now**
ACORN Housing Corp.	→	Affordable Housing Centers of America[25]
Arkansas ACORN	→	Arkansas Community Organizations[26]
California ACORN	→	Alliance of Californians for Community Empowerment[27]
Connecticut ACORN	→	New England United for Justice[28]
D.C. ACORN	→	Communities United, Inc.[29]
Louisiana ACORN	→	A Community Voice[30]
Maryland ACORN	→	Communities United, Inc.[31]
Massachusetts ACORN	→	New England United for Justice[32]
Minnesota ACORN	→	Minnesota Neighborhoods Organizing for Change[33]
Missouri ACORN	→	Missourians Organizing for Reform and Empowerment[34]
New York ACORN	→	New York Communities for Change[35]

Pennsylvania ACORN	→	Pennsylvania Neighborhoods for Social Justice[36]
	→	Pennsylvania Communities Organizing for Change[37]
Rhode Island ACORN	→	New England United for Justice[38]
Texas ACORN	→	Texas Organizing Project[39]
Washington ACORN	→	Organization United for Reform (OUR) Washington[40]

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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Committee on Oversight and Government Reform
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SFC 003228

From: Lerner Lois G
Sent: Monday, October 25, 2010 10:08 AM
To: Ingram Sarah H
Subject: Healthcare

Nan mentioned you were feeling uncomfortable about what's happening in healthcare --the who's following on for Mary Jo piece. Thought I had told you last week, but may have slipped my mind. Rob spoke to Rob Malone, who is very interested in doing it --so that is the plan. As Nan mentioned this morning, we've pulled Vinnie Fusco in to take over as "project manager" on the exam side --ROO and regular exam. He'll be playing a similar role to Rob Malone on the R & A side. I know you are concerned that no one is taking the lead here. I think that is right, but it won't happen until you step back a bit. You have been running the meetings since day one --rightly so as it is such a big deal. But, as often happens when a strong personality takes the lead, everyon e else waits for instructions. If you are wanting to get comfortable with moving off the center, we (Rob, Nan and me) need some serious time with you to get your vision of how you want this to work. We'll be happy to take on more, but we need to understa nd what you want, where you want to be "in" and where you feel comfortable being "out." As the "queen of control (me, not you)," I understand your discomfort when you aren't there for something so very important. But, I think the discomfort shows, and that is why we all await your direction. My guess is this will have to happen incrementally for you to be comfortable, but we should try and meet to get your thoughts.

Lois G. Lerner
Director, Exempt Organizations

SFC 003229

From: Urban Joseph J
Sent: Friday, February 19, 2010 1:13 PM
To: Fish David L; Miller Thomas J; Choi Robert S; Downing Nanette M; Paz Holly O
Cc: Lerner Lois G; Norton William G Jr
Subject: Investigation
Attachments: 20100218followthemoneyacornseiuandtheirpoliticalallies.pdf

This is a new report from the minority staff of the House Committee on Oversight and Reform (Congressman Issa) on Acorn.

IRS0000791013

SFC 003230

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Ranking Member

Follow the Money: ACORN, SEIU and their Political Allies

Staff Report
U.S. House of Representatives
111th Congress
Committee on Oversight and Government Reform
February 18, 2010

IRS0000791014

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I. Executive Summary

Since the first ACORN Report issued on July 23, 2009, the Oversight and Government Reform Committee staff has reviewed over 50,000 pages of documents: from ACORN offices in California and Oklahoma, from ACORN insiders in Missouri, Colorado, New York and Louisiana, and from Secretary of State investigations in nearly every state in the continental United States. Ranking Member Darrell Issa's leadership of the Committee's ACORN investigation has been enhanced by the efforts of several Members of the Committee: Representative Jim Jordan (R-OH) requested ACORN election documents from the Secretary of State in Ohio,[1] Representative Patrick McHenry (R-NC) was the first to dispute the Census Bureau's relationship with ACORN,[2] Representative Jason Chaffetz (R-UT) used the example of ACORN's corruption to propose legislation requiring the Census Bureau to partner with the U.S. Post Office,[3] and Representative Dan Burton (R-IN) called on Chairman Towns to conduct an investigation of ACORN and its affiliate corporations.[4] Additionally, Committee staff has worked with investigators from several federal Inspector General Offices, the Government Accountability Office (GAO), the Office of Legislative Affairs at the United States Department of Justice, the Louisiana Department of Justice and several local and state-level prosecutor's offices. Attorneys from the Kings County District Attorneys office, which is currently investigating ACORN in New York, told the Committee staff that the first ACORN Report had been "invaluable" to their investigation. David Caldwell, the Assistant Attorney General of Louisiana, stated that his office was able to develop probable cause in its investigation in large part due to the findings of the Oversight and Government Reform Committee Minority Staff.

Since the publication of the first ACORN Report, the House of Representatives passed Congressman Darrell Issa's Motion to Recommit (MTR) to end the federal funding of ACORN, now known as the Defund ACORN Act. Thereafter, Congress passed and the President signed Section 163 of the Continuing Appropriations Resolution of 2010, Division B of Public Law No. 111-68, which cut federal funds to ACORN. After the Continuing Resolution (CR), Congress passed and the President signed the following laws ending ACORN funding: FY 2010 Consolidated Appropriation Act, Pub. Law 111-117, §§ 418, 534, & 511; Section 427 of the Department of the Interior, Environmental and Related Agencies Appropriations Act of 2010, Pub. Law 111-88; and Section 8013 of the Department of Defense Appropriations Act of 2010, Pub. Law 111-118.

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[1] EDITORIAL, *Rep. Jordan wants Ohio to probe plan of ACORN*, COLUMBUS DISPATCH, Nov. 22, 2009, *available at*: http://www.dispatch.com/live/content/national world/stories/2009/11/22/dejord .html? (last visited Feb. 12, 2010).

[2] Congressman Patrick McHenry, *How ACORN Got Dumped by the Census*, BIGGOVERNMENT.COM, Sept. 17, 2009, *available at*: http://mchenry.house.gov/News/DocumentSingle.aspx?DocumentID=145479.

[3] PRESS RELEASE, Census Should Partner With Post Office, Not ACORN, June 24, 2009, *available at*: http://chaffetz.house.gov/2009/06/census should partner with post office not acorn .shtml.

[4] PRESS RELEASE, Burton Demands Investigation of ACORN, Sponsors Legislation To Terminate Funds, Sept. 15, 2009, *available at*: http://burton.house.gov/posts/burton demands investigation of acorn sponsors legislation to terminatefunds .

In response to the CR that cut their funding, ACORN sued the United States of America in the Federal District Court in the Eastern District of New York, arguing that the CR constituted an unconstitutional Bill of Attainder, or punishment without the due process guarantees of a judicial trial. Judge Nina Gershon, a federal judge, presided over the case. On December 11, 2009, Judge Gershon issued an injunction against the United States – an order preventing the United State from enforcing the CR – the funding ban against ACORN. However, as the Justice Department argued, the issue was moot because the CR expired December 18, 2009. Fortunately for ACORN, Judge Gershon allowed ACORN to amend its pleadings and challenge all of the anti-ACORN laws, including Public Laws 111-117, 111-88, and 111-118 as unconstitutional bills of attainder. According to the Louisiana Department of Justice, ACORN is nearing financial bankruptcy, as most of its donors have cut ties with the corporation. However, under Judge Gershon's decision, ACORN will continue to receive taxpayer dollars from the Federal Government. In other words, the American people will have BAILED OUT ACORN.

The first ACORN Report explained how ACORN used a complex organizational structure of overlapping nonprofit community initiatives and political lobbying activities to conceal the partisan political use of taxpayer and private monies originally designated for the public benefit. The report found there was no real separation between ACORN and its affiliates. ACORN is a single corrupt corporate enterprise composed of a series of holding companies and subsidiaries that are financially and operationally dependent upon the main corporation.

This report adds new evidence confirming these previous findings of ACORN's misconduct in addition to a closer examination of ACORN's financial transactions and fundraising that define the organization as a political machine.

Committee investigators have identified hundreds of ACORN bank accounts, shell organizations incorporated under different sections of the internal revenue code, and even an ACORN controlled accounting firm (Citizens Consulting Inc.) that helps ACORN obscure the true use of charitable donations and taxpayer funds. Documents and testimony from ACORN whistleblowers reveal that ACORN activities – despite contentions that they are intended to help the poor – fulfill a more self-serving and political purpose for ACORN. ACORN is well aware of the legal problems its political activities create as its own attorneys have acknowledged and outlined the potential for criminal and civil violations in private documents for senior ACORN officials.

Since release of the first report, Committee staff met with insiders from both ACORN and the Service Employees International Union ("SEIU") in addition to obtaining and reviewing documents from virtually every state, including California, Missouri and Oklahoma.

The following report makes four crucial findings:

First, ACORN and SEIU's illegal agreements, and the crimes committed in furtherance of these agreements, constitutes a criminal conspiracy.

ACORN CEO Bertha Lewis, Executive Director Steven Kest, and Political Operations Director Zach Polett have actual or apparent authority for ACORN's illegal acts. The Committee's investigation has confirmed previous findings as well as identified a method behind ACORN's criminal activities.

Second, there is a pattern, signature or "trade secret" of corruption common to all ACORN affiliates called "Muscle for the Money."

Muscle for the Money involves using non-profit corporations for electioneering activities and an SEIU strategy to threaten corporations and banks into brokering deals for ACORN's financial benefit. SEIU and Project Vote used litigation to force demands from government officials. ACORN, through Project Vote, threatened State Secretary of State offices with lawsuits, thus forcing political compromises at the expense of taxpayers.

SEIU and ACORN are substantially intertwined. SEIU and ACORN jointly manage SEIU Local 100; SEIU Healthcare Illinois Indiana; SEIU Local 21A; SEIU Local 32BJ; SEIU Local 52BJ; SEIU Local 880; and SEIU Local 1199. SEIU aided and encouraged ACORN to put pressure on banks, to use its federally-funded affiliates to target political candidates, and to threaten public officials with litigation. ACORN took the lead in these activities and SEIU was the willing accomplice. The nexus between SEIU and ACORN constituted an agreement between both organizations to engage in fraudulent activities, which ACORN perpetuated through the use of its affiliates.

The Committee investigation found ACORN prepared for these fraudulent activities by issuing membership letters documenting which banks caved-in to ACORN's pressure; through political plans targeting congressional districts to get sympathetic candidates elected, and via emails and legal complaints reflecting ACORN's ability to coerce and compel public officials to meet certain demands. These findings reflect a pattern, signature or trade secret common to all ACORN affiliates. This signature crime is known as Muscle for the Money.

ACORN has received **$5,609,338.00** dollars from SEIU. Anthony Hill, a State Senator from Florida, was simultaneously employed by SEIU and ACORN. Newly reviewed documents show Senator Claire McCaskill (D-MO), former Governor Rod Blagojevich (D-IL), and Congressman Gerry Connolly (D-VA) have received the support of SEIU's ACORN affiliates. Insiders claim that, despite SEIU Treasurer Anna Burger's statement to the contrary, SEIU has never cut ties to ACORN.

Third, ACORN, as a corporation, is responsible for thousands of fraudulent voter registrations throughout the United States.

Responses from various state election offices show that ACORN's late filings of voter registration cards and the sheer amount of fraudulent cards obstructed election administration efforts in many states. Fraudulent voter registrations are not isolated incidents; they reflect ACORN's criminal motive to compromise the system of free and fair elections promised in the Constitution of the United States.

Fourth, ACORN contributed to the risky lending that led to the financial collapse.

ACORN drafted language to loosen underwriting standards and decrease down payments in the housing industry, paving the way for the high rate of subprime loans millions of Americans eventually defaulted on.

ACORN used provisions in the Community Reinvestment Act of 1977 that allowed community groups to challenge bank mergers and acquisitions if a bank did not adequately invest in its own community. These challenges, which featured ACORN's standard intimidation tactics, successfully forced banks to make lending agreements with ACORN Housing. If banks refused ACORN's demands, they jeopardized approval of mergers in a timely manner. ACORN Housing moved to become a conventional service provider for the loans. ACORN reaped profits from **over a billion dollars** in loans to low- income neighborhoods. Because of the policies and financial instruments developed, in part through ACORN's lobbying activities, borrowers eventually defaulted on the loans. The end result was the bursting of the housing bubble.

ACORN Housing received a total of **$39,925,620.13** from Bank of America, JPMorgan Chase & Co., CitiBank, HSBC, CapitalOne, and SunTrust. These lenders and banks also provided ACORN with grants, address and bank account information of at-risk homeowners so ACORN could provide free counseling services. Instead, ACORN used the address and bank account information to target struggling Americans who would be signed up as dues-paying members of ACORN. ACORN's membership recruiting brought in $48 million a year for ACORN—a boon for their Muscle for Money program.

II. Findings

- There is no distinction between ACORN and any of its affiliates. Affiliates share staff, funds, office space, responsibilities, and common controls–there is no real separation between the parts, making it impossible to consider them as truly separate organizations. All of ACORN's non-profit affiliates give substantial amounts of money to Citizens' Consulting, Inc., an arm of ACORN that commingles funds from ACORN's nonprofit organizations and transfers this money to organizations to use for political purposes. ACORN receives large amounts of money from its nonprofit affiliates without making substantial returns to the affiliates. An examination of the accounting documents shows the American Institute for Social Justice (AISJ) transfers a particularly large amount of its funds, which come in part from the federal government and other ACORN affiliates receiving federal money, to ACORN's national organization, presumably for political purposes.

- There is a pattern, method or "trade secret" of corruption common to all ACORN affiliates called "Muscle for the Money." One method is the use of litigation and commingled funds to engage in prohibited electioneering activities. The other method is an SEIU-funded enterprise involving threats and litigation aimed to secure ACORN's corporate financing. ACORN filed corporate income tax with the Internal Revenue Service and failed to file a Form 990, a requirement for non-profit status in several states where ACORN does business. In some states, ACORN fraudulently informed state Secretary of States that it was tax-exempt in order to avoid state corporate taxes.

- SEIU and ACORN are not only financially but also politically codependent. ACORN directly runs two of the most prominent SEIU locals. ACORN has received several million dollars from SEIU. SEIU shares offices with ACORN in nine cities across the United States, utilizing SEIU staff and resources to advance both organizing and political goals.

- SEIU/ACORN has leveraged its size, influence, and wealth to advance its policies and agendas through a complicated web of political connections, backroom negotiations, public relations, intimidation and litigation. SEIU/ACORN has spent millions of dollars and man hours supporting union friendly federal and state candidates and legislation. These connections are then used to entice employers into neutrality agreements with offers of government subsidies and union concessions.

- ACORN Housing Corporation (AHC) used agreements with banks to provide a variety of benefits for their organization, creating policies that were not necessarily beneficial to and sometimes exploited, the low-income citizens they claim to help.

- The AHC used the Community Reinvestment Act provisions and coercive threats to force banks into lowering loan underwriting standards and entering into agreements that funneled profits to ACORN.

III. Timeline of the House Oversight Committee ACORN Investigation

On February 3, 2009, ACORN member Marcel Reid communicated to the staff of the Committee on Oversight and Government Reform in the House of Representatives. Marcel Reid, the president of the Washington, D.C. ACORN chapter and a member of the ACORN 8—a non-profit reform group of former high ranking ACORN employees terminated for attempting to audit the corporation—explained to the staff her concern that ACORN continues to use federal funds to support its corrupt enterprise. Marcel Reid sent documents directly to the Oversight and Government Reform Committee and then, together with Anita MonCrief, a former political operations staff member for ACORN and Project Vote, met with Oversight and Government Reform Committee staff on the afternoon of February 10, 2009 to tell their story and discuss their findings concerning ACORN.[5]

Soon after, Michael McCray, an attorney and member of the ACORN 8, also reached out to the Committee staff to discuss ACORN's suspect dealings. By February 19, 2009, a full investigation of ACORN was opened, with staff having received hundreds of documents from the ACORN informants. Throughout February and early March, the Committee staff interviewed several sources who had knowledge about ACORN and its activities, in addition to speaking with experts from the Congressional Research Service and Government Accountability Office concerning tax and campaign laws applying to nonprofit corporations.

On March 19, 2009, the House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing entitled, "Lessons Learned From the 2008 Election," in which Heather Heidelbaugh, a Pittsburgh attorney who filed suit against ACORN, discussed ACORN's fraudulent voter registration activities. It was this testimony that caused staff to expand the scope of the investigation, and instead of focusing on just ACORN's involvement in voter registration fraud, staff began investigating the business structure of the corporation and its affiliates and whether ACORN's voter registration efforts were not somehow indicative of fraud within the entire organization. The Committee staff, studying various corporate legal theories regarding vicarious liability, enterprise liability, and the corporate form, revealed no distinction between the acts of ACORN's corporate leadership and the acts of ACORN's various affiliates.

The Committee staff began to study ACORN and its numerous affiliates in terms of its compliance with various laws and regulations, including the Internal Revenue Code and the Federal Election Campaign Act of 1971, as well as whether ACORN and its affiliates were maintaining appropriate firewalls and segregated accounts. By the end of March, the Committee staff had begun drafting a report focusing on the complexities of ACORN's corporate structure as an explanation for ACORN's bad acts. Throughout

[5] *See* Appendix, § C.

March and until the end of May, the Committee staff constructed a detailed analysis of ACORN and drafted document request letters to various federal agencies.

On May 27, 2009, the Committee staff obtained a memorandum Elizabeth Kingsley, Counsel to ACORN and a partner at Harmon, Curran, Spielberg & Eisenberg L.L.P., wrote to ACORN and its affiliates concerning its potentially unlawful activities. The memorandum was used as a background for the Committee's investigation as well as a guide for requesting documents from federal agencies. Throughout June and July, the Committee staff developed the first ACORN report, examining the organization's structure.

On July 23, 2009, the Committee's report, "Is ACORN Intentionally Structured As a Criminal Enterprise?" was released to the public. On July 24, 2009 Committee Ranking Member Darrell Issa requested the House Committee on the Judiciary, the House Committee on Education and Labor, and the House Committee on Ways and Means conduct hearings and further investigate ACORN. By the end of July, the Committee staff found that ACORN was not a tax-exempt corporation, but paid corporate income taxes, thus further revealing the organization's calculated intentions to engage in partisan politics.

By December 2009, Committee Ranking Member Darrell Issa sent nearly 100 letters, including letters to the directors of the Corporation for National and Community Service, the Department of Labor, the Small Business Administration, the Department of Housing and Urban Development, the Internal Revenue Service, the Federal Election Commission, the Election Assistance Commission, and the Department of Homeland Security. Ranking Member Issa together with Senator Susan Collins (R-ME), Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, requested investigations from the Inspector Generals offices of all eight government agencies.

Ranking Member Issa, along with Financial Services Ranking Member Spencer Bachus (R-AL) and Judiciary Ranking Member Lamar Smith (R-TX), requested documents from the fourteen major banks that had funded ACORN. Additionally, Ranking Members Issa and Smith demanded Attorney General Eric Holder instruct the Department of Justice to conduct it's own investigation into ACORN. Ranking Member Issa also sent letters to the lobbying, ethics and elections divisions of all 50 Secretary of States offices requesting documents pertaining to ACORN and its affiliates.

On December 1, 2009, Ranking Members Issa and Smith co-chaired a forum on ACORN which included the following witnesses: Assistant Attorney General David Caldwell of Louisiana, Indiana Secretary of State Todd Rokita, former ACORN employee Anita MonCrief, and former Department of Justice and FEC official Hans A. von Spakovsky. The following findings were made at the December 1 hearing:

- There needs to be oversight over the Department of Justice and Federal Bureau of Investigation for failing to address and put an end to ACORN's illegal activities.

- Indiana Secretary of State Todd Rokita informed the U.S. Attorneys Office of the Northern District of Indiana as well as the FEC about violations of federal law in Indiana, neither office took any action against ACORN.
- There are 691 bank accounts of ACORN and ACORN affiliates at Whitney Bank in New Orleans, Louisiana.
- ACORN owns stock at Whitney Bank.
- In 2006, Whitney Bank inexplicably wired several million dollars to an ACORN Bank of America account in San Francisco.
- The City of New Orleans, after Hurricane Katrina, gave ACORN 121 pieces of property which ACORN was to give to low-income families but, instead, ACORN rented out these properties for a profit.
- ACORN Housing owns millions of dollars worth of property.
- ACORN uses its membership drives to raise revenue and build political power.

To date, the Louisiana Department of Justice has issued subpoenas for records from ACORN, Citizens Consulting, Inc. (CCI) – ACORN's non-profit financial accounting affiliate – and its financial institution, Whitney Bank. According to Assistant Attorney General David Caldwell, a Democrat, "[p]art of the probable cause for the issuance of the subpoena came from the Staff Report entitled 'Is ACORN Intentionally Structured as a Criminal Enterprise?' issued by the Committee on Oversight and Government Reform at the U.S. House of Representatives."[6] According to Caldwell, "Dale Rathke, brother of founder Wade Rathke, had embezzled up to five million dollars beginning in 1998, and that this embezzlement was never reported to law enforcement . . . [ACORN has] almost 400 entities and over 600 bank accounts."[7] The Louisiana Department of Justice has claimed that there is a power struggle and an apparent "civil war," between the three national ACORN chapters: New York, D.C. and New Orleans. At the center is CEO Bertha Lewis, residing at the National Chapter in New York City, "who has forcefully taken control over all ACORN accounts and is trying to consolidate whatever assets exist."[8] Louisiana investigators believe there is approximately $20 million in cash in 800 bank accounts, ACORN entities own $10 million worth of property, and the majority of the leftover ACORN assets are likely donor funds that will be consolidated by Bertha Lewis and undoubtedly commingled with other funds against the intent of the donors.[9]

Even with ACORN's corruption exposed, some Members of Congress who only a few months ago voted overwhelmingly against ACORN may now be trying to restore funding for them. Just last month, Representative Maxine Waters (D-CA) celebrated former ACORN organizer Amy Schur's recent attempt to reinvent ACORN as the Alliance of Californians for Community Empowerment, saying in a statement, "What a relief to know that the Alliance of Californians for Community Empowerment will be on the scene...I expect great things from this new organization and encourage them to roll up their sleeves and do the hard work that is needed to assist communities throughout

[6] Testimony of David Caldwell, COMM. OVERSIGHT AND GOV'T REF & COMM. JUD., ACORN FORUM, Dec. 1, 2009, at 1.
[7] *Id.* at 2.
[8] *Id.*
[9] *Id.*

California.".[10] In pending legislation that would enable an expanded government intervention into health care, a proposed amendment would benefit ACORN.[11] The provision would require that six different federal agencies each establish an "Office of Minority Health" and "community and consumer-focused nonprofit groups" that may receive grants to "conduct public education activities to raise awareness of the availability of qualified health plans."[12]

IV. The Anatomy of a Fraud

A. ACORN's Criminal Trade Secret

In the original ACORN Report, Committee investigators sought to determine which individuals owned or controlled ACORN in order to uncover the waste, fraud and abuse of federal funds at the hands of the organization's senior leadership.[13] Committee investigators found that individuals including ACORN CEO Bertha Lewis, Executive Director Steven Kest, and Political Operations Director Zach Polett had actual or apparent authority for ACORN's alleged bad acts. The original ACORN Report cited the Eighth Circuit opinion in *HOK Sport, Inc. v. FC Des Moines, L.C.*, to conclude that "[d]isregarding an entity's corporate form by piercing the corporate veil is appropriate if 'the corporation is a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice.'"[14] The ACORN Report therefore found that not only was there no real separation between ACORN and its affiliates (that is to say, ACORN Housing, Project Vote, and CCI are not entities of ACORN but are ACORN), but the ACORN management, including Bertha Lewis, Steven Kest, and Zach Polett, were legally responsible for the acts of all ACORN employees. Steven Kest, ACORN's Executive Director, stated that he, Jon Kest, Madeline Talbott, Keith Kelleher, Mike Shea, Zach Polett, Helene O'Brien, Amy Schur, Liz Wolff, and Beth Butler were on the ACORN management council and knew of Dale Rathke's embezzlement,"[15] yet none of these individuals alerted authorities of the crime. Once the corporate veil is pierced, officers and directors can be found liable as alter egos of the nonprofit corporation.[16]

This report will show that SEIU aided and encouraged ACORN to put pressure on banks, target political candidates, and threaten public officials with litigation. The nexus between SEIU and ACORN constituted an agreement between both organizations to

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[10] Evelyn Nieves, *Calif ACORN chapter splits from national group*, SAN FRANCISCO CHRONICLE, Jan. 13, 2010, *available at*: http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2010/01/13/state/n084633S73.DTL&type=health.

[11] John McCormack, *ACORN Qualifies for Funding in Senate Health Care Bill*, WEEKLY STANDARD, Dec. 21, 2009, *available at*: http://www.weeklystandard.com/weblogs/TWSFP/2009/12/exclusive_acorn_qualifies_for_1_.asp.

[12] *Id.*

[13] HOK Sport, Inc. v. FC Des Moines, L.C., at 935 36; *See also United States v. Bestfoods*, 524 U.S. 51, 62 (1998).

[14] *Id.*

[15] Email from Marcel Reid to Michael McCray (Mar. 24, 2009) (forwarding email from Steven Kest to Ralph McCloud) at 5 6 (ACORN 004785 004786) [hereinafter "Ralph McCloud CCHD"].

[16] §8.30 Revised Model Non profit Corporation Act

engage in fraudulent activities. The fraudulent activity was compounded by ACORN's activities with and through its affiliates. The Committee investigation found ACORN prepared for these fraudulent activities by issuing press releases documenting which banks caved-in to ACORN's pressure, through political plans targeting congressional districts, and via emails and legal complaints reflecting ACORN's ability to coerce and compel public officials to meet its demands. These findings reflect a pattern, signature or "trade secret" common to all ACORN affiliates.

The original ACORN Report discussed how ACORN uses a complex organizational structure of overlapping nonprofit community initiatives and political lobbying activities to conceal the partisan political use of taxpayer and private monies designated for the benefit of society. Moreover, the previous ACORN Report uncovered evidence obtained from the Form 990's of ACORN affiliate organizations and internal ACORN financial documents that demonstrates how ACORN engages in a shell-game of corporate financing, in which money is transferred from affiliate organizations receiving federal funding to a national ACORN organization that engages in partisan political activities. These money transfers enable ACORN to commingle funds and divert federal monies into partisan activities in violation of federal law.

B. ACORN and SEIU work together as one corporate conglomerate.

FINDING: *There is no distinction between ACORN and any of its affiliates. Affiliates share staff, funds, office space, responsibilities, and common controls–there is no real separation between the parts, making it impossible to consider them as truly separate organizations. All of ACORN's non-profit affiliates give substantial amounts of money to Citizens' Consulting, Inc., an arm of ACORN that commingles funds from ACORN's nonprofit organizations and transfers this money to organizations to use for political purposes. ACORN receives large amounts of money from its nonprofit affiliates without making substantial returns to the affiliates. An examination of the accounting documents shows the American Institute for Social Justice (AISJ) appears to be a shell organization whose purpose is to transfer funds from ACORN affiliates receiving federal money to ACORN's national organization for presumably political purposes.*

Since the last update of the ACORN Report, the Committee has uncovered additional evidence that supports the original report's findings. Our investigation of audits of ACORN affiliates from 1999-2004 obtained from the West Virginia Secretary of State and conducted by the firms of *Duplantier, Hrapman, Hogan, and Maher, L.L.P.*, *Spilsbury, Hamilton, Legendre, and Paciera*, and *WIPFLI, L.L.P.* shows the following:

- ACORN and its affiliates are subject to certain common controls that make it unreasonable to consider them separate organizations.
- ACORN non-profit affiliates all give substantial amounts of money to Citizens' Consulting, Inc., an arm of ACORN that commingles funds from ACORN's nonprofit organizations and transfers this money to organizations to use for political purposes.
- ACORN receives large amounts of money from its nonprofit affiliates while giving significantly less back to these affiliates.
- The American Institute for Social Justice (AISJ) appears to be a shell organization whose purpose is to transfer funds from ACORN affiliates receiving federal money to ACORN's national organization for presumably political purposes.
- ACORN files corporate income tax with the Internal Revenue Service yet fails to file a Form 990, a requirement for non-profit status in several states, thus depriving the states of corporate revenue.

Each audit statement of ACORN affiliate organizations, including ACORN Housing Corp. (AHC), Project Vote, and the American Institute for Social Justice (AISJ), contains a statement describing transactions between the audited firm and affiliated organizations. According to this statement, the audited firm and its affiliated organizations "share certain common functions and costs."[17] Furthermore, the audited firm and its affiliated organizations "are also under certain common controls by individuals who could exercise influence over their day-to-day decisions."[18] In each of these audit statements, ACORN's national organization is listed as an affiliated organization of AHC, Project Vote, and AISJ.[19]

Under the Lobbying Disclosure Act, ACORN as a taxable non-profit corporation, must be separately incorporated, keep separate books, and spend and use resources which are not part of or otherwise paid for by the tax-deductible contributions to its 501(c)(3) affiliate organizations.[20] According to the Congressional Research Service (CRS), "[i]n cases where an organization creates an IRC §501(c)(4) organization and an IRC §501(c)(3) organization, the organizations must be legally separate entities, and their activities and funds must be kept separate."[21]

The Committee staff contacted the Congressional Research Service (CRS) to determine whether similar barriers must be in place to separate the activities and funds of taxable nonprofit corporations and affiliate 501(c)(3) organizations. CRS stated that there was no reason to believe that such activities and funds would not have to be separated in the same way as the activities and funds of 501(c)(3) and 501(c)(4) organizations,

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[17] Audit Reports of ACORN Housing Corp. (2000 2004), Project Vote (1999 2003), and American Institute for Social Justice (2000 2004) (on file with author).
[18] *Id.*
[19] *Id*
[20] Jack Maskell, *Lobbying Regulations on Non Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 6.
[21] *Id.*

showing that ACORN was not keeping up appropriate firewalls between it's tax-exempt and non tax-exempt portions.

According to letters from the IRS to ACORN affiliates, AHC,[22] Project Vote,[23] and AISJ[24] have all been assigned 501(c)(3) status by the IRS. As such, their activities should be kept distinct from ACORN, a taxable non-profit organization. Since, according to past audit reports, ACORN shares "common controls by individuals who could exercise influence over their day-to-day decisions" with their 501(c)(3) affiliates, there is a reasonable suspicion that ACORN does not keep its activities separate from the activities of its 501(c)(3) affiliates.[25]

Additionally, these audits support suspicions about the role of Citizens' Consulting, Inc. (CCI) in concealing the political activities of ACORN. As stated in the previous ACORN Report, CCI is a nonprofit organization that provides consulting services, including administrative, financial, bookkeeping, and legal support, primarily to nonprofit organizations.[26] According to testimony made before the House Judiciary Committee, "[a]ll donations to ACORN or any of its approximately 175 affiliates are deposited into bank accounts held by CCI. Thereafter, CCI transfers money into various affiliates."[27] IRC, FECA, IRS and FEC regulations require political funds to be separate and segregated from tax-exempt accounts and organizations must prove that funds designated for 501(c)(3) purposes are not used for political purposes.[28] However, as noted in the previous ACORN Report, ACORN's outside counsel, Elizabeth Kingsley of Harmon, Curran, Spielberg, & Eisenberg, L.L.P, found that it was difficult to determine whether funds given to CCI that were designated to be used for 501(c)(3) purposes were actually being used for non-501(c)(3) work.[29]

Tables 1, 2, and 3 provide a summary of the data collected from the 1999-2004 audits of AHC, Project Vote, and AISJ. As these tables demonstrate, CCI receives large amounts of money from ACORN's tax-exempt affiliates for "accounting, corporate, and administrative services."[30] From 2000-2004, CCI received a total of **$1,263,356.24** from

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[22] Letter from Paul Williams, IRS District Director to ACORN Housing Corp., Mar 9, 1990 (on file with author).
[23] Letter from IRS District Director to Project Vote, Apr 23, 1988 (on file with author).
[24] Letter from IRS Exempt Organizations Coordinator to American Institute for Social Justice, Jul 2, 1991 (on file with author).
[25] *Id.*
[26] Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes, American Institute for Social Justice, Association of Community Organizations for Reform Now, Citizens Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) at 8 9 (ACORN 004934 004935) (*hereinafter* "HCSE Memo").
[27] *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 5 (2009) (statement of Heather Heidelbaugh).
[28] Jack Maskell, *Lobbying Regulations on Non Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 6.
[29] HCSE Memo (June 19, 2008) at 7 (ACORN 004933).
[30] Audit Reports of ACORN Housing Corp. (2000 2004), Project Vote (1999 2003), and American Institute for Social Justice (2000 2004) (on file with author).

the ACORN Housing Corporation (AHC) and **$287,792.41** from AISJ.[31] From 1999-2003, CCI received a total of **$1,061,388.91** from Project Vote.[32] Overall, from 1999-2004, CCI received **$2,127,663.13** from three of ACORN's 501(c)(3) organizations.[33] These charts reflect that over two million dollars was paid to a Louisiana-incorporated nonprofit corporation from three other nonprofit corporations over six years, for "accounting, corporate, and administrative services." Despite the obvious concerns regarding CCI's role in concealing the political activities of ACORN, the IRS and the FEC have failed to take appropriate legal action against ACORN.

Table 1. Summary of Transactions Between Project Vote and Relevant Organizations

Organization	Year	Receipts	Disbursements	Net
ACORN	1999	$0.00	$18,113.10	-$18,113.10
	2000	$0.00	$350,515.81	-$350,515.81
	2001	$0.00	$929.00	-$929.00
	2002	$0.00	$431,730.00	-$431,730.00
	2003	$0.00	$260,101.00	-$260,101.00
	TOTAL	**$0.00**	**$1,061,388.91**	**-$1,061,388.91**
Citizens' Consulting, Inc.	1999	$0.00	$53,674.61	-$53,674.61
	2000	$0.00	$98,670.87	-$98,670.87
	2001	$0.00	$33,203.00	-$33,203.00
	2002	$0.00	$140,933.00	-$140,933.00
	2003	$0.00	$250,033.00	-$250,033.00
	TOTAL	**$0.00**	**$576,514.48**	**-$576,514.48**

[31] *Id.*
[32] *Id.*
[33] *Id.*

Table 2. Summary of Transactions Between American Institute for Social Justice and Relevant Organizations

Organization	Year	Receipts	Disbursements	Net
ACORN	2000	$2,860,660.53	$3,959,122.28	-$1,098,461.75
	2001	$3,677,990.20	$4,922,553.82	-$1,244,563.62
	2002	$4,013,096.00	$5,857,935.00	-$1,844,839.00
	2003	$5,498,519.00	$6,190,079.00	-$691,560.00
	2004	$3,403,216.00	$12,822,853.00	-$9,419,637.00
	TOTAL	**$19,456,481.73**	**$33,752,543.10**	**-$14,299,061.37**
ACORN Housing Corp.	2000	$431,133.27	$0.00	+$431,133.27
	2001	$307,500.00	$0.00	+$307,500.00
	2002	$634,373.00	$0.00	+$634,373.00
	2003	$601,535.00	$43,388.00	+$558,147.00
	2004	$491,702.00	$0.00	+$491,702.00
	TOTAL	**$2,466,243.27**	**$43,388.00**	**+$2,422,855.27**
Citizens' Consulting, Inc.	2000	$0.00	$65,858.48	-$65,858.48
	2001	$0.00	$94,168.93	-$94,168.93
	2002	$0.00	$88,521.00	-$88,521.00
	2003	$0.00	$24,244.00	-$24,244.00
	2004	$0.00	$15,000.00	-$15,000.00
	TOTAL	**$0.00**	**$287,792.41**	**-$287,792.41**
Department of Housing and Urban Development	2000	$0.00	$0.00	+$0.00
	2001	$60,000.00	$0.00	+$60,000.00
	2002	$176,000.00	$0.00	+$176,000.00
	2003	$84,000.00	$0.00	+$84,000.00
	2004	$110,000.00	$0.00	+$110,000.00
	TOTAL	**$430,000.00**	**$0.00**	**+$430,000.00**

Table 3. Summary of Transactions Between ACORN Housing Corp. and Relevant Organizations

Organization	Year	Receipts	Disbursements	Net
ACORN	2000	$0.00	$89,875.51	-$89,875.51
	2001	$10,000.00	$78,617.07	-$68,617.07
	2002	$47,400.00	$83,392.00	-$35,992.00
	2003	$28,980.00	$97,932.00	-$68,952.00
	2004	$20,742.00	$126,681.00	-$105,939.00
	TOTAL	**$107,122.00**	**$476,497.58**	**-$369,375.58**
American Institute for Social Justice	2000	$0.00	$431,133.27	-$431,133.27
	2001	$0.00	$307,500.00	-$307,500.00
	2002	$0.00	$634,373.00	-$634,373.00
	2003	$43,388.00	$601,535.00	-$558,147.00
	2004	$0.00	$491,702.00	-$491,702.00
	TOTAL	**$43,388.00**	**$2,466,243.27**	**-$2,422,855.27**
Citizens' Consulting, Inc.	2000	$0.00	$190,969.93	-$190,969.93
	2001	$0.00	$241,656.31	-$241,656.31
	2002	$0.00	$249,366.00	-$249,366.00
	2003	$0.00	$252,954.00	-$252,954.00
	2004	$0.00	$328,410.00	-$328,410.00
	TOTAL	**$0.00**	**$1,263,356.24**	**-$1,263,356.24**
Department of Housing and Urban Development	2000	$0.00	$0.00	+$0.00
	2001	$17,522.00	$0.00	+$17,522.00
	2002	$15,000.00	$0.00	+$15,000.00
	2003	$693,522.00	$0.00	+$693,522.00
	2004	$2,157,445.00	$0.00	+$2,157,445.00
	TOTAL	**$2,883,489.00**	**$0.00**	**+$2,883,489.00**

The financial data within these audits shows that ACORN received large amounts of money from its nonprofit affiliates while giving significantly less back in return, suggesting wide-spread subversive accounting practices. Based upon ACORN affiliates' tax-exempt disclosures, there are substantial discrepancies between ACORN's own audits and what has been officially reported to the IRS. As tables 1, 2, and 3 demonstrate, from 2000-2004, ACORN received a net total of **$369,375.58** from AHC, which is funded by the Department of Housing and Urban Development and **$14,299,061.37** from AISJ.[34] From 1999-2003, ACORN received a net total of **$1,061,388.91** from Project Vote.[35] Over a six year period, from 1999-2004, ACORN received a net total of **$15,729,825.86**

[34] *Id.*
[35] *Id.*

from three of its 501(c)(3) organizations, whose funds are supposed to be kept separate from taxable nonprofit corporations like ACORN.[36]

Nearly 40% of the disbursements from three of ACORN's 501(c)(3) affiliates to ACORN's national organization come in the form of gifts and grants for which no real reason is given for the transfer of funds.[37] Between 1999 and 2004, AHC gave 3.10%, Project Vote gave 29.91%; and AISJ gave 75.94% of their respective unrestricted revenues to ACORN.[38] In the same time period, AHC also gave 16.02% of its unrestricted revenue to AISJ, which gives large percentages of its own revenue to ACORN.[39] The fact that ACORN's 501(c)(3) organizations transferred such a substantial amount of money to ACORN's national organization while receiving far less in return creates enormous concern about the transparency of these transactions involving federal funds and charitable donations.

These money transfers are consistent with allegations that ACORN engages in a shell-game of corporate financing, in which money is transferred from affiliate organizations receiving federal money to a national ACORN organization that engages in partisan political activities. The American Institute for Social Justice (AISJ) appears to play a particularly strong role in this shell-game by transferring funds from ACORN affiliates receiving federal money to ACORN's national organization, presumably for political purposes. According to audit statements of AISJ, AISJ acts as a "fiscal agent for other organizations' that "[f]or certain gifts and grants . . . receives the funds and then remits the amount received to the designated organization."[40] However, AISJ's primary fiscal client is ACORN.[41]

As Table 2 shows, **$53,209,024.83** in funds were transferred between ACORN and AISJ from 2000-2004.[42] ACORN's national organization was the overall beneficiary of these transactions, as it received a net total of **$14,299,061.37** from AISJ over the course of a five year period from 2000-2004.[43] **$13,952,234.09** of the total expenditures given to ACORN from AISJ came in the form of gifts and grants for which no real reason is given for the transfer of funds.[44] This dollar amount represents 98.6% of the total amount of grants given out by AISJ to affiliated organizations and 95.9% of the total amount of grants given out by AISJ overall, from 2000-2004.[45]

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[36] *Id.*
[37] *Id.*
[38] Audit Reports of ACORN Housing Corp. (2000 2004), Project Vote (1999 2003), and American Institute for Social Justice (2000 2004) (on file with author). It is worth noting that there were some discrepancies in the revenues reported by ACORN affiliated entities in their Form 990 statements when compared to the revenues stated in the audit statements used to calculate these percentages.
[39] *Id.*
[40] Audit Reports of American Institute for Social Justice (2000 2004) (on file with author).
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*

The amount of funds transferred from AISJ to ACORN creates substantial concern given AISJ's revenue sources. According to AISJ's audit statements, AISJ receives its funding from "gifts and grants from foundations, corporations, religious organizations and the government."[46] As Table 3 depicts, from 2000-2004, ACORN received **$430,000.00** from the Department of Housing and Urban Development (HUD).[47] Furthermore, from 2000-2004, AISJ received a total of **$2,466,243.27** in grants and gifts from ACORN Housing Corp., Inc. (AHC).[48] This dollar amount represents 78.2% of the total amount of grants given out by AHC to affiliated organizations and 56.4% of the total amount of grants given out by AHC overall, from 2000-2004.[49]

AHC, an organization whose purpose is to provide "free housing counseling to low and moderate income homebuyers"[50] provided a substantial amount of grant money to ACORN, an organization whose purpose is to be a "provider of training and technical assistance in organizing principles and methods, and a center for research and public policy development on issues of concern to low and moderate income people."[51] AHC is able to attract a significantly larger amount in public donations and federal grants than any of the other corporations in the ACORN organization. For instance, as Table 3 shows, AHC received **$2,883,489.00** in federal grant money from HUD during the years of 2000-2004, which is significantly more federal funding than AISJ received during the same time period.[52] Furthermore, according to one of AHC's tax returns, more than **four million dollars** in private donations were donated to AHC from major banks in 2000.[53]

Ranking Member Darrell Issa has sent letters to HUD and the HUD Office of Inspector General about the federal money that has been provided to AHC and whether it was spent properly according to federal law. Despite Congressman Issa's requests, HUD has yet to respond.[54]

As a result of its large pool of receipts, AHC has the ability to give money to AISJ and still conduct its day-to-day activities. AISJ can then, as ACORN's fiscal agent, give

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[46] *Id.*

[47] FEDERAL ASSISTANCE TO AMERICAN INSTITUTE FOR SOCIAL JUSTICE IN LA, FEDSPENDING.ORG, *available at*: http://www.fedspending.org/faads/faads.php?reptype=r&detail=1&datype=T&sortby=t&database=faads&recip_id=36504&fiscal_year=2007&record_num=f500 (last accessed Jan. 20, 2010).

[48] Audit Reports of ACORN Housing Corp. (2000 2004) (on file with author).

[49] *Id.*

[50] *Who We Are*, ACORN HOUSING, *available at:* http://acornhousing.org/TEXT/wwa.php (last accessed Jan. 20, 2010).

[51] *About* THE AMERICAN INSTITUTE FOR SOCIAL JUSTICE, available at: http://www.aisj.org/index.php?id=557 (last accessed Jan. 20, 2010).

[52] *Federal Assistance to ACORN Housing Corp., Inc. in LA.*, FEDSPENDING.ORG, *available at*: http://www.fedspending.org/faads/faads.php?reptype=r&detail=1&datype=T&sortby=t&database=faads&recip_id=10899&fiscal_year=2007&record_num=f500 (last accessed Jan. 20, 2010).

[53] Consumer Rights League, ACORN'S HYPOCRITICAL HOUSE OF CARDS, *available at*: http://www.consumersrightsleague.org/UploadedFiles/ACORN_AHC_Report.pdf.

[54] *See* LETTER, Ranking Member Darrell Issa to Honorable Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development, July 26, 2009.

this money in the form of gifts and grants to ACORN's national organization. This set of transactions allows funds given to AHC from private banks or the federal government to be used for whatever purposes ACORN's national organization chooses, all while avoiding the allegations of impropriety that may arise if AHC were to give this money directly to ACORN's national organization.

ACORN and SEIU engage in substantially similar transactions, for as one report described,[55]

> ACORN's usual modus operandi is to obscure its relationships to the greatest extent possible, but they are clear enough: sharing the same address with SEIU locals, millions of dollars in cozy financial relationships . . . U.S. Department of Labor LM-2's (financial disclosure forms) point to over $600,000 in transactions between these same SEIU locals and other ACORN operations. A 2007 LM-2 form shows SEIU Local 880, which is active in Illinois and Minnesota, donated $60,118 to ACORN for 'membership services.' Organized labor has kicked it back in the form of gifts and grants to ACORN totaling $2.4 million, the LM-2's reveal.

C. "Muscle for the Money" – The ACORN Trade Secret

FINDING: *There is a pattern, method or trade secret of corruption common to all ACORN affiliates called "Muscle for the Money." One method is the use of litigation and commingled funds to engage in prohibited electioneering activities. The other method is an SEIU-funded enterprise involving threats and litigation aimed to secure ACORN's corporate financing. ACORN filed corporate income tax with the Internal Revenue Service and failed to file a Form 990, a requirement for non-profit status in several states where ACORN does business. In some states, ACORN fraudulently informed state Secretary of States that it was tax-exempt in order to avoid state corporate taxes.*

According to Anita MonCrief, a former staff member of Project Vote and shared employee of ACORN Political Operations who served as an insider during the Committee's investigation, ACORN "has official and unofficial programs called 'Muscle for the Money'".[56] MonCrief described Muscle for the Money as serving two roles, one aimed at using non-profit corporations for electioneering activities and the other, a SEIU-funded strategy to threaten corporations and banks into brokering deals for ACORN's financial benefit.[57]

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[55] Kevin Williamson, *The 'Shut Up' Candidate*, NAT'L REVIEW, Feb. 8, 2010, *available at*: http://article.nationalreview.com/print/?q=YzQ0ODg3OWI3ZDAzZDNiZGNlMmFlODVmYjczY2Q2NzE. = (last visited Feb. 9, 2010).

[56] MonCrief testimony, *infra* at 4 5.

[57] *Id.*

The so-called official Muscle for the Money program "is the name for the ACORN voter registration drives."[58] Under the official program, Project Vote pays ACORN "not only to register voters, but to also convert those voter registrations into votes at the polls for specific candidates."[59] This program operates under the pretense that Project Vote is implementing the National Voter Registration Act (NVRA). Project Vote has sued Ohio and has threatened to sue Arizona, Colorado, Florida, and Missouri for failing to meet Project Vote's demands to comply with its interpretation of the NVRA.[60]

According to high-ranking members of SEIU and ACORN, "it is still the practice at ACORN to have registration quotas . . . ACORN counts only 20% of its cards . . . Project Vote pays ACORN for the cards ACORN brings in whether these cards are fraudulent or not. The more cards ACORN fills out, the more money it gets paid from Project Vote."[61] According to one insider, a former ACORN organizer, "Voter Registration is a fundraiser."[62]

The unofficial Muscle for the Money program is a program directed at corporations, where ACORN would protest or use other intimidation methods to solicit money from businesses in order to make the protests end. An example is an effort where, according to an ACORN whistleblower, "[p]ayments from SEIU were made to ACORN's DC office to harass The Carlyle Group and, specifically, Mr. David Rubenstein, a founder of the company. Even though DC ACORN had no interest in The Carlyle Group, they were paid by SEIU to go break up a banquet and protest at [Rubenstein's] house."[63] MonCrief states this strategy was called Muscle for the Money "because they would go intimidate people and protest . . . [t]argets of the paid protests included Sherwin-Williams, H&R Block, Jackson Hewitt and Money Mart, among others. The purpose was to get money from the targeted entities for ACORN, to force the companies to 'negotiate'".[64]

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[58] *Id.*
[59] *Id.*
[60] Email, Michael Slater (Project Vote), *Low Income Americans Denied an Opportunity to Register to Vote, New Report Shows*, Feb. 12, 2008, 8:59 AM EST (on file with author). *See also* Project Vote Re Notice Letter 6.9.09.pdf at 1 2 (on file with author).
[61] Interview, Committee staff with Insider 1, Insider 2, Jan. 14, 2010 (on file with author).
[62] *Id.*
[63] MonCrief testimony, *infra* at 4 5. *See also* DAVID REYNOLDS, PARTNERING FOR CHANGE: UNIONS AND COMMUNITY GROUPS BUILD COALITIONS FOR ECONOMIC JUSTICE, at 38 39 (2008) ("This powerful base in low and moderate income communities means that ACORN shares a set of values and common interests with most labor unions. . . . All of this means that ACORN is a reliable ally and organization that can support unions in their organizing drives and contract campaigns, join together in policy campaigns on issues of mutual interest to union and ACORN members through the ACORN Political Action Committee, and collaborate on political campaigns to ensure that worker and community friendly candidates are elected to office").
[64] *Id.*

The following internal ACORN e-mail from ACORN campaign director, Amy Schur, illustrates how ACORN used Muscle for the Money threats against Countrywide in order to obtain financial wins[65]:

READ THIS EVERYONE

-------- Original Message --------
Subject: Countrywide Cries...if not Uncle, at least Boo Hoo
Date: Tue, 9 Oct 2007 14:56:49 -0700
From: Amy Schur <campaigndirect@acorn.org>
Organization: Acorn
Newsgroups: acorn.campaign,acorn.headorg

So, a number of offices hit Countrywide today.

I've heard about New York (see great description below), Cleveland, Orlando and Albuquerque. I'm sure there were others. These weren't 10 person actions either... (okay, they I'm not saying they were 100, but they weren't 10)

Today, top Countrywide execs. got on a call with our top people and begged for another chance. They will lock themselves in a room with us (scary thought!) next week and not leave until we either reach agreement or an impasse --- in which case all bets are off.

THEN, the General Counsel called back again, having heard about more actions, and pleaded his case that if more actions happened it would be hard for him to get his people to come to the meeting next week.

*The actions gave them a taste of what ACORN can and will dish out. They're not likin' it! We are meeting with them next Wednesday or Thursday. [redacted] so that we don't run into a chance of having to cancel with less than 24 hrs notice. *
**
Great job!

Action move to the 25th Please read!

P-

This email was sent eight months after Countrywide officials had made the decision to cut down on subprime lending. According to a report by Reuters in March of 2007, "Countrywide ha[d] stopped making subprime loans that require no money down to borrowers without proof of income. Just 7 percent of its mortgage loans were subprime in February."[66]

V. ACORN AND THE SEIU

FINDING: *SEIU and ACORN are financially and politically codependent. ACORN directly runs two of the most prominent SEIU locals. ACORN has received several million dollars from SEIU. SEIU shares offices with ACORN in nine cities across the United States,*

[65] Email from Amy Schur, *Countrywide Cries . . . if not Uncle, at least Boo Hoo*, Oct. 9, 2007, 2:56 E.S.T.
[66] Jonathan Stempel. *Countrywide Dismisses Subprime Naysayers,* REUTERS, Mar. 16, 2007, *available at:* http://www.reuters.com/article/idUSN1625465520070316 (last visited Feb. 14, 2010).

utilizing SEIU staff and resources to advance both organizing and political goals.

The Service Employees International Union (SEIU) has come a long way from its meager beginnings as an American Federation of Labor charter, organizing janitors and window washers in Chicago.[67] In 2000, it became the largest and fastest growing independent union in North America with 1.4 million members.[68] Today, SEIU has 2.2 million members and takes in over $276 million in receipts which it has used to finance aggressive organizing and political campaigns, both directly and indirectly through its affiliate ACORN.[69]

SEIU and ACORN emails and government filings clearly outline their intimate and codependent financial and ideological relationship. ACORN directly runs two of the most prominent SEIU locals. In four of the last six years, ACORN has received **$5,609,338.00** dollars from SEIU for services ranging from organizing to political activities, setup programs to advance organizing, and arranged for union dues sharing. SEIU shares offices with ACORN in nine cities across the United States, utilizing SEIU staff and resources to advance both organizing and political goals.[70]

A. SEIU and ACORN share common origins.

According to documents obtained from ACORN's Oklahoma offices, SEIU Local 100 originated from the United Labor Unions (ULU), a union organization started by ACORN.[71] Local 100 became chartered under SEIU to organize public sector workers like school bus drivers, school aides, and janitors in Arkansas, Louisiana, and Texas. SEIU Local 880 "also comes from the ULU movement and organizes home childcare workers and home health aides throughout Illinois, with over 80,000 members statewide."[72]

According to SEIU/ACORN insiders:

> Wade Rathke was a Board Member of SEIU. Madeleine Talbott and her husband Keith Kelleher served on the boards of both SEIU and ACORN. Zach Polett is the chief of political operations at ACORN. The ACORN Office in St. Louis, Missouri is owned by SEIU 880 and ACORN Housing. Jeff Ordower, the Missouri head organizer for ACORN, works in the SEIU building in St. Louis.

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[67] OUR HISTORY, *available at*: http://www.seiu.org/a/ourunion/seiu history.php (last visited Feb. 1, 2010).
[68] *Id.*
[69] OUR UNION, *available at*: http://www.seiu.org/a/ourunion/a closer look inside labors fastest growing union.php, (last visited Feb. 1, 2010).
[70] *See* Tables 8, 9.
[71] ACORN Family, July 10, 2007 at 2 (on file with author). *See also* ABOUT LOCAL 100, http://www.seiu100.org/index.php?id=391 (last visited January 28, 2010).
[72] *Id.*

> Ordower, who works at the SEIU offices, is the field operations director for ACORN.[73]

Insiders interviewed by the Committee staff add: "It has always been that way with ACORN and SEIU."[74] According to these insiders, money was automatically given to ACORN from SEIU, and the State Council is the political arm of SEIU in Missouri and Kansas.[75] ACORN/SEIU activities are funded through dues and ACORN runs campaigns for SEIU, such as the Claire McCaskill campaign for Senate.[76]

1. SEIU Local 100

In 1980, Local 100 was founded as an independent union under the leadership of Wade Rathke to organize Hyatt housekeepers, laundresses, valets, concierges, and door and bell staff.[77] On May 25, 1984, Local 100 joined SEIU under the direct control of ACORN and started organizing service sector public workers in school districts throughout Louisiana.[78] At its peak in 2002, under the leadership of Chief Organizer Wade Rathke, Local 100 had 4,625 members and received over $1.3 million in receipts.[79] However, this success was overshadowed by the embezzlement of $5 million by Dale Rathke, Wade Rathke's brother.[80]

Although the embezzlement was not disclosed to ACORN's board until 2008, Local 100's Form LM-2 filings reflect that ACORN headquarters had knowledge of the embezzlement based on its compliance with audit requirements.[81] Until the year 2001, Dale Rathke was listed on Local 100's Form LM-2 as the point of contact for Local 100.[82] Following Dale Rathke's disappearance as the point of contact for Local 100, the union spent the next seven years amending their Form LM-2 filings, at one point reducing total assets in 2001 by over $200,000.[83]

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[73] Interview, Committee Staff and Insider 1 (ACORN, SEIU) and Insider 2 (ACORN), Jan. 21, 2010 (on file with author).
[74] *Id. See also* HEIDI SWARTS, ORGANIZING URBAN AMERICA: SECULAR AND FAITH BASED PROGRESSIVE MOVEMENTS, at 107 (2008) ("ACORN also gained an ally in the SEIU, on whose State Council sat an ACORN ally, a former organizer with SEIU local 880, which shared the ACORN office"). *See also* ROBERT FISHER, THE PEOPLE SHALL RULE: ACORN, COMMUNITY ORGANIZING, AND THE STRUGGLE FOR ECONOMIC JUSTICE, at 45 (2009) ("In 1978 1980 the roots were laid in direct labor organizing, which has now led to the inclusion of what are sometimes called by the Service Employees International Union (SEIU) "the ACORN locals," SEIU 100 and SEIU 880").
[75] *Id.*
[76] *Id.*
[77] About Local 100, http://www.seiu100.org/index.php?id=391 (last visited January 28, 2010).
[78] *Id.*
[79] SEIU Local 100, Annual Report (Form LM 2), at 1 (May 16, 2007).
[80] *See* Caldwell testimony, *infra.*
[81] SEIU Local 100, Annual Report (Form LM 2), at 1 (Apr. 18, 2002).
[82] *Id.*
[83] 2001 2007 Annual Reports, SEIU Local 100, (Form LM 2).

Previously, Committee staff reported that the SEIU Local 100 Form LM-2 filed with the Labor Department showed SEIU made payments to ACORN.[84] Steve Bachmann, ACORN's General Counsel, stated "[t]o what extent does the Local 100 Board and Local 100 members know about the perfidy of their Chief Organizer? *Do they know how hokey their LM-2 filings are?*"[85]

According to Steve Bachmann, "Local 100 was nurtured by ACORN, but I think US Labor law prevents ACORN from interfering in Local 100 affairs. And it is not clear that ACORN wants to bother with Local 100 anymore, except to collect money Local 100 has borrowed from ACORN affiliates (some $250,000). . ."[86]

To date, Local 100 and ACORN still share the same address, but according to Local 100's website, the local has disaffiliated from SEIU.[87] However, Local 100's website still displays the SEIU logo and SEIU's distinct purple and is still listed on the SEIU website as an affiliate, even though it has not registered as a corporation with the State of Louisiana.[88] In fact, according to the Louisiana Secretary of State, the United Labor Unions (ULU), the union that Local 100 supposedly returned to, had its charter revoked in 1998.[89] Furthermore, Local 100 has not filed its 2008 Form LM-2 under either ULU or SEIU.[90] Based on tax records, it appears that Local 100 is still a member of SEIU and ACORN.

2. SEIU Local 880

Keith Kelleher, former head organizer and president of SEIU Local 880, is now president of SEIU Healthcare Illinois and Indiana.[91] According to ACORN Executive Director Steven Kest, Keith Kelleher served on the ACORN management council and was aware of Dale Rathke's embezzlement.[92] Kelleher[93] is registered with the city of Chicago as a lobbyist for Service Employees International Union ("SEIU") Local 880, an ACORN affiliate.[94]

According to Kelleher, ACORN founded the United Labor Unions (ULU) to organize low-wage workers that traditional unions were unable or unwilling to

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[84] *See Form LM 2 Labor Organization Annual Report*, SEIU Local 100, DEP'T OF LABOR, (2007), SEIU LM2 2007 at 11 (March 30, 2007) (ACORN 004912).
[85] Email from Steve Bachmann (July 22, 2008) at 4 (ACORN 004328) (emphasis added and in original).
[86] *Id.* at 2 3 (ACORN 004326 004327) (emphasis added).
[87] ABOUT LOCAL 100, http://www.seiu100.org/index.php?id=444 (last visited January 28, 2010).
[88] Working Together SEIU 100, http://www.seiu100.org/index.php?id=444 (last visited Feb. 1, 2010).
[89] Letter Louisiana Board of Ethics to Hon. Darrell Issa, Re: Request for Documents for ACORN and affiliates (Dec. 7, 2009) at 1 10.
[90] UNION OR TRUST SEARCH, http://kcerds.dol esa.gov/query/getOrgQry.do (last visited Feb. 1, 2010).
[91] SEIU Local 880, Annual Report (Form LM 2), at 1 (Apr. 30, 2009).
[92] Ralph McCloud CCHD at 5 6 (Nov. 11, 2008) (ACORN 004785 004786).
[93] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 20, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.
[94] CITY OF CHICAGO, LOBBYING REGISTRATION DATABASE, *available at*: http://www.cityofchicago.org/webportal/COCWebPortal/COC EDITORIAL/RegLobAug09 .pdf.

organize.[95] In the early 1980s, the Chicago based ULU Local 880 began organizing homecare workers in the private homecare industry and those directly reimbursed by the state.[96] Lack of resources forced ULU to seek affiliation with a national union and, in 1984, attracted by organizing subsidies for local operations, legal assistance, and a significant local autonomy for its locals, the ULU decided to join SEIU.[97]

Six years after joining SEIU, Local 880 and ACORN were still dependent on SEIU International for financial support. The 1990 ACORN Internal Operations report, prepared by Dale Rathke, showed that combined ACORN operations were down 6% to just below $5 million in gross revenue.[98] The only growth came from ACORN's labor operations, Local 880 and Local 100, where dues were up 35% and subsidies from SEIU international were up 20%.[99] These SEIU subsidies and per capita rebates accounted for over 60% of ACORN's labor operations income.[100] The key question for ACORN, in 1990, was whether appropriate arrangements could be negotiated with SEIU on per capita payments and whether sufficient membership could be recruited to take up the slack from ACORN's falling numbers before the SEIU subsidies ceased.[101] By 2008, SEIU Local 880 was the fifth largest SEIU local with more than 65,000 members and over $17 million in receipts.[102]

Table 4. Employees From Former SEIU, Local 880 Now Employed By SEIU Healthcare, Illinois-Indiana

Name	SEIU, Local 880 Position	SEIU Healthcare IL-IN Position
Flora Johnson	President	Chairperson
Martina Casey	Vice President	Executive Board Member
Oneal Rayford	Secretary	Executive Board Member
Martha Tolliver	Treasurer	Executive Board Member
Keith Kelleher	Recording Secretary	President
Phyllis Clifford	Board Member	Executive Board Member
Armean Allen	Board Member	Executive Board Member
Alma McIntosh	Board Member	Executive Board Member
Angenita Tanner	Board Member	Executive Board Member
Maria Velazquez	Board Member	Executive Board Member
Alberta Walker	Board Member	Executive Board Member

ACORN locals 880 and 100 are in multiple states and in many instances, share the same office space. Beyond just office sharing, SEIU locals 880 and 100 share board members with ACORN. Wade Rathke, ACORN's founder and former Chief Organizer,

[95] Keith Kelleher, *Growth of a Modern Union Local: A People's History of SEIU Local 880*, 12 JUST LABOUR: A CANADIAN JOURNAL OF WORK AND SOCIETY, at 2 (2008).
[96] *Id.*
[97] *Id.* at 3.
[98] Year End Year Begin Report, ACORN (1990) at 5 (on file with author).
[99] *Id.*
[100] *Id.* at 6.
[101] *Id.*
[102] Kelleher, *supra* note 98 at 2.

ran SEIU Local 100.[103] Dale Rathke managed SEIU Local 100's financials and recent evidence shows that SEIU Local 100 filed bogus reports with the Labor Department in order to conceal Dale Rathke's embezzlement from ACORN.[104] ACORN audits reveal several thousand dollars transferred between SEIU locals 880 and 100 and ACORN and several affiliates, including ACORN Housing and Citizens Consulting, Inc.[105] These audits also demonstrate that ACORN affiliates and SEIU locals 880 and 100 "share certain common functions and costs" and also share "common controls by individuals who could exercise influence over their day-to-day decisions."[106] In short, ACORN affiliates fund ACORN and in turn, SEIU funds ACORN's affiliates. Documents show the clear exchange of funds goes back and forth between the two organizations depending on who needs money at the time.

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[103] SEIU Local 100, Annual Report (Form LM 2), at 1 (Apr. 18, 2002).
[104] *Id. See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 57, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf at 3 6.
[105] Audit Reports of ACORN Housing Corp. (2000 2004), Project Vote (1999 2003), and American Institute for Social Justice (2000 2004) (on file with author).
[106] *Id.*

Table 5. ACORN-SEIU Shared Addresses

SEIU Organization	ACORN Organization	Address
SEIU Healthcare Illinois & Indiana – *Healthcare*	ACORN Housing, Illinois	209 W Jackson Blvd Chicago, IL 60606[107]
SEIU Local 1 - Indiana SEIU Healthcare Illinois & Indiana - Indianapolis	Indianapolis ACORN	1800 N. Meridian Indianapolis, IN 46202[108]
SEIU Local 100	ACORN Housing, Dallas	5353 Maple Ave. Dallas, TX 75235[109]
SEIU Local 100 - Branch Office - *Public Services*	Baton Rouge ACORN	5177 Greenwell Springs Rd. Baton Rouge, LA 70806-1604
SEIU Local 100 - Houston	ACORN Housing, Houston	3333 Fannin Houston, TX 77004[110]
SEIU Local 100 - New Orleans	New Orleans ACORN	2609 Canal St. New Orleans, LA 70119[111]
SEIU Local 24/7 (IUSO) - *Property Services*	California ACORN	3411 E 12th St Ste 200 Oakland, CA 94601[112]
SEIU Local 880	ACORN Housing, St. Louis	4304 Manchester Ave. St. Louis, MO 63110[113]
SEIU Louisiana State Council	ACORN Housing, Louisiana	1024 Elysian Fields Ave New Orleans, LA 70117

B. ACORN and SEIU are co-managers of a financial and political enterprise

According to information produced to the Committee, even low level ACORN employees were instructed to state they were affiliated with both ACORN and SEIU.[114] SEIU Local 100, housed at the same New Orleans address as ACORN, has given hundreds of thousands of dollars to national ACORN chapters for political activities, according to its Department of Labor filings.[115] In Illinois, ACORN and SEIU led what they described as a "seamless" and "flawless" joint operation to elect now disgraced Governor Rod Blagojevich.[116]

[107] SEIU is on 2nd floor and AHC is on 3rd floor
[108] SEIU is in Suite 410, ACORN is in Suite 511
[109] SEIU has since moved according to their website
[110] SEIU is in Suite 115, AHC is in Suite 103
[111] ACORN has since sold this building to satisfy federal and state tax liens
[112] ACORN may have moved offices, but this address was listed on the CA ACORN website
[113] SEIU has since changed Local 880 to SEIU Healthcare Illinois/Indiana, but no longer has a Southern Illinois Office in St. Louis
[114] Interview, Committee Staff and Insider 1 (ACORN, SEIU) and Insider 2 (ACORN), Jan. 21, 2010 (on file with author).
[115] *See* Table 9, *infra*. The LM 2 has a specific section for political activities and SEIU's LM 2 filings from the last 5 years show hundreds of thousands of dollars given to ACORN for "political activities."
[116] Local 880 Year End Year Begin Report at 5 (Dec. 15, 2006) (ACORN 04354) (emphasis added). *See also id.* at 7 8, discussing several joint SEIU ACORN campaigns (emphasis added).

Documents reviewed by Committee staff show that ACORN used SEIU Local 880 to create a political staff in order to elect Democrats friendly to Union causes.[117] ACORN's political and upper management share the same role with SEIU. Peter Colavito was an ACORN political director from approximately 1999 to 2003 and currently serves as a political director for SEIU.[118] What's more, it appears ACORN's electioneering goes all the way to 1600 Pennsylvania Avenue. ACORN spokesman Scott Levenson meets frequently with White House political director Patrick Gaspard[119] who was Vice President of SEIU and maintains close ties to ACORN.[120]

SEIU developed political reports discussing ACORN's Political Action Committees (APACs) and participated in partisan electoral work.[121] SEIU "moved between 50-100 members and staff to work the precincts for Blago . . . SEIU's and APAC's volunteers in the high turnout precincts on the south side, brought it home. High level Blagojevich staff credited [the SEIU Local 880 staff] later with helping move the vote that allowed him to win."[122] SEIU documents further stated, "[b]ecause we were key in the early organizing and moving this national campaign by both ACORN and SEIU, we were well-positioned to win. Our early support of Governor Blagojevich and his commitment to support an Executive Order allowing homecare and home child care workers to organize put us far ahead of the other states."[123]

ACORN's own internal financial statements reflect its financial dependence upon SEIU. Under "financial status," ACORN's 1990 internal audit stated, "[o]nly on the labor side was there growth, but in dues -- up by some 35% -- and in moneys from the

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[117] *See* Political Operations Contact List Master Dec 6 07 .xls (produced by Anita MonCrief) (Excel Chart titled "Political Operations (& Affiliates) Contact List" with contact information for Zach Polett (ACORN), Amy Busefink (ACORN, Project Vote), Nathan Henderson James (ACORN, Project Vote), and Brian Mellor (Project Vote). *See also* Interview, Committee Staff Jan. 14, 2010 (on file with author) and Local 880 at 5 (Dec. 15, 2006) (ACORN 004354) (emphasis added); Illinois Governor Rod Blagojevich was arrested on federal corruption charges on December 9, 2008. *See* Press Release, Department of Justice, Illinois Gov. Rod R. Blagojevich and His Chief of Staff John Harris Arrested on Federal Corruption Charges, (Dec. 9, 2008), *available at*: http://chicago.fbi.gov/dojpressrel/pressrel08/dec09_08.htm (last visited July 7, 2009). *See also* State of Minnesota Campaign Finance and Public Disclosure Board, Findings Regarding SEIU Local 880 Political Fund, *available at*: http://www.cfboard.state.mn.us/bdinfo/investigation/12505seiu.pdf (finding "There is evidence that the SEIU Local 880 Political Fund . . . violated Minn. Stat. §10A.27, subd. 13(b)").

[118] John Fund, *Chris Christie's Next Case: Who Stole My Election?* WALL STREET J, Nov. 2, 2009, *available at*: http://online.wsj.com/article/SB10001424052748703932904574511612622116146.html (last visited Feb. 1, 2010).

[119] Currently Barack Obama's Director of the Office of Political Affairs. He was formerly the Executive Vice President of the Service Employees International Union ("SEIU"), which is an ACORN affiliate. He served as the National Political Director for the Barack Obama Presidential Campaign.

[120] VISITOR RECORDS, THE WHITE HOUSE, *available at*: http://www.whitehouse.gov/briefing room/disclosures/visitor records.

[121] ACORN Grant Request to the Democracy Alliance at 12 13 (Mar. 24, 2006) (ACORN 004348 004349).

[122] Local 880 Year End Year Begin Report at 17 18 (Dec. 15, 2006) (ACORN 004366 004367) (emphasis added).

[123] *Id.* at 5 (Dec. 15, 2006) (ACORN 04354) (emphasis added).

International -- up by 20%."[124] ACORN further clarified its financial connection with the SEIU as follows:

> On the labor side, dues were again up appreciably with Local 100 and Local 880. This still left the labor operations with over 60% of their income from external sources. Virtually all non-dues income continues to come from SEIU subsidies and per-capita rebates and from CHD, so the key questions remain whether appropriate arrangements can be negotiated with SEIU on per capita payments and whether sufficient membership can be recruited to take up the slack before the SEIU subsidies cease.[125]

ACORN's pattern of using donor funds for pro-union activities shows how financially connected ACORN is to SEIU. In a November 19, 1990 letter to the Nathan Cummings Foundation, which funded ACORN's "Patient's Rights Project," former ACORN employee Denisa Len wrote, "I am also very outraged with the scandalous way in which ACORN has obtained funding from you and other foundations at the expense of the poor, at the expense of the ill, and at the expense of well-meaning people such as myself."[126] The letter further stated SEIU's intention to use ACORN as a tool for unionizing employees: "I DID NOT, however, volunteer to organize Parkland employees into a union, and this is precisely what ACORN has in mind. Furthermore, ACORN misinforms, disinforms, and outright lies to accomplish its goals. It is under this burden of knowledge I quit the ACORN organization"[127]

ACORN and SEIU's ties extend to public office as well. Anthony Hill, a State Senator from Florida, in his Form 1099 filed with the IRS reveals being simultaneously paid by the "Service Employees International Union" in the amount of $49,450.50 as well as $10,000 from the "Assn of Community Organizations for Re" located at 1024 Elysian Fields Avenue in New Orleans.[128]

Locals 880 and 100 also coordinate their lobbying activities. According to the Illinois lobbying disclosure database,[129] Zach Nauth lobbied for the Service Employees International Union Local 880, while, according to the Louisiana Board of Ethics, "[a] review of our records prior to that time indicates that in 1996, Zack Nauth registered as a Legislative Branch lobbyist for that particular year. He was registered as representing SEIU Local 100."[130]

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[124] ACORN 1990 Financials, at 5.
[125] *Id.* at 6.
[126] Letter Denisa Len to Nathan Cummings Foundation (Nov. 19, 1990) (on file with author) at 1.
[127] *Id.*
[128] 2004 Form 1099 MISC (Anthony Hill) (on file with author).
[129] Zack Nauth, Lobbyist ID: 3687 (2002).
[130] Letter Louisiana Board of Ethics to Hon. Darrell Issa, Re: Request for Documents for ACORN and affiliates (Dec. 7, 2009) at 1.

1. SEIU Political Operations

FINDING: *SEIU/ACORN has leveraged its size, influence, and wealth to advance its policies and agendas through a complicated web of political connections, backroom negotiations, public relations, intimidation and litigation. SEIU/ACORN has spent millions of dollars and man hours supporting union friendly federal and state candidates and legislation. These connections are then used to entice employers into neutrality agreements with offers of government subsidies and union concessions.*

Documents show that SEIU requires its political affiliates to fund its substantial political operations.[131] Although it states that SEIU had no political expenditures on its 2008 IRS Form 990, SEIU International and locals spent millions of dollars on politics and lobbying, filtering members' dues from the locals and the international to pro-union candidates and political affiliates, including ACORN. That same year, the SEIU Committee on Political Education (COPE), a PAC, spent over $48 million on the 2008 campaign—more than half of that amount, almost $27 million was spent on then-candidate Obama's presidential campaign alone.[132] As of November 30, 2009, the SEIU COPE had total receipts of over $15.2 million, of which $5.3 million came from affiliates, and spent $6.1 million in a non-election year.[133] SEIU spent millions supporting the Employee Free Choice Act and on health care reform legislation.[134] To ensure the continued compliance of politicians that received SEIU funds, SEIU has committed $10 million in contributions to the "Justice for All" fund, a program designed to take on elected officials who fail to live up to their promises to SEIU.[135]

On January 14, 2010, Committee staff interviewed a high-ranking organizer for both ACORN and SEIU as well as a high-ranking organizer for ACORN. These whistleblowers came forward to the Committee when they became concerned that on-the-ground ACORN-SEIU organizers were being fired for wanting to volunteer on a Republican campaign. One insider is the first African American head organizer

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[131] *See* Modification of Affiliation Agreement Between Service Employees International Union and Workers United, at 3, §B, (vi), *available at*: http://www.politico.com/static/PPM110_100105_wuseiu_affiliation.html.

[132] CAMPAIGN MONEY.COM, http://www.campaignmoney.com/political/committees/seiu_cope_service_employees_international_union_committee_on_political_education_.asp?cycle=10 (last visited on January 31, 2010).

[133] *Id.*

[134] Kris Maher, *SEIU Campaign Spending Pays Political* Dividends, Wall Street J, May 16, 2009, *available at*: http://online.wsj.com/article/SB124243785248026055.html (last visited Feb. 12, 2010); *See* Sam Stein, *EFCA Ad War Heats Up: SEIU Responds to Chamber's Latest* Huffington Post, April 13, 2009, *available at*: http://www.huffingtonpost.com/2009/04/13/efca_ad_war_heats_up_seiu_n_186292.html; *see also* http://www.beyondchron.org/articles/SEIU Launches National Campaign for Change That Works 64 67.html

[135] *SEIU Members to Politicians: Live Up to Your Promises Or We Will Hold You Accountable, available at*: http://www.seiu.org/2008/05/seiu_members_to_politicians_live_up_to_your_promises_or_we_will_hold_you_accountable.php. Washington Wire, *SEIU's Stern Tops White House Visitor List*, WALL STREET J., Oct. 30, 2009, *available at*: http://blogs.wsj.com/washwire/2009/10/30/seius_stern_tops_white_house_visitor_list/tab/article/ (last visited Feb. 8, 2010).

appointed by ACORN in Missouri. He worked as a field organizer for 11 years for ACORN and claimed he was promoted out of necessity. The insider claims the pressure to hire minorities in ACORN's leadership led to his promotion.

The other insider is an organizer who was fired from ACORN and joined SEIU Local 2000 as its political director. He stated that, during his experience with SEIU, he was required to make a direct donation to an SEIU-sponsored Political Action Committee.[136] According to this insider, there was a pre-arrangement between SEIU and ACORN where SEIU paid ACORN for political advocacy.[137] Subsequently, SEIU gave money to ACORN through its PAC/COPE. Allegedly, SEIU's field campaigns are also run by ACORN.[138] This insider illustrated the ACORN-SEIU connection as follows:

> Jobs for Justice is a 501(c)(3) housed in the SEIU office which, together with Missouri Progressive Vote Coalition (MO Pro Vote), is displacing the role of ACORN. ACORN and SEIU local offices in Missouri got together to put the minimum wage initiative on the ballot instead of the tobacco tax initiative . . . . Money that ACORN gets to pay employees comes from SEIU. Ex-ACORN employees all went to SEIU.[139]

Table 6. SEIU Contributions to ACORN

Transaction Type	2005	2006	2007	2008	Total
Contributions, Gifts, and Grants	$94,000.00	$197,703.00	$140,350.00	$0.00	$432,053.00
General Overhead	$185,528.00	$136,108.00	$246,833.00	$248,015.00	$816,484.00
Political Activities	$64,564.00	$81,423.00	$112,356.00	$339,982.00	$598,325.00
Representational Activities	$2,070,212.00	$1,026,957.00	$282,811.00	$318,980.00	$3,698,960.00
Union Administration	$50,089.00	$13,427.00	$0.00	$0.00	$63,516.00
Total	**$2,464,393.00**	**$1,455,618.00**	**$782,350.00**	**$906,977.00**	**$5,609,338.00**

2. SEIU and ACORN remain co-conspirators

In the previous ACORN Report, the Committee claimed ACORN's use of employee health funds to pay back Dale Rathke's embezzlement debt might constitute a violation of the Employee Retirement Income Security Act (ERISA). The Committee

[136] Interview, Committee Staff and Insider 1 (ACORN, SEIU) and Insider 2 (ACORN), Jan. 14, 2010 (on file with author).
[137] *Id.*
[138] *Id.*
[139] *Id.*

has since confirmed that these health funds were indeed ERISA funds. According to Interim Staff Management Committee notes, ACORN has an ERISA plan with "30-40 employees listed in terms of being involved in the council"[140] The document further stated "ACORN found [ACORN Beneficial Association] – Wade, Helen Obrien head the [ERISA] Funds," "Funders were supposed to go into the [Council Health Plan] and [Council Beneficial Association]," and "There are thoughts of this money being used to pay off Dale's debt."[141]

The original ACORN Report claimed Wade Rathke's LM-2 filing was fraudulent. New evidence indicates "[t]he local 100 paperwork that unions had to file – there are questions on if proper paperwork was filed, especially in terms of finances going to Wade."[142] Documents reflect ACORN board members stating "How do we get to a LEGAL system?" and, though being a taxable corporation, stating "We will need a determination letter, not required but helpful in this matter."[143] Moreover, ACORN board members admitted to "[d]elinquent contributions – IRS, Department of Labor can come after the organization for these issues . . . The Government will and can go after ACORN."[144]

The previous ACORN Report concluded that ACORN conspired to defraud the United States by using taxpayer funds for partisan political activities. ACORN submitted false filings to the DOL, in addition to violating the Fair Labor Standards Act. ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of ERISA. ACORN has failed to comply with the Labor-Management Reporting and Disclosure Act of 1959 as well as the Employee Retirement Income Security Act of 1974.[145]

Based upon filings with the Virginia State Board of Elections, ACORN-affiliate SEIU Local 32BJ NY/NJ American Dream Fund PAC registered as a political action committee in the state of Virginia. According to Virginia filings, SEIU Local 32BJ NY/NJ America Dream Fund PAC is an "ACORN Affiliate" and in 2008 gave campaign contributions to Gerry Connolly for Chairman.[146] An email from Elisa Long, a policy analyst at the Virginia State Board of Ethics to Martha Brissette, a lawyer for the Virginia State Board of Ethics, stated, "I believe ACORN came back into Virginia in 2008 using the name Community Voters Project in order to avoid being connected to the problems created by their 2005 campaign when they operated under ACORN/Project Vote. It worked."[147]

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[140] ISM Committee Meeting Notes, July 29, 2008 (on file with author) at 3.
[141] *Id.* at 3 4.
[142] *Id.* at 3.
[143] *Id.*
[144] *Id.*
[145] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 57, *available at:* http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf at 3 6.
[146] ACORN Affiliates at 1, Nov. 6, 2009 (on file with author).
[147] Email from Elisa Long to Martha Brissette (Nov. 5, 2009).

On September 30, 2009, Anna Burger, secretary-treasurer for SEIU International, stated before the House Financial Services Committee that "SEIU has also cut all ties to ACORN."[148] But as this report clearly shows, SEIU has never cut ties to ACORN.[149] When Ms. Burger made the above statement, SEIU International was transferring assets, liabilities, equity, officers, and membership from SEIU Local 880 to SEIU Healthcare Illinois and Indiana.[150] As Table 6 illustrates, although the name has changed, the connections and personnel have remained the same, ensuring ACORN's continued influence on and partnership with SEIU. SEIU and ACORN appear to be very much involved still today. According to ACORN/SEIU insiders:

> There is "no way" SEIU has separated itself from ACORN. "[Anna Burger] lied." The relationship between ACORN and SEIU was "seamless."[151]

According to an Arnold, Missouri city councilman, "the use of taxpayer funds for the Jefferson County 911 Proposition and involvement of SEIU/ACORN/PowerUnion and about 100 others . . . is a very complicated arrangement by design. It is so intentionally designed to deceive [sic] . . . Voters lists were purchased from the Missouri [sic] Democratic Party and the SEIU Phone Dialer on Pershing Ave. in the City of St. Louis was used. I believe some $20,000 taxpayer dollars were paid to SEIU for the use of the dialer."[152]

In fact, according to LM-2 political contribution filings, the following entities received political contributions from SEIU and are affiliated with ACORN[153]:

1. ACORN
2. ACORN Houston
3. ACORN Michigan
4. ACORN New Mexico
5. Advancement Project
6. America Votes Inc
7. Catalist LLC
8. Change To Win Political Education
9. Healthcare for America Now
10. Jobs With Justice
11. Missouri Progressive Vote Coalition
12. San Francisco Labor Council Labor & Neighbor Independent Expenditure PAC
13. SEIU American Dream Fund
14. SEIU Healthcare Illinois Indiana

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[148] Available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr_092309.shtml.
[149] Interview, Committee Staff and Insider 1 (ACORN, SEIU) and Insider 2 (ACORN), Jan. 14, 2010 (on file with author).
[150] *Id.*
[151] *Id.*
[152] Email, Matthew Hay to Committee Staff, Re: SEIU and ACORN, Jan. 12, 2010 1:44PM (on file with author).
[153] SEIU, Political Contributions (Form LM 2), at *passim* (2009).

15. SEIU Healthcare Illinois Indiana PAC
16. SEIU Illinois Council PAC Fund
17. SEIU Local 1199
18. SEIU Local 1199 NJ Health
19. SEIU Local 1199 United Healthcare Workers East
20. SEIU Local 32BJ
21. SEIU Local 880
22. SEIU Local 880 Political Action Committee
23. SEIU Missouri State Council Pac Fund
24. SEIU NJ State Council AFL-CIO
25. The Advance Group
26. The Democracy Alliance
27. Working Families Campaign Committee
28. Working Families For Progressive Leadership
29. Working Families Party

Of particular notice is the lobbying shop, The Advance Group. In 2007, New York ACORN hired The Advance Group as its principal lobbyist.[154] ACORN paid The Advance Group and its additional lobbyists $50,000.00 to target the New York City Council for funding.[155] ACORN paid The Advance Group $30,000.00 to target the New York City Council, the New York State Senate, and the New York State Assembly for funding.[156] However, even as Scott Levenson of the Advance Group worked as ACORN's outside lobbyist, Levenson also designated himself as ACORN's national spokesman to media outlets including Fox News.[157] Despite lobbying for ACORN in 2007 and perhaps earlier, The Advance Group and Scott Levenson did not register as the principal lobbyist for "NY ACORN" until January 15, 2008.[158]

VI. ACORN and the Financial Collapse

ACORN's infamous Muscle for Money Program, which was created by SEIU, was used with the Community Reinvestment Act to pressure banks and lenders into relaxing home mortgage lending standards – a process that financially benefited ACORN. According to economic historian Johan Norberg, "ACORN shared the objective of wringing out more subprime mortgages."[159] Norberg clarifies this process in detail:

> One reason politicians decided to publicize information about mortgages and CRA grades was to encourage public debate about them. Their tactic worked: various citizens' groups started to

[154] NEW YORK CITY LOBBYIST DATABASE, *available at*: http://www.nyc.gov/lobbyistsearch/.
[155] *Id.*
[156] *Id.*
[157] Video excerpt from the Fox News Program with Megyn Kelly, YOUTUBE, *available at*: http://www.youtube.com/watch?v=3PS4pJb_QVM (2009).
[158] *See* The Advance Group, 2008 LOBBYING REGISTRATION, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 4), *available at*: http://lobbyingdisclosure.house.gov.
[159] JOHAN NORBERG, FINANCIAL FIASCO: HOW AMERICA'S INFATUATION WITH HOME OWNERSHIP AND EASY MONEY CREATED THE ECONOMIC CRISIS, (2009) at 35.

> pressure banks into expanding their lending. One of these groups was the Association of Community Organizations for Reform Now, and one of its most successful activists was Madeleine Talbott at ACORN Chicago. She launched meetings for banks that agreed to lower their creditworthiness requirements and reduce down payments they demanded, and she organized protest rallies against those that did not. Her goal was to push banks—"kicking and screaming"—into more generous lending practices. . . . Madeleine Talbott of ACORN was a key player when several financial institutions agreed in 1993 to launch an innovative national $55 million package to give home loans to households on low incomes and with low creditworthiness. . . . the CEO of Countrywide, a mortgage giant, who during a solemn meeting with Henry Cisneros had signed a pledge to use "proactive creative efforts" to expand homeownership to minorities and people with low incomes. In 1996, Countrywide opened a division dedicated to subprime mortgages.[160]

A. ACORN's Contribution to the Housing Crisis

The financial crisis of 2008 was in large part created by the collapse of the housing market. Last year, the Committee published a report detailing the role the Community Reinvestment Act (CRA) played in the housing market collapse by forcing lenders to grant home loans to risky applicants who defaulted on loans once they could not afford to pay them off.[161] At the center of this report was the relationship between Government Sponsored Enterprise Fannie Mae and Countrywide Financial Corporation. According to *Investor's Business Daily*, Fannie Mae CEO Franklin Raines "steered Fannie Mae business to subprime giant Countrywide Financial."[162] Years before the bubble burst, in 1999, a *New York Times* article on Fannie Mae's relaxed mortgage lending standards quoted Peter Wallison, a fellow at the American Enterprise Institute, as stating, "If they fail, the government will have to step up and bail them out".[163]

Over the past few months, additional evidence has been uncovered which suggests that ACORN and ACORN Housing Corporation (AHC) enabled the lead up to and profited from the housing market collapse by coercing lenders into entering into

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[160] *Id.* at 28 29. *See also* HEIDI SWARTS, ORGANIZING URBAN AMERICA: SECULAR AND FAITH BASED PROGRESSIVE MOVEMENTS, at 95 (2008) ("Nationally, ACORN has negotiated landmark agreements with banks all over the country, making over a billion dollars available for loans in low income neighborhoods. It helped preserve the federal Community Reinvestment Act that made these agreements possible").

[161] *See* Minority staff report, *The Role of Government Affordable Housing Policy in Creating the Global Financial Crisis of 2008* (2009), *available at*: http://republicans.oversight.house.gov/images/stories/Reports/20090707HousingCrisisReport.pdf

[162] Editorial, *The Real Culprits In This Meltdown*, INVESTOR'S BUSINESS DAILY, Sept. 15, 2008, *available at*: http://www.ibdeditorials.com (last visited Feb. 7, 2010).

[163] Steven A. Holmes, *Fannie Mae Eases Credit To Aid Mortgage Lending*, N.Y. TIMES, Sept. 30, 1999, *available at*: http://www.cbrusven.com/xsites/Agents/cbrusven/content/uploadedFiles/ExplainingTheMortgageMess .pdf (last visited Feb. 7, 2010).

these very risky loan agreements. ACORN's national and local organizations have been powerful forces in persuading federal and local governments to loosen loan standards and prevent efforts to tighten loan standards. Second, AHC used the CRA and coercive tactics to pressure banks into lowering loan standards and entering into special agreements with AHC, in which AHC is the main beneficiary.

B. ACORN Lobbying Efforts

FINDING: *ACORN Housing Corporation (AHC) used agreements with banks to provide a variety of benefits for their organization, while not necessarily helping, and sometimes exploiting, the low-income citizens they claim to help.*

ACORN's national organization has a long history of using public demonstrations and other intimidation tactics to persuade policymakers to loosen loan underwriting standards. Notably in 1991, ACORN organized a takeover of a congressional hearing room in order to halt planned reforms of the CRA. The proposed reforms would have allowed banks to take credit for providing loans to non-minority applicants and would have allowed the GAO to investigate whether the way in which federal agencies were complying with CRA was not inadvertently encouraging banking institutions to enter into risky loan agreements.[164] According to ACORN's own website, "ACORN members staged a two-day takeover of the House Banking Committee hearing room to be sure their voices were heard by Congress. They stood in line overnight and took seats normally occupied by bank lobbyists."[165] Not surprisingly, the reforms to CRA were defeated

ACORN also played a large role in the passage of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.[166] This Act, commonly known as the "GSE Act," heavily affects government-sponsored enterprises (GSE's), Fannie Mae and Freddie Mac. The GSE Act did the following:

- Imposed "an affordable housing mandate on Fannie Mae and Freddie Mac (the GSEs)" in which quota standards for loans to middle and low-income individuals would be set by the Department of Housing and Urban Development (HUD).[167]
- Ordered "GSEs to consider a loosening of their underwriting standards to accept down payments of 5% or less."[168]

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[164] H.R. 6, 102nd Cong. (1991)
[165] *Acorn History: 1990 1995, ACORN,* Available at: http://www.acorn.org/index.php?id=12443 (last visited Jan. 28, 2010).
[166] Edward Pinto, *Acorn and the Housing Bubble,* WALL STREET J, Nov. 12, 2009, *available at:* http://online.wsj.com/article/SB10001424052748703298004574459763052141456.html (last visited Feb. 8, 2010).
[167] Edward Pinto, *From a Tiny ACORN a Mighty Housing Bubble Grew*, WALL STREET J. [Draft], Sep 21, 2009. (on file with author).
[168] *Id.*

- Forced GSE's to "ignore instances of impaired credit that were over 1 year old."[169]
- Required GSE's "to devote 30 percent of their loan purchases to mortgages for low- and moderate-income borrowers."[170]

These changes in loan standards for Fannie Mae and Freddie Mac were a radical change from previous policies. In particular, Fannie Mae, at the time, was known for its strict policies on lending standards, in which purchases of unconventional or risky loans were declined.[171] These tight standards were in response to a string of foreclosures in 1982 that were blamed on Fannie Mae's policies of loose loan requirements that required down payments of only 5% and ignored the impaired credit of borrowers.[172]

According to Edward Pinto, the former chief credit officer at Fannie Mae in the 1980s, the "changes worked, for starting with the very next year, loans with 5% down were once again performing at an acceptable risk level."[173] However, with the new standards in place as a result of the passage of the GSE Act, Fannie Mae was faced with the prospect of going down the same path that led to the long string of foreclosures during the early-1980's.

ACORN's role in getting the GSE Act passed should not be understated. As Edward Pinto describes, ACORN and other community groups helped draft the language that set affordable housing standards for Fannie Mae and Freddie Mac and were influential in getting the language that forced the GSE's to enact looser credit standards into the final bill:

> [A]s Allen Fishbein, currently an adviser for consumer policy at the Federal Reserve, has noted, Acorn and other community groups were informally deputized by then House Banking Chairman Henry Gonzalez to draft statutory language setting the law's affordable-housing mandates. Interim goals were set at 30% of the single-family mortgages purchased by Fannie and Freddie, and the Department of Housing and Urban Development has increased that percentage over time. The goal of the community groups was to force Fannie and Freddie to loosen their underwriting standards, in order to facilitate the purchase of loans made under the CRA. Thus a provision was inserted into the law whereby Congress signaled to the GSE's that they should accept down payments of 5% or less, ignore impaired credit if the blot

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[169] *Id.*
[170] Steven Malanga, *Obsessive Housing Disorder,* CITY JOURNAL, available at: http://www.city journal.org/2009/19_2_homeownership.html.
[171] *Id.*
[172] Edward Pinto, *supra note* 174 at *id.*
[173] *Id.*

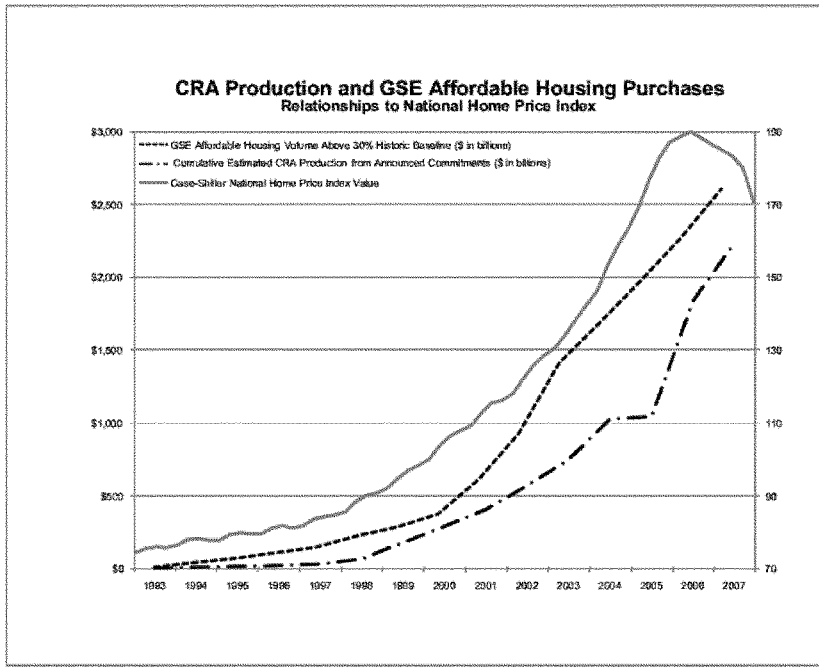
was over one year old, and otherwise loosen their lending guidelines.[174]

During testimony before the House Financial Services Committee on September 16, 2009, Pinto made the case that ACORN advanced policies that affected the economic collapse:[175]

- "Over the last twenty years, the percentage of conventional purchase money mortgages made with the borrower putting less than 10% down more than tripled from 8% in 1990 to 29% in 2007."
- "Over the period 1997-2007 the GSEs acquired a total of $2.2 trillion in credit impaired loans and private securities backed by credit impaired loans. [T]he GSEs were leader in this regard."
- "As a result of the combined CRA and AH [affordable housing] volume explosion that started in 1993, the nation's homeownership rate, after being level for over 30 years, began to grow rapidly from 1994 when it was at 64.2%, to 68% by 2001, and peaking at 69.2% in 2004."
- "The GSEs' delinquency rate on their $1.5 trillion in high risk loans, 85% of which are goals rich AH loans, is 15.5%. [as of June 30, 2009]. This is about 6.5 times the 2.4% delinquency rate on the GSEs' traditionally underwritten loans."

According to experts like Pinto, the changes in loan production brought about by the policies that ACORN helped to protect, and the policy changes that ACORN promoted, were a large contributor to the creation of the housing price bubble from 1997-2007.[176] The following chart, which was used as part of testimony given by Edward Pinto before the House Financial Services Committee in the fall of 2009, demonstrates the explosion of GSE and CRA loans following the policy changes advocated by ACORN and the relationship of this explosion to Housing prices[177]:

[174] Edward Pinto, *Acorn and the Housing Bubble*, WALL STREET J, Nov. 12, 2009, *available at*: http://online.wsj.com/article/SB10001424052748703298004574459763052141456.html (last visited Feb. 8, 2010).
[175] Written Testimony of Edward Pinto, Comm. Financial Services, Proposals to Enhance the Community Reinvestment Act, September 16, 2009, available at: http://www.house.gov/apps/list/hearing/financialsvcs_dem/pinto_testimony.pdf
[176] *Id.*
[177] *Id.*



The production of GSE and CRA loans started to increase exponentially around 1997, only five years after the GSE Act--which ACORN drafted--was enacted. Furthermore, the increase in the production of GSE and CRA loans coincided with increases in the National Home Price Index, which measures changes in the value of the U.S. residential housing market. The National Home Price Index increased until around 2006, when borrowers began to default on loans they had no ability to pay for—as a result, the housing bubble burst.

A November 19, 2009 news report stated ACORN Housing negotiated with lenders to serve its own interests, failing to actually help the foreclosed-upon individuals the organization is federally mandated to protect.[178] According to a column by Edward Pinto in the *Wall Street Journal*, ACORN was deputized to draft model CRA legislation

[178] Sonya Heitshusen, *ACORN HEADACHE: A group that's supposed to help homeowners in foreclosure has dropped out of sight in the metro*, 13WHOTV, Nov. 19, 2009, available at: http://www.whotv.com/news/who_story_acorn headache 111809,0,4197686 .story

and then became the largest player in government policies that lowered mortgage-lending standards, the cause of the housing bubble that led to the financial collapse.[179]

C. ACORN Actions against Banking Institutions

FINDING: *The AHC used the Community Reinvestment Act provisions and coercive threats to force banks into lowering loan underwriting standards and entering into agreements that funneled profits to ACORN.*

ACORN affiliate, ACORN Housing Corporation (AHC), has also used CRA provisions and coercive tactics to pressure banks into lowering loan standards and entering into special agreements with AHC, in which AHC is the main beneficiary.

Heidi Swarts, currently an Assistant Professor of Political Science at Rutgers, was allowed to directly participate and observe the activities of ACORN and other social organizations when writing her PhD dissertation. She found that ACORN uses the CRA and other protest tactics to persuade banks to loosen loan standards and make agreements with AHC:

> ACORN uses provisions in the Community Reinvestment Act of 1977 that allow community groups to challenge bank mergers and acquisitions if a bank has not adequately invested in its own community. These challenges, which often feature ACORN's standard protest tactics, have successfully forced St. Louis banks to make lending agreements with ACORN Housing if they want a pending merger to be approved. Then ACORN Housing acts as a conventional service provider. St. Louis ACORN has negotiated agreements with Boatmen's, Landmark, First Bank, First Nationwide, Allegiant, Roosevelt, Magna, Nationsbank, Firststar, and other banks.[180]

Swarts further noted:

> Nationally ACORN has negotiated landmark agreements with banks in St. Louis, Baton Rouge, Boston, Bridgeport, New York City, Jersey City, Philadelphia, Phoenix, Denver, Little Rock, New Orleans, Chicago, Minneapolis-St. Paul, Brooklyn, Des Moines, Dallas and Washington, D.C., making over a billion dollars available for loans in low- income neighborhoods.[181]

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[179] Edward Pinto, *Acorn and the Housing Bubble,* WALL STREET J., Nov. 12, 2009, *available at:* http://online.wsj.com/article/SB10001424052748703298004574459763052141456.html

[180] Heidi Swarts, *Grassroots Community Organization: Invisible Actors in American Urban Politics.* (Dissertation) Aug 2002, at 84 85 (on file with author).

[181] *Id.* at 74 75.

AHC has frequently used litigation, under supposed CRA violations, to gain concessions from banks in their loan standards. In correspondence with this Committee, a representative from HSBC noted the following about an agreement entered into with AHC as a result of litigation pursued by ACORN:

> In 2003, various HSBC Finance Corporation (formerly Household International, Inc.) consumer mortgage lending entities agreed to the settlement of litigation that included as an additional plaintiff, the Association of Community Organizations for Reform Now ('ACORN'). The settlement agreement included a foreclosure avoidance program that provided relief to HSBC borrowers who were delinquent on their payments and at risk of losing their homes.[182]

According to a flyer distributed by AHC to prospective clients, AHC had formed agreements with a wide variety of lenders to work out "repayment plans, forbearance plans, loan modifications, refinances and partial claims" for individuals who were behind on their loans.[183] The following is the list of lenders whom AHC had agreements with according to their flier: ABN/AMRO, Ameriquest, ASC Mortgage, Bank of America, Chase, CitiFinancial, CitiMortgage, Countrywide, Dovenmuehle Mortgage, EMC Mortgage, First American, GMAC, Green Tree Servicing, Homecomings Financial, HomeEq, Household/Beneficial, M&T Bank, National City, New Century, Ocwen Servicing, Option One, PHH/Cendant, Saxon Mortgage, Standard Mortgage, U.S. Bank, Wachovia, Washington Mutual, and Wells Fargo.[184]

Table 7. Relationship of ACORN Housing, Inc. with Banking Institutions

Banking Institution	Money Given to ACORN Housing (1993-2008)	Agreements or Settlements Made with ACORN Housing	Did ACORN Use Litigation?
Bank of America	$13,500,000.00	• Supported ACORN Housing's efforts to provide counseling services • Entered a service agreement with ACORN Housing in which ACORN Housing receives payments for referrals for counseling and home preservation services	No
JPMorgan Chase & Co.	$9,467,388.00	• Provided grants to ACORN Housing to support affordable housing and foreclosure prevention programs in low and moderate income communities	No
Citi	$8,075,000.00	• ACORN assisted Citi in making contact with	No

[182] Letter from HSBC's Deputy Chief Executive Officer to Rep. Darrell Issa., Oct. 9, 2009, (on file with author).
[183] ACORN Lenders Flier (2007) (on file with author).
[184] *Id.*

		distressed borrowers and negotiating loan modifications to keep these individuals in their homes • Provided support to ACORN for financial education programs	
HSBC	$7,441,789.00	• Conducted a foreclosure avoidance program to provide relief to HSBC borrowers delinquent in their payments and at risk of losing their homes, as a result of a settlement to resolve outstanding litigation between ACORN Housing and HSBC • Provided funding for ACORN sponsored financial counseling and literacy programs, as a result of a settlement to resolve outstanding litigation between ACORN Housing and HSBC	Yes
CapitalOne	$1,400,000.00	• Provided grants to ACORN Housing made for the purposes of Hurricane Katrina disaster relief, promotion of affordable home ownership, and financial literacy • Provided a grant to ACORN Housing as an outcome of a settlement reached in 2006 to resolve outstanding litigation between ACORN Housing and Capital One	Yes
SunTrust	$41,443.13	• Crestar Bank (affiliate of SunTrust) paid ACORN Housing to counsel mortgage applicants and refer these applicants to Crestar Bank in 1993 • ACORN Housing agreed to conduct financial education seminars and pre home purchase counseling on behalf of Crestar Bank in 1997	No
Total Spending	$39,925,620.13		

One of the benefits that AHC was able to extract from banks through the use of coercive tactics was grant funding. As a result of our investigation into ACORN, this Committee received letters from representatives of fourteen different banking institutions detailing their relationships with ACORN and its affiliates. Information highlighted from these letters can be found in Table 7. As Table 7 demonstrates, between 1993 and 2008, AHC has received a total of **$39,925,620.13** from Bank of America, JPMorgan Chase & Co., CitiBank, HSBC, CapitalOne, and SunTrust. There are serious concerns that AHC transfers portions of this money to ACORN headquarters for political purposes. During a special forum on ACORN's practices conducted jointly by the Republican Members of the House Committee on Oversight and Government Reform and the House Judiciary Committee, Anita MonCrief, a former employee of ACORN, stated the following concerning the use of money AHC received from the federal government, banking institutions, and charitable organizations:

> That money goes into the national ACORN coffers. If they would actually go out and fix the things they say they were going to fix, that money would eventually dry up...They may have a housing counseling session, but it's usually run by a poorly trained worker whose main goal is to increase ACORN membership. They're not really doing anything with the money they're getting besides using

> it to fund the political machine. What little they do use for actual programs, it still does not justify what they've gotten from the government and from private foundations over the years and as long as they keep people poor, they will continue to get the money to fix the same problems in the neighborhoods.[185]

These grants are often obtained by AHC through the use of coercive tactics, including the threat of litigation. Table 7 shows several grants received by AHC from CapitalOne and HSBC were a result of litigation settlements between AHC and banking institutions. CapitalOne's representative stated, "ACORN received a grant from us as an outcome of a settlement we reached in 2006 with the Attorney General of the State of Minnesota that resolved outstanding litigation."[186] HSBC's representative stated that the settlement of a dispute between AHC and HSBC included "$6 million funding . . . over a three-year period for ACORN-sponsored financial counseling and literacy programs."[187]

1. The Banks and ACORN ran a profitable partnership

Another way that AHC benefited from agreements with banks was through refering potential clients to each other. For instance, a representative from Bank of America described service agreements between AHC and Bank of America where "AHC receives payments for referrals for counseling services and home preservation services."[188] Furthermore, as a SunTrust representative described, in 1993, "Crestar Bank (an affiliate of SunTrust) paid ACORN Housing Corporation to counsel certain mortgage applicants and refer such applicants to Crestar Bank."[189]

Table 8. Top Mentions of Lending Institutions in ACORN Referral Documents

Institution	Number of Mentions	Established Relationship with ACORN
Countrywide	234	Yes
American Servicing Company	88	Yes
Chase Home Mortgage	66	Yes
EMC Mortgage Corp.	61	Yes
Option One Mortgage Co.	59	Yes
Washington Mutual (WaMu)	47	Yes
HomeEq Servicing	45	Yes
Wells Fargo	44	Yes
GMAC Mortgage	40	Yes

[185] Testimony of Anita MonCrief, Comm. Oversight and Gov't Ref & Comm. Jud., ACORN Forum, Dec. 1, at 1

[186] Letter from Lawrence J. Stein, CapitalOne's Senior Vice President, Policy Affairs to Rep. Darrell Issa (Oct. 15, 2009) (on file with author).

[187] Letter from Niall S.K. Booker, HSBC's Deputy Chief Executive Officer to Rep. Darrell Issa (Oct. 9, 2009) (on file with author).

[188] Letter from John Collingwood, Bank of America to Rep. Darrell Issa (Oct. 21, 2009) (on file with author).

[189] Letter from McHenry Kane, SunTrust to Rep. Darrell Issa. (Oct. 14, 2009) (on file with author).

Homecomings Financial	39	Yes
Litton Capital Mortgage	38	No
Saxon	38	Yes
Select Portfolio Servicing, Inc.	34	No
Ocwen Financial Corp.	33	Yes
HSBC Bank	32	No
Wilshire Credit Corp.	29	No
First Franklin Financial	28	No
CitiBank	27	Yes
Ameriquest Mortgage	22	Yes
American Mortgage Corp.	20	No
Bank of America	20	Yes
Household Financing Corp. (HFC)	16	No
New Century Mortgage	16	Yes
DL Mortgage	15	No

Furthermore, evidence obtained by this Committee indicates that AHC has entered into agreements with banks that provide contact information about individuals who are in danger of foreclosure. This Committee obtained access to records of individuals referred to AHC from corporate lenders, including Countrywide and Citibank.[190] Table 8 presents a list of lenders who represented the most individuals in these referral records. Of the top 25 lenders listed on Table 8, 16 were also included in the list of lenders in the flier referred to above, with whom AHC has established relationships. On the basis of these relationships, banking institutions provided AHC with lists of lenders who were at risk of foreclosure.[191]

While AHC claimed obtaining these referral lists would help clients, these lists were financially valuable to AHC. On October 26, 2009, ACORN's General Counsel stated ACORN makes $48 million a year from membership fees.[192] According to information obtained by Heidi Swarts during her time as a participant-observer of ACORN's practices, AHC used foreclosure assistance as an incentive to get individuals to sign up with ACORN's national organization.

> Locals like SL ACORN, which include branches of the ACORN Housing Corporation or Hiring Hall, boost their income through selective incentives-that is, they recruit members from those who apply for low-cost home loans or job referrals... ACORN's services also helped recruit dues-paying members, and staff attempted to link these recruits to related political campaigns.[193]

[190] Acorn Referral Master (Feb. 27, 2008) (on file with author).
[191] *Id.*
[192] Lincoln Anderson, *Right has ACORN on ropes, but fight isn't over: Attorney*, THE VILLAGER, Oct. 21 27, 2009, available at: http://www.thevillager.com/villager_338/righthas.html
[193] Heidi Swarts, *Grassroots Community Organization: Invisible Actors in American Urban Politics*, Aug 2002, 84 85, 101 (on file with author).

During a special congressional forum on ACORN's practices, Anita MonCrief, a former employee of ACORN, confirmed that ACORN uses foreclosure advice in order to sign up more members.

> When they do their housing counseling sessions . . . they used to have an option where you could either pay 20 dollars for a credit report or you could sign up to become a member of ACORN. The membership dues equal about 110 dollars per year or so . . . They were losing out on that one but a lot of people chose to sign up.[194]

When asked whether individuals being signed up as members of ACORN were sophisticated enough to realize they were losing money, MonCrief stated:

> I don't think so. There were numerous times when I would go to the fax machine and there would be angry letters from people saying, 'Please stop debiting my account. You've already overdrawn my account" and ACORN had a problem with actually going in and taking these people out of the system so sometimes they would have to request two or three times to stop the direct debits.[195]

Information obtained by our committee confirms MonCrief's allegations. An ACORN insider stated, "ACORN would beat up on the banks."[196] According to the insider, CRA lenders and loan counselors would provide housing information to ACORN and ACORN used this information to register new members by claiming to provide free housing counseling.[197] ACORN "tricks" poor people through its membership drives where ACORN's organizers go door to door and recruit only those individuals who give their bank account information.[198] ACORN automatically drafts $10 a month from the bank account.[199] Individuals later call ACORN's offices claiming, "I didn't know money would come out every month."[200]

The following e-mail is one of many obtained by the Committee in which an ACORN member requested repeatedly to stop being charged membership dues[201]:

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[194] Testimony of Anita MonCrief, Comm. Oversight and Gov't Ref & Comm. Jud., ACORN Forum, Dec. 1, at 1
[195] *Id.*
[196] Telephone Interview with Insider 2, Former Missouri ACORN Chief Organizer, and Insider 1, former ACORN and SEIU Employee (Jan. 14, 2010).
[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] E mail from frustrated ACORN member to Claudia Peralta, ACORN Financial Center (Apr 6, 2009) (on file with author).

SFC 003277

Acorn Monthly Fee
2 messages

[redacted] Mon, Apr 6, 2009 at 9:12 PM
To: Claudia Peralta <acornfinancialcenter@gmail.com>

Hi Claudia ----- The last time we spoke you confirmed that my monthly fee of $10 would be canceled but today, I was charged again. PLEASE FIND OUT WHY I'M NOT REMOVED AND CALL OR EMAIL YOUR RESPONSE. I need assurance that ACORN will stop charging my account.
I appreciate your prompt feedback.....Greetings..... [redacted]

--- On **Thu, 3/5/09,** [redacted] wrote:

From: [redacted]
Subject: Fw: Acorn Monthly Fee
To: "Claudia Peralta" <acornfinancialcenter@gmail.com>
Date: Thursday, March 5, 2009, 11:39 AM

Second request.....I appreciate your feedback.....

--- On **Tue, 3/3/09,** [redacted] wrote:

From: [redacted]
Subject: Acorn Monthly Fee
To: "Claudia Peralta" <acornfinancialcenter@gmail.com>
Date: Tuesday, March 3, 2009, 11:49 AM

Dear Claudia,

Please cancel my monthly $10.00 charge - I can not continue these payments due to my financial situation. I hope you understand.
Let me know you will take care of this and confirm that this month will be the last charge.

Thank you and take care,

[redacted]

VII. Conclusion

Information about ACORN's funding sources and secretive financial infrastructure provides critical insight into the organization's true purpose: political activity and increasing the power of ACORN's top officials. Committee investigators have identified hundreds of ACORN bank accounts, shell organizations incorporated under different sections of the internal revenue code, and even an ACORN controlled accounting firm (Citizens Consulting Inc.) that helps ACORN obscure the true use of charitable donations and taxpayer funds.

Documents and testimony from ACORN whistleblowers reveal that ACORN activities – despite contentions that they are intended to help the poor – fulfill a more self-serving and political purpose for ACORN.

Union organizing projects conducted by ACORN in conjunction with the SEIU provided ACORN with a funding source of dues paying union members, the opportunity to learn union "Muscle for the Money" strong-arm tactics, and access to labor friendly politicians such as former Illinois Governor Rod Blagojevich and officials in the current White House. ACORN actually controls two SEIU chapters, has shared office space with SEIU in nine cities, and a number of ACORN employees work simultaneously for SEIU.

ACORN and its affiliates receive taxpayer dollars and charitable contributions that are transferred through complex accounting structures to other ACORN affiliates that engage in partisan political campaigns. These accounting practices make it impossible to trace exactly how ACORN has spent the overwhelming majority of federal funds it receives. Evidence though makes clear that ACORN has falsified reporting in government filings and that large amounts of cash from ACORN's charitable affiliates are transferred to ACORN entities that engage in or fund partisan political work.

ACORN Housing (AHC) financially profited from efforts to intimidate banks into lowering down payment and mortgage lending standards – a trend that contributed to the financial crisis. ACORN used provisions in the Community Reinvestment Act (CRA) of 1977 to challenge bank mergers and acquisitions. These challenges successfully forced banks to make lending agreements with ACORN Housing. ACORN is one of the few entities that actually profited from the misery created by the collapse of the housing bubble. ACORN Housing was able to become a Housing and Urban Development (HUD) approved housing counselor, and received address and bank account information from lenders and banks for counseling and home preservation services. ACORN then used this information to sign up more dues-paying members. Evidence obtained by investigators shows that a number of individuals who were signed-up as dues paying members did not understand the terms of their enrollment and had difficulty withdrawing their membership and getting ACORN to stop debiting their accounts. ACORN's membership recruiting was highly profitable -- $48 million a year for the organization.

Politically, SEIU, ACORN and its affiliates worked in coordination to advance the campaigns of Democratic candidates. Often, the same individuals who were making political decisions for SEIU and ACORN affiliates to support partisan candidates or ballot measures were also running voter turnout and registration efforts that used federal dollars and were legally required to be separated from partisan and advocacy efforts. This dynamic not only created a clear conflict that warrants further investigation, but also gave these individuals access to organizational funds that were transferred, without clear explanation, to ACORN entities that engaged in more overtly partisan activities.

Until recently, ACORN has largely been able to hide the extent of its most serious legal problems from scrutiny by media and public prosecutors. Nevertheless, ACORN is well aware of these problems as ACORN's own attorneys have acknowledged and outlined the potential for criminal and civil violations in private documents for senior ACORN officials. In the past, the reluctance of prosecutors and other public officials to challenge ACORN's illegal activities may have stemmed from concern about the perception of bringing legal action against an organization that purports to serve the poor.

More disturbingly, it could also be the fear of challenging an organization that has waged savage public campaigns and delivered subtle private threats to large banking institutions for its own financial gain, defeated former political allies who lost the senior leadership's favor, and formed powerful alliances with the SEIU, state officials like former Illinois Governor Rod Blagojevich, and the Barack Obama White House.

Now, however as official investigations of ACORN have begun to begun to expose wrongdoing, more ACORN whistleblowers are coming forward with documented accounts of ACORN's criminal conduct and partisan political aims. A much clearer picture of ACORN has emerged that is changing public perception of the organization. ACORN is a not a bumbling and disorganized non-profit whose employees made mistakes during voter registration drives, but rather a complicated and sophisticated conglomerate of for-profit and non-profit entities with ties to and allegiance from key public figures. Its senior leadership uses low level employees and the poor it purports to serve to fill the organization's coffers and empowers the senior leadership to sit at the same table as the political candidates it helps elect.

This should be very troubling to all Americans. Political campaigns, taxpayer funds, and charitable donations are subject to regulations designed to protect their integrity. By abusing the rules of all three in furtherance of a political agenda, ACORN exploits the poor and vulnerable who are intended to derive benefit from public and private aid by diverting these resources to corrupt the democratic electoral process. Only by investigating and exposing the extent of this wrongdoing can prosecutorial officials across the United States understand the full scope of ACORN's crimes – not as isolated misdeeds but as part of a coordinated effort to violate Federal, State, and local statutes designed to protect Americans from machine politics and cronyism in government.

VIII. Appendices

A. Table 9. *State Governmental Investigations and Actions Taken against ACORN for Improper Conduct*[202]

State	Office	Investigation or Violation
AR	Pulaski County Municipal Court	• Project Vote employee was convicted and sentenced to 30 days of community service in 1998 for submitting more than 400 fake voter registration applications. Project Vote paid its employees $1.00 for each voter registration application it received.
AR	State Police	• The protest actions of ACORN organizers were investigated to determine whether they broke any laws when they prevented Gov. Huckabee from giving a civil rights speech, in 1998.
AZ	Secretary of State	• Ian Curtiss (Designated Lobbyist for ACORN) failed to file Lobbyist Expenditure Report, in 2009. • ACORN's propensity to file fraudulent registrations and to turn in registrations after the filing deadline resulted in calls to reform voter registration system , in

[202] Information used to make this table comes from correspondence between Rep. Issa and various state election authorities, along with information obtained from Lexis Nexis searches as part of an investigation of ACORN conducted by the Department of Justice. Both of these information sources are on file with the author.

		2008.
CA	Attorney General	• ACORN is the subject of an ongoing investigation after an undercover video was released, in 2009, showing ACORN employees advising individuals posing as a pimp and a prostitute on how to misrepresent their business activities in order to receive governmental assistance and how to smuggle girls across the U.S. Mexican border to work as prostitutes in the U.S.
CA	Secretary of State	• Investigation of questionable voter registration cards in San Diego County in 2009 uncovered the finding that half were connected to ACORN employees re registering voters and indicated the possibility that re registration was the result of ACORN's practice of paying employees for each registration card received
CA	Registrar of Voters in San Diego County	• In 2008, 17.6% of voter registration cards turned in by ACORN's San Diego office were rejected for errors • Of the cards rejected for errors, 39.7% had to be voided altogether because the intended voter could not be contacted due to errors made by ACORN employees
CO	Denver District Attorney	• Two employees of ACORN were charged and convicted, in 2004, for soliciting and submitting fraudulent voter registration forms. ACORN employees were provided financial incentives for meeting certain quotas.
CT	State Elections Enforcement Commission	• ACORN is the subject of an ongoing investigation of voter registration irregularities after Bridgeport voting officials complained that ACORN attempted to register a 7 year old girl as a voter.
DE	Public Integrity Commission	• Delaware ACORN engaged in lobbying activities without having a registered lobbyist to represent them from 10/11/08 12/2/09
FL	Brevard County Supervisor of Elections	• Over 23 suspect registrations from ACORN were turned over to prosecutors, in 2008
FL	Department of Law Enforcement	• In 2009, 11 ACORN employees were arrested and charged with falsifying 888 voter registration forms.

State	Office	Investigation or Violation
FL	State Attorney's Office	• ACORN was investigated, in 2004, for submitting 14 potentially fraudulent voter registration applications, including an application that forged information about a former St. Petersburg mayor.
GA	Governor's Office	• In 2009, Gov. Perdue issued an executive order preventing any state agencies from giving money to ACORN and calling for an investigation of any existing contracts with ACORN.
IL	Board of Elections	• ACORN was asked to update contact information to maintain active status as a voter registration organization and it has yet to do
IL	Secretary of State	• ACORN received notices of filing delinquency in 2007 and 2008 for failing to file a semi annual lobbyist registration, and 1st and 2nd half year lobbyist expenditure reports
IN	Secretary of State	• NWI ACORN employees with the assistance of national ACORN officials are alleged to have intentionally conspired to produce fraudulent, incomplete, or duplicate voter applications • NWI ACORN employees with the assistance of national ACORN officials are alleged to have deliberately submitted registration forms late in the election season so that the proper authorities would not have enough time to verify these applications • ACORN is alleged to have used a refined business model with the intent of shielding ACORN and its officers from criminal liability • ACORN employees were alleged to have failed to turn in voter registration forms to the Lake County Board of Elections
KS	Secretary of State	• ACORN attempted to file as a charitable organization in July, 2009, but the filing contained errors and was returned with a request for corrections, which was not answered
LA	Attorney General	• ACORN was subpoenaed in 2009 for records related to an ongoing investigation of possible legal violations including failure to pay employee withholding taxes to the state, obstruction of justice, violation of the Employment Retirement Security Act, and the possibility that Dale Rathke's embezzlement included grant funds given to ACORN by various governmental entities.
LA	Office of Governor	• In 2009, Gov. Jindall issued an executive order to prevent any state money from being distributed to ACORN.
MD	Attorney General	• In 2009, Attorney General Gansler received permission from Gov. O'Malley to investigate the activities of ACORN and make prosecutions of individuals related to the conduct of the group, if wrongdoing is discovered.
MD	Board of Elections	• ACORN currently owes $400.00 in fees from late campaign finance reporting for their PAC
MI	Attorney General	• In 2008, a former ACORN employee was charged and convicted of forgery for filling out, signing, and submitting 6 voter registration forms, using the names of two individuals without their permission.
MI	Secretary of State	• Project Vote was the subject of an investigation, in 2004, for allegedly submitting fraudulent applications and re registering individuals who were already registered. • ACORN was investigated, in 2008, for submitting duplicate voter registration forms and attempting to register individuals who did not exist.
MN	Hennepin County Attorney's Office	• A former ACORN canvasser, also suspected of submitting duplicates of completed registration cards, was charged with failure to turn in voter registration cards, in 2004 • An investigation into a case where an ACORN canvasser submitted multiple voter registration cards for the same person was dismissed when the canvasser died. • The late submission of voter registration cards by St. Paul ACORN was investigated in 2008

State	Office	Investigation or Violation
MN	Ramsey County Elections Office	• In 2008, nearly half of the voter registration cards turned in by Minnesota ACORN in Ramsey County were held longer than the 10 days allowed by Minnesota state law
MO	Kansas City Board of Election Commissioners	• In 2006, ACORN's voter registration activities were investigated when its employees submitted fraudulent voter registration applications. This investigation led to the conviction of four former ACORN employees. • In 2008, ACORN submitted abont 6,500 questionable voter registration applications that had to be checked for irregularities.
MO	St. Louis Election Board	• In 2006, ACORN submitted at least 1,492 potentially fraudulent voter registration cards to the St. Louis Election Board.
MO	U.S. District Court for the Western District of Missouri	• Fonr former ACORN temporary employees were convicted of voter registration fraud in 2007.
MS	Office of Governor	• Executive order ordered the State Fiscal Officer to conduct a review of Mississippi's relationship with ACORN and prohibited all state agencies from entering into contracts with or providing any financial assistance to ACORN or its affiliates
NC	Board of Elections	• Preliminary investigation into 2008 ACORN voter registration activities in Durham, NC uncovered around 100 voter applications submitted by ACORN that contained fraudulent or duplicated information. ACORN employees were subject to registration quotas, in North Carolina. • As a result of the investigation, the NC Attorney General has begun an ongoing investigation into ACORN's voter registration activities.
ND	Secretary of State	• Project Vote allowed registration to lapse on 9/1/06
NM	Bernalillo County Clerk	• In 2008, 1,500 potentially fraudulent voter registration forms, some of which were turned in by ACORN, were investigated for irregularities. As a result of the investigation, these cards were turned over to the Bernalillo County District Attorney's Office, the New Mexico Attorney General's Office, the U.S. Attorney's Office, and the FBI
NV	Secretary of State and Attorney General	• Investigation of ACORN voter registration activities, in response to complaints of potential voter registration fraud and voter intimidation, led to a raid of ACORN headquarters in 2008. • Evidence from Nevada's investigation demonstrates that ACORN sets quotas for its employees and provides rewards for those who register more voters, which is illegal under Nevada law. • Attorney General has filed a criminal complaint against ACORN concerning its voter registration activities alleging 13 felony counts of wrongdoing.
NY	Attorney General	• An investigation into whether pork barrel grants given to ACORN and its affiliates were used for their intended purposes was launched, in 2009, after an undercover video was released that showed Brooklyn ACORN employees giving inappropriate financial advice to individuals posing as a pimp and a prostitute
NY	Brooklyn District Attorney's Office	• An investigation was launched, in 2009, into potential criminal activities conducted by ACORN employees, after an undercover video was released that showed Brooklyn ACORN employees giving inappropriate financial advice to individuals posing as a pimp and a prostitute.
NY	City Clerk of NYC	• ACORN was served a notice to cure and fined $6,825.00 for deficiencies in filings of periodic lobbying reports

State	Office	Investigation or Violation
NY	Governor	• In 2009, Gov. Patterson's Budget Director and Director of State Operations ordered agencies to put a hold on any contracts with ACORN.
NY	New York City Board of Elections	• ACORN officials obtained a list of contact information of parents who would be voting on a plan to privatize five failing schools from the Schools Chancellor in 2001. This list was used to defeat the privatization plan and was given to ACORN illegally.
NY	Rensselaer County District Attorney	• In 2009, the Working Families Party was investigated based on allegations that public housing residents' names were forged on absentee ballot applications and ballots filed on behalf of the Working Families Party
NY	Staten Island District Attorney	• The Working Families Party has been the subject of an ongoing investigation, starting in 2009, to determine whether it broke campaign laws by assisting a local Democrat in winning the North Shore City Council seat in 2008.
OH	Cuyahoga County Board of Elections	• ACORN was investigated, in 2008, when its employees submitted multiple fraudulent voter registration applications. ACORN employees were subject to registration quotas set by ACORN officials. The evidence against ACORN was compiled into a binder which grew to be one inch thick. The investigation was then turned over to the Cuyahoga County Sheriff's Office. • In 2008, ACORN employees were accused of bribing an individual with cigarettes and money to get him to register to vote multiple times. The individual ended up registering to vote a total of 72 times.
OH	Cuyahoga Court of Common Pleas	• In 2009, an individual who was registered by ACORN multiple times was convicted for casting a fraudulent ballot.
OH	Franklin County Board of Elections	• ACORN employees turned in more than 60 suspicious registrations in 2004 • In 2006, ACORN turned in 500 potentially fraudulent voter registration applications. These applications were turned over to the Franklin County Prosecutor's Office.
OH	Franklin County Court of Common Pleas	• An ACORN employee was convicted, in 2004, for submitting a false registration form. • In 2007, an individual who was registered by ACORN multiple times was convicted on two counts of casting a fraudulent ballot.
OH	Hamilton County Board of Elections	• In 2004, an ACORN employee was investigated for submitting 35 voter registration cards for individuals who did not exist. ACORN employees were subject to registration quotas set by ACORN officials. • In 2008, ACORN was investigated for allegedly submitting multiple voter registration cards for individuals who did not exist.
OH	Secretary of State	• ACORN submitted 800 voter registration applications after the deadline, in 2004.
OH	Summit County Board of Elections	• ACORN was investigated when its employees submitted about 12 potentially fraudulent voter registration applications in 2006. • In 2008, ACORN was investigated for submitting many of the hundreds of potentially fraudulent voter registration applications turned in to the Summit County Board of Elections.
PA	Allegheny County District Attorney	• In 2009, 7 ACORN employees were charged with a combined 51 counts of forgery and other violations for submitting forged voter registration forms. As of February of 2010, one of these individuals has been convicted, while the rest await trial.

State	Office	Investigation or Violation
PA	Philadelphia Board of Elections	• Almost 1/3 of a batch of applications submitted by ACORN in 1999 appeared to be filled out by the same person. • In 2008, almost all of the approximately 1,200 potentially fraudulent voter registrations investigated were submitted by ACORN. These forms were turned over to the U.S. Attorney's Office for criminal investigation.
PA	Philadelphia City Commissioner	• ACORN was accused, in 2008, of submitting applications with discrepancies and missing data and re registering individuals who had already been registered to vote
RI	Board of Elections	• ACORN filed 13 campaign finance reports late resulting in $1,018 in fines and fees[203]
SC	State Law Enforcement Division	• Two ACORN employees were charged with election laws violations, in 2006, for affirming fraudulent voter registration applications.
TX	Ethics Commission	• ACORN's registered lobbyist requested a waiver of fine for not paying fees on time in 2009
TX	Harris County Tax Assessor Collector and Voter Registrar	• In 2008, about 14,000 voter registration applications submitted by ACORN were rejected due to missing information on the forms
VA	State Board of Elections	• Tidewater Project Vote consistently submits a high number of applications that are incomplete or contain clearly incorrect information • Tidewater Project Vote's incomplete or incorrect applications make up 83.12% of the total incomplete or incorrect applications received in 2005
WA	King County Elections Office	• In 2006, ACORN submitted thousands of voter registration cards after the specified deadline. ACORN also failed to submit new registration cards once a week, as required by law.
WA	King County Prosecutor and Pierce County Prosecuting Attorney	• ACORN was investigated, in 2007, for submitting more than 1,800 applications with significant irregularities, in King County. • In 2007, ACORN was investigated in Pierce County for submitting about 400 voter registration cards that were missing information, contained obviously fraudulent information, and/or listed one particular homeless shelter as an address. • As a result of the aforementioned investigations, seven ACORN employees were the subject of felony charges for submitting false information on voter registration cards. As of February of 2010, five of these individuals have been convicted.
WI	Milwaukee Election Commission	• 32 ACORN employees were turned over to the Milwaukee District Attorney's Office for submitting registrations with fraudulent information, attempting to re register individuals who had already been register to vote, and attempting to register individuals without their knowledge.
WV	Secretary of State	• ACORN, AHC, Project Vote/Voting for America, and AISJ's registrations have all been expired since 2007 and have all failed to meet registration requirements in West Virginia as of November 3, 2009

[203] Fines and fees were paid

B. Table 10. *Federal Investigations and Actions Taken against ACORN for Improper Conduct*

Investigating Office	Investigation
Department of Housing and Urban Development (HUD), Office of the Inspector General	• ACORN is the subject of an ongoing investigation, which began in 2009, into HUD's involvement with ACORN and its affiliates.
Department of Justice (DOJ), Office of the Inspector General	• In 2009, the DOJ conducted an internal audit, which uncovered that ACORN received federal money from the DOJ through its affiliates.
Department of Justice (DOJ), U.S. Attorney (Missouri)	• 8 ACORN employees were indicted, in 2007, on federal election fraud charges for submitting multiple voter registration applications with fraudulent information. All 8 employees have since been convicted on these charges. • In 2009, an ACORN employee was indicted on two counts of voter registration fraud for submitting forged and fraudulent voter registration cards.
Department of Justice (DOJ); U.S. District Court for the Western District of Missouri	• Four former ACORN temporary employees were convicted of voter registration fraud in 2007.
Department of Justice, Federal Bureau of Investigation (FBI)	• In 2004, ACORN's role in a plan to expand the size of Prince George's County Council was investigated, after it was discovered that the plan was funded largely by developers who stood to gain from the Council's expansion. • In 2008, the FBI began a nationwide investigation into ACORN to determine whether the group's policies encouraged its employees to engage in voter fraud across the U.S. • ACORN was investigated, in 2008, for possible federal election law violations when it submitted 600 800 potentially fraudulent voter registration applications in Kansas City
Department of the Treasury, Office of the Inspector General	• ACORN is the subject of an ongoing investigation into its financial practices to determine whether ACORN improperly used federal funds for political purposes.
Government Accountability Office (GAO)	• In 2010, ACORN will be the subject of an audit into whether ACORN has properly used federal grants for their intended purposes.

C. Key ACORN Officers, Fact Witnesses, and Insiders

Name	Role
Amy Schur	Member, ACORN Management Council
Anita MonCrief	Former ACORN Political Operations staff
Karyn Gillette	Project Vote Development Director
Anna Burger	SEIU Secretary-Treasurer
Anthony Hill	Florida State Senator, reported income from both ACORN and SEIU
Bertha Lewis	ACORN Chief Organizer
Beth Butler	Member, ACORN Management Council
Dale Rathke	Former ACORN Board Member
Helene O'Brien	Member, ACORN Management Council
Jeff Skrenes	Treasurer, MN ACORN PAC
Donna Pharr	Treasurer, ACORN
Nathan Henderson-James	Director, Strategic Writing & Research Department, CSI, Project Vote
William G. Stamm, CPA	Audit partner, Duplantier, Hrapmann, Hogan and Maher, L.L.P.
Norman Oder	Author, Atlantic Yards Report
Jon Kest	Member, ACORN Management Council
Keith Kelleher	Director, SEIU Local 880
Liz Wolff	Member, ACORN Management Council
Madeleine Talbott	President, ACORN Chicago
Maud Hurd	Former ACORN CEO
Michael McCray	Member, ACORN 8
Marcel Reid	President, ACORN D.C., Member, ACORN 8
Karen Inman	Former staff, Minnesota ACORN
Steve Bachmann	CCI General Counsel
Steven Kest	ACORN Executive Director
Elizabeth Kingsley	ACORN Counsel
Mike Shea	Director, ACORN Housing Corporation
Alton Bennett	Deputy Director, ACORN Housing Corp.
Nikki Paxton	Staff member, ACORN Minnesota
Apryl Walker	Head Organizer Delaware ACORN
Patrick Gaspard	Former SEIU Vice President
Patti Hagan	Former employee, Working Families Party
Stephanie Strom	Writer, the New York Times
Peter Colavito	ACORN/SEIU Political Director
Scott Levenson	ACORN Spokesman
Wade Rathke	Former Chief Organizer and CEO
Zach Nauth	ACORN/SEIU Lobbyist
Zach Polett	Director, ACORN Political Operations

D. The ACORN Council

1. 385 Palmetto Street Housing Development Fund Corporation
2. 4415 San Jacinto Street Corporation
3. 5301 McDougall Street Corporation
4. 650 Political Action Committee
5. ACHC Little Rock, AR
6. ACORN 2004 Housing Development Fund Corporation
7. ACORN 2005 Housing Development FUND CORPORATION
8. ACORN 408 East 8th St. Wilmington, DE
9. ACORN Albuquerque, NM
10. ACORN Allentown, PA
11. ACORN Arlington, TX
12. ACORN Associates Inc. Albuquerque NM
13. ACORN Associates, Inc.
14. ACORN Atlanta, GA
15. ACORN Aurora, CO
16. ACORN Baltimore, MD
17. ACORN Baton Rouge, LA
18. ACORN Bay Point, CA
19. ACORN Beneficial Association, Inc.
20. ACORN Beverly, L.L.C.
21. ACORN Bridgeport, CT
22. ACORN Brockton, MA
23. ACORN Bronx, NY
24. ACORN Buffalo, NY
25. ACORN Burien, WA
26. ACORN c/o the Progressive Center Tallahassee, FL
27. ACORN Campaign Services, Inc.
28. ACORN Campaign to Raise the Minimum Wage, Inc.
29. ACORN Canada
30. ACORN Center for Housing, Inc.
31. ACORN Charlotte, NC
32. ACORN Chicago, IL
33. ACORN Children's Beneficial Association, Inc.
34. ACORN Cincinnati, OH
35. ACORN Cleveland, OH
36. ACORN Columbus, OH
37. ACORN Community Labor Organizing Center, Inc.
38. ACORN Community Land Association Albuquerque NM
39. ACORN Community Land Association of Illinois
40. ACORN Community Land Association of Louisiana Baltimore MD
41. ACORN Community Land Association of Louisiana New Orleans LA
42. ACORN Community Land Association of Pennsylvania, Inc.
43. ACORN Community Land Association, Inc.
44. ACORN Cultural Trust, Inc.

45. ACORN Denver, CO
46. ACORN Detroit, MI
47. ACORN Dual Language Community Academy
48. ACORN Dumont-Snediker Housing Development Fund Corporation
49. ACORN El Paso, TX
50. ACORN Fair Housing Washington DC
51. ACORN Fair Housing, A Project Of American Institute Washington DC
52. ACORN Financial Justice Center St. Paul, MN
53. ACORN Foster Parents, Inc.
54. ACORN Fresno, CA
55. ACORN Ft. Lauderdale, FL
56. ACORN Ft. Worth, TX
57. ACORN Fund, Inc.
58. ACORN Glendale, AZ
59. ACORN Harrisburg, PA
60. ACORN Hartford, CT
61. ACORN Hempstead, NY
62. ACORN Hialeah, FL
63. ACORN Honolulu, HI
64. ACORN Housing 1 Associates, LP (limited partnership)
65. ACORN Housing 2 Associates, LP (limited partnership)
66. ACORN Housing 2, Inc.
67. Acorn Housing 2, Inc.
68. ACORN Housing 3 Associates LP
69. ACORN Housing 3, Inc
70. ACORN Housing Affordable Loans, LLC
71. ACORN HOUSING CORPORATION Albuquerque, NM
72. ACORN HOUSING CORPORATION Atlanta, GA
73. ACORN HOUSING CORPORATION Baltimore, MD
74. ACORN HOUSING CORPORATION Boston, MA
75. ACORN HOUSING CORPORATION Bridgeport, CT
76. ACORN HOUSING CORPORATION Brooklyn, NY
77. ACORN HOUSING CORPORATION Chicago, IL
78. ACORN HOUSING CORPORATION Dallas, TX
79. ACORN HOUSING CORPORATION Denver, CO
80. ACORN HOUSING CORPORATION Detroit, MI
81. ACORN HOUSING CORPORATION Fresno, CA
82. ACORN HOUSING CORPORATION Houston, TX
83. ACORN HOUSING CORPORATION Jersey City, NJ
84. ACORN HOUSING CORPORATION Kansas City, MO
85. ACORN Housing Corporation Little Rock, AR
86. ACORN HOUSING CORPORATION Los Angeles, CA
87. ACORN HOUSING CORPORATION Miami, FL
88. ACORN HOUSING CORPORATION Milwaukee, WI
89. ACORN HOUSING CORPORATION New Haven, CT
90. ACORN HOUSING CORPORATION New Orleans, LA

91. ACORN HOUSING CORPORATION Oakland, CA
92. ACORN HOUSING CORPORATION of IL
93. ACORN HOUSING CORPORATION Orlando, FL
94. ACORN HOUSING CORPORATION Philadelphia, PA
95. ACORN Housing Corporation Phoenix, AZ
96. ACORN HOUSING CORPORATION Pittsburgh, PA
97. ACORN HOUSING CORPORATION Portland, OR
98. ACORN HOUSING CORPORATION Providence, RI
99. ACORN HOUSING CORPORATION Sacramento, CA
100. ACORN HOUSING CORPORATION San Antonio, TX
101. ACORN HOUSING CORPORATION San Diego, CA
102. ACORN HOUSING CORPORATION San Jose, CA
103. ACORN HOUSING CORPORATION Santa Ana, CA
104. ACORN HOUSING CORPORATION Springfield, MA
105. ACORN HOUSING CORPORATION St. Louis, MO
106. ACORN HOUSING CORPORATION St. Paul, MN
107. ACORN HOUSING CORPORATION Washington, DC
108. ACORN Housing Corporation, Inc.
109. ACORN Houston, TX
110. ACORN Hyattsville, MD
111. ACORN IA
112. ACORN Indianapolis, IN
113. ACORN Institute Canada
114. ACORN Institute Dallas TX
115. ACORN Institute Inc. New Orleans LA
116. ACORN Institute Inc. Washington DC
117. ACORN Institute, Inc.
118. ACORN International, Inc.
119. ACORN Irving, TX
120. ACORN Jacksonville, FL
121. ACORN Jersey City, NJ
122. ACORN Kansas City, MO
123. ACORN Lake Charles, LA
124. ACORN Lake Worth, FL
125. ACORN Las Cruces, NM
126. ACORN Law for Education Representation & Training, Inc.
127. Acorn Law Reform PAC
128. Acorn Law, Education, Rep. & Training
129. ACORN Los Angeles, CA
130. ACORN Louisville, KY
131. ACORN Management Corporation
132. ACORN Memphis, TN 38104
133. ACORN Mesa, AZ
134. ACORN Miami, FL
135. ACORN Milwaukee, WI
136. ACORN National Broadcasting Network, Inc.

137. ACORN National Office: Boston, MA
138. ACORN National Office: Brooklyn, NY
139. ACORN National Office: Dallas, TX
140. ACORN National Office: Little Rock, AR
141. ACORN National Office: New Orleans, LA
142. ACORN National Office: Phoenix, AZ
143. ACORN National Office: Washington, D.C.
144. ACORN Newark, NJ
145. ACORN Norfolk, VA
146. ACORN Oakland, CA
147. ACORN Orlando, FL
148. ACORN Paterson, NJ
149. ACORN Philadelphia, PA
150. ACORN Pine Bluff, AR
151. ACORN Pittsburgh, PA
152. ACORN Political Action Committee of Louisiana
153. ACORN Political Action Committee, Inc.
154. ACORN Political Washington, DC
155. ACORN Portland, OR
156. ACORN Providence, RI
157. ACORN Research Dallas, TX
158. ACORN Richmond, VA
159. ACORN Sacramento, CA
160. ACORN San Antonio, TX
161. ACORN San Bernardino, CA
162. ACORN San Diego, CA
163. ACORN San Francisco, CA
164. ACORN San Jose, CA
165. ACORN Santa Ana, CA
166. ACORN Services, Inc.
167. ACORN Springfield, IL
168. ACORN Springfield, MA
169. ACORN St. Louis, MO
170. ACORN St. Paul, MN
171. ACORN St. Petersburg, FL
172. ACORN Tampa, FL
173. ACORN Television in Action for Communities, Inc.
174. ACORN Tenant Union Training & Organizing Project, Inc.
175. ACORN Tenants' Union, Inc.
176. ACORN Toledo, OH
177. ACORN Tucson, AZ
178. ACORN Votes
179. ACORN Waterbury, CT
180. ACSI
181. Advancement Project
182. Affiliated Media Foundation Movement, Inc.

183. Agape Broadcasting Foundation, Inc.
184. AGAPE Dallas, TX
185. AHDCWAPAC
186. AISJ New Orleans, LA
187. AISJ Washington, DC
188. Alabama Radio Movement, Inc. (Dissolved)
189. ALERT New Orleans, LA
190. Alliance of Californians for Community Empowerment
191. Allied Media Projects, Inc.
192. American Environmental Justice Project, Inc.
193. American Home Childcare Providers Association
194. American Home Day Care Workers Association, Inc.
195. American Institute for Social Justice, Inc.
196. America Votes Inc.
197. American Workers Association
198. ANP Little Rock, AR
199. Arkansas ACORN Fair Housing, Inc.
200. Arkansas Acorn Housing Corporation
201. Arkansas ACORN Political Action Committee
202. Arkansas Broadcast Foundation, Inc.
203. Arkansas Broadcasting Foundation, Inc.
204. Arkansas Community Housing Corporation
205. Arkansas New Party
206. Associated Regional Maintenance Systems
207. Association for Rights of Citizens, Inc.
208. Association for the Rights of Citizens Inc
209. Association of Community Organizations for Reform Now ("ACORN")
210. Austin Organizing and Support Center, Inc.
211. Baltimore Organizing and Support Center, Inc.
212. Baton Rouge ACORN Education Project, Inc.
213. Baton Rouge Association of School Employees, Inc.
214. Boston Organizing and Support Center, Inc.
215. Broad Street Corporation
216. Bronx Parent Leadership
217. California Acorn Political Action Comm.
218. California APAC
219. California Community Network
220. California Community Television Network
221. Campaign for Justice at Avondale
222. Campaign to Reward Work
223. Catalist LLC
224. Change to Win
225. Chicago Organizing and Support Center, Inc.
226. Chief Organizer Fund, Inc.
227. Child Care Providers for Action Franklin
228. Citizens Action Research Project

229. Citizens Campaign for Fair Work
230. Citizens Campaign for Finance Reform
231. Citizens Campaign for Work, Living Wage & Labor Peace
232. Citizens Consulting, Inc.
233. Citizens for April Troope
234. Citizens for Future Progress
235. Citizens Services Society, Inc.
236. Citizens Services, Inc.
237. Clean Government APAC
238. Colorado Organizing and Support Center, Inc.
239. Communities Voting Together
240. Community & Labor United for Baltimore
241. Community Labor Administrative Services, Inc.
242. Community Real Estate Processing, Inc.
243. Community Real Estate Processing, Inc.
244. Community Training for Environmental Justice, Inc.
245. Community Voices Together
246. Connecticut Working Families
247. Council Beneficial Association
248. Council Health Plan
249. Crescent City Broadcasting Corporation
250. CT Working Families
251. CTELS
252. CWA NJ Political Education Committee
253. Democracy for America
254. Desert Rose Homeowners' Association
255. Desert Rose Homes, L.L.C.
256. Development Fund Corporation
257. District of Columbia Acorn Political Action Committee
258. District of Columbia APAC
259. Dumont Avenue Housing Development Fund
260. Edison Neighborhood Center Kalamazoo, MI
261. Elysian Fields Corporation
262. Elysian Fields Partnership
263. Environmental Justice Training Project, Inc.
264. Fifteenth Street Corporation
265. Flagstaff Broadcasting Foundation, Inc.
266. Florida ACORN PAC
267. Floridians For All Miami, FL
268. Floridians for All PAC
269. Forefront Organizing
270. Franklin ACORN Housing, Inc.
271. Friends of Wendy Foy
272. Frontline Organizing
273. Genevieve Stewart Campaign Fund
274. Greenville Community Charter School Inc

275. Greenwell Springs Corporation
276. Hammurabi Fund, Inc.
277. Healthcare for America Now
278. Hospital Professionals and Allied Employees COPE Fund
279. Hospitality Hotel and Restaurant Organizing Council
280. HOTROC New Orleans, LA
281. Housing Here and Now!
282. Houston Organizing and Support Center, Inc.
283. Illinois Acorn Political Action Committee
284. Illinois APAC
285. Illinois Home Child Care Workers Association, Inc.
286. Illinois New Party
287. Illinois New Party Political Committee
288. Institute for Worker Education, Inc.
289. Iowa ACORN Broadcasting Corporation
290. IUOE Local 406
291. Jefferson Area Public Employees
292. Jefferson Area School Employees
293. Jefferson Association of Parish Employees
294. Jefferson Association of School Employees
295. Jobs with Justice
296. Johnnie Pugh Campaign Fund
297. KABF Little Rock, AR
298. KABF Radio
299. KNON Radio
300. LA PAC for Working Families
301. Labor Link, Inc.
302. Labor Neighbor Research and Training Center, Inc.
303. Lagrange Village Council Toledo, OH
304. Living Wage Resource Center
305. Local 100 Health & Welfare Fund
306. Local 100 Health and Welfare Fund
307. Local 100 Political Action Committee
308. Local 100 Retirement Fund
309. Local 100 Retirement Plan
310. Local 32BJ Service Employees International Union
311. Local 32BJ Service Employees International Union American Dream Political Action Fund
312. Local 880 PAC
313. Local 880 Political PAC
314. Local 880 SEIU Political Action Committee
315. Local 880 SEIU Power Political Action Committee
316. Louisiana ACORN Fair Housing Organization New Orleans, LA
317. Louisiana APAC
318. Maricopa Community Television Project, Inc.
319. Maryland ACORN Political Action Committee

320. Massachusetts ACORN Housing Corporation
321. Massachusetts ACORN Political Action Committee
322. McLellan Multi-Family Corporation
323. Metro Technical Institute, Inc.
324. MHANY 2003 HOUSING DEVELOPMENT FUND CORPORATION
325. MHANY A/A/F Neighborhood Restore HDFC
326. MHANY Brooklyn, NY
327. Middle South Home Day Care Workers Association, Inc.
328. Minnesota ACORN Political Action Committee
329. Missouri ACORN Political Action Committee
330. Missouri APAC
331. Missouri Home Child Care Workers Association, Inc.
332. Missouri Progressive Vote Coalition
333. Missouri Tax Justice Research Project, Inc.
334. Montana Radio Network, Inc.
335. Mott Haven ACORN Housing Development Fund
336. Movement for Economic Justice, Education & Training Center, Inc.
337. Mutual Housing Association of New York Neighborhood Restore
338. Mutual Housing Association of New York, Inc.
339. National Center for Jobs and Justice, Inc.
340. Neighborhoods First
341. Neighbors for Arthelia Ray
342. Neighbors for Maria Torres
343. Neighbors for Ted Thomas
344. New Jersey ACORN Housing Corporation, Inc.
345. New Jersey Working Families Alliance PAC
346. New Mexico ACORN Fair Housing Albuquerque NM
347. New Mexico ACORN Political Action Committee
348. New Mexico APAC
349. New Mexico Organizing and Support Center, Inc.
350. New Orleans ACORN Educational Project, Inc.
351. New Orleans Campaign for a Livable Wage
352. New Orleans Campaign for Living Wage Committee
353. New Orleans Community Housing Organization, Inc.
354. New Party National Committee, Inc.
355. New York ACORN Housing Company Inc
356. New York Acorn Political Action Committee
357. New York Agency for Community Affairs, Inc.
358. New York APAC
359. New York Organizing and Support Center, Inc
360. New York Organizing and Support Center, Inc.
361. North East Houston Community Action
362. Oregon ACORN Political Action Committee
363. Oregon APAC
364. Orleans Criminal Sheriffs
365. Orleans Criminal Sheriffs Workers Organization, Inc.

366. Overture to Cultural Season
367. P.O.W.E.R. Organizing
368. Peace and Social Justice Center of South Central Kansas Wichita, KS
369. Pennsylvania ACORN Political Action Committee
370. Pennsylvania APAC
371. Pennsylvania Institute for Community Affairs, Inc.
372. People Organizing Workfare Workers/ACORN/CWA, Inc.
373. People's Equipment Resource Corporation, Inc.
374. Phoenix Organizing and Support Center, Inc.
375. Progressive Future Education Fund
376. Progressive Houston
377. Progressive St. Louis
378. PROJECT VOTE Brooklyn, NY
379. PROJECT VOTE Little Rock, AR
380. Project Vote/Voting for America, Inc.
381. Pugh Election Campaign
382. Radio New Mexico, Inc.
383. Referendum Committee for an Accountable Future
384. Rhode Island APAC
385. Sacramento ACORN Educational Project, Inc.
386. San Francisco Labor Council Labor & Neighbor Independent Expenditure PAC
387. SEIU American Dream Fund
388. SEIU Healthcare Illinois Indiana (Formerly SEIU Local 880)
389. SEIU Healthcare Illinois Indiana PAC
390. SEIU Illinois Council
391. SEIU Illinois Council PAC Fund
392. SEIU Local 100
393. SEIU LOCAL 100 Baton Rouge, LA
394. SEIU LOCAL 100 Corpus Christi, TX
395. SEIU LOCAL 100 Dallas, TX
396. SEIU LOCAL 100 Houston, TX
397. SEIU LOCAL 100 Lake Charles, LA
398. SEIU LOCAL 100 Little Rock, AR 72206
399. SEIU LOCAL 100 New Orleans, LA
400. SEIU LOCAL 100 San Antonio, TX
401. SEIU LOCAL 100 Shreveport, LA
402. SEIU Local 21 Political Accountability Fund
403. SEIU Local 21A
404. SEIU Local 32BJ
405. SEIU Local 52BJ
406. SEIU Local 880
407. SEIU Local 880 Political Action Committee
408. SEIU LOCAL 880 Chicago, IL
409. SEIU LOCAL 880 East St. Louis, IL
410. SEIU LOCAL 880 East St. Louis, MO
411. SEIU LOCAL 880 Harvey, IL

412. SEIU LOCAL 880 Peoria, IL
413. SEIU LOCAL 880 Rock Island, IL
414. SEIU LOCAL 880 Springfield, IL
415. SEIU LOCAL 880 St. Louis, MO
416. SEIU Local 1199
417. SEIU Local 1199 NJ Health
418. SEIU Local 1199 United Healthcare Workers East
419. SEIU Missouri State Council Pac Fund
420. SEIU NJ State Council
421. SEIUSO
422. Service Workers Action Team
423. Shreveport Community Television, Inc.
424. Site Fighters
425. Sixth Avenue Corporation
426. SJSC
427. Social Policy
428. Solano Association of Government Employees, Local 1280, SEIU
429. Southern Training Center
430. St. Louis Living Wage Campaign
431. St. Louis Organizing and Support Center, Inc.
432. St. Louis Tax Reform Group, Inc.
433. Student Minimum Wage Action Campaign
434. SWAT
435. Texas United City-County Employees, Inc.
436. Texas United School Employees, Inc.
437. The Advance Group
438. The Democracy Alliance
439. United Labor Foundation of Greater New Orleans, Inc.
440. United Security Workers of America, Local
441. Volunteers for America, Inc.
442. Volunteers for California, Inc.
443. Volunteers for Missouri, Inc.
444. Wal-Mart Alliance for Reform Now, Inc.
445. Wal-Mart Association for Reform Now
446. Wal-Mart Workers Association, Inc.
447. Washington ACORN Political Action Committee
448. Waxahachie Area Resident Council
449. Workers/ACORN/CWA, Inc.
450. Working Families Association, Inc.
451. Working Families Campaign Committee
452. Working Families For Progressive Leadership
453. Working Families Party

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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(202) 225 0037

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Committee on Oversight and Government Reform
Ranking Member, Darrell Issa (CA-49)

B350A Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-5074 • Fax: (202) 225-3974

From: Lerner Lois G
Sent: Wednesday, October 17, 2012 12:50 PM
To: Mark Tornwall
Subject: RE: H B

Yes-getting older is no picnic. I've been pretty lucky so far. A few aches and pains when I get out of bed, but it all works itself out as the day goes on. SFC [redacted] and I should continue the exercise...but I don't. I do go to Massage Envy once a month--not sure if you have it down there. If you are a member, you get one hour massage per month for $49--about half what it would cost elsewhere. So, that is my treat. Some have been better than others. I find I can really use a massage after a long plane trip.

Will be off to London the first week of November for a conference. The folks who signed up to run it have assigned pieces to attendees with no real instructions or expectations, and have seemingly dropped off the face of the earth when we have questions for them. I find it frustrating when people sign up for something and then don't follow through!

While I enjoyed SF, I'm not sure I share your desire to go there once a year. So many other places I've never been to that I would love to see. If only I had unlimited time and money!

Anyway--got to get back to work--talk to you soon.
Lois G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailto: SFC [redacted]]
Sent: Wednesday, October 17, 2012 1:39 PM
To: Lerner Lois G
Subject: RE: H B

L L
Thanks for the nice e mail. Glad you enjoyed your trip to Cal. We're going to SF in December – its become a pre-Christmas tradition.
The weather there can be a little 'iffy' in December – but SF can be so beautiful when the weather is glorious. We never tire of the sights.

I guess we're at the 'older and wiser' stage now. In my case, older, for sure, but hopefully wiser, too. I am definitely older physically. Th SFC SFC has taken a toll. M SF SFC is permanently damaged and it will never get better. As a result my mobility is somewhat limited. You'd be shocked at the way I limp around sometimes. Of course, I can't run at all so I don't get the type of exercise I used to. And, when I do too much, like doing the yard work or spending a lot of time walking around on hard surfaces like the driveway or floor of the garage – I really feel it the next day.
Bottom line is, I'm no longer the athlete I used to be (unfortunately SFC [redacted]).

Havin SFC really made me feel vulnerable. I was sick for so long SFC – there were times I began to doubt if I was going to better. SFC - I had never been sick like that before. Fortunately SF provides pretty good insurance so I had ready access to the necessary health care resources. But now I have to think about being retired, which is not all that far off, and how I/we will or won't be cared f or during our 'golden years'. The Romney/Ryan ticket is really scary. How did a creep like Romney ever get to be governor of Massachusetts, anyway?

You're right about the great, good fortune we shared back in the day. It was great to be young, energetic, healthy and (sort of) fearless. I'll never forget either.

Take Care,
M M

From: Lerner Lois G [mailto: SFC]
Sent: Friday, October 12, 2012 3:54 PM
To: Mark Tornwall
Subject: RE: H B

What a nice Birthday gift! Thank you for continuing to remember, not only my birthday, but how happy we were when we were young, cute, carefree and in love! So, thank you for then...and for now. Speaking of hertzschmertz, I must have listened to an album with a song on it called The Princess and the Jester a million times after we broke up. That one is a master of hertschmertz. Don't know whose album it was, but I probably can still tell you all the words.

Had a wonderful time in Napa--what's not to like?! The weather and timing were perfect--grapes just ready to be plucked. Stayed in a lovely place in Yountville, within walking distance of some great restaurants and patisseries(I can't spell French!) We also tasted some wonderful wines from small wineries and sent a good bit home. And, you are right--it's nice to get home. I am especially loving the weather here. it has turned to all and the leaves are changing colors. A little chill in the air makes me feel like snuggling in and getting cozy. Candles and Halloween, the Thanksgiving decorations make me happy and nostalgic all at the same time.

Well, I could go on, but I'll just end by saying...for a time we were the luckiest folks on the planet. I never forget. It's all still there in my head and my heart, and it will never go away.

Lois G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailt SFC
Sent: Thursday, October 11, 2012 2:44 PM
To: Lerner Lois G
Subject: H B

Hi L L
Even after all these years (40 ! that's amazing) I've not forgotten about your birthday. But then again how could I ?

Think about what life was like in 1972 when we met. We wuz just kids then. You even more than me. You must've been only 21 when I met you. Pretty cute Kiddo, I must admit.

Back then, people were still using dial-up telephones. There were no computers or internet or CDs or Video Cameras (too bad about that) but most importantly we were young and crazy (about each other)..
I don't know if you ever heard a song from one of Karla Bonoff's albums (nice Jewish girl) called 'The Wild Heart of the Young' -- it will give you hertzschmertz if you listen to it.

Forgive my spelling if incorrect.

Enough about all that!

SFC 003300

I hope you have a great birthday and really enjoy yourself. Hope your husband makes you feel special.

And, hopefully you enjoyed your California trip. Its always a nice change to go out there but still there's no place like home. Speaking of which, sometimes I think about Laurel St when that was home.
We had some good times then.

Cheers,
M M

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SFC 003301

From: Joan Schaffer and Ed Comer [redacted]>
Sent: Sunday, November 04, 2012 8:58 AM
To: Claudia Russell; Lona Feldman; Laura Olle; Lerner Lois G; Martha Finlator; Mary Ellen Signorille; Katie Cogan; Amy Proft; Susan and Cam and Cam Schmidt
Cc: Ed Comer
Subject: Election Night
Attachments: PastedGraphic-1.tiff

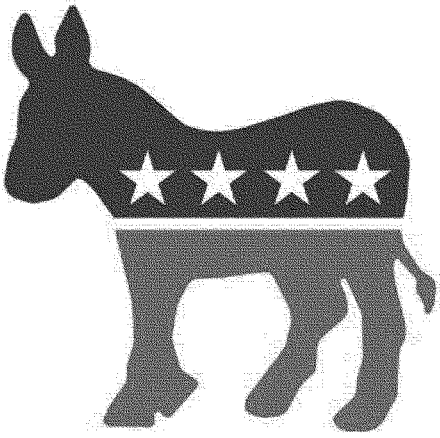
I know it's the last minute..... But, now that Nate Silver has raised Obama's chance of winning to 85.1%, Ed has become a strong enough believer to suggest that we have folks over to watch the returns Tuesday night.

I'm thinking I will make a simple dinner (maybe beef stew or chili, or perhaps just pizza - i will decide once I hear back from some of you) and some munchies, and of course some good things to drink.

We'd love to have you join us. Let me know if you think you can make it. Any time after 7:30 would be great.

Let's hope it's a good night!

Joan



SFC 003303

From: Lerner Lois G
Sent: Sunday, November 04, 2012 12:59 PM
To: [redacted]'; 'michael.mile [redacted]'
Subject: Re: Election Night

Would have loved to, but am in London. Added Michael --if he's smart he'll join you. Keeping my fingers crossed. And, I did vote!
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Joan Schaffer and Ed Comer [mailt [redacted]]
Sent: Sunday, November 04, 2012 09:57 AM
To: Claudia Russell <[redacted] Lona Feldman <[redacted]>; Laura Olle <[redacted]>; Lerner Lois G; Martha Finlator < [redacted]>; Mary Ellen Signorille [redacted]>; Katie Cogan <[redacted]>; Amy Proft [redacted]>; Susan and Cam and Cam Schmidt [redacted]>
Cc: Ed Comer [redacted]>
Subject: Election Night

I know it's the last minute..... But, now that Nate Silver has raised Obama's chance of winning to 85.1%, Ed has become a strong enough believer to suggest that we have folks over to watch the returns Tuesday night.

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We'd love to have you join us. Let me know if you think you can make it. Any time after 7:30 would be great.

Let's hope it's a good night!

Joan

SFC 003304

IRS0000794186

From: Lerner Lois G
Sent: Tuesday, November 06, 2012 3:58 PM
To: 'michael.mile SFC[redacted]'
Subject: Re: Happy Voting Day

It was a draw. It's interesting to listen to people here. They 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.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael [mailt SFC[redacted] SFC[redacted]
Sent: Tuesday, November 06, 2012 04:39 PM
To: Lerner Lois G
Subject: RE: Happy Voting Day

Poo poo? Given that you're 5 hours ahead, how did the election turn out? I hate to wait until it's 10 o'clock here to find out.

Michael R. Miles | Partne SFC[redacted]

-----Original Message-----
From: Lerner Lois G [mailt SFC[redacted]]
Sent: Tuesday, November 06, 2012 9:46 AM
To: Miles, Michael
Subject: Re: Happy Voting Day

Poo poo. Go home a little early and go to the Comers. Once in a lifetime stuff. I'm guessing Roonie won't find it better later. Sounds like her vote is important.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael [mailt SFC[redacted]]
Sent: Tuesday, November 06, 2012 09:37 AM
To: Lerner Lois G
Subject: RE: Happy Voting Day

Just voted. 20 minute wait. Roonie called while I was there. She says the lines in IN are quite long, so she's waiting unt il later today. Hard to find the socialist-labor candidates on the ballot, so I wrote them in. Not sure about the Comers. By the time I walk and feed the dogs, it's pretty late.

Michael R. Miles | Partne SFC[redacted]
-----Original Message-----
From: Lerner Lois G [mailt SFC[redacted]]
Sent: Tuesday, November 06, 2012 4:50 AM
To: Miles, Michael
Subject: Happy Voting Day

Thought I might hear from you--how is everyone? I'm off to my first meeting. My colleague is going to an election eve party at the US Embassy--she's Canadian! I'll be on my own wondering how it turns out. Are you going to Joan's?
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

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SFC 003307

From: Lerner Lois G
Sent: Wednesday, November 07, 2012 5:03 AM
To: 'LLERNE SFC [redacted]
Subject: Re: Hurray, Hurray - OBAMA for 4 more years

Ditto!
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Lerner,Leslie R. [mailto: SFC [redacted]
Sent: Wednesday, November 07, 2012 04:32 AM
To: Lerner Lois G
Subject: Hurray, Hurray OBAMA for 4 more years

It's finally over.....one more commercial and I was going to scream!

Leslie R Lerner
Business System Consultant
OAI-sys - Services Yielding Solution
Voice Engineering
Travelers
SFC [redacted]
Hartford, CT 06183
SFC [redacted] FAX
llerne SFC [redacted].

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SFC 003308

From: Miles, Michael [redacted]>
Sent: Wednesday, November 07, 2012 5:11 PM
To: Lerner Lois G
Subject: RE: Love you

Oh, you're just still in that post-election state of bliss. Sweet dreams. Heading home to deal with the fellows. xxx

Michael R. Miles | Partne [redacted]

-----Original Message-----
From: Lerner Lois G [mailto [redacted]]
Sent: Wednesday, November 07, 2012 6:01 PM
To: Miles, Michael
Subject: Love you

Going to bed. Thinking of you.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

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SFC 003309

From: Lerner Lois G
Sent: Friday, July 22, 2011 7:06 PM
To: Kennedy, Kevin - GAB
Subject: RE: Kevin Kennedy, mercy killer?

Wonderful--when I was there it was too jot to eat a steak, so I ate Italian food --at that place we went many years ago--I missed you.

Lois G. Lerner
Director of Exempt Organizations

From: Kennedy, Kevin GAB SFC [redacted]
Sent: Friday, July 22, 2011 8:04 PM
To: Lerner Lois G
Subject: Re: Kevin Kennedy, mercy killer?

I remain cool! Have been in Chicago scouting restaurabts for us.

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, July 22, 2011 06:57 PM
To: Kennedy, Kevin GAB
Subject: RE: Kevin Kennedy, mercy killer?

Metoo--are you surviving the heat--it's AWFUL. the good news is I don't mind staying here til *:00 on a Friday!!! I hear bits and pieces of junk coming from your state and think of you! (-: it is a crazy world we live in

Lois G. Lerner
Director of Exempt Organizations

From: Kennedy, Kevin GAB SFC [redacted]
Sent: Tuesday, July 12, 2011 12:17 PM
To: Lerner Lois G
Subject: Kevin Kennedy, mercy killer?

It is nice to obtain new skill sets.

Note the last paragraph where the paper supports more transparency.
The Legislature has killed our corporate disclosure rules.

Sorry we missed each other in Chicago.

Kevin J. Kennedy
Director and General Counsel
Wisconsin Government Accountability Board
SFC [redacted]

SFC [redacted]

http://www.journaltimes.com/news/opinion/editorial/article_941049f8_-ac17-11e0-88c7-001cc4c002e0.html

Public campaign financing had outlived its usefulness

- Story
- Discussion

Journal Times Editorial Board | Posted: Monday, July 11, 2011 6:42 pm | No Comments Posted

Public campaign financing is essentially dead in Wisconsin. It should be a sparsely attended funeral.

According to a report from the Wisconsin Center for Investigative Journalism, the state's top election official acknowledged the new state budget wiped out the program. For more than three decades, candidates had been able to receive public campaign money if they agreed to expense restrictions.

At one time, that may have been a worthy battle, but the system had long outlived its usefulness.

Many candidates bypass public financing, knowing it's a pittance compared to the thousands or even millions they can raise privately. The $315,000 that was reportedly distributed to candidates "for statewide or legislative office" last year wouldn't even cover the advertising tab in some major races.

It's no longer a badge of honor to sign the public financing pledge. The ones who do are often marked as weak candidates who lack the connections and leadership to win over large donors on their own.

Gov. Scott Walker proposed changing the process so public election financing would only come from residents who want to pay extra on their taxes for it. It would join the ever growing list near the end of income tax forms of causes to which Wisconsinites can contribute.

That would've been a big shift, because until now taxpayers have been able to contribute without cutting into their refund checks or adding to their individual bills. Understanding human nature, Kevin Kennedy, executive director of the state's Government Accountability Board, foresaw a plunge in generosity. Instead, he recommended dumping the program altogether and redirecting whatever money comes in.

That sounds like a mercy kill.

Big money donations are a modern reality, and strategies to rein them in have failed miserably. Public financing of campaigns has done little to curb the presence of special interest groups, with this spring's Wisconsin Supreme Court mudfest providing irrefutable evidence.

The heavily publicized Citizens United case and other legal decisions opened the door for unlimited election spending by interest groups, a trend we have supported in exchange for more thorough disclosure of who is spending those dollars and on what. That's one flag officials can carry as they're delivering the eulogy for public campaign financing.

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Read more: http://www.journaltimes.com/news/opinion/editorial/article_941049f8_ac17_11e0_88c7_001cc4c002e0.html#ixzz1RuAcCo00

LOIS G. LERNER

SFC [redacted]
SFC [redacted] (Work) SFC [redacted] (Home)
SFC [redacted] @msn.com

EXPERIENCE

Director Exempt Organizations, Internal Revenue Service
Washington, D.C. – 2005 – Present

Responsible for oversight of 1.6 million tax-exempt organizations, including charities, social welfare groups, and political organizations. Direct all functions within the IRS Exempt Organizations Division, including Determinations (the application process for non-profits seeking tax exemption), Guidance, Customer Education and Outreach, and Examinations. Collaborate with IRS Chief Counsel and Treasury Department representatives to issue formal guidance. Coordinate with the Department of Treasury, Congress, and other federal, state, local, and foreign government agencies regarding policy issues and joint initiatives, including corporate governance, and anti-terrorism efforts. Oversee 900 employees nationwide and develop and administer an $87 million budget.

Director Exempt Organizations Rulings and Agreements, Internal Revenue Service
Washington, D.C. – 2001 – 2005

Managed a nationwide program for non-profit organizations seeking tax-exempt status, including program development, outreach, training, and quality control. Directed 300 staff and developed and administered a $30 million budget.

Acting General Counsel, Federal Election Commission
Washington, D.C. – 2001

Served as chief legal officer for the independent agency responsible for the administration and civil enforcement of the federal election laws. Advised the six-member Commission on legal and policy issues. Responsible for review and approval of all legal work and for the representation of the Commission in federal courts and before Congress. Served as agency Designated Ethics Officer. Managed over 100 staff and developed and administered an $11 million budget.

Associate General Counsel for Enforcement, Federal Election Commission
Washington, D.C. – 1986 – 2001

Directed and managed the Enforcement Division of the General Counsel's Office.

Assistant General Counsel for Enforcement, Federal Election Commission
Washington, D.C. – 1983 – 1986

Supervised a team of attorneys and paralegals in all aspects of the regulatory enforcement process.

Staff Attorney, Federal Election Commission
Washington, D.C. – 1981 – 1983

Trial Attorney, Honors Program, United States Department of Justice
Washington, D.C. – 1978 – 1981

PROFESSIONAL ACTIVITIES

International

International Conference of Charity Regulators – U.S. Representative 2006 & 2008

Irish Philanthropy Symposium – IRS Representative 2008

U.S. Treasury Department Roundtable on Charitable Principles of Good Governance and Anti-Terrorist Financing Best Practices – IRS Representative 2008

Council on Governmental Ethics Laws (COGEL)

President 1994 – 1995; Member 1989 – 2001

Lectures and Speeches

Numerous presentations before the American Bar Association, the American Institute of Certified Public Accountants, and the Practicing Law Institute

Frequent speaker at IRS, FEC, and COGEL conferences, educational seminars for foreign election and charity officials, and U.S. law schools

Awards

IRS Commissioner's Award – 2008; TEGE Commissioner's Special Thanks Award – 2007; Director's Award – 2005; IRS Commissioner's Award – 2002; EEOC Award for Excellence – 2001; Performance Awards – 1994 – 2007

EDUCATION

J.D., Cum Laude – Western New England College School of Law
Springfield, Massachusetts, 1978

B.S., Cum Laude – Northeastern University
Boston, Massachusetts, 1974

From: Lerner Lois G
Sent: Friday, June 01, 2012 3:17 PM
To: Mark Tornwall
Subject: RE: Back from Down Under

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 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 G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailt SFC [redacted]]
Sent: Friday, June 01, 2012 3:57 PM
To: Lerner Lois G
Subject: RE: Back from Down Under

Those words **are exactly the same ones** that I use to describe Citizens Unit ed.
Its absolutely unbelievable and a total disgrace that the Supreme Court has endorsed this concept.

My 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 happe ns here.
The other side of this coin, of course is, that poor people are poor because they deserve to be poor.

Its also a sad commentary on what Christianity has morphed into.

Sorry I brought this up. I get depressed every time I think about it.

Have a nice glass of wine when you get home.

Cheers,
M M

Mark A. Tornwall
SFC [redacted]
[redacted] SF SFC [redacted]
SFC [redacted]

From: Lerner Lois G [mailto: SFC [redacted]]
Sent: Friday, June 01, 2012 2:46 PM
To: Mark Tornwall
Subject: RE: Back from Down Under

Citizens United is by far the worst thing that has ever happened to this country. More on that later.

SFC 003314

Lois G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailto: SFC [redacted].]
Sent: Friday, June 01, 2012 2:19 PM
To: Lerner Lois G
Subject: RE: Back from Down Under

OK
So speaking of regressive politics – does 'Citizens United' scare you as much as it scares me?

How could something like that happen in this country? The founding fathers must be spinning in their graves. Maybe not; some of them probably would've signed off on that deal.

Did you happen to see any of the Niall Ferguson thing on PBS about the (maybe?) decline of our Western Civilization?

So many questions. So little time.

Cheers,
M M

Mark A. Tornwall
SFC [redacted]

From: Lerner Lois G [mailto: SFC [redacted].]
Sent: Friday, June 01, 2012 1:12 PM
To: Mark Tornwall
Subject: RE: Back from Down Under

I'm pretty busy next week--our Advisory Committee is in town Mon-Wed and then I leave for Chicago--but I'll try. If not the week after

Lois G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailto: SFC [redacted].]
Sent: Friday, June 01, 2012 2:03 PM
To: Lerner Lois G
Subject: RE: Back from Down Under

Once again, quoting the Kinks "If you're young and if you're healthy why not get a boat and come to Australia".

I don't think I would want to go there permanently even though politically they're a lot more progressive than here in 'Tea Party Land'.

Maybe not today. We're working on a deadline and my full attention is required.
Next week would be nice, though.

M M

SFC 003315

Mark A. Tornwall
SFC [redacted]

From: Lerner Lois G [mailto: SFC [redacted]
Sent: Friday, June 01, 2012 12:57 PM
To: Mark Tornwall
Subject: RE: Back from Down Under

I knew you'd love it--if I were younger, I'd truly consider emigrating. My have time a bit later--how long will you be there today?

Lois G. Lerner
Director of Exempt Organizations

From: Mark Tornwall [mailto: SFC [redacted]]
Sent: Friday, June 01, 2012 1:24 PM
To: Lerner Lois G
Subject: Back from Down Under

Well, we're back.
All I can say is: Australia: Good ! Jet Lag: Bad !!
Aside from the time difference, never did feel like I was upside -down.

Beautiful scenery. Spectacular weather. Lots of pretty girls wearing short skirts.
Really outdoorsy. Especially Perth. Everyone running, biking. Looking fit and athletic. 'Walking around with a perpetual smile upon their face' (remember the Kinks?)

Maybe you'll have time one of these days to give me a call

Have a great weekend.

M M

Mark A. Tornwall
SFC [redacted]
SFC [redacted]

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SFC 003316

From: Lerner Lois G
Sent: Friday, August 10, 2012 4:08 PM
To: Noble, Lawrence M
Subject: RE: I can't remember

You had accepted, but not yet told Skadden.

Congratulations! Glad I could be a part of their decision. And, I would love to take you to lunch once things settle in. Let me know what will work for you.

Lois G.

Lerner

Director of Exempt Organizations

From: Noble, Lawrence M

[SFC [redacted].]
Sent: Friday, August 10, 2012

4:29 PM
To: Lerner Lois G
Subject: I can't

remember

SFC 003317

Lois,

I can't remember if I had actually accepted the offer from Americans for Campaign Reform when we last talked. In any event, I will be the next President and CEO of ACR. My last day a Skadden will be August 17, after which I'm taking a short vacation to visit family in California. I will officially join ACR on August 27. One of the first things on my agenda will be to open a D.C. office. However, here is my contact information after the August 17:

SFC [redacted]

Phone SFC [redacted]

Cell: SFC [redacted]

As always, I want to sincerely thank you for your support. Once I get settled, let's do lunch.

Best,

Larry

Lawrence M. Noble
Skadden, Arps, Slate, Meagher &Flom LLP
SFC [redacted]

[redacted]

Washington, D.C. [redacted]
T:
SFC [redacted]

F:
SFC [redacted]

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SFC 003320

From: Lerner Lois G
Sent: Friday, August 10, 2012 4:39 PM
To: Noble, Lawrence M
Subject: RE: I can't remember

Thank goodness!!!

Lois G. Lerner
Director of Exempt Organizations

From: Noble, Lawrence M [SFC]
Sent: Friday, August 10, 2012 5:32 PM
To: Lerner Lois G
Subject: RE: I can't remember

That's Fred's job.

Lawrence M. Noble
Skadden, Arps, Slate, Meagher & Flom LLP
SFC
Washington, D.C. SFC
T SFC
F SFC

From: Lerner Lois G [SFC]
Sent: Friday, August 10, 2012 5:30 PM
To: Noble, Lawrence M (WAS)
Subject: RE: I can't remember

So, when should I expect your first letter yelling at me about c4s?

Lois G. Lerner
Director of Exempt Organizations

From: Noble, Lawrence M [SFC]
Sent: Friday, August 10, 2012 5:18 PM
To: Lerner Lois G
Subject: RE: I can't remember

They are located in Concord, New Hampshire, for now. But since that is a long commute, I am going to have to find office space and hire staff in DC. You can email me the SFC address or call me on my cel SFC after the 17th. I am open next week, except Monday and Friday and will be gone the

following week. I probably have to go to NY and NH as soon as I start on the 27th, but we can see how later that week looks or if none of those work for you, after labor day.

Lawrence M. Noble
Skadden, Arps, Slate, Meagher & Flom LLP
SFC
Washington, D.C. SFC
T SFC
F SFC

From: Lerner Lois G SFC
Sent: Friday, August 10, 2012 5:11 PM
To: Noble, Lawrence M (WAS)
Subject: RE: I can't remember

PS--what is your new address--where are they located?

Lois G. Lerner
Director of Exempt Organizations

From: Noble, Lawrence M SFC
Sent: Friday, August 10, 2012 4:29 PM
To: Lerner Lois G
Subject: I can't remember

Lois,

I can't remember if I had actually accepted the offer from Americans for Campaign Reform when we last talked. In any event, I will be the next President and CEO of ACR. My last day a Skadden will be August 17, after which I'm taking a short vacation to visit family in California. I will officially join ACR on August 27. One of the first things on my agenda will be to open a D.C. office. However, here is my contact information after the August 17:

SFC
Phone SFC
Cell: SFC

As always, I want to sincerely thank you for your support . Once I get settled, let's do lunch.

Best,

Larry

Lawrence M. Noble
Skadden, Arps, Slate, Meagher & Flom LLP
SFC
Washington, D.C. SFC
T SFC

SEC

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From: Whitaker Sherry L
Sent: Sunday, November 07, 2010 4:50 PM
To: Kindell Judith E
Cc: Lerner Lois G
Subject: RE: 501(c)(4) 990s

Judith
I was informed that the DVDs were mailed to

SSA Brian Fitzpatrick
FBI
SEC [redacted] NW
Room SEC
Washington, DC 20535

Please let me know if they were never received. Thanks

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone SEC [redacted]
Fax SEC [redacted]
Cell SEC [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SEC [redacted].
Life isn't about waiting for the storm to pass ..... It's about learning to dance i n the rain

---

From: Kindell Judith E
Sent: Thursday, November 04, 2010 7:34 AM
To: Whitaker Sherry L
Subject: FW: 501(c)(4) 990s

Last month we asked about getting a DVD for the Department of Justice of Forms 990 and 990 -EZ filed by section 501(c)(4) organizations - I believe Cheryl provided a list. Did this ever go out?

From: Lerner Lois G
Sent: Thursday, November 04, 2010 9:30 AM
To: Kindell Judith E
Subject: Re: 501(c)(4) 990s

Did these ever go to them? Can you check with -I think it was Sherri Whitaker or Kathy Palmer who was getting them DVDs
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Kindell Judith E
To: Chasin Cheryl D; Lerner Lois G

SFC 003325

Sent: Tue Oct 05 08:31:08 2010
Subject: Re: 501(c)(4) 990s

What are the procedures for getting DVDs of the Forms 990? If we can just provide a set, that would be best. Otherwise, if we can get a sample of orgs that reported political campaign expenditures.

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E
Sent: Tue Oct 05 08:25:31 2010
Subject: 501(c)(4) 990s

Diane told me you wanted a couple of 990s to show to DOJ. Is there something specific you want to show them, in terms of size, activities, etc? Or should I guess based on current events?

Cheryl Chasin
SFC [redacted] (phone)
SFC [redacted] (fax)

SFC 003326

From: Lieber Theodore R
Sent: Friday, July 30, 2010 6:58 AM
To: Daly Richard M
Cc: Choi Robert S; Neuhart Paige; Douglas Akaisha; Lerner Lois G
Subject: FW: SCRs for the Month of July
Attachments: SFC [redacted] July TeaParty.doc SFC [redacted]

Attached are the R&A SCRs for July. The list of SCRs are below.

Thanks,

Theodore R. Lieber
Manager
EO Technical Group 3
SFC [redacted]

From: Grodnitzky Steven
Sent: Tuesday, July 27, 2010 4:06 PM
To: Lieber Theodore R
Cc: Grodnitzky Steven
Subject: SCRs for the Month of July

Please find attached the SCRs for EO Technical and EO Determinations for the month of July:

(1 SFC [redacted]
(2 SFC [redacted]
(3 SFC [redacted]
(4 SFC [redacted]
(5 SFC [redacted]
(6 SFC [redacted]
(7 SFC [redacted]
(8 SFC [redacted]
(9 SFC [redacted]
(10 SFC [redacted]
(11 SFC [redacted]
(12 SFC [redacted]
(13 SFC [redacted]
(14 SFC [redacted]
(15 SFC [redacted]
(16 SFC [redacted]
(17 SSEC
(18 SFC [redacted] 8

(19) Tea Party
(20 SFC
(21 SFC
(22 SFC
(23 SFC

Any questions, please let me know.

Thanks.

Steve

Steven Grodnitzky
Acting Manager, EO Technical
Rulings and Agreements, TEGE
Internal Revenue Service
SFC

SFC 003328

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: (1) Prescott Tea Party, LLC (501(c)(3) applicant), (2) Albuquerque Tea Party, Inc. (501(c)(4) applicant), (3) American Junto (501(c)(3) applicant) **TIN/EIN:** 27-0484865 and 90-0513502 **POA:** None	**TAX PERIODS:** 2009 and forward **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, D.C.	☐ **INITIAL REPORT** ☐ **FOLLOW-UP REPORT** ☐ **FINAL REPORT**
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Unique or novel issue ☐ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☐ Other (explain in Case Summary)
FORM TYPE(S): (1) Form 1023. (2) Form 1024	**START DATE:** 04/02/2010
POTENTIAL DOLLARS INVOLVED (IF > $10M) : Unknown	**CRIMINAL REFERRAL?** Unknown **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**
CASE OR ISSUE SUMMARY: The various "tea party" organizations are separately organized, but appear to be a part of a national political 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 regular basis. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and ten applications from organizations which have applied for recognition of exempti on under section 501c)(4) as social welfare organizations. Two organizations that we believe may be "tea party" organizations already have been recognized as exempt under section 501(c)(4). EOT has not seen the case files, but are requesting copies of them. The issue is whether these organizations are involved in campaign in tervention or, alternatively, in nonexempt political activity.	
CURRENT SIGNIFICANT ACTIONS ON CASE: Organization (1) – closed FTE for failure to respond to a development letter. Organization (2) – a second development letter is being drafted. Organization (3) – a development was sent to the organization.	
SIGNIFICANT NEXT STEPS, IF ANY: Send Organization (2) development letter. Continue coordinated review of applications in EO Determinations.	**ESTIMATED CLOSURE DATE:** December 31, 2010
BARRIERS TO RESOLUTION, IF ANY: Concerns whether the organizations are involved in political activities.	
SUBMITTED BY: Carter C. Hull, SE:T:EO:RA:T:2	**MANAGER:** RONALD SHOEMAKER, SE:T:EO:RA:T:2

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003329

TEGE Division Sensitive Case Report
(revised January 2007)

DATE: July 26, 2010	

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SFC 003330

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: (1) Prescott Tea Party, LLC (501(c)(3) applicant), (2) Albuquerque Tea Party, Inc. (501(c)(4) applicant), (3) American Junto (501(c)(3) applicant) **TIN/EI** SFC [redacted] **POA:** None	**TAX PERIODS:** 2009 and forward **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, D.C.	☐ **INITIAL REPORT** ☐ **FOLLOW-UP REPORT** ☐ **FINAL REPORT**
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Unique or novel issue ☐ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☐ Other (explain in Case Summary)
FORM TYPE(S): (1) Form 1023. (2) Form 1024	**START DATE:** 04/02/2010
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BARRIERS TO RESOLUTION, IF ANY: Concerns whether the organizations are involved in political activities.	
SUBMITTED BY: Carter C. Hull, SE:T:EO:RA:T:2	**MANAGER:** RONALD SHOEMAKER, SE:T:EO:RA:T:2

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SFC 003331

TEGE Division Sensitive Case Report
(revised January 2007)

DATE: July 26, 2010	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

From: Kennedy, Kevin - GA SFC [redacted]
Sent: Thursday, March 07, 2013 3:19 PM
To: Lerner Lois G
Subject: Re: Present

My bad. I arrived hone from N'awlins, where I first met my favorite IRS person. You were masquerading as an FEC enforcement attorney.

Anyway, I received the Irish soda bread. It was delicious. Thank you so much. The caraway seeds were a nice touch.

Sara and I made short work of it.

Your thoughtfulness and generosity are treasured. I am sorry I had not thanked you sooner.

Kevin

From: Lerner Lois SFC [redacted]
Sent: Thursday, March 07, 2013 12:45 PM
To: Kennedy, Kevin - GAB
Subject: Present

Lois G. Lerner
Director of Exempt Organizations

Did you get your bread?

SFC 003333

From: Lerner Lois G
Sent: Wednesday, March 13, 2013 8:42 PM
To: 'Kevin.Kennedy@wisconsin.gov'
Subject: Re: Got Your Voicemail

Of course after eating the great meal, I have no clue of restaurant name! Will ask my friend. I was so happy to hear you have a new Pope. I know you have felt "lost" without one. I know, as an infidel who is going to hell --or at least limbo, I am comforted to know the Pope is in place. Seriously though -- a Jesuit and a South American. Big steps for an out of step org. Perhaps good will come of it. The world could use some good. Will find out restaurant name.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Kennedy, Kevin - GAB [redacted]
Sent: Wednesday, March 13, 2013 07:17 PM Eastern Standard Time
To: Lerner Lois G
Subject: RE: Got Your Voicemail

Wow!

Where did you eat in Minneapolis? I have a daughter there as you know and I could one up her if I know of a place she doesn't.

Really enjoyed the bread, but still have Catholic guilt about not acknowledging the gift timely.

Oh well, Francis I would have wanted me to have distributed it to the poor. I think Sara and I qualify. Poor in spirit any way.

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Wednesday, March 13, 2013 5:53 PM
To: Kennedy, Kevin - GAB
Subject: Got Your Voicemail

No need to feel bad. I was mostly worried that I'd paid for overnight service, but the post office didn't deliver it until it turned green (good for beer --not for bread)! Glad you enjoyed it--I thought it was pretty good for store bought. Was in Minneapolis yesterday. Had a great dinner with one of my colleagues--not as good as dinner with you, of course. Glad to hear your voice. Things sound crazy there--as is the case here. The sand keep shifting as to what the new rules are. The latest--if we provide speakers for events and get free tickets in return, staff can use the free tickets, but only if they take leave to attend the event --that's even if there is no travel or other expense involved. I have worked for the govt for over 30 years and this is a first! more to come, I'm sure. Stay sane.....

Lois G. Lerner
Director of Exempt Organizations

SFC 003334

From: Blumenfeld Michael B < SFC
Sent: Friday, July 23, 2010 7:58 AM
To: Lerner Lois G
Cc: Kindell Judith E; Marks Nancy J
Subject: FEC coordinate communications E&J 501(c)(3) safe harbor

Categories: NUUU

Hi Lois --

The FEC Commission has once again picked up the coordinated communications rulemaking. Attached is draft language concerning the proposed 501(c)(3) safe harbor. At this point, preliminarily, it does not look like the Commission is going t o adopt the safe harbor. The draft explanation and justification focuses on why the Commission is not adopting the safe harbor. The Commission has not yet seen the language, but they are going to be looking at it very soon and it's possible that they are going to moving forward with this rulemaking very quickly.

Again, this is a preliminary draft that has not yet approved or even reviewed by the commission that is potentially on a very fast track. I would like give my FEC colleague an initial reaction today if possib le. If you can take a quick look at give me your reaction, I would very much appreciate it.

If you need to reach me, please do not hesitate to call me a SF SFC Thanks very much.

Michael B. Blumenfeld
Senior Technician Reviewer
IRS Chief Counsel
Tax Exempt and Government Entities
CC:TEGE
SFC

REG_2009-03_IC...

From: Lerner Lois G
Sent: Friday, April 08, 2011 8:58 AM
To: Fish David L; Kindell Judith E; Light Sharon P
Subject: FW: EO Tax Journal 2011-61

Thoughts on the Bristol Palin issue? I'm curious that a PF can pay any amount to someone who is not a DP? It is a PF right? Even if it were a PC--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. Thanks

Lois G. Lerner
Director, Exempt Organizations

From: paul streckfu [redacted]
Sent: Friday, April 08, 2011 7:39 AM
To: paul streckfus
Subject: EO Tax Journal 2011-61

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2011-61 (Friday, April 8, 2011)
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Seems like it has been a long week, so let's just ease into the weekend. Even tax lawyers are expected to know constitutional law after all, we did go to law school, didn't we? even if some of us were sitting in the back row napping so I'm sending along today a CRS report that discusses the current ground rules for aid to private schools that I think would be at least embarrassing for an EO lawyer not to know.

Since we're talking schools, what would a Friday be without a quiz. News sources are reporting that Bristol Palin was paid a total of $332,500 to urge teenagers to abstain from sex ($262,500 in 2009 for 15 to 20 days of work and $70,000 in 2010) by The Candie s Foundation, a New York based foundation, which, according to the *Associated Press,* is "a division of the apparel brand Candie's." According to *Reuters,* the foundation is "an offshoot of the fashion brand Candie's, which is part of Iconix Brand Group Inc.," of which the foundation founder, Neil Cole, is CEO and president. Cole has shrugged off criticism that the foundation, while paying Bristol $262,500 in 2009, made only two grants for $35,000 in 2009.

Query: I'm sure Bristol is worth every cent of what she was paid by the foundation, but let's suppose she was overpaid. What are the possible tax consequences? Section 4958 would not seem to be an issue, since it does not apply to private foundations and Bri stol would not seem to be a disqualified person. That leaves Ch apter 42. Section 4941 would not seem to apply since Bristol, again, would not seem to be a disqualified person. But how about section 4945? If a foundation were to pay too much to an individual who i s not a disqualified person, would we have a possible ta xable expenditure under section 4945(d)?

CRS Report on Public Aid to Sectarian Schools

The Law of Church and State: Public Aid to Sectarian Schools

Cynthia Brougher
Legislative Attorney

CRS Report for Congress

Prepared for Members and Committees of Congress

April 5, 2011

Congressional Research Service

7 5700
www.crs.gov
R40195

Summary

A recurring issue in constitutional law concerns the extent to which the Establishment Clause of the First Amendment imposes constraints on the provision of public aid to private sectarian schools. The U.S. Supreme Court's past jurisprudence construe d the clause to impose severe restrictions on aid given directly to sectari an elementary and secondary schools but to be less restrictive when given to colleges or indirectly in the form of tax benefits or vouchers. The Court's later decisions loosened the constitutio nal limitations on both direct and indirect aid.

This report gives a brief overview of the evolution of the Court's interpretation of the Establishment Clause in this area and analyzes the categories of aid that have been addressed by the Court. The report explains which categories have been held to be consti tutionally permissible or impermissible, both at the elementary and secondary school level and at the postsecondary level.

Contents [Omitted]

Overview

The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establ ishment of religion. . . ." /1/ The U.S. Supreme Court has construed the Establishment Clause, in general, to mean that government is prohibited f rom sponsoring or financing religious instruction or indoctrination. But the Court has drawn a constitutional distinction between aid that flows directly to sectarian schools and aid that benefits such schools indirectly as the result of voucher or tax benefit pro grams.

With respect to direct aid, the Court has typically applied the tripartite test it first artic ulated in *Lemon v. Kurtzman.* /2/ The *Lemon* test requires that an aid program (1) serve a secular legislative purpose; (2) have a primary effect that neither advances nor inh ibits religion; and (3) not foster an excessive entanglement with religion. Because education is an important state goal, the secular purpose aspect of this test has rarely been a problem for direct aid programs. But prior to the Court's latest decisions, both the pr imary effect and entanglement prongs were substantial barriers. To avoid a primary effect of advancing religion, the Court required direct aid programs to be limited to secular use and struck them down if they were not so limited. /3/ But even if the aid was so limite d, the Court often found the primary effect prong violated a nyway because it presumed that in pervasively sectarian institutions it was impossible for public aid to be limited to secular use. /4/ Alternatively, it often held that direct aid programs benefiting pervasively sectarian institutions were unconstitutiona l because government had to so closely monitor the institutions' use of the aid to be sure the limitation to secular use was honored that it became excessively entangled with the institutions. /5/ These tests were a part icular problem for direct aid to sectarian elementary and secondary schools, because the Court presumed that such schools were pervasively sectarian. It presumed to the contrary with respect to religious colleges.

The Court's decisions in *Agostini v. Felton* /6/ and *Mitchell v. Helms,* /7/ however, have recast these tests in a manner that has lowered the constitutional barriers to direct aid to sectarian schools. The Court has abandoned the presumption that sectarian elemen tary and secondary schools are so pervasively sectarian that direct aid either results in the advancement of religion or fosters excessive entanglement. It has also abandoned the assumption that government must engage in an intrusive monitoring of such institution s' use of direct aid. The Court still requires that direct aid serve a secular purpose and not lead to excessive entanglement. But it has recast the primary effect test to require that the aid be secular in nature, that its distribution be based on religiously neutral c riteria, and that it not be used for religious in doctrination. /8/

The Court's past jurisprudence imposed fewer restraints on indirect aid to sectarian schools such as tax benefits or vouchers . The Court still required such aid programs to serve a secular purpose; but it did not apply the secular use an d entanglement tests applicable to direct aid. The key constitutional question was whether the initial beneficiaries of the aid (i.e., parents or schoolchildren) had a

genuinely independent choice about whether to use the aid for educational services from secular or religious schools. /9/ If the universe of choices available was almost entirely religious, the Court held the program unconstitutional because the governme nt, in effect, dictated by the design of the program that a religious option be chosen. Bu t if religious options did not predominate, the Court held the program constitutional even if parents chose to receive services from pervasively sectarian schools. Moreover, in it s decision in*Zelman v. Simmons Harris,* /10/ the Court legitimated an even bro ader range of indirect aid programs by holding that the evaluation of the universe of choice available to parents is not confined to the private schools at which the voucher aid can be used bu t includes as well all of the public school options open to pare nts.

Specific Decisions Concerning Public Aid to Sectarian Elementary and Secondary Schools

Bus Transportation

In *Everson v. Board of Education,* /11/ the Court held it to be constitutionally permissible for a local government to subsidize bus transportation between home and school for parochial schoolchildren as well as public schoolchildren. The Court said the subsidy was essentially a general welfare program that helped children get from home to school and back safely. In *Wolman v. Walter,* /12/ on the other hand, the Court held the Establishment Clause to be violated by the public subsidy of field trip transportation for par ochial schoolchildren on the grounds field trips are an integral part of the school's curriculum and wholly controlled by the schoo l.

Textbooks and Instructional Materials

In several decisions, the Court has upheld as constitutional the loan of secular textbooks to children in sectarian elementar y and secondary schools, /13/ and in *Wolman v. Walter,* /14/ it upheld the inclusion in su ch a textbook loan program of related manuals and reusable workbooks. The Court has reasoned that the textbooks are by their nature limited to secular use and that the loan pr ograms are general welfare programs that only incidentally aid sectarian schools. In contrast, the Court in *Meek v. Pittenger* /15/ and *Wolman v. Walter* /16/ held the provision of instructional materials other than textbooks, such as periodicals, photographs, maps, charts, film s, sound recordings, projection and recording equipment, and lab equipment, to sectarian schools or sectarian school children to be unconstitutional because such aid provides substantial aid to the sectarian enterprise as a whole and inevitably has a primar y effect of advancing religion. But in *Mitchell v. Helms,* the Court overturned those aspects of *Meek* and *Wolman* and held it to be constitutional for government to include sectarian schools in a program providing instructional materials (including computer hardware and software) on the grounds: (1) the aid was secul ar in nature; (2) was distributed according to religiously neutral criteria; and (3) could be limited to secular use within the sectarian schools without any intrusive government monitoring.

Teachers and Other Personnel

In *Lemon v. Kurtzman,* /17/ the Court held it to be unconstitutional for a state to subsidize parochial school teachers of such secular subjects as math, foreign languages, and the physical sciences, either by way of a direct subsidy of such teachers' salaries or by means of a "purchase of secular services" program. The Court reasoned that the state would have to engage in intrusive monitoring to ensu re that the subsidized teachers did not inculcate religion; and it held such monitoring to excessively entangle government with the schools. For a similar reason in *Meek v. Pittenger,* /18/ the Court struck down a program of "auxiliary services" to children in nonpublic schools which included enrichment and remedial educational services, counseling and psychological services, and spe ech and hearing therapy by public personnel. And in *Aguilar v. Felton,* /19/ it held unconstitutional the provision of remedial and enrichment services to eligible children in sectarian schools by public school teachers under the Title I program if they wer e provided on the premises of the sectarian schools. Finally, in *City of Grand Rapids v. Ball,* /20/ the Court also struck down a similar state program of remedial and enrichment services as well as a program in which the school district hired parochial school teachers to provide after school extracurricular programs to their students on the premises of their sectarian schools.

But in *Agostini v. Felton,* /21/ the Court overturned the *Aguilar* decision and the pertinent parts of *Meek* and *Ball* and upheld as constitutional the provision of remedial and enrichment educational services to sectarian schoolchildren by public teachers on the premises of sectarian schools. In addition, the Court in *Zobrest v. Catalina Foothills School District* /22/ upheld as constitution al the provision at public expense under the Individuals with Disabilities Education Act (IDEA) of a sign language interpreter for a disabled child attending a sectarian secondary school. In both cases, the Court reasoned that the programs were general wel fare programs available to students without regard to whether they attended public or private (sectarian) schools; and in *Zobrest,* it reasoned as well that the parents controlled the decision about whether the assistance took place in a sectarian school or a public school.

Tests and State-Required Reports

In *Levitt v. Committee for Public Education,* /23/ the Court struck down a program reimhursing sectarian schools for the costs of administering and compiling the results of teacher prepared tests in subjects required to be taught by state law because the teachers controlled the tests and might include religious content in them. In contrast, in *Wolman v. Walter,* /24/ the Court upheld a program in which a state provided standardized tests in secular subjects and related scoring services to nonpublic schoolchildren, including those in religious schools. Similarly, in *Committee for Public Education v. Regan,* /25/ the Court upheld a program that reimbursed sectarian

schools for the costs of administering such st ate prepared tests as the regents exams, comprehensive achievement exams, and college qualifications tests. In both cases, the Court reasoned that such tests were limited by their nature to secular use. In *Regan,* the Court also upheld as constitutional a pr ogram that reimbursed sectarian and other private schools for the costs of complying with stateman dated record keeping and reporting requirements about student enrollment and attendance, faculty qualifications, the content of the curriculum, and physical facilities. The Court reasoned that the requirements were imposed by the state and did not involve the teaching process.

Maintenance and Repair Costs

In *Committee for Public Education v. Nyquist,* /26/ the Court struck down as unconstitutional a state pro gram subsidizing some of the costs incurred by sectarian schools for the maintenance and repair of their facilities, including costs incurred for heating, lighting, renovation, and cleaning, on the grounds the subsidy inevitably aided the schools' religiou s functions.

Vouchers and Tax Benefits

In *Committee for Public Education v. Nyquist* /27/ and *Sloan v. Lemon,* /28/ the Court held unconstitutional programs which provided tuition grants and tax benefits to the parents of children attending private schools , most of which were religious. In both instances, the Court found that the programs benefited only those with children in private schools, that most of those schools were sectaria n, and that the programs had a primary purpose and effect of subsidizing suc h schools.

In three other decisions, however, the Court upheld voucher and tax benefit programs where the benefits were available to chi ldren attending public as well as private schools or their parents. *Mueller v. Allen* /29/ involved a state program givi ng a tax deduction to the parents of all elementary and secondary schoolchildren for a variety of educational expenses, including tuition. *Witters v. Washington Department of Services for the Blind* /30/ involved a grant to a blind person who wanted to atte nd a religious college to prepare for a religious vocation under a state vocational rehabilitation program which provided educational assistance for a wide variety o f vocations. In *Zelman v. Simmons Harris,* /31/ the Court upheld a voucher program that assis ted parents in failing public schools in Cleveland to send their children to private schools, most of which were sectarian. In each instance, the Court's rationale in upholding the programs was that the benefits were available on a religiously neutral basi s and that sectarian schools benefited only indirectly as the result of the independent choices of students or their parents. In *Zelman,* the Court further held that the universe of choice open to parents was not limited to the private schools where the vou chers could be used, but included the full range of public school options open to them as well.

Health and Nutrition Services

The Court has in dicta repeatedly affirmed the constitutionality of the public subsidy of physician, nursing, dental, and optometric services to children in sectarian schools; /32/ and in *Wolman v. Walter,* /33/ it specifically upheld the provision of diagnostic speech, hearing, and psychological services by public school personnel on sectarian school premises. In addition, the Court has repeatedly in dicta affirmed the constitutionality of the public subsidy of school lunches for eligible children in sectarian schools. /34/

General Public Services

In dicta in *Everson v. Board of Education,* /35/ the Court affirmed as constitutional the provision of such general public services as police and fire protection, connections for sewage disposal, highways, and sidewalks to sectarian schools. According to the C ourt, the Establishment Clause does not require that religious schools be eut off from public services "so separate and so indisputably marked off from the religious function. . . ." /36/

Specific Decisions Concerning Public Aid to Sectarian Colleges and Universities

General Aid

In *Roemer v. Maryland Board of Public Works,* /37/ the Court upheld a state program of noncategorical grants to all private colleges in the state, including ones that were church affiliated, because the program included a statutory restriction barring the use of the funds for sectarian purposes. The Court stressed that the church related colleges that benefited were not "pervasively sectarian" and that the aid was statutorily restricted to secular use.

Construction Assistance

In *Tilton v. Richardson,* /38/ the Court upheld as constitutional a federal program that provided grants to colleges, including church affiliated colleges, for the construction of needed facilities, so long as the facilities were not used for religious worship or sectarian instruction. The statute prov ided that the federal interest in any facility constructed with federal funds would expire after 20 years, but the Court held that the nonsectarian use requirement would have to apply so long as the buildings had any viable use. Subsequ ently,

in *Hunt v. McNair,* /39/ the Court upheld a program in which a state issued revenue bonds to finance the construction of facilities at institutions of higher education, including those with a religious affiliation. The program barred the use of the funds for a ny facility used for sectarian instruction or religious worship.

Student Publication Subsidy

In *Rosenberger v. The Rector and Board of Visitors of the University of Virginia,* /40/ the Court held that it would be constitutional for a state university to subsidize t he printing costs of an avowedly religious student publication. The university made the subsidy available to non religious student publications as a way of fostering student expression and discussion, and the Court held that it would constitute viewpoint discrimination in violation of the free speech clause of the First Amendment to deny the subsidy to a student publication offering a religious perspective.

Vouchers

In two summary affirmanees, the Court has upheld the constitutionality of programs providi ng grants to students attending institutions of higher education, including religiously affiliated colleges. Both *Smith v. Board of Governors of the University of North Carolina* /41/ and *Americans United for the Separation of Church and State v. Blanton* /42/ involved grants given on the basis of need for students to use in attending either public or private colleges, including religiously affiliated ones. In affirming the d ecisions, the Supreme Court issued no opinion in either case, but the lower courts re asoned that the religious colleges benefited from the programs only if the students independently decided to attend.

In *Locke v. Davey,* /43/ the Court considered the constitutionality of a state scholarship program that included a restriction on recipients that prohibited the use of scholarship funds to pursue devotional theological degrees. The Court noted that, because the recipient would make an independent choice regarding how to spend the funds, the federal Establishment Clause would not be violated by such a program. /44/

Author Contact Information

Cynthia Brougher
Legislative Attorney
SFC

Footnotes

/1/ U.S. Const. amend. I. The First Amendment has been held to apply to the states as well as to the federal government. See Cantwell v. Connecticut , 310 U.S. 296 (1940) (Free Exercise Clause) and Everson v. Boanl of Education, 330 U.S. 1 (1947) (Establishment Clause).

/2/ 403 U.S. 602 (1971).

/3/ *See, e.g.,* Committee for Public Education v. Nyquist, 413 U.S. 756 (1973).

/4/ *See, e.g.,* Aguilar v. Felton, 473 U.S. 402 (1985), overruled by Agostini v. Felton, 521 U.S. 203 (1997).

/5/ *See, e.g.,* Wolman v. Walter, 433 U.S. 229 (1 977), overruled by Mitchell v. Helms, 530 U.S. 793 (2000).

/6/ 521 U.S. 203 (1997).

/7/ 530 U.S. 793 (2000).

/8/ *See* Agostini, 521 U.S. 203.

/9/ *See, e.g.,* Mueller v. Allen, 463 U.S. 388 (1983).

/10/ 536 U.S. 639 (2002).

/11/ 330 U.S. 1 (1947).

/12/ 433 U.S. 229 (1977).

/13/ Board of Education v. Allen, 392 U.S. 236 (1968); Meek v. Pittenger, 421 U.S. 349 (1975); and Wolman v. Walter, 433 U.S. 229 (1977).

/14/ *Id.*

/15/ 421 U.S. 349 (1975).

/16/ 433 U.S. 229 (1977).

/17/ 403 U.S. 602 (1971).

/18/ 421 U.S. 349 (1975).

/19/ 473 U.S. 402 (1985)

/20/ 473 U.S. 373 (1985).

/21/ 521 U.S. 203 (1997).

/22/ 509 U.S. 1 (1993).

/23/ 413 U.S. 472 (1973).

/24/ 433 U.S. 229 (1977).

/25/ 444 U.S. 646 (1980).

/26/ 413 U.S. 756 (1973).

/27/ *Id.*

/28/ 413 U.S. 825 (1973).

/29/ 463 U.S. 388 (1983).

/30/ 474 U.S. 481 (1986).

/31/ 536 U.S. 639 (2002).

/32/ *Lemon,* 403 U.S. 602; *Meek,* 421 U.S. 349; *Wolman,* 433 U.S. 229.

/33/ *Id.*

/34/ Lemon, 403 U.S. 602; Meek, 421 U.S. 349.

/35/ 330 U.S. 1 (1947).

/36/ *Id.* at 18.

/37/ 426 U.S. 736 (1976).

/38/ 403 U.S. 672 (1971).

/39/ 413 U.S. 734 (1973).

/40/ 515 U.S. 819 (1995).

/41/ 429 F.Supp. 871 (W.D.N.C.), aff'd mem., 434 U.S. 803 (1977).

/42/ 433 F.Supp. 97 (M.D. Tenn.), aff'd mem., 434 U.S. 803 (1977).

/43/ 540 U.S. 712 (2004).

/44/ The issue that the Court faced in *Locke* was centered on a more restrictive prohibition on establishment of religion contained in the Washington state constitution. T he state constitution required the prohibition on the use of state funds to pursue religious degrees, but the recipient challenged the restriction as a violation of the federal Free E xercise Clause. The Court held that the withholding of the funds did not improperly infringe on the federal right to free exercise . *Id.*

From: Flax Nikole C
Sent: Friday, February 26, 2010 12:55 PM
To: Livingston Catherine E; Lerner Lois G; Kindell Judith E
Cc: Blumenfeld Michael B; Marks Nancy J
Subject: Re: FEC Comment

When I spoke with sarah briefly, she was fine with it coming from counsel if that is what you all thought was appropriate.

From: Livingston Catherine E <[redacted]>
To: Flax Nikole C; Lerner Lois G; Kindell Judith E
Cc: Blumenfeld Michael B; Marks Nancy J
Sent: Fri Feb 26 13:52:50 2010
Subject: FEC Comment

Ladies,

Mike tells me that he is not aware of a prior instance in which we have sent a formal written comment t o the FEC on proposed regulations. I have asked him to research any rules or procedures that apply for sending comments to other agencies and to do it ASAP. Judy, do you have any recollections that would bear on this?

And if we have no precedents and are free to do this as we wish, do you have a preference between having the comment come from Counsel and having it come from TEGE?

Nan-- I am copying you in case you have a preference or direction, including both about the organization to send the comment and also about who signs.

The formal comment period ends March 3. Mike, I also suggest you call over there to see if we could have a bit more time in case the procedural issues require us to take a bit more time.

SFC 003342

From: Lerner Lois G
Sent: Monday, November 23, 2009 5:28 PM
To: Ingram Sarah H
Subject: FW: Anticipating the outcome of the Citizens United case

Importance: High

I know he isn't making it easy to talk to him, but is there anyway we can raise this Wed?

Lois G. Lerner
Director, Exempt Organizations

From: Ingram Sarah H
Sent: Wednesday, November 18, 2009 12:19 PM
To: Lerner Lois G
Subject: RE: Anticipating the outcome of the Citizens United case

Have all in my airplane folder. Rumor is that Steve is in next Wed and Friday and I am going for more time but we'll see.

From: Lerner Lois G
Sent: Tuesday, November 17, 2009 1:27 PM
To: Ingram Sarah H
Subject: Fw: Anticipating the outcome of the Citizens United case
Importance: High

The future is upon us in so many ways. I really need some guidance about whether, and if so, to what extent I ca n be comfortable stepping out in this area. Although it seems the powers that be would prefer silence, I don't think that is an option. In fact, I am supposed to be on a panel on this topic in early Dec. At the time I accepted the invite, I had expected the PACI report would have been out in some form --which would have helped me shape my talk. She is correct that the S. Court overturning the corporate ban is based on Constsutional free speech law, not tax -exemption law, but only us pointy-headss will understand the fine distinction. This will open up numerous additional pandora's boxes -some of which will be churches. Can we get a discussion going with Miller so we at least know the perameters of the box we're in? The Commissioner also needs to be aware that this is going to get noisey real fast. And, I do need to respond to this lady. Ordinarily, I'd tell her the message ahe's talikg about will occur as we go int PACI 2010 in January.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Rosemary E. Fe SFC
To: Lerner Lois G
Sent: Mon Nov 16 19:38:03 2009
Subject: Anticipating the outcome of the Citizens United case

Lois:

SFC 003343

In recent conversations with other EO practitioners representing politically active clients, I've been hearing repeatedly about the likely outcome of the Citizens United case pending before the Supreme Court. Many of them (if not most) believe the decision will result in the elimination of the federal election law ban on corporate independent expenditures. Everyone I've talked to about this thinks that if that is, indeed, the outcome of the case, there will be a flurry of inquiries from our EO clients, including 501(c)(3)s, about what this means for them. We anticipate having to explain to eager and unsophisticated clients that what will be touted as a major chang e in the federal election laws, has no immediate effect whatsoever on the federal tax law prohibition on partisan activity by 501(c)(3) organizations, nor does it affect where the IRS is likely to draw the line on what is deemed partisan for charities. (There is a good deal of speculation that a decision in the Citizens United case striking down the ban on corporate expenditures, will turn up the heat on the IRS to come up with clearer rules in this area, but that's not my point here.)

As a co-Chair of the subcommittee on political and lobbying activities of the ABA Tax Section EO Committee, my colleagues seem to think it would be appropriate for me to suggest to you that the IRS TE/GE might want to prepare for the Citizens United decision. In the past, the Service has issued statements at opportune moments to remind 501(c)(3) organizations of the partisan political activity prohibition, including the fact that activities may be legal under federal election rules without being permitted for a charity by I RS rules. If you're so inclined, the issuance of this might be a very helpful occasion for such reminder.

I've kept this email short, assuming you may already be aware of the Citizens United case and its implications, but if it would be helpful for you to have more information about anything discussed above, please let me know. Some practitioners believe the Supreme Court's decision may come down any time now, as the rehearing occurred in early September.

Hope this is helpful to you. If not, please ignore.

Any tax advice contained in this email was not intended to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under federal tax law. A taxpayer may rely on our advice to avoid penalties only if the advice is reflected in a more formal tax opinion that conforms to IRS standards. Please contact us if you would like to discuss the preparation of a legal opinion that conforms to these rules.

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SFC 003344

From: Lerner Lois G
Sent: Thursday, April 29, 2010 8:46 AM
To: Ingram Sarah H
Subject: RE: "Do Over" of Healthcare Overview

She's not real "useable in terms of making things happen. She was at the initial overview meeting. But her strength is specific assignments rather than broad oversight. What were you thinking?

Lois G. Lerner
Director, Exempt Organizations

From: Ingram Sarah H
Sent: Thursday, April 29, 2010 7:34 AM
To: Lerner Lois G
Subject: Re: "Do Over" of Healthcare Overview

How do you want to use Judy?

This message was sent from Blackberry

From: Lerner Lois G
To: Ingram Sarah H
Sent: Wed Apr 28 19:14:04 2010
Subject: FW: "Do Over" of Healthcare Overview

I KNOW YOU'RE WORRIED--ME TOO, BUT WE NEED TO PROVIDE MORE STRUCTURE--THIS ISN'T THEIR "USUAL" WAY OF THINKING OR WORKING. JOE WAS GREAT, BY THE WAY--HE'S ENGAGED!

Lois G. Lerner
Director, Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, April 28, 2010 7:12 PM
To: Urban Joseph J; Fish David L
Cc: Choi Robert S; Zarin Roberta B; Downing Nanette M; Clarke Stephen M; Salins Ma ry J; Malone Robert; Douglas

Akaisha; Letourneau Diane L
Subject: "Do Over" of Healthcare Overview
Importance: High

I really appreciated the healthcare overview you and Garret provided last week. It got me thinking though that we didn't have all the rig ht folks in the room. All the Directors really need to have a high level understanding of what's on the plate and the challenges. In addition, while we have a team working on what guidance we might need to provide, I'm not sure we have the appropriate le vel of thinking about all the other bases that need touching. Steve needs to be putting together a list of "need to happen" but he can't do that in a vacuum--rather he needs to understand the complexities and variables that are in the legislation so he can create the list. And Bobby and her crew are not "techies" at all, so they will need to understand what the legislation requires to design their communication pieces.

While Sarah was happy with the technical pieces in the main spreadsheet, I know she(a nd I) worries that we aren't capturing other vital items that will need to be worked on here and in other parts of the Service. I think a good start would be to redo the session you held last week and get the group thinking about what we should be capturi ng so we have as complete a list as possible. Some of the stuff will go on the spreadsheet as placeholders while we await decision--like 1023 revision vs. 1024 or 1025, but we know we need a form change, so it needs to be captured. Other issues we raised last week related to whether certain things meant automatic revocation and if so how would we accomplish it. Even if we have no answers, we need to capture the questions, and we all need to be on as much of the same page as possible.

So, I would appreciate it if you could work with David to make this happen in the very near future. Thanks

Lois G. Lerner
Director, Exempt Organizations

SFC 003346

From: Lerner Lois G
Sent: Friday, November 09, 2012 12:04 PM
To: 'michael.mile SFC[redacted]'
Subject: Re: Suspension of Retention

So we don't need to worry about alien teRrorists. It's our own crazies that will take us down.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael SFC[redacted]]
Sent: Friday, November 09, 2012 12:19 PM
To: Lerner Lois G
Subject: RE: Suspension of Retention

And I'm talking about the hosts of the shows. The callers are rabid.

Michael R. Miles | Partne SFC[redacted]

-----Original Message-----
From: Lerner Lois G SFC[redacted]]
Sent: Friday, November 09, 2012 12:17 PM
To: Miles, Michael
Subject: Re: Suspension of Retention

Great. Maybe we are through if there are that many assholes.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael SFC[redacted]]
Sent: Friday, November 09, 2012 12:02 PM
To: Lerner Lois G
Subject: RE: Suspension of Re tention

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.

Michael R. Miles | Partne SFC[redacted]

-----Original Message-----
From: Lerner Lois G SFC[redacted]]
Sent: Friday, November 09, 2012 12:00 PM
To: Miles, Michael
Subject: Re: Suspension of Retention

I'm ready. Overheard some ladies talkin g about American today. According to them we've bankrupted ourselves and at 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.
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael SFC[redacted]
Sent: Friday, November 09, 2012 11:53 AM
To: Lerner Lois G
Subject: RE: Suspension of Re tention

Have fun. See you in a few. Love.

Michael R. Miles | Partne SFC[redacted]
-----Original Message-----
From: Lerner Lois G SFC[redacted]]
Sent: Friday, November 09, 2012 11:42 AM
To: Miles, Michael
Subject: Re: Suspension of Reten tion

Has work this morning. Got to talk to their internal "spooks." I was going to take the train to windsor Castle, but stuff closes early in winter so it wasn't going to work. Instead, went Hempstead --an Edwardian English village, full of beautiful, huge hous es--which have been ruined by letting the hoi paloi live there! These people have ruined everything with their equality push!
Tonight going to a movie and dinner with Lisa Klein and her partner. Tomorrow at 8am, I get on a tour bus to go to Windsor Castle, Stonehenge and Oxford(or is it CAmbridge?). Figured I may never get the chance otherwise and have Always wanted to see Stonehenge. Then, hopefully a nice dinner and bed to be ready for the trip home. Am being good -- no shopping. Everything is super expe nsive even if the dollar and pound were equal. See you soon! XXOO Lois G. Lerner -- ---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Miles, Michael SFC[redacted]
Sent: Friday, November 09, 2012 10:43 AM
To: Lerner Lois G
Subject: Re: Suspension of Retention

So what's in store for the weekend? Eating well? You've been awfully quiet.

Michael R. Miles
Partner
SUTHERLAND
SFC[redacted]
[redacted]
SFC[redacted]
SFC[redacted] phone
SFC[redacted] fax

Sent from my phone; please excuse any typos

On Nov 9, 2012, at 3:14 AM, "Lerner Lois G" SFC[redacted]> wrote:

> Good. Me too. XXOO
> Lois G. Lerner---------- Sent from my BlackBerry
> Wireless Handheld
>
>
> ----- Original Message -----
> From: Miles, Michael [SFC]
> Sent: Thursday, November 08, 2012 05:44 PM
> To: Lerner Lois G
> Subject: RE: Suspension of Retention
>
> Okay. Miss you. xxx
>
> Michael R. Miles | Partne [SFC]
>
> -----Original Message-----
> From: Lerner Lois [SFC]
> Sent: Thursday, November 08, 2012 5:42 PM
> To: Miles, Michael
> Subject: Re: Suspension of Retentio n
>
> How silly. It just said they have to stop my retension pay b because I made too much this year and will give me the rest next year in a lump sum.
> Lois G. Lerner---------- Sent from my BlackBerry
> Wireless Handheld
>
>
> ----- Original Message -----
> From: Miles, Michael [SFC]
> Sent: Thursday, November 08, 2012 05:36 PM
> To: Lerner Lois G
> Subject: RE: Suspension of Retention
>
> The message was encrypted, so I can't read it.
>
> Michael R. Miles | Partne [SFC]
>
> -----Original Message-----
> From: Lerner Lois [SFC]
> Sent: Thursday, November 08, 2012 5:1S PM
> To: Miles, Michael
> Subject: Fw: Suspension of Retention
>
> Fyi
> Lois G. Lerner---------- Sent from my BlackBerry
> Wireless Handheld
>
>
> ----- Original Message -----
> From: Walton Sharnetta A
> Sent: Thursday, November 08, 2012 04:29 PM

SFC 003349

> To: Lerner Lois G
> Cc: DiCarlo Angela L; McMahon Claudia D; Barczak Kim E
> Subject: Suspension of Retention
>
> This message was S/MIME encrypted but your device cannot decrypt it. Please read this message on your desktop.
>
> CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unles s otherwise expressly indicated, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.
>
> This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential. If you are not an intended recipient, you may not review, copy, or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.

SFC 003350

From: Kindell Judith E
Sent: Tuesday, October 05, 2010 8:11 AM
To: Chasin Cheryl D; Lerner Lois G
Cc: Ghougasian Laurice A
Subject: Re: 501(c)(4) 990s

We were only providing the publicly available info

From: Chasin Cheryl D
To: Kindell Judith E; Lerner Lois G
Cc: Ghougasian Laurice A
Sent: Tue Oct 05 08:47:18 2010
Subject: RE: 501(c)(4) 990s

DVDs must be ordered from Ogden using Form 4506-A. An order from another government agency will be filled at no cost. Sherry Whitaker could probably expedite the proces s, but I don't know if it is possible to get a set by Friday. The attached pages from the EO Photocopy IRM describe what's available.

In the meantime, we'll get some returns from SEIN. Do you want those on a DVD? If the answer is yes, it's going to present some practical problems as there's no way to do that without using GERS and password protecting the files. Also, I'm uncertain of the disclosure rules can DOJ see Schedule B, or not? I'll ask David Fish.

Cheryl Chasin
SFC [redacted] (phone)
SFC [redacted] (fax)

From: Kindell Judith E
Sent: Tuesday, October 05, 2010 8:31 AM
To: Chasin Cheryl D; Lerner Lois G
Subject: Re: 501(c)(4) 990s

What are the procedures for getting DVDs of the Forms 990? If we can just provide a set, that would be best. Otherwise, if we can get a sample of orgs that reported political campaign expenditures .

From: Chasin Cheryl D
To: Lerner Lois G; Kindell Judith E
Sent: Tue Oct 05 08:25:31 2010
Subject: 501(c)(4) 990s

Diane told me you wanted a couple of 990s to show to DOJ. Is there something specific you want to show them, in terms of size, activities, etc? Or should I guess based on current events?

Cheryl Chasin
SFC [redacted] (phone)
SFC [redacted] (fax)

SFC 003351

IRS0000902537

SFC 003352

From: Lerner Lois G
Sent: Tuesday, October 05, 2010 4:18 PM
To: Whitaker Sherry L; Ghougasian Laurice A
Cc: Kindell Judith E; Chasin Cheryl D
Subject: RE: DOJ Request

I can't know what format until I talk to DOJ. I'll leave them a message and hopefully get the response by tomorrow--you guys are great!

Lois G. Lerner
Director, Exempt Organizations

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 5:15 PM
To: Ghougasian Laurice A
Cc: Kindell Judith E; Chasin Cheryl D; Lerner Lois G
Subject: RE: DOJ Request

Sorry, that is correct 8 index field (finger dropp ed down one key)

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone [redacted]
Fax [redacted]
Cell - [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[redacted]
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

---

From: Ghougasian Laurice A
Sent: Tuesday, October 05, 2010 3:08 PM
To: Whitaker Sherry L
Cc: Kindell Judith E; Chasin Cheryl D; Lerner Lois G
Subject: RE: DOJ Request

Sherry,

Our website (http://www.irs.gov/charities/article/0,,id=150268,00.html) states that any of the 8 index fields can be searched, and they are: EIN, tax period, taxpayer name, state, ZIP code, type of return, subsection code, and total assets. Is that correct?

Thanks.

Laurice

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 4:56 PM
To: Chasin Cheryl D; Lerner Lois G; Ghougasian Laurice A
Cc: Kindell Judith E
Subject: RE: DOJ Request
Importance: High

I just got off the phone with SOI and they can create us the DVDs. If we start now they could have them ready for us in about a week or two if we can get started before COB tomorrow, other wise it will be mid November because of the monthly and quarterly extracts that SOI needs to complete. Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw form at, you load into your on software and you can do what ever you want to with it.

Let me know which format they would like and I'll get SOI moving on it. Thanks

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone [redacted]
Fax [redacted]
Cell [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[redacted]
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

From: Chasin Cheryl D
Sent: Tuesday, October 05, 2010 12:41 PM
To: Lerner Lois G; Whitaker Sherry L; Ghougasian Laurice A
Cc: Kindell Judith E
Subject: RE: DOJ Request

Schedule C, which reports on lobbying and political activity, is also used by 990 -EZ filers. And the 990-EZs are also imaged.

I've created a list (from RICS) of TY2008 990s that claimed to be 501(c)(4)s on their returns, answered yes to either the question about political campaign activities or the proxy tax question, and attached Schedule C, about 550 organizations. I could do something similar for the 990-EZ.

I've also collected 5 of these 990s from the Foundation Center's website. I don't know what you would consider an adequate sample, or how you plan to give the files to DOJ. There are some practical issues with putting them on a DVD or CD here.

Cheryl Chasin
[redacted] (phone)
[redacted] (fax)

From: Lerner Lois G
Sent: Tuesday, October 05, 2010 1:38 PM
To: Whitaker Sherry L; Chasin Cheryl D; Ghougasian Laurice A
Cc: Kindell Judith E

SFC 003354

Subject: DOJ Request
Importance: High

I am meeting with DOJ on Friday. They 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? Do we have disks for those--I guess I should know by now, shouldn't I?! Cheryl/Laurice, if I can't get anything soon, could we pull a "sample of the? Thanks

Lois G. Lerner
Director, Exempt Organizations

From: Lerner Lois G
Sent: Monday, January 28, 2013 9:51 AM
To: Kennedy, Kevin - GAB
Subject: RE: Stuck in DC

Sorry to have missed you too. I basically stayed in bed the entire weekend except to go to dinner with Bobby and her family for her 60th. I was hoping for worse weather today so I could justify not coming in, but it seemed just wet this morning as I was walking dogs so I am here. What a mess with staying here and not getting home until 4 --I hate those kind of days! You have intrigued me with your retirement comment. Let's try and talk some evening this week. I got my new retirement figures this morning so need to look carefully at them. Stay safe.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Kennedy, Kevin - GAB [redacted]
Sent: Sunday, January 27, 2013 10:48 PM
To: Lerner Lois G
Subject: Stuck in DC

I hope you are feeling better. I missed you, but I know life is crazy and being well is paramount.

I got some work done and a long walk visiting the monuments, notably Lincoln and MLK.

Unfortunately, Frontier cancelled my return f light because the pilot accumulated too many hours. I get to spend the night in Crystal City. Leave at 9:30, but do not get back to Madison until 4.

Things are unraveling at work. I may be over reacting but I think I will be able to retire. Much sooner th an I thought.

I will call next week.

Thursday, June 10, 2010

E-DIMS Case Coversheet

SFC 003356

Case Number 50-2010-03617 Type 1 3 Creation Date 06/10/2010 Days Open 1
Cross Reference Number System Closed
Caseworker SB

Correspondence	Received	Assigned	Original Due	Revised Due	Status W	Next Action
05/27/2010	06/10/2010	06/10/2010	07/09/2010		06/10/2010	06/17/2010

Subject Category	Subject	Extension	Ten Day	Destruction	Appeal	Closed
13 Other	docs. relating to Tea Party					

Agency Requester Last Name First Name
Walsh Lynn Units 0 Pages Reviewed

[redacted] Periods 0 Released

Houston TX 77002

Taxpayer Last Name	First Name	TIN	MFT	Tax Period
Walsh		00-0000000		

Amount Charged $ .00 Exemptions Cited
Fee Category (b)(3) Statutes
Fee Waiver Code

Payment Received	Check Amount	Check Date	Check Number
Total Payments	$ .00	Fee Balance Due	$ .00

Total Time Applied 1.0
Disclosure 1.0
Functional

Case Notes Report

SFC 003357

Thursday, January 6, 2011

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Ten Day	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	Y	01/21/2011		

Caseworker ZZ

Status	Date	Time Applied	Case Worker
N	06/10/2010	0.0	LI

New Case

W	06/10/2010	1.0	SB

assigned case today, valid request. Media request since requester is a freelance journalist she has agreed to pay up to $50.00 (if estimate is more I need to contact her) Requester is asking for documents relating to any training, memos, letters, policies, etc. that detail how the Tax Exempt/Government Entities Division reviews applications for non profit, 501(c)(3) and other not for profit organizations specifically mentioning "Tea Party", the Tea Party", "tea party" or "tea parties". Will sent search memo to EO, do a SCR to Marie.

M	06/11/2010	1.5	SB

Prepared and sent search memo to Matthews Giuliano, cc Mike Seto due date is 6/25/10. Also did SCR sent to Val since requester is a freelance journalist.

M	06/14/2010	0.3	SB

Gary signed off on the SCR on 6/14/10 made copy and placed in case file also put in SCR folder in Outlook

M	06/25/2010	0.2	SB

e-mail from Matthew EO stating he just gave his manager case to review and will need an extension until July 2, 2010, spoke to him and sent him an e-mail for his files granting the extension.

M	07/07/2010	0.4	SB

prepared and mailed voluntary extension letter today, old due date is 7/9/10, new due date is 8/20/10

M	07/07/2010	0.5	SB

rec'd response from Matthew G - EO today, after reviewing memo did not explain what the exemptions should be for the redacted information and the information withheld in full. Also he did not send a unredacted copy. I call he will send amended memo and an unredacted copy of documents 4 pages.

F	07/16/2010	0.4	SB

spoke to Matthew this morning, told him I still have not recieved revised memo and a copy of unredacted documents. He said he was sorry and that he will sent them to me an e-mail with the requested information.

F	07/22/2010	0.3	SB

in staff meeting today mentioned to Marie, that I am still waiting for Matthew to send me amended response memo and unredacted documents. Marie will call him.

F	07/29/2010	0.3	SB

received call from Matthews stating that he doesn't have an unredacted copy, person is out today that can scan clean copy, I also told him that I need a responsive memo advising me of exemption etc. He said okay

Case Notes Report

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	01/21/2011		

Caseworker ZZ

Status	Date	Time Applied	Case Worker
A	08/13/2010	1.0	SB

received e-mail from Matthew Giuliano with new memo with release recommendations and unredacted documents. After reviewing them again, I need to talk to him since he sent in response a copy of "TEGE Division Sensitive Case Report, (2) copies one with additional information post in the "Current Significant Actions on Case". I need to ask if this is all they could locate since requester asked for "training, memos, letters ;policies etc. that detail how the TE/GE divsiion reviews applications for non-profit 501(c)(3)'s specifically mentioning Tea Party, the Tea Party and tea party and tea parties. I will also mention this to Marie either before or after I talk to Matthew.

A	08/17/2010	0.4	SB

Prepared another subsequent ve letter since I need to talk to Matthew again regarding documents. Old subsequent letter due date is 8/23/20, new date is 9/10/10, mailed letter today.

A	08/30/2010	0.5	SB

Sent e-mail to Marie regarding response to search memo on 8/30/10 as follows:Marie In re: Lynn Walsh
50-2010-03617
See attached copies of unredated documents sent by Matthews in response to FOIA request, I have redacted hard copies also. Matthew said these documents are responsive to request. After reading request again, they did not address the following; documents relating to training, memos, letters policies, etc. that detail how TE/GE reviews applications for non-profits,501(c)(3) etc.in their memo. I have been back and forth with Matthew and I am tried.
Please call me after you review what was sent to me. Thanks
Sharon
-----Original Message-----
From: Twarog Marie A
Sent: Monday, August 30, 2010 12:33 PM
To: Baker Sharon E
He is out of the office until tomorrow and I am out tomorrow, so it will
probably be Wednesday before I have anything for you.
Marie

A	09/03/2010	0.4	SB

Received e-mail from Marie on 9/3/10 -I received a phone message from Matthew Giuliano and I just followed up with him. He says there is nothing other than the Sensitive Case Reports because this issue is so new, there is no formal guidance on it yet. He is going to provide you with an email stating that there are no training, memos, letter, policies for dealing with TEGE non-profit reviews for organizations specifically mentioning "Tea Party", etc.
Marie Twarog
When I receive e-mail I will prepare final letter and send to Marie for reivew and signature.

Case Notes Report

SFC 003359

Thursday, January 6, 2011

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	01/21/2011		

Caseworker z2

Status	Date	Time Applied	Case Worker
S	09/08/2010	1.5	SB

received an e-mail from Matthew Giuliano on 9/3/10 -This email is to confirm that, in response to the above-mentioned FOIA request, we did a search of all records of Director, EO; Director, EO R&A; EO Guidance; EO Technical; EO Customer Education & Outreach; and EO Technical Processing Unit, relating to any training, memos, letters, policies, etc., that details how the Tax Exempt/Government Entities Division reviews applications for non-profits, 501(c)(3) and other not for profit organizations specifically mentioning ¿Tea Party¿, ¿the Tea Party¿, ¿tea party¿ and ¿tea parties¿. The four pages that we sent to you were the only responsive documents we were able to find.
If you have any questions, please let me know.
Since documents are not responsive to request I decided to prepare a no records final lette. Prepared no records letter f or Marie's review and signature.

A	09/08/2010	0.7	SB

Marie reviewed and signed letter. She forwarded letter and attachments to the FOIA Coordination Group for approval (copy of e-mail in case file) Also prepared another subsequent ve letter due date is 9/10/10, new due date is 10/22/10 mailed letter today.

A	09/10/2010	0.4	SB

e-mail dated 9/10/.10 from Marie to Tiffany asking for status of case, Tiffany responded stating case is currently in review.,

A	09/15/2010	0.2	SB

Marie sent a status e-mail request to Tiffany Eder - FOIA Coordination today 9/15/10

A	09/21/2010	0.0	MT

Followed up with CC on 9/10, 9/15, & 9/20/2010. Called Tiffany Eder [redacted] to see if there were any questions or concerns I could address. She stated that she and Charles were confused as to why the documents provided by TE/GE were not responsive to the request. The 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. No guidance. She will go back to Charles with this information and we should have a response by COB today.

Case Notes Report

SFC 003360

Thursday, January 6, 2011

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	01/21/2011		

Caseworker ZZ

Status	Date	Time Applied	Case Worker
W	09/28/2010	0.0	MT

Received call from Tiffany Eder in Chief Counsel. Charles Christopher has concerns about the response and the scope of the request. Recommendations:

Contact the requester to be sure that she wants just documents relating to organizations mentioning the "Tea Party" or if she wants training, memo's, letters...detailing how "TE/GE reviews applications for non-profits in general.

and

Check with TE./GE Counsel to see if they have anything related to the request.

A	10/18/2010	1.0	SB

Spoke to Marie regarding her input on 9/28/10, I told her I see no reason to call requester, she clearly states what she wants. Also why does Tiffany from Counsel want me to call TE/GE counsel, since Matt stated that the tea party issue is new and they have nothing but the SCR in response to request. Marie stated that maybe we should have a conference call with Matt and Tiffany. She will get back to me regarding this issue. Conference call today, Matt-EO, Tiffany-Counsel, Marie and myself, we discussed case, Matt will double check to make sure, but he stated that what he sent was all they had that was responsive to request, since subject of request is new, they do have a preson that has been assigned to draft the guidelines, but issue is still new and will take some time. I read the first paragraph of request which clearly states what the requester wanted, since Tiffany suggested that I call her, I told her it was unnessary, she said okay and Marie agreed. I explained if I do not mail final letter I will have to send requester another subsequent ve letter and I was trying not to do that since several have been sent outrequester, she stated she will try and Matt will get back to us with results from his call to CI.

A	10/19/2010	0.4	SB

received an e-mail from Matthew-EO yesterday afternoon as follows:
I have followed up with the TLS in our office who had responsive documents to the above-referenced request. While we have received other cases, at least one, from Cincinnati, we as yet have no further material responsive to the requestor's request. It is possible that we will have more responsive material at some point in the future. He forwarded the e-mail to Tiffany and Marie also. Copy of e-mail in case file. Waiting to hear from Tiffany so I can mail out final letter.

Case Notes Report

SFC 003361

Thursday, January 6, 2011

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	01/21/2011		

Caseworker zz

Status	Date	Time Applied	Case Worker
A	10/20/2010	0.7	SB

Marie forward e-mail sent to her on 10/20/10 as follows:: Eder Tiffany M [mailto[redacted]
Sent: Wednesday, October 20, 2010 10:13 AM
To: Giuliano Matthew L
Cc: Twarog Marie A
Subject: FOIA 50-2010-03617
Hi Matthew,
My apologies for requiring your further attention to this FOIA case. Despite our conversation Monday, my manager remains skeptical regarding the search done with TE/GE counsel. He's surprised that there's been no discussion at all among managers, especially on counsel side, again despite the fact that this issue is new, that only a few applications have been received, and the reasonable amount of time needed to draft and publish guidance, letters, memos, etc.

I do understand that your initial search was for "all records of Director, EO; Director, EO R&A; EO Guidance; EO Technical; EO Customer Education & Outreach; and EO Technical Processing Unit" relating to any training, memos, letters, policies, etc. specifically mentioning "Tea Party," "the Tea Party," "tea parties."

Was a similar search conducted within TE/GE counsel? Based on our conversation Monday, can you confirm the person who generated those SCRs and that he's the only one currently addressing this issue?

Thanks for your continued attention.

Tiffany Eder
IRS, Office of Chief Counsel
Procedure and Administration, Branch 7
([redacted]

Sent Marie an e-mail advising that another subsequent ve letter will be sent out, old due date is 10/22/10 new due date will be 11/30/10. Mailed today

W 10/21/2010 0.2 SB

E-mail from Marie sent to her from Charles in Counsel today Sharon - here is the latest. Charles wants us to specifically search with TE/GE Counsel for records before we provide a response.. Need to prepare search memo to Melva, to do additional search and provide her with all e-maile and information sent by Matthew in EO

M 10/22/2010 1.0 SB

Prepared search memo to Chief Counsel Disclosure Unit (Melva Tyler) today, attached copy of incoming letter, responses from EO and all e-mails relating to case for background information. Due date 11/5/10

Case Notes Report

Case Number	Type	Sub	Requester Last Name	Taxpayer Last Name
50-2010-03617	1	3	Walsh	Walsh

Received	Original	Extension	Revised	Next Action	Prior Case Number
06/10/2010	08/06/2010	07/07/2010	01/21/2011		

Caseworker ZZ

Status	Date	Time Applied	Case Worker
M	10/26/2010	0.5	SB

call from Jim MacKay, wanted to fax information regarding subject of request, received fax 2 pages subject "Coordination Tea Party Cases Update Memorandum". E-mail from Matthew G - EO dated 10/26/10- The TLS for EO Technical, Rulings and Agreements, who is reviewing all 3 Tea Party cases, prepared on 10/18 a memorandum regarding very basic procedures for reviewing the cases between our Determinations office and here. It is two pages, with redactions of taxpayer names under (b)(5)/6103(c).
I am sending it over as responsive to the FOIA request, and per the recent discussions with Tiffany Eder.
e-mail was sent to Marie also. Will have to share this with Tiffany if Marie have not already.

M	11/02/2010	0.3	SB

spoke to Marie on Friday October 29, regarding fax sent by MacKay, it is not responsive to request since it occured after the FOIA request was received in our office.

M	11/08/2010	0.3	SB

still waiting for Chief Counsel's response.

M	12/15/2010	1.0	SB

forgot to update e-dim prepared new subsequent ve letter on 12/3/10, mailed letter when I returned to work on 12/6/10, old due date is 11/30/10, new due date is 1/21/11. Requester also called today for status of her request, told her I was still waiting for area to respond to request.

M	01/04/2011	1.0	SB

faxed pages that James MacKay faxed me on 10/26/10 (Coordinating Tea Party Cases Update Memorandum dated October 18, 2010 that was prepared by Carter C. Hull (EO) to Tiffany Eder again, on 12/8/10 I faxed pages to Amina Kirk. The material was prepared after the date of requesters FOIA request. FOIA Coordination group wanted to review these pages. Still waiting for response from Counsel to see if they could locate any documents.

M	01/04/2011	1.0	SB

Tiffany had questions concerning the faxed pages from MacKay, I explained that she spoke to Marie and asked to see the document sent from EO. I told her that we are not releasing the pages since they occurred after the requesters FOIA request was sent in. She stated okay therefore they do not need to give us advise on these pages. I told Tiffany that a search memo was sent to Melva's area and that I am waiting for a response from her area. Called Marie advised her of the conversation I had with Tiffany.

SFC 003363

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

January 6, 2011

Ms. Lynn Walsh
SFC [redacted]

Dear Ms. Walsh:

I am responding to your Freedom of Information Act (FOIA) request dated May 27, 2010 that we received on June 10, 2010.

You asked for documents relating to any training, memos, letters, policies, etc., that details how the "Tax Exempt/Government Entities Division" reviews applications for non-profits, 501(c)(3) and other not for profit organizations specifically mentioning "Tea Party", "the Tea Party", "tea party" and "tea parties".

I found no documents specifically responsive to your request.

I have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Sr. Disclosure Specialist Sharon Baker, ID #SFC [redacted], at (2SFC [redacted] r write to: Internal Revenue Service, Headquarters (HQ) Disclosure Office (FOIA) , SFC [redacted] Please refer to case number 50-2010-03617.

Sincerely,

Marie A. Twarog

Marie A. Twarog
Disclosure Manager
Headquarters (HQ) Disclosure Office

Enclosure

10/26/2010 09:55 SFC [redacted] EO RA SFC 003364
PAGE 01/03

FAX

INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION
EXEMPT ORGANIZATIONS

DATE: 10-26-2010

TO: Sharon Baker

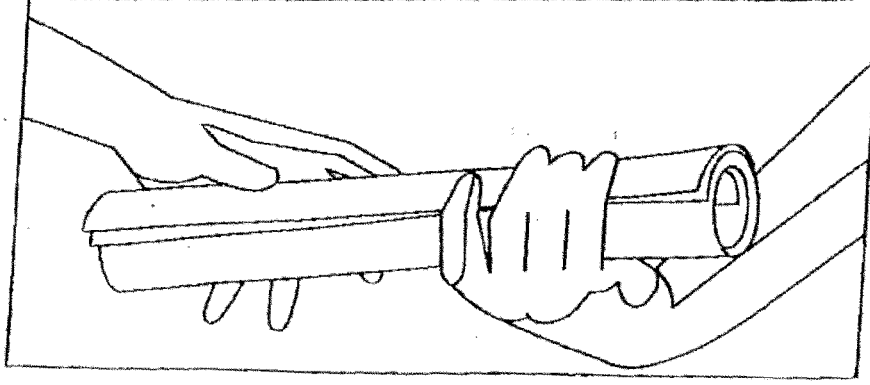
FAX NUMBER: SFC [redacted]

FROM: James R. Mackay, ID 50-30574
Phone: SFC [redacted]
FAX:
Office Symbols: SE:T:EO:RA:T:2

COMMENTS:

Number of pages (including this coversheet): 3

This communication is intended for the sole use of the individual to whom it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent for delivering the communication to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and return the communication at the address above via the United States Postal Service. Thank you.



COORDINATING TEA PARTY CASES Update Memorandum

This memorandum is to bring the file up to date concerning Tea Party Cases in Cincinnati. Exempt Organizations (HQ) is working Tea Party applications in coordination with Cincinnati. The bulk of the cases are under the jurisdiction of Cincinnati. However, HQ is also working a few applications in the Washington, D.C. office. Currently, HQ is working one IRC 501(c)(3) application and one IRC 501(c)(4) application. A development letter was sent to both organizations and replies have been received. The replies are being evaluated. These two Tea Party cases are the subject of an SCR, updated monthly.

Cincinnati is supplying HQ with copies of the Tea Party files they have identified, along with proposed development letters. The letters are reviewed and comments are made by telephone to the agent in Cincinnati, which then mails out the development letters. Mr. Grodnitzky, Acting Manager EO Technical, and the undersigned looked at the first proposed letter and discussed possible comments. The undersigned telephoned Mrs.Hofacre in Cincinnati and passed along the suggested changes. Mrs. Hofacre has continued to fax copies of the administrative files to the undersigned and has emailed copies of proposed development letters. She also mails the revised development letters to the organizations. Mr. Grodnitzy advised that he did not need to review further development letters. The undersigned continues to review Tea Party administrative files and the proposed development letters, and provide Mrs. Hofacre with suggestions.

(b)(5)/ 6103(c)

There have been three cases assigned to me, with control numbers, here at HQ. They are (1) Prescott Tea Party, LLC (an IRC 501(c)(3) application), (2) Albuquerque Tea Party, Inc. (an IRC 501(c)(4) application), and (3) American Junto, Inc. (an IRC 501(c)(3) application. The Prescott case was closed as failure to respond to the development letter. Albuquerque and Junto have both responded to first development letters, and second development letters may have to be sent to both organizations. Another case in HQ, League of American Voters, Inc. assigned to Janet Gitterman in Group 2, is similar to the other cases in HQ, but not initially identified as a "Tea Party" case. A proposed exemption letter under IRC 501(c)(4) is currently being reviewed by Siri Buller, the PACI expert in Group 1.

The attached list shows the names of the Tea Party cases currently being worked in Cincinnati, with development letters being reviewed by the undersigned before being sent out. The cases marked with an asterisk (*) are applications under IRC 501(c)(3). All others are applications under IRC 501(c)(4).

(1) The column entitled Cinn. Info. Ltr. Date shows the date on the proposed development letters, usually the date the letter was sent to HQ.

(2) The column entitled Ltr.&File Reviewed indicates that the proposed development letter and the file was reviewed in HQ.

(3) The column entitled Ltr.&File Discussed indicates that the HQ comments were passed along to Cincinnati.

Re: COORDINATING TEA PARTY CASES Update Memorandum

(4) The column entitled Reply Reviewed indicates that the applicant has replied to the development letter, and that the reply was evaluated in HQ. Three organizations have replied to the development letters, and the responses are being evaluated.

(5) The column entitled Reply Discussed indicates that the reply was discussed with Cincinnati.

Carter C. Hull
SE:T:EO:RA:T:2
October 18, 2010

06/09/2010 13:09 FAX 002/002

SFC 003367

Lynn Walsh
SFC [redacted]

RECEIVED
DISCLOSURE STAFF
JUN 09 2010
CINCINNATI, OHIO

Internal Revenue Service
Disclosure Office 5
SFC [redacted]

Dear Ms. Littlejohn:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents be provided to me:

+Documents relating to any training, memo's, 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."

In order to determine my status for the applicability of fees, you should know that I am a freelance journalist that focuses on government transparency issues.

I am willing to pay fees for this request up to a maximum of $50. If you estimate that the fees will exceed this limit, please inform me first.

I also ask that, if the IRS maintains the records (or a backup of the records) in an electronic, searchable format that can be easily imported into a commonly used spreadsheet or database program (such as a .csv, .txt or .dbf file), that the records be provided to me in that electronic, searchable format.

If you have any problems or questions at all, technical or otherwise, please do not hesitate to contact me. My phone is SFC [redacted] and my e-mail is SFC [redacted]

I shall look forward to hearing from you promptly, as specified in the law. Thank you for your cooperation.

Sincerely,
Lynn Walsh

RECEIVED
JUN 10 2010
DISCLOSURE OFFICE
COVINGTON CAMPUS

SFC 003368

Internal Revenue Service

memorandum

date: JUL - 6 2010

to: Manager, Disclosure
SE:S:CLD:GLD:D3

Michael for David L. Fish

from: David L. Fish, Manager
EO Guidance
SE:T:EO:RA:G

---

subject: Freedom of Information Act Request of Lynn Walsh
Control No. 50-2010-3617 (the "FOIA Request")

This is the response to the FOIA Request by Director, EO; Director, EO R&A; EO Guidance; EO Technical; EO Customer Education & Outreach; and EO Technical Processing Unit. The FOIA Request was received by us via memorandum dated June 11, 2010.

I attach all of the responsive documents we have in our office.

The FOIA Request required 2 hours of search time.

If you have any questions, please call Matthew Giuliano at SFC [redacted]

SFC 003369

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: ~~(1) Prescott Tea Party, LLC, and (2) Albuquerque Tea Party, Inc.~~ **TIN/EIN:** SFC [redacted] **POA:** None	**TAX PERIODS:** 2009 and forward **EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, D.C.	☒ INITIAL REPORT ☐ FOLLOW-UP REPORT ☐ FINAL REPORT

SENSITIVE CASE CRITERIA:

☒ Likely to attract media or Congressional attention
☐ Unique or novel issue
☐ Affects large number of taxpayers
☐ Potentially involves large dollars ($10M or greater)
☐ Other (explain in Case Summary)

FORM TYPE(S): (1) Form 1023, (2) Form 1024	**START DATE:** 04/02/2010
POTENTIAL DOLLARS INVOLVED (IF > $10M) : Unknown	**CRIMINAL REFERRAL?** Unknown **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:
The various "tea party" organizations are separately organized, but appear to be a part of a national politically convervative 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. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and ten applications from organizations which have applied for recognition of exemption under section 501c)(4) as social welfare organizations. Two organizations that might be "tea party" organizations already have been recognized as exempt under section 501(c)(4). The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

CURRENT SIGNIFICANT ACTIONS ON CASE:
A development letter has been sent to the 501(c)(3) applicant, and a development letter to the 501(c)(4) applicant is being prepared. We will coordinate with Cincinnati regarding the development of the cases in that office.

SIGNIFICANT NEXT STEPS, IF ANY: Review the organizations' responses to the development letters and finish a determination on whether the organizations may be recognized as exempt.	**ESTIMATED CLOSURE DATE:** September 30, 2010

BARRIERS TO RESOLUTION, IF ANY:
Concerns whether the organizations are involved in political activities.

SUBMITTED BY: ~~Carter C. Hull, SE:T:EO:RA:T:2~~	**MANAGER:** ~~RONALD SHOEMAKER, SE:T:EO:RA:T:2~~

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003370

TEGE Division Sensitive Case Report
(revised January 2007)

DATE: April 19, 2010

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003371

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: ~~(1) Prescott Tea Party, LLC, and (2) Albuquerque Tea Party, Inc.~~	**TAX PERIODS:** 2009 and forward
TIN/EIN: SFC [redacted] **POA:** None	**EARLIEST STATUTE DATE:**
FUNCTION REPORTING: EO RA **POD:** Washington, D.C.	☐ INITIAL REPORT ☒ FOLLOW-UP REPORT ☐ FINAL REPORT
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Unique or novel issue ☐ Affects large number of taxpayers	☐ Potentially involves large dollars ($10M or greater) ☐ Other (explain in Case Summary)
FORM TYPE(S): (1) Form 1023, (2) Form 1024	**START DATE:** 04/02/2010
POTENTIAL DOLLARS INVOLVED (IF > $10M): Unknown	**CRIMINAL REFERRAL?** Unknown **IF YES, WHEN?** **Freeze Code TC 914 (Yes or No)**

CASE OR ISSUE SUMMARY:
The various "tea party" organizations are separately organized, but appear to be a 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. Cincinnati is holding three applications from organizations which have applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and ten applications from organizations which have applied for recognition of exemption under section 501c)(4) as social welfare organizations. Two organizations that might be "tea party" organizations already have been recognized as exempt under section 501(c)(4), and one as a (c)(3) also may be a tea party case, but EOT is checking the case file in Cincy. The issue is whether these organizations are involved in campaign intervention or, alternatively, in nonexempt political activity.

CURRENT SIGNIFICANT ACTIONS ON CASE:
A development letter has been sent to the 501(c)(3) applicant in EOT, and a development letter to the 501(c)(4) applicant in EOT is being prepared. We will coordinate with Cincinnati regarding the development of the cases in that office.
The 501(c)(3) organization failed to submit information in the time given. A telephone call to the given number was answered by a machine, contact was requested, but the organization never called back. The case was closed FTE. Another 501(c)(3) tea party application was requested from Cincinnati. The 501(c)(4) organization requested an additional 30 days to submit the requested information.

SIGNIFICANT NEXT STEPS, IF ANY: Review the organizations' responses to the development letters and finish a determination on whether the organizations may be recognized as exempt.	**ESTIMATED CLOSURE DATE:** September 30, 2010

BARRIERS TO RESOLUTION, IF ANY:
Concerns whether the organizations are involved in political activities.

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

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SFC 003372

TEGE Division Sensitive Case Report
(revised January 2007)

SUBMITTED BY: Carter C. Hull, SE:T:EO:RA:T:2	MANAGER: RONALD SHOEMAKER, SE:T:EO:RA:T:2
DATE: May 24, 2010	Deleted: April 19, 2010¶

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

SFC 003372 Print Form

Action Routing Sheet

Request for Signature of: Gary T. Prutsman, Chief Disclosure **Date:** 6/11/10

Subject: Sensitive Case Report 50-2010-03617

i-trak Control #: _____ **Due Date:** 6/25/10

Reviewing Office	*Secretary Initial/Date*	*Reviewer Initial/Date*	*Comment*
Val Barta Acting Disclosure Manager HQ FOIA Group	veb 6-14-2010		Acting for Marie on 6-11-2010
Marie Twarog, Disclosure Manager HQ FOIA Group			
Gary T. Prutsman Chief, Disclosure		STMFB	[illegible]

Summary:
Requester is asking for 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". Search Memo was sent to Exempt Organizations on 6/11/10, due date is 6/25/10.

Prepared By:		*Office Symbols:*	*Bldg/Room #*
Sharon Baker SDS, Headquarters (HQ)	SFC [redacted]	SE:S:CLD:GLD:D	NCFB C2-332

SFC 003374

SB/SE Division Sensitive Case Report
(revised June 2006)

CASE NAME: Lynn Walsh freelance journalist 50-2010-03617 TIN/EIN: NA	TAX PERIODS:
FUNCTION REPORTING: GLD AREA/TERRITORY: Other CITY:	☒ INITIAL REPORT ☐ FOLLOW-UP REPORT ☐ FINAL REPORT
SENSITIVE CASE CRITERIA: ☒ Likely to attract media or Congressional attention ☐ Potentially involves large dollars ($10M or greater) ☐ Unique or novel issue	☐ Affects large number of taxpayers ☐ Taxpayer is IRS employee (not routine case) ☐ Other (explain in Case Summary)
TAX TYPE(S): NA	START DATE IN THIS FUNCTION: 6/10/10
POTENTIAL DOLLARS INVOLVED:	CRIMINAL REFERRAL? IF YES, WHEN? NA

CASE OR ISSUE SUMMARY:
Requester is asking for documents relating to any training, memos, letters, policies, etc., that detail how Exempt /Government Entities Division reviews applications for non-profits 501©(3) and other not for profit organizations specifically mentioning "Tea Party", "the Tea Party", "tea party" and "tea parties".

RECENT ACTIVITY REQUIRING REPORT:
Sent search memo to corrdinator Matthews Giuliano Exempt Organizations (cc Mike Seto) for processing on June 11, 2010.

SIGNIFICANT NEXT STEPS, IF ANY:	ESTIMATED DATE: **6/25/10**

BARRIERS TO RESOLUTION, IF ANY:

SUBMITTED BY: **Sharon E. Baker, SDS, thru Val Barta, Acting Disclosure Mgr., thru Gary T. Prutsman, Chief, Disclosure**	CONCURRENCE, IF REQUIRED BY DIVISION

DATE: **June 11, 2010**

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

Baker Sharon E

From: Barta Valerie E
Sent: Monday, June 14, 2010 11:09 AM
To: Prutsman Gary T
Cc: Baker Sharon E; Twarog Marie A
Subject: FW: FOIA Sensitive Case Report 50-2010-03617
Attachments: Action Routing Sheet.pdf; Lynn Walsh.pdf; SCR 50-2010-03617.doc

Initial Sensitive Case Report on request from a "freelance journalist" for your review and forwarding to Clare.

Chief Counsel and Media Relations were sent a copy of the request on Friday, June 11, 1010.

Search Memo has been issued to Exempt Organizations.

I am just completing the cycle since I was Acting for Marie on Friday, June 11, 2010.

Val
SFC

From: Baker Sharon E
Sent: Monday, June 14, 2010 9:55 AM
To: Barta Valerie E
Subject: 50-2010-03617

Val

I left your name on the routing sheet for this case since you were acting on Friday, June 11, 2010.

Sharon

W&M EXHIBIT 12

SFC 003376

From: Light Sharon P
Sent: Thursday, January 24, 2013 10:48 AM
To: Paz Holly O
Subject: FW: EO Tax Journal 2013-15

Retirement talk?

From: Lerner Lois G
Sent: Thursday, January 24, 2013 11:46 AM
To: Light Sharon P
Subject: RE: EO Tax Journal 2013 15

Oh--maybe I can get the DC office job!

Lois G. Lerner
Director of Exempt Organizations

From: Light Sharon P
Sent: Thursday, January 24, 2013 11:35 AM
To: Lerner Lois G; Paz Holly O; Fish David L
Subject: RE: EO Tax Journal 2013 15

This is the most informative article I've read about it http://www.theatlantic.com/politics/archive/2013/01/how-organizing-for-action-plans-to-keep-obamas-foot-soldiers-enlisted/267384/.

Right now, the Obama campaign site includes info about this new org, featuring a blog from the new executive director who is leaving the White House to run it from Chicago. They'll also have a DC office.

Since Priorities USA did not file a 1024, I woul d think they would follow the same self-declaring path here. But maybe not.

From: Lerner Lois G
Sent: Thursday, January 24, 2013 11:26 AM
To: Paz Holly O; Fish David L
Cc: Light Sharon P
Subject: RE: EO Tax Journal 2013 15

I know--this is the second article I've read about this. You may want to look for the earlier one--it may say whether they intend to apply

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, January 24, 2013 10:05 AM

W&M EXHIBIT 12

SFC 003377

To: Lerner Lois G; Fish David L
Cc: Light Sharon P
Subject: RE: EO Tax Journal 2013 15

I am not aware that we have received this but will check. It is hard to have certainty without the org's EIN though.

From: Lerner Lois G
Sent: Thursday, January 24, 2013 8:27 AM
To: Paz Holly O; Fish David L
Subject: Fw: EO Tax Journal 2013 15

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. I am not going to ABA because I am not feeling great so will be in later today. Thanks
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: paul streckfus [mailt [redacted]]
Sent: Thursday, January 24, 2013 05:11 AM Eastern Standard Time
To: paul streckfus [redacted]>
Subject: EO Tax Journal 2013 15

From the Desk of Paul Streckfus,
Editor, EO Tax Journal

Email Update 2013-15 (Thursday, January 24, 2013)
Copyright 2013 Paul Streckfus

1 - New (c)(4) to Supersede DNC?

2 - IRS Denies Organization for Benefitting Musicians a nd Music Companies

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1 - New (c)(4) to Supersede DNC?

Dem Officials Fret over New Obama Nonprofit
By James Hohmann, *Politico,* January 23, 2013

Some key Democrats worry that President Obama's new Organizing for Action group will marginalize the traditional party apparatus, cannibalizing dollars and volunteers while making it harder to elect down -ballot candidates.

State party leaders grumbled Tuesday at the Democratic National Committee's meeting in Washington about a lack of detail on how exactly the new tax -exempt advocacy organization will work. "It's still a big question mark right now," said Minnesota Democratic chairman Ken Martin. "We were told before the end of this campaign that all of that [the Obama campaign machi nery] would fold into state parties. Now we're being told something different, which is they're going to set up this 501(c)(4)."

Martin backs the idea of the new structure in theory but worries that the organizations responsible for actually electing Democrats will get left behind in the chase for donors and activists. "I'm not a dummy," he said. "I understand post-*Citizens United* the necessity to set up vehicles for different types of money to flow, but the

reality is you can't strip the party bare and ex pect in four years that we're going to be able to pick up the pieces and get a Democrat elected president if you've completely stopped building capacity within the party."

Obama's White House intends for OFA to serve as a perpetual grass -roots arm, energizing supporters in favor of the president's policies. Rather than focus on fundraising and candidates, leaders said last week that they will engage -- at least initially -- in harnessing Obama's network of supporters and volunteers. Nonprofit status allows Obama to raise unlimited money from both individuals and corporations, which the DNC and individual state parties cannot do. But it prevents OFA from directly participating in elections.

"People are very concerned. They don't know where it will lead," sa id North Carolina Democratic Party Chairman David Parker. "The concerns vary. Nothing in particular, and everything in general.... There's always a question of what does a successful reelection campaign do after the show is over. Is there another play to be involved with? Or what? And we're in the 'or what' stage?"

"I would love to know," he added. "It's like the three wise men come to [King] Herod, and Herod says, ' Well, this is really cool. After you find the baby Jesus, come back and tell me where he is so that I too may go worship,'" Parker added. "Now, was he acting in good faith or did he kill all the children in Bethlehem? I don't know how the story ends."

Other Democratic leaders huddling at the Omni Shoreham Hotel would not go so far on the record the day after the president's inauguration, but they view the post -election shuffle with just as much apprehension. "Essentially, it's an end run around the DNC and state parties," said a third state chairman. "For the long -term health of our party, I don't think it is the way to go. I don't think fighting for donors is the way to do it.... We've won five of the last six popular votes in the general elections, so som ething's working.

"The simple truth of the matter is that OFA 4.0, or whatever it is now, is not going to work to elect our local legislators," the chairman added. "It's not going to work to elect our local governors. It's going to work to push the president's agenda. I come from a state where the president's not very popular. My elected Democrats are not always going to line up with him, and getting the activists all juiced up over it doesn't help elect Democrats."

On Sunday, the new group welcomed thous ands of Obama supporters to another Washington hotel for a "Legacy Conference" to discuss ways they might support the president's legislative agenda. Indiana Democratic Chairman Dan Parker welcomes any outside help. He also notes that parties have unique f unctions that cannot be replicated, including direct coordination with party nominees. "In each state, it's going to be interesting to see how they work with the parties because I don't know if they can," he said.

DNC Chairwoman Debbie Wasserman Schultz, who was reelected unanimously at Tuesday afternoon's meeting, pronounced herself "thrilled" by the new arrangement and pledged to "work closely" with OFA. "Organizing for Action will enable us to keep our volunteers engaged through issue advocacy [and] to help pass the president's legislative agenda while training the next generation of grass -roots organizers and leaders," she said. "We will march forward with OFA to build the strongest progressive beachhead ever seen by electing leaders across the country whose values match our hearts and whose determination needs our commitment."

Behind the scenes, though, the new incarnation of OFA will undoubtedly diminish the DNC's relevance and overshadow Wasserman Schultz. Many insiders believe Obama's decision to al low her to stay on as chairman for another term suggests a lack of interest in the party as much as a vote of confidence in her leadership.

Separating OFA and the DNC allows the White House to avoid relying on the Florida congresswoman as a spokeswoman. A poll conducted for the Obama campaign last year ranked Wasserman Schultz dead last as an effective surrogate. The new model allows those who are actually in Obama's inner circle to speak for him,

including Jim Messina (Obama's former campaign manager who will chair the group), Jon Carson and David Plouffe. An OFA spokeswoman did not respond to a request for comment.

Many rank-and-file committee members, especially those who do not chair state parties, were much more positive about the new endeavor. Gus Bi ckford, a Massachusetts national committeeman, noted that OFA and his state party worked together well during the 2012 election. That was true, he said, even though the Obama campaign was focused on winning neighboring New Hampshire while the state party's priority was electing Elizabeth Warren to the Senate. "We didn't fight against each other," he said.

He does not expect infighting for limited resources. "I'm not naïve as to how political fundraising works," said Bickford. "From what I do know ... I don't think so ... I'm not a person to say it's a bad thing."

Oregon national committeewoman Laura Calvo said local Democrats already have lots of experience partnering with outside advocacy organizations like labor or abortion rights groups. "So far, it's so br and new that the word really hasn't trickled down to something that's concrete, that you can sit down and read. Personally, I think it's pretty exciting," she said. "Sometimes the structure and the logistics and the priorities don't quite match up.... So that causes what I would call hiccups, but there's never been a major problem as far as I can see."

She said her state party, because Oregon's not a swing state, has a stable structure that could win without national help in 2012. "We were pretty much left t o our own devices, and the party really pulled through," said Calvo. "The more progressive voices there are out there, the better off we are."

---

2 - IRS Denies Organization for Benefitting Musicians and Music Companies

I recognize that, because of the section 7428 declaratory judgment provisions, the IRS feels compelled to make all possible arguments in denial letters to (c)(3) applicants, hoping that on judicial review a judge will find an argument for denial he or she agre es with.

In denial letter 201303018, reprinted below, the IRS's National Office cites 13 revenue rulings (all from the sixties and seventies -- the golden age of EO revenue rulings) and four court cases, but did the IRS make its case? (Aside: why many organizations don't protest remains a mystery.)

To me the underlying issue, based on the facts set forth, is whether the applicant is engaged in some sort of commercial endeavor or something else. Also, I'd like to know more about its funding, which is descr ibed thusly: "Your primary source of income is from gifts, grants, and contributions. You also receive some income from membership, consulting, and other fees." That doesn't sound like your typical commercial endeavor, unless the focus is on consulting inc ome. An important factor here may be the statement that "Although Y software is free, you will charge a flat fee for your hosting services." Are the hosting services a significant source of revenue?

In its rationale for denying the applicant, the IRS sta tes: "You do not conduct any public discussion groups, forums, panels, lectures or similar programs; all of your educational instruction occurs online on your website and blog." While this may be true, is the IRS saying more traditional educational program s are favored over websites and blogs? Surely not. I suppose this sentence needs to be read in context with the next sentence, which states: "These activities are best described as providing product information and are analogous to a product manual, which does not rise to the level of educational as required under I.R.C § 501(c)(3)." But this raises another question: is the IRS saying providing product information is not educational? Are product manuals not educational and presumably commercial endeavors? I f these two sentences are not head -scratching enough, the next sentence states: "Furthermore, you are not described in I.R.C. § 501(c)(3) as a charitable

SFC 003380

Miller Steven T

From: SFC [redacted]
Sent: Saturday, May 04, 2013 4:25 PM
To: Miller Steven T
Subject: Re:

Ok -- would it make sense for you to email the CoS just to say team is working all weekend and maybe suggest a time to time for the two of you to talk tmrw? (Just to reinforce with him that there is motion this weekend?) Thanks.

----- Original Message
From: Miller Steven T SFC [redacted]
Sent: Saturday, May 04, 2013 04:13 PM
To: Patterson, Mark (DO)
Subject: Re:

So just got off some calls (also spoke to Wilkins). There will be another call with Counsel and EO at noon tomorrow.

I will give you a buzz after I get briefed on that call (I probably will not be on it). My intention would be to give a preview to mayor CoS after that.

Call if you need more before that.

Sent using BlackBerry

SFC 003381

Miller Steven T

From: Flax Nikole C
Sent: Monday, May 06, 2013 9:20 PM
To: Miller Steven T

First proposed c4 denial going tomorrow - not the well known org.

IRSC032193

SFC 003382

From: Ingram Sarah H
Sent: Wednesday, September 29, 2010 3:58 PM
To: Brown Cynthia A
Subject: RE: Meeting

Probably should discuss who but we have to do this. Do they mean Oct 1st or Oct 8th?

From: Brown Cynthia A
Sent: Wednesday, September 29, 2010 4:51 PM
To: Ingram Sarah H
Subject: FW: Meeting
Importance: High

Need your assistance--is this for you or someone else should handle?

Thanks

From: Pilger, Richard [mailt SFC [redacted]
Sent: Wednesday, September 29, 2010 4:20 PM
To: Brown Cynthia A
Cc: Smith, Jack; Simmons, Nancy; Hulser, Raymond
Subject: Meeting

Ms. Brown, as we discussed this afternoon, we would like to invite Ms. Ingram to meet with us concerning 501(c)(4) issues, and propose next Friday at 10:00 a.m. We are located in th SFC Building [redacted] [redacted]. Thank you for your assistance.

Richard C. Pilger
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
SFC [redacted]
[redacted](f)

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SFC 003383

From: Hamilton David K
Sent: Friday, October 22, 2010 2:35 PM
To: Whitaker Sherry L
Cc: Blackwell Robert M
Subject: RE: Address for 501 data

I'm sending the Justice Dep't. C4 returns you requested to the FBI today. 21 DVD's plus an index file and a description of how to read the index file. Plus my contact info. Have them contact me if there are any questions.

Dave Hamilton SEC [redacted]

SOI Exempt Organization Returns Image Net (SEIN)

From: Whitaker Sherry L
Sent: Thursday, October 07, 2010 8:51 AM
To: Hamilton David K
Subject: FW: Address for 501 data

Dave
Below is the address that we need to send the special request for the C4 orgs to. Again, I really appreciate your help with this.

SSA Brian Fitzpatrick
FBI
SEC [redacted] NW
Room SEC
Washington, DC 20535

Sherry L. Whitaker, Manager

SE:T:BSP:SPP
Office Phone SEC [redacted]
Fax SEC [redacted]
Cell SEC [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SEC [redacted].
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

SFC 003384

From: Buller Siri
Sent: Monday, October 11, 2010 9:42 AM
To: Lerner Lois G; Kindell Judith E; Urban Joseph J; Lowe Justin
Cc: Letourneau Diane L
Subject: DOJ Recap
Attachments: 10.8.10 DOJ Full Recap.doc; 10.8.10 DOJ Recap.doc

Attached are reports on the meeting with DOJ – a full recap and a shorter version for Sarah. Looking forward to your comments! Thanks.

Siri Buller
Tax Law Specialist
Technical Group 1
Exempt Organizations
P SFC
F SFC

IRSC038444

On October 8, 2010, Lois Lerner, Joe Urban, Judy Kindell, Justin Lowe, and Siri Buller met with the section chief and other attorneys from the Department of Justice Criminal Division's Public Integrity Section, and one representative from the FBI, to discuss recent attention to the political activity of exempt organizations.

The section's 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. In response, Lois and Judy eloquently explained the following points:

- Under section 7805(b), we may only revoke or modify an organization's exemption retroactively if it omitted or misstated a material fact or operated in a manner materially different from that originally represented.
    - If we do not have these misrepresentations, the organization may rely on our determination that it is exempt. However, the likelihood of revocation is diminished by the fact that section 501(c)(4)-(c)(6) organizations are not required to apply for recognition of exemption.
    - We discussed the hypothetical situation of a section 501(c)(4) organization that declares itself exempt as a social welfare organization, but at the end of the taxable year has in fact functioned as a political organization. Judy explained that such an organization, in order to be in compliance, would simply file Form 1120-POL and paying tax at the highest corporate rate.

Lois stated that although we do not believe that organizations which are subject to a civil audit subsequently receive any type of immunity from a criminal investigation, she will refer them to individuals from CI who can better answer that question. She explained that we are legally required to separate the civil and criminal aspects of any examination and that while we do not have EO law experts in CI, our FIU agents are experienced in coordinating with CI.

The attorneys asked whether a change in the law is necessary, and whether a three-way partnership among DOJ, the FEC, and the IRS is possible to prevent prohibited activity by these organizations. Lois listed a number of obstacles to the attorneys' theories:

- Definitions of the following terms are not clear to a jury:
    - A "political committee"
    - "Advocacy"
    - "Lobbying"
    - "Political intervention"
    - "Express advocacy"
- There is confusion over the difference between political campaign activity and lobbying, which we see in the referrals we receive.
- We receive Forms 990 long after the activity has concluded.
- There is public fatigue over this discussion.
- In a case like this, the defense will go through each of the organization's expenditures and explain why it is not political.

Judy also explained that the political activity definitions of sections 501(c)(3) and 527 both apply to section 501(c)(4) organizations, but we have no Chief Counsel ruling on whether they are different definitions. She pointed to Revenue Ruling 2004-6, which was drafted in light of the electioneering communication rules before they were litigated.

On October 8, 2010, Lois Lerner, Joe Urban, Judy Kindell, Justin Lowe, and Siri Buller met with the section chief and other attorneys from the Department of Justice Criminal Division's Public Integrity Section, and one representative from the FBI, to discu ss recent attention to the political activity of exempt organizations.

Lois and Judy eloquently explained the following points:

- Section 7805(b) provides that an EO has reliance on our determination as long as it operates as originally represented.
- The likelihood of revocation for section 501(c)(4)-(c)(6) organizations is diminished because they are not required to apply for recognition of exemption.
- If a section 501(c)(4) organization declares itself exempt as a social welfare organization, but at the end of the taxable year has in fact functioned as a political organization , such an organization could simply file Form 1120-POL and pay tax at the highest corporate rate to be compliant.
- We are legally required to separate the civil and criminal as pects of any examination and while we do not have EO law experts in CI, our FIU agents are experienced in coordinating with CI.
- There are a number of obstacles to criminally prosecuting these organizations:
    - Definitions of the following terms are not clear to a jury:
        - "Political committee"
        - "Advocacy"
        - "Lobbying"
        - "Political intervention"
        - "Express advocacy"
    - Confusion over the difference between political campaign activity and lobbying.
    - We receive Forms 990 long after the activity has concluded.
    - There is public fatigue over this discussion.
    - The defense will explain why each of the organization's expenditures is not political.
- Both of the political activity definitions from sections 501(c)(3) and 527 apply to section 501(c)(4) organizations, but we have no ruling from Chief Counsel on whether they are in fact different definitions.

SFC 003387

From: Ingram Sarah H
Sent: Wednesday, September 29, 2010 5:29 PM
To: Miller Steven T; Song Victor S O; Raven Rick A
Cc: Lerner Lois G
Subject: DOJ Meeting

Importance: High

This is to heads-up you about the 10/8 meeting we have been invited to at the Criminal Division of Justice. Lois will take the lead for us as I will be out of town. Lois knows at least some of these folks from her years working in this office (a while ba ck and before she worked at Fed Election Commission).

The plan is to walk them 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 she 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).

Would IRS-CI like to send anyone with us? Anyone want to be pre-briefed? We would report back on the meeting and any follow-up issues.

PS. Steve: Lois and I are on your calendar this Friday on the Baucus letter.

From: Brown Cynthia A
Sent: Wednesday, September 29, 2010 4:51 PM
To: Ingram Sarah H
Subject: FW: Meeting
Importance: High

From: Pilger, Richard [mailt SFC [redacted]
Sent: Wednesday, September 29, 2010 4:20 PM
To: Brown Cynthia A
Cc: Smith, Jack; Simmons, Nancy; Hulser, Raymond
Subject: Meeting

Ms. Brown, as we discussed this afternoon, we would like to invite Ms. Ingram to meet with us concerning 501(c)(4) issues, and propose next Friday at 10:00 a.m. We are located in th SFC Building [redacted] Thank you for your assistance.

Richard C. Pilger
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530

SFC [redacted]

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From: Urban Joseph J
Sent: Tuesday, October 19, 2010 12:25 PM
To: Kindell Judith E
Subject: FW: Contact Point/501(c)(4)

Categories: NUUU

See Nan's caveat below. Just waiting to hear back from Janet. FYI, her contact info is: Janet J. Johnson, Deputy Division Counsel/Deputy Associate Chief Counsel (Criminal Tax), Office of Chief Counsel, IRS – Phone SFC

From: Marks Nancy J [mailt SFC
Sent: Tuesday, October 19, 2010 1:19 PM
To: Urban Joseph J; Johnson Janet J - CT
Cc: Kindell Judith E
Subject: RE: Contact Point/501(c)(4)

Thanks and yes Janet is the right contact. I'd let him know that we've given her a heads up but also let him know that because this has not been an area in whi ch we've seen activity that rises to the level of criminal investigation it is pretty unfamiliar ground for anyone in the criminal tax enforcement area thereby laying the foundation that we'll be with Janet in any exploration of the issues in order to prov ide the EO context.

From: Urban Joseph J [mailt SFC
Sent: Tuesday, October 19, 2010 1:14 PM
To: Marks Nancy J; Johnson Janet J - CT
Cc: Kindell Judith E
Subject: Contact Point/501(c)(4)

We received an e-mail today from Richard Pilger, who was an attorney in the meeting we had with the DOJ folks on election issues. He gives his title as Director, Election Crimes Branch & Senior Trial Attorney Public Integrity Section Criminal Division. He asked whether we "had a chance to identify a good IRS contact re criminal tax enforcement against tax exempt organizations?" I wanted you to know the request was here and to confirm that it was still OK to offer Janet as the contact.

SFC 003390

From: Buller Siri
Sent: Thursday, October 07, 2010 1:00 PM
To: Urban Joseph J
Subject: Cover Sheet
Attachments: DOJ Cover Sheet.doc

Here is the cover sheet for the materials for tomorrow – anything you would suggest adding to make it look more official? Letterhead? Contact information for follow-up/questions?

IRSC038472

Enclosed are the following materials regarding political activity of section 501(c)(4), 501(c)(5), and 501(c)(6) organizations :

1) "Advocacy Organizations" – an internal two-page summary of allowable advocacy activities of exempt organizations, with an accompanying chart.

2) 2007 Form 990: Return of Organization Exempt From Income Tax

3) 2007 Form 990-EZ: Short Form Return of Organization Exempt From Income Tax

4) 2007 Instructions for Form 990 and Form 990-EZ

5) Schedule C: Political Campaign and Lobbying Activities, 2009 Form 990 or 990-EZ

6) 2009 Instructions for Schedule C (Form 990 or 990-EZ)

7) Revenue Ruling 2004-6, 2004-4 I.R.B. 328 (January 26, 2004)

8) Presentation and accompanying script for the 2008 Phone Forum on Rules for Tax-Exempt Organizations During an Election Year: Topics include the distinctions between political activity, lobbying, and general advocacy, and which activities are permissible by 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6) and 527 organizations (available at http://www.irs.gov/charities/nonprofits/article/0,,id=155031,00.html).

SFC 003392

From: Pilger, Richard [mailto:SFC [redacted]]
Sent: Thursday, October 07, 2010 10:47 AM
To: Whitaker Sherry L
Cc: Fitzpatrick, Brian K. (FBI); Simmons, Nancy
Subject: Address for 501 data

Please forward the properly available IRS 501 filing data to --

SSA Brian Fitzpatrick
FBI
SFC [redacted] NW
Room SFC
Washington, DC 20535

Thanks very much.

From: Lerner Lois G [SFC [redacted]
Sent: Tuesday, October 05, 2010 5:52 PM
To: Pilger, Richard
Cc: Lerner Lois G; Whitaker Sherry L
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

Lois G. Lerner
Director, Exempt Organizations

SFC 003393

From: Whitaker Sherry L SFC [redacted]
Sent: Thursday, October 07, 2010 10:51 AM
To: Hamilton David K
Subject: FW: Address for 501 data

Dave
Below is the address that we need to send the special request for the C4 orgs to. Again, I really appreciate your help with this.

SSA Brian Fitzpatrick
FBI
SF SFC [redacted] SF NW
Room SFC
Washington, DC 20535

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone - SFC [redacted]
Fax - 8SFC [redacted]
Cell - 4SFC [redacted]
SFC [redacted]
SFC [redacted]
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

SFC 003394

-----Original Message-----
From: Whitaker Sherry L [mailtoSFC [redacted]
Sent: Friday, May 30, 2014 5:06 PM
To: McDougal John C
Subject: FW: Question

Sherry L. Whitaker,
Director, GE Program Management
Office - SFC [redacted]
Cell - SFC [redacted]
EE-Fax - SFC [redacted]
TOD: Monday - Thursday 5:00 am - 3:30 pm (MT)
SFC [redacted]
Life is not measured by the number of breaths we take, but by the moments that take our breath away" -- Maya Angelou

-----Original Message-----
From: Hamilton David K [mailto:SFC [redacted]
Sent: Tuesday, October 05, 2010 2:49 PM
To: Whitaker Sherry L; Blackwell Robert M
Subject: RE: Question

There are 113,000 C4 returns from January 1, 2007 to now. Assuming they want all pages including redacted ones, that's 1.25 million pages. I've got a special extract set up for cases like this so very little programming is involved. If we get started on it right away, before the 10th when the monthly extracts start, we can probably get it done in a week or so. If we can't get it started right away, we won't be able to get it done until after the monthly and quarterly extracts, so we are looking at early to mid November.

Dave Hamilton SFC [redacted]

SOI Exempt Organization Returns Image Net (SEIN)

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 2:13 PM
To: Hamilton David K; Blackwell Robert M
Subject: RE: Question

How long are we talking?

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone SFC
Fax - SFC
Cell - SFC
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SFC
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

---

From: Hamilton David K
Sent: Tuesday, October 05, 2010 2:15 PM
To: Whitaker Sherry L; Blackwell Robert M
Subject: RE: Question

Yes, that is something we can query on so we can extract just the C4's.

Dave Hamilton <SFC

SOI Exempt Organization Returns Image Net (SEIN)

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 1:43 PM
To: Blackwell Robert M; Hamilton David K
Subject: Question

Is there a method that we can provide a DVD of all the 990 & 990-EZ filings for the last four years that are C4 orgs.

The request is coming down from the Department of Justice

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone - SF C
Fax - SFC
Cell - SF C
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SFC
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

SFC 003396

-----Original Message-----
From: Whitaker Sherry L [mailto:SFC [redacted]
Sent: Friday, May 30, 2014 5:06 PM
To: McDougal John C
Subject: FW: Question

Sherry L. Whitaker,
Director, GE Program Management
Office - SFC [redacted]
Cell - SFC [redacted]
EE-Fax - SFC [redacted]
TOD: Monday - Thursday 5:00 am - 3:30 pm (MT)
SFC [redacted]
Life is not measured by the number of breaths we take, but by the moments that take our breath away" -- Maya Angelou

-----Original Message-----
From: Hamilton David K [mailto: SFC [redacted]
Sent: Tuesday, October 05, 2010 2:51 PM
To: Whitaker Sherry L
Subject: RE: Question

I only want to do it once, so we need to give them what they need the first time. Either way is about the same amount of work, though multi-page tiffs take a little longer.

Dave Hamilton <SFC [redacted]

SOI Exempt Organization Returns Image Net (SEIN)

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 2:34 PM
To: Hamilton David K; Blackwell Robert M
Subject: RE: Question

Since they haven't said, which would you prefer I sell them on?

Sherry L. Whitaker, Manager
SE:T:BSP:SPP

Office Phone - SFC
Fax - SFC
Cell - SFCSFC
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SFC
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

---

From: Hamilton David K
Sent: Tuesday, October 05, 2010 2:19 PM
To: Whitaker Sherry L; Blackwell Robert M
Subject: RE: Question

How are they going to want it? Alchemy format? If Raw format, single-page or multi-page tifs?

Dave Hamilton <SFC>

SOI Exempt Organization Returns Image Net (SEIN)

From: Whitaker Sherry L
Sent: Tuesday, October 05, 2010 1:43 PM
To: Blackwell Robert M; Hamilton David K
Subject: Question

Is there a method that we can provide a DVD of all the 990 & 990-EZ filings for the last four years that are C4 orgs.

The request is coming down from the Department of Justice

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone - SF SF SFC
Fax - SF SF SFC
Cell - SF SF SFC
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
SFC
Life isn about aiti g for the storm to pass ..... It's about learning to dance i the rain

To: Minsek John H[redacted]]; Sweeney-Holt Fonda L[redacted]]
Cc: Taiwo Francis A[redacted]]; Signor Aaron G[redacted]]; Daniels Ramon D[redacted]]; St Jean Matthew J[redacted]]
From: Wilburn Lillie V
Sent: Thur 8/4/2011 3:47:51 PM
Importance: Normal
Subject: Re: MITS needs some helpAaron,

John, I really appreciate your efforts thus far and there's no need to continue.

I will inform the customer.

Can you please ship the drives back to Fonda at the address below?

SFC [redacted]

Thank so much for all your help!

Lillie Wilburn
Field Director, HQ CSSC
[redacted]

Sent using BlackBerry

----- Original Message -----
From: Minsek John H [mailto:[redacted]]
Sent: Thursday, August 04, 2011 04:40 PM
To: Sweeney-Holt Fonda L; Wilburn Lillie V
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J
Subject: RE: MITS needs some helpAaron,

Folks:

I performed a head stack assembly swap using the donor and unfortunately the drive will not recognize in any of my recovery tools. I have seen this before where everything suggests a bad head(s) but the device doesn't recognize on the first swap attempt. In just the right light, a score around the center of the platter appears indicating surface damage. If that's the case, the prognosis sometimes isn't good. It's possible that the system area of the disk containing the modules is in the center (which is the case many times) and that's why it cannot become ready. If you want me to try a couple more I can certainly do that but our budget folks tell me we'll need to wait to see if there are funds for this. If you have another donor or two that would be the next step.

Another option is an outside data recovery service. I would suggest Kroll-Ontrack but the price can be expensive. Normally for an exam like this the price will be anywhere from $1000. to $3000. depending on what's recovered.

Kroll-Ontrack
http://www.krollontrack.com/ps211-data-recovery/?utm_source=google&utm_medium=cpc&utm_term=kroll%20ontrack_Phrase&utm_content=Brand&utm_campaign=US%3a%202010%20Data%20Recovery%20Brand&?ppc_dr=KO

John Minsek
Sr. Investigative Analyst
IRS - CI Electronic Crimes - Tech & Support Ctr
SFC [redacted]
[redacted] (office)
[redacted] (mobile)

-----Original Message-----
From: Sweeney-Holt Fonda L [mailto:[redacted]]
Sent: Wednesday, August 03, 2011 2:26 PM
To: Minsek John H; Wilburn Lillie V
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J
Subject: RE: MITS needs some helpAaron,

Mike,

I will deliver the drive first thing in morning personally. Please let me know what time you arrive.

Thanks!

Fonda L. Sweeney-Holt
Senior Program Analyst
Headquarters CSSC
SFC [redacted]
Desk/VMS [redacted]
****New - Cell Phone [redacted]
New Carrollton - SFC [redacted]
Desk/VMS [redacted]
Email: [redacted]

-----Original Message-----
From: Minsek John H [mailto:[redacted]]
Sent: Wednesday, August 03, 2011 2:06 PM
To: Wilburn Lillie V; Sweeney-Holt Fonda L
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J
Subject: RE: MITS needs some helpAaron,

no problem folks - either way I'll get to it as soon as it comes in.

John Minsek
Sr. Investigative Analyst
IRS - CI Electronic Crimes - Tech & Support Ctr
SFC [redacted]
[redacted] (office)
[redacted] (mobile)

-----Original Message-----
From: Wilburn Lillie V [mailto[redacted]]
Sent: Wednesday, August 03, 2011 2:04 PM
To: Sweeney-Holt Fonda L; Minsek John H
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J
Subject: Re: MITS needs some helpAaron,

Can we hand carry it

The director needs an update

Lillie Wilburn
Field Director, HQ CSSC
[redacted]

Sent using BlackBerry

----- Original Message -----
From: Sweeney-Holt Fonda L
Sent: Wednesday, August 03, 2011 02:03 PM
To: Minsek John H; Wilburn Lillie V
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J
Subject: RE: MITS needs some helpAaron,

Hello All,

John: I apologize for overlooking this email. We will ship the hard-drive today, and provide the tracking number once rec'd.

Thanks!

Fonda L. Sweeney-Holt
Senior Program Analyst
Headquarters CSSC
SFC [redacted]
Desk/VMS [redacted]
****New - Cell Phone [redacted]
New Carrollton - SFC [redacted]
Desk/VMS [redacted]
Email: [redacted]

-----Original Message-----
From: Minsek John H [mailto[redacted]]
Sent: Wednesday, August 03, 2011 11:57 AM
To: Wilburn Lillie V
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J; Sweeney-Holt Fonda L
Subject: RE: MITS needs some helpAaron,

hi Lilly:

Just returned to the office and looked around here - I'm sorry but I don't see the drive anywhere. Was it sent? If so, perhaps you can provide the tracking numbers.

John Minsek
Sr. Investigative Analyst
IRS - CI Electronic Crimes - Tech & Support Ctr
SFC [redacted]
[redacted] (office)
(mobile)

-----Original Message-----
From: Wilburn Lillie V [mailto[redacted]]
Sent: Monday, August 01, 2011 7:48 PM
To: Minsek John H
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J; Sweeney-Holt Fonda L
Subject: RE: MITS needs some helpAaron,

John, I am not sure if your back from vacation but I wanted to follow up to see if you received the hard drive

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: [redacted]
Mobile: [redacted]
Fax: [redacted]

-----Original Message-----
From: Minsek John H [mailto[redacted]]
Sent: Tuesday, July 26, 2011 1:04 PM
To: Wilburn Lillie V
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D; St Jean Matthew J; Sweeney-Holt Fonda L
Subject: Re: MITS needs some helpAaron,

Lilly:

Yes, thank you. I'll get to it when I return. Please send to me at:

IRS-CI
Attn: J Minsek
SFC [redacted]

-------Original Message-------
From: Wilburn Lillie V
To: Sr. Investigative Analyst John Minsek
Cc: Taiwo Francis A
Cc: Signor Aaron G
Cc: Daniels Ramon D
Cc: St Jean Matthew J
Cc: Sweeney-Holt Fonda L
Subject: RE: MITS needs some helpAaron,
Sent: Jul 22, 2011 17:30

John,

Yes, we have a similar 80GB drive but we can't get it to you until Monday.
Since you are on leave next week, should we ship it? It should be there when you return.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: [redacted]
Mobile: [redacted]
Fax: [redacted]

-----Original Message-----
From: Minsek John H [mailto:[redacted]]
Sent: Friday, July 22, 2011 5:25 PM
To: Wilburn Lillie V; Sweeney-Holt Fonda L; St Jean Matthew J
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D
Subject: RE: MITS needs some helpAaron,

Lillie et al.

Unfortunately the PCB and HSA swaps from my existing donor did not cause the device to come ready. The next step is to find a similar 80GB donor. Would anyone there happen to have one (or perhaps more)? If not we need to order one.

John Minsek
Sr. Investigative Analyst
IRS - CI Electronic Crimes - Tech & Support Ctr
SFC [redacted]
[redacted] (office)
[redacted] (mobile)

-----Original Message-----
From: Wilburn Lillie V [mailto:[redacted]]
Sent: Friday, July 22, 2011 3:33 PM
To: Minsek John H; Minsek John H; Sweeney-Holt Fonda L; St Jean Matthew J
Cc: Taiwo Francis A; Signor Aaron G; Daniels Ramon D
Subject: RE: MITS needs some helpAaron,

John, Thank you very much for trying, Please let us know the outcome

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: [redacted]
Mobile: [redacted]
Fax: [redacted]

------Original Message Truncated------

John Minsek
Sr. Investigative Analyst
IRS-CI ECP TSC
[redacted] (mobile)

SFC 003404

From: Westcott Cindy M
Sent: Wednesday, September 24, 2008 7:26 AM
To: Melahn Brenda
Subject: RE: Policitial Case Alert

Thanks

From: Melahn Brenda
Sent: Wednesday, September 24, 2008 8:24 AM
To: Westcott Cindy M
Subject: FW: Policitial Case Alert
Importance: High

From: Melahn Brenda
Sent: Monday, September 08, 2008 8:26 AM
To: Shafer John H; Bowling Steven F; Brinkley Lynn A; Combs Peggy L; Jefferson White Beverly J; Lewis Jovonnie; St Julien James A; Werner Connie M
Subject: FW: Policitial Case Alert
Importance: High

As a reminder any "political sensitive" case should be sent to EODQA. Memo from Rob dated 12/19/07 indicate they should be worked as full development cases (not screened out) AND they are mandatory review.

Brenda

From: Abner Donna J
Sent: Monday, September 08, 2008 7:57 AM
To: Westcott Cindy M; Camarillo Sharon L; Melahn Brenda
Cc: Bibb Kenneth B; Waddell Jon M
Subject: Policitial Case Alert

6103

Jon's Cases: 6103
6103

Already Exempt Emerge America Case #606044026 Closed Status 06 3/16/06
Emerge Women Leaders for a Democratic Future Case # 604246037 Closed status 01 9/2/04
Emerge Arizona Women Leaders for a Democratic Future Case #507291023 Closed status 01 3/12/08
Emerge New Mexico Case # 506194109 Closed status 01 5/8/07
Emerge Wisconsin Case # 438014038 Closed status 06 3/6/08

Open Case 6103

SFC 003405

6103

Because of the partisan nature of the cases guidance from EO Technical is pending. Recent rulings considered include PLR 200833021 and Democratic Leadership Council, 542 F. Supp. 2d 63 (2008).

Per IRM 7.20.5 "sensitive political issue" cases were designated as subject to mandatory review in 2007. Please note the two case above closed in 2008 that did not come through QA.

I recommend an alert be issued regarding th is type of case as well as a reminder that "sensitive political issue" cases are subject to mandatory review.

Thank you,
Donna

SFC 003406

From: Bowling Steven F
Sent: Wednesday, January 25, 2012 12:11 PM
To: Bell Ronald D
Subject: BOLO
Attachments: BOLO Spreadsheet 01252012.xls

Ron,
I made changes to the emerging issues tab to remove advocacy orgs and update the issue in an effort to capture what we are looking for. I also added Occupy orgs to the Watch List. Review the changes and if you do not have any concerns send out the BOLO alert.

Thanks,

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
SFC [redacted]

SFC 003407

From: Seok Stephen D
Sent: Sunday, May 27, 2012 10:51 AM
To: Chumney Tyler N; Bell Ronald D
Subject: RE: Occupy Cases - Watch List Case Identified
Attachments: TEDS [redacted] Not Sent Yet.doc; TEDS [redacted] doc; [redacted] Summary.doc

Tyler & Ron,

Attached please find a summary of the activities and issues and letters of the Occupy case. The case f le is on Tyler's desk and the case application and my letter are available via TEDS, if you need. I am on leave next Tuesday. However, I am planning to be in office on Wednesday May 30. I will be happy to discuss this further when I come back to office, if you still need a discussion.

Thank you,
Stephen.

From: Chumney Tyler N
Sent: Friday, May 25, 2012 2:33 PM
To: Seok Stephen D; Bell Ronald D
Subject: FW: Occupy Cases Watch List Case Identified

Stephen & Ron,

Re: [redacted]

Stephen - Provide to Ron a summary of the activities and issues in the Occupy case you have, also provide Ron a copy of the letter(s) you have sent
Ron - Please prepare a summary of the above Occupy case and what is similar with the cases

Come see me Tuesday May 29 so we can discuss this briefly.

Thank you,

Tyler Chumney
TE/GE EOD Manager Grp 7822
SFC [redacted]

From: Chumney Tyler N
Sent: Friday, May 25, 2012 2:28 PM
To: Combs Peggy L
Subject: Occupy Cases Watch List Case Identified

Peggy,

Re: [redacted]

Do the "occupy" cases meet the Current Political Issues description? No, these cases have not been considered to be Current Political Issues. The BOLO Watch List Tab Issue Description number 21 'Occupy Organizations' includes the text

"social injustices due to "big-money" influence." Although this is similar to the Emerging Issue Tab for the BOLO Advocacy Political cases with the EI-1 Issue Description that includes the text "$ocial economic reform/movement" my understanding is that these Occupy organizations are not advocating expanding/limiting the government.

The above case was screened by Ron, he has determined it is an "Occupy" issue. I do not know who screened the other "Occupy" case that Stephen has.

As for getting these case to the bickerers or the assignment and development by someone who has gotten the May 2012 EO DC folks Advocacy training please let me know.

I do not know the specifics of the case but I will be getting this information. I will obtain and forward to you a summary that will include the following:
- the issues
- if the issues are similar to the case Stephen has
- the letter Stephen has sent

Thank you,

Tyler Chumney
TE/GE EOD Manager Grp 7822
SFC

From: Combs Peggy L
Sent: Friday, May 25, 2012 1:36 PM
To: Chumney Tyler N
Subject: RE: Watch List Case Identified
Importance: Low

Tyler,

Do the "occupy" cases meet the Current Political Issues description? Did Ron look at them? Are they politically advocating for economic reform? If so, I think we need to let the bickerers take a look at these two cases as well. If Ron hasn't looked at it, please give it to him to take a look.

If not a Current Political Issue, then please send Stephen's additional information letter to me on the one he has - I'd like to take a look at it to see what the issues are before we proceed.

Thanks.

From: Combs Peggy L
Sent: Friday, May 25, 2012 8:23 AM
To: Chumney Tyler N
Subject: RE: Watch List Case Identified
Importance: Low

Tyler,

Are these cases considered advocacy cases per the BOLO? If so, I would think that we would want to have these developed by someone who has received the recent training. If not, is there a separate description for them on the BOLO?

Did Ron screen the case already? What are the issues in the case? Are they similar to the issues in the case Stephen has? Can you have any additional inform ation letters Stephen has sent scanned and e-mailed to me?

SFC 003409

Thanks.

From: Chumney Tyler N
Sent: Thursday, May 24, 2012 3:34 PM
To: Combs Peggy L
Subject: FW: Watch List Case Identified

Peggy,

There is one other "Occupy" case, Steve Bowling just called to let me know this. He also told me it is assigned to Stephen Seok who is developing the case.

Thank you,

Tyler Chumney
TE/GE EOD Manager Grp 7822
SFC[redacted]

From: Chumney Tyler N
Sent: Thursday, May 24, 2012 3:23 PM
To: Combs Peggy L
Subject: Watch List Case Identified

Peggy,

Re:[redacted] 6103

This is an "Occupy" organization on the watch lis t issue number 21.

"Occupy" Organizations	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 everythi ng from healthcare to the economy.	21	2012 #1	Forward case

Please let me know any updates or concerns regarding this situation and if it should be elevated. For instance should a summary be prepared?

Let me know how this case should be handled. Thank you,

Tyler Chumney
TE/GE EOD Manager Grp 7822
SFC[redacted]

SFC 003410

From: Combs Peggy L
Sent: Friday, January 20, 2012 11:32 AM
To: Bowling Steven F
Cc: Thomas Cindy M
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

Here are the e-mails with description...

From: Combs Peggy L
Sent: Friday, January 20, 2012 11:15 AM
To: Thomas Cindy M
Subject: FW: Potential Watch List/ BOLO item Occupy Groups Applying for (c)(3)

Cindy,

Elevating for consideration to add to BOLO:

OCCUPY GROUPS WOULD FACE BURDENS, GET BENEFITS FROM TAX EXEMPT STATUS, PRACTITIONERS SAY

By David van den Berg

Some of the Occupy groups that have sprouted nationwide have taken steps toward becoming nonprofit organizations -- something that would impose s everal requirements on the groups but would also provide some benefits, practitioners told Tax Analysts.

Through large protests and public encampments, the Occupy groups have attempted to raise awareness about what they consider corporate greed and incom e inequality. So far, some Occupy organizations, including those in Portland, Ore., and Atlanta, have registered as nonprofits with their appropriate state agencies. On its website, the Occupy organization in Wilmington, N.C., said it has "voted to file" f or section 501(c)(3) status.

The main advantage of tax exemption for the Occupy groups would be the ability to directly receive tax -deductible contributions, said Lloyd Mayer, a professor at the University of Notre Dame. But he isn't sure that matters to the Occupy groups.

"Given the grass-roots nature of the movement, I am not sure how much their supporters need that incentive in order to be enticed into giving," Mayer said. "It appears inconsistent with the general character of these groups for them t o seek such status and the organizational and operational restrictions that come with it."

From: Sheer Mary
Sent: Monday, January 09, 2012 3:23 PM
To: Combs Peggy L
Subject: Potential Watch List/ BOLO item Occupy Groups Applying for (c)(3)

Hi Peggy,

There was a news articles in the 12/29 listing of "In The News" on the intranet that indicated some of the "Occupy" groups may be applying for 501(c)(3) including one in N.C. that states on its website that it has v oted to apply for (c)(3) status. I

thought that this might be something worthy of keeping an eye out for due to the significant news coverage that these groups have generated and potential qualification issues.

Article: http://irweb.irs.gov/AboutIRS/Nws ctr/ExtIRSNews/ITN/29868.aspx

Thanks,
Mary

From: Combs Peggy L
Sent: Friday, January 20, 2012 6:13 PM
To: Thomas Cindy M; Bowling Steven F
Subject: RE: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

Importance: Low

I don't... We wouldn't want to miss this one if it comes in so it needs to be pretty clear...

-----Original Message-----
From: Thomas Cindy M
Sent: Friday, January 20, 2012 1:10 PM
To: Bowling Steven F
Cc: Combs Peggy L
Subject: Re: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

The BOLO change can wait until Monday when Stephen is back.

I don't have any suggestions. After you talk with Stephen on Monday, it might be best to ask a few managers if they have any ideas.

Peggy -- do you have any suggestions for wording?

Sent using BlackBerry

------Original Message------
From: Steve Bowling
To: Cindy M Westcott
Cc: Peggy Combs
Subject: RE: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)
Sent: Jan 20, 2012 12:29 PM

Cindy,

The only email that came through is yours but I agree we should work them with the advocacy cases. I think we need to update the Issue Description to capture these as well as to try and weed out the ones that we do not want in this inventory.

Currently the spreadsheet states;

"Organizations involved with political, lobbying, or advocacy for exemption

under 501(c)(3) or 501(c)(4)."

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. If the BOLO can wait, I'd like to run this by Stephen when he is back on Monday to see what we can come up with (any suggestions?).

STEVEN F. BOWLING
Manager, EO Group 7822
Exempt Organizations Determinations
550 Main Street, Room 4-504
Cincinnati, OH 45202
Tel (513) 263-3704
Fax (513) 263-4540

-----Original Message-----
From: Thomas Cindy M
Sent: Friday, January 20, 2012 11:24 AM
To: Bowling Steven F
Cc: Combs Peggy L
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

Steve,

Please read emails below. We should probably say these should be referred to your group (can work them with the advocacy cases). Your thoughts?

Cindy M. Thomas
---- Original Message ----
From: Combs Peggy L
Sent: Fri 1/20/12 11:15 AM
To: Thomas Cindy M
Subject: FW: Potential Watch List/ BOLO item - Occupy Groups Applying for (c)(3)

SFC 003414

From: Bell Ronald D
Sent: Sunday, May 13, 2012 7:47 PM
To: Hull Carter C
Cc: Chumney Tyler N
Subject: ACORN Successor org's

Hi Chip,

Ive 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.

The name of the case is : [redacted] 6103

It is located in [redacted] 6103

The teds case # is [redacted] 6103 61...

Please advise how you want to process this ca se. Thanks.

Ron Bell

SFC 003415

Screening Workshop
July 28, 2010

IRSR0000169695

SFC 003416

Health Care

- Patient Protection and Affordable Care Act
- Health Care and Education Reconciliation Act of 2010

IRSR0000169696

SFC 003417

Health Care - Cases

- High Risk Health Insurance Pools
- Promoting Uniformity of Standards in Electronic Transactions
- Health Benefit Exchanges

IRSR0000169697

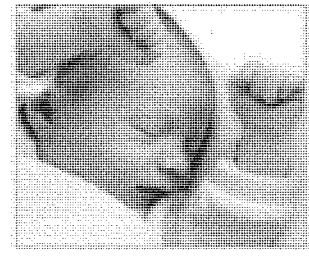
Health Care - Cases

- Qualified Non-Profit Health Insurance Issuers
- Community Health Insurance Advisory Councils
- Reinsurance Entities
- Health Care Sharing Ministries

SFC 003419

Health Care - Cases

- Freestanding Birth Centers
- Family Planning Services
- Early Childhood Home Visitation Programs

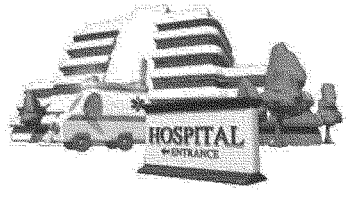


IRSR0000169699

SFC 003420

Health Care - Cases

- Community Health Grant Recipients
- Key National Indicator System
- Requirements for Hospitals



IRSR0000169700

SFC 003421

Health Care - Cases

- Multi-State Plans in Exchanges
- Community Service Centers for Pregnant and Parenting Teens

IRSR0000169701

Health Care - Cases

- Sick and Accident Benefits Provided to Members of a VEBA (Group 7824)
- Certain Organizations Providing Health Insurance

Health Care – New Issue

- Accountable Care Organizations
- Provides for additional Medicare payments to physician practices based on quality of care, cost-effectiveness of services, etc.

27 Month Deadline Cases

- Form 1023 where organization was formed more than 27 months prior to filing for exemption
- Form 1023 Part VII, Item 2 is yes
- Form 1024 Part I, Item 6 is yes
- Except - Churches/Church Related Orgs

Form 1023

Part VII Your History

2 Are you submitting this application more than 27 months after the end of the month in which you were legally formed? If "Yes," complete Schedule E.
Yes No

Form 1024

6 Did the organization previously apply for recognition of exemption under this Code section or under any other section of the Code? **Yes No**
If "Yes," attach an explanation.

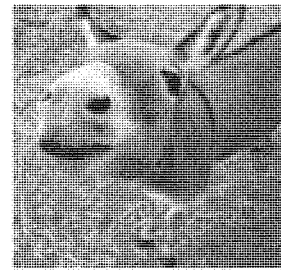
27 Month Deadline Cases

- Forward Case to Group 7822 for Secondary Screening
- Group 7822 conducts IDRS research and assigns “T” number if appropriate

SFC 003428

Current Activities

- Politics

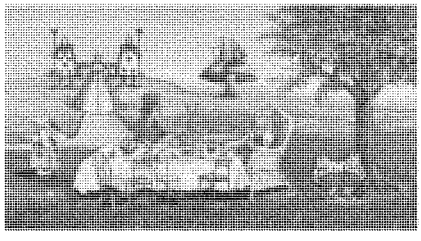


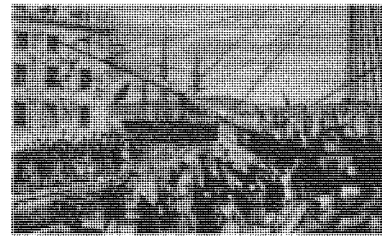
- Look for names like

IRSR0000169708

Current Activities

- Tea Party

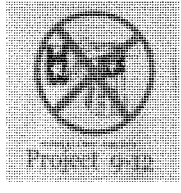


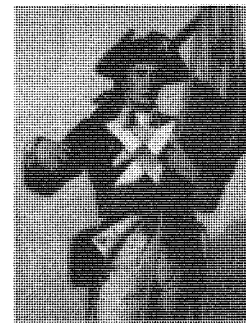


SFC 003430

Current Activities

- Patriots
- 9/12 Project
- Emerge

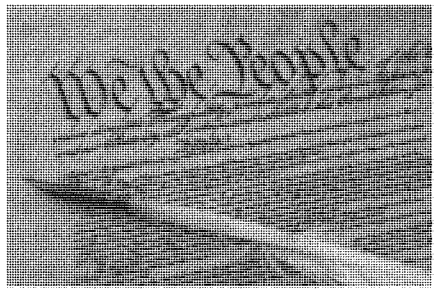




IRSR0000169710

Current Activities

- Progressive
- We the People



Current Activities

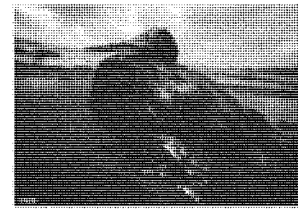
- These organizations may file a Form 1023 or 1024
- Most will file as IRC 501(c)(4)

Current Activities

- Concerns: May be more than 50% political, possible PAC (Political Action Committee)

Disaster Relief

- Gulf Coast Oil Spill cases may not mention those terms in application
- Terms may include: bird rescue, turtle rescue, tar ball retrieval, etc.



Disaster Relief

- Forward cases to Group 7824 through Renee/Joan in the Screening Group

SFC 003436

POAs to the CAF – Cases in Teds

- 06 Closures Only
- Other tax forms (990, 941, etc.)

IRSR0000169716

POAs to the CAF – Cases in Teds

- Print Form 2848
- Document CCR
- Place Form 2848 in bin in screening area

SFC 003438

Closing Sheet

- Please do not cover the organization's name or the EDS number or TEDS number when attaching the closing sheet

IRSR0000169718

Credit Counseling

- Prepare credit counseling checksheet when “buzz words” are used
- Revised credit counseling checklist

SFC 003440

Tag Cases

- New Tag List

IRSR0000169720

From: Kowalczyk Chadwick A
Sent: Tuesday, May 18, 2010 11:12 AM
To: Abner Donna J; Camarillo Sharon L; Melahn Brenda; Brinkley Lynn A
Cc: Thomas Cindy M; Berry Daniel W
Subject: CPE Room Locations
Please disseminate to your staff accordingly.

Below is a chart that provides attendees with the classroom locations for the upcoming CPE:

Week of:	Cincinnati Room Number	Instructors	Outside POD's	POD Room Number	Instructors
June 7th	5519	Donna Abner Jon Waddell			
June 14th	4519	Faye Ng Peggy Combs	El Monte	2nd Floor Conference Room B	Mike Tierney Jon Waddell
June 21st	5519	Faye Ng Peggy Combs	Laguna Nigel	Classroom 2402C	Mike Tierney Steve Bowling
June 28th	5519	Donna Abner Jon Waddell			
July 12th	5519	Faye Ng Steve Bowling			
July 19th			Baltimore	Classroom Charles South	Donna Abner Peggy Combs

As a reminder: Monday and Friday will be travel days. The actual CPE instruction will take place on Tuesday, Wednesday and Thursday.

Chad A. Kowalczyk
Acting Training Coordinator
EO Determinations
vms: 513-263-4778
fax: 513-263-4554

From: Paz Holly O
Sent: Wednesday, September 12, 2012 10:23 AM
To: Thomas Cindy M
Subject: FW: Advocacy Denial

FYI

From: Paz Holly O
Sent: Wednesday, September 12, 2012 11:22 AM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Megosh Andy; Fish David L; Light Sharon P; Kindell Judith E
Subject: RE: Advocacy Denial

Any 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. I understand the TPs' frustration and I also want to move these cases as quickly as possible but we are in overly sensitive climate right now and have to be aware of that.

From: Abner Donna J
Sent: Wednesday, September 12, 2012 11:19 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Megosh Andy; Fish David L
Subject: RE: Advocacy Denial

Hi Mike,
I also left you a phone message. TP's are starting to pressure the specialist's for a deci sion on the cases. All three have been under review for several months - the oldest was forwarded to DC in January. We've reached agreement all should be denied so what's the hold up? Can we go ahead and complete our review of the the proposed denial le tters and issue them to the TP's?

Thanks,
Donna

From: Seto Michael C
Sent: Tuesday, September 11, 2012 3:27 PM
To: Abner Donna J
Cc: Lieber Theodore R; Paz Holly O; Megosh Andy; Fish David L
Subject: RE: Advocacy Denial

We are doing our best; everyone here is multi-tasking and dealing with multiple priorities. Guidance and Technical have agreed on the results on all 3 cases. They are working out the details. Can you follow-up with me in the next two weeks? If you have any questions, let me know.

From: Abner Donna J
Sent: Tuesday, September 11, 2012 1:15 PM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

Thought I better follow up again.....as noted below review in Guidance was expected to be done no later than the end of August 25th week. I've yet to receive anything. Update??????

Thanks,
Donna

From: Abner Donna J
Sent: Tuesday, August 28, 2012 7:09 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

Any update on guidance?

From: Seto Michael C
Sent: Monday, August 13, 2012 4:58 PM
To: Abner Donna J
Cc: Lieber Theodore R; Paz Holly O; Giuliano Matthew L
Subject: RE: Advocacy Denial

All three cases are pending in EO Guidance for review. Guidance should be done with the review by no later than the end of next week. EO Technical recommends an adverse position on all three cases.

From: Abner Donna J
Sent: Monday, August 13, 2012 7:21 AM
To: Abner Donna J; Seto Michael C
Cc: Lieber Theodore R; Paz Holly O
Subject: RE: Advocacy Denial

Any update on the three cases below??????

From: Abner Donna J
Sent: Friday, August 03, 2012 11:39 AM
To: Seto Michael C
Cc: Lieber Theodore R; Paz Holly O
Subject: FW: Advocacy Denial

Following up on the three cases below as well.....any updates?

From: Seto Michael C
Sent: Friday, June 08, 2012 11:40 AM
To: Abner Donna J
Cc: Paz Holly O; Lieber Theodore R
Subject: Status of Technical Assisatance Requests Pending Denials

Hi Donna,

Here is the status of the three Technical Assistance Requests we have from EOQA:

SFC 003444

1. [redacted] - Pending with a reviewer in EO Guidance. The initiator recommends adverse, and concurs with your position.

2 [redacted] - Pending with a reviewer in EO Guidance. The initiator recommends adverse and concurs with your position.

3. [redacted] - The initiator is reviewing the case now. The initiator will forward it to the Guidance reviewer, and the projected timeline for sending to Guidance is on the week of 6/11 or 6/18.

If you have questions, let me know.

Thanks, Mike

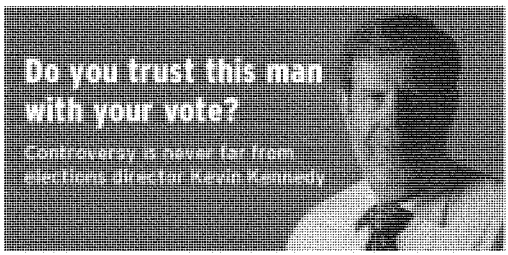
SFC 003445

SFC

Wisconsin elections director Kevin Kennedy is at the center of state's political storm

Do you trust this man with your vote?

by MARY ELLEN BELL NOVEMBER 1, 2012



KELLY DOERING

When Kevin Kennedy celebrated his 60th birthday a few months ago, his staff at the Government Accountability Board presented him with framed copies of two political cartoons. They ran in the *Wisconsin State Journal* while recall petitions were being verified last spring.

In one panel, a young protester offers to give the GAB a hand with the checking. In the other, a group of older people with tea party signs makes the same offer.

Art imitates life. This actually happened: Both sides did try to horn in on the verification process.

"We refused them both," Kennedy says with a laugh, explaining that only people who had not signed a recall petition, participated in the months of protests, or put a sign in their yards were considered for the dozens of temporary jobs verifying signatures.

The cartoons illustrate the kind of tightrope the Government Accountability Board has been walking ever since it was created out of a merger of the former State Elections and State Ethics boards in 2007. The board, composed of six retired judges, is charged with being nonpartisan. So as passions flamed higher during the protests and recalls, Kennedy, the director, and his agency pleased neither side. Liberals grew suspicious that the GAB was not doing enough to ensure the integrity of the recall

elections. Conservatives were similarly suspicious, questioning as well the legitimacy of the entire recall process. And both sides kept Kennedy and the agency in the hot seat for more than a year.

Kennedy is no stranger to controversy. He was under the gun when he headed the State Elections Board and entered into a contract with a private, out-of-state company to build a statewide voter registration system in 2004. But the firestorm during the recalls was on a whole new scale.

"I did not expect this perfect storm," Kennedy says. "Given what we do, we are always going to have some level of controversy. We have had recalls before, but never nine at the same time. We've had recounts, but never a statewide recount. Campaign finance is always in the crosshairs. But now, the political environment has changed, and it's much more challenging."

And a perfect storm it has been. Charges of voter fraud from Republicans. Charges of election fraud, ballot-bag tampering and voting-machine inaccuracy from Democrats. The off-and-on implementation of the voter ID law. Recounts. Lawsuits. One mess after another. And Kennedy and the GAB were under scrutiny on every count by partisans on both sides.

Dealing with the criticism of the agency's performance was one challenge. Keeping staff morale up was yet another.

"The staff, in addition to having a massive workload thrust on them, was at the focus," Kennedy says. "They are state employees, and their benefits were being taken away. In addition to having to do their jobs and with a growing workload, they were a part of what was driving all this."

Yet, through it all, Kennedy appears to have remained calm and good humored - laser-focused on doing his job regardless of political pressures.

"Our job is to implement the election laws that have been passed by the Legislature," he says. "If someone has a problem with what we are doing, they really have a problem with the law."

Trial by fire

Kevin Kennedy's first trial by fire was in 2004, when, as head of the old Elections Board, he hired the global conglomerate Accenture to develop the state's first voter registration list. This was one of the requirements of the 2002 federal Help America Vote legislation, passed to address voter registration problems after the 2000 presidential election.

The Wisconsin Democracy Campaign brought a lawsuit, claiming that Kennedy lacked the authority to enter into the contract, that the Elections Board withheld information about the status and details of the contract, and that it may have violated Wisconsin's Open Meetings Law. The plaintiffs also contended the job could have been done for far less money if it had been done by state employees. The judge eventually ruled that Kennedy did not have the authority to enter into the contract, but that the issue was moot since his board subsequently approved the contract.

"We believed that outsourcing the registration system was a very bad idea," says Mike McCabe, the Democracy Campaign's executive director. "And Accenture's track record was not good. They had failed in other states."

Kennedy contends he did exactly what he was supposed to do when he signed up Accenture. Using state workers for the job was, in his view, not feasible.

"It would have meant bringing in an army of new workers for two years," he says. To solve the problem, he used the state procurement system and put the job up for bids. Accenture won the contract.

Kennedy figures much of the criticism directed at Accenture stems from its former affiliation with Arthur Andersen, of the Enron scandal, and its support of Republican candidates. But Kennedy contends that "Accenture won the contract based on a scoring system that is supposed to take the politics out of the bidding process."

After missed deadlines by Accenture, the Elections Board moved to sever its contract with the company. Kennedy says the agency won rights to use Accenture's original source code so the system could be completed and maintained by GAB employees. The state also refused to pay 20% of the $9.3 million contract for work not completed, and got Accenture to repay an additional $4 million.

"We got $6 million back, and we now have a registration system that works," Kennedy says.

Mickey Mouse for governor

As the Government Accountability Board geared up in December to run the unprecedented set of recall elections - including one between Gov. Scott Walker and challenger Tom Barrett - Kennedy made a memorable remark that fired up the conservative crowd. He said, in what was probably an unguarded moment, that it was not the job of petition verifiers to strike phony signatures like "Mickey Mouse." That was the responsibility of those up for recall.

Supporters of Gov. Scott Walker and the state senators facing recall elections jumped on that statement, contending that their opponents would have free rein to fill petitions with fictitious names and that the GAB would do nothing to stop them. This resulted in a demand from partisan groups to be allowed to examine signatures, forcing the GAB to post the petitions and a searchable database of petition signers on a website. As the members of conservative groups scrutinized the petitions, looking for "Mickey Mouse" and "Adolf Hitler," they found names of prominent people in sensitive positions who had signed, and promptly outed them.

State Rep. Terese Berceau (D-Madison) says Kennedy's remark was politically naive.

"I don't think he anticipated how the things he said could be used against him and the entire recall process," Berceau says. "It took him a long time to figure out that everything he did was being watched through a political lens."

But Berceau likes Kennedy and thinks he has done an excellent job of managing the elections system and the recall process. She believes the creation of the Government Accountability Board was a wise move.

"The GAB has become a national model for how elections should be managed. But I worry that the political opposition to the recalls could put it in jeopardy," she says, adding that some Republicans have talked publicly about eliminating the agency.

Assembly Speaker Jeff Fitzgerald was the most vocal among those calling for an overhaul of the Government Accountability Board. In December 2011, he told the Associated Press that the public had lost faith in the agency and that he would support returning to the previous structure - a nonpartisan Ethics Board and an Elections Board with partisan appointees.

Bad idea, says former Circuit Court Judge Gordon Myse, who served in Outagamie, Shawano, Langlade and Menominee counties before being appointed to the Elections Board. He refused a second term because it was, as he says, "the most frustrating experience of my life."

"The board was composed of good and honorable people, but it was very partisan, and we were always in stalemate. No productive action seemed to be possible," he says. Former Gov. Jim Doyle later appointed Myse to the Government Accountability Board for a three-year term, which ended last December.

"The GAB is definitely an improvement," Myse says, adding that partisanship has

never been an issue with this board.

"The criticism of the GAB is nonsense, and it's untrue," he says. "There are people in the Legislature who don't like the GAB and don't want it to have jurisdiction over their conduct, but we need complete compliance with the ethics rules and election rules, and when there is an issue the board is required by its charge to investigate."

Myse met Kennedy in 1982, when the judge ran for state Supreme Court and Kennedy was the director of the Elections Board.

He says Kennedy was responsive and knowledgeable and is known nationally for his expertise. Myse also says Kennedy's management style suits the post.

"Herding judges makes herding cats look like child's play," Myse says. "You cannot out-yell a judge. Judges have strong personalities, and they are not the easiest group to control. Kevin's leadership style is a soft glove. If the discussion goes off track, he brings everyone back to the basics, to the statutory requirements."

Like Myse, Andrea Kaminski, executive director of the Wisconsin League of Women Voters, is concerned about efforts to discredit the Government Accountability Board. The League named the agency in a lawsuit contesting the constitutionality of Wisconsin's voter ID law, but Kaninski says that it's nothing personal and that she and Kennedy are "friendly opponents" in court.

"Our lawyers told us that we needed to sue the GAB as well as Gov. Walker because we had to name the agency that would implement the law in our lawsuit," she says.

The League's lawsuit has resulted in an injunction against implementing the photo ID requirements in the law, and the case is now before an appellate court.

Kaminski says Kennedy has been helpful and encouraging of the League's mission to advocate for voters.

"He really cares that the League has the information we need to assist voters, and I think very highly of him and the other judges on the board. They have critics on both sides, and it's a tough job."

Checking the ballots

One remnant of the historic recall period is the continuing work of citizen groups to recount ballots county by county to determine if the paper ballots match up with the tallies from the voting machines.

The largest group, Hand Count Votes Now! has several hundred volunteers attempting to do a comprehensive count of the entire state. A smaller group, the Audit Team, is spot-checking ballots in about 10 counties.

Both groups are concerned about the verifiability of results from electronic voting machines.

When requests for a hand-count of ballots started coming in, Kennedy says he had to figure out how it could be done without jeopardizing the security of the paper ballots and without overburdening county and municipal clerks. He sent a memo to the clerks informing them that state law bars anyone except election officials from handling ballots after they have been cast and telling them they could charge for retrieving and showing the ballots.

The groups who wanted to check the ballots were enraged.

"[Kennedy's] reasoning was difficult to understand," says Mary Magnuson, a Brookfield resident and a member of the Audit Team. "Just because there were so many requests doesn't mean you have the right to charge citizens to look at the ballots. And it's my understanding that he does not have the statutory authority to require us to pay."

Magnuson says individual clerks have allowed volunteers to touch the ballots under supervision. And all but one, Marinette County, where Magnuson grew up, agreed to waive any charges. The Marinette County clerk said the cost to review the ballots would be $26 an hour.

Magnuson filed suit against the county and County Clerk Kathy Brant, claiming the county was in violation of the state open records law. At the end of August, attorneys for both sides settled the case in Magnuson's favor. Volunteers could touch the ballots, and there would be no fee.

Kennedy says he never objected to the effort to perform a hand count of the ballots. He says he advised clerks that they could charge for their time, but also suggested they consult with their corporate attorneys to make sure they were not in violation of the open records law.

"I think the hand count is a good thing," he says. "But when volunteers do it, you need the same level of accountability. We are not going to walk out of the room while they are doing it. We have to be sure the [hand count] is done in a way that protects the integrity of the process."

As for concerns that the voting machines are vulnerable to tampering, Kennedy says he has confidence in the process and citizens should as well.

"That's why we designed the system we have, with the paper trail as a safeguard so we can validate the results," he says.

Starved for resources

Kennedy thinks there might be more the GAB could do to improve the elections systems in Wisconsin - more training for county and municipal clerks, audits of procedures for programming voting machines and audits of election results, for example. But he says the board simply does not have the staff or resources to do all those things, so it has focused on enhanced training for clerks.

McCabe, once one of Kennedy's harshest critics, agrees that the Government Accountability Board has been starved for resources.

"I'm sympathetic when it comes to all that was loaded on them. The Legislature did not provide more resources when their workload increased, and, on top of their normal responsibilities, they had to oversee the recalls and deal with the voter ID law," McCabe says. "They were expected to just suck it up and figure out how to do it."

McCabe would like to see more and better poll-worker training so that operations are consistent at the municipal level, but he understands that the board lacks resources.

Overall, McCabe gives Kennedy and the GAB credit for standing their ground and resisting partisan pressure.

"I was very critical of the Elections Board, but it was a partisan board, and Kevin was doing what the board expected him to do," he says. "The GAB is a big improvement, and Kevin has been freed to do his job in a different way."

Keeping his cool

Kennedy was born and raised in Madison. He worked his way through UW-Madison and its law school, getting his law degree in 1976. Before joining the state Elections Board in 1979, he worked briefly as an assistant district attorney in Washington County and in private practice in Madison.

His career in elections administration began almost by chance.

"I basically took a state test for state attorneys, and this was the first opening I was interviewed for. They offered me the job," he says.

SFC 003450

At the end of the day, Kennedy says he unwinds by taking time for a private life. The father of two adult daughters, one of whom lives with him in his near-west-side home, he enjoys hiking and is pursuing a goal of walking the entire length of the Ice Age Trail. He is a fan of American Players Theatre and musical theater. His musical tastes run to jazz and blues, and his reading is eclectic - everything from *The Hunger Games* to Stephen Ambrose's *Undaunted Courage*.

Kennedy, who supervises roughly 43 employees and manages a $6.3 million budget (a combination of state and federal funds), says he has kept his cool as criticism raged by focusing on doing the job he was hired to do, keeping his head down in the face of controversy, and remembering that what he does is important. He says he regularly reminds his staff to focus on their first priority - insuring that elections are run fairly and efficiently and without political considerations.

"I constantly tell the staff how much I appreciate their hard work," he says. "People who want to work here care about the electoral system. If you're interested in the political process, this is a great place to see it, as long as you realize you're not going to be taking sides. If you always wanted to do something where you have an impact, here you are with a job that goes to the fundamental basis of government - how we choose our leaders. It's really interesting work."

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[JOINT COMMITTEE PRINT]

REPORT TO THE HOUSE COMMITTEE ON WAYS AND MEANS ON PRESENT LAW AND SUGGESTIONS FOR REFORM SUBMITTED TO THE TAX REFORM WORKING GROUPS

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

May 6, 2013

U.S. Government Printing Office
Washington: 2013

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TABLE 5.–TYPES AND TAX TREATMENT OF SECTION 501(C) ORGANIZATIONS

Section of 1986 Code	Description of Organization	Year Exemption was Introduced	General Nature of Activities	Subject to UBIT	Taxed on Investment Income	Contributions Generally Deductible as Charitable Contributions	Subject to Private Inurement Restriction	Required to File Exemption Application	Number of Entities on Master File (last updated 2/11/13)
501(c)(1)	Corporations organized under Act of Congress	1934	U.S. instrumentality	No	Generally No	Only if exclusively for public purposes	No	No	447
501(c)(2)	Title holding corporations	1916	Holding title to property for another exempt organization	Yes	Generally No	No	No	Optional	4,496
501(c)(3)	Charitable organizations	1894	Religious, charitable, scientific, educational, etc.	Yes	Generally No (but private foundations are subject to tax on net investment income)	Yes	Yes	Yes (except for certain organizations including churches and small organizations)	1,063,484
501(c)(4)	Social welfare organizations	1913	Promoting the common good and general welfare of people of a community	Yes	Generally No	No	Yes	Optional	85,502

and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.[60]

For purposes of determining whether lobbying activities are a substantial part of a public charity's overall functions, a public charity may choose between two standards, the "substantial part" test or the "expenditure" test.[61] The substantial part test derives from the statutory language quoted above and uses a facts and circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.[62]

Political campaign activities.—As noted, under present law, 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.[63] 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,[64] termination assessment of all taxes due,[65] and an injunction against further political expenditures.[66]

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[60] Sec. 4945(d)(1).

[61] Secs. 501(c)(3), 501(h), and 4911. Churches and certain church-related entities may not choose the expenditure test. Sec. 501(h)(5).

[62] Secs. 501(h) and 4911.

[63] Sec. 501(c)(3).

[64] Sec. 4955.

[65] Sec. 6852(a)(1).

[66] Sec. 7409.

Lobbying and political activities

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. The lobbying activities of a social welfare organization generally are not limited. 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.

Comparison with section 501(c)(3) organizations

The concept of "social welfare" for purposes of section 501(c)(4) overlaps considerably with the definition of "charitable" under section 501(c)(3). As a result, many organizations could qualify for exemption under either section.[85] However, an organization's choice between social welfare status and charitable status will result in different benefits and burdens. For example, a donor to a charitable organization may take a charitable deduction, whereas a donor to a social welfare organization may not take a charitable deduction. As a result, charitable organizations are generally viewed as having an advantage in attracting contributions.

On the other hand, social welfare organizations have greater operational flexibility than charitable organizations. For example, whereas social welfare organizations may engage in an unlimited amount of lobbying without jeopardizing their exempt status, charitable organizations may engage in only a limited amount of lobbying.[86] In addition, while social welfare organizations may engage in political campaign activity so long as it is not a primary activity of the organization, charitable organizations are prohibited from engaging in any political campaign activity.[87] 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.[88]

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[85] The regulations under both sections recognize an overlap in exempt purposes. See Treas. Reg. sec. 1.501(c)(3)-1(d)(2) (definition of "charitable" for purposes of section 501(c)(3) includes the promotion of social welfare); Treas. Reg. sec. 1.501(c)(4) (providing that a social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of "charitable" under section 501(c)(3) and meets certain other requirements).

[86] Compare sec. 501(c)(3) and Treas. Reg. sec. 1.501(c)(3)-1(c)(3) with sec. 501(c)(4).

[87] Compare sec. 501(c)(3) with sec. 501(c)(4) and Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(ii).

[88] Sec. 508(a).

SFC 003457

September 25, 2010

The following statement is from Mark V. Holden, Senior Vice President and General Counsel, Koch Industries, Inc.

We were encouraged to learn that members of the United States Senate Finance Committee have formally requested an investigation into recent questionable activities by the administration concerning our confidential tax information. We think this inquiry is important, not only for our protection, but to help ensure that others' rights will not be violated.

As we explained earlier this week, we are deeply concerned about what, if any, access the administration has had to Koch Industries' confidential tax information. As a matter of law, the administration should not be accessing or disclosing our confidential tax information. In addition, even if the administration has not accessed our confidential tax information, we remain concerned that we were singled out by an administration official on a conference call regarding corporate income taxes. For the administration to single out one corporation, with no evidence of wrongdoing, is not only troubling to us, but should be troubling to all Americans.

The September 24th statement made by an unnamed administration official immediately after the request by members of the Senate Finance Committee was made public still does not answer our questions about where the senior administration official got the information referenced in his August 27th statement or why this official singled out Koch Industries. Hopefully, the actions by the Senate Finance Committee will uncover the facts as to what, if any, confidential information was accessed and disclosed by the administration. Finally, we reiterate 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.

SFC 003458

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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 [redacted] of the Finance Committee staff at (202) 224-4515.

Sincerely,

Orrin G. Hatch
Ranking Member
Senate Finance Committee

Max Baucus
Chairman
Senate Finance Committee

SFC 003464

MAX BAUCUS, MONTANA, CHAIRMAN

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

RUSSELL SULLIVAN, STAFF DIRECTOR
KOLAN DAVIS, REPUBLICAN STAFF DIRECTOR AND CHIEF COUNSEL

September 28, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Via Electronic Transmission

Dear Commissioner Shulman:

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 Committee has focused extensively over the past decade on whether tax–exempt groups have been used for lobbying or other financial or political gain.

The central question examined by the Committee has been whether certain charitable or social welfare organizations qualify for the tax-exempt status provided under the Internal Revenue Code.

Recent media reports on various 501(c)(4) organizations engaged in political activity have raised serious questions about whether such organizations are operating in compliance with the Internal Revenue Code.

The law requires that political campaign activity by a 501(c)(4), (c)(5) or (c)(6) entity must not be the primary purpose of the organization.

If it is determined the primary purpose of the 501(c)(4), (c)(5) and (c)(6) organization is political campaign activity the tax exemption for that nonprofit can be terminated.

Even if political campaign activity is not the primary purpose of a 501(c)(4), (c)(5), and (c)(6) organization, it must notify its members of the portion of dues paid due to political activity or pay a proxy tax under Section 6033(e).

Also, tax-exempt organizations and their donors must not engage in private inurement or excess benefit transactions. These rules prevent private individuals or groups from using tax-exempt organizations to benefit their private interests or to profit from the tax-exempt organization's activities.

A September 23 *New York Times* article entitled "Hidden Under a Tax-Exempt Cloak, Private Dollars Flow" described the activities of the organization Americans for Job Security. An Alaska Public Office Commission investigation revealed that AJS, organized as an entity to promote social welfare under 501(c)(6), fought development in Alaska at the behest of a "local financier who paid for most of the referendum campaign." The Commission report said that "Americans for Job Security has no other purpose other than to cover money trails all over the country." The article also noted that "membership dues and assessments ... plunged to zero before rising to $12.2 million for the presidential race."

A September 16 *Time Magazine* article examined the activities of Washington D.C. based 501(c)(4) groups planning a "$300 million ... spending blitz" in the 2010 elections. The article describes a group transforming itself into a nonprofit under 501(c)(4) of the tax code, ensuring that they would not have to "publically disclose any information about its donors."

These media reports raise a basic 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? They also raise concerns about whether the tax benefits of nonprofits are being used to advance private interests.

With hundreds of millions of dollars being spent in election contests by tax-exempt entities, it is time to take a fresh look at current practices and how they comport with the Internal Revenue Code's rules for nonprofits.

I request that you and your agency survey major 501(c)(4), (c)(5) and (c)(6) organizations involved in political campaign activity to examine whether they are operated for the organization's intended tax exempt purpose and to ensure that political campaign activity is not the organization's primary activity. Specifically you should examine if these political activities reach a primary purpose level – the standard imposed by the federal tax code – and if they do not, whether the organization is complying with the notice or proxy tax requirements of Section 6033(e). I also request that you or your agency survey major 501(c)(4), (c)(5), and (c)(6) organizations to determine whether they are acting as conduits for major donors advancing their own private interests regarding legislation or political campaigns, or are providing major donors with excess benefits.

Possible violation of tax laws should be identified as you conduct this study.

Please report back to the Finance Committee as soon as possible with your findings and recommended actions regarding this matter.

SFC 003466

Based on your report I plan to ask the Committee to open its own investigation and/or to take appropriate legislative action.

Sincerely,

Max Baucus
Chairman

SFC 003467

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CHAIRMAN

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JENNIFER SAFAVIAN,
STAFF DIRECTOR

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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JANICE MAYS,
MINORITY CHIEF COUNSEL

June 16, 2014

The Honorable Barack H. Obama
President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

As you know, the House Committee on Ways and Means (Committee) is conducting an investigation related to the Treasury Inspector General for Tax Administration's May 14, 2013 audit report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review." The day after the report was released you promised to "work with Congress as it performs its oversight role. And [to] work hand in hand with Congress to get this thing fixed." Given the revelation last Friday, June 13, 2014 that the Internal Revenue Service (IRS) had lost key evidence relating to the targeting of conservative organizations on the basis of name and policy position, we are writing to request critical assistance that only the White House can provide.

Throughout its ongoing investigation, the Committee has uncovered material evidence of wrongdoing at the IRS, including specific actions of former IRS official Lois Lerner, and, on April 9, 2014, referred this evidence to the Department of Justice. However, last week, the IRS claimed that a technological failure resulted in the loss of all emails between former Exempt Organizations Director Lois Lerner and parties outside of the IRS for the period between January 1, 2009 and April 2011. The Committee is in possession of some Lerner emails for this time period, but only those written to or from other IRS employees. Any emails written to or from Lerner and persons outside of the IRS would, according to the agency's own admission, be lost.

In order to ensure accountability and "get this thing fixed," please provide by June 30,

2014, 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. Also, please indicate in writing when the EOP was informed, and by whom, that the IRS had lost critical Lerner documents.

Thank you in advance for your assistance in this matter. If you have any questions, please contact Committee staff at 202-225-5522.

Sincerely,

DAVE CAMP
Chairman

CHARLES W. BOUSTANY, JR. MD
Chairman
Subcommittee on Oversight

SFC 003469

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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

SFC 003471
Attachment 1

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

June 13, 2014

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Hatch:

I am writing to provide an update on IRS document productions to Congress. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received the documents the IRS identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report by the Treasury Inspector General for Tax Administration. *See* Enclosure 1. As my August 29, 2013 letter to you described, in order to produce those documents, we ran agreed search terms on many (then 77, now 83) custodians' electronic materials, reviewed the resulting materials for responsive documents, and produced them. *See* Enclosure 2. Production of those materials identified as responsive from the agreed custodians and search terms was completed three months ago. *See* Enclosure 1.

The IRS hopes that your investigation can be concluded and the Senate Finance Committee's report issued in the very near future so that the IRS can then take further corrective action to address issues, where necessary. Congressional reports are important to learn from, address, and move beyond the problems and concerns identified. Your committee's conclusions and recommendations will be a critically important step in that process.

More than 250 IRS employees have spent over 120,000 hours working on compliance with several investigations stemming from last May's report related to the processing and review of applications for tax-exempt status by the Treasury Inspector General for Tax Administration. We have responded to hundreds of Congressional requests for information. In so doing, the IRS has incurred a direct cost of nearly $10 million. We have spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for the production and required redactions to protect taxpayer information. I have attached a document describing some of the challenges and limitations that the IRS faced in its production process. *See* Enclosure 3.

Since mid-March, in response to Chairman Dave Camp's request and Chairman Darrell Issa's subpoena, the IRS has been reviewing and producing all remaining email for which Lois Lerner was a custodian – regardless of search terms, relevance, or subject

matter. In other words, these Lerner documents are beyond and in addition to the already-produced Lerner materials the IRS identified as related to the processing and review of applications for tax-exempt status, which your Committee had received by mid-March. In addition, as described in Enclosure 3, when unavailable from Ms. Lerner's custodial account, we are producing Lerner-related email (i.e., email on which Ms. Lerner was an author or recipient) from other custodians regardless of subject matter. In certain instances, such as personal conversations between Ms. Lerner and her family regarding health issues, we expect to make the materials available here at the IRS for interested Congressional staff to come review. In all, the IRS has produced or will produce or make available approximately 67,000 emails in which Ms. Lerner was an author or a recipient. As per your staff's request, we will continue to include your committee in our productions until or unless you instruct us otherwise.

Sincerely,

Leonard Oursler

Enclosures (3)

cc: The Honorable Dave Camp, Chairman, House Ways and Means Committee
The Honorable Sander Levin, Ranking Member, House Ways and Means Committee
The Honorable Carl Levin, Chairman, Senate Permanent Subcommittee on Investigations
The Honorable John McCain, Ranking Member, Senate Permanent Subcommittee on Investigations
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform

SFC 003473

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 19, 2014

The Honorable Ron Wyden
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As I have testified, I believe that oversight is a critically important management tool. We can benefit from insights of those entrusted with the oversight function, including Congressional committees and the Treasury Inspector General for Tax Administration (TIGTA).

Last year, TIGTA issued a report related to the determination process and the processing of applications for tax exempt status, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Since then, we have taken substantive corrective actions to address the problems TIGTA had identified. We have:

- Created an expedited approval process for 501(c)(4) organizations that has significantly reduced our backlog
- Established an Accountability Review Board to assess individual employees' conduct and recommend discipline where appropriate
- Installed a new management team in the Exempt Organizations (EO) division
- Developed new training and conducted 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
- Established a new process to document the reasons why applications are chosen for further review
- Issued guidelines for EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention
- Created a formal, documented process for EO determinations personnel to request assistance from technical experts

For the past ten months, we have cooperated with multiple investigations on issues arising from the original TIGTA report. More than 250 IRS employees have spent nearly 100,000 hours working directly on compliance with the investigations -- at a direct cost of nearly $8 million. For our document collection and production, we worked closely with Congressional staff to select the relevant search terms and to identify the 83 custodians whose email was searched. As a result, your committee has:

- Interviewed 26 current and former IRS employees
- Received more than 690,000 pages of documents, including
  - Tens of thousands of IRS emails
  - Voluminous IRS training, management, and policy materials
  - Hundreds of case files for specific organizations

As you know, we have a duty to make redactions in order to protect taxpayer information before producing documents to committees that do not have authority under Internal Revenue Code Section 6103 to receive such information. Nonetheless, we have produced hundreds of thousands of redacted pages to those committees as well. In order to review, redact, and produce this volume of materials, we spent an additional $6-8 million to optimize existing information technology systems and provide a stable technology infrastructure to support our production efforts while protecting taxpayer-specific information.

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. We will make redacted copies of these materials available to other committees as soon as we complete the redactions. We will, of course, continue to work with you and your staff on any follow-up questions that you may have.

In light of these productions, I hope that the investigations can be concluded in the very near future. Once we have the resulting reports, we can then take further corrective action, where necessary. These reports are important for us to learn from, address, and move beyond the problems and concerns identified as a result of the ongoing investigations. Your committee's conclusions and recommendations will be a critically important step in that process.

I look forward to working with you to rebuild taxpayer confidence in the IRS and in its ability to fairly and efficiently administer the nation's tax laws. If you have any questions, please contact me, or a member of your staff can contact Leonard Oursler, Director of Legislative Affairs, at (202) 317-6985.

Sincerely,

John A. Koskinen

cc: The Honorable Orrin Hatch
Ranking Member, Senate Committee on Finance

SFC 003475

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

July 2010 Screening Workshop

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C – a set of all terms proposed by congressional staff – were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Ouraler
Area Director

Description of IRS Email Collection and Production

Over the past year, the Internal Revenue Service made a massive document production in response to Congressional and other inquiries. This activity has been challenging since processing email for production to third parties is a more complex process for the IRS than it is for many private or public organizations. Below we analyze why it is so complicated for the agency to respond to what otherwise in this modern day seem like straightforward requests, including an assessment of what is and is not currently possible. Sophisticated IRS information technology systems are designed to facilitate tax administration, cost-effective use of resources, and preserve confidential taxpayer information, not to facilitate matters related to document preservation, collection, processing, and review. The IRS faces unique challenges in producing email to third parties because of how its email is stored, the security required for IRS email, and the laws protecting confidential taxpayer information from disclosure.

I. Background

Over the past year, four Congressional committees, the Treasury Inspector General for Tax Administration (TIGTA), and the Department of Justice have conducted investigations related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Congressional committees and individual members of Congress made hundreds of requests for information related to the issues raised in the TIGTA report.

In response, the IRS undertook an unprecedented document collection and production effort. As requested by investigators, electronic mail was a primary focus of IRS efforts. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received documents the IRS had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report. Since then, IRS efforts have focused on completing the redaction of those materials for production to other committees and, in response to Congressional requests, production of email (on all topics) involving Lois Lerner, former Director of the Exempt Organizations division at the IRS.

More than 1.3 million pages of material have been produced; 750,000 pages in unredacted form to the Congressional committees authorized to receive taxpayer information protected under Section 6103[1] and another 600,000 pages in redacted format to other committees. None of the IRS systems (e.g., email storage, document collection functions) were designed to facilitate such extensive reviews and productions; as a result, the process required significant human capital and financial resources. More than 250 IRS and Chief Counsel employees have spent over 120,000 hours

[1] Under 26 U.S.C. §6103, tax "[r]eturns and return information shall be confidential," and may not be revealed absent statutory authority. Section 6103(f) provides that upon written request by the Chairman of the Senate Finance Committee or the House Ways & Means Committee, the IRS may provide such information to the Chairman's designee(s).

working on compliance with the investigations – at a direct cost of nearly $10 million. Many of these employees worked on the document production and review process to the exclusion of their normal workload for months at a time. The IRS also spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for those productions.

II. Physical Retention, Collection, and Production of Email

The IRS email system runs on Microsoft Outlook. Each of the Outlook email servers are located at one of three IRS data centers. Approximately 170 terabytes of email (178,000,000 megabytes, representing literally hundreds of millions of emails) are currently stored on those servers. For disaster recovery purposes, the IRS does a daily back-up of its email servers. The daily back-up provides a snapshot of the contents of all email boxes as of the date and time of the backup. Prior to May 2013, these backups were retained on tape for six months, and then for cost-efficiency, the backup tapes were released for re-use. In May of last year, the IRS changed its policy and began storing rather than recycling its backup tapes.[2]

A. Email Preservation

In late May 2013 and early June 2013, the IRS sent document retention notices to employees identified as having documents (including email) potentially relevant to the investigations. These notices instructed employees not to alter or destroy:

> all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.[3]

In that same time frame, the IRS sent similar document retention notices to all employees in the IRS Tax Exempt and Government Entities function and its Chief Counsel counterpart; the IRS Communications and Liaison function; and all employees assigned to respond to the Congressional inquiries.

B. Employees' Email Storage

The IRS has approximately 90,000 employees. Due to financial and practical considerations, the IRS has limited the total volume of email stored on its server by restricting the amount of email most individual users can keep in an inbox at any given time. This is not an uncommon practice within the government or the private sector.

[2] This practice of retaining rather than recycling tapes is estimated to cost approximately $200,000 annually.
[3] Litigation Hold, Attachment A.

According to estimates, it would cost well over ten million dollars to upgrade the IRS information technology infrastructure in order to save and store all email ever sent or received by the approximately 90,000 current IRS employees.

Currently, the average individual employee's email box limit is 500 megabytes, which translates to approximately 6,000 emails. *See* Attachment B. Prior to July 2011, the limit was lower, 150 megabytes or roughly 1,800 emails. *See* Attachment C. The IRS does not automatically delete email in its employees' email account to meet these limits; rather, each employee is responsible for managing and prioritizing the information stored within his/her email box.

Historically, the email of IRS employees is stored in two locations – email in an individual's active email box and therefore saved on the IRS centralized network and email archived on the individual employee's computer hard drive.[4] If an email user's mailbox gets close to capacity, the system sends a message to the user noting that soon the mailbox will become unable to send additional messages.

When a user needs to create space in his or her email box, the user has the option of either deleting emails (that do not qualify as official records) or moving them out of the active email box (inbox, sent items, deleted items) to an archive. In addition, if an email qualifies as an official record, per IRS policy, the email must be printed and placed in the appropriate file by the employee.[5] Archived email is moved off the IRS email server and onto the employee's hard drive on the employee's individual computer. As a result, these IRS employees' emails no longer exist in the active email box of the employee and are not backed-up as part of the daily backup of the email servers. Email moved to a personal archive of an employee exists only on the individual employee's hard drive. An electronic version of the archived email would not be retained if an employee's hard drive is recycled or if the hard drive crashes and cannot be recovered.

C. Email Collection

There have been questions from third parties about the speed of the review and production of IRS email materials; it is therefore important to understand the features of the IRS email system that make the process difficult and time-consuming. As noted above, the IRS has approximately 90,000 employees, each of whom conceivably could have responsive electronic data to any given request. There is no mechanism to allow IRS to search across its entire email system. To gather email from IRS employees, each potential custodian's mailbox and hard drive must be individually collected.

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[4] The approximately 2,000 IRS Counsel employees (as opposed to IRS employees) have a system that allows archived email to be stored on a central drive.

[5] An official "record" is any documentary material made or received by an agency under federal law or in connection with the transaction of public business and appropriate for preservation (44 U.S.C. § 3301). Not all of the emails on IRS servers or backup tapes qualify as official records; accordingly, the agency's email system does not retain all email indefinitely. Rather, individual employees are responsible for ensuring that any email in their possession that qualifies as a "record" is retained in accordance with the requirements in the Internal Revenue Manual (IRM) and Document 12990 (Record Control Schedules).

Collecting from a hard drive involves an Information Technology employee taking physical possession of the computer and copying the contents of the computer's hard drive. These collection efforts are inherently labor-intensive and time-consuming.

The technology used by the IRS does not permit the IRS to select identifiable emails or groups of emails relating to a particular matter from a particular employee. Instead, all of an employee's email must be collected to start the processing function and limited, if at all, later in the processing function by date restrictions and search terms.

The technology used by the IRS also does not permit the IRS to search the network across multiple employees' email in connection with a particular matter. Similarly, it is impossible currently to search all IRS employees' accounts for email to a particular domain. As a result, to find literally "all email" in the custody and control of IRS on a given topic or to a particular domain (e.g., a specific government agency), every single employee's email would need to be individually collected, then processed and reviewed for responsive material.

D. Email Processing

After an employee's email is collected, it needs to be processed and properly formatted so that it can be searched and analyzed for content potentially responsive to a particular request for information. This typically involves "flattening" the email message to make it readable by, for example, an eDiscovery platform tool. This also involves decrypting the email message – for security and privacy reasons, much of IRS email is encrypted when sent. In order to decrypt an email message, the system must use the individual custodian's encryption certificate and multiple reprocessing steps, so that the email can be readable using an eDiscovery platform tool. Once properly flattened and decrypted, email can be loaded onto an eDiscovery platform tool, where it can be searched using search terms and/or date limitations when appropriate. At this point, the materials are ready for review.

E. Email Review and Redaction to Protect Taxpayer Information

The final step before email can be produced involves identifying the relevant materials and taking steps where necessary to protect confidential taxpayer return information. In the course of our productions, the IRS has reviewed and produced email collected from 83 custodians. The IRS has a unique responsibility to protect confidential taxpayer information as required by I.R.C. § 6103.[6] All emails that might contain statutorily protected information must be reviewed and if necessary redacted.

Because when an email is sent it then exists in the author's and all recipients' email boxes, multiple copies of any one email occur frequently in document review. Although the IRS eDiscovery platform tool has a feature that eliminates certain duplicate emails before they are produced to a third party, the "deduping" feature only eliminates

[6] Taxpayers may have a civil cause of action when these taxpayer confidentiality rules are violated and IRS employees may be subject to disciplinary action and criminal penalties if they violate these rules.

duplicate emails that are virtually identical in every respect. A slight variance in the information contained in one email versus another, e.g., the time sent and the time received, results in the emails being treated as unique documents, which translates into increased review and processing times and added volume of documents produced to a third party.

III. Investigations' Requests and IRS Production

The Congressional committees investigating issues raised in the May 2013 TIGTA report requested a broad array of materials, with date ranges that span multiple years (e.g., from 2009 through mid-2013). As outlined in the attached August 29, 2013 letter,[7] the IRS collaborated with Congressional staff to select search terms and custodians with the goal of gathering and producing information as prioritized by Congress. This document production effort has involved hundreds of people, hundreds of thousands of hours, and millions of dollars.

The IRS followed the process described above in preserving, collecting, processing, and reviewing material in response to Congressional requests related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. The IRS completed a search of 83 custodians' email using specifically identified search terms, and reviewed the results for responsiveness and for confidential taxpayer information. When email was responsive, it was produced and redacted when required by Section 6103.

Generally, the IRS produced all documents to all six investigations. There are situations, however, in which materials were produced only to investigators with authority to see information protected by Section 6103. One such situation relates to taxpayer files, which are protected in their entirety. Another is a collection of Excel spreadsheets and associated documents that were produced in native format, which format cannot be redacted for Section 6103 material.

In responding to the investigations, the IRS has not withheld relevant documents on the grounds of privilege.

Many times over the course of the year, different committees expressed interest in specific people, time periods, or events. The IRS did its best to accommodate these requests and expedite material in the priority set by investigators. In early 2014, Chairmen Camp and Issa reiterated their requests for all of Lois Lerner's email, regardless of subject matter. Because of Ms. Lerner's unavailability for Congressional interviews and in response to the Chairmen's requests, the IRS agreed to produce or make available for Congressional review all of her email.

Fulfilling the request for Ms. Lerner's emails regardless of subject matter required the IRS to load additional email beyond the email responsive to search terms originally

[7] Attachment D, Leonard Oursler August 29, 2013 letter to Senator Baucus, also sent to Senators Hatch, Levin, and McCain and Congressmen Camp, Levin, Issa, and Cummings.

loaded for review from Ms. Lerner's custodial email box. By mid-March, IRS had produced to the tax-writing committees the Lerner-related (and other) materials it had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report.[8] IRS then focused on redacting materials for the non-taxwriters and processing the rest of Ms. Lerner's email for production.

Ms. Lerner's emails were subject to the same preservation and collection process as other materials that the IRS produced to investigators.[9] The IRS put Ms. Lerner on administrative leave as of May 23, 2013, at which date she was no longer permitted to access her computer or blackberry. On September 23, 2013 Ms. Lerner separated from the Service.

The electronic data collection for Ms. Lerner's custodial email was completed on May 22, 2013. According to personnel involved in the collection of Ms. Lerner's email, the materials on Ms. Lerner's computer were successfully captured in the data collection process.[10] All of the email from 2009 through 2013 that the IRS collected from Ms. Lerner's computer has or will be produced or made available to Congressional investigators.

As part of the IRS production of materials related to the TIGTA report, email from Ms. Lerner's email box and hard drive previously had been processed using search terms. By mid-March 2014 almost 8,000 such emails from Ms. Lerner's computer and mailbox had been produced in unredacted form. Another 3,000 emails involving Ms. Lerner (as author or recipient) from other custodians also had been produced in unredacted form, for a total of approximately 11,000 produced emails involving Ms. Lerner and related to the TIGTA report.

Producing email regardless of relevance required reprocessing what had been collected from Ms. Lerner so that the email reviewed and produced was no longer limited by search terms or subject matter. As the IRS reviewed Ms. Lerner's email for production and prepared to produce to investigators the balance of 2009-2013 materials from Ms. Lerner's custodial email account (unlimited by subject matter or search terms), it determined that her custodial email (from her email box and hard drive) contains very few emails prior to April 2011, while the number of Ms. Lerner's custodial emails dated after April 2011 is more voluminous. In total, more than 43,000 Lerner custodial emails exist between January 1, 2009 and May 22, 2013, all of which have been or will be produced.

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[8] The IRS also assisted Ms. Lerner's attorneys in identifying and redacting Section 6103 information on documents located on her personal home computer and email on her personal email account.

[9] On May 16, 2013, the IRS Chief Counsel's office sent Ms. Lerner (and many others) a litigation hold notice instructing her not to alter or destroy: "all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present." Litigation Hold, Attachment A.

[10] TIGTA currently has custody of Ms. Lerner's computer.

Although the IRS is unable to interview Ms. Lerner to learn more, the IRS has determined that Ms. Lerner's computer crashed in mid-2011. *See* Attachment E. At that time, the IRS Information Technology Division tried -- at Ms. Lerner's request -- multiple processes to recover the information stored on her computer's hard drive. However, the data stored on her computer's hard drive was determined at the time to be "unrecoverable" by the IT professionals. Attachment F. Any 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.

In order to produce as much email on which Ms. Lerner was an author or recipient as possible, the IRS:

- 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 its production email from an earlier 2011 data collection of Ms. Lerner's email;
- Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which not uncommon 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.

As a result of these efforts, the IRS identified approximately 24,000 Lerner-related emails between January 1, 2009 and April 2011 in addition to those related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, which have already been produced. All such emails have been or will be produced or made available to Congressional committees. In total, Congressional committees have received or will receive more than 67,000 emails in which Ms. Lerner was an author or a recipient.

IV. Conclusion

The Internal Revenue Service has never before undertaken a document production of this size and scope. Hundreds of employees spent thousands of hours locating, processing, reviewing, and redacting documents for the Congressional Committees and other investigators. Because of how the IRS maintains and stores its email, certain challenges were inherent in the process and we have addressed those challenges in as comprehensive a manner as possible.

SFC 003486

From: Melcher Glenn J
Sent: Thursday, May 16, 2013 5:57 PM
To: [redacted] Lerner Lois G.

Subject: IMPORTANT LITIGATION HOLD NOTICE

Importance: High

Categories: NUUU

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review in which litigation is reasonably anticipated.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. You may already have been contacted by IRS IT to begin the preservation process but that does not change your obligations to preserve information and to respond to this email. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted.

Please provide an e-mail response to this e-mail **within five business days.** In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

Attachment A

1 E-mail and attachments

2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)

3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. The destruction of ESI could result in judicial sanctions against the agency. This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above.

If you have questions related to this e-mail, please contact the undersigned immediately.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2365
Glenn.J.Melcher@irscounsel.treas.gov

1.10.3-1 Reducing the Size of Your Mailbox (07/08/2011)

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 500 MB (500 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 475 MB. When it exceeds the 500 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox ".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a federal record. IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on reducing the size of the contents. The Outlook Help menu provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

Exhibit 1.10.3-1 (02-20-2009)
Reducing the Size of Your Mailbox

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 150 MB (150 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 120 MB. When it exceeds the 150 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a Federal Record. See IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on how to reduce the size of the contents. Outlook help provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

SFC 003490

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

July 2010 Screening Workshop

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C -- a set of all terms proposed by congressional staff -- were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Oursler
Area Director

SFC 003494

From: Douglas Akaisha
Sent: Monday, June 13, 2011 10:19 AM
To: Grant Joseph H; Medina Moises C; &TEGE:EO 1750 Penn Ees
Cc: Cook Janine; Marks Nancy J; Livingston Catherine E; Ingram Sarah H; Flax Nikole C; Holland Tiwana M; Lemons Terry L; Siereveld Brett L; Taser Cheryl A
Subject: LOIS LERNER HARD DRIVE CRASH

Lois' hard drive has crashed on her computer and will be without email. If you need to contact Lois please call her at 202-283-8848. For immediate attention, contact Akaisha Douglas at 202-283-9488.

Akaisha Douglas
IRS, Exempt Organizations
202-283-9488

Attachment E

SFC 003495

From: Lerner Lois G
Sent: Saturday, August 06, 2011 7:49 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Thanks for trying. I really do appreciate the effort. Sometimes stuff just happens.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Wilburn Lillie V
Sent: Friday, August 05, 2011 07:38 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Hello Ms Lerner, I was just about to send you an update.

Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecover able.

I am very sorry. Everyone involved tried their best.

Lillie Wilburn
Field Director, HQ CSSC
202-302-4160

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, August 05, 2011 07:06 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Thanks! just saw this--any further word/

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Monday, August 01, 2011 7:57 PM
To: Lerner Lois G

Attachment F

Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Ms Lerner,

As a last resort, we sent your hard drive to CI's forensic lab to attempt data recovery. The CI tech working on the recovery is unexpectedly out until Aug 3rd and promised to update me when he returns.

I will send you a status on Friday morning.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4:40 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Thanks for the update--I'll keep my fingers crossed

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Wednesday, July 20, 2011 12:10 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Ms. Lerner,

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.

I do have one other possibility that I am looking into and I hope to update you on the progress soon.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division

SFC 003497

OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 10:46 AM
To: Froehlich Carl T
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: RE: Careful What You Ask For

We can only try--but it may be too late--don't they send them off to the hard drive cemetery? In any event, thanks to all.

Lois G. Lerner
Director of Exempt Organizations

From: Froehlich Carl T
Sent: Tuesday, July 19, 2011 6:43 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: Re: Careful What You Ask For

Lois,

Lillie Wilburn will call Diane in the morning. If she can't fix it nobody can.

Carl

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 05:21 PM
To: Froehlich Carl T
Cc: Letourneau Diane L
Subject: Careful What You Ask For

It was nice to meet you this morning --although I would have preferred it was under different circumstances. I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy --but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated. I've cced my exec assistant. It's always a good idea to include her emails to me because she gets to my emails far faster than I do. Thanks!

Lois G. Lerner
Director of Exempt Organizations

SFC 0034

Attachment 2

Appendix A

Electronically Stored Information ("ESI") is collected from custodian's computers, removable storage devices, email servers, file servers, and business applications. To date, we have collected information from 119 custodians. The collected ESI undergoes a 9-stage process conducted by the IRS E-Discovery Office. This process involves decrypting files and conducting a search according to search terms designed to capture relevant and responsive information. Following completion of the nine-stage process, the data is provided to Counsel for review.

For the following "Group A" Custodians:

Douglas Shulman	Steven T. Miller	Jonathan T. Davis	William J. Wilkins
Nikole C. Flax	Jennifer Vozne	Carol A. Campbell	

The revised "Group A" Terms are:[1]

"Democrat!"	"America" w/4 "better place to live"	"Adelson"
"Left wing"	"Critical" w/s "country"	"Rove"
"tea party"	"C(4)"	"Donor!"
"9/12"	"C4"	"White House"
"912"	"C(3)"	"WH"
"9-12"	"C3"	"Obama"
"patriot"	"501c"	"POTUS"
"make America a better place to live"	"Citizens United"	"Rahm"
"conservative"	"uptick w/6 (c3 or c4 or c(3) or c(4))"	"Jarrett"
"conservative!"	"Be on the Lookout"	"Cutler"
"republican"	"Triage"	"Lerner"
"republican!"	"Advocacy" w/3 "group"	"Paz"
"right wing"	"Criteria" w/5 "identify"	"Roady"

[1] The following "Group A" search terms were eliminated/revised effective August 11,2013:

"progress!"	"ABA"	"American Bar Association"	"election"

"progressive"	"Criteria" w/5 "search"	"American Bar Association w/(2013) and (April or May)"
"liberal"	"Pro-life"	"ABA w/(2013) and (April or May)"
"BOLO"	"Pro-choice"	"Campaign"
"watch list"	"Pro-Israel"	"Emerging" w/2 "issue"
"task force"	"Glenn Beck"	"advocacy" w/3 "cases"
"emerging issue"	"Bill of Rights"	"political" w/3 "advocacy"
"High" w/3 "profile"	"Romney"	"take back the country"
"Government" w/4 "debt"	"Leadership Institute"	"emerge"
"We the People"	"Koch"	"Wynn"
"Government" w/4 "spending"		

We also search "Group A" Custodians for any email messages in which the" to" or "from" lines contain any of the following e-mail domain names:

a) "Treasury"
b) "treas"
c) "who.eop.gov"

For the following Group B Custodians:

Lois G. Lerner	Robert Choi	Jason A. Krotine
Sharon P. Light	William J. Angner	Jeffrey C. Gaunce
Judith E. Kindell	Sharon Camarillo	Justin R. Palmer
Holly O. Paz	Brenda Melahn	Karen J. Allen
Justin J. Lowe	Lynn A. Brinkley	Karen K. Craig
Robert W. Malone	Bonnie Esrig	Kevin W. Payton
Joseph J. Urban	Peggy L. Combs	Kimberly Tucker
Thomas J. Miller	Kenneth B. Bibb	Mike M. Kerr
Virginia G. Richardson	Faye H. Ng	Richard J. Kemble
David Louis Fish	Donald G. Herring III	Shawntel R. Sanders
Michael C. Seto	Jovonnie Lewis	Sonya I. Adigun
Cindy M. Thomas	Lori A. Perry	Theodora Sandifer

Steven B. Grodnitzky	Carly D. Young	Donna E. Moore
Steven F. Bowling	Victoria T. Lahey	Karl John Beckerich
Jon M. Waddell	Janine L. Estes	Julie Chen
Donna J. Abner	Jodi L. Garuccio	Glenn W. Collins
Joseph R. Herr	Joseph Kevin Phegley	Jeffery A. Cullen
Stephen D. Seok	Annetta Rose Morris	Nancy L. Heagney
Ronald David Bell	Beverly Jefferson-White	Felicia Johnson
John H. Shafer	Gregory Woo	Kimberly L. Kitchens
Elizabeth L. Hofacre	Lonnie Shankling	Renee Railey Norton
Mitchell P. Steele	Elizabeth J. Marquez	Roger W. Vance
Carter C. Hull	Philip H. Haley	Deborah Ruth Kant
Ronald J. Shoemaker	Christopher R. Brown	Andrew F. Megosh
Hilary A. Goehausen	Crystal B. Day	Vincent Fusco Jr.
John J. Koester	Dale T. Schaber	Diane M. Gentry
Gary A. Muthert	Elizabeth C. Kastenberg	Theodore R. Lieber
Tyler N. Chumney	Gerardo Fierro	Jamie N. Heitbrink

The revised "Group B" Terms are:[2]

"Democrat!"	"We the People"	"Rove"
"Left wing"	"Government" w/4 "spending"	"Donor!"
"tea party"	"America" w/4 "better place to live"	"White House"
"9/12"	"Critical" w/s "country"	"WH"
"912"	"Citizens United"	"Obama"
"9-12"	"TIGTA"	"POTUS"
"patriot"	"progressive"	"Rahm"
"make America a better place to live"	"Be on the Lookout"	"Jarrett"

[2] The following "Group B" search terms were eliminated/revised effective August 11, 2013:

"election"	"progress!"	"American Bar Association"	"ABA"

"conservative"	"Triage"	"Cutter"
"conservative!"	"Advocacy" w/3 "group"	"Roady"
"republican"	"Criteria" w/5 "identify"	"American Bar Association w/(2013) and (April or May)"
"republican!"	"Criteria" w/5 "search"	"ABA w/(2013) and (April or May)"
"right wing"	"Pro-life"	"Campaign"
"progressive"	"Pro-choice"	"Emerging" w/2 "issue"
"liberal"	"Pro-Israel"	"advocacy" w/3 "cases"
"BOLO"	"Glenn Beck"	"political" w/3 "advocacy"
"watch list"	"Bill of Rights"	"take back the country"
"task force"	"Romney"	"emerge"
"emerging issue"	"Leadership Institute"	"Adelson"
"High" w/3 "profile"	"Koch"	"Russell George"
"Government" w/4 "debt"	"Wynn"	"Perjuri"
"Adelson"	"Camp"	"Boustany"
"Issa"	"Ways and Means"	"Oversight"

We also search "Group B" Custodians for any email messages in which the "to" or "from" lines contain any of the following e-mail domain names:

a) "Treasury"
b) "treas"
c) "who.eop.gov"

For the following "Group C" Custodians:

Jeffrey L. Parry	Courtney Dunbar Jones	Victoria A. Judson	Michelle L. Eldridge
Nancy J. Lee	Erik H. Corwin	Susan Denver Brown	Floyd Williams
Raymond J. Stahl	Christopher B. Sterner	Catherine M. Barre	Frank Keith
Mireille T. Khoury	Joseph Grant	Jennifer L. Best	Kenneth J. Drexler

David L. Marshall	Nancy J. Marks	Thomas J. Kane	Eric A. San Juan
Kenneth M. Griffin	Don R. Spellman	Deborah A. Butler	Jill MacNabb
Amy Franklin Giuliano	Janine Cook	Sarah Hall Ingram	Terry Lemons

The revised "Group C" Terms are:[3]

"Democrat!"	"Government" w/4 "debt"	"Koch"
"Left wing"	"We the People"	"Wynn"
"tea party"	"Government" w/4 "spending"	"Adelson"
"9/12"	"America" w/4 "better place to live"	"Rove"
"912"	"Critical" w/s "country"	"Donor!"
"9-12"	"Citizens United"	"White House"
"patriot"	"perjur!"	"WH"
"make america a better place to live"	"Be on the Lookout"	"Obama"
"conservative"	"Triage"	"POTUS"
"conservative!"	"Advocacy" w/3 "group"	"Rahm"
"republican"	"Criteria" w/5 "identify"	"Jarrett"
"republican!"	"Criteria" w/5 "search"	"Cutter"
"right wing"	"Pro-life"	"Roady"
"progressive"	"Pro-choice"	"American Bar Association w/(2013) and (April or May)"
"liberal"	"Pro-Israel"	"ABA w/(2013) and (April or May)"

[3] The following "Group C" search terms were eliminated/revised effective August 11, 2013:

"progress!"	"American Bar Association"	"ABA"	"election"

"BOLO"	"Glenn Beck"	"Campaign"
"watch list"	"Bill of Rights"	"Emerging" w/2 "issue"
"task force"	"Romney"	"advocacy" w/3 "cases"
"emerging issue"	"Leadership Institute"	"political" w/3 "advocacy"
"High" w/3 "profile"	"emerge"	"take back the country"
"Uptick w/6 (c3 or c4 or c(3) or c(4)"	"Adelson"	

We also search "Group C" Custodians for any email messages in which the "to" or "from" lines contain any of the following e-mail domain names:

a) "Treasury"
b) "treas"
c) "who.eop.gov"

SFC 003504

NATIONAL ARCHIVES

ARCHIVIST *of the* UNITED STATES

DAVID S. FERRIERO
T: 202.357.5900
F: 202.357.5901
david.ferriero@nara.gov

10 July 2014

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510-6200

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
Unites States Senate
Washington, DC 20510-6200

Dear Chairman Wyden and Ranking Member Hatch:

I am writing in response to your questions about the recordkeeping requirements imposed on the Internal Revenue Service (IRS) and their compliance with those requirements. I understand that these questions arise from the Committee's investigation into the processing of certain applications for tax-exempt status by the IRS.

Thank you for this opportunity to assist you and the committee in understanding an agency's responsibilities for records management in general and IRS compliance specifically. In addition to the regulations promulgated in 36 CFR, Chapter XII, Subchapter B—Records Management, NARA Memorandums (memos) to Agency Records Officers are general announcements issued via email by the Office of the Chief Records Officer for the U. S. Government. The content of the memos vary, but typically include information about federal records management policies, guidance, training opportunities, and meetings. They are posted at http://www.archives.gov/records-mgmt/policy/memos-to-agency-records-officers.html.

NARA's web page for Federal Records Managers (http://www.archives.gov/records-mgmt/) provides links to our email management guidance; activities related to the Managing Government Records Directive (M-12-18); and records management guidance, regulations, and training opportunities.

NATIONAL ARCHIVES *and* RECORDS ADMINISTRATION
700 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20408-0001
www.archives.gov

Enclosed you will find NARA's response to your questions with supporting documentation.

Please let us know if you have further questions.

Sincerely,

DAVID S. FERRIERO
Archivist of the United States

Enclosures:

1: NARA Responses to 2014 06 26 questions
2: RMSA IRS responses 2009-2013
3: SAO Annual Report 2013-Treasury-Departmental Offices
4: 2014 06 17 Wester to Bennett
5: 2014 06 09 Bennett to Wester

1. Does the IRS' Records and Information Management Program comply with the Federal Records Act, and does it generally meet your expectations with respect to the preservation of records?

Like most agencies, the IRS's records disposition program is more robust for paper records than its program for electronic records. The IRS, like many agencies, also has records – paper and electronic – that are overdue for legal transfer to NARA.

Each year, NARA requires all Federal agencies to conduct and submit to NARA an annual records management self-assessment (RMSA). The goal of the self-assessments is to determine whether federal agencies are compliant with statutory and regulatory records management requirements.

NARA uses the results of the RMSAs in other records management oversight projects including formal agency inspections. NARA has the authority to inspect the records management programs and practices of federal agencies under 44 U.S.C. § 2904 and § 2906. NARA evaluates agencies for compliance with requirements stated in 44 U.S.C. Chapters 31 and 33 and the regulations in the Code of Federal Regulations (CFR) – specifically "Subchapter B – Records Management" of 36 CFR Chapter XII.

The RMSA is just one indicator of how well an agency believes it is complying with records management regulations. It is self reported data. Random sample verification, as well as anecdotal information from NARA appraisal archivists or other NARA staff interacting with agencies can lead NARA to believe the scores accurately reflect the health of an agency's records management program. We have not (as yet) conducted an inspection or review of any Treasury components since the Records Management Oversight Section was created in 2011. The IRS scores well on the RMSA, but their scored dropped 11 points in 2013. The IRS scores are summarized in the table below.

Fiscal Year	RMSA Score	Rating
2013	88	Moderate Risk
2012	99	Low Risk
2011	94	Low Risk
2010	93	Low Risk
2009	96	Low Risk

Enclosed are the RMSA original responses (or raw data) as downloaded from the survey tools for the IRS from 2009-2013 (Enclosure 2). These provide the IRS responses to questions, as well as, any comments they made. The comments add more detail than the yes/no responses.

The Managing Government Records Directive (M-12-18) also requires agencies to designate a Senior Agency Official (SAO). The SAO Annual Report provides each agency with an opportunity to describe plans for achieving the goal of the Directive. The report requires that SAOs identify concrete steps, annual progress, and challenges. Enclosed is the report submitted by Treasury on behalf of its components, including the IRS (Enclosure 3).

2. Generally, please explain under the Federal Records Act what constitutes:
   a. An *actual* removal, defacing, alteration or destruction of records;
   b. An *impending* removal, defacing, alteration, or destruction of records; and
   c. A *threatened* removal, defacing, alteration, or destruction of records.

NARA's regulations at 36 CFR Part 1230 address the issue of Unlawful or Accidental Removal, Defacing, Alteration or Destruction of Records. Section 1230.3 defines the terms "alteration," "deface," "removal," and "unlawful or accidental destruction." Our regulation does not define the terms "actual," "impending," or "threatened."

3. What are the general procedures that a Federal agency must follow when it experiences an actual, impending, or threatened removal, defacing, alteration, or destruction of records?

The general procedures that a federal agency must follow when it experiences an actual, impending, or threatened removal, defacing, alteration, or destruction of records are found in NARA's regulations at 36 CFR Part 1230. Section 1230.14 explains how agencies report incidents. The reports must include:

(1) A complete description of the records with volume and dates if known;

(2) The office maintaining the records;

(3) A statement of the exact circumstances surrounding the removal, defacing, alteration, or destruction of records;

(4) A statement of the safeguards established to prevent further loss of documentation; and

(5) When appropriate, details of the actions taken to salvage, retrieve, or reconstruct the records.

NARA has long recognized that virtually every federal agency has been challenged with effectively managing its email records. The sheer volume of emails that each federal employee receives, and the long-standing expectation that each federal employee is responsible for determining both whether an email is a record and the disposition of each email record (i.e., is it transitory, long-term temporary, or permanent), generally in "print-and-file" systems – compounded by common auto-delete policies at many agencies to save network space, along

with all-too-frequent hardware and network failures – has made it virtually impossible for agencies to ensure that all email records are maintained for the appropriate period of time. Moreover, most agencies have not been effective at training employees on their individual requirements to manage their email records. Accordingly, NARA has not expected every agency to report every incident in which email records were deleted before their proper disposition.

Instead, NARA has focused its efforts on trying to help agencies find workable solutions for managing email records. Beginning in 1997, NARA encouraged agencies to utilize electronic records management applications (RMA) for email records, but those RMA's turned out to be costly and did not relieve the burden on each employee to "click-and-file" email records. Beginning in 2007, NARA has worked closely with congressional oversight committees as they developed legislation to help address the problem of managing email records, known as the Electronic Message Preservation Act (EMPA). NARA has also worked closely with the Obama Administration to help establish similar requirements for Executive branch agencies, resulting in the Presidential Memorandum on Managing Government Records of November 28, 2011, and the subsequent OMB/NARA Managing Government Records Directive of August 24, 2012, which requires all agencies to manage their email records electronically by the end of 2016. Most recently, on August 29, 2013, NARA issued "Guidance on a New Approach to Managing Email Records," known as "Capstone." The Capstone guidance reflects NARA's view that the best way for many agencies to manage email records is through automated systems that minimize the involvement of individual users. Capstone also allows agencies to utilize existing technologies that agencies may already have acquired for IT or e-discovery purposes, thus making it more economical.

NARA is currently compiling additional guidance and best practices around this issue. The goal is to help agencies better understand the relationship between IT and records management in managing email and related electronic records, and to clarify agencies' responsibilities when IT and/or records management challenges surface. This effort will reinforce the procedures agencies must follow if a situation comparable to the IRS develops in the future.

4. From fiscal year 2010 to the present, please provide yearly information about the aggregate number of notifications received from the IRS about the actual, impending, or threatened removal, defacing, alteration, or destruction of records.

There were no IRS cases of alleged unauthorized disposition in FY 2010 – 2013. In FY 2014, there have been two cases: IRS Form 656 and Lois Lerner emails. NARA learned of the Form 656 case from a third party, and the IRS notified Senators Wyden and Hatch, but not NARA, about the Lerner emails. (IRS's response to NARA about the Form 656 case indicated that the record in question was properly disposed of according to the records disposition schedule. NARA therefore closed this case, with the allegation categorized as unfounded.)

Fiscal Year	Notifications Received from the IRS	Alleged Unauthorized Destruction Cases Opened
2010	0	0
2011	0	0
2012	0	0
2013	0	0
2014	0	2

5. Based on the information provided in the attached letter from the IRS, has the IRS experienced an actual, impending, or threatened removal, defacing, alteration, or destruction of records relating to Lois Lerner?

After NARA became aware of the June 13, 2014, letter from the IRS to Senators Wyden and Hatch, NARA sent a letter on June 17, 2014, to the IRS's Chief of Records and Information Management, pursuant to our regulations at 36 CFR Part 1230, asking the IRS to report back to us in 30 days (Enclosure 4). The IRS responded on July 9, 2014 (Enclosure 5), and stated that it "cannot determine that an authorized disposal occurred" and that it has "no definitive way of determining what, if any, federal records were lost." The June 13, 2014, report from the IRS notes that Ms. Lerner's "custodial email (from her email box and hard drive) contains very few emails prior to April 2011." The letter then notes that the IRS made efforts to collect Ms. Lerner's email records from that time period from "an earlier 2011 data collection of Ms. Lerner's email" and by searching "email from other custodians for material on which Ms. Lerner appears as an author or recipient." Accordingly, it appears that the IRS may have experienced a threatened destruction of email records, but then made reasonable efforts to recover as much as they could.

6. Since January 1, 2010, has the IRS notified you of any actual, impending, or threatened removal, defacing, alteration, or destruction of any records in the custody of Lois Lerner?

No. NARA learned of the loss of the Lerner emails from the June 13, 2014, IRS letter to Senators Wyden and Hatch. The IRS did not notify NARA.

7. Since January 1, 2010, have you, through the Attorney General, exercised your statutory authority to initiate an action for recovery and redress of any IRS records that were removed, defaced, altered, or destroyed?

No. The authority in 44 U.S.C. § 2905(a) to initiate "action through the Attorney General for the recovery of records unlawfully removed and for other redress provided by law" (and parallel authority in § 3106) is principally intended for situations when federal records have been improperly removed from the government (e.g., by former government officials as they leave government service).

SFC 003511

INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

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

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Date: MAY 14 2013

SFC [redacted]

Employer Identification Number:
SFC [redacted]
Person to Contact and ID Number:
SFC [redacted]
Contact Number:
SFC [redacted]
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 003516

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 19, 2014

The Honorable Ron Wyden
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As I have testified, I believe that oversight is a critically important management tool. We can benefit from insights of those entrusted with the oversight function, including Congressional committees and the Treasury Inspector General for Tax Administration (TIGTA).

Last year, TIGTA issued a report related to the determination process and the processing of applications for tax exempt status, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Since then, we have taken substantive corrective actions to address the problems TIGTA had identified. We have:

- Created an expedited approval process for 501(c)(4) organizations that has significantly reduced our backlog
- Established an Accountability Review Board to assess individual employees' conduct and recommend discipline where appropriate
- Installed a new management team in the Exempt Organizations (EO) division
- Developed new training and conducted 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
- Established a new process to document the reasons why applications are chosen for further review
- Issued guidelines for EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention
- Created a formal, documented process for EO determinations personnel to request assistance from technical experts

For the past ten months, we have cooperated with multiple investigations on issues arising from the original TIGTA report. More than 250 IRS employees have spent nearly 100,000 hours working directly on compliance with the investigations -- at a direct cost of nearly $8 million. For our document collection and production, we worked closely with Congressional staff to select the relevant search terms and to identify the 83 custodians whose email was searched. As a result, your committee has:

- Interviewed 26 current and former IRS employees
- Received more than 690,000 pages of documents, including
  - Tens of thousands of IRS emails
  - Voluminous IRS training, management, and policy materials
  - Hundreds of case files for specific organizations

As you know, we have a duty to make redactions in order to protect taxpayer information before producing documents to committees that do not have authority under Internal Revenue Code Section 6103 to receive such information. Nonetheless, we have produced hundreds of thousands of redacted pages to those committees as well. In order to review, redact, and produce this volume of materials, we spent an additional $6-8 million to optimize existing information technology systems and provide a stable technology infrastructure to support our production efforts while protecting taxpayer-specific information.

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. We will make redacted copies of these materials available to other committees as soon as we complete the redactions. We will, of course, continue to work with you and your staff on any follow-up questions that you may have.

In light of these productions, I hope that the investigations can be concluded in the very near future. Once we have the resulting reports, we can then take further corrective action, where necessary. These reports are important for us to learn from, address, and move beyond the problems and concerns identified as a result of the ongoing investigations. Your committee's conclusions and recommendations will be a critically important step in that process.

I look forward to working with you to rebuild taxpayer confidence in the IRS and in its ability to fairly and efficiently administer the nation's tax laws. If you have any questions, please contact me, or a member of your staff can contact Leonard Oursler, Director of Legislative Affairs, at (202) 317-6985.

Sincerely,

John A. Koskinen

✓cc: The Honorable Orrin Hatch
Ranking Member, Senate Committee on Finance

SFC 003518

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

September 5, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write in response to your letter dated June 26, 2014, and to other Congressional Committees' inquiries regarding the emails of various Internal Revenue Service employees. The IRS has been and remains committed to cooperating fully in the pending oversight investigations into the issues raised in the Treasury Inspector General for Tax Administration (TIGTA) May 2013 report regarding the review of tax-exempt status applications. The Service is committed to providing Congress with the information and documents requested in connection with the investigations and to working with the Committees to ensure that the American people remain confident in the Service's administration of the tax laws.

As you will recall, the IRS provided a report to four Congressional Committees on June 13, 2014 concerning its efforts to collect and produce emails. As you know, TIGTA is conducting an investigation into various related issues; as with the Congressional inquiries, the IRS is committed to cooperating fully with TIGTA's investigation.

As we have reported to you, even though Lois Lerner's hard drive malfunctioned, we were able to provide 24,000 of Ms. Lerner's emails, which were recovered from alternate sources within IRS. We also reported to the Committees in June 2014 that certain other potentially relevant IRS employees -- custodians of data related to the investigations and loaded by IRS on its Clearwell eDiscovery platform, whom we have previously referred to as the "Clearwell custodians" – experienced computer equipment issues of some sort between September 2009 and February 2014. We reviewed IRS records and efforts were made to contact these current or former employees concerning their computer issues, with the goal of ascertaining, to the extent possible, whether any equipment issues resulted in a loss of emails. At TIGTA's request, IRS suspended these efforts in late June 2014 so that TIGTA could proceed with its own investigation; in August 2014, with TIGTA's approval, the IRS resumed its efforts. Enclosed is a memorandum summarizing our findings.

In brief, the IRS reviewed the records of eighty-two email custodians. We determined that of these custodians, eighteen experienced computer equipment issues during the four-plus years under review. Of these eighteen, five experienced equipment issues that resulted in a probable loss of emails, as detailed in the attached memorandum. However, as the experience with Ms. Lerner's emails indicates, even if an email cannot be recovered from such an employee's hard drive, it may be accessible from alternate sources (such as the email account of another employee, with whom the employee exchanged emails). For the five custodians referenced above, the IRS was able to collect a total of over 14,000 potentially relevant emails for the periods affected by their computer issues, including emails from the custodians' accounts as well as from the email accounts of other employees. As part of its prior document productions, the IRS previously reviewed the emails in this set and produced relevant emails to the Committees. We informed TIGTA of our preliminary findings with respect to these custodians earlier this summer.

Throughout this review, the IRS has found no evidence that any IRS personnel deliberately destroyed any evidence. To the contrary, based on the available evidence, the computer issues identified above appear to be the same sorts of issues routinely experienced by employees within the IRS, in other government agencies, and in the private sector. (Through the first six months of this year, for example, thousands of hard drive issues were reported by IRS employees.) Indeed, each of the five hard drive issues resulting in a probable loss of emails referenced above substantially predates the onset of the investigations in 2013; and, by all accounts, in each instance the user contacted IT staff and attempted to recover his or her data.

The IRS endeavors to provide the Committees with the information and documents they have requested, in as efficient and complete a manner as possible. If you have any questions or concerns regarding the attached, please do not hesitate to contact me at (202) 317-4316. We are also sending copies of this letter and report to the Ranking

Member of Ways and Means, Sander Levin; Chairman, Oversight and Government Reform, Darrell Issa; Ranking Member Oversight and Government Reform, Elijah Cummings; Chairman, Ron Wyden; Ranking Member Senate Finance Committee, Orrin Hatch; and Chairman and Ranking Senate, Permanent Subcommittee on Investigations, John McCain; Carl Levin, Chairman, Permanent Subcommittee on Investigations.

Sincerely,

Leonard Oursler

cc: The Honorable Sander Levin, Ranking Member, Committee on Ways and Means
The Honorable Darrell Issa, Chairman, Committee on Oversight and Government Reform
The Honorable Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform
The Honorable Ron Wyden, Chairman, Senate Finance Committee
The Honorable Orrin Hatch, Ranking Member, Senate Finance Committee
The Honorable Carl Levin, Chairman, Permanent Subcommittee on Investigations
The Honorable John McCain, Ranking Member, Permanent Subcommittee on Investigations

Clearwell Custodian Computer Equipment Issues

On June 13, 2014, the Internal Revenue Service provided a report to four Congressional committees concerning its efforts to collect and produce emails relevant to the committees' oversight investigations. As part of this report, the Service advised that some of the Lois Lerner email messages that the committees had been seeking were deemed unrecoverable in 2011 when her computer's hard drive failed and efforts to recover data from the drive proved unsuccessful. The IRS has conducted a review of available information regarding the data of other custodians loaded on the IRS's Clearwell eDiscovery platform tool, in order to determine whether any of these other custodians experienced computer equipment issues similar to Ms. Lerner that could have resulted in the loss of emails stored on computer hard drives.

There are 82 custodians on the Clearwell eDiscovery platform, not including Lois Lerner. Between September 2009 and February 2014, as detailed below, 18 of the 82 custodians reported having some kind of computer issue; for 5 of the 82 custodians, the available information indicates that equipment failure resulted in a probable loss of emails.

It bears noting that the incidence of reported computer equipment failure among the Clearwell custodians is consistent with the industry standard new equipment failure rate of 5 to 6% over a three-year period.

This memorandum describes the IRS's efforts to determine the character and extent of the above-described equipment issues and the likelihood that these issues resulted in the loss of emails from custodians' data loaded into the IRS's Clearwell system.

I. Timeline of Inquiry

As noted, a report on the IRS's efforts to collect and produce emails was made to the Chairman and Ranking Member of the Senate Finance Committee, with copies to the Chairmen and Ranking Members of the other committees, on June 13, 2014. Part of this report addressed the 2011 failure of Lois Lerner's hard drive and the IRS's efforts to collect and produce Ms. Lerner's emails. Pursuant to an earlier request from the Commissioner, the IRS on June 14 began to determine whether there were hard drive incidents reported by other custodians of data loaded on the Clearwell platform. The IRS proceeded to identify, and to attempt to contact, all of the custodians that had apparent hard drive incidents (as determined through the methods described in Part II, below).

IRS personnel began reaching out to Clearwell custodians on June 17, 2014. On or about June 23, 2014, the Treasury Inspector General for Tax Administration (TIGTA) opened an investigation concerning hard drive issues. On June 27, 2014, TIGTA requested that the IRS suspend its efforts to ascertain the character and extent of the custodian hard drive issues in light of TIGTA's investigation; the IRS agreed. During the first week of August 2014, TIGTA advised that it was now acceptable for the IRS to

resume its efforts. Accordingly, IRS resumed its efforts; by the end of August 2014, IRS personnel contacted most of the identified custodians, either directly or through their counsel, and information was obtained regarding their recollections of reported computer incidents. In addition, IRS IT staff assembled records regarding the computer incidents, and the analyses of those records are detailed below.

II. Sources of Information

The IRS identified Clearwell custodians with hard drive issues in three ways: through searches of the Service's IT ticketing systems, KISAM and ITAMS;[1] through searches of email on Clearwell for messages referencing hard drive or computer "crashes"; and through information provided by Congressional staff. KISAM tickets and data from the retired ITAMS ticketing system were obtained on each identified incident (except for the David Fish incident discussed below, for which no ticket could be found on either system); all of the email messages mentioning the computer incidents were reviewed; and most employees involved were either interviewed or contacted through outside counsel to determine what, if anything, the employees remembered about the incidents. For the five custodians who experienced equipment failures resulting in probable email loss, we have not yet been able to locate their broken equipment, with the possible exception of Nancy Heagney, discussed below.

III. Summary of Findings

Between September 2009 and February 2014, computer issues that could potentially have resulted in loss of data were reported by 18 of the 82 above-referenced custodians. Among these, there are five custodians for which there appear to be probable email loss resulting from equipment failure. They are: Julie Chen, Nancy Heagney, Judy Kindell, Justin Lowe, and Ron Shoemaker.

The 13 remaining custodians, for which the available information does *not* indicate probable email loss resulting from equipment failure, are: Tyler Chumney, Glenn W. Collins, Michelle Eldridge, David Fish, Nikole Flax, Carter Hull, Kimberly Kitchens, John Koester, Elizabeth Marquez, Andy Megosh, Shawntel R. Sanders, Mitchell Steele, Cindy Thomas (Westcott).

A. Equipment Failures Resulting in Probable Email Loss

Julie Chen

A KISAM ticket was initiated by Julie Chen, a Determinations Specialist in Cincinnati, on June 12, 2012. The ticket describes the problem as the computer shutting down upon log-in, and it indicates that the hard drive had to be replaced. The ticket is silent about whether any data was recovered from the failed drive.

[1] KISAM (Knowledge, Incident/Problem, Service, and Asset Management) replaced ITAMS (Information Technology Asset Management System) in August 2011. Both are tools used for, among other things, tracking requests by IRS personnel for IT support. The ITAMS user interface is no longer available, but the historical data from that system can be displayed on an Excel spreadsheet.

Ms. Chen stated in a telephonic interview on June 18, 2014 that she called the help desk because she was unable to log-on to the network. She was directed to, and did, take her laptop to the IT department on-site in Cincinnati. IT put a new hard drive into her laptop. Ms. Chen stated that she had size limitations on her inbox and got messages saying she had to delete emails as she exceeded size limits. As part of her transition to Windows 7, she was unable to find pst (email archive) files to copy from her hard drive (for restoration after the computer was re-imaged) as directed prior to the transition. Ms. Chen stated that she contacted IT, which told her that she had no pst files and that she lost all of the email that had been stored in her personal folders. She routinely saved documents to a network drive, but that was limited to 500 MB so she moved files from the network drive to her hard drive as the network drive approached size limits. Ms. Chen stated that everything she stored on the hard drive was lost as a result of the June 2012 hard drive failure.

The IRS has been able to identify 207 potentially relevant emails of Ms. Chen's for the period effected by her hard drive failure: one email from her own account; and 206 emails from other employees' accounts, which Ms. Chen either sent or received, or on which she was copied. Emails from this set were reviewed for relevance and produced to the committees as part of the IRS's prior document productions.

Nancy Heagney

A KISAM ticket was initiated by Nancy Heagney, a Determinations Specialist in Cincinnati, on November 6, 2012. The ticket states that a problem logging-on to Ms. Heagney's laptop was initially thought to be a software problem, but it was eventually determined that the system was having "hardware" issues, and a request was submitted for replacement. The resolution description on the ticket is "Break Fix inalled [sic] and up and running." "Break Fix" is a term used by IT to describe a laptop replacement rather than a component replacement. The ticket is silent about whether data was lost.

In a telephonic interview on June 18, 2014, Ms. Heagney stated that she was unable to log-on to her laptop in early November 2012, so she called the help desk and ultimately delivered her laptop to IT personnel in Cincinnati. According to Ms. Heagney, they replaced her laptop about three weeks after she delivered it to them. She stated that she used personal folders extensively to store email messages, and that all of those were lost as a result of the November 2012 hard drive failure. She had no recollection of any success by any IT specialist in restoring any of these emails.

The IRS has been able to identify 883 potentially relevant emails of Ms. Heagney's for the period effected by her hard drive failure: 14 emails from her own account; and 869 emails from other employees' accounts, which Ms. Heagney either sent or received, or on which she was copied. Emails from this set were reviewed for relevance and produced to the committees as part of the IRS's prior document productions. In addition, the IRS was able to locate in a surplus equipment depot a laptop that had been used by Ms. Heagney. The IRS is retrieving the laptop to determine whether it contains the hard drive that failed in November 2012. If this is the hard drive at issue, the IRS will discuss with TIGTA how best to proceed in assessing whether any additional relevant documents can be obtained from it.

Judy Kindell

Three emails were discovered in Clearwell, dated in August and September of 2010, suggesting that Judith Kindell, Senior Technical Advisor to the Director of Exempt Organizations, had a computer "crash" in early August 2010. Ms. Kindell stated in a telephonic interview on June 18, 2014 that she has had more than one hard drive failure, but only one since January 1, 2009. Her recollection was that her hard drive failed in approximately July 2010, and that emails were lost. According to Ms. Kindell, she had a limit on the amount of data that could be stored on the email server and so periodically she moved email to archives. For a time, her office was instructed to store their email archives on a network drive, but that soon ran out of space, so they were instructed to go back to archiving on their hard drives. Thus, when her hard drive failed, she lost email that resided on that drive. She was able to recover some documents from the network drive.

IT was able to recover the ITAMS data on an incident reported on August 11, 2010. The data shows that the incident involved a "crashed system." Within a day, according to the ticket, it was determined that the data on the hard drive was unrecoverable, and a new hard drive was installed on August 12, 2010. The ticket data supports Ms. Kindell's recollection that she lost emails in the summer of 2010.

The IRS has been able to identify 4,910 potentially relevant emails of Ms. Kindell's for the period effected by her hard drive failure: 239 emails from her own account; and 4,671 emails from other employees' accounts, which Ms. Kindell either sent or received, or on which she was copied. Emails from this set were reviewed for relevance and produced to the committees as part of the IRS's prior document productions.

Justin Lowe

Information received by Congressional staff indicated that Justin Lowe, Tax Law Specialist and former Technical Advisor to the TEGE Commissioner, lost data in a hard drive crash in June of 2011. This was confirmed by a review of emails on Clearwell (*see, e.g.*, IRS0000635756-IRS0000635757; IRSR0000635756-IRSR0000635757). In his initial telephonic interview on June 18, 2014, Mr. Lowe stated that he did not remember having any hard drive issues. In a follow-up call, Mr. Lowe was referred to a number of emails he wrote to others stating that he had lost documents in a hard drive crash in June of 2011; he responded that, while he could not dispute what he had said in the emails, he could not remember the incident.

Subsequently, ITAMS data was located regarding an incident reported by Mr. Lowe on June 23, 2011. The ITAMS data shows that Mr. Lowe was unable to access his computer, that the IT technicians were unable to get the hard drive to work, and that ultimately the hard drive was replaced. The ITAMS information does not say whether or not data was captured from the old drive and restored to the replacement.

The IRS has been able to identify 5,377 potentially relevant emails of Mr. Lowe's for the period effected by his hard drive failure: 1,833 emails from his own account; and

3,544 emails from other employees' accounts, which Mr. Lowe either sent or received, or on which he was copied. Emails from this set were reviewed for relevance and produced to the committees as part of the IRS's prior document productions.

Ron Shoemaker

An ITAMS ticket was initiated by Ron Shoemaker, a Group Manager in Exempt Organizations Technical, on March 4, 2011. A search of the Clearwell system for email referencing computer or hard drive crashes also revealed an email from Mr. Shoemaker dated March 29, 2011, in which he states that he lost his timesheet when his computer crashed. The technician reported on the ITAMS system that Mr. Shoemaker's hard drive proved unrecoverable and that it was replaced with a new drive.

Mr. Shoemaker was interviewed by telephone on June 18, 2014. He stated that he had a hard drive crash at the end of 2010 and lost all data stored on his laptop. He further stated that the computer support people did everything they could to recover data from the failed drive but were completely unsuccessful. According to Mr. Shoemaker, he had a limit on the amount of email that could be stored on the exchange server and so had a lot of his email archived on his laptop.

The IRS has been able to identify 3,262 potentially relevant emails of Mr. Shoemaker's for the period effected by his hard drive failure: 398 emails from his own account; and 2,864 emails from other employees' accounts, which Mr. Shoemaker either sent or received, or on which he was copied. Emails from this set were reviewed for relevance and produced to the committees as part of the IRS's prior document productions.

B. Equipment Failures That, Based on Available Information, Do Not Appear to Have Resulted in Email Loss

Tyler Chumney

A KISAM ticket was initiated by Tyler Chumney, a Determinations Manager in Cincinnati, on December 9, 2011. The ticket reported that Mr. Chumney was experiencing frequent "freeze" events in which his computer became unresponsive. The IT department closed the ticket with the code "NOTRSLVD" and the resolution explanation "user is being refreshed," which indicate that Mr. Chumney received a new computer.

In a telephonic interview on June 23, 2014, Mr. Chumney stated that he recalled having a problem with his laptop in December of 2011, when he had to frequently re-boot/re-start his computer in order to be able to use it. This occurred several times per day so he reported it to the help desk. According to Mr. Chumney, the help desk determined that they should replace his laptop, so he delivered it to the IT department. A review of Mr. Chumney's data loaded on Clearwell has produced a relatively low number of search-term-responsive documents. However, Mr. Chumney's KISAM ticket did not indicate any email loss; and Mr. Chumney stated during his interview that IT copied all of the data from his frozen computer onto the new laptop, and that he has no recollection of losing any emails.

Glenn W. Collins

A KISAM ticket was initiated by Glenn Collins, a Determinations Specialist in Cincinnati, on February 8, 2013. The ticket indicates that Mr. Collins reported a laptop "crash." The ticket contains few details but states that the technicians worked to recover the user's hard drive data (HDD) and repair the system. There is no indication on the ticket that the hard drive was replaced, and no mention of any data loss.

During a telephonic interview on June 27, 2014, Mr. Collins stated that he had no specific recollection of that particular incident, but that he had had numerous issues with his computer, especially since the migration to Windows 7. He could not say whether IT replaced his hard drive or simply repaired the computer. He stated that on at least some occasions, IT deleted program files and reinstalled them to fix software problems, but he did not believe he lost any emails as a result of these issues. Mr. Collins stated that he once lost an email folder in which he had archived correspondence with a particular manager, John Schafer. Mr. Collins believed this was in 2012. However, Mr. Collins believed this was a result of inadvertent deletion, rather than equipment failure.

Michelle Eldridge

A KISAM ticket was initiated by Michelle Eldridge, Chief, National Media Relations, on February 8, 2014, to report that Windows or her hard drive appeared to have crashed. The ticket states that the computer was re-imaged and that all data was restored to the new image.

Ms. Eldridge was interviewed by telephone on June 26, 2014, and stated that she was unaware of any loss of any emails or other data as a result of the February 2014 incident. She stated that it appeared all of her email and data were successfully copied by IT.

David Fish

Information received by Congressional staff indicates that David Fish, Manager of Exempt Organizations Guidance, had a computer "crash" in mid-June 2011. Email searches in Clearwell confirm this (*see* IRS0000903314-IRS0000903315; IRSR0000903314-IRSR0000903315). During a telephonic interview on June 18, 2014, David Fish stated that he has no recollection of losing email or other data for any reason. However, Mr. Fish noted that his recollection generally is impaired due to a severe head injury he sustained in 2013. IT has been unable to retrieve any ITAMS data with respect to this computer crash.

Nikole Flax

In an email message dated January 11, 2012, Nikole Flax, former Chief of Staff, advised a co-worker that "my hard drive crashed" (*see* IRS0000463620-IRS0000463620; IRSR0000463620-IRSR0000463620). A KISAM incident report initiated December 15, 2011 appears to concern the same incident; the ticket indicates that Ms. Flax's laptop would not boot and that, after unsuccessful attempts to fix it with available tools, the hard drive was replaced on January 10, 2012. A May 6, 2013, email

message (*see* IRS0000449271-IRS0000449273; IRSR0000449271-IRSR0000449273) references a second computer crash, but no IT ticket was found for this incident.

Ms. Flax was interviewed telephonically on June 17, June 18, and August 20, 2014. She recalled having at least one hard drive issue, but did not recall losing any data as a result. After reviewing a copy of the ticket for the December 2011 hard drive crash, Ms. Flax recalled that the crash concerned her "extra" laptop, which she used to work from home after hours. (Ms. Flax explained that she also had a desktop in her office for day use; the KISAM ticket confirms that it was a laptop, rather than a desktop, that crashed.) According to Ms. Flax, the failure of the laptop hard drive should not have resulted in any email loss because she maintained her archives on the desktop hard drive, and only accessed network emails from the laptop. Ms. Flax had no recollection of the computer crash referenced in the May 6, 2013 email, and does not believe she experienced any data loss problems at around this time. A subsequent email on May 7, 2013 seems to suggest that Ms. Flax's computer was working properly.

Carter Hull

An email located on Clearwell, dated September 19, 2011, indicates that Carter (Chip) Hull, a former Tax Law Specialist in Exempt Organizations Technical, experienced a computer crash the week before. The email further states that Mr. Hull's computer had been fixed. Mr. Hull has since retired, and he declined to be interviewed.

IT was able to recover ITAMS data on four tickets initiated in or about September of 2011. According to this ticket data, Mr. Hull reported that his computer was constantly shutting off as soon as he tried to start it up. Analysis by a technician showed that the laptop had a defective motherboard, heatsink, and fan. The hard drive was tested in another laptop and was found to be problem-free. The laptop was upgraded with replacement parts, and the ticket was closed on September 15, 2011. There was no indication in the ITAMS information that any data was lost in the repair process.

Kimberly Kitchens

A KISAM ticket was initiated by Kimberley Kitchens, a Determinations Specialist in Cincinnati, on June 5, 2012. The ticket indicates that work on Ms. Kitchen's laptop began before the hard drive completely failed, and that the technicians were attempting to capture her data while the hard drive directory was still accessible. A replacement drive was installed and determined to be working properly before the ticket was closed.

Ms. Kitchens was interviewed by telephone on June 18, 2014. She advised that, around June of 2012, she was unable to log-on to her computer so she called the help desk. The help desk instructed her to drop her laptop off with the IT department, and the IT department replaced her hard drive. Ms. Kitchens did not recall losing any emails, but stated that she was not sure. She stated that she believed non-email case files were lost. However, the KISAM data suggests a successful data transfer to her new computer.

John Koester

An ITAMS ticket was initiated by John Koester, a former Determinations Specialist in Cincinnati, on July 19, 2011 to report that his computer "died" and showed error messages when he attempted to restart it. According to the ticket, IT tried for several days to resolve the problem and ultimately concluded that the hard drive must be replaced. The ticket indicates that IT was able to recover the data from the old hard drive and copy it to the replacement drive.

Mr. Koester is now retired and declined to be interviewed, but he stated through his attorney that he did not recall having a hard drive replaced in July 2011. He further stated through counsel that he did not recall experiencing any data loss in connection with any computer equipment issues.

Elizabeth Marquez

A KISAM ticket was initiated by Elizabeth Marquez, a Determinations Specialist in California, on January 10, 2014, reporting that she was getting an error message requiring a restart of her computer. The ticket contains few details but indicates that a hard drive recovery was successful and that new software was installed. The ticket contains no indication of data loss. Ms. Marquez indicated through counsel that she did not remember losing any data as a result of computer issues.

Andy Megosh

An email dated August 18, 2011 was located on Clearwell (*see* IRS0000719107-IRS0000719110; IRSR0000719107-IRSR0000719110), indicating that Andy Megosh, a manager in Exempt Organizations Guidance, experienced a computer crash. In a telephonic interview on June 18, 2014, Mr. Megosh stated that he recalled no hard drive crashes or other issues since January 1, 2009. According to Mr. Megosh, he did get his computer refreshed at the time of the migration to Windows 7 in December 2012; and his recollection was that IT backed up his old computer and restored the data to his new computer with the new Windows 7 operating system and the new Outlook.

Subsequent to this interview, IT recovered ITAMS data on an incident Mr. Megosh reported on August 16, 2011, in a telephone call to the IT help desk in which he said he was getting an error message whenever he tried to start his computer. According to the ITAMS information, IT technicians spent several days working on the hard drive, including recovery and backup of data, and the ticket was "closed with customer concurrence" on August 19, 2011 with resolution code "Repaired." Nothing in the ITAMS data indicates that the hard drive was replaced or that any data was unrecoverable.

Shawntel R. Sanders

A KISAM ticket was initiated by Shawntel Sanders, a Determinations Specialist in Cincinnati, on December 20, 2012. The ticket indicates that Ms. Sanders' computer would not load Windows. According to the ticket, technicians determined that Ms. Sanders' laptop had a broken keyboard and ordered a replacement laptop. When the

replacement arrived, they captured the data from her old hard drive and restored it to the new laptop.

Ms. Sanders was interviewed by telephone on June 25, 2014, and she remembered having problems with her computer going to a black screen starting in December of 2012. The issues persisted for about six months before IT finally gave her a new computer. During that time, she said she was given loaner computers on at least 3 different occasions; on each occasion, Ms. Sanders' data was transferred to the loaner and back. She did not recall any data loss on any of these occasions.

Mitchell Steele

Information received by Congressional staff, confirmed by a review of Clearwell emails (*see* IRS0000575551; IRSR0000575551), indicates that Mitchell Steele, a Determinations Specialist in Cincinnati, experienced a computer "crash" sometime prior to August 20, 2012. Mr. Steele was interviewed over the telephone on June 18, 2014; he stated that he had no recollection of any hard drive crashes and no reason to think that any data was lost in connection with any equipment failure. He did recall that in late 2012 or early 2013, he received messages that his Outlook was full and then deleted all his email. Presently, the earliest email Mr. Steele has on his system is dated January 2, 2013. Mr. Steele stated that he assumed everything was backed up somewhere and that he was just deleting his copies.

The KISAM ticket for the incident referenced in the August 2012 email has been located. It shows that Mr. Steele reported that his computer display was not working on July 24, 2012. According to the ticket, Mr. Steele was given a replacement laptop, and the data from his old laptop was successfully transferred to the replacement.

Cindy Thomas (Westcott)

A review of the KISAM and ITAMS ticketing systems indicates that Cindy Thomas (Westcott), a former Program Manager in Exempt Organizations Determinations in Cincinnati, initiated an ITAMS ticket on September 16, 2009 to report that her laptop was shutting down sporadically. According to the ticket, the keyboard, power supply, and battery were replaced, but the computer continued to shut down in mid-use. The hard drive was tested and failed the tests; accordingly, IT ordered a replacement drive. The ticket further states that, after Ms. Thomas had difficulty backing up her data for transfer to the new hard drive, the IT technician made an additional copy to her own hard drive. Ultimately, a new hard drive was installed for Ms. Thomas, and the copied data was successfully transferred to the new drive. Ms. Thomas is now retired and declined to be interviewed; however, she indicated through counsel that she does not recall any issues with her hard drive.

IV. Conclusion

As in any large organization or business, certain IRS employees have experienced computer equipment issues over the course of the last five years. A small subset of the above-discussed Clearwell custodians – 5 out of 82 users – appear to have lost emails as a result of equipment failures. However, the IRS has been able to

recover a total of more than 14,000 emails for these five custodians, and it has produced to the Congressional committees relevant emails from this set. The Internal Revenue Service remains committed to cooperating fully with the TIGTA and Congressional investigations and will continue its efforts to provide the Committees with requested information and documents.

SFC 003531

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

September 11, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to tax exempt advocacy organizations. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

The Internal Revenue Service is committed to providing you with as complete of a response as possible, and is committed to providing to you and your staff our full cooperation in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your requests. Documents are produced from responsive paper documents as well as ESI comprised of responsive emails, attachments to responsive emails, and other files not attached to responsive emails.

We are providing this partial response to your requests, which consists of documents from multiple custodians, including Renee Norton, Ronald Bell, Holly Paz, Nikole Flax, Catherine Barre, Sharon Light, Nancy Marks, Judy Kindell, Joseph Herr, and others. These documents are Bates-stamped IRS0000385712-IRS0000393018, IRS0000382344, IRS0000410433-IRS0000410434, and IRS0000406073-IRS0000406178.

In addition we are providing four specific groups of documents responsive to various specific requests from Members of Congress or their staffs.

First, we are producing the remaining documents from Lois Lerner's ESI that are responsive to the various congressional requests, including yours, that stem from the May 14 TIGTA report. We have completed our review of her ESI, and with this set of documents we have completed our production of her responsive ESI. These are Bates-stamped IRS0000406179-IRS0000410432 and IRS0000410435-IRS0000410459. To the extent we identify any additional responsive ESI from Ms. Lerner, we will produce that material in a future production. We are

currently reviewing a small collection of Ms. Lerner's paper documents, and will produce any responsive documents from this set of materials in our next production.

Second, we are producing additional responsive documents relating to training materials for Exempt Organization employees. These are Bates-stamped IRS0000380097-IRS0000382343.

Third, we are producing the calendars of the following individuals in Outlook daily list format: Jonathan Davis, Nikole Flax, Lois Lerner, Steve Miller, Doug Shulman, and William Wilkins. Although these calendars were previously produced on August 29, 2013, in a monthly view format, at the request of your staff we are now producing them in a daily format upon further requests from your staff. These are Bates-stamped IRS0000385411-IRS0000385711.

Finally, we are producing documents relating to a Congressional request on July 30, 2013 for communications regarding four entities identified in communications between Ms. Lerner and the FEC. These are Bates-stamped IRS0000382345-IRS0000385410 and IRS0000393019-IRS0000406072.

Included in this set of documents are Excel spreadsheets that would appear as numerous blank pages if we were to use our normal production process. To address this issue, we are instead producing these documents in native format. Each native document will have a single Bates number, rather than a Bates number for each page. The affected documents are Bates-stamped IRS0000385712-IRS0000393018.

For your convenience, I am also providing you this set of documents, excluding the native-format files (IRS0000385712-IRS0000393018), in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at SFC [redacted].

Sincerely,

Leonard Oursler
Area Director

SFC 003533

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NATIONAL DIRECTOR
FOR LEGISLATIVE
AFFAIRS

June 13, 2014

The Honorable Ron Wyden
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Hatch:

I am writing to provide an update on IRS document productions to Congress. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received the documents the IRS identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report by the Treasury Inspector General for Tax Administration. *See* Enclosure 1. As my August 29, 2013 letter to you described, in order to produce those documents, we ran agreed search terms on many (then 77, now 83) custodians' electronic materials, reviewed the resulting materials for responsive documents, and produced them. *See* Enclosure 2. Production of those materials identified as responsive from the agreed custodians and search terms was completed three months ago. *See* Enclosure 1.

The IRS hopes that your investigation can be concluded and the Senate Finance Committee's report issued in the very near future so that the IRS can then take further corrective action to address issues, where necessary. Congressional reports are important to learn from, address, and move beyond the problems and concerns identified. Your committee's conclusions and recommendations will be a critically important step in that process.

More than 250 IRS employees have spent over 120,000 hours working on compliance with several investigations stemming from last May's report related to the processing and review of applications for tax-exempt status by the Treasury Inspector General for Tax Administration. We have responded to hundreds of Congressional requests for information. In so doing, the IRS has incurred a direct cost of nearly $10 million. We have spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for the production and required redactions to protect taxpayer information. I have attached a document describing some of the challenges and limitations that the IRS faced in its production process. *See* Enclosure 3.

Since mid-March, in response to Chairman Dave Camp's request and Chairman Darrell Issa's subpoena, the IRS has been reviewing and producing all remaining email for which Lois Lerner was a custodian – regardless of search terms, relevance, or subject

matter. In other words, these Lerner documents are beyond and in addition to the already-produced Lerner materials the IRS identified as related to the processing and review of applications for tax-exempt status, which your Committee had received by mid-March. In addition, as described in Enclosure 3, when unavailable from Ms. Lerner's custodial account, we are producing Lerner-related email (i.e., email on which Ms. Lerner was an author or recipient) from other custodians regardless of subject matter. In certain instances, such as personal conversations between Ms. Lerner and her family regarding health issues, we expect to make the materials available here at the IRS for interested Congressional staff to come review. In all, the IRS has produced or will produce or make available approximately 67,000 emails in which Ms. Lerner was an author or a recipient. As per your staff's request, we will continue to include your committee in our productions until or unless you instruct us otherwise.

Sincerely,

Leonard Oursler

Enclosures (3)

cc: The Honorable Dave Camp, Chairman, House Ways and Means Committee
The Honorable Sander Levin, Ranking Member, House Ways and Means Committee
The Honorable Carl Levin, Chairman, Senate Permanent Subcommittee on Investigations
The Honorable John McCain, Ranking Member, Senate Permanent Subcommittee on Investigations
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform

SFC 003535

COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 19, 2014

The Honorable Ron Wyden
Chairman, Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As I have testified, I believe that oversight is a critically important management tool. We can benefit from insights of those entrusted with the oversight function, including Congressional committees and the Treasury Inspector General for Tax Administration (TIGTA).

Last year, TIGTA issued a report related to the determination process and the processing of applications for tax exempt status, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Since then, we have taken substantive corrective actions to address the problems TIGTA had identified. We have:

- Created an expedited approval process for 501(c)(4) organizations that has significantly reduced our backlog
- Established an Accountability Review Board to assess individual employees' conduct and recommend discipline where appropriate
- Installed a new management team in the Exempt Organizations (EO) division
- Developed new training and conducted 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
- Established a new process to document the reasons why applications are chosen for further review
- Issued guidelines for EO specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention
- Created a formal, documented process for EO determinations personnel to request assistance from technical experts

For the past ten months, we have cooperated with multiple investigations on issues arising from the original TIGTA report. More than 250 IRS employees have spent nearly 100,000 hours working directly on compliance with the investigations -- at a direct cost of nearly $8 million. For our document collection and production, we worked closely with Congressional staff to select the relevant search terms and to identify the 83 custodians whose email was searched. As a result, your committee has:

- Interviewed 26 current and former IRS employees
- Received more than 690,000 pages of documents, including
  - Tens of thousands of IRS emails
  - Voluminous IRS training, management, and policy materials
  - Hundreds of case files for specific organizations

As you know, we have a duty to make redactions in order to protect taxpayer information before producing documents to committees that do not have authority under Internal Revenue Code Section 6103 to receive such information. Nonetheless, we have produced hundreds of thousands of redacted pages to those committees as well. In order to review, redact, and produce this volume of materials, we spent an additional $6-8 million to optimize existing information technology systems and provide a stable technology infrastructure to support our production efforts while protecting taxpayer-specific information.

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. We will make redacted copies of these materials available to other committees as soon as we complete the redactions. We will, of course, continue to work with you and your staff on any follow-up questions that you may have.

In light of these productions, I hope that the investigations can be concluded in the very near future. Once we have the resulting reports, we can then take further corrective action, where necessary. These reports are important for us to learn from, address, and move beyond the problems and concerns identified as a result of the ongoing investigations. Your committee's conclusions and recommendations will be a critically important step in that process.

I look forward to working with you to rebuild taxpayer confidence in the IRS and in its ability to fairly and efficiently administer the nation's tax laws. If you have any questions, please contact me, or a member of your staff can contact Leonard Oursler, Director of Legislative Affairs, at (202) 317-6985.

Sincerely,

John A. Koskinen

cc: The Honorable Orrin Hatch
Ranking Member, Senate Committee on Finance

SFC 003537

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

July 2010 Screening Workshop

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C – a set of all terms proposed by congressional staff – were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Oursler
Area Director

Description of IRS Email Collection and Production

Over the past year, the Internal Revenue Service made a massive document production in response to Congressional and other inquiries. This activity has been challenging since processing email for production to third parties is a more complex process for the IRS than it is for many private or public organizations. Below we analyze why it is so complicated for the agency to respond to what otherwise in this modern day seem like straightforward requests, including an assessment of what is and is not currently possible. Sophisticated IRS information technology systems are designed to facilitate tax administration, cost-effective use of resources, and preserve confidential taxpayer information, not to facilitate matters related to document preservation, collection, processing, and review. The IRS faces unique challenges in producing email to third parties because of how its email is stored, the security required for IRS email, and the laws protecting confidential taxpayer information from disclosure.

I. Background

Over the past year, four Congressional committees, the Treasury Inspector General for Tax Administration (TIGTA), and the Department of Justice have conducted investigations related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*. Congressional committees and individual members of Congress made hundreds of requests for information related to the issues raised in the TIGTA report.

In response, the IRS undertook an unprecedented document collection and production effort. As requested by investigators, electronic mail was a primary focus of IRS efforts. As of mid-March 2014, the Senate Finance Committee and the House Ways & Means Committee had received documents the IRS had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 report. Since then, IRS efforts have focused on completing the redaction of those materials for production to other committees and, in response to Congressional requests, production of email (on all topics) involving Lois Lerner, former Director of the Exempt Organizations division at the IRS.

More than 1.3 million pages of material have been produced; 750,000 pages in unredacted form to the Congressional committees authorized to receive taxpayer information protected under Section 6103[1] and another 600,000 pages in redacted format to other committees. None of the IRS systems (e.g., email storage, document collection functions) were designed to facilitate such extensive reviews and productions; as a result, the process required significant human capital and financial resources. More than 250 IRS and Chief Counsel employees have spent over 120,000 hours

[1] Under 26 U.S.C. §6103, tax "[r]eturns and return information shall be confidential," and may not be revealed absent statutory authority. Section 6103(f) provides that upon written request by the Chairman of the Senate Finance Committee or the House Ways & Means Committee, the IRS may provide such information to the Chairman's designee(s).

working on compliance with the investigations – at a direct cost of nearly $10 million. Many of these employees worked on the document production and review process to the exclusion of their normal workload for months at a time. The IRS also spent an additional $6-8 million to optimize existing information technology systems and ensure a stable infrastructure for those productions.

II. Physical Retention, Collection, and Production of Email

The IRS email system runs on Microsoft Outlook. Each of the Outlook email servers are located at one of three IRS data centers. Approximately 170 terabytes of email (178,000,000 megabytes, representing literally hundreds of millions of emails) are currently stored on those servers. For disaster recovery purposes, the IRS does a daily back-up of its email servers. The daily back-up provides a snapshot of the contents of all email boxes as of the date and time of the backup. Prior to May 2013, these backups were retained on tape for six months, and then for cost-efficiency, the backup tapes were released for re-use. In May of last year, the IRS changed its policy and began storing rather than recycling its backup tapes.[2]

A. Email Preservation

In late May 2013 and early June 2013, the IRS sent document retention notices to employees identified as having documents (including email) potentially relevant to the investigations. These notices instructed employees not to alter or destroy:

> all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.[3]

In that same time frame, the IRS sent similar document retention notices to all employees in the IRS Tax Exempt and Government Entities function and its Chief Counsel counterpart; the IRS Communications and Liaison function; and all employees assigned to respond to the Congressional inquiries.

B. Employees' Email Storage

The IRS has approximately 90,000 employees. Due to financial and practical considerations, the IRS has limited the total volume of email stored on its server by restricting the amount of email most individual users can keep in an inbox at any given time. This is not an uncommon practice within the government or the private sector.

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[2] This practice of retaining rather than recycling tapes is estimated to cost approximately $200,000 annually.
[3] Litigation Hold, Attachment A.

According to estimates, it would cost well over ten million dollars to upgrade the IRS information technology infrastructure in order to save and store all email ever sent or received by the approximately 90,000 current IRS employees.

Currently, the average individual employee's email box limit is 500 megabytes, which translates to approximately 6,000 emails. *See* Attachment B. Prior to July 2011, the limit was lower, 150 megabytes or roughly 1,800 emails. *See* Attachment C. The IRS does not automatically delete email in its employees' email account to meet these limits; rather, each employee is responsible for managing and prioritizing the information stored within his/her email box.

Historically, the email of IRS employees is stored in two locations – email in an individual's active email box and therefore saved on the IRS centralized network and email archived on the individual employee's computer hard drive.[4] If an email user's mailbox gets close to capacity, the system sends a message to the user noting that soon the mailbox will become unable to send additional messages.

When a user needs to create space in his or her email box, the user has the option of either deleting emails (that do not qualify as official records) or moving them out of the active email box (inbox, sent items, deleted items) to an archive. In addition, if an email qualifies as an official record, per IRS policy, the email must be printed and placed in the appropriate file by the employee.[5] Archived email is moved off the IRS email server and onto the employee's hard drive on the employee's individual computer. As a result, these IRS employees' emails no longer exist in the active email box of the employee and are not backed-up as part of the daily backup of the email servers. Email moved to a personal archive of an employee exists only on the individual employee's hard drive. An electronic version of the archived email would not be retained if an employee's hard drive is recycled or if the hard drive crashes and cannot be recovered.

C. Email Collection

There have been questions from third parties about the speed of the review and production of IRS email materials; it is therefore important to understand the features of the IRS email system that make the process difficult and time-consuming. As noted above, the IRS has approximately 90,000 employees, each of whom conceivably could have responsive electronic data to any given request. There is no mechanism to allow IRS to search across its entire email system. To gather email from IRS employees, each potential custodian's mailbox and hard drive must be individually collected.

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[4] The approximately 2,000 IRS Counsel employees (as opposed to IRS employees) have a system that allows archived email to be stored on a central drive.

[5] An official "record" is any documentary material made or received by an agency under federal law or in connection with the transaction of public business and appropriate for preservation (44 U.S.C. § 3301). Not all of the emails on IRS servers or backup tapes qualify as official records; accordingly, the agency's email system does not retain all email indefinitely. Rather, individual employees are responsible for ensuring that any email in their possession that qualifies as a "record" is retained in accordance with the requirements in the Internal Revenue Manual (IRM) and Document 12990 (Record Control Schedules).

Collecting from a hard drive involves an Information Technology employee taking physical possession of the computer and copying the contents of the computer's hard drive. These collection efforts are inherently labor-intensive and time-consuming.

The technology used by the IRS does not permit the IRS to select identifiable emails or groups of emails relating to a particular matter from a particular employee. Instead, all of an employee's email must be collected to start the processing function and limited, if at all, later in the processing function by date restrictions and search terms.

The technology used by the IRS also does not permit the IRS to search the network across multiple employees' email in connection with a particular matter. Similarly, it is impossible currently to search all IRS employees' accounts for email to a particular domain. As a result, to find literally "all email" in the custody and control of IRS on a given topic or to a particular domain (e.g., a specific government agency), every single employee's email would need to be individually collected, then processed and reviewed for responsive material.

D. Email Processing

After an employee's email is collected, it needs to be processed and properly formatted so that it can be searched and analyzed for content potentially responsive to a particular request for information. This typically involves "flattening" the email message to make it readable by, for example, an eDiscovery platform tool. This also involves decrypting the email message – for security and privacy reasons, much of IRS email is encrypted when sent. In order to decrypt an email message, the system must use the individual custodian's encryption certificate and multiple reprocessing steps, so that the email can be readable using an eDiscovery platform tool. Once properly flattened and decrypted, email can be loaded onto an eDiscovery platform tool, where it can be searched using search terms and/or date limitations when appropriate. At this point, the materials are ready for review.

E. Email Review and Redaction to Protect Taxpayer Information

The final step before email can be produced involves identifying the relevant materials and taking steps where necessary to protect confidential taxpayer return information. In the course of our productions, the IRS has reviewed and produced email collected from 83 custodians. The IRS has a unique responsibility to protect confidential taxpayer information as required by I.R.C. § 6103.[6] All emails that might contain statutorily protected information must be reviewed and if necessary redacted.

Because when an email is sent it then exists in the author's and all recipients' email boxes, multiple copies of any one email occur frequently in document review. Although the IRS eDiscovery platform tool has a feature that eliminates certain duplicate emails before they are produced to a third party, the "deduping" feature only eliminates

[6] Taxpayers may have a civil cause of action when these taxpayer confidentiality rules are violated and IRS employees may be subject to disciplinary action and criminal penalties if they violate these rules.

duplicate emails that are virtually identical in every respect. A slight variance in the information contained in one email versus another, e.g., the time sent and the time received, results in the emails being treated as unique documents, which translates into increased review and processing times and added volume of documents produced to a third party.

III. Investigations' Requests and IRS Production

The Congressional committees investigating issues raised in the May 2013 TIGTA report requested a broad array of materials, with date ranges that span multiple years (e.g., from 2009 through mid-2013). As outlined in the attached August 29, 2013 letter,[7] the IRS collaborated with Congressional staff to select search terms and custodians with the goal of gathering and producing information as prioritized by Congress. This document production effort has involved hundreds of people, hundreds of thousands of hours, and millions of dollars.

The IRS followed the process described above in preserving, collecting, processing, and reviewing material in response to Congressional requests related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report. The IRS completed a search of 83 custodians' email using specifically identified search terms, and reviewed the results for responsiveness and for confidential taxpayer information. When email was responsive, it was produced and redacted when required by Section 6103.

Generally, the IRS produced all documents to all six investigations. There are situations, however, in which materials were produced only to investigators with authority to see information protected by Section 6103. One such situation relates to taxpayer files, which are protected in their entirety. Another is a collection of Excel spreadsheets and associated documents that were produced in native format, which format cannot be redacted for Section 6103 material.

In responding to the investigations, the IRS has not withheld relevant documents on the grounds of privilege.

Many times over the course of the year, different committees expressed interest in specific people, time periods, or events. The IRS did its best to accommodate these requests and expedite material in the priority set by investigators. In early 2014, Chairmen Camp and Issa reiterated their requests for <u>all</u> of Lois Lerner's email, regardless of subject matter. Because of Ms. Lerner's unavailability for Congressional interviews and in response to the Chairmen's requests, the IRS agreed to produce or make available for Congressional review all of her email.

Fulfilling the request for Ms. Lerner's emails regardless of subject matter required the IRS to load additional email beyond the email responsive to search terms originally

[7] Attachment D, Leonard Oursler August 29, 2013 letter to Senator Baucus, also sent to Senators Hatch, Levin, and McCain and Congressmen Camp, Levin, Issa, and Cummings.

loaded for review from Ms. Lerner's custodial email box. By mid-March, IRS had produced to the tax-writing committees the Lerner-related (and other) materials it had identified as related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report.[8] IRS then focused on redacting materials for the non-taxwriters and processing the rest of Ms. Lerner's email for production.

Ms. Lerner's emails were subject to the same preservation and collection process as other materials that the IRS produced to investigators.[9] The IRS put Ms. Lerner on administrative leave as of May 23, 2013, at which date she was no longer permitted to access her computer or blackberry. On September 23, 2013 Ms. Lerner separated from the Service.

The electronic data collection for Ms. Lerner's custodial email was completed on May 22, 2013. According to personnel involved in the collection of Ms. Lerner's email, the materials on Ms. Lerner's computer were successfully captured in the data collection process.[10] All of the email from 2009 through 2013 that the IRS collected from Ms. Lerner's computer has or will be produced or made available to Congressional investigators.

As part of the IRS production of materials related to the TIGTA report, email from Ms. Lerner's email box and hard drive previously had been processed using search terms. By mid-March 2014 almost 8,000 such emails from Ms. Lerner's computer and mailbox had been produced in unredacted form. Another 3,000 emails involving Ms. Lerner (as author or recipient) from other custodians also had been produced in unredacted form, for a total of approximately 11,000 produced emails involving Ms. Lerner and related to the TIGTA report.

Producing email regardless of relevance required reprocessing what had been collected from Ms. Lerner so that the email reviewed and produced was no longer limited by search terms or subject matter. As the IRS reviewed Ms. Lerner's email for production and prepared to produce to investigators the balance of 2009-2013 materials from Ms. Lerner's custodial email account (unlimited by subject matter or search terms), it determined that her custodial email (from her email box and hard drive) contains very few emails prior to April 2011, while the number of Ms. Lerner's custodial emails dated after April 2011 is more voluminous. In total, more than 43,000 Lerner custodial emails exist between January 1, 2009 and May 22, 2013, all of which have been or will be produced.

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[8] The IRS also assisted Ms. Lerner's attorneys in identifying and redacting Section 6103 information on documents located on her personal home computer and email on her personal email account.

[9] On May 16, 2013, the IRS Chief Counsel's office sent Ms. Lerner (and many others) a litigation hold notice instructing her not to alter or destroy: "all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present." Litigation Hold, Attachment A.

[10] TIGTA currently has custody of Ms. Lerner's computer.

Although the IRS is unable to interview Ms. Lerner to learn more, the IRS has determined that Ms. Lerner's computer crashed in mid-2011. *See* Attachment E. At that time, the IRS Information Technology Division tried -- at Ms. Lerner's request -- multiple processes to recover the information stored on her computer's hard drive. However, the data stored on her computer's hard drive was determined at the time to be "unrecoverable" by the IT professionals. Attachment F. Any 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.

In order to produce as much email on which Ms. Lerner was an author or recipient as possible, the IRS:

- 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 its production email from an earlier 2011 data collection of Ms. Lerner's email;
- Confirmed that back-up tapes from 2011 no longer exist because they have been recycled (which not uncommon 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.

As a result of these efforts, the IRS identified approximately 24,000 Lerner-related emails between January 1, 2009 and April 2011 in addition to those related to the processing and review of applications for tax-exempt status as described in the May 2013 TIGTA report, which have already been produced. All such emails have been or will be produced or made available to Congressional committees. In total, Congressional committees have received or will receive more than 67,000 emails in which Ms. Lerner was an author or a recipient.

IV. Conclusion

The Internal Revenue Service has never before undertaken a document production of this size and scope. Hundreds of employees spent thousands of hours locating, processing, reviewing, and redacting documents for the Congressional Committees and other investigators. Because of how the IRS maintains and stores its email, certain challenges were inherent in the process and we have addressed those challenges in as comprehensive a manner as possible.

SFC 003548

From: Melcher Glenn J
Sent: Thursday, May 16, 2013 5:57 PM
To: [redacted] Lerner Lois G.

Subject: IMPORTANT LITIGATION HOLD NOTICE

Importance: High

Categories: NUUU

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review in which litigation is reasonably anticipated.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. You may already have been contacted by IRS IT to begin the preservation process but that does not change your obligations to preserve information and to respond to this email. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted.

Please provide an e-mail response to this e-mail **within five business days.** In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

Attachment A

1 E-mail and attachments

2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)

3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. **The destruction of ESI could result in judicial sanctions against the agency.** This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above.

If you have questions related to this e-mail, please contact the undersigned immediately.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2366
Glenn.J.Melcher@irscounsel.treas.gov

1.10.3-1 Reducing the Size of Your Mailbox (07/08/2011)

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 500 MB (500 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 475 MB. When it exceeds the 500 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox ".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a federal record. IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on reducing the size of the contents. The Outlook Help menu provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

Exhibit 1.10.3-1 (02-20-2009)
Reducing the Size of Your Mailbox

The Secure Enterprise Messaging system (SEMS) establishes a standard size of 150 MB (150 megabytes) for individual mailboxes. The system mails you daily warning messages that the limit is being approached when your mailbox reaches a size of 120 MB. When it exceeds the 150 MB limit, you will receive the following warning each time you attempt to send a message:

- "You have exceeded your storage limit on your mailbox".
- Delete some mail from your mailbox or contact your system administrator to adjust your storage limit. (Consider whether any of the items you want to delete may be a Federal Record. See IRM 1.10.3.3.2 above.)

It is not the practice of the SEMS staff to adjust any individual mailbox storage limits, but rather to provide guidance on how to reduce the size of the contents. Outlook help provides instructions for enabling and configuring both Auto-archiving and Rules to manage mail and mailbox folders to maintain proper storage limits.

Attachment C

SFC 003552

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 29, 2013

The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

I am responding to your request for documents relating to the application process for tax exemption by organizations that may be engaged in political activity. **Our response includes, where appropriate, information requested under IRC section 6103 (f)(1).** By separate letter, I am providing you with information that has IRC section 6103 information redacted.

We are committed to providing you with as complete a response as possible and our full cooperation with you and your staff in addressing this matter.

We are in the process of gathering relevant information responsive to your request. As part of this process, we have directed our document retention and retrieval specialists to perform an electronic data search of the records of all personnel we have identified who may have potentially relevant information. We are conducting this process under the litigation hold procedures detailed in IRS Chief Counsel Notice CC-2012-017. Much of the raw electronically stored information (ESI) requires decryption, which often corrupts files that must be restored manually before the search process can begin. Once we have the decrypted information, it is electronically searched using the terms in attached Appendix A. The resulting material is then reviewed manually to ensure the documents produced by the search terms are responsive to your request.

We are providing this partial response to your request, which consists of documents from multiple custodians, including Lois Lerner, Dave Fish, Steven Miller, Holly Paz, Steven Grodnitzsky, Jonathan Davis, Nikole Flax, and others. The documents are produced from ESI comprised of emails, attachments to emails, and other files not attached to emails ("loose files") that were responsive as described above.

These documents are Bates-stamped IRS0000176970–181055.

In addition to the above-referenced partial response, we are also providing you with documents that are responsive to several specific requests: your staff's request on August 5 for certain targeted subsets of the responsive material in our review database, and a request for documents related to screening workshops held in July 2010. These two requests are explained more fully below.

IRS Document Request Discussion 8/5/2013

On August 5, 2013 your staff provided us with a list of ten specific document requests to be identified from the responsive material in our review database.[1] That list was later supplemented to include an eleventh such request. Today we are producing the results of the searches conducted to respond to all eleven of these requests, including:

1. Sensitive Case Report summary chart email. All emails containing the chart, as well as all emails replying to the original message or forwarding it. These documents are Bates-stamped IRS0000141718–162642.

2. All communications between the Directors of Rulings &Agreements (Robert Choi, Holly Paz, Dave Fish) to the Director of Exempt Organizations (Lois Lerner) containing or transmitting the Tea Party Sensitive Case Report or a summary of it and all the emails replying or forwarding the report or such summaries. These documents Bates-stamped IRS0000154624-154647, IRS0000156478-156481, IRS0000156485- IRS0000156488, IRS0000156526-156529, IRS0000156535-156557, IRS0000158405-158416, IRS0000158456-158481, IRS0000159382-159383, IRS0000159426-159445, IRS0000160968-161001.

3. All communications between Robert Choi, Holly Paz and Dave Fish and Lois Lerner transmitting or discussing Sensitive Case Reports from April 2010 to June 2013. These documents are Bates-stamped IRS0000162643–163025.

4. All emails with the Tea Party Sensitive Case Report attached, including all emails replying to or forwarding the original message. These documents are Bates-stamped IRS0000163026–167868.

5. Any emails between Steve Grodnitzky and Rob Choi and any emails between either/both of them and Lois Lerner regarding the Tea Party cases. These documents are Bates-stamped IRS0000167869–167941.

6. Calendars for Steve Miller, Doug Shulman, William Wilkins, Lois Lerner, Jonathan Davis, Nikole Flax, and any other chiefs of staff.[2] These documents are Bates-stamped

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[1] Unless otherwise indicated, we used search terms to identify this material. We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged and have not produced today documents flagged as potentially privileged. This flag is applied to documents that contain deliberation regarding: draft congressional correspondence; draft congressional testimony; draft questions for the congressional record; draft tax regulations and/or draft tax policy documents; and statutory analysis. We will conduct a closer review of this material and either produce it, redact certain lines, or provide a summary by category of documents we ultimately conclude contain privileged material that should not be produced. To date, our review database contains data that we have collected from 77 individuals, who are identified in attached Appendix B. Other individuals' documents may be added to this database, including the material from any other individuals identified by you or your staff.

[2] As discussed with your staff, we have provided these calendars in Outlook monthly view format. For some of these individuals, on some days, certain information is not visible. As we informed your staff, we will both (a) provide fuller views of any particular days at your or their request; and (b) review and provide

IRS0000378201-378440.

7. Emails and calendar entries regarding a February/March/April 2011 meeting between Lois Lerner, Holly Paz and Cindy Thomas regarding the TAG spreadsheet. These documents are Bates-stamped IRS0000167942–168019.

8. Emails between the Office of Chief Counsel and EO Technical in late 2011/early 2012 regarding the guidesheet.[3] These documents are Bates-stamped IRS000054979–71169.

9. A copy of all documents in possession of Holly Paz at time of her interview with the Senate Committee on Finance and the House Committee on Ways and Means.[4] These documents are Bates-stamped IRS0000168020–168131.

10. All emails from or to Lois Lerner, Steve Miller, Doug Shulman, Nikole Flax, William Wilkins and Jonathan Davis that contain the words "tea party" or "advocacy cases" or just "advocacy." These documents are Bates-stamped IRS0000210063 -301111 and IRS0000301158-378200.

11. All emails to/from Lois Lerner from February 2010 to June 2013.[5] These documents are Bates-stamped IRS0000181056-197594, IRS0000197596-198508, IRS0000198510-203694, and IRS0000203696-210062.

July 2010 Screening Workshop

To locate documents responsive to this request, we searched our database for all documents containing the terms "Screening Workshop." We reviewed the results of the term searches to eliminate non-responsive and "false hit" documents. In addition, we also flagged potentially

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any responsive information in the calendars as we proceed with our review of these individuals' electronic material. In addition, you will note that for some of these individuals, there is little information prior to 2012. We have been informed that in a broad migration of computer systems from Windows XP to Windows 7, Outlook calendar information from before 2012 was lost. We are gathering and will produce responsive materials from any copies of that material we are able to locate.

[3] We previously produced this material on August 2, 2013.

[4] To respond to this request, we asked Ms. Paz' attorney to provide us with the material in her possession at the time of her interview and are producing today what her attorney provided to us.

[5] We have previously produced materials from Ms. Lerner on July 1, 2013; July 15, 2013; July 22, 2013; July 26, 2013; August 2, 2013; and August 14, 2013. Today's production completes our initial review of her emails. Prior to loading Ms. Lerner's electronic materials into the review database, the search terms at Appendix C – a set of all terms proposed by congressional staff – were run against it to identify responsive materials, and it was subsequently reviewed manually for responsiveness. In addition, certain documents were flagged at the initial review stage as potentially privileged. We are currently conducting a closer review of these documents and will produce them either in full or with appropriate redactions, along with appropriate explanation, in our next production.

privileged material and will produce it as described in Footnote 1. These documents are Bates stamped IRS0000168132–176969.

Furthermore, I am also providing you these documents in PDF.

I hope this information is helpful. If you have any questions, please contact me or have your staff contact me at (202) 622-3724.

Sincerely,

Leonard Oursler
Area Director

SFC 003556

From: Douglas Akaisha
Sent: Monday, June 13, 2011 10:19 AM
To: Grant Joseph H; Medina Moises C; &TEGE:EO 1750 Penn Ees
Cc: Cook Janine; Marks Nancy J; Livingston Catherine E; Ingram Sarah H; Flax Nikole C; Holland Tiwana M; Lemons Terry L; Siereveld Brett L; Teser Cheryl A
Subject: LOIS LERNER HARD DRIVE CRASH

Lois' hard drive has crashed on her computer and will be without email. If you need to contact Lois please call her at 202-283-8848. For immediate attention, contact Akaisha Douglas at 202-283-9488.

Akaisha Douglas
IRS, Exempt Organizations
202-283-9488

Attachment E

SFC 003557

From: Lerner Lois G
Sent: Saturday, August 06, 2011 7:49 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Thanks for trying. I really do appreciate the effort. Sometimes stuff just happens.
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Wilburn Lillie V
Sent: Friday, August 05, 2011 07:38 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: Re: Careful What You Ask For - UPDATE

Hello Ms Lerner, I was just about to send you an update.

Unfortunately the news is not good. The sectors on the hard drive were bad which made your data unrecover able.

I am very sorry. Everyone involved tried their best.

Lillie Wilburn
Field Director, HQ CSSC
202-302-4160

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, August 05, 2011 07:06 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Thanks! just saw this--any further word/

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Monday, August 01, 2011 7:57 PM
To: Lerner Lois G

Attachment F

SFC 003558

Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For - UPDATE

Ms Lerner,

As a last resort, we sent your hard drive to CI's forensic lab to attempt data recovery. The CI tech working on the recovery is unexpectedly out until Aug 3rd and promised to update me when he returns.

I will send you a status on Friday morning.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division
OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4: 40 PM
To: Wilburn Lillie V
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Thanks for the update--I'll keep my fingers crossed

Lois G. Lerner
Director of Exempt Organizations

From: Wilburn Lillie V
Sent: Wednesday, July 20, 2011 12:10 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Froehlich Carl T
Subject: RE: Careful What You Ask For

Ms. Lerner,

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.

I do have one other possibility that I am looking into and I hope to update you on the progress soon.

Lillie V. Wilburn
Field Director, Headquarters CSSC
Customer Service Support
Information Technology Division

SFC 003559

OS:CTO:EU:C:HQ
Desk: 202-622-0732
Mobile: 202-302-4160
Fax: 202-622-8873
lillie.wilburn@irs.gov

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 10:46 AM
To: Froehlich Carl T
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: RE: Careful What You Ask For

We can only try--but it may be too late--don't they send them off to the hard drive cemetery? In any event, thanks to all.

Lois G. Lerner
Director of Exempt Organizations

From: Froehlich Carl T
Sent: Tuesday, July 19, 2011 6:43 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Wilburn Lillie V
Subject: Re: Careful What You Ask For

Lois,

Lillie Wilburn will call Diane in the morning. If she can't fix it nobody can.

Carl

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 05:21 PM
To: Froehlich Carl T
Cc: Letourneau Diane L
Subject: Careful What You Ask For

It was nice to meet you this morning--although I would have preferred it was under different circumstances. I'm taking advantage of your offer to try and recapture my lost personal files. My computer skills are pretty basic, so nothing fancy --but there were some documents in the files that are irreplaceable. Whatever you can do to help, is greatly appreciated. I've cced my exec assistant. It's always a good idea to include her emails to me because she gets to my emails far faster than I do. Thanks!

Lois G. Lerner
Director of Exempt Organizations

SFC 003560

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

SFC 003561

United States Senate
WASHINGTON, DC 20510

June 18, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

On March 14, 2012, we wrote to you with a number of questions regarding the procedures the Internal Revenue Service ("IRS") uses when evaluating organizations that apply for tax-exempt status. We appreciate the thoroughness of your response to our inquiries. However, we remain concerned that the IRS is requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors.

Prior Congresses have passed legislation with bipartisan support to ensure the privacy of donors who give to charitable organizations. While the annual tax returns of certain charitable organizations have long been required to be made available for public review, the 91st Congress denied the Secretary of the Treasury the authority to disclose the names and addresses of financial contributors from these returns.[1] In addition, the 100th Congress created a specific statutory exception for disclosure of names and addresses of financial contributors, when they expanded public inspection of certain annual returns, reports, and applications for exemption of certain tax exempt organizations.[2] In using nearly identical legislative language to create these exceptions from disclosure, both Congresses made strong legislative pronouncements that their goal was to protect the privacy of donor information. In addition, the same commitment to privacy is evident in the requirement that taxpayers be given the opportunity to obtain redaction of identifying information before related IRS private letter rulings, technical advice memoranda, and Chief Counsel Advice memoranda are made public.[3] Through these various expressions, Congress has made privacy the rule, and not the exception.

It is important to note the value that is placed on protecting the privacy of individuals and organizations that choose to donate funds to charitable organizations. The privacy interests of donors is widely recognized and valued. Various public policy initiatives have rightly encouraged donations to social welfare organizations, and these efforts are threatened when private information about donors is not adequately protected. A list of donors who have given

[1] See H.R. 13270, The Tax Reform Act of 1969, which became Public Law Number 91-172
[2] See H.R. 3545, Omnibus Budget Reconciliation Act of 1987, which became Public Law Number 100-203
[3] 26 USC § 6110

money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.

As we mentioned in our March 14 letter, it is our understanding that the IRS asked several organizations who applied for tax-exempt status to provide the names of individuals who had made donations (regardless of dollar amount) to those organizations, as well as the names of individuals who are expected to make donations in the future. The Form 1024 exemption application asks applicants for sources of financing but does not ask for names and addresses. It is our understanding that specific donor information — names and addresses — are not provided on Form 1024.

Yet, by requesting through correspondence, after the filing of a Form 1024, that organizations applying for tax exempt status provide names of donors, the IRS sets in motion an outcome wherein donor information that would be protected and redacted by one provision of the Internal Revenue Code ("Code") which provides an exception from disclosure, would be made available for public inspection by a separate provision of the Code relating to inspection of applications for tax exemption. Such an outcome is clearly at odds with the express intent of Congress to maintain the privacy of donors. Even if not prohibited by law, the actions of IRS are an inappropriate circumvention of the policy of donor privacy embedded in the Code.

When the IRS requests specific donor information through a follow up letter as part of the exemption application process, it ensures that this highly sensitive donor information will be included in the administrative record. This presents a serious privacy problem: if the IRS approves the organization's application for tax-exempt status, then section 6104 of the Code requires the associated administrative record – including the identity of donors if included therein — to be made available for public review at the national office of the Internal Revenue Service.[4] This is completely at odds with the treatment of the same donor information when it is viewed at the principal office of the tax-exempt organization. The Code specifically states that the names and addresses of donors are not required to be available for public inspection when viewed at this physical location.[5] Given that donor information is redacted on annual tax returns of tax-exempt organizations, redacted on denied tax-exempt applications, redacted on successful tax-exempt applications (when viewed at the organization's principal office), and not required to be provided on the Form 1024, it is disconcerting that donor information would be reviewable, or at the very least not be redacted, on successful tax-exempt applications viewed at the national office of the IRS.

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[4] 26 USC § 6104(a)(1)(A)
[5] 26 USC § 6104(d)(3)(A)

In order to better understand the background on these recent requests for confidential donor information and the authority of the Internal Revenue Service to make these requests, we respectfully request that you provide answers to the following questions:

1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?

2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011.

3. Is the Exempt Organizations technical office involved in all such information requests of exemption applicants?

4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of these letters contains passages which specifically request names of donors.[6]

    a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?
    b) Which IRS officials provided authority and approval for the questions requesting donor names?
    c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?

5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?

6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

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[6] Letter 1313 asks for donor names in question 3(a) on page 4. Letter 2382 asks for donor names in question 11(a) on page 6.

7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as $1, meet the relevancy standard?

Thank you for your prompt attention to this matter.

Sincerely,

Orrin Hatch

John Cornyn

Jon Kyl

Lamar Alexander

Mike McConnell

Mike Enzi

Rand Paul

Kay Bailey Hutchison

Boozman

John Thune

Pat Roberts

Enclosures

SFC 003565

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 8, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

A matter has recently come to my attention that raises serious concerns about the procedures providing for security and confidentiality of information filed with the Internal Revenue Service ("IRS"). This matter demands your immediate attention.

As reported recently in the press, the National Organization for Marriage ("NOM"), a nonprofit tax exempt social welfare organization under Section 501(c)(4) of the Internal Revenue Code, believes that the confidentiality of information furnished to the IRS has been disclosed without authorization. Specifically, evidence suggests that the IRS may have been the source of the unauthorized disclosure of donor information from NOM's 2008 Form 990 Schedule B ("2008 Schedule B"), which was obtained and published by the Human Rights Campaign ("HRC") and the Huffington Post. The unauthorized public disclosure of return information is strictly prohibited by law, and appropriately treated as a serious crime, punishable not only with loss of employment but with imprisonment. See 18 U.S.C. 1905.

The information that has come to my attention regarding the unauthorized disclosure of NOM's 2008 Schedule B donor information is disturbing. That document includes a list of the donors to NOM who have contributed $5,000 or more during the reporting period. Both NOM and its donors had reason to expect that the donor information on the 2008 Schedule B would not be publicly disclosed without authorization. NOM filed the 2008 Schedule B pursuant to 26 U.S.C. 6033, and disclosure by the IRS of the names or addresses of contributors to NOM is not authorized. See 26 U.S.C. 6104(b).

It is my understanding that HRC and the Huffington Post published NOM's 2008 Schedule B on their websites on or about March 30, 2012. Evidence brought to my attention, suggests that the IRS may have been the source of the 2008 Schedule B published on the HRC and Huffington Post websites.

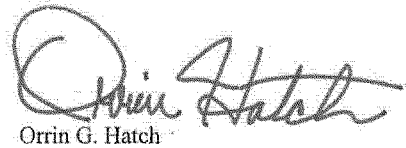
NOM is required, pursuant to 26 U.S.C. 6104, to make the public portions of its Form 990, those that do not include confidential donor information, available for public inspection. It is my understanding that HRC has published NOM's public Form 990 for both 2009 and 2010 on its website. Yet those public 990s differ in critical ways from the 2008 Schedule B at issue here.

The public 2009 and 2010 forms do not include confidential donor information. Moreover, unlike the 2009 and 2010 public 990s, the 2008 Schedule B published by HRC and Huffington Post is a PDF document that appears to have been deliberately altered in a manner to obscure information that would identify its origins with the IRS. First, the 2008 Schedule B appears to have been cropped in order to hide a stamp appearing across the top of each page that states, "THIS IS A COPY OF A LIVE RETURN FROM SMIP. OFFICIAL USE ONLY." Second, a white rectangle appears diagonally across the middle of each page of the document at issue -- a redaction that hides a number that appears to have been generated by the IRS.

The possibility of an unauthorized public disclosure by the IRS of NOM's 2008 Schedule B donor information is a matter that I take with the utmost seriousness, and I expect that you will treat this inquiry with the attention that it deserves. Violations of the statutory protections accorded confidential return information threaten the mission of the IRS. Our political history shows the absolute necessity of maintaining the nonpartisan integrity of the IRS. The proper administration of the nation's tax laws requires confidence that the personal and confidential information filed with IRS will not be improperly disclosed or used for political purposes.

I request that you update my staff by May 29, 2012 regarding the actions you are taking to investigate this matter. Should you have any questions, please contact Preston Rutledge or Brendan Dunn of my staff (202-224-4515). Given the potential commission of a crime in this case, I are copying the Attorney General on this letter and expect that he will provide you with any assistance that you need in getting to the bottom of this matter.

Sincerely,



Orrin G. Hatch
Ranking Member

Cc: Eric Holder, United States Attorney General

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SFC 003567

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510–6200

September 23, 2010

The Honorable J. Russell George
Treasury Inspector General for Tax Administration
1125 15th Street NW, Suite 700
Washington, DC 20005

Dear Inspector General George:

We are writing to ask you to investigate a very serious allegation that Administration employees may have improperly accessed and disclosed confidential taxpayer information. As you know, section 6103 of the Internal Revenue Code protects the privacy of federal tax returns and return information. This law was enacted as a result of the use of tax information for political gain during the Watergate scandal.

Congress sent a very clear message with the enactment of section 6103 that taxpayer privacy was extremely important. The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) imposed further sanctions on IRS and Treasury employees for accessing tax information without reason – even if such information was not further disclosed. Penalties for unauthorized access or disclosure of returns and return information range from monetary penalties to termination of employment to imprisonment.

Chairmen of either the Senate Committee on Finance or the House Ways and Means Committee are the only Members of Congress able to receive information protected by section 6103 and that is only upon written request in which specific individuals who may view the sensitive information are identified to the IRS. However, these Members and their staff are subject to the same sanctions for unauthorized access or disclosure of returns and return information.

Similarly, your office and the Government Accountability Office (GAO) are also subject to the same sanctions. In fact, we have been told repeatedly that TIGTA, GAO, and even IRS reports that summarize tax information are in violation of section 6103 if they include aggregate data on so few taxpayers that the taxpayers may be easily identified.

Thus, we are very concerned about a statement made by Administration officials in an August 27, 2010, press briefing regarding the President's Economic Recovery Board's (PERAB) report on corporate tax reform. This statement, as reported by *The Wall Street Journal*, comments on the legal structure of Koch Industries, Inc. (Koch) and its impact on the group's tax liability. While Koch's website indicates some of the Koch companies are limited liability companies (LLC) or limited partnerships, there is no indication that Koch itself is a Subchapter S

Corporation, which is one type of flow through entity, or a Subchapter C corporation. In addition, an LLC can choose to be taxed as Subchapter C corporation.

Thus, the statement that Koch is a pass-through entity implies direct knowledge of Koch's legal and tax status, which would appear to be a violation of section 6103. Alternatively, if the statement was based on speculation, it raises the question of whether the Administration speculating about any specific taxpayer's liability is appropriate.

The statement is also troubling because it was made shortly after the President highlighted the advocacy work of certain tax-exempt organizations funded by Koch Industries, Inc. and its owners. The work of these tax-exempt organizations, while opposing the Administration's policies, appears to be in compliance with the tax laws. However, we are concerned that the PERAB's statement singling out Koch Industries, Inc. so soon after the President's statement was politically motivated.

As a result, we ask that you obtain and review a transcript of the August 27, 2010, press briefing to determine the basis for the Administrations employees' statements and review the PERAB's work in preparing its report on corporate tax reform. In particular, we ask you to address the following questions.

1) Did Administration employees, including PERAB employees, have access to tax returns and return information in compiling the PERAB report?
2) If yes, how many companies' tax returns did the PERAB employees review and did they follow the procedures prescribed under the regulations governing section 6103 for accessing and protecting taxpayer information?
3) Did Administration employees, including PERAB employees, violate section 6103 when they discussed the tax status of Koch Industries, Inc. and its related companies?
4) If violations of 6103 did not occur, what was the basis for the statement regarding Koch's legal and tax status and was the statement appropriate?

We appreciate your prompt attention to this matter.

Sincerely,

Chuck Grassley
Ranking Member

Jon Kyl
United States Senator

SFC 003569

Jim Bunning
United States Senator

Pat Roberts
United States Senator

Michael B. Enzi
United States Senator

John Cornyn
United States Senator

John Ensign
United States Senator

SFC 003570

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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?

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[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.

SFC 003572

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

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 4