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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 4 OF 4

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SFC 003573

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

The applicable regulations are authorized by Section 7805 of the Internal Revenue Code, which provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.[1]

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the detail provided is insufficient to make a determination or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?

As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. As needed, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff, but the EO Technical office is not involved in all information requests sent to applicants seeking tax-exemption Note that in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote quality and consistency. In such cases, agents, either with or without EO Technical, may work together in drafting information requests for similar cases.

[1] IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

Question 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 those letters contains passages which specifically request names of donors.

a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. As noted above, in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote consistency. In such cases, agents may work together in drafting questions for similar cases.

b) Which IRS officials provided authority and approval for the questions requesting donor names?

See response to a), above.

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?

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. The IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they could contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in an alternative manner.

Question 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?

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes efforts to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. As previously mentioned, we advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they can contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 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?

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

Question 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?

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status. An applicant who is concerned with burden or relevancy in the process can work with the agent assigned to the case and the agent's manager.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact Cathy Barre, Director, Legislative Affairs, at (SFC [redacted].

Sincerely,

Steven T. Miller
Deputy Commissioner for
Services and Enforcement

SFC 003578

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

DEPUTY COMMISSIONER

September 11, 2012

The Honorable Bob Corker
United States Senate
Washington, D.C. 20510

Dear Senator Corker:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

The applicable regulations are authorized by Section 7805 of the Internal Revenue Code, which provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003579

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable John Cornyn
United States Senate
Washington, D.C. 20510

Dear Senator Cornyn:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

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Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003580

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable John Thune
United States Senate
Washington, D.C. 20510

Dear Senator Thune:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

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Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003581

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Jon Kyl
United States Senate
Washington, D.C. 20510

Dear Senator Kyl:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

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Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003582

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Kay Bailey Hutchison
United States Senate
Washington, D.C. 20510

Dear Senator Hutchison:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

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Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003583

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Michael Enzi
United States Senate
Washington, D.C. 20510

Dear Senator Enzi:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

Question 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)?

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Question 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 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003584

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Lamar Alexander
United States Senate
Washington, D.C. 20510

Dear Senator Alexander:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

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SFC 003585

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

DEPUTY COMMISSIONER

September 11, 2012

The Honorable Mitch McConnell
United States Senate
Washington, D.C. 20510

Dear Senator McConnell:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

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SFC 003586

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Pat Roberts
United States Senate
Washington, D.C. 20510

Dear Senator Roberts:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

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Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003587

DEPUTY COMMISSIONER

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

September 11, 2012

The Honorable Rand Paul
United States Senate
Washington, D.C. 20510

Dear Senator Paul:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided by statute in the Internal Revenue Code.

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Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

SFC 003588

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JANICE MAYS,
MINORITY CHIEF COUNSEL

April 9, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

The Committee on Ways and Means (Committee) of the U.S. House of Representatives has discovered information in the course of its ongoing investigation of the targeting by the Internal Revenue Service (IRS) of taxpayers on the basis of their political views. This information suggests willful misconduct by an IRS official, and also suggests that she may have violated multiple federal criminal statutes.

Rule X.1(t) of the Rules of the House of Representatives for the 113th Congress delegates to the Committee legislative jurisdiction over "[r]evenue measures generally," including the Internal Revenue Code (IRC or Code) and the Department of Treasury (Treasury), which includes the IRS. As a result, the Committee is responsible for considering all legislation that raises the revenue required to finance the federal government. The raising of such revenue depends on voluntary compliance with the IRC, which is undermined when taxpayers and exempt organizations perceive that the administration of the IRC is unfair or, worse, is biased against them. Oversight of the IRS, and particularly investigation of IRS activity that could undermine voluntary compliance with the IRC, is thus a fundamental obligation of the Committee.[1] It is pursuant to this authority and in discharge of this obligation that the Committee has investigated allegations that the IRS mistreated certain taxpayers and exempt organizations on the basis of their political beliefs.

[1] *See also* Rule X.2(b)(1), Rules of the House of Representatives, 113th Congress (vesting Committee with authority to oversee and evaluate whether laws written by Committee are being administered consistent with congressional intent and whether such laws should be changed); *cf.* IRC § 6103 (expressly authorizing Committee review of certain material).

During the course of its investigation, the Committee has obtained information that reveals that former IRS Exempt Organizations Division (EO) Director Lois G. Lerner, while acting in her official capacity, may have violated one or more criminal statutes. Specifically, the Committee's investigation has uncovered conduct by Lerner that includes the following:

1. Lerner used her position to improperly influence agency action against only conservative organizations, denying these groups due process and equal protection rights under the law as guaranteed by the U.S. Constitution, in apparent violation of 18 U.S.C. § 242;

2. Lerner impeded official investigations by providing misleading statements in response to questions from the Treasury Inspector General for Tax Administration (TIGTA), in apparent violation of 18 U.S.C. § 1001; and

3. Lerner risked exposing, and may actually have disclosed, confidential taxpayer information, in apparent violation of IRC § 6103 by using her personal email to conduct official business.

These findings, supported by the evidence described below, suggest that Lerner may have violated multiple criminal statutes. The Committee asks that you pursue this evidence and ensure that the victims of IRS abuse do not also suffer neglect from the criminal justice system.

I. Lerner Showed Extreme Bias and Prejudice in Exercising Her Power and Influence Over the Non-Profit Sector

As EO Director, Lerner had authority to act on behalf of the IRS.[2] Lerner willfully used her authority to subject specific organizations to adverse treatment in defiance of IRS controls. Lerner directed subordinates to subject specific right-leaning groups to increased scrutiny and audits, and even the denial of exempt status.

a. *Lerner's Targeting of Crossroads GPS & Blind Eye to Priorities USA*

On October 19, 2010, Lerner explained to a group of Duke University students that 501(c)(4) organizations were spending money on campaign activity in the wake of the *Citizens United* decision.[3] She said, "[E]verybody is screaming at us, 'fix it now before the election....'"[4] At the same time, Assistant Senate Majority Leader Dick Durbin, wrote then IRS Commissioner Doug Shulman to demand an investigation of Crossroads GPS.[5] Lerner explained to the students, "I won't know until I look at their 990s next year

[2] See IRC § 7803 (setting out the authorities of the IRS Commissioner), *see also* Internal Revenue Manual (IRM) 1.1.23.5 (providing that Director of EO reports directly to Deputy Commissioner of TE/GE and, among other duties, "supervises and is responsible for the activities of . . . EO Rulings and Agreements and EO Examinations functions").
[3] *See generally, Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310 (2010).
[4] Transcribed from http://www.youtube.com/watch?feature=player_embedded&v=EH1ZRyq-HM, Exhibit 1.
[5] *See* Letter from Assistant Majority Leader Dick Durbin to IRS Commissioner Doug Shulman on October 12, 2010. Available at: http://www.durbin.senate.gov/public/index.cfm/pressreleases?ID=833d8f1e-bbdb-4a5b-93ec-706f0cb9cb99.

whether they have done more than their primary activity as political or not, so I can't do anything right now."[6] While Lerner's public comments seemingly cast a wide, unbiased net across the entire 501(c)(4) spectrum, her private actions were different.

Documents produced to the Committee further link Lerner's actions with complaints from Democracy 21.[7] Those complaints chiefly focused on Crossroads Grassroots Policy Strategies (Crossroads) and other right-leaning groups, but also cite left-leaning groups such as Priorities USA.[8] On October 5, 2010, just two weeks before her remarks at Duke University, Fred Wertheimer of Democracy 21 and Gerald Hebert of the Campaign Legal Center (CLC) wrote to then-Commissioner Shulman and Lerner to, "Request for IRS investigation to determine whether 'Crossroads GPS' is operating in violation of tax status."[9] Later, on July 27, 2011, Democracy 21 and CLC sent the IRS a self-styled, "Petition for Rulemaking On Campaign Activities by Section 501(c)(4) organizations," in which they raised concerns about the political campaign activities of 501(c)(4) exempt organizations, including Crossroads and Priorities USA.[10] Finally, on December 14, 2012, Democracy 21 requested a meeting with Lerner to discuss its July 27, 2011 petition.[11]

Lerner quickly organized a meeting for Democracy 21 not only with herself, but also with the Office of Chief Counsel and the Office of Tax Policy at the Department of the Treasury for January 4, 2013.[12] In preparation for the meeting, Lerner asked David Fish, then acting Director of EO's Rulings and Agreement Division, and Andy Megosh with EO Guidance, for all "letters these orgs sent in asking for c4 guidance...."[13] While Democracy 21's petition raised concerns about groups across the political spectrum, documents IRS produced to the Committee show an aggressive and improper pursuit of Crossroads by Lerner, but no evidence she directed reviews of similarly situated left-leaning groups.[14]

For example, on January 2, 2013, the IRS's Chief for Media Relations circulated a ProPublica article to Lerner and Nikole Flax, then chief of staff to Acting Commissioner Steve Miller, among others, "FYI—Here is the latest inbound for ProPublica."[15] Following was an article titled: "Watchdog Groups Again Call on IRS to Deny Tax-Exempt Status to Karl Rove's Crossroads GPS, Cite $70 Million in 2012 Campaign

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[6] Exhibit 1.

[7] Democracy 21 describes itself as a "nonprofit, nonpartisan organization that...promotes campaign finance reform, lobbying and ethics reforms...and other government integrity measures." *See* "Petition for Rulemaking On Campaign Activities by Section 501(c)(4) Organizations" at ¶10. Available at: http://www.democracy21.org/uploads/D21_and_CLC_Petition_to_IRS_7_27_2011.pdf.

[8] *See* Democracy 21 "Letters to the IRS." Available at: http://www.democracy21.org/wp-content/uploads/2013/05/Letters-to-IRS.pdf.

[9] *See* http://www.democracy21.org/wp-content/uploads/2013/05/Letters-to-IRS.pdf.

[10] *See* fn 7.

[11] IRS00000122502-122505, Exhibit 2. *See* fn 8 for "Petition for Rulemaking."

[12] *See id.*

[13] *See id.*

[14] *See* Letter from House Ways and Means Committee Chairman Dave Camp to IRS Acting Commissioner Daniel Werfel of September 20, 2013 (requesting returns and return information of right-leaning American Crossroads, Crossroads GPS, and Americans for Prosperity, as well as left-leaning Priorities USA, Priorities USA Action, and Organizing for Action), Exhibit 3. The documents show no special scrutiny of the left-leaning groups.

[15] IRS0000122515-6, Exhibit 4.

Expenditures as *Prima Facie* Evidence Group is Campaign Operation, not 'Social Welfare' Group."[16] The "watchdog" groups to which the article refers are Democracy 21 and Campaign Legal Center (CLC). This email prompted Lerner to give notice to Flax and others about the meeting scheduled for January 4 with these groups:

> Just FYI for everyone's information—I received the incoming and will refer it to Exam as we do with any complaint. Ruth Madrigal, Vickie Judson and I are meeting with Democracy 21 and some others regarding their request for guidance on c4. This has been set up for some time. I plan to have David Fish there and begin the meeting by telling them we cannot discuss specific taxpayers… We will be very cautious.[17]

Notwithstanding Lerner's apparent careful adherence to the rule against discussing specific cases with people outside of the IRS, emails with her subordinates show a focused interest in Crossroads immediately following the meeting. Again, these emails show no apparent interest in left-leaning groups.

Lerner's calendar shows the January 4, 2013 meeting with Democracy 21 blocked off for 11:00 AM-Noon and, based on Lerner's subsequent actions, it is clear that the meeting went forward as planned.[18] Before or soon after the meeting, Lerner apparently contacted Tom Miller (EO Technical) to ask about the status of Crossroads (whether the group had been audited or selected for audit) because he replied by email at 1:55 PM the same day that the group had twice been before the Political Action Review Committee (PARC), in November 2010 and June 2011, but was not selected for audit.[19]

Following Tom Miller's response, Lerner sent an email to Nanette Downing, the Director of the EO Examinations Unit in Dallas, TX, demanding to know why Crossroads had not been audited.

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[16] Available at: http://www.propublica.org/article/watchdogs-to-irs-reject-rove-groups-tax-application. (The article updates an earlier ProPublica story from December 14, 2012 that was based on an IRS- leaked copy of Crossroads application for exempt status.)

[17] Exhibit 5. A "referral" is, in lay terms, a complaint; pursuant to the IRM it means:

> A. A document or other communication, including an electronic communication, received by EO Classification-Referrals from a source outside the Internal Revenue Service, which alleges possible noncompliance with a tax law on the part of an exempt organization, political organization, taxable entity, or individual.
>
> B. An internal document (referral) prepared by an Internal Revenue Service employee and forwarded to EO Classification-Referrals, which identifies current or potential noncompliance discovered during either the processing of an assigned case, or at any other time in the performance of official duties.

IRM 4.75.5.2 (05-13-2005).

[18] IRS0000378449 (displaying calendar entry), Exhibit 5. *See also*, Complaint of Van Hollen et al. v. IRS (D.D.C. August 21, 2013) at ¶41 (noting that "On January 4, 2013, representatives of Democracy 21 and the Campaign Legal Center met with Ms. Lerner and other IRS officials regarding the petition for rulemaking."). Available at: http://www.democracy21.org/wp-content/uploads/2013/08/Complaint-August-20-final-for-filing.pdf.

[19] IRS0000122549-122551, Exhibit 6. The PARC is responsible for determining whether allegations of improper political activity by an exempt organization merit an audit. *See* IRS0000378444-378446, IRS Memorandum to Congress, "IRS Exempt Organizations Processes with Respect to Examinations," Exhibit 7. At the direction of Lois Lerner, Nanette Downing created a special process for reviewing complaints of political activity by exempt organizations following the *Citizens United* decision. *See* Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Interview of: Nanette Downing, December 6, 2013 at 33-37, Exhibit 8.

> I had a meeting today with an organization that was asking us to consider guidance on the c4 issue. To get ready for the meeting, I asked for every document that (sic) had sent in over the last several years because I knew they had sent in several referrals. I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn't done something with the org. The first complaint came in 2010 and there were additional ones in 2011 and 2012... The organization at issue is Crossroads GPS… I know the org is now in the ROO--based on allegations sent in this year, but this is an org that was a prime candidate for exam when the referrals and 990s first came in.[20]
>
> ***
>
> You should know that we are working on a denial of the application, which may solve the problem because we probably will say it isn't exempt. Please make sure all moves regarding the org are coordinated up here before we do anything.[21]

On the following Monday, January 7, 2013, Lerner sent a follow-up email to Downing which states, "As I said, we are working on the denial for the [Crossroads] 1024, so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it."[22] Interviews of IRS personnel and a review of Crossroad's file shows that Lerner was in fact actively seeking to ensure a denial of the group.

In a transcribed interview of Victoria Judson, Associate Chief Counsel (Tax Exempt & Government Entities), Committee staff asked Judson about Lerner's interest in Crossroads:

> Q: I think you said that it was in the spring of 2012 that you discussed with Ms. Lerner a Crossroads GPS case and she gave you advance notice that that might be a denial. Is that correct?
>
> A: That's the best of my recollection. And I don't know if I would characterize it as "discuss" as opposed to "she told me that…"[23]

Lerner's plan to deny the Crossroad application is evident from the work log for the Cincinnati-based revenue agent assigned to the case, as after her January 4, 2013 meeting with Democracy 21, the agent sprung into action. In the seven business days following her meeting, the revenue agent Joseph Herr, logged more time on the application than the entire year preceding.[24] But more, the log shows that Herr was directed to reach a particular result with Crossroads. Herr's log shows, in part:

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[20] Exhibit 6.
[21] *See id.*
[22] *See id.*
[23] Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Interview of: Victoria Ann Judson, Wednesday, September 11, 2013, at 57 (quotation marks added), Exhibit 9.
[24] *See* IRS00071224-71226, Exhibit 10.

> On January 4, 2013, Herr notes a conference call with EOT [Exempt Organizations Technical Division] in DC where specific guidance is given to him on "how to best proceed with the [Crossroads] case."
>
> On January 7, this guidance from EOT was memorialized in Herr's time sheet, "[b]ased on conference begin reviewing case information, tax law, and draft/template advocacy denial letter, all to think about how best to compose the denial letter."[25]

In the next journal entry from Herr, he notes,"[w]rite-up summary of idea on how I plan to make denial argument and share with Sharon Light, the Special Advisor to EO Director in Washington DC, for her opinion on whether the idea seems valid."[26] Nowhere in his 2012 log entries is there any discussion of denial. In fact, in an analysis of the Crossroads application in November 2011, among many others, EO Technical lawyer Hillary Goehausen makes no recommendation for denial.[27]

The Committee subsequently learned that the agency was in the process of denying Crossroads' application for exempt status and selecting them for audit. Judson informed staff the organization would be receiving a proposed denial letter.[28] An IRS representative separately told staff that Crossroads had also been selected for audit.[29] The evidence shows that without Lerner's intervention, neither adverse action would have been taken against Crossroads. Again, the Committee has found no record of Lerner pursuing similarly situated left-leaning groups, despite receiving similar public complaints.[30]

In fact, during the same time period Lerner was engineering a denial and audit of Crossroads, documents show Lerner had a favorable disposition toward left-leaning groups, including considering future employment with one. In response to a news story about the formation of Organizing For Action, a 501(c)(4), Lerner remarked to EO Senior Technical Advisor Sharon Light, "Oh—maybe I can get the DC office job!"[31] Light then forwarded Lerner's comment to Holly Paz wondering if Lerner was considering retirement to pursue a potential job opportunity at this left-leaning group.[32]

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[25] *See id.*
[26] *See id.*
[27] IRS0000063029, Exhibit 11.
[28] Exhibit 9.
[29] Telephone briefing by IRS staff to Oversight Subcommittee staff of September 3, 2013.
[30] *See* http://www.democracy21.org/wp-content/uploads/2013/05/Letters-to-IRS.pdf.
[31] *See* Email from Lois Lerner to Sharon Light of January 24, 2013, IRSC007157-60, Exhibit 12. *N.b.* Democracy 21 is highly critical of Organizing For Action. *See, e.g.,* " Statement by Fred Wertheimer" January 22, 2013 (stating with reference to the formation of Organizing For Action that, "In taking this step, the President has opted for 'the ends justify the means' approach that is fraught with danger. It opens the door to opportunities for government corruption.") Available at: http://www.democracy21.org/money-in-politics/press-releases-money-in-politics/statement-by-fred-wertheimer-president-obama-opts-for-the-ends-justify-the-means; *see also,* "Is Organizing For Action Too Close To The White House?" National Public Radio (March 19, 2014)(quoting Democracy 21's Fred Wertheimer, "The best thing the president of the United States could do is shut [Organizing for Action] down. This is a danger to the integrity and credibility of his presidency."). Available at: http://www.npr.org/2014/03/19/291312006/is-organizing-for-action-too-close-to-the-white-house.
[32] *See* Exhibit 12.

b. *Evidence Suggests Lerner Targeted Other Right-Leaning Groups*

Evidence discovered by the Committee also suggests that Lerner targeted other right-leaning groups. On January 2, 2013, ProPublica separately published an article titled, "Controversial Dark Money Group Among Five That Told IRS They Would Stay Out of Politics, Then Didn't" that was circulated within the IRS.[33] Forwarding the ProPublica article, Lerner asked Holly Paz, David Fish and Sharon Light to "meet on the status of these applications please. Can we talk Friday?"[34] The five groups named in the article are:

- Americans for Responsible Leadership
- Freedom Path
- Rightchange.com
- America is Not Stupid
- A Better America.[35]

Information later provided to the Committee regarding IRS EO examinations processes showed that four of the five groups were subject to extra-scrutiny; two of the groups were placed in the IRS' surveillance program, called a "Review of Operations," and two were selected to be put before the Political Activity Review Committee, which determines whether a group will be audited.[36] Ultimately three of the groups were selected for audit.[37]

c. *Lerner's Defiance of Internal Controls and Abuse of Authority*

The evidence demonstrates Lerner acted in defiance of IRS internal controls. Internal IRS policies and procedures, which would be well known to Lerner, deter any one person from deciding the disposition of a group based on political or personal animus. Joseph Grant, former Commissioner of the Tax Exempt and Government Entities Division, and former boss of Lerner, told the Committee in a transcribed interview that it would be "completely" inappropriate for a manager to target a specific organization for exam or adverse determination.[38] The IRS put in place these safeguards "in the 1990's to ensure

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[33] *See* http://www.propublica.org/article/controversial-dark-money-group-among-five-that-told-irs-they-would-stay-out.

[34] IRS0000122510, Exhibit 13.

[35] fn 33.

[36] Telephone briefing by IRS staff to Oversight Subcommittee staff of September 3, 2013.

[37] Telephone briefing by IRS staff to Oversight Subcommittee staff of March 27, 2014.

[38] *See* Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, Interview of: Joseph H. Grant, Sept. 20, 2013, at 39, Exhibit 14. Under questioning:

> Q: Would it be appropriate for a manager at IRS to refer a specific taxpayer to Exams or to intervene on their own on -- I mean, their own volition to Determ[ination]s?
>
> A: I believe it would be completely -- it would not be appropriate to intervene on their own. So -- and I'm not aware of that occurring.

See also, Testimony IRS Commissioner Douglas Shulman before the U.S. House Committee on Appropriations Subcommittee on Financial Services and General Government Hearing on the FY 2013 Internal Revenue Service Budget, March 21, 2012. Per Shulman:

> [W]e have the safeguards built in to this process so that no one person can decide to examine an organization based on political activities. So you've got your peers watching. You can't just get a case, go off in the corner,

equity and transparency and that no *one individual* could select organizations within certain classes for examination."[39]

These safeguards are reflected in current EO Examinations Unit procedures adopted during Lerner's tenure that she nonetheless circumvented. From the FY2013 EO work plan:

> EO will have a PARC (Political Action Review Committee) operating at all times comprised of three experienced career civil servant employees.... PARC operations are overseen by the Managers of EPR and EOCA; *however, they shall not override or influence any case selection decision of the PARCs.*[40]

The PARC determines whether organizations about which referrals are made are to be subject to audit.[41] The PARC had twice refused to target Crossroads, yet Lerner stated to the head of EO Examinations that, "we are working on the denial for the [Crossroads] 1024, so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it," in defiance of IRS policy.[42] Lerner makes clear that she believes she is entitled to approve or disapprove an application or subject an organization to an audit based on her say so alone and irrespective of the PARC's decision.

d. *Lerner Seeks to Influence the IRS' Independent Appeals Process*

In addition to IRS safeguards against interfering in the determinations and exams functions, there are internal controls in place with regard to the IRS's Appeals Division that Lerner sought to circumvent. If EO Determinations reaches the conclusion that an application for exempt status does not satisfy the requirements under the Code, the IRS generally will issue a proposed adverse determination letter to the applicant and give notice of the opportunity to appeal.[43] The Appeals Division is independent of the EO Division and thus outside of the EO Director's chain of command.[44] Furthermore, as a matter of law and not just IRS policy, *ex parte* communications between appeals officers or settlement officers and other IRS employees, to the extent that those communications appear to compromise the independence of Appeals, are prohibited.[45]

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and run with your own agenda. Available at: http://appropriations.house.gov/uploadedfiles/hhrg-112-ap23-wstate-dhshulman-20120321.pdf.

[39] IRS, FINAL REPORT, PROJECT 302 Political Activities Compliance Initiative at 3 (emphasis added). Available at: http://www.irs.gov/pub/irs-tege/final_paci_report.pdf.

[40] IRS0000410461-62, Exhibit 15. "EPR" refers to Examinations Programs & Review and EOCA to Exempt Organizations Compliance Area. *See also*, IRS Exempt Organizations FY 2012 Annual Report & FY 2013 Work Plan at 2. Available at: http://www.irs.gov/pub/irs-tege/FY2012_EO_AnnualRpt_2013_Work_Plan.pdf.

[41] Exhibit 7.

[42] Exhibit 6.

[43] Internal Revenue Bulletin: 2013-2, Jan. 7, 2013, Rev. Proc. 2013-9, sec. 7.01.

[44] *See* Section 1001(a)(4) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 26 USC 7801 note. The provision requires:

> The Commissioner of Internal Revenue shall...ensure an independent appeals function within the Internal Revenue Service, including the prohibition in the plan of ex parte communications between appeals officers and other Internal Revenue Service employees to the extent that such communications appear to compromise the independence of the appeals officers.

[45] *See id.*

An email from Lerner to the Chief of IRS Appeals, Chris Wagner, on January 31, 2013, shows she sought to influence the independent appeals process notwithstanding a prohibition against such contact. Lerner offers unsolicited advice about how to handle incoming c4 denials:

> I gave [your people] a heads up that, in the next few months we believe they will get a lot of business from our [taxpayers] regarding denials on 501(c)(4) applications. I explained the issue is whether they are primarily involved in social welfare activities and whether their political intervention activities…I explained the issue was very sensitive and visible and there is a lot of interest--Congress, press, political groups, you name it… I offered a general tutorial session (noncase-related) on the law and the complexities because--as I pointed out… I told them this is a place where we have worked very hard to be consistent and have all our cases worked by one group, and suggested they might want to do something similar. (PS we are under audit by TIGTA because of allegations of political bias on these cases)… If you think it would be useful to have a meeting on this –let me know.[46]

Ironically, Lerner's communication closes with, "Hope this doesn't [sound] like I'm trying to run your shop." The purpose of this email could not be clearer. Lerner explained that her team worked very hard both to get what Lerner characterized as a highly technical law right and also to apply it consistently to the circumstances of each applicant. She further characterized the cases as "sensitive and visible" and suggested that Wagner should consult her.[47] Notwithstanding agency safeguards, the message from Lerner to the Appeals chief was unequivocal: EO got these denials right and Appeals should affirm them.

II. Lerner Provided the Treasury Inspector General with Misleading Statements

The Committee has found documents that suggest Lerner's written statement to TIGTA, submitted during the course of TIGTA's audit, was knowingly misleading (Reference Number: 2013-10-053). The document titled, *EO Director's responses to 3 questions asked by Director Paterson*, which Lerner drafted and submitted to TIGTA on November 2, 2012, contained specific statements that are contradicted by the documentary evidence reviewed by the Committee.[48]

TIGTA asked:

> 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

[46] IRS0000122863-122864, Exhibit 16.
[47] *See* Exhibit 16. The applicable Revenue Procedure allows Appeals to seek technical advice from EO, but that request for advice would come from Appeals in the first instance and would be documented, not behind the scenes.
[48] EO Director's responses to 3 questions asked by Director Paterson, produced to the Committee by the Treasury Inspector General for Tax Administration, Exhibit 17. *See also*, telephone briefing by TIGTA staff to Oversight Subcommittee staff of September 12, 2013.

> of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

Lerner began her response with the statement:

> In early 2010, EO Determinations witnessed an uptick in the number of applications for §501(c)(3) or 501(c)(4) status that contained indicators of potentially significant amounts of political campaign intervention ("advocacy organizations")."[49]

Lerner here seeks to establish that there was an increase in the number of applications received in Cincinnati that contained political campaign activity to minimize her responsibility for the targeting. However, the statement is the first of a compilation of misleading half-truths.

Just a few months before, on July 17, 2012, Lerner sent an email to Holly Paz and Nikole Flax offering comments on a talking point drafted for then-Deputy Commissioner for Services and Enforcement Steve Miller about a perceived uptick in political advocacy cases:

> Only one comment--I know we don't have published SOI stats for the uptick, but our Cincy folks saw it happening –can we get Nikole whatever "inside" info we have that led to that conclusion--she can then figure out how to use it.[50]

Holly Paz sought assistance from Nanlee Park,[51] who responded later that evening and included Lerner on the response:

> [A]s Holly pointed out in her comment, we do not have a reliable method for tracking data by issue such as political activity. This is consistent with our congressional responses where we had explained we would have to manually go through each application, etc.
>
> Because of the above points, the first bullet that presently reads as:
> Starting in 2010, EO observed an increase in the number of section 501(c)(3) and section 501(c)(4) determination applications from organizations that appeared to be potentially engaged in political advocacy activities.
>
> Recommend it be revised (i.e., along the lines of the following):
> For about the past five years [alternative verbiage: From FY 2008 through June 30th of FY 2012], EO has observed an increase in the number of section 501(c)(4) determination applications filed, as well as a general upward trend in section 501(c)(3) application filings.[52]

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[49] Exhibit 17.
[50] IRS0000179271, Exhibit 18.
[51] IRS0000179269-179270, Exhibit 19.
[52] IRS0000179389-179390, Exhibit 20.

Despite being told that "political advocacy activities" could not be substantiated in her proposed talking point, Lerner used almost the exact same words in her response to federal law enforcement. Lerner knew her answer could not be substantiated, and yet provided it in response to TIGTA's audit in an attempt to minimize her role in the agency's management failures.

Lerner then answered the question of when she first learned "the IRS was targeting applications…that mention…the 'Tea Party,'" by saying that she:

> First became aware that the BOLO referenced 'tea party' organizations and EO Determinations was using the above criteria to determine what organizations met that description when I was briefed on these cases on June 29, 2011.[53]

This half-truth appears calculated to obscure her knowledge that "Tea Party" cases were being treated differently, in part, at her direction, and far earlier than she acknowledged. A series of emails show that Lerner knew as early as April 2010 that tea party cases were being flagged and held in Cincinnati.

- On April 28, 2010 Lerner was told by email, "there are 13 tea party cases out in EO Determinations." The attached spreadsheet even identifies the issue involved "whether a tea party organization meets the requirements under 501(c)(3) and is not involved in political intervention" and notes that there is a grouping of tea party cases.[54]

- On May 13, 2010, Lerner responded to a detailed summary of the tea party cases and even inquires about the status of the cases. Upon review of the email, she asked follow-up questions regarding the tea party cases, "[Are the] tea party cases – applications for c3? What's their basis?" In response, she is explicitly told "[w]e have tea party cases here in EOT in Cincy. In EOT, there is a (c)(3) application. In Cincy there are 10 (c)(4)s and a couple of (c)(3)s."[55]

- In an email dated August 3, 2010, Lerner specifically asked her assistant to print out a Sensitive Case Report (SCR) on the handling of the tea party cases, for her review. The SCR noted that the cases were being held due to the likelihood of attracting media attention, contrary to Lerner's assertion that the targeting was prompted by the "uptick in applications" with these characteristics.[56]

- On January 1, 2011, Lerner received an SCR that flagged issues with "tea party organization[s]."[57] The next day, Lerner responded, "Tea Party Matter very dangerous…. Counsel and Judy Kindell need to be in on this. Cincy should

[53] Exhibit 17.
[54] IRS0000141809-141811, Exhibit 21.
[55] IRS0000167872-167873, Exhibit 22. Pursuant to the Internal Revenue Manual (IRM) 7.29.3.2 (07-14-2008), Sensitive Case Reports are written for the benefit upper management.
[56] IRS0000163358-163359, Exhibit 23.
[57] IRS0000147507-147509, Exhibit 24.

> probably NOT have these cases."[58] Less than hour later, Lerner appeared to be directing staff to find a way to deny both c3 and c4 applications--"[I]t would be great if we can get there without saying the only reason they don't get a 3 is political activity."[59]

These email exchanges memorialize Lerner's knowledge that, as early as April 2010, the IRS was targeting applications for tax-exemption involving the name "Tea Party" and holding these cases pending review from EO Technical in Washington, D.C.

III. Lerner Used Her Personal Email for Official Business, Including Confidential Return Information; Further Investigation Could Review Unauthorized Disclosure

In an email dated October 29, 2012, Lerner sent TIGTA's draft chronology containing confidential return information of taxpayers, protected by 26 U.S.C section 6103, to her personal email address:

> From: Lerner Lois G
> Sent: Monday, October 29, 2012 10:51 AM
> To: 'tobomatic@msn.com'
> Subject: Fw: Revised timeline
> Attachments: Long Political Advocacy Timeline HOP comments.doc
>
> Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld[60]

A review of the redacted chronology shows that nine of the 17 pages contain section 6103 material.[61]

The next evening, Lerner sent this material back to her official email address and to others in the IRS with her comments:

> From: Toby Miles <tobomatic@msn.com>
> Sent: Tuesday, October 30, 2012 9:16 PM
> To: Paz Holly O; nancy.marks@irs.gov; Lerner Lois G
> Subject: Long Timeline from LOIS
> Attachments: Long Political Advocacy Timeline HOP comments.doc
> Looks pretty good--a couple questions/comments[62]

More recently on May 4, 2013, EO Senior Technical Advisor Meghan Biss, apparently at Lerner's request, sent a summary of One Fund Boston's 501(c)(3) application, which consisted almost entirely of section 6103 material, to Lerner's personal email address.[63]

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[58] IRS0000147510-147513, Exhibit 25.
[59] Exhibit 25.
[60] IRS0000062811-28, Exhibit 26.
[61] Exhibit 26.
[62] IRS0000062829, Exhibit 27. "Miles" is Lerner's husband's, Michael R. Miles, last name. The source of the name "Toby" is not known.
[63] IRS0000322610, Exhibit 28. The application has since been approved and is available for public inspection.

Sending confidential taxpayer information to a personal email address is prohibited by IRS policy, but is not illegal.[64] However, it is a crime to disclose taxpayer return information.[65] If persons other than Lerner had access to her personal email account, tobomatic@msn.com, and accessed this protected section 6103 material, then Lerner may have violated a criminal statute for which the penalty is up to $5,000 fine and/or up to five years in prison.[66]

IV. Conclusion

Contrary to reports that IRS' Administrative Review Board found no political bias or willful misconduct by Lois Lerner, the Committee's investigation has uncovered such evidence.[67] After reviewing these same emails, Acting Commissioner Danny Werfel himself conceded that there was evidence that raised questions about wrongdoing at the agency. At a September 18, 2013 hearing, Oversight Subcommittee Chairman Charles Boustany asked Werfel whether Lerner acted in violation of internal agency controls:

> Chairman Boustany. Did Lois Lerner seek to intervene in the examinations process or audit process?
>
> Mr. Werfel. I am not sure that I can fully answer that question because all those documents in Lois' email file need to be further reviewed. I will say this, that there were emails that we turned over to you... that I thought raised questions, [which] I provided directly to TIGTA and I also provided them to the Accountability Review Board.[68]

Werfel's testimony is the first public admission by an IRS official that evidence may show intentional wrongdoing; this concession is wholly consistent with the Committee's investigation.

Notwithstanding the Werfel Report and other IRS statements, the foregoing sets forth evidence that tends to show intentional wrongdoing, including targeting specific taxpayers for adverse treatment, making misleading statements to law enforcement, and

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[64] *See* IRM 11.3.1.14.2 — Electronic Mail and Secure Messaging *[Last Revised: 03-07-2008]*
(1) a. Employees may not use E-mail to transmit SBU [(Sensitive but Unclassified)] data unless they use the IRS Secure Messaging (SM) system...Both the sender and recipient must have SM in order for the E-mail to be protected.
b. SBU information **includes taxpayer data**, Privacy Act protected information, some law enforcement information, and other information protected by statute or regulation...
d. SBU data may not be sent to parties outside of IRS, including other government agencies , taxpayers, or their representatives...**Employees cannot send E-mails containing SBU data outside the IRS network**, even if specifically authorized by the taxpayer. (emphasis added)

[65] *See* IRC § 7213. Unauthorized disclosure of information.

[66] *See id.*

[67] Stephen Ohlemacher, "IRS official at heart of tea party scandal retires," Associated Press, Sept. 23, 2013. Available at: http://bigstory.ap.org/article/irs-official-heart-tea-party-scandal-retires.

[68] U.S. House Committee on Ways and Means Oversight Subcommittee Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit, September 18, 2013.

the possible disclosure of confidential taxpayer information. The Committee requests that you act on the findings within this letter and the attached documentation to ensure the rights of law-abiding taxpayers are protected. Please contact Committee staff at (202) 225-3625 if you have any questions.

Sincerely,

DAVE CAMP
Chairman

cc: The Honorable J. Russell George, TIGTA
The Honorable John Koskinen, Commissioner, IRS

W&M EXHIBIT 1

SFC 003602

Lois Lerner Discusses Political Pressure on IRS in 2010

…And what happened last year was the Supreme Court, out of a block getting chipped away and chipped away in the federal election arena, the Supreme Court dealt it a huge blow overturning 100 year old precedent that said, basically, appropriations can give directly to political campaigns. And everyone is up in arms because they don't like it. Federal Election Commission can't do anything about it – they want the IRS to fix the problem. The IRS laws are not set up to fix the problem. (c)(4)s can do straight political activity. They can go out and pay for an ad that says 'vote for Joe Blow.' That's something they can do as long as long as their primary activity is their (c)(4) activity, which is social welfare. So everybody is screaming at us, 'fix it now before the election, can you see how much these people are spending?' I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not, so I can't do anything right now.

Transcribed from a video of Lois Lerner speaking to a group of students at the Duke University Sanford School of Public Policy's Foundation Impact Research Group, October 19, 2010.

W&M EXHIBIT 2

SFC 003603

From: Lerner Lois G
Sent: Wednesday, December 19, 2012 10:39 AM
To: Fish David L; Megosh Andy
Subject: FW: Meeting with Democracy 21 and Campaign Legal Center

Can I get copies of all letters these orgs sent in asking for c4 guidance --Thanks

Lois J. Lerner
Director of Exempt Organizations

From: Kathryn Beard [mailto:[redacted]
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

2000 Massachusetts Ave NW
Washington, DC 20036
[redacted]

From: Lerner Lois G [mailto:Lois.G.Lerner@[redacted]
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?

W&M EXHIBIT 2

SFC 003604

Lois G. Lerner
Director of Exempt Organizations

From: Kathryn Beard [mailto:[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

2000 Massachusetts Ave NW
Washington, DC 20036
[redacted]

From: Lerner Lois G [mailto:Lois.G.Lerner@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

From: Kathryn Beard [mailto:[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

W&M EXHIBIT 2

SFC 003605

Communications & Research Director
Democracy 21

2000 Massachusetts Ave NW
Washington, DC 20036
[redacted]

From: Lerner Lois G [mailto:Lois.G.Lerner@SFC]
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 Beard [mailto:[redacted]]
Sent: Monday, December 17, 2012 11:46 AM
To: Lerner Lois G
Cc: Sandifer Theodora
Subject: RE: Meeting with Democracy 21 and 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 that 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

2000 Massachusetts Ave NW
Washington, DC 20036
[redacted]

W&M EXHIBIT 2

SFC 003606

From: Lerner Lois G [mailto:Lois.G.Lerner@SFC]
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 Beard [mailto:[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 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
[redacted]

W&M EXHIBIT 3

SFC 003607

DAVE CAMP, MICHIGAN,
CHAIRMAN

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KEVIN BRADY, TEXAS
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ADRIAN SMITH, NEBRASKA
AARON SCHOCK, ILLINOIS
LYNN JENKINS, KANSAS
ERIK PAULSEN, MINNESOTA
KENNY MARCHANT, TEXAS
DIANE BLACK, TENNESSEE
TOM REED, NEW YORK
TODD YOUNG, INDIANA
MIKE KELLY, PENNSYLVANIA
TIM GRIFFIN, ARKANSAS
JIM RENACCI, OHIO

JENNIFER BARAVIAN,
STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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ALLYSON SCHWARTZ, PENNSYLVANIA
DANNY K. DAVIS, ILLINOIS
LINDA SANCHEZ, CALIFORNIA

JANICE MAYS,
MINORITY CHIEF COUNSEL

September 20, 2013

Mr. Daniel Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Mr. Werfel,

In order to conduct oversight on matters within jurisdiction of the Committee on Ways and Means (Committee), including the administration of federal tax law, and pursuant to my authority under IRC §6103, I am writing to request certain returns and return information as to the following organizations. No later than October 4, please produce to the Committee all documents relating to the following organizations:

American Crossroads
Crossroads GPS
Priorities USA
Priorities USA Action
Americans for Prosperity
Organizing for Action

I am designating six members of the Committee staff as my agents to receive returns and return information insofar as it is disclosed pursuant to this request: [redacted]

This document is a record of the Committee and is entrusted to the Internal Revenue Service for your use only in handling this matter. Additionally, any documents created by the Internal Revenue Service in connection with a response to this Committee document, including (but not limited to) any replies to the Committee, are records of the Committee and shall be segregated from agency records and remain subject to the control of the Committee. Accordingly, the aforementioned documents are not "agency records" for the

purpose of the Freedom of Information Act. Absent explicit Committee authorization, access to this document and any responsive documents shall be limited to Internal Revenue Service personnel who need such access for the purpose of providing information or assistance to the Committee.

Thank you in advance for your assistance in this matter. If you have any questions, please contact Ways and Means Committee staff [redacted]

Sincerely,

DAVE CAMP
Chairman

W&M EXHIBIT 4

SFC 003609

From: Lerner Lois G
Sent: Wednesday, January 02, 2013 4:29 PM
To: Eldridge Michelle L; Flax Nikole C; Lemons Terry L
Cc: Sterner Christopher B; Vozne Jennifer L; Zarin Roberta B; Kirbabas Mark J; Williams Grant; Burke Anthony; Patterson Dean J
Subject: RE: ProPublica: 501c4 questions -- says deadline today

Just FYI for everyone's information --I received the incoming and will refer it to Exam as we do with any complaint. Ruth Madrigal, Vickie Judson and I are meeting with Democracy 21 and some others on Friday regarding their request for guidance on c4. This has been set up for some time. I plan to have David Fish there and begin the meeting by telling them we cannot discuss specific taxpayers, but are there to hear their general comments regarding potential guidance. We will be very cautious.

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Wednesday, January 02, 2013 4:16 PM
To: Flax Nikole C; Lerner Lois G; Lemons Terry L
Cc: Sterner Christopher B; Vozne Jennifer L; Zarin Roberta B; Kirbabas Mark J; Williams Grant; Burke Anthony; Patterson Dean J
Subject: FW: ProPublica: 501c4 questions -- says deadline today

FYI--Here is latest inbound from ProPublica. They are updating their story given a new letter sent to IRS by Democracy 21 and Campaign Legal Center. Below is the cut and past version of that letter.

I recommend that we just let this one sit and wait out the deadline. We can certainly decline comment on the letter sent to us --but gets more problematic on the issue of th e application based on previous correspondence. Please let me know if you have other thoughts. Thanks. -- Michelle

Watchdog Groups Again Call on IRS to Deny Tax -Exempt Status to Karl Rove's Crossroads GPS
Wednesday, January 02, 2013

Watchdog Groups Again Call on IRS to Deny Tax -Exempt Status to Karl Rove's Crossroads GPS, Cite $70 Million in 2012 Campaign Expenditures as *Prima Facie* Evidence Group is Campaign Operation, not "Social Welfare" Group

In a letter sent today to the IRS, Democracy 21, join ed by the Campaign Legal Center, again called on the agency to deny Karl Rove's Crossroads GPS tax -exempt status as a section 501(c)(4) social welfare organization.

According to the letter from the watchdog groups:

According to the Center for Responsive Politics (CRP), Crossroads GPS spent $70 million on independent expenditures to elect Republican candidates or defeat Democratic candidates in the 2012 elections. This is an extraordinary amount of money to be spent on influencing elections by a group which claims it is a "social welfare" organization.

Indeed, Crossroads GPS and its affiliated Super PAC, American Crossroads, together spent a total of $175 million on independent expenditures and electioneering communications to influence the 2012 elections—far more than any other outside spender, according to CRP.

The letter from the watchdog groups continues:

[W]e submit that the $70 million spent by Crossroads GPS just on campaign ads reported to the FEC in 2012 is *prima facie* evidence that the organization does have a "primary purpose" to engage in campaign activities. The statement made by Crossroads GPS two years ago on its application for tax-exempt status that its campaign activities will be "limited in amount, and will not constitute the organization's primary purpose" are simply not credible, in light of the actual practices of the organization and the tens of millions of dollars Crossroads GPS spent on campaign ads since then.

As we have stated in previous letters, the misuse of "social welfare" organizations as vehicles for campaign spending results in direct and serious harm to the American people because it hides from public scrutiny the identity of the donors funding the campaign spending.

According to Democracy 21 President Fred Wertheimer:

The apparent failure of the IRS to grant tax-exempt status to Crossroads GPS, more than two years after Crossroads applied for status as a 501(c)(4) "social welfare" organization, provides some hope that the agency will do the right thing and reject the Crossroads GPS application.

It appears clear that Crossroads GPS exists for the overriding purpose of influencing elections. Crossroads GPS founder Karl Rove is a political operative, not a "social welfare" activist. Crossroads GPS spent tens of millions of dollars on TV ads to elect and defeat candidates and is nothing more than a campaign operation posing as a "social welfare" organization.

The IRS must not allow Crossroads GPS to get away with its charade of claiming to be a "social welfare" organization so it can hide the donors financing its campaign activities from the American people. Crossroads GPS must be held accountable for abusing the nation's tax laws to inject tens of millions of dollars in "dark money" into federal races.

According to the letter sent today:

ProPublica, a news organization, recently received and publicly disseminated the Form 1024, "Application for Recognition of Exemption under Section 501(a), filed by Crossroads GPS on September 3, 2010, seeking recognition as a "social welfare" organization under section 501(c)(4) of the Internal Revenue Code. So far as we are aware, the IRS has yet to grant the application.

In its application, Crossroads GPS states that 50 percent of its activities will be devoted to "public education," 30 percent will be devoted to "influenc[ing] legislation and policymaking," and 20 percent will be devoted to "research." Application at 2. Thus, when asked to provide a "detailed narrative description of all the activities of the organization – past, present and planned," Crossroads GPS fails to mention any activities devoted to influencing federal elections, and instead describes 100 percent of its activities as involving efforts other than electioneering.

Inconsistently, in response to a different question on the application, Crossroads GPS states that it plans to spend funds "to distribute independent political communications," but such activity "will be limited in amount, and will not constitute the organization's primary purpose." *Id.* at 4.

We have written to you on a number of occasions in the past two years regarding the enormous sums of money spent by Crossroads GPS to influence the 2010 and 2012 federal elections. In those letters, we have challenged the organization's eligibility for section 501(c)(4) tax-exempt status.

W&M EXHIBIT 5

SFC 003611

January 04, 2013

Friday

January 2013

Su	Mo	Tu	We	Th	Fr	Sa
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13	14	15	16	17	18	19
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February 2013

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24	25	26	27	28		

4 Friday

From Dec 17, 12 **Regeina Vacation** 8:30am

From Dec 31, 12 **Theo on Leave;** Sandifer Theodora To Jan 7

7 am

8 00 **Block - no meetings unless absolutely necessary**

9 00 **Email, etc.**

10 00 **Office Details**
Room 341; Lerner Lois G

11 00 **Meeting with Democracy 21 & Campaign Legal Center**
999 N. Capitol St., 5th Floor
Lerner Lois G

12 pm **Block**

1 00 **Auto-revocation briefing for l**
Giuliano Matthew L

2 00 **DIscuss HMO**
1-866-606-4717 [redacted]
Cook Janine

Meeting with Janine

ACA Update
Lerner Lois G

3 00 **Discuss Latest Articles**
Conf Rm 574; Lerner Lois G

4 00

5 00

6 00 **Dinner with Di**
Lerner Lois G

W&M EXHIBIT 6

SFC 003612

From: Lerner Lois G
Sent: Monday, January 07, 2013 4:56 PM
To: Downing Nanette M
Subject: RE: Referral organization

The reasons stated for not selecting earlier on that the org is for -profit is most disturbing. The other two reasoned that there was no 990 filed and it had a 1024 pending so let's send it to Cincy. That would make sense if this were a c3, but it doesn't if it is a c4. They don't have to come into Cincy. If we only open audits on orgs that file 990s, that's a big hole in the system. Then you have newspapers telling us what the orgs are doing, but we never look. If the org has been around log enough to owe us a 990 and they aren't filing to hide what they are alleged to have done, it should be our job to go out and get the 990 and then determine whether the allegations--that are very strong--are true.

As I said, we are working on the denial for the 1024, so I need to think about whether to open an exam. I think yes, but let me cogitate a bit on it.

Do I have information regarding the cases approved for exam previously and their priorities? I'd like to get some into the field, but can't until I'm comfortable with that. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Downing Nanette M
Sent: Monday, January 07, 2013 12:19 PM
To: Lerner Lois G
Subject: RE: Referral organization

I pulled up referral files on this organization. We have received numerous referrals on this organization over the last 3 years (25 in total). The system shows that the organization did not file a form 990 until April 2 012. The first eight referrals were limited news article. They were put into 2 referral files and sent to committee. There was no 990 filed and the committee notated that an application was pending. The file indicates that they submitted the referral inf ormation to determinations. The reason for the non selection was due to the limited information provided in the news article. These are the two referral non selection mentioned by Tom.

Future referrals had additional information. We were instructed in August 2011 to hold all political referrals until dual track was finalized. All future referrals were associated together and included in the dual track. The PARC reviewed in December 2012 and selected it for examination. I have pulled the files and see that they went back to the committee in December 2012 for final committee review.

From: Lerner Lois G
Sent: Friday, January 04, 2013 4:50 PM
To: Downing Nanette M
Subject: FW: Referral organization

I had a meeting today with an organization that was asking us to consider guidance on the c4 issue. To get ready for the meeting, I asked for every document that had sent in over the last

several years because I knew they had sent in several referrals. I reviewed the information last night and thought the allegations in the documents were really damning, so wondered why we hadn't done something with the org. The first complaint came in 2010 and there were additional ones in 2011 and 2012.

I asked Tom Miller whether he recalled seeing referral committee notes on the referrals when he and Judy went down to look at the referrals. He looked them up, and as you can see below, the referral committee unanimously non-selected the case twice. I don't know where we go with this--as I've told you before--I don't think your guys get it and the way they look at these cases is going to bite us some day. The organization at issue is Crossroads GPS, which is on the top of the list of c4 spenders in the last two elections. It is in the news regularly as an organization that is not really a c4, rather it is only doing political activity --taking in money from large contributors who wish to remain anonymous and funneling it into tight electoral races. Yet--twice we rejected the referrals for somewhat dubious reasons and never followed up once the 990s were filed.

I know the org is now in the ROO--based on allegations sent in this year, but this is an org that was a prime candidate for exam when the referrals and 990s first came i n. I worry that if the allegations in the present complaint only discuss this year, Exam will slot if for a future year because this year's 990 isn't in yet. My level of confidence that we are equipped to do this work continues to be shaken. I don't even know what to recommend to make this better. I'm guessing if it hadn't been for us implementing Dual Track, the org would never be examined. And, I am not confident they will be able to handle the exam without constant hand holding--the issues here are going to be whether the expenditures they call general advocacy are political intervention.

Please keep me apprised of the org's status in the ROO and the outcome of the referral committee. You should know that we are working on a denial of the applic ation, which may solve the problem because we probably will say it isn't exempt. Please make sure all moves regarding the org are coordinated up here before we do anything.

Lois G. Lerner
Director of Exempt Organizations

From: Miller Thomas J
Sent: Friday, January 04, 2013 1:55 PM
To: Lerner Lois G
Subject: Referral organization

I looked at the file on that organization, which is currently in the "ROO Inventory" category. The organization was created in June 2010. It has twice previously been considered by the RC, in 11/2010, and 6/2011. Both times it was not selected by unanimous vote, though some committee explanations are questionable. On the 11/2010 tracking sheet, two members not e that the organization had recently filed Form 1024, with one recommending forwarding the referral information to Determinations and the other transferring the case to the ROO. The third member wrote, however, that "the referral is on a for-profit entity..." which is in no way correct. Although it is understandable that recommending an examination could be considered premature at either point, especially as the organization did not file Forms 990 until late April 2012, when it filed one for the period 06/0 1/2010-05/31/2011, and another for the period 06/01/2011 -12/31/2011 (presumably to change its tax year).

The file contains the classifier recommendation that the case be referred for field examination, but I did not see an indication when it would go back to referral committee.

Tom Miller

Thomas J. Miller
Technical Advisor
Exempt Organizations Rulings & Agreements
Phone: [redacted]
Fax: [redacted]

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.

W&M EXHIBIT 7

SFC 003617

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

W&M EXHIBIT 8
SFC 003618 1

RPTS BLAZEJEWSKI

DCMN HOFSTAD

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: NANETTE DOWNING

Friday, December 6, 2013

Washington, D.C.

The interview in the above matter was held in Room 1102, Longworth House Office Building, commencing at 10:13 a.m.

we finish a project, you know, folks are trained, if we get something on it, it won't be a formal project. So 501(c)(3)s and politicals was just normal -- process as any other referral. It still would go through just a normal committee, because it's very sensitive.

Then, 2010, Citizens United came out. We started getting referrals on 501(c)(4)s, political, we started getting congressional.

Q Uh-huh.

A You know, folks above me came and said, how are you going to deal with these? We know this is going to be very --

Q Who was that? Who would have come and asked you?

A Lois, up the chain, you know.

Kind of like for your work plan, what are you going to do, how are you going to do this? We had to take a step back. We said, this is a new area, we need processes, we need procedures, we need training.

Q Right.

A At that time, we said, stop (c)(3) referrals because we want to make sure we're being consistent with them all.

So, you know, this was the end of 2010. 2011, we developed -- you know, they tasked to me, what are you going to do, as the Director? I put a team together, a cross-functional team, said, how are we going to do this? And we wanted to use, you know, what we learned from the (c)(3) political stuff, you

know, and the past project we had, what worked best. TIGTA had come in and looked at it.

But we also had something new; we had the new 990. We had new data. You know, we were coming up with a strategy of the new 990. The Oversight Board was asking us, how are you going to use all this new data from the 990? We came up with a strategy of all these potential queries of how we could use the 990. And, you know, a piece of it was political, a piece is fraud, nonfiler stuff, different things, and we had some with political. So we said, this is new than when we did PACI. We know we've got referrals, we know we've got data analytics, and we came up with this dual-track approach.

So we came up with this concept in a picture, but then we still had -- we said, we cannot start exams until we have processes in place, procedures, and train our folks. We built processes. We built definitions. We had to build training from my classifiers, and we did -- and the ROO folks and my committee members. We knew how sensitive this would be, that we wanted very tight controls and we wanted some extra safeguards in place.

So, I mean, just a very high-level overview. If a referral comes in with a political allegation, it goes to the ROO to review, to do all that publicly available information, to see if they see any potential reasonable belief that, yes, there's political activities going on or maybe -- you know, a referral. Maybe they're just confused and it's lobbying stuff. The ROO will do

that review.

And then we set up committee members, that the committee members look at the ROO review. And that committee of three then makes that final decision whether or not there's reasonable belief that an exam should be done.

Q Let me ask about the PARC. Is that the term for the political committee?

A Uh-huh.

Q In the words of a report by the IRS, the purpose of the PARC is to ensure equity and transparency and that no one individual could select an organization within certain classifications for examination.

A Uh-huh.

Q Is that your understanding, that the true purpose is to prohibit one person from actually effecting these decisions?

A Right. You know, I've got several different committees, like a church committee.

Q Sure.

A And it's when it's very sensitive that we don't want it in any one person's hands to have to make that decision.

Q I understand. If an entity is looked at by the PARC, is that kind of a one-time thing? Or can a group be referred to the PARC several times?

A They could -- I mean, at the beginning, as we started, you know, we had this inventory, so when something went to the

ROO, if we had already received 10 referrals, the whole packet went. But I would assume in the future, if I get a new referral in, it will go through the process again.

And, in a way, that's like any of my referrals. You know, there are individuals who will send -- you know, I could get 50 referrals. Well, it goes through a process, and it might be that eventually they provide -- you know, it can't just be a referral saying, I don't like this person, I think they're doing something wrong. I mean, that's why we've got these safeguards in place, and that's why, you know -- there's got to be information for somebody to have a reasonable belief there's a potential area of noncompliance there.

So, yes, you can send more, and it will go through the review process.

Q You mentioned safeguards that are in place. What are those? What types of safeguards are in place?

A Well, part of the safeguard is the committee of three.

Q Right.

A Part of the safeguard is we built this referral system. And this is something, you know, that from back years ago we didn't have, that the system automatically calculates and that the individual actually puts their comments in the system, whereas before it was all paper.

We did -- so this is all dual-track. Before I briefed up, say, and I had all my processes in place, I'm ready to go, I've

got my first small bucket that we're ready to examine, we had some folks come in and just do a consistency check, quality check.

We built definitions. We built definitions of -- I'm trying to think of an example of some of the definitions. You know, what was the impact? You know, was it -- you know, if it's -- you know, what was the impact of the political nature? Was it a speech that went out on the Internet? You know, just to help -- or was it one sign one time? You know, again, just some definitions to try to help them to give them some clear guidance on making those final decisions so that we were consistent.

Q Does the PARC look at or consider whether or not a group has a ROO recommendation?

A Do they consider the ROO?

Q Is that known to the PARC as they look at a case?

A I can't be certain to answer that question.

Q Would the PARC have information that was obtained by a ROO?

A Yes, they will have the ROO file.

Q They have the ROO file.

A And if the PARC needs to do additional research, that is part of their --

Q They also have the ability to --

A The ability to do additional research.

EXAMINATION

BY MS. ACUNA:

Q So when they do additional research and when they have the ROO file, that all becomes part of the PARC file with respect to that referral?

A Yes. Yeah. It will all go in the file.

Q Okay. And that's electronically, as well, or just the hard copies?

A No, it will all be put in the electronic file.

Q So it will be loaded up into that system we were discussing?

A Uh-huh.

Q And can any one person override a PARC decision?

A No. No.

Q So once the PARC makes a decision one way or the other, no one can come in and say --

A No. And I would expect -- I don't think you were in here when I talked about this. I would expect if anybody tried to do that, they would turn that in to TIGTA. We are not allowed to do that.

Q Okay.

Mr. Armstrong. Well, right now, we're at an hour. Do you want to take a break?

Mr. Kaiser. Your call.

Mr. Armstrong. It's up to you.

Ms. Downing. I'm okay.

Mr. Armstrong. Okay. Great.

W&M EXHIBIT 9
SFC 003625 1

RPTS COCHRAN

DCMN HERZFELD

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: VICTORIA ANN JUDSON

Wednesday, September 11, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:05 a.m.

Q Okay.

A I don't know of any -- I don't know what, if any, work my team may have done with respect to specific cases.

Q Prior. Okay.

Mr. SFC Chris, may I?

Mr. SFC Yes.

BY MR. SFC :

Q I think you said that it was in the spring of 2012 that you discussed with Ms. Lerner a Crossroads GPS case and she gave you advance notice that that might be a denial. Is that correct?

A That's the best of my recollection. And I don't know if I would characterize it as discuss as opposed to she told me that --

Q That you had some --

A A heads-up about it.

Q And that you didn't recall having any discussions with her about any other Tea Party-type cases?

A The one thing I recall discussing with her was whether there were other cases as well and whether the cases that were coming reflected different sides of the political spectrum.

Q Okay. And what did she tell you?

A She told me they did.

Q They did. What was it about Crossroads that made that the subject of this conversation? If there were other cases, other Tea Party cases, other cases on the other side of the political

W&M EXHIBIT 10

EP/EO Case Chronology Record

Page 1

Employer's or Organization's Name	EIN	
Crossroads Grassroots Policy Strategies	27-2753378	
	Screener's Name: G Muthert	Total Time 0.4
Plan name and Plan Number	Specialist's Name: Liz Hofacre / Joseph Herr	0.5
	Reviewer's Name	

Date	Individual Contacted	Action Code	Time	Topics Discussed, Information/Amendments Requested or Other Action Taken	Follow-Up Date
1/30/12				Assigned case.	
2/2/12		1	6	OFAC review & check completed – no matches found; BOL O review & check completed – no matches found. This is a high profile case; the news media has been monitoring this organization. Conduct internet research on the organization. View advocacy communications by organization on You Tube. Review tax law related to organization RR 81-95, 2004-6. Draft Letter1312.	
2/3/12	Stephen Seok, EO Determinations	1, 4	6	Discuss case with Stephen Seok, coordinator for Advocacy Project. Search internet for mention of organization in news media. Finishing review tax law and drafting letter. Send draft to Stephen for review.	
2/16/12	Stephen Seok, Steve Bowling, Jon Waddell	4	2	Meeting with Advocacy Coordinator and Manager to review developmental letter. They suggested some changes to letter. Finish letter and mail to organization and POA.	3/08/12
2/22/12	Michael Bayes, POA [redacted]	3		POA left voicemail message requesting an extension. I returned the call and granted the extension.	3/22/12
2/23/12				Advocacy cases placed on hold	
3/16/12		2		Mail 60-day extension letter to organization and POA. (Copy of Letter 1312 included in mail; not included for case file copy)	5/15/12
3/19/12	Michael Bayes, POA [redacted]	3		POA left voicemail message. I return call; POA asked for more time. I explained a 60-day extension was sent on Friday.	
4/23/12				Advocacy cases requested to be turned in for review per program manager.	
5/04/12	Michael Bayes, POA [redacted]	3		POA left message.	
5/07/12	Michael Bayes, POA [redacted]	3	0.5	I left return message. POA returned my call. POA discussed the response. I said organization could send in the information they currently have available and that I would it to see if it sufficed. He also asked for some additional time (about a week). I said I would elevate the request for additional time.	

Action Codes
1. Review file, application, amendments/information
2. Correspondence
3. Telephone contacts
4. Examination or conference
   A. Employer/Administrator/Trustee Office
   B. Representative's Office
   C. District Office

Remarks

W&M EXHIBIT 10
SEC 003628

EP/EO Case Chronology Record

Employer's or Organization's Name	EIN	
Crossroads Grassroots Policy Strategies	27-2753378	
	Screener's Name: G Muthert	Total Time 0.4
Plan name and Plan Number	Specialist's Name: Liz Hofacre / Joseph Herr	0.5
	Reviewer's Name	

5/09/12	Michael Bayes, POA [redacted]	3		Received approval for extension. I called POA to let him know.	5/22/12
5/22/12	Michael Bayes, POA [redacted]	3		POA left voicemail stating response was sent overnight	
5/23/12		2		Receive response	
6/07/12		1	5.5	Begin review of large response. Create spreadsheet to analysize cost of each television ad and track whether political or advocacy.	
6/08/12		1	2	Continue analysis of response.	
6/25/12				Send information to EOT to get their aid in analyzing cases.	
6/25/12 – 8/17/12				Note: Specialist was instructing seven separate sessions of CPE the weeks of June 25 through August 17.	
9/17/12 – 9/21/12				Specialist on leave	
9/27/12		1	2	As requested from EOT, draft a briefing on my thoughts on case and how case might be worked. Submit by email to Andy Megosh and request to schedule conference call.	
1/04/13		4	2	Conference call with EOT and acting area manager on how best to proceed with case.	
1/07/13		1	2	Based on conference begin reviewing case information, tax law, and draft/template advocacy denial letter, all to think about how best to compose the denial letter.	
1/09/13		1	7	Work on analyzing case and drafting denial letter	
1/10/13		1	7	Work on analyzing case and drafting denial letter	
1/11/13		1	7	Work on analyzing case and drafting denial letter	

Action Codes
1. Review file, application, amendments/information
2. Correspondence
3. Telephone contacts
4. Examination or conference
   A. Employer/Administrator/Trustee Office
   B. Representative's Office
   C. District Office

Remarks

W&M EXHIBIT 10
SEC 003629

EP/EO Case Chronology Record **Page 3**

Employer's or Organization's Name	EIN	
Crossroads Grassroots Policy Strategies	27-2753378	
	Screener's Name: G Muthert	Total Time 0.4
Plan name and Plan Number	Specialist's Name: Liz Hofacre, Joseph Herr	0.5
	Reviewer's Name:	

1/14/13		1	2	Write-up summary of idea on how I plan to make denial argument and share with Sharon Light for her opinion on whether the idea seems valid.	1/22/13
5/02/13		4	1	Call with Andy Megosh from EOT to discuss draft denial letter.	
5/08/13		1	9	Review case materials. Review draft denial letter of similar case. Prepare spreadsheet to help analyze ads. Begin draft of denial using the similar case as template.	
5/09/13		1	8	Continue spreadsheet to help analyze ads. Continue draft of denial using the similar case as template.	
5/10/13		1	4.5	Continue spreadsheet to help analyze ads. Continue draft of denial	
5/13/13		1	3	Continue working on draft of letter	
5/14/13		1	2	Continue working on draft of letter	
5/15/13		1	2	Continue working on draft of letter	
5/17/13		1	2	Continue working on draft of letter	
5/30/13		1	4	Complete first working draft of denial letter. Send draft along with spreadsheet analysis to Sharon Light for review by EOT.	

Action Codes	Remarks
1. Review file, application, amendments/information 2. Correspondence 3. Telephone contacts 4. Examination or conference A. Employer/Administrator/Trustee Office B. Representative's Office C. District Office	

W&M EXHIBIT 11

SFC 003630

EOD Political Advocacy Cases - Screened by EO Technical (11/16/11) 5

59	Crossroads Grassroots Policy Strategies	09/03/10	27-2753378	c-4	52	X	X	X	X	Yes	"Lobbying and general advocacy org; however, significant anti-Obama rhetoric and articles; appears to be an anti-Obama Administration website; however there are educational materials on site.	
60	Sidney Shelby County Liberty Group	09/13/10	35-4924344	c-4	52	X			X	Yes	Appears to be lobbying; have held a number of candidate forums; development should explore if political activities are primary activity etc. Also need more info on actual activities.	
61	KSP True the Vote	09/20/10	27-2660095	c-3	52		X		X	Yes	c3: Educational advocacy org; voter registration/drive activities. However, may be developed campaign intervention, (substantial language/information on website focuses on democratic attacks and republican/conservative response so development is needed and should examine this language/web section).	Possible denial; however development suggested
62	OKC FIA Association	09/23/10	27-0434401	c-4	52	X		X		Yes	General advocacy org & lobbying activities; however little to no educational activities/true advocacy; highly inflammatory and disparaging commentary/articles. Appears to have no objectivity, no factual support for statements, etc.	
63	US Health Freedom Coalition, Inc.	09/24/10	87-0808173	c-4	52	X					Lobbying appears to be primary activity. Org is advocating a health care reform/freedom act.	Possible favorable
64	Just Liberty Incorporated	09/29/10	27-1101706	c-4	52	X				Yes	Appears to be substantial lobbying activities; need membership to log in so development may want materials distributed via email, materials distributed at rallies, meeting minutes, etc.	
65	CVFC	09/30/10	27-3219078	c-3	52					Yes	More development necessary; affiliates with Combat Veterans for Congress PAC. Form 1024 provides little to no information on activities and is vague and broad as to planned activities.	
66	Wetumpka Tea Party Inc.	10/13/10	27-1231032	c-4	52				X	Yes	Org specifically states activities involve candidate election advocacy; need to determine if primary activity.	
67	Bedford County Patriots	10/18/10	80-0599063	c-4	52				X	Yes	Political campaign activities; supporting candidates; website has little on educational activities, a lot of info on campaign activities and candidate forums. Need to determine if primary activity.	
68	North East Tarrant Tea Party, Inc.	10/18/10	27-2998083	c-4	52				X	Yes	Political campaign intervention appears to be a significant if not primary activity.	
69	American Patriots for Conservative Action, Inc.	10/25/10	27-3587320	c-4	52					Yes	Unclear; much more development needed. Form 1024 description of activities is bare and not detailed. No website.	
70	Comeback America Initiative, Inc.	10/25/10	27-3469428	c-3	52		X			Yes	c3: Appears educational in line with 501c3 purposes; no apparent political campaign activity; may want to look into whether compensation of CEO is reasonable and if absolutely no political intervention.	

IRS0000063029

W&M EXHIBIT 12

SFC 003631

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 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 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 003632

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

W&M EXHIBIT 12

SFC 003633

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 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

W&M EXHIBIT 13

SFC 003635

From: Lerner Lois G
Sent: Wednesday, January 02, 2013 11:42 AM
To: Paz Holly O; Fish David L; Light Sharon P
Cc: Marx Dawn R
Subject: FW: latest article

I'd like to meet on status of these applications please. Can we talk Friday?

Lois G. Lerner
Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, January 02, 2013 12:32 PM
To: Lerner Lois G; Marks Nancy J; Fish David L
Subject: latest article

http://www.propublica.org/article/controversial-dark-money-group-among-five-that-told-irs-they-would-stay-out

W&M EXHIBIT 14
1
SFC 003636

RPTS HUMISTON

DCMN SECKMAN

SUBCOMMITTEE ON OVERSIGHT,

COMMITTEE ON WAYS AND MEANS,

U.S. HOUSE OF REPRESENTATIVES,

WASHINGTON, D.C.

INTERVIEW OF: JOSEPH H. GRANT

Friday, September 20, 2013

Washington, D.C.

The interview in the above matter was held at Room 1102, Longworth House Office Building, commencing at 10:04 a.m.

Q Okay.

A You know, hypothetically, if, you know, somebody had come to me with --

Mr. SFC . I wouldn't even give a hypothetical. The answer is you don't recall it ever happening.

Mr. SFC . Let's let him answer.

Mr. SFC . I never did it.

Mr. SFC . Counsel.

Mr. SFC . That's fine. I just never had occasion to do that.

BY MR. SFC :

Q Sure. That's fair?

A I suppose some set of circumstances could be put together where, you know, I might have felt a need to do that, but I never did.

Q Are you aware of an instance where -- where an executive at the IRS did that?

A No.

Q Would it be appropriate for a manager at IRS to refer a specific taxpayer to Exams or to intervene on their own on -- I mean, their own volition to Derms?

A I believe it would be completely -- it would not be appropriate to intervene on their own. So -- and I'm not aware of that occurring.

Q Rather than passing along.

- If it appears that a return has not been filed because the organization has not been operating more than a year, the case is returned to the Classification Referrals manager to set up as a future-year referral. The case will be resent to the ROO unit when the return is filed or becomes delinquent. (Note: The Referrals Manager runs a monthly Future-Year Referrals Report and processes the required returns).

Step 3(c) Other 501(c) organizations that have filed a return

These referrals are sent to ROO.

Step 4

The referrals are researched by Classification-Referrals to determine whether the entity was examined previously under the Political Activity Compliance Initiative (PACI), and the result of that examination. If it has been examined, the prior case file is retrieved and forwarded to the ROO for consideration along with the current allegation.

Step 5

The ROO secures the filed Form 990 along with any other relevant returns, such as Form 990-T and Form 1120-POL.

Step 6

The ROO tests the organization's Form 990 against the risk models using a check sheet to see whether the risk models would have identified the alleged violation. (If no return has been filed, this step is skipped). ROO also completes a lead sheet on the case.

Step 7

The case file (including the referral) is returned to Classification-Referrals for updating the referral database and is forwarded for review by a Political Activities Referral Committee (PARC).

Step 8

The PARC reviews the case file and determines whether the case should be one of the following:

- Future Year Referral
- Not selected for Examination
- Selected for Compliance Check
- Selected for Examination (OCEP)
- Selected for Examination (field)
- Selected for Examination (not political)
- Transfer to ROO (for additional research)

EO will have at least one PARC operating at all times comprised of three experienced career civil servant employees. PARC positions generally are filled on a rotational basis for a minimum period of one year. The **EPR Manager will solicit and assign volunteers for the PARCs.** PARC operations are overseen by the Managers of EPR and EOCA; however, they shall not override or influence any case selection decision of the PARCs.

Step 9

If the case is Selected for Examination, the PARC determines whether the case is a "high priority", which results in the case being forwarded to Case Selection and Delivery (CS&D) for immediate assignment to a group (See Step 10), or "other," which results in the case being retained in Classification pending receipt of a case order.

If the IRS concluded in a prior examination that a 501(c)(3) organization had intervened in a political campaign, the case will automatically be classified as "high priority."

Otherwise the PARC considers the following factors to determine whether it should be categorized 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. For instance, whether the audience consisted of thousands of people versus 100 or fewer.
- The significance of the political campaign. For instance, whether the election was for a national office in a closely contested race.
- The frequency of the alleged intervention. For instance, whether the intervention occurred five or more times, versus a one-time event.
- The degree of specificity used to identify the candidate or the support/opposition. For instance, whether it was very clear whom the exempt organization was supporting or opposing.
- The degree of candidate participation in the alleged intervention. For instance, whether the candidate was an officer or director of the exempt organization and used the organization's resources to promote his or her candidacy.
- The degree to which the organization is soliciting contributions to support its political campaign intervention. For instance, whether the organization constructed a mechanism to solicit political contributions, versus a one-time donation by the organization.
- Any other relevant factors.

W&M EXHIBIT 16

SFC 003640

From: Lerner Lois G
Sent: Thursday, January 31, 2013 1:07 PM
To: Wagner Christopher (Chief Appeals)
Subject: A Couple Items

I just got off our quarterly meeting with Appeals and wanted to raise a couple issues to make sure we are all on the same page. I'm raising with you because I am not familiar enough with your organization to know where I should be going, and at least with the second item, I think you do need to be aware.

1. Apparently Appeals is going through a Lean Six Sigma process. One thing they brought to our attention is that Appeals believes the time between when a TP first requests to go to Appeals and the time the case gets to Appeals is too long. They have provided us with data, but also told us they think it isn't very good --so we're not sure of their basis for the claim that things are taking too long. They have spoken to some of our managers about the process, but without data that we can look at and an explanation about how they are going about this, it is hard to understand where the starting point is and where the pain points may be. They have not met with either Holly and Nan, who are the Directors of the programs they are looking at, and who I believe could save them a lot of time. Thought you might want a briefing on this from them--you may be perfectly OK with their approach, but we are baffled.

2. During the meeting I gave them a heads up that, in the next few months we believe they will get a lot of business from our TPs regarding denials on 501 (c)(4) applications. I explained the issue is whether they are primarily involved in social welfare activities a nd whether their political intervention activities, along with other non -social welfare activities mean they don't meet the c4 requirements. I explained the issue was very sensitive and visible and there is a lot of interest--Congress, press, political groups, you name it. I personally have been up to the Hill at least 8 times this past year to explain the complexities of the rules --they are not black and white and they are not always intuitive. I offered a general tutorial session (non-case-related)on the law and the complexities because --as I pointed out--this is a new issue driven by a recent Supreme Court case expanding spending in elections to corporations, and a desire of some to make the expenditures without having their names show up on Federal Election Reports. The fact that these orgs can do some of this activity and still be a c4 further complicates the issue. I told them this is a place where we have worked very hard to be consistent and have all our cases worked by one group, and suggested th ey might want to do something similar. (PS we are under audit by TIGTA because of allegations of political bias on these cases) If I were you, this is definitely something I'd want to be aware of and have a high level person overseeing and reporting regula rly to me. You were in TEGE long enough to understand how dangerous what we do can be.

From the call, I could tell you have a lot of acting folks who will be coming and going over the next year--I feel that pain. But, from my perspective, that only makes high level involvement more imperative. If you think it would be useful to have a meeting on this --let me know.

Hope this doesn't should like I'm trying to run your shop --have enough trouble with my own. (-:

W&M EXHIBIT 16

SFC 003641

Lois G. Lerner
Director of Exempt Organizations

IRS0000122884

W&M EXHIBIT 17

SFC 003642

Document: EO Director's responses to 3 questions asked by Director Paterson.
Purpose: To document the responses of the EO Director regarding the criteria for identifying advocacy cases.
Source: Lois Lerner, EO Director

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?

No. To the best of my knowledge, no individual or organization outside the IRS influenced the creation of these criteria.

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?

In early 2010, EO Determinations witnessed an uptick in the number of applications for § 501(c)(3) or 501(c)(4) status that contained indicators of potentially significant amounts of political campaign intervention ("advocacy organizations"). EO Determinations first became of aware of this uptick in February 2010, when an EO Determinations screener identified a § 501(c)(4) applicant that planned to spend a significant amount of its budget on influencing elections, which he believed was like organizations that had been receiving media attention for purportedly seeking classification as § 501(c)(4) social welfare organizations but operating like § 527 political organizations. He alerted his manager of the potential "emerging issue."

To ensure consistent treatment of applications, EO Determinations had long been alerting its specialists to emerging issues by sending emails describing particular issues or factual situations warranting additional review or coordinated processing. Because it was difficult to keep track of all of these separate email

alerts, EO Determinations staff requested a consolidated list of all such alerts. EO Determinations was developing the Be On the Lookout (BOLO) list in early 2010. The BOLO, which is an Excel spreadsheet, provides a centralized source of regularly updated information to EO Determinations specialists about potentially abusive organizations or fraud issues, issues and cases requiring coordinated processing, emerging issues and issues for which to watch. The BOLO currently includes four tabs: (1) Potential Abusive, (2) Emerging Issues, (3) Coordinated Processing, and (4) Watch List.

The first BOLO list contained the following entry on the Emerging Issues tab: "These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4) [sic]." That description was added to the BOLO to help specialists identify cases involving potentially significant political campaign intervention for assignment to a particular Determinations group so that they could be consistently processed in accordance with advice provided by EO Technical. The language used on the BOLO was selected by Determinations specialists with the involvement of a front-line manager in EO Determinations. At this time, the language was not reviewed or approved by executive management.

As the number of advocacy cases grew, the Acting Director, EO Rulings & Agreements wanted to ensure that EO Determinations was not being over-inclusive in identifying such cases (including organizations that were solely engaged in lobbying or policy education with no apparent political campaign intervention). In addition, in light of the diversity of applications selected under this "tea party" label (e.g., some had "tea party" in their name but others did not, some stated that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.), the Acting Director, EO Rulings & Agreements sought clarification as to the criteria being used to identify these cases. In preparation for briefing me, the Acting Director, EO Rulings & Agreements asked the EO Determinations Program Manager what criteria Determinations was using to determine whether a case was a "tea party" case. Because the BOLO only contained a brief reference to "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)" in June 2011, the EO Determinations Program Manager asked the manager of the screening group what criteria were being used to label "tea party" cases ("Do the applications specify/state ' tea party'? If not, how do we know applicant is involved with the tea party movement?"). The manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government

debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run."

As TIGTA's interviews with EO Determinations employees revealed, the BOLO description and the above-referenced list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group. Applications that did not contain these terms, but that contained indicators of potentially significant political campaign intervention, were also referred to the group assigned to work such cases.

I first became aware that the BOLO referenced "tea party" organizations and EO Determinations was using the above criteria to determine what organizations met that description when I was briefed on these cases on June 29, 2011. I immediately directed that the BOLO be revised to eliminate the reference to "tea party" organizations and refer instead more generally to advocacy organizations. The BOLO was revised on July 11, 2011; the "issue name" was changed from "Tea Party" to "Advocacy Orgs", and the "Issue Description" was changed to "Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Unbeknownst to me, EO Determinations further revised the BOLO issue description on January 25, 2012 to "political action type organizations involved in limiting/expanding government, educating on the Constitution and Bill of Rights, social economic reform/movement." When I learned of this change, I directed that the BOLO description be revised. [redacted] They were trying to edit the description to avoid capturing these organizations. Per my direction, the BOLO was updated on May 17, 2012. The separate entries for Occupy groups and ACORN successors were deleted and the advocacy organization description was revised to read, "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."

At the same time that I directed the BOLO be revised, I also directed the Acting Director of EO Rulings & Agreements to implement procedures for updating the

BOLO that included executive-level approval. On May 17, 2012, the Acting Director of EO Rulings & Agreements issued a memorandum that set forth such procedures, which require that all additions and changes to the BOLO be approved by the manager of the emerging issues coordinator, the EO Determinations Program Manager, and the Director, Rulings & Agreements.

W&M EXHIBIT 18

SFC 003646

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 9:51 AM
To: Paz Holly O; Flax Nikole C
Subject: RE: Emailing: c4 talking points 7-16-12.doc

Importance: High

Only one comment--I know we don't have published SOI stats for the uptick, but our Cincy folks saw it happening --can we get Nikole whatever "inside"
info we have that led to that conclusion --she can then figure out how to use it.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Paz Holly O
Sent: Tuesday, July 17, 2012 7:23 AM
To: Flax Nikole C; Lerner Lois G
Subject: Emailing: c4 talking points 7-16-12.doc

I have added some edits and comments to Lois'. I am c hecking on numbers and will get back to you ASAP.

W&M EXHIBIT 19

SFC 003647

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 9:46 AM
To: Paz Holly O
Subject: RE: Emailing: c4 talking points 7-16-12.doc

good

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Paz Holly O
Sent: Tuesday, July 17, 2012 10:44 AM
To: Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

That is who I am checking with.

-----Original Message-----
From: Lerner Lois G
Sent: Tuesday, July 17, 2012 10:42 AM
To: Paz Holly O; Flax Nikole C
Subject: RE: Emailing: c4 talking points 7-16-12.doc

Contact Nalee--she knows all about the response.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----
From: Paz Holly O
Sent: Tuesday, July 17, 2012 10:08 AM
To: Flax Nikole C; Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

The SOI numbers I was looking at were closures (that's all SOI has that is relevant to this question). I think the numbers in Boustany response must
be receipts. I am checking and will get back to you.

-----Original Message-----
From: Flax Nikole C
Sent: Tuesday, July 17, 2012 9:21 AM
To: Paz Holly O; Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

On the point whether there was an increase in c4 applications - in the Boustany response we show that applications did increase. Looks like the figures are different from what you pulled from SOI so we need to track this down as I think it is an important point.

From Boustany - c4 applications

2008 - 1410
2009 - 1571
2010 - 1591
2011 - 2242
2012 - 1715 (through April 1, 2012 -- if this pace stands all year would be a significant increase)

-----Original Message-----
From: Paz Holly O
Sent: Tuesday, July 17, 2012 7:23 AM
To: Flax Nikole C; Lerner Lois G
Subject: Emailing: c4 talking points 7-16-12.doc

I have added some edits and comments to Lois'. I am checking on numbers and will get back to you ASAP.

W&M EXHIBIT 20

SFC 003649

From: Lerner Lois G
Sent: Wednesday, July 18, 2012 8:55 AM
To: Flax Nikole C; Park Nalee; Lowe Justin; Urban Joseph J
Cc: Mistr Christine R
Subject: Re: Emailing: c4 talking points 7-16-12.doc

I'll ask exam
Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

------Original Message------
From: Nikole Flax
To: Nalee Park
To: Lois Call in Number
To: Justin Lowe
To: Joseph Urban
Cc: Mistr Christine R
Subject: FW: Emailing: c4 talking points 7-16-12.doc
Sent: Jul 18, 2012 9:52 AM

The chart is very helpful, thanks.

Can Steve get a chart like this first one with exam numbers - c3s, c4s, and totals or each of the years listed? Thanks

---

From: Park Nalee
Sent: Tuesday, July 17, 2012 7:53 PM
To: Flax Nikole C
Cc: Lerner Lois G; Paz Holly O
Subject: RE: Emailing: c4 talking points 7-16-12.doc

Per Lois, I took a look on the talking points based on what we've told Boustany about c4 application numbers.

First, under Legal Requirements, I added a few suggested (tracked) changes, including a couple bullets. Feel free to ignore or accept.

Regarding the reference to c4 application numbers in the first bullet under Background, see comment [NLP4]. Comment is referring to the second attachment here, which is a summary on the numbers of applications received for c3s and c4s, total app closures (including specifically c4 apps), and application approvals for c3s and c4s - starting from FY 2008. All these numbers were provided in Boustany responses, except for FY 2012 data through June 30th (which were collected as part of hearing preparations - i.e., Descriptions for Updated Stats 7/3/2012) and unless otherwise noted (i. e., in Issa). You/STM should already have all this data in the hearing prep

binders, but I just consolidated them into this one-sheeter for an easier trend/comparison read.

Also, as Holly pointed out in her comment, we do not have a reliable method for tracking data by issue such as political activity. This is consistent with our congressional responses where we had explained we would have to manually go through each application, etc.

Because of the above points, the first bullet that presently reads as :

Starting in 2010, EO observed an increase in the number of section 501(c)(3) and section 501(c)(4) determination applications from organizations that appeared to be potentially engaged in political advocacy activities.

Recommend it be revised (i.e., along the lines of the following):

For about the past five years [alternative verbiage: From FY 2008 through June 30th of FY 2012], EO has observed an increase in the number of section 501(c)(4) determination applications filed, as well as a general upward trend in section 501(c)(3) application filings.

NaLee
[redacted]

W&M EXHIBIT 21

SFC 003651

From: Grodnitzky Steven
Sent: Wednesday, April 28, 2010 5:23 PM
To: Lerner Lois G; Choi Robert S
Cc: Letourneau Diane L; Grodnitzky Steven
Subject: SCR Chart
Attachments: SCR report Table 2010 Final.doc

Please find attached a copy of the SCR chart for cases in EO Technical for the period ending April 28, 2010.

Of note, we added one new SCR concerning 2 Tea Party cases that are being worked here in DC. Currently, there are 13 Tea Party cases out in EO Determinations and we are coordinating with them to provide direction as to how to develop those cases based on our development of the ones in DC. We also closed one significant case last month -- American Pakistan Foundation -- providing relief to displaced persons in Pakistan.

Steven Grodnitzky
Acting Manager, EO Technical
Rulings and Agreements, TEGE
Internal Revenue Service
phone [redacted]
fax [redacted]

EO Technical
Significant Case Report
(April 28, 2010)

Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action
Prescott Tea Party, LLC and Albuquerque Tea Party, Inc.	2/Ron Shoemaker	27-0484865 and 90-0513502	4/2/2010	Whether a tea party organization meets the requirements under 501(c)(3) and is not involved in political intervention.	Chip Hull	9/30/2010	One development letter sent, and working on sending development letter for the second case. Also, will coordinate with Cincy as to helping to develop their cases.
American Pakistan Foundation	2/Ron Shoemaker	27-0726675	Cincinnati 10/7/09 EOT 10/22/09	Whether US org formed to provide relief to displaced persons in Pakistan qualifies for C3	Jackie Manasterli	**CLOSED**	TLS is recommending a favorable exemption. Will coordinate with other foreign -grant making organizations in the office to ensure consistency. Case Closed April 2010.
Bluegrass Family Health	1/Ellen Berick	61-1241101	6/08	Whether HMO operator recognized as exempt under C4 qualifies for C4 status	Justin Lowe	6/30/2010	Briefing for TEGE Commissioner re -scheduled for May 14th.
The Calhoun Academy	2/Ron Shoemaker	57-0523954	Cincinnati 8/29/07 EOT 1/8/08	Whether private school that previously applied for and was denied C3 status due to racial discrimination now qualifies .	Meghan Wrathall	5/30/2010	Guidance completed review of proposed denial and then sent back to EOT to make changes and Guidance will take a final look before issuance.
Delta Dental of Delaware	1/ Ellen Berick	51-0228088	Cincinnati 9/22/06 EOT 11/9/06	Whether HMO operator recognized as exempt under C4 qualifies for C4 status	Justin Lowe	6/30/2010	Coordinate DDD and Bluegrass cases to then brief TEGE Commissioner on May 14, 2010.
Emerge Maine, Emerge Nevada, Emerge Massachusetts, Oregon	1/ Ellen Berick	41-8018017	Cincinnati 1/11/08 EOT 10/9/08	Whether orgs that recruit women belonging to Democratic party to schools that teach campaign-related skills qualify for C4 status	Siri Buller	6/30/2010	Reviewed by Judy Kindell, send to TEGE Counsel to ensure consistency as to litigation strategy.
EPM Civil Rights Funds	2/Ron Shoemaker	26-4582939	Cincinnati 7/16/09 EOT 12/1/09	Whether org that pays travel and interpreter expenses incurred by attorneys providing pro bono legal services to Guantanemo detainees qualifies for C3 status	Andy Strelka	6/30/2010	The TLS reviewed case from Cincy and issued in April 2010 an additional development letter to ensure that expenses by attorneys a re not used for private benefit purposes.
Jewish Giving Online , Inc.	3/Ted Lieber	26-3398630	Cincinnati 11/28/08 EOT 7/29/09	Whether TP seeking C3 status for internet solicitation for foreign orgs is a conduit and/or provides impermissible private benefit	Peter Hollat	6/30/2010	Submit proposed adverse determination letter to Guidance after being reviewed by EOT group reviewer.
Lehman Health Care	3/Ted Lieber	26-6552611	Cincinnati	Whether applicant for VEBA status	Obi	Unknown	Need to determine whether bankruptcy litigation

W&M EXHIBIT 21

SFC 003653

Trust			4/15/09 EOT 8/26/09	established and funded by subsidiary of org shortly before org's bankruptcy qualifies -- whether we cannot rule because bankruptcy proceedings are pending litigation	Chukwuanu		issue would have an impact on processing application.
Muslim Alliance in North America	3/Ted Lieber	71-0997466	Cincinnati 5/21/07 EOT 3/4/09	Applicant for C3 status endorsed Obama on its website; its president was unindicted co - conspirator in 93 World Trade Center plot .	Matt Parrish	6/30/2010	Briefed EO Director on 4/19/10. Continue researching other board members and officers and coordinate with Joe Urban to help draft and send additional development letter.
Methodist International	1/ Ellen Berick	30-0347273	Cincinnati 4/07 EOT 2/08	Whether org providing consulting and training to foreign entities operating health care facilities qualifies for C3	Siri Buller	6/30/2010	Received comments from EO Guidance and now making changes as a result. Then send to TEGE Counsel.
National Railroad Retirement Investment Trust	1/ Ellen Berick	01-6186277	8/4/08	Whether income earned from investment is not subject to UBIT	Justin Lowe	6/30/2010	After conference of right, TP submitted additional information as to whether NRRIT's assets are not subject to UBIT as assets of the Federal government. Meeting with TEGE Counsel and EP week of 3/29 to review and strategize as to next steps. Counsel reached out to PassThroughs Counsel to explore grantor -trust issue and waiting for reply. Brief EO executives when information is in from Counsel.
Tennessee Pooled Assets	1/ Ellen Berick	62-1833034	Cincinnati 3/27/03 EOT 7/25/03	Whether trustee of pooled trust established for disabled persons under Medicaid program qualifies for C3 status	Susan Cundiff	6/30/2010	Held conference of right with related case (Farnilly Trust of Mass.), then send to Counsel for concurrence for final adverse.
United Order of Texas	2/Ron Shoemaker	26-4726535	2/16/2010	Whether organization with ties to polygamist ranch qualifies for exemption as apostolic or religious order under §501(d)	Leonard Orcino	8/30/2010	Sent development letter on 4/6/10 and sent development letter to related org. on 4/15/10.
World Wildlife Fund	2/Ron Shoemaker	52-1693387	11/6/09	Whether WWF's sale of carbon credits is substantially related to WWF's exempt purposes and thus not subject to UBIT	Meghan Wrathall	8/30/10	WWF must modify its request to limit it to the substantially related issue . Then send tech. assistance to IT&A.
Bernice Bishop DBA Kamehameha Schools	3/Ted Lieber	99-0073480	3/21010 PLR received in EO Tech.	Whether a series of land transactions that are taking place over a ten year period is subject to UBIT. We are expecting to get more requests.	Peter Hollat	6/30/2010	TLS reviewing case and preparing draft r uling and then will submit to Guidance and CC for review.
Miss America Foundation	2/Ron Shoemaker	27-0390958	3/1/2010 assigned in EO Tech.	Whether an organization that provides non - forfeitable scholarships to Miss America participants qualifies under § 501(c)(3) as an affiliate of the National Miss America pageant.	Len Henzke	9/30/2010	Reviewing response to development letter and more development may be needed.

W&M EXHIBIT 22

SFC 003654

From: Grodnitzky Steven
Sent: Sunday. May 16, 2010 6:01 PM
To: Lerner Lois G; Choi Robert S
Cc: Letourneau Diane L; Neuhart Paige; Douglas Akaisha
Subject: RE: EO Tech. highlights and stats

Ok, just let me know when you would like to chat about the case.

-----Original Message-----
From: Lerner Lois G
Sent: Saturday, May 15, 2010 11:17 AM
To: Grodnitzky Steven; Choi Robert S
Cc: Letourneau Diane L; Neuhart Paige
Subject: Re: EO Tech. highlights and stats

Thanks. Let's talk about co-conspirator. We need Joe there Lois G.
Lerner---------- Sent from my BlackBerry Wireless Handheld

------Original Message------
From: Steven Grodnitzky
To: Lois Call in Number
To: Rob Choi
Cc: Diane Letourneau
Cc: Paige Harrell
Cc: Akaisha Douglas
Subject: RE: EO Tech. highlights and stats
Sent: May 13, 2010 7:54 PM

We have tea party cases here in EOT and in Cincy. In EOT, there is a (c)(3) application and a (c)(4) ap plication. In Cincy, there are 10 (c)(4)s and a couple of (c)(3)s. The organizations are arguing education, but the big issue for us is whether they are engaged in political campaign activity. We are in the development process at this point here in DC, and I have asked the TLS and front line manager to coordinate with Cincy as to how to develop their cases, but not resolve anything until we get clearance from you and Rob.

The tea party cases, like the others on the list, are the subject of an SCR, and I customarily give Rob a heads up, but of course can let you know as well before anything happens.

As to MANA, I had spoken with Ted about the case, and he did mention that Joe had a different view as to whether to request information about the unindicte d coconspirator.

I called the FTC and spoke with them about the possibility of an MOU and that we were interested in starting discussions. Leah Frasier, the FTC point of contact, said that she would speak with her bosses and get back to me.

From: Lerner Lois G
Sent: Thursday, May 13, 2010 7:04 PM

W&M EXHIBIT 22

SFC 003655

To: Grodnitzky Steven; Choi Robert S
Cc: Letourneau Diane L; Neuhart Paige; Douglas Akaisha
Subject: RE: EO Tech. highlights and stats

I like this format. David will kill you as I'd like to see if he can do a monthly 1 pager also.Tea Party cases --applications for c3? What's their basis? MANA--Judy and I have talked and I may be in a different place than Joe and Tom re: next steps. All cases on your list should not go out without a heads up to me please. Have we reached out to FTC to raise the possibility of an MOU? Akaisha--please start a notebook for me and update each month with new report. I'd like to be able to look back easily to see progress. Steve --remember to cc Akaisha on these. Thanks

Lois G. Lerner
Director, Exempt Organizations

From: Grodnitzky Steven
Sent: Thursday, May 13, 2010 6:10 PM
To: Lerner Lois G; Choi Robert S
Cc: Letourneau Diane L; Neuhart Paige; Grodnitzky Steven
Subject: EO Tech. highlights and stats

Please find below the April highlights for EO Technical, including case statistics. If you are looking for other types of information in the future, please let me know and I will provide for next month's highlights.

April in EO Technical

Statistics

Cases Received

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

W&M EXHIBIT 23

SFC 003656

From: Lerner Lois G
Sent: Tuesday, August 03, 2010 5:52 PM
To: Douglas Akaisha; Choi Robert S; Lieber Theodore R; Neuhart Paige
Cc: Letourneau Diane L
Subject: FW: SCRs for the Month of July
Attachments: July Bishop.doc; July Lehman Bros.doc; July Ballot Initiative.doc; July Bluegrass Family Health.doc; July Calhoun Academy.doc; July Credit Counseling.doc; July DDD.doc; July Emerge.doc; July EPM Civil Rights.doc; July Group Reclassification.doc; July Imagine Schools Non-Profit.doc; July Jewish Giving Online.doc; July MANA.DOC; July Methodist International.doc; July Miss America Foundation.doc; July Mortgage Foreclosure.doc; July NRRIT.DOC; July TAG-18.doc; July TeaParty.doc; July United Order Texas.doc; July WWF.doc; JulyTennessee.doc; July Medical Marijuana.DOC

Follow Up Flag: Follow up
Flag Status: Flagged

Akaisha--please print so I can review. Everyone else--have we always sent to Mike Daly with no review time for me first? I realize I don't usually get to them in time, but I think I could with a few days notice. I'm a bit uncomfortable sending without r eading--thoughts?

Lois G. Lerner
Director, Exempt Organizations

From: Lieber Theodore R
Sent: Friday, July 30, 2010 7:58 AM
To: Daly Richard M
Cc: Choi Robert S; Neuhart Paige; Douglas Akaisha; Lerner Lois G
Subject: FW: SCRs for the Month of July

Attached are the R&A SCRs for July. The list of SCRs are below.

Thanks,

Theodore R. Lieber
Manager
EO Technical Group 3
(202) 283-8999

From: Grodnitzky Steven
Sent: Tuesday, July 27, 2010 4:06 PM

W&M EXHIBIT 23

SFC 003657

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) Kamehameha Schools
(2) Lehman Health Care Trust
(3) Ballott Initiative Group of Missouri
(4) Bluegrass Family Health
(5) The Calhoun Academy
(6) Credit Counseling Compliance Project
(7) Delta Dental of Delaware
(8) Emerge Maine
(9) EPM Civil Rights
(10) Group Rulings
(11) Imagine Schools
(12) Jewish Giving Online
(13) Muslim Alliance of North America
(14) Methodist International
(15) Miss America Foundation
(16) Mortgage Foreclosure
(17) NRRIT
(18) TAG-18
(19) Tea Party
(20) United Order of Texas
(21) World Wildlife Fund Inc.
(22) Tennessee Pooled Assets
(23) Compassionate Cannabis Information Center (medical marijuana)

Any questions, please let me know.

Thanks.

Steve

Steven Grodnitzky
Acting Manager, EO Technical
Rulings and Agreements, TEGE
Internal Revenue Service
phone: [redacted]
fax: [redacted]

W&M EXHIBIT 24

SFC 003658

EO Technical
Significant Case Report
(January 31, 2011)

Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Elevated to Commissi
American Junto and Albuquerque Tea Party, Inc.	2/Ron Shoemaker	27-0484865 and 90-0513502	4/2/2010	Whether a tea party organization meets the requirements under 501(c)(3) and is not involved in political intervention.	Chip Hull	3/31/2011	Developing both a (c)(3) and (c)(4) case. Proposed favorable being drafted on (c)(4). Proposed denial being drafted on (c)(3).Coordinating with Ginny as to helping to develop their cases.	No
Compassionate Cannabis Information Center	1/Steven Grodnitzky	90-0421314	1/4/2010	Where a dispensary of medical marijuana meets the requirements under § 501(c)(3).	Kristen Burns	3/31/2011	A proposed denial was prepared and is in review with the group reviewer. Director, EO R&A recommended consulting with TEGE Counsel before issuing a proposed denial. There are 5 cases in EOT and 5 in EOD.	No
Bluegrass Family Health	1/Steven Grodnitzky	61-1241101	6/08	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011	TEGE Commissioner and TEGE Counsel met on August 24, 2010 to discuss options on this ca se and Delta Dental of Delaware, a case presenting a similar issue as it relates to HMOs. Preparing to meet with IRS Chief Counsel to discuss strategy. Also, exploring settlement options with Bluegrass.	Yes
Delta Dental of Delaware	1/ Steven Grodnitzky	51-0228088	Cincinnati 9/22/08 EOT 11/9/08	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011	TEGE Commissioner and TEGE Counsel met on August 24, 2010 to discuss options on this case, and Bluegrass, a case presenting a similar issu e as it relates to HMOs. Planning to meet with the IRS Chief Counsel to discuss strategy.	Yes
Emerge Maine , Emerge Nevada, Emerge Massachusetts, Oregon	1/ Steven Grodnitzky	41-8078017	Cincinnati 1/11/08 EOT 10/9/08	Whether orgs that recruit women belong ing to Democratic party to schools that teach campaign-related skills qualify for § 501(c)(4) status	Siri Buller	02/28/2011	Proposed denial sent to TEGE Counsel in late April to ensure consistency as to litigation strategy. Reviewing Counsel comm ents.	No
EPM Civil Rights Funds	2/Ron Shoemaker	26-4582939	Cincinnati 7/16/09 EOT 12/1/09	Part of activities includes paying travel and interpreter expenses incurred by attorneys providing pro bono legal services to Guantanamo detainees, and does it quali fy under § 501(C)(3) status. Bulk of activities	Jonathan Carter	1/31/2011	Proposed denial being finalized.	No

W&M EXHIBIT 24

SFC 003659

				are educational , and some private benefit in the past re: funding the payment of medical expenses of an individual.				
Lehman Health Care Trust	3/Ted Lieber	26-6552611	Cincinnati 4/15/09 EOT 8/26/09	Whether applicant for VEBA status established and funded by subsidiary of org shortly before org's bankruptcy qualifies under § 501(c)(9). Whether we can rule because bankruptcy proceedings are pending litigation	Obi Chukwuanu	4/30/2011	Taxpayer's response to development letter due 1/7/11.	No
Methodist International	1/ Steven Grodnitzky	30-0347273	Cincinnati 4/07 EOT 2/08	Whether org providing consulting and training to foreign entities operating health care facilities qualifies for C3.	Siri Buller	02/28/2011	Received Counsel's comments on proposed denial. Incorporating comments. Brief EO Director.	No
National Railroad Retirement Investment Trust	1/ Steven Grodnitzky	01-6186277	8/4/08	Whether income earned from investment is subject to UBIT.	Justin Lowe	3/31/2011	Adverse ruling has been reviewed by Counsel and is currently under review by EP . NRRIT recently met with Treasury to discuss revising memorandum of understanding (MOU) currently in effect between Treasury, OMB, and NRRIT. Director, EO reached out to Treasury to coordinate actions.	Yes
Tennessee Pooled Assets	1/ Steven Grodnitzky	62-1833034	Cincinnati 3/27/03 EOT 7/25/03	Whether trustee of pooled trust established for disabled persons under Medicaid program qualifies for C3 status	Susan Cundiff	03/31/2011	Held conference of right with similar case (Family Trust of Mass.). Final adverse letter submitted to Counsel on 11/23/10.	No
United Order of Texas	2/Ron Shoemaker	26-4728535	2/16/2010	Whether organization with ties to polygamist ranch qualifies as apostolic or religious order under §501(d).	Leonard Orcino	3/31/2011	Proposed denial with group reviewer.	No
World Wildlife Fund	2/Ron Shoemaker	52-1693387	11/6/09	Whether WWF's sale of carbon credits is substantially related to WWF's exempt purposes and thus not subject to UBIT	Meghan Wrathall	6/30/2011	Similar case involving mitigation credits sent to Counsel for review on 10/13/10.	No
Miss America Foundation	2/Ron Shoemaker	27-0390958	3/1/2010 assigned in EO Tech.	Whether an organization that provides non - forfeitable scholarships to Miss America participants qualifies under § 501(c)(3) as an affiliate of the National Miss America pageant.	Jackie Minasterli	3/31/11	Proposed denial issued. Awaiting taxpayer protest.	No
Imagine Schools Non-Profit	2/Ron Shoemaker	20-3590526	10/18/2006 assigned in EOT	Whether a charter school should be granted exemption under § 501(c)(3).	Meghan Wrathall	03/31/2011	Issued proposed denial to taxpayer on August 2nd. TP protested and conference of right held 10/27/10. Applicant submitted some a dditional materials on 11/17/10. Currently awaiting a new appraisal from the taxpayer, which will be sent to the IRS engineer.	No
Mortgage Foreclosure Cases	1 and 2/ Ron Shoemaker		On going cases.	Whether organizations involved in mortgage foreclosure activities meet the requirements under § 501(c)(3).	Elizabeth Kastenberg	Ongoing.	Continue to review cases from Cincy and develop, and deny, or approve cases in DC. EOT drafting a failure to establish adverse ruling on one of the cases.	No

W&M EXHIBIT 24

SFC 003660

Z Street	EO Determination	27-1354388	December 29, 2009	Whether an organization that ad vocates for legislation to support Israel qualifies for exemption under section 501(c)(3).	Jon Waddell	Litigation ongoing	Applicant filed declaratory judgment action on August 25, 2010, alleging the IRS routinely delays and may deny applications if the applicants oppose U.S. policies in the Middle East. EO Determinations is coordinating with regard to the litigation with Chief Counsel through Senior manager EO Guidance	No
Harvard Medical Collaborative, Inc.	3/Ted Lieber	04-3476764	June 23, 2009	Whether operation of a power plant to supply power, steam and chilled waster, at cost, to Harvard Medical School and its affiliated hospitals will jeopardize HMC's exempt status under section 501(c)(3) of the Code or be treated as an unrelated trade or business under section 513(a).	Donna E. Moore	05/31/2011	Taxpayer conference to discuss IRS' adverse position held on 11/4/10. EOT and Counsel attended. Additional information provided by HMC under review.	No

W&M EXHIBIT 25

SFC 003661

From: Seto Michael C
Sent: Wednesday, February 02, 2011 12:40 PM
To: Fish David L
Subject: FW: SCR Table for Jan. 2011 & SCR items
Attachments: SCR table Jan 2011.doc; SCR Jan 2011 Park 51 MD.doc; SCR Jan 2011 Bluegrass MD.doc; SCR Jan 2011 DDD MD.doc; SCR Jan 2011 Emerge.doc; SCR Jan 2011 Methodist MD.doc; SCR Jan 2011 Newspaper Cases Update MD.DOC; SCR Jan 2011 NRRIT MD.DOC; SCR Jan 2011 Medical Marijuana.doc; SCR Jan 2011 Mortgage Foreclosure.doc; SCR Jan 2011 Foreign Lobby Cases.doc; SCR Jan 2011 Iowa Student.doc; SCR Jan 2011 Harvard Medical.doc

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From: Seto Michael C
Sent: Wednesday, February 02, 2011 1:39 PM
To: Lieber Theodore R; Salins Mary J; Seto Michael C; Shoemaker Ronald J; Smith Danny D
Subject: FW: SCR Table for Jan. 2011 & SCR items

Below is Lois' and Holly's directions on certain technical areas, such as newspapers, health care case, etc. Please do not allow any cases to go out before we have brief Lois and Holly.

Attached is the SCR table and the SCRs. The SCRs that went to Mike Daly ends with "MD." I will forward the other SCRs that didn't went Mike as fyi.

These reports are for your eyes only . . . not to be distributed.

Thanks,

Mike

From: Lerner Lois G
Sent: Wednesday, February 02, 2011 11:17 AM
To: Paz Holly O; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E; Light Sharon P
Subject: RE: SCR Table for Jan. 2011

Thanks--even if we go with a 4 on the Tea Party cases, they may want to argue they should be 3s, so it would be great if we can get there without saying the only reason they don't get a 3 is political activity.

I'll get with Nan Marks on the delta Dental piece.

I'm just antsy on the churchy stuff--Judy--thoughts on whether we should go to Counsel early on this--seems to me we may want to answer all questions they may have earlier rather than later, but I may be being too touchy. I'll defer to you and Judy.

W&M EXHIBIT 25

SFC 003662

Z Street--I thought the elevated to TEGE Commish related to wheth er we ever had--that's why I asked. Perhaps the block is wrong--maybe what we need is some notation that the issue is one we would elevate?

I hear you about you and Mike keeping track, but I would like a running history. that's the only way I can speak to what we're doing and progress in a larger way. Plus we've learned from Exam--if they know I'm looking, they don't want to have to explain --so they move things along. the 'clean" sheet doesn't give me any sense unless I go back to previous SCRs.

I've added Sharon so she can see what kinds of things I'm interested in.

Lois G. Lerner
Director, Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 02, 2011 11:02 AM
To: Lerner Lois G; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Tea Party - Cases in Determs are being supervised by Chip Hull at each step - he reviews info from TPs, correspondence to TPs, etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here. I believe the c4 will be ready to go over to Judy soon.

HMO case (Delta Dental) - When you say to push for the next Counsel meeting, with whom in Counsel are you referring? The plan had been for Sarah to meet with Wilkins and Nan on this. We think this has not happened but have not heard directly (unless Sarah has responded to your recent email on this case). I don't know that we at this level can drive that meeting.

NRRIT-I will reach out to Phil to see if Nan has seen it. She was involved in the past but I d on't know about recently.

On United Order (religious order), proposed denials typically do not go to Counsel. Proposed denial goes out, we have conference, then final adverse goes to Counsel before that goes out. We can alter that in this case and brie f you after we have Counsel's thoughts.

Z Street was not elevated at Mike Daly's direction. He had us elevate it twice after the litigation commenced but said not to continue after that unless we are changing course on the application front and going fo rward with processing it.

Ground Zero mosque (Park 51) - Our general criteria as to whether or not to elevate an SCR to Sarah/Joseph and on up is to only elevate when there has been action. Park 51 was elevated this month because it was just received. We will now begin to review the 1023 but won't have anything to report for sometime. We will elevate again once we have staked out a position and are seeking executive concurrence.

We (Mike and I) keep track of whether estimated completion dates are bei ng moved by means of a track changes version of the spread sheet. When next steps are not reflected as met by the estimated time, we follow up with the appropriate managers or Counsel to determine the cause for the delay and agree on a dua date.

W&M EXHIBIT 25

SFC 003663

From: Lerner Lois G
Sent: Tuesday, February 01, 2011 6:28 PM
To: Seto Michael C
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Thanks--a couple comments

1. Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules. Counsel and Judy Kindell need to be in on this one pl ease needs to be in this. Cincy should probably NOT have these cases--Holly please see what exactly they have please.

2. We need to push for the next Counsel meeting re: the HMO case Justin has. Reach out and see if we can set it up.

3. NRRIT--has that gone to Nan Marks? It says Counsel, but we'll need her on board. In all cases where it says Counsel, I need to know at what level please.

4. I assume the proposed denial of the religious or will go to Counsel before it goes out and I will be briefed?

5. I think no should be yes on the elevated to TEGE Commissioner slot for the Jon Waddel case that's in litigation--she is well aware.

6. Case involving healthcare reconciliation Act needs to be briefed up to my level please.
7. SAME WITH THE NEWSPAPER CASES--NO GOING OUT WITHOUT BRIEFING UP PLEASE.

8. The 3 cases involving settlements in Israel should be briefed up also.

9. ground zero case--why "yes-for this month only" in TEGE Commissioner block?

Also, please make sure estimated due dates and next step dates are after the date you send these. On a couple of these I can't tell whether stuff happened recently or not.

Question--if you have an estimated due date and the person doesn't make it, how is that reflected? My concern is that when Exam first did these, they just changed the date so we always looked current, rather than providing a history of what occurred. perhaps it would help to sit down with me and Sue Lehman--she helped develop the report they now use.

W&M EXHIBIT 25

SFC 003664

From: Seto Michael C
Sent: Tuesday, February 01, 2011 5:33 PM
To: Lerner Lois G
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L
Subject: SCR Table for Jan. 2011

Here is the Jan. SCR summary.

W&M EXHIBIT 26

SFC 003665

From: Lerner Lois G
Sent: Monday, October 29, 2012 10:51 AM
To: SFC @msn.com'
Subject: Fw: Revised timeline
Attachments: Long Political Advocacy Timeline HOP comments.doc

Lois G. Lerner---------- Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Paz Holly O
Sent: Sunday, October 28, 2012 02:31 PM
To: Lerner Lois G; SFC @msn.com <SFC @msn.com>; Marks Nancy J; Light Sharon P
Subject: Revised timeline

Attached is a revised version of the timeline that incorporates our discussion of last week and the revisions to the answers to the questions. Please note:

1. In the meeting, we ran out of time and did not discuss anything after Jan. 2012 so please review that portion closely.

2. In the Oct. 19, 2010 entry, I added a comment about how many of the orgs did not have TP in their name but I wanted you to be aware that some of those orgs included in my count of non -TP names had "patriot" or "912" in their names.

3. Should we include EOD's rationale (albeit flawed) as to why it asked the donor question? EOD did explain to TIGTA that they were concerned that 527 donors would be a red flag for a c4 that engages in political activity.

W&M EXHIBIT 26

SFC 003666

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

Objective: To interview Exempt Organizations (EO) function management involved in developing the advocacy emerging issue to identify steps taken and develop a timeline of events.

Background: We interviewed EO function officials to understand how applications are processed for organizations seeking tax-exempt status. We learned that there was an increase in the number of organizations applying for Section (§) 501(c)(3) or 501(c)(4) whose applications contained indicators of potentially significant amounts of political campaign intervention. In February 2010, an EO Determinations screener identified a § 501(c)(4) case that he believed was similar to organizations that had recently been the subject of much media attention for purportedly seeking classification as § 501(c)(4) social welfare organizations but operating like § 527 political organizations. The screener noted that this applicant indicated that it intended to spend a significant amount of its budget on influencing elections. The screener elevated his concerns about this case through the management chain. The EO Determinations Program Manager raised the issue with the Acting Manager of EO Technical who requested that this case be transferred to EO Technical. It is EO Rulings & Agreements' standard practice with emerging issues (including credit counseling and mortgage foreclosure) as well as these advocacy organizations to work some of the applications in EO Technical in order to get a better sense of the issues. EO Technical is then better able to advise EO Determinations on the processing of such cases and determine the most appropriate form of advice, which may range from verbal or written advice on a particular application or applications to template development letters, template denial letters, guide sheets, etc. In addition to seeking advice from and coordinating with EO Technical, the unusual number of applications with potential political campaign intervention by organization seeking § 501(c)(3) or 501(c)(4) exempt status also prompted the EO function to isolate these types of cases as an emerging issue warranting scrutiny by a particular Determinations group to ensure consistent processing.

In order to help specialists identify cases involving potentially significant political campaign intervention for assignment to a particular Determinations group so that they could be consistently processed in accordance with advice provided by EO Technical, a description was included on the Be On the Lookout (BOLO) list. To ensure consistent treatment of applications, EO Determinations had long been alerting its specialists to emerging issues by sending emails describing particular issues or factual situations warranting additional review or coordinated processing. Because it was difficult to keep track of all of these separate email alerts, EO Determinations staff requested a consolidated list of all such alerts. EO Determinations was developing the Be On the Lookout (BOLO) list in early 2010. The BOLO, which is an Excel spreadsheet, provides a centralized source of regularly updated information to EO Determinations specialists about potentially abusive organizations or fraud issues, issues and cases requiring coordinated processing, emerging issues and issues for which to watch. The BOLO currently includes four tabs: (1) Potential Abusive, (2) Emerging Issues, (3) Coordinated Processing, and (4) Watch List.

W&M EXHIBIT 26

SFC 003667

The first BOLO list contained the following entry on the Emerging Issues tab: "These case i nvolve various local organizations in the Tea Party [1] movement are applying for exemption under 501(c)(3) or 501(c)(4) [sic]." The language used on the BOLO was selected by Determinations specialists with the involvement of a front-line manager in EO Determinations. At this time, the language was not reviewed or approved by executive management.

As the number of advocacy cases grew, the Acting Director, EO Rulings & Agreements wanted to ensure that EO Determinations was not being over-inclusive in identifying such cases (including organizations that were solely engaged in lobbying or policy education with no apparent political campaign intervention). In addition, in light of the diversity of applications selected under this "tea party" label (e.g., some had "tea party" in their name but others did not, some stated that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.), the Acting Director, EO Rulings & Agreements soug ht clarification as to the criteria being used to identify these cases. In preparation for briefing me, the Acting Director, EO Rulings & Agreements asked the EO Determinations Program Manager what criteria Determinations was using to determine whether a case was a "tea party" case. Because the BOLO only contained a brief reference to "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)" in June 2011, the EO Determinations Program Manager asked the manag er of the screening group what criteria were being used to label "tea party" cases ("Do the applications specify/state ' tea party'? If not, how do we know applicant is involved with the tea party movement?"). The manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include govern ment 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."

As interviews with EO Determinations employees revealed, the BOLO description and the above - referenced list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group. Applications that did not contain these terms, but that contained indicators of potentially significant political campaign intervention, were also referred to the group assigned to work such cases.

Additional information was gathered during fieldwork to develop a timeline of events that chronologically details the evolution of the advocacy emerging issue, including the officials who participated or were informed about key events. This information is summarized in the R esults section table below.

Criteria: We reviewed applicable EO Internal Revenue Manuals (IRMs) and supplemental guidance to determine if there are procedures to ensure approval by appropriate management officials when the criteria is revised for emerging issues associated with applications for tax-exempt status. We did not identify any guidelines. Discussions with the EO Director , Rulings and Agreements, confirmed that no procedures existed prior to May 17, 2012, but controls were subsequently instituted to ensure that any

[1] EO Determinations indicates that it used the description "tea party" as a shorthand way of referring to the group of advocacy cases rather than to target any particular group. As a result, cases that did not have "tea party" in their name or application were included in the group of advocacy cases. In this document, "tea party" is used generically to refer to this entire grou p of advocacy cases except where noted to refer to a specific organization.

criterion that is established or edited is reviewed and approved at a higher level in the EO function . Moreover, we were informed that E O Determinations began revising IRM 7.20.4 (Emerging Issues) in October 2011, and we were provided with a draft of that IRM section, which contains procedures regarding the BOLO. All affected stakeholders have provided comments on the draft IRM, which are currently being incorporated, and the exhibits to the IRM are under review by the IRS Office of Ta xpayer Correspondence.

Results: The initial case that started the emerging issue development was identified in February 2010. The EO Determinations office requested assistance from the EO Technical office on how to process the cases. The Acting Manager EO Technical requested that this § 501(c)(4) case be transferred to EO Technical. In May 2010, EO Determinations specialists were told to coordinate "tea party" cases with a particular Determinations group. From April 2010 to October 2010, an EO Technical Tax Law Specialist, worked with a Determinations specialist to develop the cases not transferred from Determinations to EO Technical. In October 2010, while waiting for guidance from the EO Technical office, the Specialist assigned the emerging issue cases stopped processing them. In June 2011, the EO Director was briefed on the issue, and she raised concerns about the criteria being used to identify the cases and immediately directed that they be revised. The criteria were revised in July 2011. In November 2011, the EO Technical office provided draft guidance for processing the cases to the EO Determinations office. In January 2012, additional information request letters were issued to many of the organizations. This resulted in media and Congressional attention due to the amount and types of information being requested. In May 2012, training was given to the Specialists processing the cases. A review of all the cases identified to date was also completed to determine if any could be closed.

Conclusion: The initial criteria developed by the EO Determinations office referred to Tea Party organizations. In addition, the EO Technical office more than 20 months (March 2010 – November 2011) to provide written guidance on processing these cases to the EO Determinations office.

Draft

W&M EXHIBIT 26

SFC 003669

Timeline of Events for the Political Advocacy Emerging Issue

Date	Event	Additional Details
February 25, 2010	Determinations screener identified one § 501(c)(4) case that seemed similar to organizations receiving recent media attention for purportedly seeking classification as § 501(c)(4) social welfare organizations but operating like § 527 political organizations indicating a "high profile" case. Screener noted that the applicant indicated that it intended to spend a significant amount of its budget influencing elections. The screener's manager forwarded the issue up through management to the Acting Manager, EO Technical in Washington, D.C., who requested the case be forwarded to her.	
March 1, 2010	Screener Manager asked one of his Specialists to search TEDS to identify other Tea Party cases or similar organizations in order to determine the scope of the issue in the determination letter program. Specialist continued to complete searches for additional cases until the precursor to the "BOLO" was issued in May 2010.	Specialist used Tea Party, Patriot, and 9/12 as part of the criteria for these searches.
March 16-17, 2010	Ten total cases were identified. Acting Manager, EO Technical, requests two more cases be transferred to Washington, D.C. The Screener Group Manager transferred one § 501(c)(3) and one § 501(c)(4) case.	Not all of the ten cases had "tea party" in their name.
April 1-2, 2010	New Acting Manager, EO Technical, suggests the need for a Sensitive Case Report on the Tea Party cases. EO Determinations Manager agrees.	
April 5, 2010	Two Tea Party cases assigned to EO Technical Specialist.	
April 5, 2010	EO Determinations Screener developed list of 18 identified "Tea Party cases" during search of the TEDS. Three had already been approved as tax-exempt.	While the heading of the document listing these 18 cases referred to "Tea Party" cases, not all of the organizations listed had "tea party" in their name.

IRS0000062815

Date	Event	Additional Details
April 19, 2010	First Sensitive Case Report prepared by EO Technical.	Sensitive Case Reports are shared to the Director, EO Rulings & Agreements and a chart summarizing all Sensitive Case Reports is provided to the EO Director
April 25-26, 2010	Determinations Program Manager requests EO Technical contact for Specialist assigned to work other Tea Party cases. Received contacts. EO Technical Specialist sent development letters to one § 501(c)(4) and § 501(c)(3) Tea Party case.	
May 6, 2010	Prior to the BOLO development, an instruction to coordinate with a particular group all "Tea Party" applications was sent via email.	
May 17, 2010	Determinations Specialist will send development letters to EO Technical Specialist for review prior to issuance as part of EO Technical's attempt to provide guidance to assist EO Determinations.	
May 26, 2010	EO Technical Specialist closed § 501(c)(3) case as Failure to Establish and requested another § 501(c)(3) case.	
May 27, 2010	EO Technical Specialist began reviewing development letters of EO Determinations Specialist.	
June 14, 2010	EO Technical Specialist received first response from § 501(c)(4) case.	
June 30, 2010	Replacement § 501(c)(3) case assigned to EO Technical Specialist.	Organization did not have "tea party" in its name.
July 2, 2010	A Determinations Specialist identifies a case tha t appears to have direct links to Tea Parties with possibly 30 state chapters.	
July 27, 2010	Prior to the BOLO development, an e mail was sent updating the description of advocacy applications and providing a coordinator contact for the advocacy cases. Description now reads, "These case involve	

Date	Event	Additional Details
	various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4)."	
August 12, 2010	The Be On the Lookout (BOLO) listing was develop ed by a Determinations Specialist tasked to create it in order to replace the existing practice of sending separate emails to all Determinations employees as to cases to watch for, potentially abusive cases, cases requiring coordinated processing and emerging issues . The political advocacy emerging issue was included on the BOLO. The same description used in the July 2010 email for the advocacy emerging issue was used for this initial BOLO listing.	The language used on the BOLO was selected by Determinations specialists with the involvement of a front-line manager in EO Determinations. This language was not reviewed or approved by executive management.
August 2010	The responsibility for the advocacy emerging issue was moved to a different Determinations group as part of a global group realignment within EO Determinations.	
October 2010	The advocacy cases were transferred to another Determinations Specialist. He did not work on the cases while waiting for guidance from EO Technical. He received an advocacy tracking sheet from the previous Determinations Specialist responsible for the cases.	Determinations Specialist not sure who told him not to continue working on the cases while waiting for guidance. Per Director, Rulings and Agreements, there was a miscommunication about not working the cases while waiting for guidance. She does not know who told the Specialist not to work the cases.
October 19, 2010	An EO Technical group manager forwarded a memo to the Acting Manager, EO Technical, describing the work completed on the Tea Party cases by EO Technical. Included is a listing of the cases the EO Technical Specialist assisted the Determinations Specialist with.	The listing includes 40 cases – 18 of which do not have "tea party" in their names.

W&M EXHIBIT 26

SFC 003672

Date	Event	Additional Details
October 26, 2010	EO Determinations Program Manager raises concern to the Manager, EO Technical, with the approach being used to develop the Tea Party cases. Why does the EO Technical Specialist need to review every development letter when a template letter could be approved and used on all the cases?	
November 16, 2010	New coordinator contact for advocacy cases announced.	
November 16-17, 2010	A Determinations group manager raises concern to Determinations Area Manager that they are still waiting for a development letter template from EO Technical for the Tea Party cases. The coordinator has received calls from taxpayers checking on the status of their applications.	
November 17, 2010	EO Determinations Program Manager discussed Tea Party cases with Manager, EO Technical. Review of the cases by the EO Technical Specialist found that not all the cases have the same issues, so a template letter has not been developed.	
December 13, 2010	EO Determinations Program Manager asks Manager, EO Technical, for a status on the tea party cases. The Manager EO Technical, responds that they are going to discuss the cases with the Senior Technical Advisor to the EO Director shortly.	
January 28, 2011	EO Determinations Program Manager requests an update on the Tea Party cases from the Acting Manager, EO Technical.	
January 2011	A new person took over the Acting Manager, EO Technical role.	
February 3, 2011	Acting Manager, EO Technical, provides an update to the EO Determinations Program Manager on the cases being worked by the EO Technical Specialist; letters are being developed and will be reviewed shortly.	
March 2, 2011	A Determinations group manager reminds EO Determinations Program Manager to follow up with EO Technical on the status of the Tea Party cases.	
March 30, 2011	EO Determinations receives Operational Assistance Requests from the Taxpayer Advocate Service office	

Date	Event	Additional Details
	on two cases.	
March 31, 2011	EO Determinations Program Manager states that while waiting for guidance from EO Technical, Determinations Office still needs to work Tea Party cases to the extent possible.	This contradicts the Specialist's statement about not working the cases until guidance received from EO Technical and supports the statement of the Director EO Rulings & Agreements that there was a miscommunication about not working the cases while awaiting guidance.
April 13, 2011	EO Technical met with the EO Director's Senior Technical Advisor to discuss two cases. She made recommendations for case development.	
June 1-2, 2011	Acting Director, Rulings and Agreements, requested criteria used to identify "Tea Party" cases from EO Determinations Manager. EO Determinations Manager requested criteria from Screener Manager.	
June 1-6, 2011	As the number of advocacy cases grew, t he Acting Director, EO Rulings & Agreements wanted to make sure that EO Determinations was not being over - inclusive in identifying such cases (including organizations that were solely engaged in lobbying or policy education with no apparent political campa ign intervention). In addition, in light of the diversity of applications selected under this "Tea Party case" label (e.g., some had "tea party" in their name but others did not, some stated in their activities that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.), the Acting Director, EO Rulings & Agreements sought clarification as to the criteria being used to identify these cases. In preparation for the briefing w ith the EO Director, the Acting Director, EO Rulings & Agreements asked the EO Determinations Program Manager what criteria Determinations was using to determine if a case was a "Tea Party case." Because the BOLO only contained a brief reference to "Organ izations involved with the	

W&M EXHIBIT 26

SFC 003674

Date	Event	Additional Details
	Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)", the EO Determinations Program Manager asked Screener Manager what criteria were being used to label these cases ("Do the applications specify/state ' tea p arty'? If not, how do we know applicant is involved with the tea party movement?"). Screener Manager provided criteria for identifying potential "tea party" cases to EO Determinations Program Manager ("The following are issues that could indicate a case to be considered a potential 'tea party' case"). Information forwarded to Acting Director, Rulings and Agreements.	
June 6, 2011	EO Determinations Manager refers to the EO Director's inquiry of May 26th regarding a particular case after the Commi ssioner, Services and Enforcement, questioned her about it.	
June 6, 2011	Determinations Program Manager mentions that her office needs guidance from EO Technical to ensure consistency.	
June 29, 2011	A briefing was held with the EO Director. The briefing paper noted that EO Determinations was sending cases meeting any of the criteria below to a designated group to be worked: • "Tea Party," "Patriots" or "9/12 Project" is referenced in the case file. • Issues include government spending, government debt, or taxes. • Education of the public via advocacy / lobbying to "make America a better place to live." • Statements in the case file criticize how the country is being run. There were over 100 advocacy cases identified by this time. It was decided to develop a guide sheet for processing advocacy cases.	The briefing paper for the EO Director was prepared by Tax Law Specialists in EO Technical and EO Guidance, and was reviewed by the Acting Manager, EO Technical. The EO Guidance Specialist was the primary author of the briefing paper. During the briefing, the EO Director raised concerns over the language of the BOLO criteria for advocacy cases. The EO Director directed that the criteria immediately be changed.

W&M EXHIBIT 26

SFC 003675

Date	Event	Additional Details
July 5, 2011	Conference call held with EO Technical, EO Director, and EO Determinations Program Manager. They developed new criteria for identifying the cases at issue. Determinations Program Manager made changes to the BOLO. The "issue name" on the BOLO was changed to "advocacy orgs". The "issue description" was changed to "organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."	
July 5, 2011	Washington, D.C. Office will be putting a document together with recommended actions for advocacy cases.	
July 23, 2011	EO Technical assigned new person to coordinate with EO Determinations Office.	
July 24, 2011	Work commences on the guide sheet when the Acting Manager, EO Technical, asks Tax Law Specialists to draft list of things for EO Determinations Specialists to look for when working advocacy cases.	
August 4, 2011	EO Rulings and Agreements holds meeting with Chief Counsel so everyone has the latest information on the advocacy issue.	
August 4, 2011	EO Guidance Specialist asks if Counsel will review the check sheet for the advocacy organizations pri or to issuance to EO Determinations. Acting Director, Rulings and Agreements, responds that Counsel will review prior to issuance.	
August 10, 2011	EO Technical met with Chief Counsel to discuss two sample cases EO Technical requested from EO Determinations in April and May 2010.	
September 15, 2011	EO Determinations Program Manager sends a listing of all identified advocacy cases to Acting Director, Rulings and Agreements, so EO Technical can complete a "triage" of the cases on the TEDS. The utility of this triage was limited because the review was conducted through TEDS so the EO Technical specialist did not necessarily have the full application file. An EO Technical Specialist reviews the listing to determine if any could be closed on merit or closed with an adverse determination letter. This "triage" was considered a third screening.	

W&M EXHIBIT 26

SFC 003676

Date	Event	Additional Details
September 21, 2011	Draft guide sheet sent for review and comment to various EO employees in Washington, D.C.	
October 2011	New person took over as Acting Director, Rulings and Agreements.	
October 24, 2011	An EO Technical frontline manager forwarded initial "triage" results of advocacy cases to EO Determinations Office.	
October 25, 2011	EO Determinations Program Manager is unclear, based on the categories and terminology used in the spreadsheet, what Determinations should do with the triage results – close cases, develop further, etc. Also requests status of guidance from EO Technical.	
October 26, 2011	EO Technical Specialist provided further explanation of the triage results in an email to EO Determinations Program Manager.	
October 30, 2011	EO Determinations Program Manager contacts the Acting Manager, EO Technical, asking additional questions regarding the triage results and requesting a status update on the EO Technical guidance for the advocacy cases. The Determinations Program Manager received a call from someone working with one of the organizations. The person stated they would contact their Congressional Office on this organization and others.	
November 3, 2011	An updated draft version of the guide sheet is sent to EO employees for comment.	
November 6, 2011	Acting Manager, EO Technical, will have EO Technical Specialist provide more details on triage results. He also informed the EO Determinations Program Manager that the guidance is being reviewed prior to issuance.	
November 6, 2011	Acting Director, Rulings and Agreements, informs Acting Manager, EO Technical, and EO Determinations Program Manager that, based on the feedback he has received, the guidance developed will not work in its present form because it was written in technical terms that may not help Revenue Agents. Need EO Determinations Office input.	
November 15, 2011	EO Determinations Program Manager forwards EO Technical Specialist's triage results to the	

Date	Event	Additional Details
	EO Director's Senior Technical Advisor per the EO Director's request.	
November 22, 2011	Acting Manager, EO Technical, forwards the clarified triage results to the EO Determinations Program Manager.	
November 23-30, 2011	A new EO Determinations coordinator is assigned oversight of the advocacy cases by the group manager. The draft EO Technical guidance is provided to the coordinator (*Advocacy Organizations Guide Sheet*). The coordinator began working advocacy cases after receiving the draft EO Technical guidance in anticipation of a team being assembled to work the cases.	
December 7-9, 2011	An advocacy team of Determinations Specialists was set up to review all the identified advocacy cases; one Grade 13 from each Determinations group. An employee from Quality Assurance was also part of the team. EO Technical provided contacts for them.	
December 16, 2011	The first advocacy team meeting was held.	
January 2012	The first batch of letters requesting additional information for applications containing incomplete or missing information were issued by Determinations Specialists based, in part, on their reading of the draft *Advocacy Organizations Guide Sheet* issued by EO Technical.	
January 2012	Determinations Specialist tasked with performing a secondary screening of identified "advocacy" cases to ensure they were political advocacy, and not just general or lobbying advocacy.	
January 25, 2012	The BOLO criteria was again updated to focus specifically on political advocacy. The criterion was revised as "political action type organizations involved in limiting/expanding government, educating on the Constitution and Bill of Rights, social economic reform/movement." Coordinator contact changed as well.	
February 27, 2012	Advocacy team member asks when he can start issuing development letters on advocacy cases to applicants	

Date	Event	Additional Details
	again.	
February 27, 2012	EO Determinations Program Manager questions why advocacy team members are not issuing development letters. Advocacy team group manager had told team coordinator to stop developing template questions, not development letters. Miscommunication corrected on February 29, 2012.	
February 29, 2012	EO Director requests the Acting Director, Rulings and Agreements, develop a letter to clearly inform advocacy applicants what is going to happen if they don't respond to the development letters, and giving them more time for their responses.	
February 29, 2012	EO Director stops any more development letters from being issued on advocacy cases until new guidance is provided to EO Determinations. Acting Director, Rulings and Agreements, discussed with EO Determinations Program Manager, having specialists print out web site information and asking the organizations to verify the information instead of asking for applicants to print out the web sites.	
February-March 2012	Numerous news articles begin to be published with complaints from Tea Party organizations about the IRS's unfair treatment. Congress also begins to show interest in the IRS's treatment of Tea Party organizations.	
March 2012	A new person becomes Acting Group Manager of the advocacy team.	
March 1, 2012	Draft list of template questions prepared by members of advocacy team forwarded to EO Guidance.	Questions include asking for donor information.
March 5, 2012	Acting Manager, EO Technical, established procedures for reviewing first favorable determination letter for an advocacy case drafted by EO Determinations.	
March 6, 2012	EO Determinations forwarded an advocacy case it thought could be approved to EO Technical for review.	
March 8, 2012	Commissioner, Services and Enforcement, requests that if a taxpayer calls about having to provide donor	

W&M EXHIBIT 26

SFC 003679

Date	Event	Additional Details
	information, that EO Determinations will allow them not to send donor names, but inform them that we may need it later.	
March 8, 2012	Acting Director, Rulings and Agreements, sends a draft letter on giving advocacy applicants additional time to respond to the additional information letters to EO Determinations Program Manager for comment. The EO Determinations Program Manager raises a concern of giving organizations that are not compliant with standard response timelines special treatment.	
March 15, 2012	EO Determinations received guidance on how to handle different scenarios, based upon the status of their advocacy cases. Those § 501(c)(4) organizations that have not responded to a development lette r were issued another letter giving them an additional 60 days to respond. These letters were to be issued by March 16, 2012. This additional time letter was a one -time occurrence.	
March 23, 2012 and March 27, 2012	Technical Advisor to the TE/GE Commissioner and the Deputy Commissioner, Services and Enforcement, discussed concerns with the media attention the Tea Party applications were receiving. The Commissioner asked Technical Advisor to look into what was going on in EO Determinations and make recommendations.	
April 2012	Acting Director, Rulings and Agreements, learned that the BOLO criteria for the advocacy cases had been changed on January 25, 2012 and informed the EO Director.	
April 4, 2012	EO Determinations received the extension letter for issuance to § 501(c)(3) organizations that had not responded to a previous development letter.	
April 17, 2012	Employees of the EO Director and the TE/GE Commissioner received the EO Technical triage results and the EO Technical Guide Sheet provided to EO Determinations. Template questions developed by the advocacy team were also provided.	

W&M EXHIBIT 26

SFC 003680

Date	Event	Additional Details
April 23, 2012	Technical Advisor to the TE/GE Commissioner visited Determinations office in Cincinnati, OH with a group of EO employees, and reviewed around half of the identified advocacy cases.	
April 24, 2012	Acting Director, Rulings and Agreements, requests that the EO Director's Senior Technical Advisor review all the development letters issued for the advocacy cases and identify troubling questions, which organizations received them, and which Specialists asked them.	
April 25, 2012	Senior Technical Advisor to the EO Director provided results of development letter review, including list of troubling questions.	Results included names of donors as a troubling question.
April 25, 2012	Chief Counsel's Office provides additional comments on draft advocacy guide sheet to EO.	
May 8, 2012	Determinations Program Manager informed that EO employees from Washington, D.C., plan to visit Cincinnati, OH to provide training on the advocacy cases and perform a review of the cases to determine the appropriate action.	
May 9, 2012	Director, Rulings and Agreements, asks about the process for updating the BOLO.	
May 14, 2012	Director, Rulings and Agreements, requests feedback on whether statements she considers "propaganda" affect the approval of tax-exempt status.	Concluded, in light of case law on what is educational, that "propaganda" activities should be considered part of an organization's social welfare activities in analyzing whether it is primarily engaged in promoting social welfare.
May 14-15, 2012	Training held in Cincinnati, OH on how to process the advocacy cases. An EO Director's Technical Advisor took over from EO Determinations coordination of the advocacy team.	
May 16, 2012	Review of all advocacy cases begins in Cincinnati, OH. Cases divided into four groups: favorable determination, favorable with limited development, significant development, and probable adverse. This	

IRS0000062826

Date	Event	Additional Details
	took around three weeks to complete. A worksheet is used to document the reviews.	
May 17, 2012	The Director, Rulings and Agreements, issues memorandum outlining new procedures for updating the BOLO listing. The BOLO criteria was updated again. New criteria reads: "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."	Suggested additions and changes must be approved by the Group Manager of the emerging issues coordinator, the EO Determinations Program Manager, and the Director, Rulings and Agreements.
May 21, 2012	Counsel determines that requested donor information can be destroyed or returned to the applicant if not used to make the final determination of tax -exempt status. It does not need to be kept in the administrative record. A letter will be issued to the organizations informing them that the donor information was destroyed.	
May 24, ,2012	A phone call script was developed to inform some organizations that have not responded to additional information requests that it is not necessary to send the requested information and that their applications have been approved. Also, an additional paragraph was developed for the determination letter.	
May 2012	After the review of the advocacy cases was completed, each Determinations Specialist working advocacy cases was assigned an EO Technical employee to work with on the cases. The EO Technical employee is reviewing all development letters prior to issuance. Quality Assurance begins reviewing 100 percent of the cases in each bucket prior to closure. Quality Assurance review shifts from 100% review to sample review once a comfort level with the results of the quality review of each bucket is achieved.	
May 2012	A decision was made to refer cases to the Review of Operations Unit for follow-up if there are indications of political activity, but not enough to prevent approval of tax-exempt status.	

Date	Event	Additional Details
June 4, 2012	Draft letter developed to send to organizations that provided donor information. Letter will inform the organizations that the information was destroyed.	
June 7, 2012	The Director, Rulings and Agreements, provides guidance on how to process the advocacy cases now that they have been reviewed and divided into categories. Any new cases received will go through the same review process prior to assignment.	
July 15, 2012	A new Acting Group Manager is overseeing the advocacy team.	

DRAFT

W&M EXHIBIT 27

SFC 003683

From: Toby Miles <SFC [redacted]@msn.com>
Sent: Tuesday, October 30, 2012 9:16 PM
To: Paz Holly O; nancy.marks [redacted] Lerner Lois G
Subject: Long Timeline from LOIS
Attachments: Long Political Advocacy Timeline HOP comments.doc

Looks pretty good--a couple questions/comments

W&M EXHIBIT 28

SFC 003684

From: Biss Meghan R
Sent: Saturday, May 04, 2013 10:08 AM
To: Lerner Lois G [redacted]@msn.com
Subject: Summary of Application
Attachments: [redacted].docx

Lois:

Attached is a summary of the entire application fro [redacted]. 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 other victim compensation funds, I included the information we have on those funds from internet research.

As a note, th [redacted] compensation fund may be an issue for the community foundation that made the payments. The CF is large enough (171 million on 2011 Form 990) that a 5 million payment to victims shouldn't jeopardize their exemption. But we won't know anything for sure until their 2012 Form 990 is filed.

Also, this article re funds distributing money to victims is interesting:
http://www.motherjones.com/politics/2013/04/where-does-money-donated-victims-mass-shootings-go

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 003685

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

June 20, 2013

Control No: TEGE-07-0613-06

MEMORANDUM FOR MANAGER, EO DETERMINATIONS

FROM: Karen Schiller
Acting Director, EO Rulings and Agreements

SUBJECT: Interim Guidance on the Suspension of BOLO List Usage

Effective immediately, the use of watch lists to identify cases or issues requiring heightened awareness is suspended until further notice, with the exception of categories or cases required to be identified by Criminal Investigations, Appeals, or other functional divisions for the purposes of preventing waste, fraud and abuse. This includes the Be on the Lookout (BOLO) list and the TAG (Touch and Go) monthly alerts as defined in IRM 7.20.6.3.

These lists were used to identify potential issues or cases that required heightened or coordinated efforts. They involved cases with potential terrorist connections, abusive transactions, fraud issues, emerging issues, coordinated processing[1] and watch-out cases to allow for more consistent treatment of similarly situated taxpayers.

EO Rulings and Agreements is undertaking a comprehensive review of screening and identification of critical issues. We intend to develop proper procedures and uses for these types of documents. Until a more formal process for identification, approval and distribution of this type of data is established, Rulings and Agreements will not use this technique to elevate issues. All efforts will be made to provide a balance between ensuring taxpayer privacy and safeguards and ensuring consistent treatment in cases involving complex or sensitive issues.

Specialists should follow the instructions in IRM 7.20.1.4 regarding cases requiring transfer to EO Technical, as well as IRM 7.20.5.4 regarding cases requiring mandatory review prior to closing. All EO Determinations Specialists and Screeners will continue to check the names of organizations and individuals referenced in the case against the Office of Foreign Asset Control (OFAC) list. If the specialist identifies an emerging issue or one that might require special handling, he or she should discuss the case with his or her manager, who in turn will elevate the issue.

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[1] Coordinated processing cases are ones that present similar issues and thus are to be handled by a single team or group in order to facilitate consistency.

SFC 003686

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

December 23, 2013

Control No: TEGE-07-1213-24
Affected IRM: IRM 7.20.2
Expiration Date: December 23, 2014

MEMORANDUM FOR EXEMPT ORGANIZATIONS DETERMINATIONS UNIT AND EXEMPT ORGANIZATIONS TECHNICAL UNIT EMPLOYEES

FROM: Kenneth C. Corbin */s/ Kenneth C. Corbin*
Acting Director, Exempt Organizations, TE/GE

SUBJECT: Expansion of Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)

The purpose of this memorandum is to expand, update and amend the interim administrative guidance to the Exempt Organizations Determinations Unit and Exempt Organizations Technical Unit regarding an optional expedited process for certain exemption applications under section 501(c)(4), which was first outlined in my memorandum dated June 25, 2013, Control No.TEGE-07-0613-08, and amended by a memorandum dated July 18, 2013, Control No. TEGE-07-0713-12.

In the interest of effective and efficient tax administration and to assist in the transparent and consistent review of applications for tax-exempt status under section 501(c)(4), the IRS has been offering an optional expedited process for organizations that have submitted 501(c)(4) applications. Until now, this optional expedited process has been available only to applicants for 501(c)(4) status with applications pending for more than 120 days as of May 28, 2013 that indicate the organization may be involved in political campaign intervention or issue advocacy and that do not present any private inurement issues. The optional expedited process will now be offered to include all applicants for 501(c)(4) status (as opposed to only those with applications pending for more than 120 days as of May 28, 2013) whose applications indicate the organization could potentially be engaged in political campaign intervention or in providing private benefit to a political party and that otherwise do not present any issues with regard to exempt status.

The Exempt Organizations Determinations Unit and Exempt Organizations Technical Unit must follow the attached procedures for the identified pending applications effective the date of this memorandum. Any questions are to be directed to the Director, Rulings and Agreements, Exempt Organizations, TE/GE.

The content of this memorandum will be incorporated in IRM 7.20.2.

Attachment: Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)

cc: www.IRS.gov

Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)

Outlined below are the steps of a process for achieving expedited and fair processing of certain exemption applications under section 501(c)(4), specifically, those applications for section 501(c)(4) exemption that indicate the organization could potentially be engaged in political campaign intervention or providing private benefit to a political party (hereinafter, "pending applications") and that otherwise do not present any issues with regard to exempt status.

Step 1: IRS Reviews for Issues Other than Political Issues

The IRS will promptly review all pending applications to ensure that the application (1) is complete, (2) does not indicate any private inurement, and (3) does not present any other potential issues other than possible political campaign intervention or private benefit to a political party (hereinafter, collectively, "political issues").

If there are no issues other than possible political issues, the pending application will proceed to step 2.

If there are issues other than possible political issues, Exempt Organizations Determinations will prepare and send out a development letter seeking additional information on those other issues and informing the applicant it is eligible for the optional expedited process if/when such other issues are resolved. If the applicant sends a response that resolves these other open issues (i.e., the open issues other than the political issues) such that these issues are no longer a bar to granting exemption under § 501(c)(4), the pending application will proceed to step 2.

If any pending applications are determined ready to be granted favorable status, Exempt Organizations Determinations will proceed to issuing the favorable determination letter and steps 2 through 5 will not apply to such applications.

Step 2: Offering Optional Expedited Process

By letter to the applicant (Letter 5228), Exempt Organizations Determinations will provide an optional expedited process for all pending applications for which there are no issues other than political issues. The optional expedited process will permit these applicants to make representations under penalties of perjury regarding their past, current, and anticipated future political campaign intervention and social welfare activity. If the applicant makes the specified representations, Exempt Organizations Determinations will send the applicant a favorable determination letter without further review and within one month of receipt of the signed representations.

This process is optional; applicants can determine whether they want to provide the representations, assuming they are able to do so, or whether they want the IRS to continue to review their application with regard to the possible political issues.

Letter 5228 will request a response by the applicant within 45 days.

Step 3: IRS Processing of Applications

Optional Expedited Process— Exempt Organizations Determinations will send any applicant that provides the representations under penalties of perjury a favorable determination within one month of receiving the signed representations. Like all organizations receiving a favorable determination of exempt status, the organization may be subject to examination by the IRS and the organization's exempt status may be revoked if, and as of the tax year in which, the facts and circumstances indicate exempt status is no longer warranted. Revocation may be retroactive to the date of formation if the facts and circumstances indicate the representations were not accurate. An organization may no longer rely on the determination letter issued as part of this optional expedited process for any tax year in which its activities are no longer consistent with the representations, if the applicable legal standards change, or if the determination letter is revoked. If the organization determines that it continues to be described in section 501(c)(4) notwithstanding the fact that its activities are no longer consistent with the representations, it may continue to take the position that it is described in section 501(c)(4) and file Form 990, *Return of Organization Exempt From Income Tax*, but it must notify the IRS about such representations ceasing to be correct on Schedule O, *Supplemental Information*, of the Form 990.

An organization receiving Letter 5228 that provides the representations may be referred to Exempt Organizations Classification (using Form 5666) for subsequent review.

Regular Process—If an applicant received Letter 5228 and does not provide the additional representations under the optional expedited process within 45 days from the date of the letter, Exempt Organizations Determinations will formally transfer the pending application to Exempt Organizations Technical, and Exempt Organizations Technical will review and process the pending application under Steps 4 and 5.

Step 4: Reviewing the Pending Application Under the Regular Process – Documenting Review and Recommendations

Review of the pending applications under the regular process will include review by Exempt Organizations Technical and (in some cases, as explained below) Chief Counsel attorneys and a newly formed Advocacy Application Review Committee ("Review Committee") comprised of three career executives from the IRS and the Office of Chief Counsel.[1]

[1] The Committee will be comprised of the Director, EO; Commissioner (TE/GE); and Division Counsel/Associate Chief Counsel (TEGE), or their delegates.

Exempt Organizations Technical will review the facts and circumstances in the pending application and any other materials to determine if the organization is operated primary for social welfare purposes, including by evaluating the possible political issues. The issues will be analyzed as quickly as possible under current law, using available resources in applying the law to the facts.
Under the regular process, Exempt Organizations Technical will document[2] its review of the pending application and its recommendation regarding a favorable or adverse determination.

Favorable Recommendation: If Exempt Organizations Technical determines the applicant is ready to be recognized as described in section 501(c)(4), Exempt Organizations Technical will issue the applicant a favorable determination.

Request for Additional Information: If Exempt Organizations Technical determines that it needs to request additional information regarding the possible political issues, Exempt Organizations Technical will prepare and send a letter requesting additional information.

Adverse Recommendation: If Exempt Organizations Technical's recommendation (either initially or after receiving a response to a request for additional information) is for an adverse determination, Chief Counsel attorneys will review the application and documentation of the recommendation. If Chief Counsel attorneys disagree with the recommendation, they will provide a brief explanation of their views and send the application to the Review Committee. If Chief Counsel attorneys agree with the recommendation, they will assist Exempt Organizations Technical in preparing the proposed adverse determination letter and will follow normal processes in communicating with the applicant to offer an adverse conference (which would be provided on an expedited basis). If the adverse conference results in a changed recommendation to a favorable determination, Exempt Organizations Technical will issue the favorable determination, unless Exempt Organizations Technical or Chief Counsel attorneys recommend further review by the Review Committee.

If the adverse conference is held and does not result in a changed recommendation, the pending application will be sent to the Review Committee in Step 5.

Step 5: Committee Review of Adverse Recommendations

If, after Step 4, Exempt Organizations Technical and Chief Counsel attorneys recommend an adverse determination or conclude that additional review is needed, the Review Committee will review the application, the documentation of the recommendations at all levels, the proposed adverse determination (if any), and any

[2] Documentation will be done consistently through a template; reviewer will be noted by an identifying number rather than by name.

additional information from the adverse conference (if any). The Review Committee will apply the law to the facts presented and evaluate whether the applicant has satisfied the requirements for exemption under 501(c)(4).

With respect to an adverse recommendation, if the Review Committee concurs, Exempt Organizations Technical will issue an adverse determination. If the Review Committee does not agree, the Review Committee will instruct Exempt Organizations Technical to issue a favorable determination.

In any case, the Review Committee may recommend referral to the Exempt Organizations Classification (using Form 5666) for subsequent review.

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

SFC 003691

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

February 28, 2014

Control No: TEGE-07-0214-02
Affected IRM: IRM 7.20.2 and 7.20.5
Expiration Date: February 28, 2015

MEMORANDUM FOR EXEMPT ORGANIZATIONS DETERMINATIONS AND EXEMPT ORGANIZATIONS DETERMINATIONS QUALITY ASSURANCE

FROM: Stephen A. Martin */s/ Stephen A. Martin*
Acting Director, Exempt Organizations, Rulings and Agreements

SUBJECT: Streamlined Processing Guidelines for All Cases

To assist in the processing and review of applications, the streamlined process developed using the LSSO concepts is extended to Exempt Organizations Determinations (EOD) and Exempt Organizations Determinations Quality Assurance (EODQA). This memorandum expands on the streamlined process outlined in the Memoranda issued January 26, 2014 by Kenneth Corbin, Acting Director, EO, and December 27, 2013 by Karen Schiller, Acting Director, EO Rulings and Agreements.

Specialists have received training on the streamlined concepts developed during the LSSO process (see attachment). The training included assessing risk and using paragraphs in notices developed by the LSSO team (see attachment). To further assist the implementation of this pilot, effective upon issuance of this memo, the following procedures will be implemented and followed:

1. Specialists will use the paragraphs as described in the attachment and where appropriate for Letter 1312.
2. The inventory will be allocated among agents based on the number selected to work the cases.
3. The agents will work the cases to completion using the LSSO concepts.
4. To assess the quality of the determinations as well as the effectiveness of training, review will be conducted by EODQA staff where feedback will be provided to the agents and managers and reports issued analyzing overall results.

Any questions are to be directed to Jon Waddell, Manager, Rulings and Agreements, Determinations, Area 2.

The contents of the memorandum will be incorporated into IRM 7.20.2 and 7.20.5.

cc: www.irs.gov

Attachments:
Streamlined Application Process Pilot Summary
1312 Letter and Section 501(c)(3) Paragraphs for use in the Letter
Non-Section 501(c)(3) Paragraphs for use in the Letter

Proposal to Apply the Concepts from the Streamlined Application Process Pilot to Existing Inventory

Background & Streamlined Application Pilot

Background

In June 2013, the Lean Six Sigma Organization (LSSO), in conjunction with Subject Matter Experts from the TEGE, EO, Determinations, conducted an LSSO Opportunity Assessment to evaluate the effectiveness of the program and to develop opportunities for process improvement.

The assessment concluded that the current process has high inventory, limited resources, inaccurate forms, outdated IRMs, continuously changing procedures, multiple touch points, multiple work streams, and non-standard processes. In addition, inadequate technical tax law training has not equipped the workforce to effectively/efficiently complete the work.

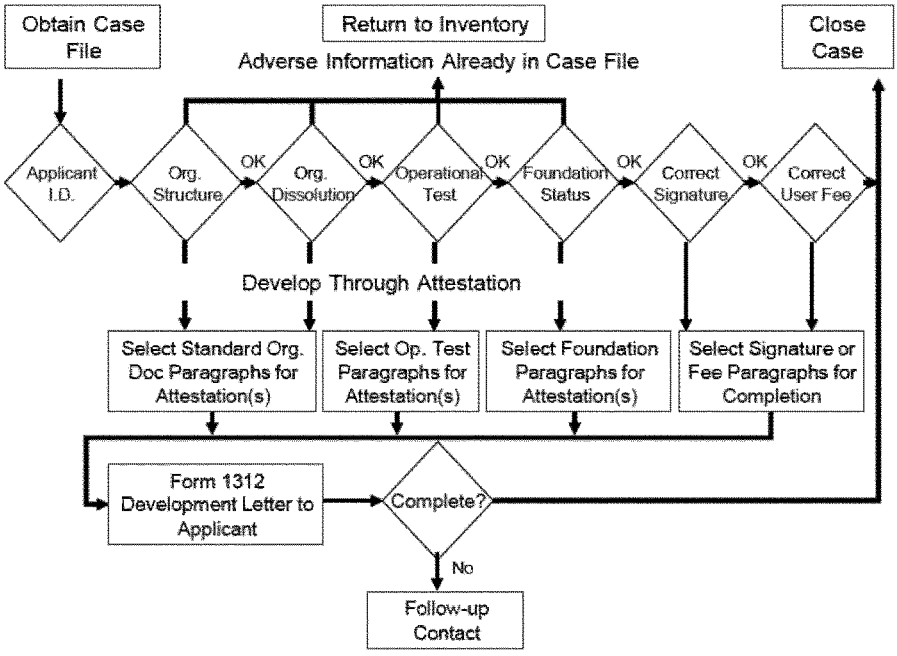
The assessment found that there may be opportunities to streamline the physical flow of work. Additionally, opportunities exist to implement a classification process that efficiently and accurately moves inventory, ensures all resources in the determination process, including the workforce, are developed and deployed appropriately thereby lessening the burden on employees and facilitating consistent and timely determinations.

Streamlined Application Pilot

The initial pilot of the Streamlined Application Process was conducted for three weeks in October and November. The pilot was a beta test, or proof of concept experiment, with Revenue Agents (RA) applying the concepts of a developed draft Form 1023-EZ to existing status 71 and status 51 501(c)(3) general inventory. Form 1023EZ drastically reduces the informational burden for both the taxpayer and the Service through Taxpayer (TP) assurance of meeting the organizational and operational tests through representational attestations. During the pilot, if additional clarification from the TP was needed, standardized paragraphs and language were used to get attestations and to promote consistency of the determination by the RAs. Consequently, the pilot showed that the underlying process was simplified, correspondence with the TP was easier, and case closures were accelerated. At the conclusion of the pilot, feedback from both RAs and TPs was generally positive.

In order to further-measure the effectiveness of the streamlined application process, beginning January 6, 2014, the Lean Six Sigma project team plans to replicate and expand the pilot by applying the lessons learned and concepts from this initial effort to the status 61 inventory. Results of this pilot will be monitored/measured to analyze effectiveness and will be reported to the appropriate management level as required.

Concepts of the Streamlined Application Process



1. In determining what information to require from applicants in a Form 1023EZ, the LSSO team followed the existing Code and Regulations that require an organization to meet the organizational and operational tests. Also included, was the information needed to accurately-update the Master File such as identifying information and foundation status.

   The following is a list of items deemed necessary by the team, and used in the initial pilot:

Part I--Identification of Applicant – Name, Address, EIN, FYM
Part II--Organizational Structure – Conformed Organizing Document
Part III--Organizational Structure – 501(c)(3) Purpose and Dissolution
Part IV --Your Specific Activities – Meets 501(c)(3) Operational Test
Part V--Foundation Classification – Correct Foundation Status
Part VI --Correct Signature
Correct User Fee

2. Based on the previous requirements, the team created a draft Form 1023EZ. Since it was determined that some organizations would not be able to use Form 1023EZ due

to the nature of their activities or amount of revenue, an eligibility worksheet was also created.

3. The worksheet was "applied" to the existing 71 and 51 inventories.

4. Standard paragraphs were created for Letter 1312 for missing information. Rather than ask organizations to submit documents and descriptions of items as is typically done while processing cases, the newly-developed paragraphs now request that organizations simply attest that they meet the requirements for exemption under section 501(c)(3) by signing in the appropriate area of the letter. This concept is similar to the requirements on Form 1023EZ where applicants would have simply checked the items to indicate they meet certain requirements.

   Note: If an organization would have not met the eligibility criteria to file Form 1023EZ, but the case could be closed on merit or by using the standard paragraphs, then the case was in fact closed. A tracking spreadsheet/tool was developed by the team to capture how many of these cases we closed.

The Streamlined Application Pilot

1. A team of revenue agents was selected to test the concept on the existing inventory. Half of the agents worked status 71 inventory and the other half worked status 51 inventory. Additionally, half of the agents worked paper cases and the other half worked TEDS cases.

2. Agents were instructed <u>not</u> to think about the case status as they have in the past, but rather to look at the case as though it was being reviewed for the first time and apply the Form 1023EZ concepts.

3. Agents reviewed each case to see if they could check off each item on the Form 1023EZ worksheet:

   - If each item could be checked, the case would be closed.
   - If the case could be closed after securing information using the standard paragraphs created, then Letter 1312 was sent with the appropriate paragraphs.
   - If the case could not be closed by securing the additional information/attestations, then the case was returned to inventory.

   (Examples of cases returned to inventory were those that had evidence of substantial private benefit or inurement or contained some other evidence of activities contrary to the requirements of IRC 501(c)(3) that could result in a denial of exemption.)

4. Below is an explanation of when each standard paragraph for Letter 1312 was used. (See attachment for the standard paragraphs used)

Organizing Document
The organizing document paragraph was sent if there was not an organizing document in the file or if the document in the file was not a filed/conformed copy.

Organizing Document – Verify Contains Appropriate Provisions
This paragraph verifying (c)(3) language was used with the previous organizing document paragraph if there was not a conformed organizing document in the file. This paragraph was sent so that the organization could verify that its organizing document contained the proper 501(c)(3) provisions.

Organizing Document – Amend
This paragraph was used when it was evident that the organization's organizing document did not have the correct language and an amendment was needed. This paragraph specifically tells the organization that the organizing document submitted with the application does not meet the requirements.

Operational Test
This paragraph was used when the information in the file did not show the organization met the operational test, but there was no clear evidence of an issue that would cause the organization to be denied exemption. In other words, if clarification was needed regarding the activities of the organization, this paragraph was used. Examples of when this paragraph was used include:

- If no activity narrative was submitted with the application.
- If the organization only submitted a brief narrative, such as just stating its mission.
- If the organization listed a charitable purpose such as "housing," but did not provide specific details or schedules.

If there was an indication in the file that the organization did not qualify for exemption then this paragraph was not used and the case was returned to inventory.

Foundation Status Incorrect
This item was used for minor foundation status changes such as 509(a)(1) and 170(b)(1)(A)(vi) to 509(a)(2). However, this might not be appropriate for certain situations where the organization might not agree to the change such as when the organization requests church status and it appears the organization is not a church.

Page 12 Signature
This item was used when a correct signature was needed.

Owe Additional User Fee
This paragraph was used when the correct user fee was needed.

SFC 003696

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Department of the Treasury

Date: *

*
*
*
*

Employer Identification Number:
XX-XXXXXXX
Person to Contact – Group #:
Specialist Name - XXXX
ID# XXXXXXX
Contact Telephone Numbers:
XXX-XXX-XXXX Phone
859-669-3783 Fax
Response Due Date:
*

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 and the enclosed Application Identification Sheet 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 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.

- 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 don't 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 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.

**********DELETE IF NO POWER OF ATTORNEY**********
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,

Specialist Name
Exempt Organizations Specialist

Enclosure: Information
Request Application
Identification Sheet

Name
EIN

Additional Information Requested:

*. **FYM**

In the space below, please clarify the month your annual accounting period ends. If the correct month is unclear, we will assume a calendar year basis and proceed with December.

_____

*. **Organizing Document**

Please sign and date the statement below to attest that you have an appropriate organizing document (your original application did not contain a conformed copy). Also, indicate your entity type and give the exact date your organizing document was filed (if incorporated) or adopted (if an association or trust).

___Corporation (Articles of Incorporation with proof of filing with the state)

___Association (Articles, Constitution, etc. with the exact date of adoption signed by two individuals)
___Trust (Trust document signed and dated by at least one trustee)

I attest that the organization has an appropriate organizing document that was filed or adopted on _____ (mm/dd/yyyy).

_____
Signature Date

NOTE: It is not necessary to submit a copy of the actual document with your response. The signature above is sufficient. Submitting a copy of the document or submitting conflicting supplemental information could delay the processing of your application.

*. **Organizing Document – Verify Contains Appropriate Provisions**

Section 1.501(c)(3)-1(b) of the Treasury Regulations describes the requirements an organizing document must meet in order for an organization to be organized for one or more exempt purposes under section 501(c)(3). The organizing document must:

(a) Limit the purposes of such organization to one or more exempt purposes under IRC 501(c)(3); and
(b) not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes; and
(c) provide that an organization's assets must be dedicated to an exempt purpose within IRC 501(c)(3), either by an express provision in its governing instrument or by operation of law.

See page 7 of the Instructions for Form 1023 for more details and examples of specific language that meets the requirements.

Please sign and date the statement below to attest that your organizing document either meets these requirements or has been amended to meet these requirements.

I attest that our organizing document contains appropriate provisions to comply with the above regulations, or has been amended to comply with the above regulations.

_____
Signature Date

NOTE: It is not necessary to submit a copy of the actual document with your response. The signature above is sufficient. Submitting a copy of the document or submitting conflicting supplemental information could delay the processing of your application.

Name
EIN

*. Organizing Document – Amend

Section 1.501(c)(3)-1(b) of the Treasury Regulations describes the requirements an organizing document must meet in order for an organization to be organized for one or more exempt purposes under section 501(c)(3). The organizing document must:

(a) Limit the purposes of such organization to one or more exempt purposes under IRC 501(c)(3); and
(b) not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes; and
(c) provide that an organization's assets must be dedicated to an exempt purpose within IRC 501(c)(3), either by an express provision in its governing instrument or by operation of law.

See page 7 of the Instructions for Form 1023 for more details and examples of specific language that meets the requirements.
The organizing document submitted with your application does not meet these requirements. Please amend your organizing document to include the appropriate provisions. Please sign and date the statement below to attest that your organizing document has been amended to meet these requirements.

I attest that our organizing document has been amended to comply with the above regulations.

_____

Signature Date

NOTE: It is not necessary to submit a copy of the actual document with your response. The signature above is sufficient. Submitting a copy of the document or submitting conflicting supplemental information could delay the processing of your application.

*. Operational Test

It is not evident from the information you submitted whether or not you meet the operational requirements to be exempt under section 501(c)(3). Therefore, please sign below to attest that you are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does 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.

_____

Signature Date

*. Foundation Status Incorrect

It appears you may have selected an incorrect foundation classification. In order for us to determine the best foundation classification for you, please sign and date below to authorize us to select the appropriate foundation classification for you.

_____

Signature Date

If you disagree, please explain.

Name
EIN

*. **Page 12 Signature**

Your application was not signed by an authorized individual. Please have an authorized individual (an officer, board member, director, etc.) sign the enclosed page of your application.

*. **Owe Additional User Fee**

The user fee you submitted with your application is insufficient. You submitted a user fee of $_____. The user fee for organizations that expect to receive $10,000 or less in annual gross receipts is $400. The user fee for organizations that expect to receive over $10,000 annually is $850. Therefore, please remit an additional $_____.

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 12192
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
201 Rivercenter Blvd
ATTN: Extracting Stop 312
Covington, KY 41011

SFC 003701

Questions for Additional Information Letter (non(c)(3))

FYM

In the space below, please clarify the month your annual accounting period ends. If the correct month is unclear, we will assume a calendar year basis and proceed with December.

_____

APPROPRIATE ORGANIZING DOCUMENT

Please sign and date the statement below to attest that you have an appropriate organizing document (your original application did not contain a conformed copy). Also, indicate your entity type and give the exact date your organizing document was filed (if incorporated) or adopted (if an association or trust).

___Corporation (Articles of Incorporation with proof of filing with the state)

___Association (Articles, Constitution, etc. with the exact date of adoption signed by two individuals)

___Trust (Trust document signed and dated by at least one trustee)

I attest that the organization has an appropriate organizing document that was filed or adopted on _____(mm/dd/yyyy).

_____

Signature Date

NOTE: It is not necessary to submit a copy of the actual document with your response. The signature above is sufficient. Submitting a copy of the document or submitting conflicting supplemental information could delay the processing of your application.

OPERATIONAL REQUIREMENTS

Organizations applying for exemption must meet certain operational requirements. These requirements vary depending on the subsection under which exemption is requested. It is not evident from the information you submitted whether or not you meet the operational requirements to be exempt under the subsection you requested. Therefore, please review the requirements for subsection _____in Publication 557 (found at www.irs.gov) and sign below to attest that you meet the requirements.

_____

Signature Date

AUTHORIZED SIGNATURE

Your application was not signed by an authorized individual. Please have an authorized individual (an officer, board member, director, etc.) sign the enclosed page of your application.

USER FEE

The user fee you submitted with your application is insufficient. You submitted a user fee of $_____. The user fee for organizations that expect to receive $10,000 or less in annual gross receipts is $400. The user fee for organizations that expect to receive over $10,000 annually is $850. Therefore, please remit an additional $_____.

(c)(19) DEDUCTIBILITY

IRC 170(c)(3) provides an income tax deduction for contributions to a post of "war veterans" if it is organized in the United States or any of its possessions, and no part of its net earnings inures to the benefit of any private shareholder or individual. To qualify for deductibility of contributions, a veterans' organization must also satisfy both a membership requirement and a purpose requirement.

To meet the membership requirement, at least 90% of the members must be war veterans. In addition, substantially all the other members must be either veterans (but not war veterans), or cadets, spouses, widows, or widowers of war veterans, veterans or cadets.

To meet the purpose requirement an organization must be organized and operated for at least one of the following purposes:

a. Furthering comradeship among persons who are or have been members of the Armed Forces;
b. Honoring the memory of deceased veterans and members of the Armed Forces and aiding and comforting their survivors;
c. Encouraging patriotism; and
d. Aiding hospitalized, disabled and needy war veterans and their dependents.

Do you meet these requirements, and therefore qualify to receive tax deductible contributions?

Yes _____; No_____

SFC 003703

MEMORANDUM OF DISCUSSION

DATE: 05/22/2012 **TIME:** 10:50-11:30 AM

SUBJECT/PURPOSE: To document discussion of the IG briefing paper that we prepared on certain § 501(c)(4) applications being "targeted"

PRESENT: Lois Lerner — Director, EO function
Troy Paterson — TIGTA

SOURCE: Discussion via teleconference

NOTE: The following are highlights from my conversation with the EO function Director, Lois Lerner.

- **Troy**: I'm just calling to let you know that we will be raising an issue to our IG regarding § 501(c)(4) applications. We have received documentation showing that certain organizations (Tea Party, organizations criticizing how the country is being run) were targeted for additional scrutiny in part of the EO function. We do not know whether this led to inconsistent or improper treatment of these organizations and we will not know that until we conduct an audit. I believe we need to inform our IG because our front office has received congressional interest and external complaints that the IRS has been targeted specific groups as part of the application process. The reason I wanted to let you know this is because the IG may or may not discuss this at the upcoming IRS Commissioner meeting. **Lois**: I was expecting your call and I understand the issues, but I would probably characterize it differently.

- **Troy**: Let me fill you in on what I know and you can let me know if you think my understanding is incorrect and if you have any perspective to add. In the Spring of 2010, the IRS began receiving certain types of applications that it had not seen before. Therefore, the EO Rulings and Agreements organization put out e-mails to its screeners to target all "Tea Party" applications for additional review by a certain group. By June 2011, the criterion had been expanded to include other groups, such as Patriots and the 9/12 group, as well as groups that question how the country is being run. About 100 cases had been set aside by this time. It is my understanding that you were briefed on the criterion being used. As a result of the briefing, the criterion was changed to be more about the tax law and less about the specific groups or ideologies involved. We believe that the criterion should have been about issues with the tax law all along. We are aware that the criterion has changed since then and is still under revision. Is this correct? **Lois**: That is basically correct; however, I think I can fill in some gaps that will help you understand the situation better. It has been customary for the applications group in Cincinnati to document emerging issues through e-mails. However, we received complaints at a CPE that employees were receiving too much information via e-mail and there was no consolidated place where employees could go for this information. As a result, Cincinnati began consolidating information into what is called a BOLO (Be On the LOokout). In the Spring of 2010, the applications group began seeing a surge in applications that were very up front about political work the organizations would be conducting. It is not unusual for us to send cases to a specific group when we see an uptick of applications with the same issues. We like to have a specific group or set of people work the applications so that we are consistent in our determinations.

- **Lois**: Since our Cincinnati folks had never seen applications like the ones they were receiving, they contacted the TE/GE Division National Office to ask for guidance on how to proceed. At the time, I was only aware that there had been an uptick in the number of applications received that involved political activity. This is not unusual leading into an election year. I had not been informed of the specific criterion that was being used in the field. Our National Office asked to review several representative cases so that we could provide guidance on how the field should handle these cases. This is not unusual when there is not a lot of legal precedent in an area. Our National Office reviewed cases and drafted guidance for the field. However, I'm not sure if that guidance was used or whether it was used consistently because it was only in draft form. When I heard the criterion being used, I immediately asked that the criterion be changed. While I don't believe our folks in Cincinnati meant any malice, I was disappointed with the language used to describe the emerging issue. I would agree that the language should be more about the issues in the applications and not about particular groups that are applying for tax exemption. I believe that Cincinnati was just using shorthand to describe the cases and

was not thinking about the impact of describing cases in a particular manner. Our work is much more out in the public and, while I believe the Cincinnati employees were just trying to find an easy way to describe the applications, our employees need to be cognizant of the fact that we need to make it clear that we do not select cases for additional determinations or examination work based on political affiliation. It should not enter into the conversation.

- **Lois**: As a result of the briefing you mentioned, we changed the criterion. I was later informed that the criterion we decided upon was so generic that it was catching too many applications. Therefore, the Cincinnati employees began changing the criterion to ease the situation. Once I heard about that, I began to put controls in place to ensure that any criterion that is established or edited is reviewed and approved at a higher level in the EO function organization. **Troy**: It is interesting that you say that because the audit team and I have spoken about the need for a control that would ensure a more broad-based approval than local level e-mails and spreadsheets. **Lois**: I believe that by the time you get to reporting on your audit that we will have already taken care of the issue. I believe you will also see that we have conducted training on the issue and we're moving forward on getting guidance into the IRM. You will also see some other actions that we are taking.

- **Troy**: Would you suggest that I contact Joseph Grant (Acting Commissioner, Tax Exempt and Government Entities) to let him know about the fact that we will be briefing our IG and he may brief the IRS Commissioner? **Lois**: I appreciate it, but I can inform him of our discussion. He is very well aware of the events that have led us to this point.

JOURNAL INTERACTIVE

Q&A: Untangling Wisconsin's recent John Doe investigations

By Patrick Marley of the Journal Sentinel
Sept. 10, 2014

Madison — The future of a stalled investigation into Gov. Scott Walker's campaign and conservative groups backing him now lies with a panel of three federal appeals judges. Those judges expressed skepticism during oral arguments that the matter should even be before them, signaling they could leave key questions about the probe to be dealt with by state courts.

The case before the 7th Circuit Court of Appeals in Chicago is one of five pieces of litigation that have been spawned by the probe.

Here's a look at what's happened so far and what's on the horizon. This article updates an earlier Q&A on the issue.

Q.Who launched the investigation?

A. Milwaukee County District Attorney John Chisholm, a Democrat, conducted a wide-ranging probe of aides and associates to the Republican governor going back to Walker's time as Milwaukee County executive. That investigation led to six convictions, ranging from misconduct in office for campaigning on county time to stealing from a veterans fund. Walker was not charged, and that investigation was shut down in March 2013.

Before closing that probe, however, Chisholm launched a separate investigation in the summer of 2012 based on information learned in the first one. To get the investigation off the ground, Chisholm worked with district attorneys from both parties in four other counties and the state Government Accountability Board, which administers the state's elections and ethics laws. Francis Schmitz, a former assistant U.S. attorney and self-described Republican, has been named special prosecutor in the case.

Q.What is a John Doe investigation?

A. The state's unusual John Doe law — which dates to the 19th century — allows prosecutors to compel people to give testimony under oath and turn over documents. They've been dubbed John Doe probes because their purpose is to determine whether a crime has been committed and, if so, by whom.

The probes are conducted in front of a judge — in this case, Reserve Judge Gregory Peterson, a former appeals judge from Eau Claire. The judge issues and enforces the secrecy orders, presides over testimony and rules on legal questions that arise.

Q.What is being investigated?

A. Some details of the investigation are not known because the probe is being conducted in secret. But

many specifics have come out in recent months because of the litigation over the investigation and through other means. Investigators were looking into whether the Wisconsin Club for Growth and other conservative groups illegally coordinated with the campaigns of Walker and candidates for state Senate during the 2011 and 2012 recalls that were sparked by Walker's limits on collective bargaining for most public workers.

Prosecutors contend they have developed evidence that Walker and his top campaign aides extensively raised large sums from donors for the Wisconsin Club for Growth. Prosecutors say the club received $700,000 during that period from Gogebic Taconite, an iron ore mining firm that secured relaxed environmental regulations as it pursues developing a massive mine in northern Wisconsin. Walker has said he was unaware of that donation.

In one filing, prosecutors spelled out a theory that Walker was part of a "criminal scheme" to subvert campaign laws. But an attorney for one prosecutor later said Walker was not a target of the probe.

Q.What is illegal campaign coordination?

A. Candidates are required to disclose all the donations they receive, and individuals who donate to their campaigns face limits (for statewide offices such as governor, they can give no more than $10,000 each in a normal four-year election cycle). Independent groups — if they're set up in a certain way — can keep their fundraising secret and accept and spend unlimited amounts from individuals, corporations or unions.

Candidates and such independent groups are not generally allowed to closely cooperate with each other on spending. For instance, candidates and those independent groups can't directly share their ad strategy with each other.

Experts differ over what type of coordination is acceptable and how closely candidates can work with certain types of groups. Such questions are at the heart of this investigation and related litigation.

Q.Is the investigation ongoing?

A. For the moment, it has been halted by U.S. District Judge Rudolph Randa in Milwaukee. Prosecutors are asking the appeals court to throw out the federal lawsuit against them and allow them to restart their probe.

Q.How did a federal judge get involved?

A. In February, the Wisconsin Club for Growth and one of its directors, Eric O'Keefe, sued in federal court in an attempt to stop the investigation because they said it violated their rights to free speech, free association and equal protection under the law. They portrayed the investigation as a partisan witch hunt aimed at bullying conservative groups from making their voices heard during election time.

Randa soon began expressing skepticism toward the prosecutors and refused to dismiss the lawsuit as they requested. They said the case should be thrown out because federal courts generally can't interfere with state proceedings and because prosecutors are usually immune from lawsuit.

In May, Randa issued a preliminary injunction halting the probe while he considers the lawsuit. He said the probe had to be stopped for now because it appeared prosecutors were violating O'Keefe and the club's First Amendment rights.

Q.What happened after he halted the probe?

A. Less than 24 hours after Randa issued his decision, the appeals panel reversed him. It said Randa didn't have the authority to put the injunction in place because the prosecutors had already appealed his decision against dismissing the case.

The three-judge panel told Randa he could issue an injunction only if he first certified that prosecutors' earlier appeal was frivolous. Even then, he could not order that the prosecutors return evidence or their copies of it at this early stage of the case.

The next day, Randa entered an order finding the appeal frivolous and reinstating his injunction.

Q.What happens next in the case?

A. The panel heard oral arguments Sept. 9 as it considers whether the injunction halting the investigation should be lifted and whether the case should be dismissed.

The judges expressed skepticism that they should address the campaign finance questions at the center of the case, saying federal courts normally stay out of the way of state courts as they wrestle with issues. The court is expected to rule in the coming months, and could rule before Nov. 4, when Walker stands for re-election against Democrat Mary Burke.

Q. What happens if the federal court throws out the lawsuit?

A. The questions over campaign finance law would then be left to state courts to decide. The investigation would remain effectively halted unless prosecutors could persuade a state court to let them revive their probe.
The Wisconsin Supreme Court has yet to decide whether it will take three cases over the investigation. A fourth case is pending in Waukesha County Circuit Court.

Q.What about all the sealed records?

A. Normally, court records are available to the public. But in this case, thousands of pages have been fully or partially blacked out because of the secrecy inherent in the underlying investigation.

The Reporters Committee for Freedom of the Press and four other journalism groups have intervened in the case in an attempt to unseal all those documents. Meanwhile, two targets of the probe have intervened to keep all of them sealed, arguing information about them shouldn't be released because they haven't been charged.

The appeals court is expected to address whether more records should be unsealed and whether the unnamed targets should be allowed to continue in the case anonymously.

Q.Beyond the order halting the probe, are there other impediments to the investigation?

A. Yes. Peterson, the judge overseeing the John Doe investigation, in January quashed subpoenas prosecutors had issued, saying — much as Randa later ruled — that the alleged coordinated activity in question was not illegal.

Q.How did prosecutors respond to that ruling?

A. Chisholm and Schmitz in February asked a state appeals court to overturn Peterson's decision on the subpoenas. The District 4 Court of Appeals in Madison has not ruled.

Walker's campaign in April asked the state Supreme Court to take the case without having the appeals court first weigh in on it. The high court hasn't said whether it would take the case.

Jason Stein of the Journal Sentinel staff contributed to this report.

Find this article at:
http://www.jsonline.com/news/sealed-documents-in-john-doe-probe-of-gov-scott-walkers-campaign-could-be-unsealed-tuesday-b99331782-271713691.html

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JOURNAL INTERACTIVE

Wisconsin Supreme Court ends John Doe probe into Scott Walker's campaign

By Patrick Marley and Mary Spicuzza of the Journal Sentinel
Updated: 12:58 p.m.

Madison— Dealing Gov. Scott Walker a victory just as his presidential camapaign gets underway, the Wisconsin Supreme Court in a sweeping decision Thursday ruled the governor's campaign and conservative groups had not violated campaign finance laws in recall elections in 2011 and 2012.

The ruling means the end of the investigation, which has been stalled for 18 months after a lower court judge determined no laws were violated even if Walker's campaign and the groups had worked together as prosecutors believe.

It could also reshape how campaigns are run in Wisconsin by making clear campaigns can work closely with outside groups, allowing more political money to be spent without the names of donors being disclosed.

Also, the decision builds momentum for rewriting campaign finance laws, overhauling the state's elections and ethics agency and limiting the ability of prosecutors to conduct John Doe probes. Republicans who control the Legislature have put those issues at the top of their agenda, arguing such investigations shouldn't be conducted in political cases and targets of probes shouldn't be barred from speaking out publicly if they want.

The ruling dealt with three pieces of litigation, and the justices split 4-2 on the campaign finance laws that were at the center of the probe.

Writing for the majority, Justice Michael Gableman found a key section of Wisconsin's campaign finance law is "unconstitutionally overbroad and vague" and that the activities prosecutors had investigated were not illegal. He ordered prosecutors to return all records they seized and destory any copies they made of them.

"It is utterly clear that the special prosecutor has employed theories of law that do not exist in order to investigate citizens who were wholly innocent of any wrongdoing," Gableman wrote.

Calling those who challenged the probe "brave individuals," Gableman wrote that their litigation gave "this court with an opportunity to re-endorse its commitment to upholding the fundamental right of each and every citizen to engage in lawful political activity and to do so free from the fear of the tyrannical retribution of arbitrary or capricious governmental prosecution. Let one point be clear: our conclusion today ends this unconstitutional John Doe investigation."

In dissent, Justice Shirley Abrahamson wrote that the ruling had loosened campaign finance rules and that "the majority opinion's theme is 'Anything Goes.'"

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"The majority opinion adopts an unprecedented and faulty interpretation of Wisconsin's campaign finance law and of the First Amendment," she wrote. "In doing so, the majority opinion delivers a significant blow to Wisconsin's campaign finance law and to its paramount objectives of 'stimulating vigorous campaigns on a fair and equal basis' and providing for 'a better informed electorate.'"

A spokeswoman for Walker's presidential campaign applauded the ruling.

"Today's ruling confirmed no laws were broken, a ruling that was previously stated by both a state and federal judge," AshLee Strong said in a statement. "It is time to move past this unwarranted investigation that has cost taxpayers hundreds of thousands of dollars."

Francis Schmitz, the special prosecutor leading the investigation, had written in court papers that one or more of the justices should not have participated in the case because the groups being investigated had spent millions of dollars to help elect those justices. None of those justices agreed to step aside, and they did not explain in Thursday's ruling why they believed they could remain on the case.

Schmitz could ask the U.S. Supreme Court to review their decision to stay on the cases, but the nation's high court steps into such matters rarely. He could also ask the nation's high court to review how the state court interpreted the First Amendment right to free speech.

In a statement, he did not say if he would do so.

"The decision represents a loss for all of the citizens of Wisconsin — independents, Democrats and Republicans alike," he said in his statement. "It defies common sense that a Wisconsin resident of average means who gives $25 to a campaign has his or her name publicly reported under the law but, according to this decision, someone who gives, for example, $100,000 to a group which closely coordinates with the same campaign can remain anonymous."

The investigation and the litigation have been shrouded in secrecy. Large sections of court filings have been blacked out — which is highly unusual — because the underlying investigation was conducted under the state's John Doe law, which allows prosecutors to operate in secret.

John Doe probes allow prosectuors to force people to produce documents and give testimony and bar them from speaking about the matter with anyone but their attorneys. They are conducted before a judge.

Despite the attempts to keep the information about the investigation private, key details have emerged in news reports, opinion pieces and a wave of litigation challenging the probe.

Milwaukee County District Attorney John Chisholm in August 2012 opened the investigation into Walker's campaign. He was assisted by Schmitz, four district attorneys from both parties and the Government Accountability Board, which oversees the state's campaign finance laws. Chisholm is a Democrat and Schmitz is a Republican.

Walker and other Republicans have insisted the probe is a political witch hunt — claims prosecutors deny.

Those in the majority raised questions about the way the probe was conducted, with Gableman writing the search warrants were executed as "pre-dawn, armed, paramilitary-style raids" and Justice David Prosser writing in a concurrence that the subpoenas were "so extensive that they make the fruits of the legendary Watergate break-in look insignificant by comparison."

In all, 29 organizations and individauls received subpoenas seeking millions of documents. Some of the

material seized was "wholly irrelevant information, such as retirement income statements, personal financial account information, personal letters, and family photos," Gableman wrote.

But Schmitz denied the search warrants were executed unprofessionally and said the majority had accepted the targets' claims as fact without anyone holding a hearing on the matter. Those raids were audio recorded, he said.

"I was denied the opportunity to appropriately respond to the campaign of misinformation about how and why the investigation was conducted," Schmitz said in his statement.

The investigation focused on whether Walker's campaign illegally coordinated its activities with the Wisconsin Club for Growth and other conservative groups.

Prosecutors turned up evidence that Walker helped raise funds for the Wisconsin Club for Growth and that his campaign worked with the group on strategy. R.J. Johnson simultaneously served as an adviser to the club and Walker's campaign.

Those groups and Walker say they did nothing wrong, in part because the groups run issue ads that don't explicitly tell people how to vote. The state's high court on Thursday came firmly down on their side, with Gableman writing prosecutors and election authorities don't have the power to determine how much campaigns and such groups can work together.

Issue groups have broader free speech rights than those that run ads expressly urging people to vote for or against candidates. To the average voter, the two types of ads appear similar because they praise or denigrate candidates, but only one type uses phrases such as "vote for" or "vote against."

Reserve Judge Gregory Peterson, who oversaw the investigation, agreed with the groups in January 2014 that the activites in question were not illegal. He quashed subpoenas that had been issued to the groups and his ruling effectively halted the investigation.

Court records have shown those fighting the subpoenas included Walker's campaign; the state's largest business group, Wisconsin Manufacturers & Commerce; and WMC's political arm.

Schmitz asked an appeals court to overturn that ruling. Meanwhile, the Wisconsin Club for Growth, Johnson and another club adviser, Deb Jordahl, filed a lawsuit challenging the probe on technical grounds. Johnson and Jordahl — whose homes were raided in October 2013 — also filed suit directly with the high court asking the high court to uphold Peterson's ruling.

The suits involving the club, Johnson and Jordahl were filed anonymously, but the Journal Sentinel reported on their involvement in the cases last year.

The appeals court ruled in favor of prosecutors in the challenge that dealt with technical issues about how the probe was conducted. The state Supreme Court agreed last year to take that case, as well as the other two without input from the appeals court.

The technical challenge argued the special prosecutor had been improperly appointed, reserve judges couldn't oversee such probes and investigations in seperate counties couldn't be conducted together. The state Supreme Court agreed with the appeals court and did not accept those arguments, though Gableman wrote the way the investigation was conducted "does raise serious questions."

But the justice sided with the targets oft he probe on the more significant issue of whether issue groups and campaigns can closely collaborate. They found that they could.

Joining Gableman in the majority were the court's three other conservatives — Prosser, Chief Justice Patience Roggensack and JusticeAnnette Ziegler.

In dissent on the campaign finance issue were Abrahamson, a liberal, and Justice N. Patrick Crooks, a swing vote. Liberal Justice Ann Walsh Bradley did not particiapte in the case because her son practices law with one of the attorneys involved in the case.

Eric O'Keefe, the director of the Wisconsin Club for Growth, said in a Thursday interview with conservative Green Bay radio host Jerry Bader state law needed to be rewritten to prevent the John Doe law from being used in the future for cases involving politics.

"If tools like this are allowed to be used by one side, eventually they will be used by the other side," O'Keefe said.

Todd Graves, an attorney for O'Keefe and the club, praised the ruling and said in a statement Chisholm and the accountability board until now "acted like playground bullies without fear of restraint from the courts."

"The government acted as if key protections in our nation's Bill of Rights simply did not apply," Graves said in his statement. "They used search warrants to conduct pre-dawn raids on families and secretly obtained millions of personal emails from numerous parties, including individuals who still do not know they were targeted. They counted on a veil of secrecy to assault the fundamental liberties of our clients and commit taxpayer funds for an outrageous misuse of their offices and the law."

The chairman of the accountability board, Gerald Nichol, said in a statement the ruling shows the need for the Legislature to convene a committee to study how to rewrite Wisconsin's campaign finance law. The decision reverses how state election officials have interpreted campaign finance laws for nearly 40 years, he said.

Republican Attorney General Brad Schimel — who had no role in the investigation — issued a statement that said the ruling "leaves no doubt that the John Doe investigation is over."

"This closes a divisive chapter in Wisconsin history, and the assertive recognition of First Amendment rights by the Wisconsin Supreme Court protects free speech for all Wisconsinites," his statement said.

But Daniel Weiner, senior counsel at the Brennan Center for Justice at New York University, said in a statement the court "has made campaign finance law extraordinarily easy to evade. No other court has gone this far and for good reason — it is a misreading of the law and threatens fair and transparent elections."

Justices asked to step aside

Weiner's center filed a brief in the case supporting a February motion by the special prosecutor asking that one or more justices drop out of the cases, presumably because they have benefitted from spending by the Wisconsin Club for Growth and Wisconsin Manufacturers & Commerce.

The Wisconsin Club for Growth is estimated to have spent $400,000 for Ziegler in 2007; $507,000 for Gableman in 2008; $520,000 for Prosser in 2011; and $350,000 for Roggensack in 2013.

WMC spent an estimated $2.2 million for Ziegler; $1.8 million for Gableman; $1.1 million for Prosser; and $500,000 for Roggensack.

In addition, Citizens for a Strong America — a group funded entirely by the Wisconsin Club for Growth — spent an estimated $985,000 to help Prosser. The spending estimates come from the Wisconsin Democracy Campaign, which tracks political spending.

The justices did not give a reason for why they don't view that spending as a conflict, but court rules say political spending on its own is not enough to force a justice off a case.

In the 2011 race, Prosser defeated JoAnne Kloppenburg. She later was elected an appeals court judge and participated in one of the challenges to the probe even though she had money spent against her by groups involved in the probe. Kloppenburg is again seeking a seat on the high court — this time for the seat Crooks is expected to vacate when his term ends next year.

Abrahamson has benefitted from spending by unions and liberal groups, but those entities were not involved in the investigation or the litigation over it.

Prosceutors could ask the U.S. Supreme Court to review Thursday's decision because justices did not step down from the case or on the First Amendment issues the Wisconsin high court raised.

Other lawsuits filed

O'Keefe and his Wisconsin Club for Growth have challenged the probe on other legal fronts. A federal lawsuit they brought alleging their civil rights were violated was thrown out last year and a separate lawsuit over the probe is pending in Waukesha County Circuit Court.

Putting up a defense against those lawsuits has cost taxpayers more than $1 million. Prosecutors and investigators have never provided an accounting of how much their investigation has cost, frustrating critics of the probe.

The disclosures stemming from the litigation have been damaging to both prosecutors and those being investigated. One set of court documents showed Walker had worked closely with the Wisconsin Club for Growth, and that the group had roped in $700,000 from Gogebic Taconite, the mining company that helped write a 2013 law that loosened environmental regulations aimed at helping the company establish an iron ore mine in northern Wisconsin. Gogebic abandoned the project this year.

Even before the high court ruled, it was clear changes are likely in store. Republicans who control the Legislature have put on their agenda plans to rewrite campaign finance laws, overhaul how John Doe probes are conducted and restructure the Government Accountability Board. They have been waiting for the court decisions before advancing those bills and could take them up this fall.

Supporters of the accountability board say it should be preserved and have called it a model for the nation because it is non-partisan and consists of six retired judges. Opponents have alleged its staff is biased against Republicans.

Some GOP lawmakers last week called for the board's director, Kevin Kennedy, to step down after learning he has had a professional association for years with Lois Lerner, the former Internal Revenue Service official involved in targeting tea party groups for review of their tax exempt status. Kennedy said there was nothing to suggest he or his agency had done anything inappropriate.

Thursday's ruling also revealed some details that hadn't previously been known. For instance, Johnson and Jordahl separately filed court claims in Decmeber 2013 to recover material that prosecutors had seized from them.

Jason Stein of the Journal Sentinel staff contributed to this report.

Find this article at:
http://www.jsonline.com/news/statepolitics/wisconsin-supreme-court-ends-john-doe-probe-into-scott-walkers-campaign-b99535414z1-315784501.html

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MAY 20, 2013 1:30 PM

A Partisan Union at the IRS

Nearly two-thirds of campaign contributions from IRS employees go to Democrats.

By Andrew Stiles

The IRS may be "an independent enforcement agency with only two political appointees," in the words of White House press secretary Jay Carney, but its employees are represented by a powerful, deeply partisan union whose boss has publicly disparaged the Tea Party and criticized the Republican party for having ties to it.

The White House continues to insist that profound incompetence, not partisan malice, led the IRS to single out conservative groups applying for nonprofit status. If the testimony of acting commissioner Steven Miller is true, incompetence was certainly a factor. But given all that has come to light about the agency and its employees in recent days, it would be hard to believe that its targeting of conservative groups wasn't also politically motivated.

As the *Washington Examiner*'s Tim Carney and others have pointed out, the agency's employees are heavily engaged in politics and lean considerably to the left. Records show that IRS employees in 2012 donated more than twice as much to the Obama as to the Romney campaign. Nearly two-thirds of all employee contributions over the last three elections cycles have gone to Democrats.

This individual activity is tame compared with that of the National Treasury Employees Union (NTEU), which represents 150,000 federal employees across 31 agencies, including the IRS. The union endorsed Obama in both of his presidential runs and operates a political-action committee (PAC) that has donated $1.63 million to federal candidates and committees since 2008, more than 96 percent of it to help elect Democrats. During that period, IRS employees have contributed more than $67,000 to the PAC.

This past cycle, the union spent heavily on competitive House and Senate races. (In light of the recent scandal, the National Republican Campaign Committee is calling on Democrats to return NTEU contributions.) The union's members participated in other ways as well, by "educating and organizing various types of activities around the country including candidate nights and volunteering for campaigns."

Colleen Kelley, the union's president since 1999, worked as a revenue agent for the IRS for 14 years, and her political leanings are clear. She has given nearly $5,000 to the NTEU PAC since 2007, and she donated $500 to John Kerry's presidential campaign in 2004. If her public statements

are any indication, Kelley thinks none too highly of the Republican party, especially its more conservative elements such as the Tea Party.

In March 2011, when Congress was in talks over a continuing resolution to prevent a government shutdown, Kelley slammed the "extreme elements" of the GOP for insisting on meaningful reductions in federal spending. "For months, budget negotiations have stalled in Congress as House Republicans have succumbed to extreme Tea Party elements rather than coming to common sense compromises," Kelley said in a statement. "You have to be from Wonderland to believe that you can make severe cuts in government spending without sending the economy into a tailspin and cutting critical services Americans depend upon."

Kelley was highly critical of Paul Ryan's (R., Wis.) most recent budget proposal, which called for a reduction in the federal work force as well as reforms to benefits and pension programs for federal employees. "The Ryan budget proposal would worsen our nation in so many ways," she said in March 2013.

Kelley appears to wield considerable influence in Democratic circles and the Obama administration. Under her leadership, the NTEU has spent nearly $7.5 million lobbying the federal government. Since Obama took office, she has been to the White House at least eleven times to meet with high-ranking officials such as Jeffrey Zients, acting director of the Office of Management and Budget, according to visitor logs. She has also met directly with the president and the first lady.

In November 2010, President Obama nominated Kelley to serve on the Federal Salary Council, an "obscure" panel that nonetheless "performs a vital role in recommending raises for most federal employees," as described by the *Washington Post*.

The Hill in a May 2012 profile observed that Kelly "has had a hand in every major deficit negotiation" since Republicans retook the House in 2010; she "has tangled with the Tea Party and gone up against GOP standard-bearers Reps. Darrell Issa (Calif.) and Paul Ryan (Wis.)."

"There is no doubt that when we look at the implications of various budget proposals, we seek her input," Representative Chris Van Hollen (Md.), the leading Democratic on the House Budget Committee, said of Kelley.

As lawmakers continue to investigate the IRS scandal — House and Senate committees will hold additional hearings this week — Republicans will be eager to learn more about Kelley's knowledge of the IRS targeting of conservative groups and about the extent to which union members may have been involved. In a letter to IRS employees, Kelley said she believes "no one intentionally did anything wrong," and promised to "work to ensure that front-line employees are not treated unfairly."

She has already cast doubt on the Obama administration's claims that the IRS targeting of conservative groups was carried out by a handful of "front-line" employees in the agency's Cincinnati field office. "No processes or procedures or anything like that would ever be done just by front-line employees without any management involvement," Kelley told the Associated Press last week. "That's just not how it operates."

— *Andrew Stiles is a political reporter for* National Review Online.

NATIONAL REVIEW ONLINE WWW.NATIONALREVIEW.COM PRINT

MAY 23, 2013 4:30 PM

Lois Lerner at the FEC

Before her IRS tenure, Lerner subjected conservative groups to heightened scrutiny.

By Eliana Johnson

Before Lois Lerner was embroiled in the IRS scandal, she was involved in a questionable pattern of law enforcement at the Federal Election Commission that mirrors the discrimination recently exposed at the nation's tax-collection agency.

One of Lerner's former colleagues tells National Review Online that her political ideology was evident during her tenure at the FEC, where, he says, she routinely subjected groups seeking to expand the influence of money in politics — including, in her view, conservatives and Republicans — to the sort of heightened scrutiny we now know they came under at the IRS.

Before the IRS, Lerner served as associate general counsel and head of the enforcement office at the FEC, which she joined in 1986. Working under FEC general counsel Lawrence Noble, Lerner drafted legal recommendations to the agency's commissioners intended to guide their actions on the complaints brought before them.

"I've known Lois since 1985," says Craig Engle, a Washington, D.C., attorney who from 1986 to 1995 served as the executive assistant to one of the FEC's commissioners and later worked as general counsel to the National Republican Senatorial Committee. "I'm probably one of the few people in Washington who really knows her whole career as opposed to those who have come across her lately."

Engle describes Lerner as pro-regulation and as somebody seeking to limit the influence of money in politics. The natural companion to those views, he says, is her belief that "Republicans take the other side" and that conservative groups should be subjected to more rigorous investigations. According to Engle, Lerner harbors a "suspicion" that conservative groups are intentionally flouting the law.

General counsel's reports composed during Lerner's tenure at the FEC confirm Engle's recollections of a woman predisposed to back Republicans against the wall while giving Democrats a pass. Though Noble, then the FEC's general counsel, is listed as the author of the reports, sources familiar with the commission say that given Lerner's position, she would have played an integral role shaping their conclusions. "As head of enforcement at the FEC, Lois would have approved the drafting of every general counsel's report," Engle tells me.

Contributions from foreign nationals, in one instance, drew more scrutiny when they reached Republican coffers than when they fell into the hands of Democrats.

After the Republican National Committee, under the chairmanship of Haley Barbour, established the nonprofit National Policy Forum in the run-up to the Republican takeover of Congress in 1994, the Democratic National Committee accused him of using the organization to funnel money from a Hong Kong national to the RNC. The foreigner in question had loaned the National Policy Foundation $1.6 million, and the foundation used the money to repay a debt to the RNC. The FEC's general counsel concluded that both Barbour and RNC treasurer Alec Poitevint had "knowingly and willfully" violated federal law.

A prolonged investigation led to a stalemate among the FEC commissioners, who deadlocked along party lines and took no action against Barbour or the RNC. A subsequent investigation by the Department of Justice concluded that the loan did not constitute a political contribution.

Democrats in a similar predicament were treated more leniently, with Lerner in one instance citing a donor's political clout as an excuse to avoid investigating him. The House Oversight Committee was not pleased, and in 1998 held a hearing on the FEC's failure to investigate the fundraiser, Howard Glicken, who was accused of soliciting a $20,000 contribution for the Democratic Senatorial Campaign Committee from a German national. (Glicken later pleaded guilty to doing so and paid a $40,000 fine to the FEC.) With Lerner seated before him, committee chairman Dan Burton (R., Ind.) read aloud from the general counsel's report she had approved: "While this office would generally recommend a reason to believe finding against Mr. Glicken and conduct an investigation into the two DSCC contributions, because of the discovery complications and time constraints, this office does not now recommend proceeding against this individual or the DSCC."

The report, though, got more specific, citing Glicken's "high profile as a prominent Democratic fundraiser" and "potential fundraising involvement in support of Mr. Gore's expected presidential campaign" as reasons not to pursue an investigation. His prominence, according to FEC lawyers, made it "unclear that this individual would agree to settle this matter short of litigation."

The reports on two complaints surrounding the travel expenditures of political candidates serving simultaneously as elected officials — then–vice president George H. W. Bush in 1988, and the Clinton-Gore duo in 1996 — are revealing.

A 1988 complaint filed by four Democratic state-party chairmen alleged that then–vice president George H. W. Bush's presidential campaign had improperly shifted travel expenses related to the campaign from the Bush for President Committee to the Republican National Committee and a number of Republican state-party committees. The Bush campaign responded that the RNC and state parties had covered some of the expenses because the vice president had, during his travels, participated in party-building events.

The general counsel's report argued that a dozen Republican state-party chairmen and the Republican National Committee had violated federal campaign-finance laws and urged the commission to approve subpoenas for the state-party chairmen and the RNC treasurer. A later report recommended that the FEC file suit to enforce the subpoenas. After seven years, however, the FEC in 1996 — at the discretion of the commissioners, to whom Lerner reported — dropped the matter, citing the need to "prioritize" and "move on." Bush and company received a letter that amounted to a slap on the wrist.

The FEC gave President Bill Clinton and vice president Al Gore less trouble when similar allegations arose.

A nonprofit group in 1996 accused the Clinton-Gore duo of using Air Force One for campaign trips and then failing to reimburse the government, thereby receiving the value of the travel as a political contribution. (The use of government property for political purposes is prohibited.) The general counsel's report concluded there was "no reason to believe" violations had occurred.

FEC lawyers reached the same conclusion about a complaint lodged by the RNC regarding a campaign trip Clinton took through several states by train that cost approximately $1,000,000.

Neither the cases nor the alleged wrongdoings are exactly parallel, but they are illustrative of Lerner's tendency toward the rigorous investigation of allegations against Republicans while giving Democrats the benefit of the doubt. Even after years-long investigations against conservatives — as with the Bush campaign and Barbour — the commissioners either could not agree that any wrongdoing had occurred, or found themselves hamstrung because Lerner's investigations had dragged on so long.

Mark Hemingway at *The Weekly Standard* has documented what he calls Lerner's "politically motivated harassment" of the Christian Coalition. At her direction, the FEC in 1994 sued the group in the largest enforcement action in history, accusing it of "expressly advocating" the election of Republican candidates. In a deposition, FEC lawyers asked Lieutenant Colonel Oliver North whether and why the former Southern Baptist minister Pat Robertson was praying for him and why he thanked Robertson in a letter for his "kind regards." Five years later, in 1999, the group was cleared of any wrongdoing.

Before invoking her right to remain silent on Wednesday, Lerner struck a defiant tone before the House Oversight committee, insisting that she had "not done anything wrong" and remains "very proud" of her work in government. We do not yet know the extent of her knowledge or involvement in the IRS's targeting of tea-party, conservative, and pro-life groups, but her record at the FEC suggests the bias revealed this month may not be unique, only more blatant.

— *Eliana Johnson is media editor of* National Review Online.

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AUGUST 20, 2013 12:00 PM

The Missing Koch Report

Treasury won't let the conservative donors see the results of an inspector general's investigation.

By Eliana Johnson

In late September 2010, Iowa senator Chuck Grassley and six of his colleagues grew suspicious that a senior Obama administration official had improperly accessed the tax information of industrial behemoth Koch Industries. After Austan Goolsbee, then-chairman of the president's Council of Economic Advisers, made an erroneous statement that implied direct knowledge of the company's confidential tax status, the senators demanded that the Treasury Department inspector general for tax administration (TIGTA) investigate. Now, more than two years since the completion of that investigation, and despite repeated requests from Koch Industries and Senator Grassley himself, the results have yet to see the light of day.

Ironically, federal law is designed to keep that information from public view. Asked how taxpayers might discover whether their information has been accessed improperly, a spokeswoman for the House Ways and Means Committee tells National Review Online that, in most cases, "They won't."

In order for Koch Industries or the general public to see the TIGTA report, the IG's office must refer the case to the Department of Justice for prosecution. If Justice declines to prosecute, all the relevant information remains under lock and key. Critics worry that a highly politicized Justice Department is unlikely to take up cases that have the potential to damage the Obama administration.

Koch Industries' tax returns became the subject of controversy when, in an August 2010 briefing with reporters on a newly released tax-reform report, Goolsbee claimed that the company paid no corporate-income taxes. "We have a series of entities that do not pay corporate income tax," he said, "some of which are really giant firms — you know, Koch Industries, I think, is one, is a multibillion-dollar business…"

Goolsbee's assertion raised the eyebrows of a half-dozen GOP lawmakers, who subsequently called on Treasury Department inspector general J. Russell George to investigate whether Goolsbee had accessed the company's tax returns in violation of federal law. In a letter to George, Grassley and his colleagues said they were "very concerned" by Goolsbee's remarks. "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," they wrote, referring to the section of

the Internal Revenue Code that protects the confidentiality of tax returns and all related information. George agreed to investigate.

Goolsbee tells National Review Online that his statement was nothing more than a slip of the tongue. He readily concedes that the company pays corporate taxes. "I certainly never saw any private information about their tax returns," he says. "That I was in error ought to make that particularly obvious."

George's investigation concluded in August 2011. Since then, Koch Industries senior vice president and general counsel Mark Holden has repeatedly requested a report summarizing the agency's findings from multiple federal agencies but has been summarily denied by all of them. "TIGTA sent me to the IRS, the IRS sent me back to TIGTA, but none of them would release the report or any information about the investigation," Holden says.

It has been a Kafkaesque march through the federal bureaucracy. In August 2011 a TIGTA special agent told Holden in an e-mail that "the final report relative to the investigation of Austan Goolsbee's press conference remark is completed, has gone through the approval process, and would now be available through a FOIA request." Holden's request, however, was denied. "Because your request is for law enforcement records concerning a third party, TIGTA can neither admit nor deny the existence of responsive records," the agency wrote him. He was instead referred to the Internal Revenue Service. After lodging a request there, he was sent back to TIGTA, only to be told, "Our previous response . . . also responds to this request" and "we are closing our file in this matter."

Asked why the potential victim of a crime is prohibited from viewing TIGTA's findings, TIGTA communications director Karen Kraushaar declined to go into detail, telling me only that "federal confidentiality law, including Section 6103 of the Internal Revenue Code, prohibits us from disclosing any information concerning our review of such allegations. Therefore, we regret that we cannot provide you with any further information."

The agency divulged no more information to Senator Grassley. On requesting the report, he was told by George in a letter that, owing to the confidentiality provisions affecting individual tax records, "TIGTA could not provide information regarding action, if any, TIGTA might have taken beyond its review of the allegations." As a result, George said, he was "unable to respond to any of the questions" Grassley posed about the investigation's findings.

Oddly, the results of investigations conducted by the Treasury Department inspector general are considered the confidential tax information of the alleged perpetrator. So, as a Ways and Means Committee spokeswoman explains, the IG report is filed in the tax records of "the person who allegedly committed the violation" and its disclosure is considered tantamount to the release of the individual's tax returns, a violation of section 6103.

SEC 003723

The chairmen of the House Ways and Means Committee and the Senate Finance Committee have, in Congress, the unique power to view confidential tax information, including the TIGTA report that concerns the Koch brothers. In this case, Max Baucus, chairman of the Senate Finance Committee, whose colleagues prompted the investigation, has declined to request the report. "I share your concern that the law prohibits me from disclosing to you the information that you have requested," George conceded.

Grassley's concern is that the law as it stands — section 6103 in particular — is being used to skirt transparency. "Taxpayer confidentiality laws are important," the senator tells NATIONAL REVIEW ONLINE, "but the purpose of those laws is to prevent and deter inappropriate uses of taxpayer information, not to prevent public scrutiny if or when that confidentiality has been breached or keep the victim in the dark. A taxpayer should be able to know whether someone breached his or her confidentiality, whether any investigation resulted, and the outcome of that investigation. The taxpayer shouldn't get the runaround from TIGTA."

That's exactly what the Kochs have gotten.

— Eliana Johnson is media editor of NATIONAL REVIEW ONLINE.

EDITOR'S NOTE: This piece has been modified from its original version. It incorrectly quoted Austan Goolsbee's remarks to reporters in 2010 and has been updated accordingly.

A Campaign Inquiry in Utah Is the Watchdogs' Worst Case

By NICHOLAS CONFESSOREMARCH 18, 2014

It is the nightmare scenario for those who worry that the modern campaign finance system has opened up new frontiers of political corruption: A candidate colludes with wealthy corporate backers and promises to defend their interests if elected. The companies spend heavily to elect the candidate, but hide the money by funneling it through a nonprofit group. And the main purpose of the nonprofit appears to be getting the candidate elected.

But according to investigators, exactly such a plan is unfolding in an extraordinary case in Utah, a state with a cozy political establishment, where business holds great sway and there are no limits on campaign donations.

Public records, affidavits and a special legislative report released last week offer a strikingly candid view inside the world of political nonprofits, where big money sluices into campaigns behind a veil of secrecy. The proliferation of such groups — and what campaign watchdogs say is their widespread, illegal use to hide donations — are at the heart of new rules now being drafted by the Internal Revenue Service to rein in election spending by nonprofit "social welfare" groups, which unlike traditional political action committees do not have to disclose their donors.

In Utah, the documents show, a former state attorney general, John Swallow, sought to transform his office into a defender of payday loan companies, an industry criticized for preying on the poor with short-term loans at exorbitant interest rates. Mr. Swallow, who was elected in 2012, resigned in November after less than a year in office amid growing scrutiny of potential corruption.

"They needed a friend, and the only way he could help them was if they helped get him elected attorney general," State Representative James A. Dunnigan, who led the investigation in the Utah House of Representatives, said in an interview last week.

What is rare about the Utah case, investigators and campaign finance experts say, is not just the brazenness of the scheme, but the discovery of dozens of documents describing it in fine detail.

Mr. Swallow and his campaign, they say, exploited a web of vaguely named nonprofit organizations in several states to mask hundreds of thousands of dollars in campaign contributions from payday lenders. His campaign strategist, Jason Powers, both established the groups — known as 501(c)(4)s after the section of the federal tax code that governs them — and raked in consulting fees as the cash moved between them. And affidavits filed by the Utah State Bureau of Investigation suggest that Mr. Powers may have falsified tax documents submitted to the Internal Revenue Service.

"What the Swallow case raises is the possibility that political money is never really traceable," said David Donnelly, executive director of thePublic Campaign Action Fund, which advocates stricter campaign finance laws.

A lawyer for Mr. Swallow, Rodney G. Snow, said in an email last week that he and his client "have some issues with the conclusions reached" but did not respond to requests for further comment.

Walter Bugden, a lawyer for Mr. Powers, said the special committee's report found no evidence that the consultant had violated the law.

"Using 501(c)(4)s so that donors are not disclosed is done by both political parties," Mr. Bugden said. "It's the nature of politics."

Ties to Company Founder

A former state lawmaker, Mr. Swallow had worked as a lobbyist for the payday loan company Check City, based in Provo, Utah, becoming close with its founder, Richard M. Rawle, a charismatic entrepreneur who had built a sprawling empire of payday loan and check-cashing companies. One witness would later describe Mr. Swallow's attitude to his former boss as one of "reverence."

When Utah's sitting attorney general, Mark Shurtleff, decided in mid-2011 not to run for a fourth term, Mr. Swallow, then his chief deputy, laid plans to run as his successor. He teamed with Mr. Powers, a Republican political consultant who has helped elect most of Utah's most powerful political figures.

To support his campaign, Mr. Swallow turned to payday lenders and other businesses that frequently clash with regulators.

"I look forward to being in a position to help the industry as an AG following the 2012 elections," Mr. Swallow wrote to one Tennessee payday executive in March 2011.

Payday lenders had every reason to want his help. The newly created federal Consumer Financial Protection Bureau had been given authority to oversee payday lenders around the country; state attorneys general were empowered to enforce consumer protection rules issued by the new group.

In June 2011, after receiving a commitment of $100,000 from members of a payday lending association, Mr. Swallow wrote an email to Mr. Rawle and to Kip Cashmore, the founder of another payday company, pitching them on how to raise even more.

Mr. Swallow said he would seek to bolster the industry among other attorneys general and lead opposition to new consumer protection bureau rules. "This industry will be a focus of the CFPB unless a group of AG's goes to bat for the industry," he warned.

But Mr. Swallow was wary of payday lenders' poor reputation. It was important to "not make this a payday race," he wrote. The solution: Hide the payday money behind a string of PACs and nonprofits, making it difficult to trace donations from payday lenders to Mr. Swallow's campaign.

The same month as Mr. Swallow's pitch, Mr. Powers and Mr. Shurtleff registered a new political action committee called Utah's Prosperity Foundation. The group advertised itself as a PAC for Mr. Shurtleff. But documents suggest it was also intended to collect money destined for Mr. Swallow, including contributions from payday lenders, telemarketing firms and home-alarm sales companies, which have clashed with regulators over aggressive sales tactics.

"More money in Mark's PAC is more money for you down the road," a campaign staffer wrote to Mr. Swallow in an email.

In August, Mr. Powers and other aides also set up a second entity, one that would never have to disclose its donors: a nonprofit corporation called the Proper Role of Government Education Association.

Directing Contributions

As the 2012 campaign swung into gear, Mr. Swallow raised money for both groups, as well as a second PAC set up by his campaign advisers. He often called his donors from Check City franchises around Salt Lake City, designating particular checks for each of the groups.

Between December 2011 and August 2012, Utah's Prosperity Foundation contributed $262,000 to Mr. Swallow's campaign, more than one of every six dollars he raised. About $30,000 in contributions to the foundation during the campaign came from four out-of-state payday companies.

But the biggest payday contributions went into the new nonprofit. The Proper Role of Government Education Association collected $452,000 during the campaign, most of it from the payday industry. Mr. Rawle himself allegedly provided $100,000 in secret money to Mr. Swallow's effort. Mr. Cashmore's company and others provided about $100,000.

Underscoring how explicitly political the nonprofit became, a memo on one $5,000 check described it as a "campaign contribution."

"It's a parallel universe where almost nothing is reported publicly, where contributions are made in secret," said Jim Mintz, president of the Mintz Group, a private investigative firm that conducted the Utah House investigation with lawyers from Akin Gump Strauss Hauer & Feld.

Helping with all three groups was a Republican lawyer in Oklahoma named Anthony J. Ferate.

Mr. Ferate, who declined to comment for this article, has been an official or consultant for numerous such groups in several states, according to a New York Times review of federal and state records.

Some of the groups appeared to have employed a particular strategy for evading federal and state campaign disclosure requirements: using a nonprofit group to collect contributions on behalf of a "super PAC." Anyone looking up the super PAC's contributors would see only the name of the nonprofit, not the individuals or businesses that provided the cash.

Documents and emails obtained by investigators suggest similar tactics at the nonprofit established on Mr. Swallow's behalf: The association collected money from Mr. Swallow's donors and spent it to help him win Utah's Republican primary for attorney general.

The first television ads appeared in late June 2012, just days from the primary, scorching Mr. Swallow's Republican opponent, Sean D. Reyes, for what it said were unethical campaign finance practices. A wave of radio ads followed, dredging up a 1993 altercation with a motorist and raising questions about Mr. Reyes's temperament.

The group behind the ads was listed as a Nevada-based super PAC called It's Now or Never, for which Mr. Ferate served as treasurer, and which spent at least $140,000 on the campaign.

When the ads appeared, Mr. Swallow's spokeswoman, Jessica Fawson, denied any involvement. "We're actually really proud of the fact that we've been running a positive campaign," Ms. Fawson told The Deseret News.

In fact, say Utah House investigators, the money came from the Proper Role of Government Education Association — for which Ms. Fawson, among others, was a director, and which funneled more than $150,000 to It's Now or Never via other nonprofits, masking the source of the money behind the ads.

The association also paid for a second wave of attacks, against Brad Daw, a four-term Utah state representative. Mr. Daw, a Republican, had pushed for legislation that would have barred payday companies from making loans to individuals who were already deep in debt.

Mr. Daw's approval ratings went negative, and he went on to lose his primary that June.

"I think the point was to send a message: If you try this, this will happen to you," Mr. Daw said.

Inquiries by I.R.S.

Mr. Swallow beat Mr. Reyes in the primary and went on to win the general election handily in November. Mr. Rawle did not live to see his protégé take office: He died of cancer in December 2012, at age 73. Mr. Swallow was sworn in a few weeks later. That same day, according to the investigators, he sent a text to Mr. Cashmore, thanking him for his help.

But cracks had already begun to appear in the edifice of anonymous money that helped elect Mr. Swallow. That fall, the I.R.S. had asked the Proper Role of Government Education Association to document its activities and expenditures. According to the Utah House investigators, Mr. Powers responded by making changes to the group's records, reclassifying roughly $156,000 of election expenditures as "non-electioneering." Both he and Mr. Ferate then faxed the records back the I.R.S.

An affidavit filed in the case by an agent with the Utah State Bureau of Investigation states that the two men "together participated in making false statements and agreeing to make false statements to the

Internal Revenue Service" because the association's actual political expenditures would break I.R.S. rules.

Mr. Bugden, the lawyer for Mr. Powers, said a witness had misled the agent. "We absolutely, categorically, unequivocally deny that Mr. Powers and Mr. Ferate made any false statements to the I.R.S.," he said.

The I.R.S. sent a follow-up letter early last year. But in the spring of 2013, as the agency was engulfed in accusations that it singled out conservative nonprofit groups for harassment, the two concluded that "the I.R.S. now had little leverage over them," according to the Utah House report, and declined to provide the agency with more information.

A spokesman for the I.R.S. said he could not comment on particular taxpayers or cases.

In September, the Justice Department closed a related investigation into whether Mr. Swallow and Mr. Rawle had sought to bribe Senator Harry Reid of Nevada on behalf of a businessman under federal indictment. Mr. Swallow, Mr. Rawle and Mr. Reid had all denied the allegations.

But in November, Mr. Swallow nevertheless stepped down, saying the continuing investigations had taken a toll on his family.

The F.B.I. is pursuing potential charges under state law with the district attorneys for Salt Lake County and neighboring Davis County.

"At the end of the day," said Troy Rawlings, the Davis County district attorney, "people will be surprised at both the breadth and depth of this investigation."

Kitty Bennett contributed reporting.

A version of this article appears in print on March 18, 2014, on page A1 of the New York edition with the headline: A Campaign Inquiry in Utah Is the Watchdogs' Worst Case. Order Reprints| Today's Paper|Subscribe

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March 19, 2010

Acorn on Brink of Bankruptcy, Officials Say

By IAN URBINA

BALTIMORE — The community organizing group Acorn, battered politically from the right and suffering from mismanagement along with a severe loss of government and other funds, is on the verge of filing for bankruptcy, officials of the group said Friday.

Acorn is holding a teleconference this weekend to discuss plans for a bankruptcy filing, two officials of the group said. They asked not to be identified because they were not authorized to speak to the news media.

Over the last six months, at least 15 of the group's 30 state chapters have disbanded and have no plans of re-forming, Acorn officials said. The California and New York chapters, two of the largest, have severed their ties to the national group and have independently reconstituted themselves with new names. Several other state groups are also re-forming outside the Acorn umbrella, and will not be affected if the national organization files for bankruptcy.

This week, the Maryland chapter announced that it would not reopen its offices, which were shuttered in September in the wake of a widely publicized series of video recordings made by two conservative activists, posing as a prostitute and a pimp, who secretly filmed Acorn workers providing them tax advice. In the videos, Acorn workers told one of the activists, James E. O'Keefe III, how to hide prostitution activities from the authorities and avoid taxes, raising no objections to his proposed criminal activities.

After the activists' videos came to light and swiftly became fodder for 24-hour cable news coverage, private donations from foundations to Acorn all but evaporated and the federal government quickly distanced itself from the group.

The Census Bureau ended its partnership with the organization for this year's census, the Internal Revenue Service dropped Acorn from its Voluntary Income Tax Assistance program, and Congress voted to cut off all grants to the group.

A network that once included more than 1,000 grass-roots groups, Acorn, which stands for

Association of Community Organizations for Reform Now, was created in 1970 and has fought for liberal causes like raising the minimum wage, registering the poor to vote, stopping predatory lending and expanding affordable housing. The organization helped roughly 150,000 lower-income families prepare their tax returns and obtain $190 million in tax refunds between 2004 and 2009, Acorn officials said.

But long before the activist videos delivered what may become the final blow, the organization was dogged for years by financial problems and accusations of fraud. In the summer of 2008, infighting erupted over embezzlement of Acorn funds by the brother of the organization's founder. Some chapters were also found to have submitted voter application forms with incorrect information on them during the lead-up to the 2008 presidential election, leading to blistering charges from conservative organizations linking Acorn's errors to the Obama campaign.

"That 20-minute video ruined 40 years of good work," said Sonja Merchant-Jones, former co-chairwoman of Acorn's Maryland chapter. "But if the organization had confronted its own internal problems, it might not have been taken down so easily."

The national organization's housing affiliate, long one of the best-financed offshoots, has been hit especially hard. The group, which changed its name to the Affordable Housing Centers of America this year, now has 17 offices, down from 29 a year ago. The housing group's annual budget has dropped to $6 million this year, down from $24 million last year.

Some of Acorn's state chapters have tried to remake themselves in recent months.

Calls to Acorn's New York City offices, for example, are now met with a recording that says: "Acorn is not providing services in New York. If you're interested in hearing from local organizations with similar purposes, please press zero."

The New York chapter has been replaced by a new group, called New York Communities for Change, whose Web site promotes many of Acorn's goals and many of whose staff and community members are the same.

In Pittsburgh, Acorn officials said they were trying to continue work while they decided whether to stay with the national organization or form a new one. Maryellen Hayden, the volunteer director of Allegheny County's Acorn, said the group was continuing to counsel people facing foreclosure and had recently sent two buses with dozens of members to Washington to rally for the Democratic health care bill.

Many former Acorn staff members and beneficiaries of its work say that while the group was its

own worst enemy in many ways, it was also one of the most consistent advocates for the poor. Acorn's sudden demise, supporters say, has left a vacuum in services for communities that used to rely on it for free advice on employment, tax and loan matters.

In Prince George's County, Md., the Rev. Gloria Swieringa said she owed her home to Acorn. Ms. Swieringa, 72, who is blind, said her mortgage payment was $1,100 per month, more than she could afford on her fixed income of about $1,500 a month, until Acorn stepped in.

After she tried unsuccessfully to persuade her mortgage company to lower her rate or readjust her loan, Acorn workers began writing letters, making calls and contacting the news media on her behalf. Last May, the company relented and lowered her monthly payments to $771 per month.

"That's what I know Acorn for," Ms. Swieringa said. "And that's why it's just awful for it to disappear."

But other supporters have grown disenchanted. Rick Tingling-Clemmons, 66, a teacher in Washington, was an enthusiastic dues-paying member, but soured on the organization over the reports of embezzlement and dropped his affiliation last year. By the time the scandal over the videotaped employees erupted, he was already done with Acorn, he said, and he now believes it needs to reinvent itself with a new mission and a new name.

"We get better, all of us, after we make mistakes that we learn from," he said. "It's from those mistakes that we learn and we get smarter. I think the people in Acorn will get smarter."

Bertha Lewis, the chief executive of Acorn, said in an e-mail message that her organization's problems were the result of "a series of well-orchestrated, relentless, well-funded right-wing attacks" reminiscent of the McCarthy era.

"Our effective work empowering African-American and low-income voters made us a target," she said. "And the videos were a manufactured, sensational story that led to a rush to judgment and an unconstitutional act by Congress."

In the month after the videos were released, Acorn commissioned an internal audit by a former attorney general of Massachusetts, Scott Harshbarger. His report, released in December, said the employees portrayed in the videos had not engaged in any illegal activity. Last month, the Brooklyn district attorney's office completed an investigation of the Acorn employees there who appeared in the video and concluded that they had not taken part in any criminality.

Nonetheless, the damage had been done. Republicans and conservatives attacked the group, in part because the group's registration efforts typically signed up voters who were believed to

support Democrats. Those critics saw the videos as evidence of Acorn's corruption.

Darrell Issa of California, the ranking Republican on the House Committee on Oversight and Government Reform, described Acorn at a December hearing as a "criminal organization" working hand-in-glove with the Obama administration. In February, committee Republicans released a report saying that Acorn "exploits the poor and vulnerable" for political gain.

A federal district court judge in New York ruled in December that the Congressional ban on funding for the group was unconstitutional. This month, the same judge barred federal officials from enforcing it, but no federal money is flowing to the organization while the government appeals the ruling.

In January, Mr. O'Keefe and three other men were arrested in New Orleans and accused of trying to tamper with the office telephone system of Senator Mary L. Landrieu, Democrat of Louisiana.

Mr. O'Keefe has denied the charges and said the group was trying to investigate complaints that constituents calling Ms. Landrieu's office could not get through to criticize her support of a health care overhaul bill.

Theo Emery contributed reporting from Washington.

This article has been revised to reflect the following correction:

Correction: March 23, 2010

Several articles since September about the troubles of the community organizing group Acorn referred incorrectly or imprecisely to one aspect of videotaped encounters between Acorn workers and two conservative activists that contributed to the group's problems.

In the encounters, the activists posed as a prostitute and a pimp and discussed prostitution with the workers. But while footage shot away from the offices shows one activist, James O'Keefe, in a flamboyant pimp costume, there is no indication that he was wearing the costume while talking to the Acorn workers.

The errors occurred in articles on Sept. 16 and Sept. 19, 2009, and on Jan. 31 of this year. Because of an editing error, the mistake was repeated in an article in some copies on Saturday.

The New York Times | CBS NEWS Poll

Americans' Views on Money in Politics

Most Americans say that money has too much of an influence on politicians and that campaign finance changes are needed. JUNE 2, 2015 Related article

The nationwide telephone poll was conducted on landlines and cellphones May 28-31 with 1,022 adults and has a margin of sampling error of plus or minus three percentage points. Full methodology.
Show responses from

- Influence of Money on Elections
- The Need for Reform
- Are Political Donations Free Speech?
- Which Party Benefits Most?

Influence of Money on Elections

In a rare show of unity, Americans, regardless of their political affiliation, agree that money has too much influence on elections, the wealthy have more influence on elections, and candidates who win office promote policies that help their donors.

Thinking about United States elections, do you think all Americans have an equal chance to influence the elections process, or do you think wealthy Americans have more of a chance to influence the elections process than other Americans?

Equal influence
31%
Wealthy have more influence
66%

Thinking about the role of money in American political campaigns today, do you think money has too much influence, too little influence or is it about right?

Too much
84%
Too little
About right
10%
Don't know/No answer

How often do you think candidates who win public office promote policies that directly help the people and groups who donated money to their campaigns — most of the time, sometimes, rarely or never?

Most of the time
55%
Sometimes
30%
Rarely
9%
Never
Depends
Don't know/No answer

The Need for Reform

With near unanimity, the public thinks the country's campaign finance system needs significant changes. There is strong support across party lines for limiting the amount of money individuals can contribute to political campaigns, limiting the amount of money groups not affiliated with candidates can spend, and requiring unaffiliated groups to publicly disclose their donors if they spend money during a political campaign.

Which of the following three statements comes closest to expressing your overall view of the way political campaigns are funded in the United States: 1) On the whole, the system for funding political campaigns works pretty well and only minor changes are necessary to make it work better.2) There are some good things in the system for funding political campaigns but fundamental changes are needed.3) The system for funding political campaigns has so much wrong with it that we need to completely rebuild it.

Only minor changes
13%
Fundamental changes
39%
Completely rebuild
46%
No changes needed
Don't know/No answer

This question was asked only of people who answered that the system needed changes.Looking ahead, are you optimistic or pessimistic that changes will be made to improve the way political campaigns are funded in the United States?

Optimistic
39%

Pessimistic
58%

Which one of the following two positions on campaign financing do you favor more: limiting the amount of money individuals can contribute to political campaigns, or allowing individuals to contribute as much money to political campaigns as they would like?

Limiting
77%
Allowing
21%

Currently, groups not affiliated with a candidate are able to spend unlimited amounts on advertisements during a political campaign. Do you think this kind of spending should be limited by law, or should it remain unlimited?

Should be limited
78%
Should remain unlimited
19%
Don't know/No answer

Do you think groups not affiliated with a candidate that spend money during political campaigns should be required to publicly disclose their contributors, or do you think it's O.K. for that information to remain private?

Should publicly disclose
75%
Should remain private
22%
Don't know/No answer

Are Political Donations Free Speech?

On the whole, Americans do not think donating money to political candidates is a form of free speech. Yet, opinions diverge along party lines with Republicans divided and slightly more inclined than Democrats or independents to agree.

Do you consider money given to political candidates to be a form of free speech protected by the First Amendment to the Constitution or not?

Yes, free speech
41%
No, not

54%

Which Party Benefits Most?

While a majority of all Americans (including most Republicans and independents) think both parties benefit equally from money in political campaigns, most Democrats think the Republican Party benefits more.

In general, which political party do you think benefits the most from the amount of money in politics today — the Republican Party, the Democratic Party, or do both parties benefit about equally?

Republican Party
23%
Democratic Party
14%
Both equally
58%

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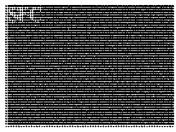

The New York Times

POLITICS

Donor Names Remain Secret as Rules Shift

By MICHAEL LUO and STEPHANIE STROM SEPT. 20, 2010

Crossroads Grassroots Policy Strategies would certainly seem to the casual observer to be 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 dollars 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 scrutiny 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 political 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 likely 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 because 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 inclined 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."

A version of this article appears in print on September 21, 2010, on page A1 of the New York edition with the headline: Donor Names Remain Secret As Rules Shift.

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I.R.S. Suspends Official at Center of Storm

By JONATHAN WEISMANMAY 23, 2013

WASHINGTON — Lois Lerner, the head of the Internal Revenue Service's division on tax-exempt organizations, was put on administrative leave Thursday, a day after she invoked the Fifth Amendment and declined to testify before a House committee investigating her division's targeting of conservative groups.

Lawmakers from both parties said Thursday that senior I.R.S. officials had requested Ms. Lerner's resignation but that she refused, forcing them to put her on leave instead. Whether her suspension will lead to dismissal was unclear, given Civil Service rules that govern federal employment.

"The I.R.S. owes it to taxpayers to resolve her situation quickly," said Senator Charles E. Grassley, Republican of Iowa. "She shouldn't be in limbo indefinitely on the taxpayers' dime."

The move to put Ms. Lerner on leave came minutes after Senators Carl Levin, Democrat of Michigan, and John McCain, Republican of Arizona, released a letter to the new acting I.R.S. commissioner, Daniel I. Werfel, demanding her immediate suspension for what they said was her failure to disclose information to their Senate Permanent Subcommittee on Investigations.

"Given the serious failure by Ms. Lerner to disclose to this subcommittee key information on topics that the subcommittee was investigating, we have lost confidence in her ability to fulfill her duties as director of exempt organizations at the I.R.S.," wrote Mr. Levin and Mr. McCain.

If Ms. Lerner is dismissed, she will be the third senior I.R.S. official to lose his or her job in the scandal. The acting commissioner, Steven T. Miller, was dismissed, and Ms. Lerner's supervisor, Joseph H. Grant, director of the tax-exempt and government entities division, is retiring.

On May 10, Ms. Lerner delivered an awkward apology to Tea Party and other conservative groups whose applications for tax exemptions had been singled out for special scrutiny. At that time, she said she had learned of the targeting in 2012, when Tea Party groups publicly accused the I.R.S. of mistreatment.

But days later, a Treasury inspector general's audit appeared to make it clear that she had known of the effort before then and had tried to reshape it. Lawmakers accused her of lying.

On Wednesday, appearing before the House Committee on Oversight and Government Reform, Ms. Lerner gave an opening statement in which she said she had not lied to Congress and had done nothing wrong. She then invoked her constitutional right against self-incrimination and declined to testify.

But Representative Darrell Issa, Republican of California, the committee's chairman, said that with her opening statement, Ms. Lerner had lost the right not to testify. He said he was considering calling her back.

"Everything she said under oath is subject to perjury," Mr. Issa said. "This is not one of those things where you can put the genie back in the bottle."

Ken Corbin, a deputy director in the I.R.S.'s wage and investment division, was named acting director of Ms. Lerner's division.

A version of this article appears in print on May 24, 2013, on page A17 of the New York edition with the headline: I.R.S. Suspends Official at Center of Storm. Order Reprints| Today's Paper|Subscribe

SFC 003745

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134417–13]

RIN 1545–BL81

Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to tax-exempt social welfare organizations on political activities related to candidates that will not be considered to promote social welfare. These regulations will affect tax-exempt social welfare organizations and organizations seeking such status. This document requests comments from the public regarding these proposed regulations. This document also requests comments from the public regarding the standard under current regulations that considers a tax-exempt social welfare organization to be operated exclusively for the promotion of social welfare if it is "primarily" engaged in activities that promote the common good and general welfare of the people of the community, including how this standard should be measured and whether this standard should be changed.

DATES: Written or electronic comments and requests for a public hearing must be received by February 27, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–134417–13), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134417–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–134417–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amy F. Giuliano at (202) 317–5800; concerning submission of comments and requests for a public hearing, Oluwafunmilayo Taylor at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by January 28, 2014.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced; and

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology.

The collection of information in these proposed regulations is in § 1.501(c)(4)–1(a)(2)(iii)(D), which provides a special rule for contributions by an organization described in section 501(c)(4) of the Internal Revenue Code (Code) to an organization described in section 501(c). Generally, a contribution by a section 501(c)(4) organization to a section 501(c) organization that engages in candidate-related political activity will be considered candidate-related political activity by the section 501(c)(4) organization. The special rule in § 1.501(c)(4)–1(a)(2)(iii)(D) provides that a contribution to a section 501(c) organization will not be treated as a contribution to an organization engaged in candidate-related political activity if the contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is subject to a written restriction that it not be used for candidate-related political activity. This special provision would not apply if the contributor organization knows or has reason to know that the representation is inaccurate or unreliable. The expected recordkeepers are section 501(c)(4) organizations that choose to contribute to, and to seek a written representation from, a section 501(c) organization.

Estimated number of recordkeepers: 2,000.

Estimated average annual burden hours per recordkeeper: 2 hours.

Estimated total annual recordkeeping burden: 4,000 hours.

A particular section 501(c)(4) organization may require more or less time, depending on the number of contributions for which a representation is sought.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

Background

Section 501(c)(4) of the Code provides a Federal income tax exemption, in part, for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." This exemption dates back to the enactment of the federal income tax in 1913. See Tariff Act of 1913, 38 Stat. 114 (1913). The statutory provision was largely unchanged until 1996, when section 501(c)(4) was amended to prohibit inurement of an organization's net earnings to private shareholders or individuals.

Prior to 1924, the accompanying Treasury regulations did not elaborate on the meaning of "promotion of social welfare." See Regulations 33 (Rev.), art. 67 (1918). Treasury regulations promulgated in 1924 explained that civic leagues qualifying for exemption under section 231(8) of the Revenue Act of 1924, the predecessor to section 501(c)(4) of the 1986 Code, are "those not organized for profit but operated exclusively for purposes beneficial to the community as a whole," and generally include "organizations engaged in promoting the welfare of mankind, other than organizations comprehended within [section 231(6) of the Revenue Act of 1924, the predecessor to section 501(c)(3) of the 1986 Code]." See Regulations 65, art. 519 (1924). The regulations remained substantially the same until 1959.

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The current regulations under section 501(c)(4) were proposed and finalized in 1959. They provide that "[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community." Treas. Reg. § 1.501(c)(4)–1(a)(2)(i). An organization "embraced" within section 501(c)(4) is one that is "operated primarily for the purpose of bringing about civic betterments and social improvements." *Id.* The regulations further provide that "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii). This language is similar to language that appears in section 501(c)(3) requiring section 501(c)(3) organizations not to "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" ("political campaign intervention"). However, unlike the absolute prohibition that applies to charitable organizations described in section 501(c)(3), an organization that primarily engages in activities that promote social welfare will be considered under the current regulations to be operating exclusively for the promotion of social welfare, and may qualify for tax-exempt status under section 501(c)(4), even though it engages in some political campaign intervention.

The section 501(c)(4) regulations have not been amended since 1959, although Congress took steps in the intervening years to address further the relationship of political campaign activities to tax-exempt status. In particular, section 527, which governs the tax treatment of political organizations, was enacted in 1975 and provides generally that amounts received as contributions and other funds raised for political purposes (section 527 exempt function income) are not subject to tax. Section 527(e)(1) defines a "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(f) also imposes a tax on exempt organizations described in section 501(c), including section 501(c)(4) social welfare organizations, that make an expenditure furthering a section 527 exempt function. The tax is imposed on the lesser of the organization's net investment income or section 527 exempt function expenditures. Section 527(e)(2) defines "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 local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors" (referred to in this document as "section 527 exempt function").[1]

Unlike the section 501(c)(3) standard of political campaign intervention, and the similar standard currently applied under section 501(c)(4), both of which focus solely on candidates for elective public office, a section 527 exempt function encompasses activities related to a broader range of officials, including those who are appointed or nominated, such as executive branch officials and certain judges. Thus, while there is currently significant overlap in the activities that constitute political campaign intervention under sections 501(c)(3) and 501(c)(4) and those that further a section 527 exempt function, the concepts are not synonymous.

Over the years, the IRS has stated that whether an organization is engaged in political campaign intervention depends upon all of the facts and circumstances of each case. See Rev. Rul. 78–248 (1978–1 CB 154) (illustrating application of the facts and circumstances analysis to voter education activities conducted by section 501(c)(3) organizations); Rev. Rul. 80–282 (1980–2 CB 178) (amplifying Rev. Rul. 78–248 regarding the timing and distribution of voter education materials); Rev. Rul. 86–95 (1986–2 CB 73) (holding a public forum 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, does not constitute political campaign intervention under section 501(c)(3)). More recently, the IRS released Rev. Rul. 2007–41 (2007–1 CB 1421), providing 21 examples illustrating facts and circumstances to be considered in determining whether a section 501(c)(3) organization's activities (including voter education, voter registration, and get-out-the-vote drives; individual activity by organization leaders; candidate appearances; business activities; and Web sites) result in political campaign intervention. The IRS generally applies the same facts and circumstances analysis under section 501(c)(4). See Rev. Rul. 81–95 (1981–1 CB 332) (citing revenue rulings under section 501(c)(3) for examples of what constitutes participation or intervention in political campaigns for purposes of section 501(c)(4)).

Similarly, Rev. Rul. 2004–6 (2004–1 CB 328) provides six examples illustrating facts and circumstances to be considered in determining whether a section 501(c) organization (such as a section 501(c)(4) social welfare organization) that engages in public policy advocacy has expended funds for a section 527 exempt function. The analysis reflected in these revenue rulings for determining whether an organization has engaged in political campaign intervention, or has expended funds for a section 527 exempt function, is fact-intensive.

Recently, increased attention has been focused on potential political campaign intervention by section 501(c)(4) organizations. A recent IRS report relating to IRS review of applications for tax-exempt status states that "[o]ne of the significant challenges with the 501(c)(4) [application] review process has been the lack of a clear and concise definition of 'political campaign intervention.'" Internal Revenue Service, "Charting a Path Forward at the IRS: Initial Assessment and Plan of Action" at 20 (June 24, 2013). In addition, "[t]he distinction between campaign intervention and social welfare activity, and the measurement of the organization's social welfare activities relative to its total activities, have created considerable confusion for both the public and the IRS in making appropriate section 501(c)(4) determinations." *Id.* at 28. The Treasury Department and the IRS recognize that both the public and the IRS would benefit from clearer definitions of these concepts.

Explanation of Provisions

1. Overview

The Treasury Department and the IRS recognize that more definitive rules with respect to political activities related to candidates—rather than the existing, fact-intensive analysis—would be helpful in applying the rules regarding qualification for tax-exempt status under section 501(c)(4). Although more definitive rules might fail to capture (or might sweep in) activities that would (or would not) be captured under the IRS' traditional facts and circumstances approach, adopting rules with sharper distinctions in this area

[1] In 2000 and 2002, section 527 was amended to require political organizations (with some exceptions) to file a notice with the IRS when first organized and to periodically disclose publicly certain information regarding their expenditures and contributions. See sections 527(i) and 527(j).

would provide greater certainty and reduce the need for detailed factual analysis in determining whether an organization is described in section 501(c)(4). Accordingly, the Treasury Department and the IRS propose to amend Treas. Reg. § 1.501(c)(4)–1(a)(2) to identify specific political activities that would he considered candidate-related political activities that do not promote social welfare.

To distinguish the proposed rules under section 501(c)(4) from the section 501(c)(3) standard and the similar standard currently applied under section 501(c)(4), the proposed regulations would amend Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii) to delete the current reference to "direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office," which is similar to language in the section 501(c)(3) statute and regulations. Instead the proposed regulations would revise Treas. Reg. § 1.501(c)(4)–1(a)(2)(ii) to state that "[t]he promotion of social welfare does not include direct or indirect candidate-related political activity." As explained in more detail in section 2 of this preamble, the proposed rules draw upon existing definitions of political campaign activity, both in the Code and in federal election law, to define candidate-related political activity that would not be considered to promote social welfare. The proposed rules draw in particular from certain statutory provisions of section 527, which specifically deals with political organizations and taxes section 501(c) organizations, including section 501(c)(4) organizations, on certain types of political campaign activities. Recognizing that it may be beneficial to have a more uniform set of rules relating to political campaign activity for tax-exempt organizations, the Treasury Department and the IRS request comments in suhparagraphs a through c of this section of the preamhle regarding whether the same or a similar approach should be adopted in addressing political campaign activities of other section 501(c) organizations, as well as whether the regulations under section 527 should be revised to adopt the same or a similar approach in defining section 527 exempt function activity.

a. Interaction With Section 501(c)(3)

These proposed regulations do not address the definition of political campaign intervention under section 501(c)(3). The Treasury Department and the IRS recognize that, because such intervention is absolutely prohibited under section 501(c)(3), a more nuanced consideration of the totality of facts and circumstances may be appropriate in that context. The Treasury Department and the IRS request comments on the advisability of adopting an approach to defining political campaign intervention under section 501(c)(3) similar to the approach set forth in these regulations, either in lieu of the facts and circumstances approach reflected in Rev. Rul. 2007–41 or in addition to that approach (for example, by creating a clearly defined presumption or safe harbor). The Treasury Department and the IRS also request comments on whether any modifications or exceptions would be needed in the section 501(c)(3) context and, if so, how to ensure that any such modifications or exceptions are clearly defined and administrahle. Any such change would he introduced in the form of proposed regulations to allow an additional opportunity for public comment.

h. Interaction With Section 527

As noted in the "Background" section of this preamble, a section 501(c)(4) organization is subject to tax under section 527(f) if it makes expenditures for a section 527 exempt function. Consistent with section 527, the proposed regulations provide that "candidate-related political activity" for purposes of section 501(c)(4) includes activities relating to selection, nomination, election, or appointment of individuals to serve as public officials, officers in a political organization, or Presidential or Vice Presidential electors. These proposed regulations do not, however, address the definition of "exempt function" activity under section 527 or the application of section 527(f). The Treasury Department and the IRS request comments on the advisability of adopting rules that are the same as or similar to these proposed regulations for purposes of defining section 527 exempt function activity in lieu of the facts and circumstances approach reflected in Rev. Rul. 2004–6. Any such change would be introduced in the form of proposed regulations to allow an additional opportunity for public comment.

c. Interaction With Sections 501(c)(5) and 501(c)(6)

The proposed regulations define candidate-related political activity for social welfare organizations described in section 501(c)(4). The Treasury Department and the IRS are considering whether to amend the current regulations under sections 501(c)(5) and 501(c)(6) to provide that exempt purposes under those regulations (which include "the betterment of the conditions of those engaged in [labor, agricultural, or horticultural] pursuits" in the case of a section 501(c)(5) organization and promoting a "common business interest" in the case of a section 501(c)(6) organization) do not include candidate-related political activity as defined in these proposed regulations. The Treasury Department and the IRS request comments on the advisability of adopting this approach in defining activities that do not further exempt purposes under sections 501(c)(5) and 501(c)(6). Any such change would he introduced in the form of proposed regulations to allow an additional opportunity for public comment.

d. Additional Guidance on the Meaning of "Operated Exclusively for the Promotion of Social Welfare"

The Treasury Department and the IRS have received requests for guidance on the meaning of "primarily" as used in the current regulations under section 501(c)(4). The current regulations provide, in part, that an organization is operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) 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). As part of the same 1959 Treasury decision promulgating the current section 501(c)(4) regulations, regulations under section 501(c)(3) were adopted containing similar language: "[a]n 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)." Treas. Reg. § 1.501(c)(3)–1(c)(1). Unlike the section 501(c)(4) regulations, however, the section 501(c)(3) regulations also provide that "[a]n organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose." *Id.*

Some have questioned the use of the "primarily" standard in the section 501(c)(4) regulations and suggested that this standard should he changed. The Treasury Department and the IRS are considering whether the current section 501(c)(4) regulations should be modified in this regard and, if the "primarily" standard is retained, whether the standard should be defined with more precision or revised to mirror the standard under the section 501(c)(3) regulations. Given the potential impact on organizations currently recognized as described in section 501(c)(4) of any change in the "primarily" standard, the

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Treasury Department and the IRS wish to receive comments from a broad range of organizations before deciding how to proceed. Accordingly, the Treasury Department and the IRS invite comments from the public on what proportion of an organization's activities must promote social welfare for an organization to qualify under section 501(c)(4) and whether additional limits should be imposed on any or all activities that do not further social welfare. The Treasury Department and the IRS also request comments on how to measure the activities of organizations seeking to qualify as section 501(c)(4) social welfare organizations for these purposes.

2. Definition of Candidate-Related Political Activity

These proposed regulations provide guidance on which activities will be considered candidate-related political activity for purposes of the regulations under section 501(c)(4). These proposed regulations would replace the language in the existing final regulation under section 501(c)(4)—"participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office"—with a new term—"candidate-related political activity"—to differentiate the proposed section 501(c)(4) rule from the standard employed under section 501(c)(3) (and currently employed under section 501(c)(4)). The proposed rule is intended to help organizations and the IRS more readily identify activities that constitute candidate-related political activity and, therefore, do not promote social welfare within the meaning of section 501(c)(4). These proposed regulations do not otherwise define the promotion of social welfare under section 501(c)(4). The Treasury Department and the IRS note that the fact that an activity is not candidate-related political activity under these proposed regulations does not mean that the activity promotes social welfare. Whether such an activity promotes social welfare is an independent determination.

In defining candidate-related political activity for purposes of section 501(c)(4), these proposed regulations draw key concepts from the federal election campaign laws, with appropriate modifications reflecting the purpose of these regnlations to define which organizations may receive the benefits of section 501(c)(4) tax-exempt status and to promote tax compliance (as opposed to campaign finance regulation). In addition, the concepts drawn from the federal election campaign laws have been modified to reflect that section 501(c)(4) organizations may be involved in activities related to local or state elections (in addition to federal elections), as well as the broader scope of the proposed definition of candidate (which is not limited to candidates for federal elective office).

The proposed regulations provide that candidate-related political activity includes activities that the IRS has traditionally considered to be political campaign activity per se, such as contributions to candidates and communications that expressly advocate for the election or defeat of a candidate. The proposed regulations also would treat as candidate-related political activity certain activities that, because they occur close in time to an election or are election-related, have a greater potential to affect the outcome of an election. Currently, such activities are subject to a facts and circumstances analysis before a determination can be made as to whether the activity furthers social welfare within the meaning of section 501(c)(4). Under the approach in these proposed regulations, such activities instead would be subject to a more definitive rule. In addition, consistent with the goal of providing greater clarity, the proposed regulations would identify certain specific activities as candidate-related political activity. The Treasury Department and the IRS acknowledge that the approach taken in these proposed regulations, while clearer, may he both more restrictive and more permissive than the current approach, but believe the proposed approach is justified by the need to provide greater certainty to section 501(c)(4) organizations regarding their activities and reduce the need for fact-intensive determinations.

The Treasury Department and the IRS note that a particular activity may fit within one or more categories of candidate-related political activity described in subsections h through e of this section 2 of the preamble; the categories are not mutually exclusive. For example, the category of express advocacy communications may overlap with the category of certain communications close in time to an election.

a. Definition of "Candidate"

These proposed regulations provide that, consistent with the scope of section 527, "candidate" means an individual who identifies himself or is proposed by another for selection, nomination, election, or appointment to any public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not the individual is ultimately selected, nominated, elected, or appointed. In addition, the proposed regulations clarify that for these purposes the term "candidate" also includes any officeholder who is the subject of a recall election. The Treasury Department and the IRS note that defining "candidate-related political activity" in these proposed regulations to include activities related to candidates for a broader range of offices (such as activities relating to the appointment or confirmation of executive branch officials and judicial nominees) is a change from the historical application in the section 501(c)(4) context of the section 501(c)(3) standard of political campaign intervention, which focuses on candidates for elective public office only. See Treas. Reg. § 1.501(c)(3)–1(c)(3)(iii). These proposed regulations instead would apply a definition that reflects the broader scope of section 527 and that is already applied to a section 501(c)(4) organization engaged in section 527 exempt function activity through section 527(f).

b. Express Advocacy Communications

These proposed regulations provide that candidate-related political activity includes communications that expressly advocate for or against a candidate. These proposed regulations draw from Federal Election Commission rules in defining "expressly advocate," but expand the concept to include communications expressing a view on the selection, nomination, or appointment of individuals, or on the election or defeat of one or more candidates or of candidates of a political party. These proposed regulations make clear that all communications—including written, printed, electronic (including Internet), video, and oral communications—that express a view, whether for or against, on a clearly identified candidate (or on candidates of a political party) would constitute candidate-related political activity. A candidate can he "clearly identified" in a communication hy name, photograph, or reference (such as "the incumbent" or a reference to a particular issue or characteristic distinguishing the candidate from others). The proposed regulations also provide that candidate-related political activity includes any express advocacy communication the expenditures for wbich an organization reports to the Federal Election Commission under the Federal Election Campaign Act as an independent expenditure.

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c. Public Communications Close in Time to an Election

Under current guidance, the timing of a communication about a candidate that is made shortly before an election is a factor tending to indicate a greater risk of political campaign intervention or section 527 exempt function activity. In the interest of greater clarity, these proposed regulations would move away from the facts and circumstances approach that the IRS has traditionally applied in analyzing certain activities conducted close in time to an election. These proposed regulations draw from provisions of federal election campaign laws that treat certain communications that are close in time to an election and that refer to a clearly identified candidate as electioneering communications, hut make certain modifications. The proposed regulations expand the types of candidates and communications that are covered to reflect the types of activities an organization might conduct related to local and state, as well as federal, contests, including any election or ballot measure to recall an individual who holds state or local elective public office. In addition, the expansion of the types of communications covered in the proposed regulations reflects the fact that an organization's tax exempt status is determined based on all of its activities, even low cost and volunteer activities, not just its large expenditures.

Under the proposed definition, any pnblic communication that is made within 60 days before a general election or 30 days before a primary election and that clearly identifies a candidate for puhlic office (or, in the case of a general election, refers to a political party represented in that election) would be considered candidate-related political activity. These timeframes are the same as those appearing in the Federal Election Campaign Act definition of electioneering communications. The definition of "election," including what would be treated as a primary or a general election, is consistent with section 527(j) and the federal election campaign laws.

A communication is "puhlic" if it is made using certain mass media (specifically, by broadcast, in a newspaper, or on the Internet), constitutes paid advertising, or reaches or is intended to reach at least 500 people (including mass mailings or telephone banks). The Treasury Department and the IRS intend that content previously posted by an organization on its Web site that clearly identifies a candidate and remains on the Web site during the specified pre-election period would be treated as candidate-related political activity.

The proposed regulations also provide that candidate-related political activity includes any communication the expenditures for which an organization reports to the Federal Election Commission under the Federal Election Campaign Act, including electioneering communications.

The approach taken in the proposed definition of candidate-related political activity would avoid the need to consider potential mitigating or aggravating circumstances in particular cases (such as whether an issue-oriented communication is "neutral" or "biased" with respect to a candidate). Thus, this definition would apply without regard to whether a public communication is intended to influence the election or some other, non-electoral action (such as a vote on pending legislation) and without regard to whether such communication was part of a series of similar communications. Moreover, a public communication made outside the 60-day or 30-day period would not be candidate-related political activity if it does not fall within the ambit of express advocacy communications or another specific provision of the definition. The Treasury Department and the IRS request comments on whether the length of the period should be longer (or shorter) and whether there are particular communications that (regardless of timing) should be excluded from the definition because they can he presumed to neither inflnence nor constitute an attempt to influence the outcome of an election. Any comments should specifically address how the proposed exclusion is consistent with the goal of providing clear rules that avoid fact-intensive determinations.

The Treasury Department and the IRS also note that this rule regarding puhlic communications close in time to an election would not apply to public communications identifying a candidate for a state or federal appointive office that are made within a specified number of days before a scheduled appointment, confirmation hearing or vote, or other selection event. The Treasury Department and the IRS request comments on whether a similar rule should apply with respect to communications within a specified period of time before such a scheduled appointment, confirmation hearing or vote, or other selection event.

d. Contributions to a Candidate, Political Organization, or any Section 501(c) Entity Engaged in Candidate-Related Political Activity

The proposed definition of candidate-related political activity would include contributions of money or anything of value to or the solicitation of contributions on behalf of (1) any person if such contribution is recognized under applicable federal, state, or local campaign finance law as a reportable contribution; (2) any political party, political committee, or other section 527 organization; or (3) any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this proposed rule. This definition of contribution is similar to the definition of contribution that applies for purposes of section 527. The Treasury Department and the IRS intend that the term "anything of value" would inclnde both in-kind donations and other support (for example, volunteer hours and free or discounted rentals of facilities or mailing lists). The Treasury Department and the IRS request comments on whether other transfers, such as indirect contributions described in section 276 to political parties or political candidates, should be treated as candidate-related political activity.

The Treasury Department and the IRS recognize that a section 501(c)(4) organization making a contribution may not know whether a recipient section 501(c) organization engages in candidate-related political activity. The proposed regulations provide that, for purposes of this definition, a recipient organization would not be treated as a section 501(c) organization engaged in candidate-related political activity if the contributor organization ohtains a written representation from an authorized officer of the recipient organization stating that the recipient organization does not engage in any such activity and the contribution is snbject to a written restriction that it not be nsed for candidate-related political activity. This special provision would apply only if the contrihutor organization does not know or have reason to know that the representation is inaccurate or unreliable.

e. Election-Related Activities

The proposed definition of candidate-related political activity would include certain specified election-related activities, including the conduct of voter registration and get-out-the-vote drives, distribution of material prepared by or on behalf of a candidate or section 527 organization, and preparation or

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distribution of a voter guide and accompanying material that refers to a candidate or a political party. In addition, an organization that hosts an event on its premises or conducts an event off-site within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program (whether or not such appearance was previously scheduled) would be engaged in candidate-related political activity under the proposed definition.

The Treasury Department and the IRS acknowledge that under the facts and circumstances analysis currently used for section 501(c)(4) organizations as well as for section 501(c)(3) organizations, these election-related activities may not be considered political campaign intervention if conducted in a non-partisan and unbiased manner. However, these determinations are highly fact-intensive. The Treasury Department and the IRS request comments on whether any particular activities conducted by section 501(c)(4) organizations should be excepted from the definition of candidate-related political activity as voter education activity and, if so, a description of how the proposed exception will both ensure that excepted activities are conducted in a non-partisan and unbiased manner and avoid a fact-intensive analysis.

f. Attribution to a Section 501(c)(4) Organization of Certain Activities and Communications

These proposed regulations provide that activities conducted by an organization include, but are not limited to, (1) activities paid for by the organization or conducted by the organization's officers, directors, or employees acting in that capacity, or by volunteers acting under the organization's direction or supervision; (2) communications made (whether or not such communications were previously scheduled) as part of the program at an official function of the organization or in an official publication of the organization; and (3) other communications (such as television advertisements) the creation or distribution of which is paid for by the organization. These proposed regulations also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity. The proposed regulations do not specifically address material posted by third parties on an organization's Web site. The Treasury Department and the IRS request comments on whether, and under what circumstances, material posted by a third party on an interactive part of the organization's Web site should be attributed to the organization for purposes of this rule. In addition, the Treasury Department and the IRS have stated in guidance under section 501(c)(3) regarding political campaign intervention that when a charitable organization chooses to establish a link to another Web site, the organization 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. See Rev. Rul. 2007–41. The Treasury Department and the IRS request comments on whether the consequences of establishing and maintaining a link to another Web site should be the same or different for purposes of the proposed definition of candidate-related political activity.

Proposed Effective/Applicability Date

These regulations are proposed to be effective the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. For proposed date of applicability, see § 1.501(c)(4)–1(c).

Statement of Availability for IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at *http://www.irs.gov* or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that only a minimal burden would be imposed by the rule, if adopted. Under the proposal, if a section 501(c)(4) organization chooses to contribute to a section 501(c) organization and wants assurance that the contribution will not be treated as candidate-related political activity, it may seek a written representation that the recipient does not engage in candidate-related political activity within the meaning of these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS generally request comments on all aspects of the proposed rules. In particular, the Treasury Department and the IRS request comments on whether there are other specific activities that should be included in, or excepted from, the definition of candidate-related political activity for purposes of section 501(c)(4). Such comments should address how the proposed addition or exception is consistent with the goals of providing more definitive rules and reducing the need for fact-intensive analysis of the activity. All comments submitted by the public will be made available for public inspection and copying at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

SFC 003751

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.501(c)(4)–1 is proposed to be amended by revising the first sentence of paragraph (a)(2)(ii) and adding paragraphs (a)(2)(iii) and (c) to read as follows:

§ 1.501(c)(4)–1 Civic organizations and local associations of employees.

(a) * * *

(2) * * *

(ii) * * * The promotion of social welfare does not include direct or indirect candidate-related political activity, as defined in paragraph (a)(2)(iii) of this section. * * *

(iii) *Definition of candidate-related political activity*—(A) *In general.* For purposes of this section, candidate-related political activity means:

(*1*) Any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section) expressing a view on, whether for or against, the selection, nomination, election, or appointment of one or more clearly identified candidates or of candidates of a political party that—

(*i*) Contains words that expressly advocate, such as "vote," "oppose," "support," "elect," "defeat," or "reject;" or

(*ii*) Is susceptible of no reasonable interpretation other than a call for or against the selection, nomination, election, or appointment of one or more candidates or of candidates of a political party;

(*2*) Any public communication (defined in paragraph (a)(2)(iii)(B)(*5*) of this section) within 30 days of a primary election or 60 days of a general election that refers to one or more clearly identified candidates in that election or, in the case of a general election, refers to one or more political parties represented in that election;

(*3*) Any communication the expenditures for which are reported to the Federal Election Commission, including independent expenditures and electioneering communications;

(*4*) A contribution (including a gift, grant, subscription, loan, advance, or deposit) of money or anything of value to or the solicitation of contributions on behalf of—

(*i*) Any person, if the transfer is recognized under applicable federal, state, or local campaign finance law as a reportable contribution to a candidate for elective office;

(*ii*) Any section 527 organization; or

(*iii*) Any organization described in section 501(c) that engages in candidate-related political activity within the meaning of this paragraph (a)(2)(iii) (see special rule in paragraph (a)(2)(iii)(D) of this section);

(*5*) Conduct of a voter registration drive or "get-out-the-vote" drive;

(*6*) Distribution of any material prepared by or on behalf of a candidate or by a section 527 organization including, without limitation, written materials, and audio and video recordings;

(*7*) Preparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties (including material accompanying the voter guide); or

(*8*) Hosting or conducting an event within 30 days of a primary election or 60 days of a general election at which one or more candidates in such election appear as part of the program.

(B) *Related definitions.* The following terms are defined for purposes of this paragraph (a)(2)(iii) only:

(*1*) *"Candidate"* means an individual who publicly offers himself, or is proposed by another, for selection, nomination, election, or appointment to any federal, state, or local public office or office in a political organization, or to be a Presidential or Vice-Presidential elector, whether or not such individual is ultimately selected, nominated, elected, or appointed. Any officeholder who is the subject of a recall election shall be treated as a candidate in the recall election.

(*2*) *"Clearly identified"* means the name of the candidate involved appears, a photograph or drawing of the candidate appears, or the identity of the candidate is apparent by reference, such as by use of the candidate's recorded voice or of terms such as "the Mayor," "your Congressman," "the incumbent," "the Democratic nominee," or "the Republican candidate for County Supervisor." In addition, a candidate may be "clearly identified" by reference to an issue or characteristic used to distinguish the candidate from other candidates.

(*3*) *"Communication"* means any communication by whatever means, including written, printed, electronic (including Internet), video, or oral communications.

(*4*) *"Election"* means a general, special, primary, or runoff election for federal, state, or local office; a convention or caucus of a political party that has authority to nominate a candidate for federal, state or local office; a primary election held for the selection of delegates to a national nominating convention of a political party; or a primary election held for the expression of a preference for the nomination of individuals for election to the office of President. A special election or a runoff election is treated as a primary election if held to nominate a candidate. A convention or caucus of a political party that has authority to nominate a candidate is also treated as a primary election. A special election or a runoff election is treated as a general election if held to elect a candidate. Any election or ballot measure to recall an individual who holds state or local elective public office is also treated as a general election.

(*5*) *"Public communication"* means any communication (as defined in paragraph (a)(2)(iii)(B)(*3*) of this section)—

(*i*) By broadcast, cable, or satellite;

(*ii*) On an Internet Web site;

(*iii*) In a newspaper, magazine, or other periodical;

(*iv*) In the form of paid advertising; or

(*v*) That otherwise reaches, or is intended to reach, more than 500 persons.

(*6*) *"Section 527 organization"* means an organization described in section 527(e)(1) (including a separate segregated fund described in section 527(f)(3)), whether or not the organization has filed notice under section 527(i).

(C) *Attribution.* For purposes of this section, activities conducted by an organization include activities paid for by the organization or conducted by an officer, director, or employee acting in that capacity or by volunteers acting under the organization's direction or supervision. Communications made by an organization include communications the creation or distribution of which is paid for by the organization or that are made in an official publication of the organization (including statements or material posted by the organization on its Web site), as part of the program at an official function of the organization, by an officer or director acting in that capacity, or by an employee, volunteer, or other representative authorized to communicate on behalf of the organization and acting in that capacity.

(D) *Special rule regarding contributions to section 501(c) organizations.* For purposes of paragraph (a)(2)(iii)(A)(*4*) of this section, a contribution to an organization described in section 501(c) will not be treated as a contribution to an organization engaged in candidate-related political activity if—

(*1*) The contributor organization obtains a written representation from an authorized officer of the recipient organization stating that the recipient

organization does not engage in such activity (and the contributor organization does not know or have reason to know that the representation is inaccurate or unreliable); and

(2) The contribution is subject to a written restriction that it not be used for candidate-related political activity within the meaning of this paragraph (a)(2)(iii).

(c) *Effective/applicability date.* Paragraphs (a)(2)(ii) and (iii) of this section apply on and after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–28492 Filed 11–26–13; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–146620–13]

RIN 1545–BL92

Authority for Voluntary Withholding on Other Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document contains proposed regulations under the Internal Revenue Code (Code) relating to voluntary withholding agreements. In the Rules and Regnlations of this issue of the **Federal Register**, the IRS is also issuing temporary regulations to allow the Secretary to issue guidance in the Internal Revenue Bulletin to describe payments for which the Secretary finds that income tax withholding under a voluntary withholding agreement would be appropriate. The text of those temporary regulations also generally serves as the text of these proposed regulations. The regulations affect persons making and persons receiving payments for which the IRS issues subsequent guidance authorizing the parties to enter into voluntary withholding agreements.

DATES: Written or electronic comments and requests for a public hearing must be received by February 25, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–146620–13), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146620–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–146620–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Linda L. Conway-Hataloski at (202) 317–6798; concerning submission of comments and request for hearing, Oluwafunmilayo (Funmi) Taylor at (202) 317–5179 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 3402(p) allows for voluntary income tax withholding agreements. Section 3402(p)(3) authorizes the Secretary to provide regulations for withholding from (A) remuneration for services performed by an employee for the employee's employer which does not constitute wages, and (B) from any other payment with respect to which the Secretary finds that withholding would be appropriate, if the employer and employee, or the person making and the person receiving such other type of payment, agree to such withholding. Section 3402(p)(3) also authorizes the Secretary to prescribe in regulations the form and manner of such agreement. Section 31.3402(p)–1 of the Employment Tax Regulations describes how an employer and an employee may enter into an income tax withholding agreement under section 3402(p) for amounts that are excepted from the definition of wages in section 3401(a).

Explanation of Provisions

The proposed regulations amend the headings to paragraphs (a) and (b) of § 31.3402(p)–1 to clarify that those paragraphs apply to voluntary withbolding agreements between an employer and employee. Temporary regulations in the Rnles and Regulations section of this issue of the **Federal Register** also amend the Employment Tax Regulations (26 CFR part 31) under section 3402(p). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the **ADDRESSES** heading in this preamble. The IRS and Treasury Department request comments on all aspects of the proposed regulations. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Linda L. Conway-Hataloski, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 31.3402(p)–1 is amended by:

Liberal Groups Say They Received IRS Scrutiny Too

by TAMARA KEITH

June 19, 2013 4:00 AM ET

Listen to the Story

Morning Edition **5 min 18 sec**

The conventional shorthand for the IRS scandal is that employees "targeted" conservative groups for extra scrutiny in the applications for tax-exempt status. Except, as an inspector general's report showed, it wasn't just conservative groups that got extra scrutiny. Plenty of liberal groups had to produce extensive documentation answer dozens of questions, too.

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STEVE INSKEEP, HOST:

Some other news: We have a more complicated view, this morning, of the scandal at the IRS. An inspector general critiqued the tax agency's targeting of conservative groups, many of them linked with the Tea Party movement. We knew that much.

And now, it's become apparent that more liberal or progressive groups were also targeted. NPR's Tamara Keith reports.

TAMARA KEITH, BYLINE: Maryann Martindale applied for tax-exempt status for her group, the Alliance for a Better Utah, in September of 2011. When she heard back from the IRS, the agency asked her about her group's activities and donors.

MARYANN MARTINDALE: We were asked what type of donors we had; if we had candidates, political organizations, parties and such - any of that type of group, anything like that; if we'd had any donors that fit under any of those categories. We didn't.

KEITH: In many ways, Martindale's experience sounds like that of the Tea Party groups flagged

for extra scrutiny by the IRS. One big difference - her group's progressive leanings.

MARTINDALE: We don't affiliate directly with either party, but I would say that in terms of position or ideology, we would align closer with the Democrats.

KEITH: Alliance for A Better Utah secured its tax-exempt status as a 501(c)(4) social welfare group in June 2012. The group also applied for a 501(c)(3) charitable status for its voter-education work. Both groups can keep their donor names secret, but only the (c)(3) can offer them a tax deduction. And Martindale says she's still waiting on that.

MARTINDALE: As it's approaching 600 days, we've bent over backwards to prove that we really are not doing anything beyond reproach of a (c)(3) organization ,but yet we still are waiting for that designation. It's really tough, let me just put it that way. It's just - it's really tough.

KEITH: And while she waits, Martindale says her group has suffered, missing out on donations and grants.

PAT ZAHAROPOULOS: I'm Pat Zaharopoulos. I'm president of Middle Class Taxpayers Association of San Diego.

KEITH: And her group was also flagged by the IRS. It's on a list of 176 organizations the IRS says were pulled aside for further review and ultimately, granted nonprofit status. Middle Class Taxpayers Association of San Diego is progressive and takes positions on issues and initiatives, but not candidates.

ZAHAROPOULOS: We got - our final approval came May 9 of this year, and we applied July 9, 2010.

KEITH: When they finally got the letter from the IRS, Zaharopoulos says they celebrated. It had been almost three years of waiting, and answering questions from the IRS. [POST-BROADCAST CORRECTION: In reality the process took about a year.]

ZAHAROPOULOS: While we were impatient about it, we were certainly not offended that they took the time to evaluate.

KEITH: These groups are part of what Martin Sullivan describes as a substantial minority of those on the IRS list. He's chief economist at Tax Analysts.

MARTIN SULLIVAN: And if you look down the list - you can eyeball it and readily see that many

certainly were conservative groups; and you could also see that many weren't. And so I just started doing web searches on each of these groups.

KEITH: The list released by the IRS offers an incomplete view. It doesn't tell us how many of the groups that applied for tax-exempt status were conservative or liberal. It doesn't tell us how long each group waited. And it also doesn't tell us why they were flagged for further scrutiny. What the inspector general's report shows is that Tea Party and Patriot groups were targeted based on their names or their views. And that, virtually everyone agrees, was improper. Again, Sullivan.

SULLIVAN: There still can be bias; there still can be all - other types of problems with what the IRS has done. But the one fact that it's brought out is that about 30 percent were not conservative groups and therefore, it was not only conservative groups who were being targeted.

KEITH: Sean Soendker Nicholson knows that firsthand. He's the executive director of Progress Missouri, and waited about a year before getting a letter from the IRS asking a series of questions.

SEAN SOENDKER NICHOLSON: Please provide a more detailed description of the actual activities you have conducted since your formation; as well as activities you plan to conduct within the next year, and how these activities serve social welfare purposes.

KEITH: Shortly after responding, Progress Missouri was approved. And as he sees it, the scrutiny was a good thing. He just hopes it wasn't only small groups like his who were getting all the attention, since some 501(c)(4)s spent tens of millions of dollars in the last election.

TARA MALLOY: The methodology that the IRS used was clearly, unjustifiable.

KEITH: Tara Malloy is a lawyer at the Campaign Legal Center, which is pushing for the IRS to scrutinize 501(c)(4) groups. She says the fact that progressive groups were also screened doesn't excuse the way the agency went about flagging Tea Party groups. But Malloy says the IRS should be examining organizations with political activity.

MALLOY: It makes perfect sense that the IRS has an obligation to determine that you actually are eligible for this exemption from taxation; and that it's a meaningful review, not just a rubber stamp.

KEITH: Her concern is that all the blowback from inappropriately targeting conservative groups will make the IRS back down from the reviews it really should be doing.

Tamara Keith, NPR News, the Capitol.

(SOUNDBITE OF MUSIC)

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Correction

July 8, 2013

In this story, the president of a progressive group that received extra scrutiny from the IRS says it took three years to get approved for tax-exempt status. In reality the process took about a year.

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SFC 003757

NTEU The Voice of Federal Employees

NATIONAL TREASURY EMPLOYEES UNION

To organize federal employees to work together to ensure that every federal employee is treated with dignity and respect.

What Makes NTEU The Voice of Federal Employees?

NTEU is widely known as a highly-focused, smart, tough organization, well-respected for its knowledge of federal employee issues. The union's record of success comes from its determination to work with federal agencies, with Congress, and in the courts to protect, promote and expand the rights of those it represents.

Since 1938, NTEU has been driven by the principle that every federal employee should be treated with dignity and respect. In that time, NTEU has grown to represent some 150,000 bargaining unit employees in 31 federal agencies and departments. NTEU members are represented by an experienced and professional staff in Washington, D.C., seven field offices across the nation and highly-trained, dedicated local leaders in their workplaces.

Here's a brief look at how NTEU is working every day on behalf of federal employees.

On Capitol Hill

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In the Media

Skilled communications specialists take the message of the importance of federal workers to the media. Through news releases, interviews, op-ed articles and letters to the editor, NTEU's Public Relations Department successfully reaches the American public using print, broadcast and electronic news outlets. Additionally, NTEU members often are the first to hear breaking news about their workplaces through print and electronic member communications and NTEU's online presence.

In all these ways, NTEU ensures that federal employees have a strong, effective and persistent advocate speaking in every forum where decisions are being made about the work of our country.

NTEU Leadership

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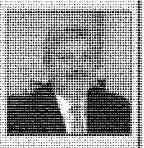
Kelley, a former IRS Revenue Agent, was first elected to the union's top post in August 1999, after a four-year term as national executive vice president. She was overwhelmingly re-elected to a fourth term in August 2011. Her dedication to improving the lives of federal employees is clear from her exemplary service to NTEU and its members at the local and national levels for more than 20 years.

Reardon has nearly 29 years of service with NTEU. Prior to his election as national executive vice president in December 2003, he was the Chief Operating Executive of NTEU.

The district national vice presidents sit on the NTEU Executive Board along with Kelley and Reardon and together they are leading NTEU to even greater success.



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12/2013

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A History of Success

There is a lot to point to in NTEU's proud and successful history—from courtroom and legislative victories, to significant contractual and workplace improvements to precedent-setting arbitration wins and much more. The positive impact of the gains and protections NTEU has won are being enjoyed by federal employees today. Here is just a sampling:

NTEU won **$533 million in back pay** for federal employees when an appeals court ruled against President Nixon's 1972 pay raise deferral.

NTEU's work led to **Flexible Spending Accounts** (FSAs), allowing employees to save money by setting aside pretax income to pay out-of-pocket medical and dependent care expenses.

An expansion of the ability of employees to contribute to or modify their contributions to the federal **Thrift Savings Plan** is the result of NTEU's efforts on Capitol Hill.

The union waged a successful fight for a **dental-vision plan** for federal workers.

NTEU's 22-year legal battle against OPM regulations exempting special rate employees from annual pay raises ended in victory in 2002, resulting in **back pay of $178 million** for 212,000 current and former special rate employees.

Thousands of dollars in **back pay was won for Customs and Border Protection Officers** forced to work an unpaid sixth day of training.

NTEU successfully challenged the law prohibiting federal employees from participating in **informational pickets**.

An 18-month challenge by NTEU to the IRS' proposed field reorganization and corresponding reduction-in-force of 5,000 employees ended in victory, ultimately **saving 29,000 IRS jobs**.

A federal court agreed with NTEU that employees have the **right to review promotion files**.

A major **First Amendment victory** allowed a rally of federal employees on the grounds of a New York federal building.

NTEU negotiated a precedent-setting employee **salary and benefit package** with the FDIC.

A **legal challenge** by NTEU ended with a federal court decision declaring portions of the Department of Homeland Security personnel rules illegal.

In a major battle impacting both employees and the public, NTEU **beat back an attempt to close dozens of IRS Taxpayer Assistance Centers** nationwide.

NTEU won by a 2-to-1 margin a **representation election** covering more than 20,000 CBP employees.

NTEU won an unprecedented court victory against an agency's **illegal use of appropriated funds to give federal jobs to a contractor** without giving employees the chance to compete.

The **Food and Drug Administration dropped plans to close seven of 13 national food-sampling laboratories** after NTEU media and congressional efforts highlighted the public safety risks involved.

NTEU won a lengthy, difficult battle for **enhanced Law Enforcement Officer retirement benefits** for Customs and Border Protection Officers.

NTEU was instrumental in securing a presidential executive order establishing **labor-management forums** across the federal government.

NTEU's **public service campaigns** (www.TheyWorkforUS.org) reach millions of television viewers and radio listeners with a message about the strong connection between their lives and the work of federal employees.

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Aggressive and persistent action by NTEU helped push a **major telework bill** through Congress allowing many more federal employees to take advantage of alternative workplaces.

The **Federal Career Intern Program came to an end** after a prolonged campaign by NTEU to halt agency use of the hiring mechanism that disregarded the competitive hiring process.

NTEU played a key role in **protecting vital employee rights in financial regulatory reform**.

With strong NTEU support, **phased retirement** and enhanced whistleblower protections became law.

Following a 16-day government shutdown, NTEU secured in Congress language providing **back pay** to those employees locked out of their jobs.

NTEU-Represented Agencies

NTEU represents some 150,000 employees nationwide and in Aruba, the U.S. Virgin Islands, the Bahamas, Bermuda, Guam, Puerto Rico, Canada and Ireland who work for:

Department of Agriculture
- Farm Service Agency
- Food, Nutrition, and Consumer Services

Department of Commerce
- Patent and Trademark Office

Department of Energy

Department of Health & Human Services
- Administration for Children and Families
- Administration for Community Living
- Food and Drug Administration
- Health Resources and Services Administration
- Indian Health Service
- National Center for Health Statistics
- Office of the Secretary
- Program Support Center
- Substance Abuse and Mental Health Services Administration

Department of Homeland Security
- U.S. Customs and Border Protection

Department of the Interior
- National Park Service

Department of the Treasury
- Bureau of Engraving and Printing
- Bureau of the Fiscal Service
- Departmental Offices
- Internal Revenue Service
- Office of Chief Counsel
- Office of the Comptroller of the Currency
- Tax and Trade Bureau

Consumer Financial Protection Bureau

Environmental Protection Agency

Federal Communications Commission

Federal Deposit Insurance Corporation

Federal Election Commission

National Credit Union Administration

Nuclear Regulatory Commission

Securities and Exchange Commission

Social Security Administration
- Office of Disability Adjudication and Review

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About NTEU

Who We Are | NTEU-Represented Agencies | History of Success | The Voice of Federal Employees | Strong Leadership

Our mission: To organize federal employees to work together to ensure that every federal employee is treated with dignity and respect.

Who We Are

• Contact Us
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Join NTEU

NTEU is widely known as a smart, tough organization, well-respected for its knowledge of federal employee issues. And for its determination to work with federal agencies, with Congress, and in the courts to protect, promote and expand the rights of those it represents.

Since 1938, NTEU has been driven by the principle that every federal employee should be treated with dignity and respect. In that time, NTEU has grown to represent some 150,000 bargaining unit employees in 31 federal agencies and departments.

NTEU members are represented by an experienced and professional staff in Washington, D.C., seven field offices across the nation and highly-trained, dedicated local leaders in their workplaces.

NTEU-represented agencies

Dept. of Agriculture
• Farm Service Agency
• Food and Nutrition Service

Dept. of Commerce
• Patent and Trademark Office

Dept. of Energy

Dept. of Health and Human Services
• Administration for Children and Families
• Administration on Community Living
• Food and Drug Administration
• Health Resources and Services Administration
• Indian Health Service
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Dept. of the Interior
• National Park Service

Dept. of the Treasury
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• Internal Revenue Service
• Office of Chief Counsel
• Office of the Comptroller

Consumer Financial Protection Bureau

Environmental Protection Agency

Federal Communications Commission

Federal Deposit Insurance Corp.

Federal Election Commission

National Credit Union Administration

Nuclear Regulatory Commission

Securities and

SEC 003760

• National Center for Health Statistics • Office of the Secretary	of the Currency • Tax and Trade Bureau	Exchange Commission Social Security Administration • Office of Disability Adjudication and Review

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Publication Celebrates NTEU History

A commemorative publication follow NTEU's remarkable growth through photos, narrative and a comprehensive timeline. Learn about the issues and fights that have shaped the union and how we continue to drive change in federal workplaces nationwide.

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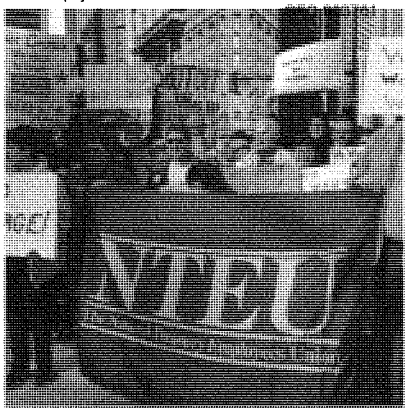

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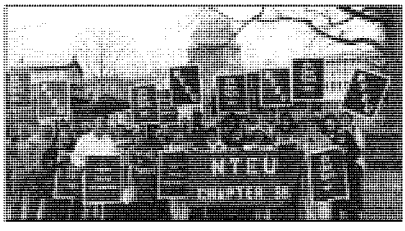

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SEC 003763

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SFC 003764

Hatch Act Matters Received Between FY 2010 - FY 2013 Involving Department of Treasury and IRS

Case Number	Date Received	Agency	Installation
FY 2010			
HA-10-1794	03/29/2010	Internal Revenue Service	IRS
	Total in FY: 1		
FY 2011			
HA-11-1645	02/23/2011	Internal Revenue Service	
HA-11-1961	03/31/2011	Internal Revenue Service	IRS CINCINNATI
HA-11-2294	04/22/2011	Internal Revenue Service	
HA-11-2587	05/23/2011	Internal Revenue Service	
HA-11-2625	05/23/2011	Internal Revenue Service	
HA-11-3488	08/01/2011	Internal Revenue Service	INTERNAL REVENUE SERVICE
HA-11-3892	09/07/2011	Department of Treasury	BUREAU OF ENGRAVING & PRINTING
HA-11-4062	09/20/2011	Internal Revenue Service	IRS LARGE BUSINESS DIVISION
	Total in FY: 8		
FY 2012			
HA-12-0921	11/30/2011	Internal Revenue Service	
HA-12-2127	03/15/2012	Department of Treasury	IRS
HA-12-2301	03/21/2012	Internal Revenue Service	
HA-12-4282	08/13/2012	Internal Revenue Service	
HA-12-4291	08/02/2012	Department of Treasury	CONSUMER FINANCIAL PROTECTION BUREAU
HA-12-4417	08/16/2012	Internal Revenue Service	KANSAS CITY IRS
HA-12-4767	09/07/2012	Internal Revenue Service	
	Total in FY: 7		
FY 2013			
HA-13-0371	10/15/2012	Internal Revenue Service	
HA-13-0397	10/24/2012	Internal Revenue Service	
HA-13-0720	11/01/2012	Internal Revenue Service	
HA-13-0783	10/23/2012	Internal Revenue Service	
HA-13-0881	11/26/2012	Internal Revenue Service	
HA-13-0888	11/08/2012	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-0889	10/08/2012	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-0890	11/08/2012	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-0891	10/28/2012	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-0892	11/08/2012	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-0969	11/30/2012	Internal Revenue Service	
HA-13-1395	01/04/2013	Internal Revenue Service	
HA-13-1397	01/04/2013	Internal Revenue Service	
HA-13-1403	01/08/2013	Internal Revenue Service	

Case Number	Date Received	Agency	Installation
HA-13-3007	05/10/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3009	05/10/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3010	05/10/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3011	05/10/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3448	06/13/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3451	06/13/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-3453	06/13/2013	Department of Treasury	INTERNAL REVENUE SERVICE
HA-13-4060	08/13/2013	Internal Revenue Service	

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Total in FY: 22

Total: 38

SFC 003766

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Exclusive: Lois Lerner breaks silence

By RACHAEL BADE | 9/22/14 4:59 AM EDT Updated: 9/27/14 6:27 PM EDT

Employers won't hire her. She's been berated with epithets like "dirty Jew." Federal agents have guarded her house because of death threats. And she's spent hundreds of thousands of dollars defending herself against accusations she orchestrated a coverup in a scandal that has come to represent everything Americans hate about the IRS.

Lois Lerner is toxic — and she knows it. But she refuses to recede into anonymity or beg for forgiveness for her role in the IRS tea party-targeting scandal.

"I didn't do anything wrong," Lerner said in her first press interview since the scandal broke 16 months ago. "I'm proud of my career and the job I did for this country."

(GRAPHIC: IRS scandal timeline (http://images.politico.com/global/2014/09/22/irstimeline1200.jpg))

Lerner, who sat down with POLITICO in an exclusive two-hour session, has been painted in one dimension: as a powerful bureaucrat scheming with the Obama administration to cripple right-leaning nonprofits. Interviews with about 20 of her colleagues, friends and critics and a survey of emails and other IRS documents, however, reveal a much more complicated figure than the caricature she's become in the public eye.

The portrait that emerges shows Lerner is, indeed, fierce, unapologetic and perhaps even tone-deaf when she says things that show her Democratic leanings. She had a quick temper and may have intimidated co-workers who could have helped her out of this mess. It's easy to see how Republicans have seized on the image of a devilish figure cracking down on conservative nonprofits.

(Also on POLITICO: Lerner on Lerner: More from the former IRS official

(http://www.politico.com/story/2014/09/lois-lerner-irs-exclusive-111204.html))

"We followed the trail where it leads, and we saw it lead to Lois Lerner," House Oversight and Government Reform Chairman Darrell Issa (R-Calif.) said at a hearing Thursday. "She refers with disdain to conservatives; she's an active liberal; and it's clear her actions were set out to be detrimental to conservatives."

Yet Lerner is also described as "apolitical" and fair. Some say she was a generous boss who inspired loyalty, baking brownies and handing out lottery tickets to managers to raise morale. She's putting her babysitter's son through college and in 2005 flew to New Orleans after Hurricane Katrina to rescue animals.

And she's a savvy lawyer: She studiously avoided answering fundamental questions about her role in the IRS scandal that could land her in deeper trouble with Congress. During her POLITICO interview, flanked by her husband, a partner at a national law firm, and two of her personal attorneys, she opened up about her life as a pariah, joked about horrible news photos and advice that she disguise herself with a blond wig, and cried when expressing gratitude for her legal team's friendship.

(Also on POLITICO: Timeline of IRS scandal (http://www.politico.com/story/2014/09/timeline-of-the-irs-scandal-111185.html))

Very few details of Lerner's personal history, professional background or life since her fall have been detailed in the news media. One thing is clear: She doesn't seem poised to back down or give her Republican critics in Congress any satisfaction.

"Regardless of whatever else happens, I know I did the best I could under the circumstances and am not sorry for anything I did," the 63-year-old said.

An apology and a firestorm

On May 22, 2013, Lerner returned to the seeming safety of her IRS office after invoking the Fifth Amendment and being chased down a Capitol Hill hallway by the Washington press corps.

Instead, she was summoned by the human resources department and ordered to resign or clean out her desk by 2 p.m. and be escorted from the building on indefinite administrative leave. She refused to resign.

(Also on POLITICO: Carl Levin slams IRS watchdog over tea party report
(http://www.politico.com/story/2014/09/carl-levin-irs-tea-party-scandal-110639.html))

It was a startling turnabout for the woman whose alumni magazine said she had "rock star status" in the tax world and who was a recipient of a government service award for ethics. She thought she was months away from a quiet retirement after 33 years working for Uncle Sam.

"Under both Republican and Democratic administrations, she got these amazing ratings and bonuses. … And once she retired, she would have gone out with bells and whistles, and the IRS commissioner would have made a speech. … It went from that to: You're under criminal investigation, and your career is ruined, in a week," said Lerner's husband, Michael Miles, who sat to her right during the interview.

The beginning of the end started a few days earlier, when acting IRS Commissioner Steven Miller asked her to get ahead of a damning inspector general report due the following week. It detailed IRS agents giving heightened scrutiny to nonprofits using words like "tea party," "patriot" and "limited government spending," and asking the groups inappropriate questions about their donors and political affiliations.

(POLITICO's full coverage of tax policy (http://www.politico.com/tag/taxes))

SFC 003768

Lerner, then head of the division handling organizations claiming tax-exempt status, obliged and dropped what turned out to be a political bombshell at an American Bar Association conference, using a planted question to apologize for the treatment of right-leaning nonprofits from IRS "front-line people" in Cincinnati.

Within days, lawmakers in both parties were calling for her resignation, furious that IRS leaders, including Lerner, had withheld information when asked by lawmakers for months about the matter. Top officials also blamed Cincinnati, when, in fact, Washington was also handling the cases.

Called to testify before the House Oversight Committee, Lerner decided to take the Fifth and read a defiant speech declaring her innocence — one that Republicans argued waived her rights. She says she'd do it again.

(Also on POLITICO: More IRS employees lost emails (http://www.politico.com/story/2014/09/irs-emails-lost-110648.html))

"By taking the Fifth, Lois put a sign on her back: Kick me," said Paul Streckfus, editor of the EO Tax Journal. "To the average person, that sounds like, 'Oh my God, she must be hiding something!'"

Lerner, for her part, assumes she is at the center of the storm because "I was the person who announced it. I assume the other part of it is because I declined to talk, and once I declined to talk, they could say anything they wanted, and they knew I couldn't say anything back."

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From IRS: 'Death by delay'

At least a half dozen conservative applicants are still waiting for an answer from the IRS.

By RACHAEL BADE | 2/26/15 5:42 AM EST | Updated 2/26/15 4:30 PM EST

IRS Commissioner John Koskinen in an early February hearing with the Senate Finance Committee acknowledged that mistakes were made and should not be made again. | John Shinkle/POLITICO

Nearly two years after the IRS was exposed for improperly sidetracking requests for tax exemptions from tea party groups, POLITICO has learned that at least a half-dozen conservative applicants are still waiting for an answer.

This challenges repeated assertions by IRS Commissioner John Koskinen that his embattled agency has "completed" a set of recommendations to fix the problem and address a backlog of nearly 300 applications, some of which had been pending already for three years.

The groups that are still waiting include Karl Rove's giant Crossroads GPS, which spent at least $26 million against Democrats in the last election cycle. But most of the half dozen are mom-and-pop outfits from New Mexico to New Jersey, run by volunteers out of their own houses and operating at a fraction of Crossroads' budget.

The years-long delay has gutted these groups' membership, choked their ability to raise funds, forced them to reserve pots of money for possible back taxes and driven them into debt to pay legal bills.

"If you say the targeting issues have been resolved ... how come we still haven't received a determination one way or the other?" asked Rick Harbaugh, leader of the Albuquerque Tea Party, which has been waiting five years for its tax exemption. "We are still being targeted."

ALSO ON POLITICO:

IRS won't collect on bad returns from Obamacare glitch

KELSEY SNELL

IRS' website says it has closed 95 percent of "priority" groups that had been pulled for extra scrutiny.

The agency said it cannot comment on specific cases, but it deflected blame, in part, to the Justice Department. When an applicant is suing the IRS, Justice also has a say in whether to issue a final ruling during litigation. Almost all the groups in limbo have taken the IRS to court.

The IRS also argued that holdups can arise when a group appeals a preliminary, though not official, ruling on its application, which "can add significant time."

"The IRS is committed to treating taxpayers fairly," IRS said in a statement.

But a retired IRS veteran who oversaw the tax-exempt division called it "inexcusable."

"While I appreciate that some determinations involving exemption for organizations engaged in political activity can involve difficult decisions, a five-year wait is inexcusable," said Marvin Friedlander, who retired in 2008. "Justice delayed is

justice denied."

Even critics who argue some such political groups shouldn't be tax-exempt say they deserve an answer from the IRS.

ALSO ON POLITICO:

Judge overturns Christie pension cut

BRIAN MAHONEY

"Regardless of whether or not a group is entitled to [501c](c)(4) status, I think groups have the right to have a determination made in a timely fashion — and five years is not timely," said Paul S. Ryan of the Campaign Legal Center, which backs reforming tax-exemption rules to require disclosure of donors. "It's a disgrace."

QUESTIONS, NOT ANSWERS

In 2009, a group of conservatives in New Mexico made a plan to speak out for limited government, joining the nascent tea party movement sweeping the nation.

The Albuquerque Tea Party vowed to educate surrounding communities on the Constitution, states' rights and free markets. It homed in on the Obama administration's big moves on health care and Democratic proposals, including the DREAM Act for undocumented youths and cap-and-trade rules on pollution.

It mailed its application for tax exemption to the IRS on Dec. 29, 2009. Members expected to hear back in a few months.

But in April 2010, instead of an approval, they received a lengthy request for more documentation — copies of newsletters, brochures, handouts and board-meeting minutes.

ALSO ON POLITICO:

Walmart pay hike has limited reach

MARIANNE LEVINE

What they didn't realize was that just weeks before, a Cincinnati-based IRS agent had flagged their application, along with another tea party group's, sending them to Washington, D.C., for further examination.

The IRS around the time was aware of Democratic lawmakers' complaints, including some by President Barack Obama himself, about how the Citizens United court decision would affect "dark money" nonprofits like Americans for Prosperity, suggesting they that were breaking tax-exempt law by over-engaging in politics and hiding donors.

When approving 501(c)(4) applications, the IRS has to determine if the purpose of a group is "primarily" for social welfare, often interpreted to mean 51 percent of its time and money. The rest of its resources can go toward campaigns and politics, including candidate endorsements.

But defining "political activity" proved difficult. IRS employees mixed up the rules and found themselves in hot water for flagging groups based on their policy stances, like curbing government spending or taxes — even though expressing such views, even lobbying on them, is allowed.

In November 2011, more than a year after submitting a "couple hundred pages" worth of answers to IRS questions, Albuquerque received another list of questions.

It wasn't the only group getting extra scrutiny. Using ideological trigger words, including "tea party" and "patriot," IRS agents sidetracked at least 298 similar applications — most of them from conservative-leaning groups. The IRS also used hot-button terms like "occupy" and "progressive" to flag seemingly liberal groups.

San Fernando Valley Patriots in California, which applied in October 2010, didn't hear back from the IRS for 16 months. In February 2012, it received a letter requesting donor information, political party affiliations of all event speakers and the employer ID numbers of businesses it had worked with.

The small groups interviewed for this story told POLITICO they have always followed rules limiting "political activity," though they would not share their budgets for POLITICO to verify that claim.

But they did describe their activities in general terms. Harbaugh, the secretary of the Albuquerque Tea Party, said his group keeps an email list of around 1,000 subscribers. Volunteers gather every third Tuesday of the month in a local church or inexpensive hotel conference room to discuss various topics, from school board

elections to national policy priorities. About 30 members recently screened a documentary on the impact illegal immigration is having on border towns.

They have a clear political point of view, but Harbaugh said they have never endorsed a candidate. They host candidate forums for the state house, city council or county commissioner, but both parties are invited to attend. They spend most of their time on education and advocacy, Harbaugh said, organizing lectures, for example, on problems with VA hospitals and arranging retreats for kids to learn about the Constitution.

Like other groups interviewed for this story, they scoff at allegations that big-name donors, like the Koch brothers, send them checks to influence elections. Harbaugh said his group raises 95 percent of its funds locally, including from an Uncle Sam top hat members pass around at monthly meetings.

Given his group's size, budget and mission, Harbaugh said he doesn't know why approval is taking so long: "What is the IRS afraid of?"

UNFINISHED BUSINESS

In May 2013, the Treasury Inspector General for Tax Administration, the IRS watchdog, disclosed the targeting practice. It attributed the controversy to incompetence and found no evidence of political bias, but the watchdog, the FBI and a half-dozen congressional committees are still investigating.

The IRS was given nine recommendations to fix the problem and ensure it wouldn't happen again, including: Stop pulling applicants based on controversial trigger words, fix the murky social welfare rule and ensure employees are better trained.

Another key recommendation given the lengthy wait some groups had endured: Get to the backlog of 298 cases.

"Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously," the recommendation reads. That was 22 months ago.

But the way the IRS counts the cases makes it difficult to track the agency's progress.

In May 2013, it released a list of 176 political nonprofits it said it had approved already, many of them groups it once labeled "inflammatory," "anti-Obama" and engaging in "propaganda."

Then, the IRS created a Web page on which it updated monthly its rulings on a collection of 145 "priority" applications from groups that had been waiting for more than 120 days as of May 2013. The IRS has declined to explain why it does not track the progress of all the groups the watchdog identified.

In January 2014, after closing 111 of those "priority"cases, the IRS declared victory and proclaimed to have "completed" the watchdog's recommendation. Since then the agency has ruled on another 27 cases, bringing the total to 138, but still short of its 145 target.

That hasn't prevented IRS chief Koskinen from asserting repeatedly that the agency has satisfied all the watchdog's recommendations.

In early February, Koskinen appeared before the Senate Finance Committee. When Sen. Tim Scott (R-S.C.) prodded Koskinen for taking nearly a half-decade to approve a tea party application from his state, Koskinen agreed with his outrage.

"I have said from the start that those were mistakes that were made, they should never have been made and they should not be made again," he said.

Then he assured the committee members: "We have implemented every one of the inspector general's recommendations to do our best to make sure that never happens again."

The agency says the process is complicated by litigation. If an applicant sues, the agency said, the case "moves to the Department of Justice, which in consultation with the IRS will control the resolution of the applicant's status."

Freedom Path in Texas, a group that's been waiting about four years for an answer and is suing the IRS, says it was told it could not receive a ruling while litigation was pending. But the American Center for Law and Justice, which represents more than 40 conservative groups, including Albuquerque Tea Party, saw multiple groups approved during litigation. In fact, that was one of the reasons why the judge threw

out the case, calling it moot. ACLJ is appealing.

IRS also said applicants who received a proposed denial letter can appeal, moving the matter from the exempt division to appeals, "a process that can add significant time to when a final decision on the application is made," IRS said.

'DEATH BY DELAY'

While Crossroads' expansive connections, powerful fundraising arm and full-time staff have kept the group functioning despite lacking the IRS' stamp of approval, small groups on hold for years at a time struggle to stay above water.

"Your ability to operate as a [501](c)(4) when you're not approved is fatally injured — your ability to raise money ... to plan," said David French, senior counsel for the American Center for Law and Justice.

At one point, for example, Unite in Action, a group that's been on hold for more than 1,700 days, looked poised for growth. With members in various states and a mission to "prepare current and future generations to be guardians of our Constitutional Republic," it quickly built a nationwide following, fundraising $600,000 to throw a multiday rally on conservative priorities in Washington, D.C., in 2010. Thousands attended.

IRS agents flagged its tax-exempt application, citing a blog post that said "fire Timothy Geithner," then the Treasury secretary, and "demand Joe Biden apologize," according to leaked IRS documents from 2011.

When the IRS asked Unite in Action for its list of donors, their occupations and addresses, the group's finances took a nosedive.

"We told everybody that we will in no circumstances surrender that ... [donor] information, but it still has dried up about 95 percent of the fundraising that we were able to do prior," said current president Jay Devereaux, who joined the group in 2009. The IRS would later apologize for asking for groups' donors, which it said was inappropriate.

Now Unite in Action is $16,000 in debt and operates on an annual budget of $8,000 to $10,000.

Though Devereaux, an IT guy by day, dreams of organizing a nationwide bus tour to protest the Common Core education standards, the most his group can afford to do is to occasionally send a member to lobby state legislatures on amending the Constitution, or to Congress to protest fast-track trade authority for Obama.

"We really can't do events anymore, namely because of the cost and the impact this has had on our fundraising since this whole thing was made public," Devereaux said.

Some would-be donors and partners are suspicious of groups without exemptions, thinking they might be bad apples.

Northeast Tarrant Tea Party in Texas, which received its tax-exempt status in December 2014 after waiting four years, had a partner withdraw funding for a mailer when he found out the group wasn't yet IRS approved. "He wasn't sure of the legal limits for how his tax-exempt organization could interact with ours," said Julie McCarty, group president.

Other donors worry they'll be audited or slapped with a gift tax, another option some in the IRS exempt unit had considered. A former Albuquerque Tea Party president, who has left the group, was audited twice after the group filed its application.

Groups say they've lost members out of fear and frustration. One of Albuquerque's board members quit because of concern that involvement with the group would affect a spouse's government job. Another Albuquerque volunteer backed out from leading a protest at a local IRS office because of "his fear of being photographed by the IRS cameras," Harbaugh, the group's secretary, said.

Unite in Action lost "some of our best people involved in this because they got so frustrated with the process," Devereaux said.

And if they do not get an exemption, these groups face a potential tax hit for the years they were allowed to operate as a nonprofit. Harbaugh made the executive decision to put money aside each year in case that happens. He told a local paper in July that his group has $3,500 in reserves.

"This is huge for a group like ours where every dollar counts," he said.

California's San Fernando Valley Patriots found itself in a similar bind. Upon

applying for tax-exempt status in the fall of 2010, organizer Karen Kenney was advised that California's exemption for state taxes would be approved automatically once her federal approval came through.

But the group dropped its federal application in the summer of 2012 after receiving a donor-request letter. Two weeks after Kenney testified on Capitol Hill on the matter in mid-2013, she got a call from California tax collectors.

The group, which has a $3,000 annual budget, wound up owing around $2,500 due to a minimum tax California levies on non-for-profit corporations. It forced them to cut honorariums for guest speakers, curb support for the local food bank, kill the advertising budget to promote the group on talk radio and halt distribution of free copies of the Constitution.

"Do the math — it hurt us," said Kenney. She just paid the last installment out of her own pocketbook at the end of January.

After the scandal broke, the IRS gave groups on hold a fast-track option: immediate approval if they pledged to spend less than 40 percent of their time and resources on political campaigns. But several of the groups dismissed that option on principle, calling it unfair because it was a stricter standard than other 501(c)(4)s had to abide by.

Unlike with nonprofit charities and foundations, which are allowed to sue the IRS if they don't get an answer from the agency within 270 days of filing, the IRS is under no obligation to answer 501(c)(4) applications within a certain time frame.

Former IRS official Friedlander said postponing a decision this way is known as "death by bureaucratic delay."

Indeed, many conservative groups withdrew their applications in frustration. Others changed their names and could try to start the whole process again. For example, Greenwich Tea Party Patriots of South Jersey, another group that never heard back, is starting a new group, changing its name to Faith and Freedom Coalition of New Jersey.

Then, there are those who went belly-up while waiting.

Freedom Path, which was created in part by GOP operatives with connections to Utah politicians, ran a series of ads in Utah between summer 2011 and spring 2012 supporting a balanced budget amendment and Obamacare repeal.

IRS deemed two of the 2012 ads political campaign activity: one praised Sen. Orrin Hatch (R-Utah), battling a contentious primary that year, for backing both policy positions, telling Utahans to call his congressional office to show support. The other name-dropped Mitt Romney, presidential candidate, for holding similar views.

The Center for Public Integrity reported the group spent at least $500,000 on "ads designed to help Hatch's electoral prospects," citing FEC filings, and received hundreds of thousands in donations from a Hatch-friendly drug lobby.

But the group argues it never came close to breaking the social welfare rules.

"The majority of the ads and the primary purpose of the organization was issue-based and not political," said board member Scott Bensing, former executive director of the National Republican Senatorial Committee. "We weren't pushing any limits."

Even if they had, Friedlander said the IRS by now should have given them an answer because "a record exists on which the IRS can make an informed determination."

Without an answer, Freedom Path, currently suing the IRS, stopped operating in late spring of 2012 out of concern that it would be denied tax-exempt status and forced to pay back taxes. It also feared donor information could be revealed to the IRS.

Freedom Path exists mostly in name now. It doesn't even have a website. It's "six-figures" in debt for legal bills suing the IRS.

"We've had to reduce all of our expenses, and really we're in a position now where we're just struggling with legal bills," Bensing said. "We're closer to bankruptcy than to solvency."

POLITICO

IRS scrutinized some liberal groups

By: David Nather
July 22, 2013 01:58 PM EDT

After a political group in Texas asked the IRS for a tax exemption last year, it got a lengthy, time-consuming list of questions — like a request for the minutes of all the board meetings since the group got started.

And a California-based group got turned down completely in 2011, because the IRS concluded that it was set up "primarily for the benefit of a political party."

These two stories sound like they'd fit right into the raging IRS scandal over its treatment of conservative groups that applied for tax-exempt status.

(PHOTOS: 10 slams on the IRS)

The only difference: these two groups — Progress Texas and Emerge America — were unabashedly liberal.

POLITICO surveyed the liberal groups from an IRS list of advocacy organizations that were approved after the tougher examinations started. The review found some examples of liberal groups facing scrutiny similar to their conservative counterparts — they were asked for copies of web pages, actions alerts, and written materials from all of their events.

But those harsh investigations were more rare than what POLITICO had found when it surveyed conservative groups at the beginning of the scandal. And the questions themselves appear less invasive, overall.

So while liberals have some reason to complain about the IRS, the disparity in treatment does help explain why the conservative piece became a runaway story while the liberal side did not.

(PHOTOS: IRS hearing on Capitol Hill)

Plus, many liberal groups just weren't as bothered by the questions they did get.

Progress Texas was the only one that came forward during the height of the scandal, releasing its own IRS letter to prove it had been hassled, too. It even had a cover letter from Lois Lerner, the embattled IRS official at the center of the scandal.

But even then, its leaders didn't really feel hassled.

"If you're going to ask for exceptional treatment, you should expect to go through exceptional screening," said Ed Espinoza, the executive director of Progress Texas. "We all play by the same rules, and if they don't like the rules, they don't have to play."

(Also on POLITICO: 5 questions for tax inspector general J. Russell George)

At a hearing on Thursday, Rep. Darrell Issa asked the IRS inspector general to look into where liberal groups were targeted. But most of the momentum is behind Congress staying on the trail of the conservative targeting. Top Republicans are trying to pry more information out of the agency about the role of the IRS Chief Counsel's office, after career IRS officials testified that Lerner sent Tea Party applications there as part of a lengthy review process.

The bottom line is, Republicans have more fuel to keep the scandal alive — and liberal groups just aren't about to march in the streets.

"In my mind, I didn't find it to be onerous. I just thought they were doing their due diligence," said Denise Cardinal of Progress Now, the umbrella organization for state progressive groups like Progress Texas.

Her group was one of the ones that got off easily. Its IRS letter — which came from the same Cincinnati office that investigated the conservative groups — asked just four follow-up questions, mostly about its relationship with its state affiliates.

Cardinal said some of the state groups did get lengthier sets of questions. And Alliance for a Better Utah, one of those state affiliates, is still waiting for the IRS to approve 501(c)(3) status for its education and voter registration operation. That's causing problems because it can't apply for foundation and grant money while that application to become a charitable organization is in limbo, according to Maryann Martindale, the group's executive director.

But the group has gotten its 501(c)(4) approval for its advocacy work — the same kind of tax-exempt status that snagged so many conservative groups. That status is for "social welfare" groups that can participate in politics, but it's not supposed to be the main thing they do. And Martindale had no problem with the questions her group received in that process.

"I think they all seemed reasonable," Martindale said. "The way I look at it is, if you're applying for tax-exempt status, you should come under a certain level of scrutiny."

The shrugs from many liberal groups may help explain why more of them didn't come forward during the height of the IRS firestorm. There's a feeling among some Democrats and liberals that the conservative groups got all the attention, and sparked the inspector general investigation, because they were the louder complainers.

Espinoza says it took Progress Texas 18 months to get its 501(c)(4) approval, longer than some of the Tea Party groups. "Some of the people complaining about the process, theirs took less time than ours did," he said.

Better Georgia, another Progress Now affiliate, has been waiting for 501(c)(4) approval since February 2012, and has now applied for "expedited" IRS approval, in which it just has to state that most of its activities aren't political. But "we have not complained about the process, because we believe it's appropriate when we do some public interest work and some political work," said board chairman Amy Morton.

And even when Emerge America, which trains Democratic women to run for office, had three state chapters turned down for 501(c)(4) status in 2011 — also with a Lois Lerner cover letter — it just solved the problem by converting all of its organizations into 527 groups, according to co-founder Dana Kennedy.

Those are tax-exempt too, but with a crucial difference: They have to disclose their donors, while 501(c)(4)s don't.

"We've never had any problem disclosing our donors ... We're still operating and doing all the same things we've always done," said Kennedy. "These groups that are screaming really loud, why do they have a problem with becoming 527s?"

The IRS declined to comment for this story.

It's true that the conservative groups had powerful allies championing their cause — from the American Center for Law and Justice, the legal group that represented some of the Tea Party organizations, to the Republicans that pushed to find out why their applications were delayed.

And there may have been more conservative groups applying for tax-exempt status in the first place. There's no definitive ideological breakdown of the 298 groups that were set aside for special IRS scrutiny, but a Tax Analysts study of the 176 organizations that won IRS approval found that 122 likely had conservative leanings, including 46 with "Tea Party," "Patriots," and "9/12" in their name.

But it's also a lot easier to find conservative groups that were singled out for lengthy, intrusive interrogations. The treatment of the liberal groups appears to have been more random. Some had a hard time, but there were plenty that didn't think their experiences were hellish at all.

For example, they weren't asked to name their donors, like conservative groups were. Martindale, for example, says the Alliance for a Better Utah was asked a more general question — whether it took donations from any political parties, political candidates or elected officials. But it wasn't asked for "the names of the donors, contributors and grantors," as at least two of the conservative groups were.

It was easy for the Utah group to satisfy the IRS, too. "We just said no" — the group wasn't taking those donations — "and that was the end of the discussion," said Martindale.

It's clear that liberal groups were on the agency's radar. The agency's infamous "Be On the Look Out" (BOLO) list included the term "progressive" — and Democrats have uncovered evidence that screeners were trained to look for progressive groups as well as "Tea Party," "Patriots" and "9/12 Project" organizations. At a Thursday hearing, George, the Treasury inspector general, blamed the IRS for not turning those documents over to him during his investigation.

Even groups that weren't necessarily ideological — like Chi Eta Phi Sorority, an African American nurses group — have gotten caught up in the screening. The group has told congressional Democrats it believes it was singled out because of the phrase "social change" in its mission statement, and has been asked to explain statements on its website about "sisterhood/brotherhood" and "love and caring." The group's attorney did not respond to several requests for comment.

But none of the progressive groups contacted by POLITICO said they had been grilled about what they were reading — or asked about their relationships with specific political activists, like Ohio's Liberty Township Tea Party was when it was asked about Justin Binik-Thomas, a former leader of the Cincinnati Tea Party.

"The questions they asked were pretty neutral," said Joe Onek of the Committee for a Fair Judiciary, which pressures the Senate to fill judicial vacancies. He said the IRS mostly wanted

to know how it would separate its activities from those of the Raben Group, a lobbying group whose founder, Robert Raben, is one of the leaders of the Fair Judiciary group.

The liberal groups' pattern doesn't track with the conservative groups, either, which received the most probing questions from the IRS Cincinnati office. The Progress Texas letter with the harsh questions came from an IRS office in Laguna Niguel, California — not Cincinnati.

And some of the other liberal groups that got relatively mild questions received them from the Cincinnati office — including the Middle Class Taxpayers Foundation of San Diego. It was mostly asked structural questions, like how it would make sure the funds from its charitable arm wouldn't be used for legislative or political activities. The rest were milder inquiries, like: "What is the purpose of professional fees?"

Some of the groups said there are probably strong reasons why they didn't get stronger scrutiny. Bob Fulkerson, state director of the Progressive Leadership Alliance of Nevada, said it may have just had good timing. He said his group applied for its tax exemption in October 2011, rather than in 2010, so "the IRS didn't get a chance to make the burdensome requests that we've learned other groups were subjected to."

Onek said the Fair Judiciary group probably didn't trigger harsher screening because the name doesn't make it obvious that it's a progressive organization — although since it's pushing to "fill the vacancies" that President Barack Obama has been trying to fill for months, "you wouldn't have to read very far to figure out where we were coming from."

And Progressives United, a Wisconsin-based group, had a built-in advantage. It was founded by former Sen. Russ Feingold, the co-author of the McCain-Feingold campaign finance law — and staffed with attorneys who know the law so well that they were able to anticipate virtually every IRS question when they sent in the application.

"We actually didn't get any questions," said Josh Orton, the group's spokesman. "We didn't go into this blind."

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Prepared Remarks of Commissioner of Internal Revenue Service John Koskinen before the National Press Club

IR-2014-42, April 2, 2014

WASHINGTON — Thank you for that warm welcome. It's an honor for me to be here today at the National Press Club for the first time as IRS Commissioner.

Now that we've turned the calendar to April, I know there are usually two things on peoples' minds. The first is Spring and the second is taxes. Plus watching the Final Four this weekend. As a former Chairman of the Duke Board of Trustees, we had a moment of silence earlier in the tournament. But the loss to Mercer was part of a longer term-strategy to increase the Duke endowment in the hopes of a substantial contribution from an unnamed major investor in the United States, in recognition of the billion dollars we saved him by losing the game.

Moving on, if you came to this luncheon or tuned in expecting to hear about the state of affairs at the Internal Revenue Service, you've come to the right place.

I was sworn in as IRS Commissioner a little over three months ago, and I feel exactly the same way I did on Day One: Excited and proud to lead an agency that's critical to the functioning of our government and one that touches virtually every American. These last three months I've traveled to 18 of the 25 largest IRS offices around the country. I have talked with and listened to about 8,000 employees so far and been delighted to see the professionalism, skills and dedication of our employees.

I am on this journey because, throughout my career, I have found that the people who know most about what's going on in an organization are the front line employees. They have important insights into the opportunities and challenges an organization faces.

In light of all that has happened to Federal employees in the last four years, and IRS employees in particular – no pay raises for four years, government shutdowns, furloughs and the negative publicity about the IRS the last year – you might have expected that I would have heard a lot of grumbling from employees about not being paid enough or having to work too hard. Instead, the consistent response I have heard is a concern that we do not have enough employees to provide the level of taxpayer services our employees want to provide and feel taxpayers deserve.

I also have heard at every stop – even in the 18th city last Friday – interesting observations and suggestions about how we can improve the day-to-day operations of the agency. And I have explained in town halls with front line workers and meetings with managers at each office that one of my goals is to foster an environment where information flows easily from the bottom up in the agency as well as from the top down.

This is critical, not only for us to get the benefit of observations and suggestions from employees, but also to learn as quickly as possible about problems or challenges. I have noted that it is illusory to think that we'll never have a problem or make a mistake. We have 90,000 employees administering the world's most complicated tax code and dealing with millions of taxpayers. Instead, my goal is for us to find problems quickly, fix them promptly, make sure they stay fixed, and be transparent about the entire process. I've told our employees that if there's a problem anywhere in the organization, it's my problem and we'll fix it together. If an employee makes an honest mistake,

it's my mistake as well, and we'll work together to remedy the situation. And if there's a problem that I don't know about, that's my fault, because it would mean we haven't built a culture that encourages information to flow up from the front lines through the organization. SFC 003784

As I tell the employees, my theory is that "bad news is good news," since the only problem we can't solve is one we don't know about. And, as a corollary, employees need to know that we don't shoot messengers, we thank them.

In moving the IRS forward, one of the most important things we have to do is restore public trust in the agency, which was shaken by the management problems that came to light last year with regard to the determination process used for applicants to become tax exempt social welfare organizations under section 501(c)(4) of the IRS code. Organizations that have 501(c)(4) status can be everything from garden clubs to homeowners associations, but the focus for the last year has been on advocacy groups that spend part of their time and money on political campaigns.

As a result of the inappropriate use of an organization's name alone as the criterion for setting its application aside for special treatment, doubt has been cast by some on the independence of the IRS. This is an important issue that deserves our attention. But it is also important to put this issue into the proper perspective. The IRS has about 800 employees in its Exempt Organizations Division, and only a small subset of those folks work on processing applications for tax-exempt status for social welfare organizations. Meanwhile, there about 89,000 other IRS employees in offices all across the country who are also doing critical work for our tax system and for the nation in other areas.

Nonetheless, taxpayers need to be confident that the IRS will treat them fairly. It doesn't make any difference who they are, what organizations they belong to, or whom they voted for in the last election. None of that matters to us at the IRS. We will do about one million audits of individual taxpayers this year. Some who get audited may be Democrats, some may be Republicans, and others may be something else altogether. But they will all have one thing in common: They're being contacted by us because there was something on their tax returns that needed follow up. Perhaps we just need a clarification. Maybe there was a mathematical error. Or there could be something seriously wrong with the return. But the return alone is the reason for our inquiry. And anyone else with the same issue would receive the same treatment from the IRS.

To make sure that this problem does not recur, we've done a number of things. We have accepted all nine of the recommendations from the Inspector General for Tax Administration. It was his report last May that found applications for 501(c)(4) status were being screened using inappropriate criteria in the determinations process.

Since then, for the last several months the IRS has been cooperating with the investigations into this matter that were launched last summer. There are six ongoing investigations, four conducted by Congressional committees, one by the Department of Justice and one by the IG.

We were asked by members of Congress to quantify the work we've done and how much it has cost. The answer is that more than 250 IRS employees have spent over 100,000 hours working directly on complying with the investigations. This work has cost more than $14 million, which includes adding capacity for our computer systems to make sure we are protecting taxpayer information while processing and producing these materials.

In letters to Congressional Committees two weeks ago and in my testimony before the House Oversight and Government Reform Committee last week, I was pleased to report that we now have provided all the documents we have identified as being related to the determinations process – which was the focus of the IG's report last May. We have provided the tax writing committees, our primary oversight committees, with almost 700,000 pages of documents. We are still redacting taxpayer information from the last of those documents before they can be shared with the Committees that do not have authority to see taxpayer information.

As a result, my hope is that at least some of the six pending investigations will be concluded and reports issued in the near future. I have made it clear that we will respond appropriately to the facts and recommendations of those reports and move the agency forward.

Our production of materials has proceeded according to priorities set with all of the investigating committees and, as we have now completed our production of documents related to the determinations process, we are prepared to work with the committees on any new avenues they may want to pursue. SFC 003785

You may have noticed that, during my three-hour hearing last week before the House Oversight and Government Reform Committee, some members of the Committee expressed unhappiness with the rate at which we are producing redacted information for them. As I tried to make clear, we never indicated that we would not respond to the very broad subpoena for documents we received in mid-February. Indeed, we have produced documents responsive to each of the subpoena's categories. In the private sector, a court would require these requests to be reduced to those relevant to the inquiry. Unfortunately, the subpoena contains no such limitations, so the volume of materials requested means we could be at this for a long time.

Another recommendation by the IG was that the Treasury Department and the IRS should provide clearer guidance on how to assess the permissibility of 501(c)(4) social welfare organizations' activities. So last November, Treasury and the IRS issued proposed regulations that are designed to clarify the extent to which a 501(c)(4) organization can engage in political activity without endangering its tax-exempt status.

While I was not involved in the issuance of this draft proposal, because it happened before I was confirmed as Commissioner, I believe it is extremely important to make this area of regulation as clear as possible. Not only does that help the IRS properly enforce the law, but clearer regulations will also give a better roadmap to applicants, and will help those that already have 501(c)(4) status properly administer their organizations without unnecessary fears of losing their tax-exempt status.

During the comment period, which ended in February, we received more than 150,000 comments. That's a record for an IRS rulemaking comment period. In fact, if you take all the comments on all Treasury and IRS draft proposals over the last seven years and double that number, you come close to the number of comments we are now beginning to review and analyze. It's going to take us a while to sort through all those comments, hold a public hearing, possibly repropose a draft regulation and get more public comments. This means that it is unlikely we will be able to complete this process before the end of the year.

Before leaving this topic, I want to note one other thing. Last month, former IRS Commissioner Randolph Thrower passed away at the age of 100. Commissioner Thrower led the IRS from 1969 to 1971, during the early years of the Nixon Administration, which turned out to be a challenging time for the agency. Commissioner Thrower held firm against attempts being made at that time to politicize the agency. The White House eventually fired him for his principled stance.

I'm sure if Commissioner Thrower were here today, he would say he was only doing his job. But he was doing much more. His refusal to let politics compromise the IRS is an important reminder to all IRS Commissioners now and in the future of what our mission is. I intend to follow his example. I want to reassure everyone listening to me today that the IRS is an agency of career civil servants who are dedicated to serving the American taxpayer in a fair and impartial manner. That's how it's always been, and that's how it will stay on my watch.

We have other important challenges to face. One example of this is insuring that the tax filing season goes smoothly. When I started in December, I told our employees that I wanted to help with the filing season and, as the new kid on the block, the best thing I could probably do was to stay out of the way. I've been very successful at that and, at least partially as a result, the filing season has gone very well thus far. Through the end of March, we've received more than 90 million tax returns and issued more than 73 million refunds, for approximately $207 billion.

As we get closer to the April 15th deadline for filing returns, I think it's important to realize what a tremendous accomplishment it is for the agency to process 150 million individual taxpayer returns every year. This doesn't happen by accident and it doesn't happen automatically. It happens because thousands of dedicated and experienced employees work for months planning for the next filing season and then administering it.

Another top priority of ours: taxpayer service. This filing season, as we do every year, the IRS provides services to taxpayers to help them fulfill their tax obligations. SFC 003786

Taxpayers want and need more online tax information and services, and we're working to meet that demand by making improvements to our website, IRS.gov. Last year alone, taxpayers viewed IRS.gov web pages more than 450 million times, to get forms and publications, find answers to their tax questions and check the status of their refunds.

One of the most popular features on IRS.gov is the "Where's My Refund?" electronic tracking tool, which taxpayers used more than 200 million times last year. Now that doesn't mean, of course, that there are 200 million taxpayers. Some of them just can't resist checking over and over to see how their refund is doing.

This year we have several new digital applications that will expand what taxpayers can do online. One of these applications is IRS Direct Pay, which provides taxpayers with a secure, free, quick and easy online option for making tax payments. Another innovation, Get Transcript, is a secure online system that allows taxpayers to view and print a record of their IRS account, also known as a transcript, in a matter of minutes. We are also in the final stages of revamping the IRS Online Payment Agreement, which allows taxpayers to apply for an installment agreement online.

To provide better service, the IRS is also expanding the methods it uses to communicate information to taxpayers. We have moved beyond traditional media, like newspapers and TV news to also take advantage of social media, such as YouTube, Twitter and Tumblr.

During my three months on the job, I have been surprised to learn how much time, effort and resources we provide trying to help taxpayers determine the amount they owe and how to pay it. As I have said, it may take me a while to convince the average taxpayer that "we're from the IRS and we're here to help you," but we really do work hard to make it as easy as possible to file your taxes.

Along with taxpayer service, another high priority for the IRS is maintaining a robust tax compliance program and building on the work that's been done to improve compliance in a number of areas. One of the most important of these is the battle against refund fraud, especially fraud caused by identity theft. I say "battle" because we really do have a fight on our hands against identity thieves who steal peoples' information outside the tax system and use that information to file a tax return claiming a refund.

We're doing a much better job of stopping suspicious returns before they can be processed compared to a couple of years ago, and our criminal investigators are making great progress in helping the Justice Department find these criminals and put them behind bars. Last year we protected $17.8 billion from refund fraud, we initiated 1,400 investigations, and we obtained over 1,000 indictments and 400 convictions. We're also doing a lot better at helping identity theft victims clear up their IRS accounts after they have been victimized. The time for resolving a new case has been reduced from over 300 days to roughly 120 days. But there's still room for improvement, and we intend to do even better.

Perhaps our most intense challenge is fulfilling the responsibility Congress has given us to implement tax-related provisions of enacted legislation, including the Affordable Care Act. We have a lot of work to complete if we are going to be prepared for major ACA provisions that go into effect this year, including the premium tax credit and the individual shared responsibility provision. As I have told our employees, the significant challenge of implementing the Affordable Care Act provides us with a major opportunity to demonstrate the skill, dedication and competence of the IRS. After the difficulties experienced last fall with the rollout of ACA, if we can have a smooth filing season next year including the appropriate review of the returns of taxpayers who took or were eligible for the advanced premium tax credit, the public and the Congress will have to say, "That's some organization with an amazing work force."

Along with the ACA, another important piece of legislation we're in the process of implementing is the Foreign Account Tax Compliance Act, which is more commonly known as FATCA. This law is important because it requires foreign financial institutions to tell us about accounts owned by U.S.

citizens. With this information, we can do a much better job of combatting offshore tax evasion. Our goal is to make it more and more difficult for Americans to hide their money in a tax haven to avoid paying taxes. SFC 003787

The importance of FATCA is not just that we'll be collecting more money. It is also important because the average taxpayer has to be confident that, while they are paying their taxes, the very wealthy, with fancy lawyers and accountants, are no longer able to hide their money in foreign countries and avoid paying their fair share to support the operations of the government.

When I became Deputy Mayor of Washington, the city's theory of snow removal had been that "the sun will come up tomorrow." So, when I began, we had a "snow summit" and I told the leadership team that, whatever else we were going to do, we were going to get the snow off the streets. That's my feeling today at the IRS. Whatever else we are going to do, we are going to implement the non-discretionary legislative mandates we have been given: the Affordable Care Act and FATCA.

This brings me to what I believe is the biggest challenge facing the IRS today, the substantial decline in our funding, which puts significant strain on our ability to provide adequate services to taxpayers and to maintain strong service and enforcement levels to ensure the integrity of our voluntary compliance system.

For the IRS to keep making progress in all the areas I've just mentioned, it is critical for us to receive adequate resources. The agency continues to be in a very difficult budget environment since we are the only major agency functioning basically at the post-sequester level rather than having been moved back toward the pre-sequester level of funding. Since Fiscal 2010, IRS appropriations have been cut by about $900 million and we have 10,000 fewer employees even as our responsibilities continue to expand.

We recognize the need to become more efficient, no matter what happens to our funding level. Since 2010, the IRS has cut annual spending on professional and technical service contracts by $200 million. We generated $60 million in annual printing and postage savings by eliminating the printing and mailing of certain tax packages and publications, and by transitioning to paperless employee pay statements.

Real estate is another area where we have found major savings. In 2012 the IRS began a sweeping space-reduction initiative that is projected to reduce rent costs by more than $40 million and reduce total IRS office space by more than 1.3 million square feet by the end of this fiscal year. Taken together, we're spending $300 million a year less in these areas.

We will continue our efforts to find savings and efficiencies wherever we can. And we will continue to carry out our core responsibilities and work toward preserving the public's faith in the essential fairness and integrity of our tax system. But these budgetary constraints will pose serious challenges to our efforts to enforce the tax laws and provide excellent customer service.

Essentially, the federal government is losing billions in revenue collection to achieve budget savings of a few hundred millions dollars, since the IRS estimates that, for every $1 invested in the IRS budget, it produces $4 in revenue.

As I said during my confirmation hearing, I didn't find a single organization in my 20 years of private-sector experience that said, "Let's take our revenue operation and starve it for funds and see how it does."

So far this filing season, we have been fortunate that the volume of phone calls to our toll-free lines is actually down a bit compared to this time last year. One factor is the lack of major tax changes in 2013, which means fewer questions from taxpayers. Our improved website and its applications also have helped provide taxpayers with important support without requiring a phone call.

As a result, for now, we're maintaining a level of phone service around 72 percent. That's much better than last year's overall average of 60.5 percent. But we expect that for the year we will drop well below 70 percent and end up closer to last year's 60.5 percent. That would mean more than 30

percent of taxpayers trying to reach us on the phone couldn't get through. It wasn't that long ago, with proper funding, that our level of service was 88 percent. SFC 003788

Along with phone service, we're also concerned about the amount of time it takes for people to get help in person when they go to one of our Taxpayer Assistance Centers. We've had reports from field staff in offices across the country of taxpayers lining up outside our centers well before the centers open in the morning to make sure they receive service the same day, sometimes waiting up to three hours to be served after they enter the office. Expanding our online offerings can only go so far to ameliorate these problems. As Forbes magazine noted earlier this year, when you punish the IRS you punish taxpayers.

Our information technology operation is still another area that the IRS has always been focused on. Our use of IT helps us do a better job of stopping potentially fraudulent returns before they are processed and allows us to keep making improvements to our operations and our website. Our 2014 budget had $330 million for IT work related to implementing ACA. None of that money was provided. Since we are mandated by statute to implement ACA, that has meant that other vital IT projects have had to be shelved.

The solution to the budget problem that we face starts with the Administration's Fiscal Year 2015 budget proposal, which was released last month. The Administration proposes a funding level of approximately $12.5 billion for the IRS for Fiscal 2015, which would reverse the erosion in our budget over the last several years.

I think it's fair to ask what value the American taxpayer would get for that extra billion or so dollars that the Administration is proposing. It would help taxpayers get the service they need and strengthen compliance efforts in key areas, especially the two I mentioned earlier – refund fraud and offshore tax evasion. The budget proposal halts the declines in key enforcement personnel we've had and allows the IRS to again invest in necessary basic infrastructure.

Ultimately, it's in everyone's best interests to have an IRS that can do its job. We don't believe that any member of Congress wants their constituents – be they taxpayers, tax preparers or financial advisors – to go through the aggravation of not getting the help they need from the IRS. They don't want their constituents waiting in line for hours at a taxpayer assistance center or having trouble getting through on our toll free lines.

So my hope is that once we get beyond the issues surrounding the 501(c)(4) application process, and once the major tax-related provisions of the Affordable Care Act that I mentioned earlier are up and running, we can have a more normal discussion about our budget. I look forward to working with Congress to solve this budget problem. I hope that one of the legacies of my time as IRS Commissioner will be that we put the agency's funding on a more solid and sustainable footing.

There's another way in which Congress can help the IRS improve the work it does to assist taxpayers and ensure compliance with the tax laws, and that is to simplify the tax code. Congressman Dave Camp, Chairman of the House Ways and Means Committee, put it well when he introduced his tax reform proposal a few weeks ago. He said that the tax code is ten times the size of the Bible, without the good news. The IRS Taxpayer Advocate has estimated that individuals and businesses spend about 6.1 billion hours a year complying with the filing requirements of the tax code. All in an effort to determine and pay the right amount of taxes.

We can do better than that. And, while tax policy is the domain of the Treasury Department, the Administration and the Congress, those of us involved in tax administration are anxious to do whatever we can to assist in the process.

Thank you very much for letting me spend this time with you. With that, I'd be happy to take some questions.

Page Last Reviewed or Updated: 02-Apr-2014

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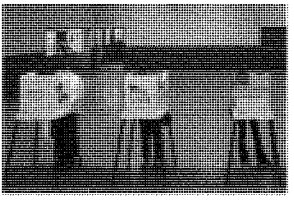
Buying Your Vote
Dark Money and Big Data

Controversial Dark Money Group Among Five That Told IRS They Would Stay Out of Politics, Then Didn't

by Kim Barker
ProPublica, Jan. 2, 2013, 12:34 p.m.

Jan. 4: *This post has been updated.*



Sun Valley residents vote on election day in Los Angeles, Calif. Americans for Responsible Leadership, which California officials have accused of "campaign money laundering," is among five dark money groups that were active in 2012 elections that previously had told tax regulators they would not engage in politics, filings obtained from the IRS show. (Joe Klamar/AFP/Getty Images)

Five conservative dark money groups active in 2012 elections previously told tax regulators that they would not engage iu politics, filings obtained from the IRS show.

The best known and most controversial of the groups is Americans for Responsible Leadership [1], an Arizoua-based orgauization. Not long after filing an applicatiou to the IRS pledging — under penalty of perjury — that it would not attempt to sway elections, the group spent more than $5.2 million, mainly to snpport Republican presidential candidate Mitt Romney.

The California Fair Political Practices Commission has accused Americans for Responsible Leadership of "campaign money lanndering [2]" for failing to disclose the origin of $11 million it funneled to a group trying to influence two state ballot propositions.

The other groups that filed applicatious for IRS recognition of tax-exempt status saying they wouldn't engage in politics are Freedom Path [3], Rightchange.com II [4], America Is Not Stupid [5] and A Better America Now [6].

Much hangs on these applications, all of which are still pending. The tax code allows social welfare nonprofits to engage in political activities as long as public welfare, not politics, is their primary purpose. If the IRS ultimately decides not to recognize these groups, they conld have to disclose their donors.

Such decisions, along with IRS' oversight of social welfare nonprofits overall, have come under increasing scrutiny as these groups have assumed an ever larger role in elections, ponring an unprecedented $322 million [7] into the 2012 cycle.

ProPublica has documented [8] how some social welfare nonprofits underreport their political activities, characterizing them to the IRS as "education" or "issue advocacy." Other groups have popped up [9], spent money on elections and then folded before tax regulators could catch up with them.

The IRS sent the applications submitted by the five groups to ProPublica in response to a public records request, although the agency is only required to supply these records after groups are recognized as tax-exempt. (ProPublica also obtained the pending application of Crossroads GPS [10], the dark money group launcbed by GOP strategist Karl Rove that spent more than $70 million on the 2012 elections, which we wrote about separately.)

The IRS confirmed that none of the groups had been recognized as tax-exempt aud referred ProPublica to its earlier response about Crossroads' application. In that email, the IRS cited a law that says publishing unauthorized tax returns or return information is a felony punishable by up to five years in prison or a fine of up to $5,000, or both.

A lawyer for Americans for Responsible Leadership, Jason Torchinsky, cited the saiue law in an email.

"If you willfully to (*sic*) print or publish iu any manner any information about Americans for Responsible Leadership tbat you do not lawfully possess — and which may or may not be complete — you will be doing so in violation of (the law [11]) and we will not hesitate to report such unlawful publication to the appropriate law enforcement officials," Torchinsky wrote.

The other groups for which ProPublica obtained IRS applications did not respond to calls or emails for comment.

ProPublica has published the applications of all five groups, but redacted parts to omit fiuaucial information.

"As we said when we published our story on the Crossroads application, ProPublica believes that the infornation we are publishing is not barred by the statute cited by the IRS, and it is clear to us that there is a strong First Amendiuent interest in its publication," said Richard

Tofel, ProPublica's president.

Social welfare nonprofits do not need IRS recognition, though most opt to apply for it. They can operate, and spend money on politics, while their applications are nnder consideration.

Americans for Responsible Leadership [1] incorporated in Arizona in July 2011 and applied for IRS recognition last September.

By that time, the group had already spent $5,300 on get-out-the-vote efforts for Sen. Orrin Hatch, R-Utah, and given $57,500 [12] to two Republican political committees in Arizona.

Nonetheless, its IRS application said the group hadn't spent any money to influence elections, nor would it. It also said [13] the group planned to split its efforts between influencing policy and educating the public, in part by "promoting a more ethical and transparent government."

According to Federal Election Commission filings, the group spent more than $5.2 million on campaign activities in October and early November, mostly on phone calls urging the defeat of President Barack Obama. In addition to the millions it pumped into California ballot measures, the gronp also spent $1.5 million [14] on two Arizona propositions.

While the IRS doesn't classify spending on ballot measnres as political, California election authorities do.

When ProPublica read the group's description of its activities on its IRS application to Ann Ravel, the chairwoinan of the California Fair Political Practices Commission, she laughed.

"Wow," she said, upon hearing that the group said it would not try to influence elections. "That's simply false."

The California commission pressed Americans for Responsible Leadership to identify who contributed the funds it aimed at the California ballot measures, a battle that reached the state Supreme Court. Just before Election Day, the court ordered the group to reveal its donors.

So, who were they? Another Arizona social welfare nonprofit, which got its money from a Virginia trade association, which also didn't have to report its donors. California regulators are still trying to peel back the group's layers, to see who's behind the money.

Update (Jan. 4): In a Jan. 2 email to the editor at the Arizona Capitol Times, Jason Torchinsky, an attorney for Americans for Responsible Leadership, said the group had snbmitted an amended application for recognition of tax-exempt status to the IRS that "corrected the error that was the central feature" of ProPublica's story.

Contacted by ProPublica, Torchinsky said he could not confirm that this was accurate without his client's authorization. Torchinsky also would not say when the gronp submitted the amended filing, or what was changed.

ProPublica has reqnested that Americans for Responsible Leadership provide us with the corrected application or give the IRS permission to do so. So far, we have not received a reply.

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SFC 003791

Buying Your Vote
Dark Money and Big Data

IRS Office That Targeted Tea Party Also Disclosed Confidential Docs From Conservative Groups

by Kim Barker and Justin Elliott
ProPublica, May 13, 2013, 5:30 p.m.

***May 20**: Listen to ProPublica editor-in-chief Steve Engelberg talk to Kim Barker in a podcast about this story [1].*

***May 17**: This post has been updated. [2]*

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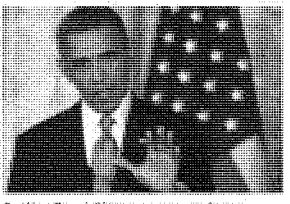

President Barack Obama at a news conference Monday during which he addressed the IRS. (Alex Wong/Getty Images)

The same IRS office that deliberately targeted [3] conservative groups applying for tax-exempt status in the run-up to the 2012 election released nine pending confidential applications of conservative groups to ProPublica late last year [4].

The IRS did not respond to requests Monday following up about that release, and whether it had determined how the applications were sent to ProPublica.

In response to a request for the applications for 67 different nonprofits last November, the Cincinnati office of the IRS sent ProPublica applications or documentation for 31 groups. Nine of those applications had not yet been approved—meaning they were not supposed to be made public. (We made six [4] of those [5] public, after redacting their financial information, deeming that they were newsworthy.)

On Friday, Lois Lerner, the head of the division on tax-exempt organizations, apologized [6] to Tea Party and other conservative groups because the IRS' Cincinnati office had unfairly targeted them. Tea Party groups had complained [7] in early 2012 that they were being sent overly intrusive questionnaires in response to their applications.

That scrutiny appears to have gone beyond Tea Party groups to applicants saying they wanted to educate the public to "make America a better place to live" or that criticized how the country was being run, according [8] to a draft audit cited by many outlets. The full audit, by the Treasury Department's inspector general for tax administration, will reportedly be released this week. (ProPublica was not contacted by the inspector general's office.) (UPDATE May 14: The audit has been released [9].)

Before the 2012 election, ProPublica devoted months to showing how [10] dozens of social-welfare nonprofits had misled the IRS about their political activity on their applications and tax returns. Social-welfare nonprofits are allowed to spend money to influence elections, as long as their primary purpose is improving social welfare. Unlike super PACs and regular political action committees, they do not have to identify their donors.

In 2012, nonprofits that didn't have to report their donors poured an unprecedented $322 million into the election. Much of that money — 84 percent [11] — came from conservative groups.

As part of its reporting, ProPublica regularly requested applications from the IRS's Cincinnati office, which is responsible for reviewing applications from nonprofits.

Social welfare nonprofits are not required to apply to the IRS to operate. Many politically active new conservative groups apply anyway. Getting IRS approval can help with donations and help insulate groups from further scrutiny. Many politically active new liberal nonprofits have not applied.

Applications become public only after the IRS approves a group's tax-exempt status.

On Nov. 15, 2012, ProPublica requested the applications of 67 nonprofits, all of which had spent money on the 2012 elections. (Because no social welfare groups with Tea Party in their names spent money on the election, ProPublica did not at that point request their applications. We had requested the Tea Party applications earlier, after the groups first complained about being singled out by the IRS. In response, the IRS said it could find no record of the tax-exempt status of those groups — typically how it responds to requests for unapproved applications.)

Just 13 days after ProPublica sent in its request, the IRS responded with the documents on 31 social welfare groups.

SEC 003792

One of the applications the IRS released [4] to ProPublica was from Crossroads GPS, the largest social-welfare nonprofit involved in the 2012 election. The group, started in part by GOP consultant Karl Rove, promised the IRS that any effort to influence elections would be "limited." The group spent more than $70 million from anonymous donors in 2012.

Applications were sent to ProPublica from five other social welfare groups that had told the IRS that they wouldn't spend money to sway elections. The other groups ended up spending more than $5 million related to the election, mainly to support Republican presidential candidate Mitt Romney. Much of that money was spent by the Arizona group Americans for Responsible Leadership [5]. The remaining four groups that told the IRS they wouldn't engage in political spending were Freedom Path, Rightchange.com II, America Is Not Stupid and A Better America Now.

The IRS also sent ProPublica the applications of three small conservative groups that told the agency that they would spend some money on politics: Citizen Awareness Project, the YG Network and SecureAmericaNow.org. (No unapproved applications from liberal groups were sent to ProPublica.)

The IRS cover letter [12] sent with the documents was from the Cincinnati office, and signed by Cindy Thomas, listed as the manager for Exempt Organizations Determinations, whom a biography [13] for a Cincinnati Bar Association meeting in January says has worked for the IRS for 35 years. (Thomas often signed the cover letters of responses to ProPublica requests.) The cover letter listed an IRS employee named Sophia Brown as the person to contact for more information about the records. We tried to contact both Thomas and Brown today but were unable to reach them.

After receiving the unapproved applications, ProPublica tried to determine why they had been sent. In emails, IRS spokespeople said ProPublica shouldn't have received them.

"It has come to our attention that you are in receipt of application materials of organizations that have not been recognized by the IRS as tax-exempt," wrote one spokeswoman, Michelle Eldridge. She cited a law saying that publishing unauthorized returns or return information was a felony punishable by a fine of up to $5,000 and imprisonment of up to five years, or both.

In response, ProPublica's then-general manager and now president, Richard Tofel, said, "ProPublica believes that the information we are publishing is not barred by the statute cited by the IRS, and it is clear to us that there is a strong First Amendment interest in its publication."

ProPublica also redacted parts of the application to omit financial information.

Jonathan Collegio, a spokesman for Crossroads GPS, declined to comment today on whether he thought the IRS's release of the group's application could have been linked to recent news that the Cincinnati office was targeting conservative groups.

Last December, Collegio wrote [4] in an email: "As far as we know, the Crossroads application is still pending, in which case it seems that either you obtained whatever document you have illegally, or that it has been approved."

This year, the IRS appears to have changed the office that responds to requests for nonprofits' applications. Previously, the IRS asked journalists to fax requests to a number with a 513 area code — which includes Cincinnati. ProPublica sent a request by fax on Feb. 5 to the Ohio area code. On March 13, that request was answered by David Fish, a director of Exempt Organizations Guidance, in Washington, D.C.

In early April, a ProPublica reporter's request to the Ohio fax number bounced back. An IRS spokesman said at the time the number had changed "recently." The new fax number begins with 202, the area code for Washington, D.C.

For more on the IRS and nonprofits active in politics, read our story on how the IRS's nonprofit division got so dysfunctional [14], Kim Barker's investigation, "How nonprofits spend millions on elections and call it public welfare [15]", our Q&A on dark money [16], and our full coverage [10] of the issue.

Update: Testifying [17] before a House committee Friday, former acting IRS Commissioner Steven Miller said that the disclosure [18] of unapproved applications of conservative nonprofits to ProPublica last year, as well as the separate [19] disclosure [20] of confidential documents of the National Organization for Marriage, was "inadvertent." Miller also mentioned that there had been discipline in one of the cases because procedures had not been followed.

We followed up on the issue, and the IRS sent this statement:

"When these two issues were previously raised concerning the potential unauthorized disclosures of 501(c)(4) application information, we immediately referred these cases to TIGTA [Treasury Inspector General for Tax Administration] for a comprehensive review. In both instances, TIGTA found these instances to be inadvertent and unintentional disclosures by the employees involved."

The IRS did not respond to questions on who had been disciplined and how. TIGTA did not respond to requests for comment.

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2. #update
3. http://www.washingtonpost.com/business/irs-apologizes-for-inappropriately-targeting-conservative-political-groups-in-2012-election/2013/05/11/ea5d5790-baoe-11e2-b568-6917f6ac6d9d_story.html
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Buying Your Vote
Dark Money and Big Data

Karl Rove's Dark Money Group Promised IRS It Would Spend 'Limited' Money on Elections

Crossroads GPS, the brainchild of GOP strategist Karl Rove that has spent tens of millions from secret donors on elections, told the IRS in its 2010 application that its efforts would focus on education, policy-making and research. (J. Scott Applewhite/AP Photo)

by Kim Barker
ProPublica, Dec. 14, 2012, 11:19 a.m.

In a confidential 2010 filing [1], Crossroads GPS — the dark money group that spent more than $70 million from anonymous donors on the 2012 election — told the Internal Revenue Service that its efforts would focus on public education, research and shaping legislation and policy.

The group's application for recognition as a social welfare nonprofit acknowledged [2] that it would spend money to influence elections, but said "any such activity will be limited in amount, and will not constitute the organization's primary purpose."

Political insiders and campaign-finance watchdogs have long questioned [3] how Crossroads, the brainchild of GOP strategist Karl Rove, had characterized its intentions to the IRS.

Now, for the first time, ProPublica has obtained the group's application for recognition of tax-exempt status, filed in September 2010. The IRS has not yet recognized Crossroads GPS as exempt, causing some tax experts to speculate that the agency is giving the application extra scrutiny. If Crossroads GPS is ultimately not recognized, it could be forced to reveal the identities of its donors.

The tax code allows groups like Crossroads to spend money on political campaigns — and to keep their donors private — as long as their primary purpose is enhancing social welfare.

Crossroads' breakdown of planned activities said [4] it would focus half its efforts on "public education," 30 percent on "activity to influence legislation and policymaking" and 20 percent on "research," including sponsoring "in-depth policy research on significant issues."

This seems at odds with much of what the group has done since filing the application, experts said. Within two months of filing its application, Crossroads spent about $15.5 million on ads telling people to vote against Democrats or for Republicans in the 2010 midterm elections.

"That statement of proposed activities does not seem to align with what they actually did, which was to raise and spend hundreds of millions to influence candidate elections," said Paul S. Ryan, senior counsel for the Campaign Legal Center, who reviewed the group's application at ProPublica's request.

Officials with Crossroads GPS would not answer specific questions about the material in the application or whether the IRS had sent a response to it.

"As far as we know, the Crossroads application is still pending, in which case it seems that either you obtained whatever document you have

illegally, or that it has been approved," Jonathan Collegio, the group's spokesman, said in an email.

The IRS sent Crossroads' application to ProPublica in response to a public-records request. The document sent to ProPublica didn't include an official IRS recognition letter, which is typically attached to applications of nonprofits that have been recognized. The IRS is only required to give out applications of groups recognized as tax-exempt.

In an email Thursday, an IRS spokeswoman said the agency had no record of an approved application for Crossroads GPS, meaning that the group's application was still in limbo.

"It has come to our attention that you are in receipt of application materials of organizations that have not been recognized by the IRS as tax-exempt," wrote the spokeswoman, Michelle Eldridge. She cited a law saying that publishing unauthorized returns or return information was a felony punishable by a fine of up to $5,000 and imprisonment of up to five years, or both. The IRS would not comment further on the Crossroads application.

"ProPublica believes that the information we are publishing is not barred by the statute cited by the IRS, and it is clear to us that there is a strong First Amendment interest in its publication," said Richard Tofel, ProPublica's general manager.

ProPublica has redacted parts of the application to omit Crossroads' financial information.

With its sister group, the super PAC American Crossroads, Crossroads GPS has helped remake how modern political campaigns are financed.

American Crossroads, which does identify its donors, spent almost $105 million on election ads in the 2012 cycle. For its part, Crossroads GPS poured more than $70 million [5] into ads and phone calls urging voters to pick Republicans — outlays that were reported to the Federal Election Commission. It also announced spending an additional $50 [6] million [7] on ads critical of President Barack Obama that ran outside the FEC's reporting window.

Based on the extent of Crossroads GPS' campaign activities, Obama's re-election campaign [8] asked the FEC [9] in June to force it to register as a political action committee and disclose its donors. The FEC has yet to rule on the request.

Politically active social welfare nonprofits like Crossroads have proliferated since the Supreme Court's Citizens United decision [10] in January 2010 opened the door to unlimited political spending by corporations and unions.

Earlier this year, a ProPublica report showed that many of these groups exploit gaps in regulation between the IRS and the FEC, using their social welfare status as a way to shield donors' identities [11] while spending millions on political campaigns. The IRS' definition of political activity is broader than the FEC's, yet our investigation showed many social welfare groups underreported political spending on their tax returns.

It's impossible to know precisely how Crossroads has directed its efforts, but the breakdown of expenses on its tax returns from June 2010 [12] to December 2011 [13] gives some indications.

During those 19 months, Crossroads spent a total of $64.7 million, of which $1.4 million — or just 2 percent — was identified as being spent on research. That compares with the 20 percent of effort Crossroads said it would devote to research in its application.

A tax return covering this year isn't due until November 2013.

The IRS rarely pursues criminal charges against nonprofits based on statements in their applications. It's more common for the agency to deny recognition or revoke a group's tax-exempt status.

In a letter to Congress in September, the IRS said it was engaged in "more than 70 ongoing examinations [14]" of social welfare nonprofits. Earlier, in its work plan [15] for the 2012 fiscal year, the agency said it was taking a hard look at social welfare nonprofits with "serious allegations of impermissible political intervention."

Campaign finance watchdog Fred Wertheimer, who runs Democracy 21 and has filed several complaints to the IRS about Crossroads, said the group's application for recognition showed why more aggressive enforcement is needed.

"When you read what they say on their application, there are a lot of words there. But I find them to be disingenuous and to have little to do with why Karl Rove founded this organization," Wertheimer said. "If you believe this is a social welfare organization, I have a rocket that can get you to the moon very quickly and at very little cost."

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1. http://www.propublica.org/documents/item/537045-crossroads-gps-application-to-irs
2. http://www.propublica.org/documents/item/537045-crossroads-gps-application-to-irs#document/p4/a84315

3. http://takingnote.blogs.nytimes.com/2012/06/21/disclosure-would-be-great-then-what/
4. http://www.propublica.org/documents/item/537045-crossroads-gps-application-to-irs#document/p2/a84313
5. http://www.opensecrets.org/outsidespending/detail.php?cmte=C90011719&cycle=2012
6. http://tbecaucus.blogs.nytimes.com/2012/05/16/presidential-ad-wars-kick-into-full-swing/
7. http://www.politico.com/blogs/burns-haberman/2012/07/crossroads-gps-unleashes-new-million-blitz-128163.html
8. http://big.assets.huffingtonpost.com/ObamaCampaignComplaintCrossroadsGPS.pdf
9. http://www.reuters.com/article/2012/07/02/us-usa-tax-irswatchdog-idUSBRE8611FB20120702
10. http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/
11. http://www.propublica.org/article/how-nonprofits-spend-millions-on-elections-and-call-it-public-welfare
12. http://www.propublica.org/documents/item/339122-crossroads-gps-990-2010
13. http://www.propublica.org/documents/item/339124-crossroads-gps-990-2011
14. http://www.insidepoliticallaw.com/2012/09/20/irs-to-senator-levin-irs-conducting-over-70-audits-of-501c4-organizations/
15. http://www.irs.gov/pub/irs-tege/fy2012_eo_work_plan_2011_annrpt.pdf
16. http://www.propublica.org/forms/newsletter_daily_email?utm_campaign=subscribe&utm_source=propublica&utm_medium=article&utm_term=footer

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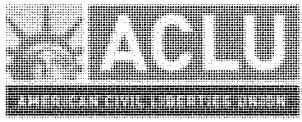

SFC 003797

February 4, 2014

The Honorable John A. Koskinen
Commissioner of Internal Revenue
CC:PA:LPD:PR (REG-134417-13), Room 5205
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comments on Draft Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities

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Dear Commissioner Koskinen:

The American Civil Liberties Union ("ACLU") respectfully submits these comments in response to the Notice of Proposed Rulemaking (the "Notice") issued by the Internal Revenue Service (the "IRS" or "Service") and the Treasury Department on November 29, 2013.[1]

I. Executive Summary

As we explain in detail in our comments below, while we support replacing the current "facts and circumstances" test for political activity by affected tax-exempt organizations with a bright-line standard, we have serious concerns with the rule as proposed in the Notice, both from a First Amendment perspective and as a simple matter of workability.

We comment below on:

- The danger with the Service's proposed "electioneering communications-plus" approach in the definition of candidate-related political activity ("CRPA"), which would cover *any* public communication that refers to a candidate within 30 days before a primary or 60 days before a general election, or, in the 60 days before a general election, refers to a political party;

- Why the proposed "functional equivalence" test, which would count as CRPA any communication that is "susceptible of no reasonable interpretation" other than one in support of or opposition to a

[1] Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71,535 (proposed Nov. 29, 2013) (to be codified at 26 C.F.R. pt. 1) [hereinafter *Notice*].

candidate or candidates of a party, will fundamentally undermine the bright-line approach that the Service wishes to adopt, and will produce the same structural issues at the IRS that led to the use of inappropriate criteria in the selection of various charitable and social welfare groups[2] for undue scrutiny;[3]

- The need to exclude non-partisan voter guides, get-out-the-vote ("GOTV") drives and voter registration activity from the definition of CRPA;

- The need to exclude non-partisan candidate events during the 60/30-day blackout period from the definition of CRPA;

- The need to harmonize the definition of CRPA across all tax-exempt groups and to provide greater clarity and coordination with the definition of "exempt function" under 26 U.S.C. § 527(e)(2) (2012);[4] and

- Why the Service should apply a real bright-line test for CRPA that limits its scope as closely as possible to "magic words" express advocacy.[5]

Despite our serious concerns with the approach in the proposed rule, the Service can and should take resolute steps to address the issues that resulted in the inappropriate targeting of conservative and progressive § 501(c)(4) (and § (c)(3)) groups, and to apply a true bright-line test for political intervention by social welfare groups. Most social welfare organizations—on both the left and right—serve exactly that function as they see it, the promotion of social welfare and community good. Based on their respective visions, they advocate for the powerless and the voiceless. They promote fiscal responsibility and good government. They serve as a check on government overreach, or as a cheerleader for sound public policy.

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2 Referred to herein as §§ 501(c)(3) and 501(c)(4) groups, respectively.

3 Treasury Inspector Gen. for Tax Admin., Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (2013) (the "TIGTA Audit").

4 "Exempt function," somewhat counter-intuitively, does not refer to activities conducted by a tax-exempt group. Rather, it covers political advocacy, which is *taxable* under § 527 if engaged in by a § 501(c) group. Specifically, "exempt functions" include "influenc[ing] or attempt[ing] 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."

5 The "magic words" test refers to communications that use express terms of advocacy for or against a candidate, as opposed to communications that may be critical or laudatory but represent advocacy around specific legislative, regulatory or policy issues. The test has its origins in *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976) ("The construction would restrict the application of § 608(e)(1) to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'"). We acknowledge that the list of express advocacy "magic words" in *Buckley* is not exhaustive, and we look forward to working with the Service to inclusively refine the definition of express advocacy.

In many of these functions, social welfare organizations praise or criticize candidates for public office on the issues and they should be able to do so freely, without fear of losing or being denied tax-exempt status, even if doing so could influence a citizen's vote. Such advocacy is at the heart of our representative democracy. To the extent it influences voting, it does so by promoting an informed citizenry. The current IRS exempt organization review system serves to chill that activity and, despite our concerns with the proposed rule, we appreciate the Service's demonstrated commitment to reforming the current rule to provide a clearer standard.

We further believe that those social welfare organizations that are serving a private benefit, or that are engaged in actual partisan political activity, can be regulated without chilling legitimate issue advocacy.

II. Interest of Commenter

The ACLU is a nationwide, nonprofit, non-partisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws.

As a matter of formal policy, we do not endorse or oppose candidates or nominees for political office. We do, however, often engage in issue advocacy on legislative and policy matters impacting civil liberties and civil rights. We frequently do so in close proximity to elections, and identify office holders, some of whom may be candidates, in these communications.[6]

We also provide extensive voter education materials, including an online ACLU "scorecard" that assigns numerical scores to all current members of Congress based on key civil liberties and civil rights votes and, prior to the 2012 presidential election, a resource called "Liberty Watch" that likewise assessed the civil liberties records of President Obama, Governor Romney and Governor Johnson, the Libertarian Party candidate.[7] None of these materials endorse or oppose a candidate or nominee.

Further, the ACLU has an extensive state and local network, with affiliates and chapters in every state and Puerto Rico.[8] These organizations separately advocate for civil liberties and civil rights at all levels of state and local government, and are often deeply involved in efforts to protect

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[6] *See McConnell v. Fed. Election Comm'n*, 251 F. Supp. 2d 176, 793 (D.D.C. 2003) (opinion of Leon, J.), *aff'd in part, rev'd in part*, 540 U.S. 93 (2003), *overruled in part by, Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) ("[The] 60 days before a general election and 30 days before a primary . . . are often periods of intense legislative activity. During election years, the candidates stake out positions on virtually all of the controversial issues of the day. Much of the debate occurs against the backdrop of pending legislative action or executive branch initiatives." (quoting Decl. of Laura. W. Murphy, director of the ACLU's national lobbying office ¶ 12)).

[7] *See* Key Votes: Congress, ACLU.org, http://bit.ly/1fsuftY (last visited Jan. 13, 2014); ACLU Liberty Watch 2012, http://www.aclulibertywatch.org/ (last visited Jan. 13, 2014).

[8] Local ACLU Affiliates, ACLU.org, https://www.aclu.org/affiliates (last visited Jan. 15, 2014).

low-income and minority voters. These efforts include participation in legislative advocacy and voter education campaigns, including a coordinated effort called "Let Me Vote" that provides state-by-state information and resources on how voters can register, polling place locations, early and absentee voting and, crucially, abusive voter identification requirements.[9] ACLU affiliates and chapters are likewise bound by formal policy to abstain from *any* partisan political activity.

Nevertheless, under a plain reading of the proposed rule, to the extent this activity is performed by the ACLU's § 501(c)(4) entity, the American Civil Liberties Union, Inc. ("ACLU, Inc."), and by state and local ACLU § 501(c)(4) affiliate and chapter groups, it may qualify as CRPA.

Additionally, based on past experience, we anticipate that both the Service and tax practitioners will look to the final rule for § 501(c)(4) groups as guidance for other tax-exempt organizations. The breadth of the proposed definition of CRPA could therefore significantly impair the ability of the ACLU's § 501(c)(3) entity, the American Civil Liberties Union Foundation, Inc. ("ACLU Foundation, Inc."), to engage in public communications and advocacy, despite only an insubstantial part of its activities being federal or state lobbying, and its complete avoidance of any partisan political activity.[10] The ACLU Foundation, Inc. sponsors communications that mention candidates for public office as part of its issue advocacy that some may argue qualify under the proposed definition of CRPA.

Accordingly, we can say with confidence that bona fide charitable organizations, may also, under the proposed rule, be forced to seriously "hedge and trim" what should be fully protected speech in their issue advocacy to stay far clear of any potential CRPA.[11] Worse, this chilling effect will be more acute for smaller organizations that do not have access to legal expertise in this area.

For the past four decades, the ACLU has been involved in efforts to craft sensible campaign spending laws that respect First Amendment principles while limiting corruption. We support numerous measures to improve the integrity of our political system, including reasonable limits on direct campaign contributions, meaningful public financing, appropriate disclosure rules, reasonable bulwarks against coordination between candidates and outside political groups, enforcement of criminal laws against straw donors and measures to improve under-resourced candidates' access to media.[12]

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[9] *See* Know Your Voting Rights: State-By-State Voter Information 2012, ACLU.org, http://bit.ly/Lfpy8Q (last visited Jan. 17, 2014). The ACLU has been at the forefront of the fight against various voter discrimination tactics, including voter identification requirements that disproportionately disenfranchise minority, low-income and elderly Americans. *See* Voter ID, ACLU.org, http://bit.ly/1eQwkwW (last visited Jan. 17, 2014).

[10] The ACLU Foundation, Inc. does take an annual election under 26 U.S.C. § 501(h) (2012).

[11] *Buckley*, 424 U.S. at 43 (opining that, absent a truly bright line between express and issue advocacy, restrictions on political speech offer "no security for free discussion" and force speakers to "hedge and trim" (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945))).

[12] *See* Gabe Rottman, *Common Ground on Campaign Finance*, ACLU.org (Apr. 12, 2013), http://bit.ly/12RpLGK; Michael W. Macleod-Ball, *One Key to Campaign Finance Reform*, ACLU.org (June 21, 2012), http://bit.ly/1m5JLN0; The ACLU and Citizens United, http://bit.ly/1eptX5n (last visited

Since even before *Buckley*, however, we have also forcefully defended the First Amendment in the face of well-meaning but overreaching campaign finance laws that unconstitutionally restrict issue advocacy.[13] As explained below in detail, we fear that the proposed rule will result in many of the same unintended consequences that we warn of in that context, and will impermissibly chill political speech that should receive the highest level of protection under the First Amendment.[14]

III. The Proposed Blackout Period in the 30 Days Before a Primary and 60 Days Before a General Election Will Sweep In Vast Amounts of Non-Partisan Issue Advocacy, and Will Pose Daunting Logistical Challenges for Tax-Exempt Groups

The proposed rules would extend the definition of CRPA to any "public communication" in the 30 days before a primary or 60 days before a general election that refers to one or more clearly identified candidates or, in the case of a general election, one or more political parties that are represented in the election.[15]

"Public communication," in turn, includes any communication (1) by broadcast, cable or satellite; (2) on an internet website; (3) in a newspaper, magazine or other periodical; (4) in the form of paid advertising; or (5) that otherwise reaches, or is intended to reach, more than 500 persons.[16] "Communication" is defined circularly as any communication by whatever means, including written, printed, electronic, video or oral communications.[17]

Jan. 15, 2014); News Release, ACLU, In New Alliance, ACLU and Public Campaign Urge Support for Full Public Financing (Oct. 26, 1999), http://bit.ly/161a6cH.

[13] *See* Amicus Curiae Br. of the Am. Civil Liberties Union in Support of Appellant on Supplemental Question, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (No. 08-205), 2009 WL 2365203; Br. Amicus Curiae of the Am. Civil Liberties Union in Support of Appellee, *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007) (Nos. 06-969, 06-970), 2007 WL 894817; Br. of Appellant Am. Civil Liberties Union, *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003) (No. 02-1374), 2003 WL 21649664; Br. of the Am. Civil Liberties Union, Amicus Curiae, in Support of Appellee at 14, *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652 (1990), 1989 WL 1126847, at *14; Br. Amicus Curiae of the Am. Civil Liberties Union and the Civil Liberties Union of Mass., *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986), 1986 WL 727489; *Buckley v. Valeo*, 424 U.S. 1 (1976); *Am. Civil Liberties Union v. Jennings*, 366 F. Supp. 1041 (D.D.C. 1973), *vacated as moot sub nom.*, *Staats v. Am. Civil Liberties Union*, 422 U.S. 1030 (1975); *United States v. Nat'l Comm. for Impeachment*, 469 F.2d 1135 (2d Cir. 1972).

[14] *R.A.V. v. City of St. Paul*, 505 U.S. 377, 422 (1992) ("Our First Amendment decision have created a rough hierarchy in the constitutional protection of speech. Core political speech occupies the highest, most protected position . . . .") (Stephens, J., concurring).

[15] *Notice*, *supra* note 1, at 71,541 (§ 1.501(c)(4)-1(a)(2)(iii)(A)(2)).

[16] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(B)(5)).

[17] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(B)(3)).

"Candidate" is defined aggressively to include any federal, state or local candidate or nominee (including electors) in a race for (1) public office, (2) a recall election *or* (3) office in a political organization.[18] "Clearly identified" includes (1) express reference to the candidate, including through a photograph, drawing or other visual representation; (2) identification apparent by reference (e.g., "the Mayor"); *or* (3) reference solely to an "issue or characteristic" that serves to differentiate candidates or nominees from their opponents.[19] "Election" covers all federal, state and local caucuses and primary, general, special, run-off and recall elections.[20]

Accordingly, and as the Service acknowledges, virtually any document, audio-visual file or graphic posted to a § 501(c)(4) group's website that identifies a "candidate," including documents that merely reference a hot-button issue like abortion or voting rights in a particular election, will qualify as a "public communication."[21] If they appear during the blackout periods, they qualify as CRPA.

The 30- and 60-day blackout periods track a similar approach in the "electioneering communications" that were regulated under the Bipartisan Campaign Reform Act,[22] but the capacious definitions of "public communication" and "communication" dramatically expand the scope of the proposed regulation.

This "electioneering communications-plus" CRPA would encompass an enormous amount of ACLU material that has absolutely nothing to do with partisan politicking.

In fact, ACLU legislative counsel and representatives produce several dozen documents a week, especially in the lead up to a national election, that expressly mention an incumbent candidate or

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[18] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(B)(1)).

[19] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(B)(2)).

[20] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(B)(4)). Special and run-off elections used to nominate a candidate are treated as primary elections, as are conventions or caucuses; special or run-off elections that elect a candidate are considered general elections. A recall election is classified as a general election. *Id.*

[21] *Id.* at 71,540 ("These proposed rules also provide that an organization's Web site is an official publication of the organization, so that material posted by the organization on its Web site may constitute candidate-related political activity.").

[22] *See* Pub. L. No. 107-155, 116 Stat. 81, § 203 (2002) ("BCRA"). Section 203 was codified at 2 U.S.C. § 441b (2012) and amended § 316 of the Federal Election Campaign Act, Pub. L. No. 92-225, 86 Stat. 3 (1972) ("FECA"). It barred various entities, including non-profit corporations like the ACLU, from making any electioneering communications, defined as broadcast, cable or satellite communications that clearly identify a candidate for federal office in the 60 days before a general election or 30 days before a primary, and, with the exception of presidential races, are targeted at the relevant electorate. The restriction on electioneering communications was narrowed by the Supreme Court in *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007) ("*WRTL*"), and struck down in *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

party. ACLU affiliates and chapters do the same at the state and local level. All of this work is part of our workaday legislative analysis and advocacy; it has nothing to do with attempting to influence the outcome of any particular election.

Indeed, the Service's proposed definition of public communication could encompass internal communications to our members, donors and supporters. For instance, "ACLU Action" seeks to mobilize existing supporters and identify potential new members through targeted communications on litigation, legislation and public policy issues. All of these communications include a requested action, which may either directly identify a sitting lawmaker running for reelection or may be deemed to identify a candidate through mention of a disputed campaign issue.[23] None of these communications are meant to influence the outcome of an election, but rather are meant to influence the debate on a particular issue. Any restriction on these communications would clearly implicate our members' and supporters' associational and free speech rights.[24]

Remarkably, the Service even anticipates that communications produced and posted to a social welfare group's website *before* the blackout period would slip into the definition of CRPA if left up *during* the blackout period.[25] Accordingly, the ACLU would have to purge its website of all communications identifying a federal, state or local candidate or, in the case of a general election, even a political party during the blackout period, or would have to devise a way of accounting for them as CRPA.

It's crucial to note that the ACLU's website includes literally hundreds of thousands of individual webpages, and the proposed blackout rules would cover vast amounts of content that has absolutely nothing to do even with issue advocacy, let alone partisan politicking. For instance, it could cover copies of publicly filed lawsuits with government defendants, requests under the Freedom of Information Act, any communication addressed to a candidate currently holding elective or appointed office or even 50-state legal surveys mentioning covered officials.

Further, were the Service to harmonize the definition of CRPA with § 527, we would have to count them as reportable exempt function expenditures under § 527(e)(2) subject to tax under § 527(f). Such a requirement isn't just unworkable, it's impossible.

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[23] *See Notice*, *supra* note 1, at 71,541 (§ 1.501(c)(4)-1(a)(2)(iii)(B)(2) (explaining that communication not identifying candidate by name, image or reference may still "clearly identif[y]" candidate through reference to "issue or characteristic used to distinguish the candidate from other candidates"); *see also* discussion *infra* pp. 15-16.

[24] *Cf.*, *Va. State Bd. of Pharm. V. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) ("[W]here a speaker exists . . . the [First Amendment] protection afforded is to the communication, to its source and to its recipients both."); *Kleindienst v. Mandel*, 408 U.S. 753, 762-63 (1972) (acknowledging independent First Amendment right to "receive information and ideas"); *Lamont v. Postmaster Gen.*, 381 U.S. 301 (1965) (affirming right of U.S. citizens to receive foreign publications).

[25] *See Notice*, *supra* note 1, at 71,539.

Additionally, during a presidential election year, the blackout period will extend *far* beyond just the 30 days before the nominating convention or 60 before Election Day.

In 2012, for instance, both major parties held their initial caucuses on January 3. The 30-day clock would therefore have begun on December 4, 2011. For both Democrats and Republicans, there was no 30-day break between primaries from January 3 through late June. In other words, the 30-day blackout period for each primary would have ended only after another blackout period had begun. Accordingly, successive 30-day primary blackout windows would have applied to all communications from early December 2011 through June 5, 2012, for Democrats (the South Dakota primary) and June 26, 2012, for Republicans (the Utah primary).

Additionally, for the Republicans, the 30-day clock before the national convention would have started ticking on July 28 (30 days before August 27), providing a mere 31-day non-blackout period between early December 2011 and late August 2012. For the Democrats, the 30-day pre-national convention blackout period would have started on August 6, 2012 (30 days before September 5), providing only a 60-day non-blackout period for communications. For both parties, the pre-*election* 60-day blackout would have started on September 7, 2012—two days after the Democratic convention began.

In Table 1 below, we use the 2012 presidential election to demonstrate the scope of the overlapping 60/30-day primary-general CRPA blackout.[26] We list the number of days between the first caucus and the election in which a mere mention of *any* presidential candidate, including a third party candidate, would qualify a communication as CRPA, and the limited number of days that escape the rolling 30/60-day blackout periods.

Importantly, during the last 60 days before the election, even mention of a political party represented in the election would qualify as CRPA. This would include *objectively* non-partisan communications that are supportive or critical of all represented parties equally (e.g., "neither Democrats nor Republicans have committed to reforming NSA surveillance authority" or "the ACLU applauded the bi-partisan vote today on surveillance reform, where 94 Republicans joined 111 Democrats in attempting to defund NSA bulk collection authority").

	Iowa Caucus	Last Primary	Convention	Non-CRPA Days	CRPA Days[27]
D	Dec. 4, 2011	June 5, 2012	Sept. 5, 2012	61[28]	278
R	Dec. 4, 2011	June 26, 2012	Aug. 27, 2012	41[29]	298

[26] We focus on the two major parties for ease of illustration, but we note, crucially, that the rules would also apply to third parties that are able to field candidates for the presidential ticket.

[27] Based on a count of 339 days between December 4, 2011, and Election Day, November 6, 2012.

[28] That is, 60 days between the first caucus and the last state primary, plus presumably one day between the first day of the convention and the beginning of the election blackout period.

[29] Adding 10 days between the first day of the convention and the election blackout to the 31-day CRPA window following the last primary.

By way of further illustration, we list below a representative sampling of the types of communications that would qualify as CRPA for this extended primary and general presidential election season. As noted, *all* of the ACLU's online communications referencing a candidate or, in the case of a general election, party would be covered under the proposed rule if they remained up during a blackout period, and hundreds of communications would be captured by the "rolling" 60/30-day presidential CRPA blackout demonstrated above.

For the sake of emphasis, however, we include only communications posted to our website in the 60 days before November 6, 2012. These include:

- A blog mentioning several House members by Legislative Counsel/Policy Advisor Gabe Rottman urging a "No" vote on the Stolen Valor Act, a bill that would criminalize false statements about military decorations;[30]

- A blog by Legislative Assistant Sandra Fulton on ACLU testimony regarding domestic drone use, which quotes Rep. Hank Johnson (D-GA) and mentions drone legislation sponsor Rep. Ted Poe (R-TX);[31]

- An ACLU letter to the Privacy and Civil Liberties Oversight Board on domestic surveillance and privacy priorities, which mentions the president;[32]

- A blog by Legislative Representative Ian Thompson on the one-year anniversary of the repeal of the military's "Don't Ask, Don't Tell" policy that criticized an anti-DADT measure introduced by Rep. Todd Akin (R-MO), then in a heated race against Sen. Claire McCaskill (D-MO);[33]

- Comments submitted to the Department of Health and Human Services and posted to the ACLU's website mentioning President Obama and criticizing an HHS rule that would unfairly exempt certain immigrant women and children from provisions of the new health care plan;[34]

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[30] Gabe Rottman, *Stolen Valor in House Today*, ACLU.org, Sept. 11, 2012, http://bit.ly/19Z3FGr.

[31] Sandra Fulton, *ACLU Testifies as Congress Takes on Domestic Drones*, ACLU.org, Oct. 25, 2012, http://bit.ly/1i7Cycs.

[32] Letter from Michael Macleod-Ball & Michelle Richardson, ACLU, to the Privacy and Civil Liberties Oversight Board (Oct. 26, 2012), *available at* http://bit.ly/1f92wJZ.

[33] Ian S. Thompson, *At DADT Repeal's One-Year Anniversary, Refusing to Turn Back the Clock*, ACLU.org (Sept. 19, 2012), http://bit.ly/1hY1F6s.

[34] Comments from Laura W. Murphy et al. to the Centers for Medicare & Medicaid Services (Oct. 29, 2012), *available at* http://bit.ly/1hrNql5.

- A detailed report by ACLU Policy Counsel Sarah Lipton-Lubet defending the Obama administration's contraceptive coverage rule in the Affordable Care Act ("ACA");[35]

- A blog by Legislative Counsel/Policy Advisor Gabe Rottman praising President Obama for defending the First Amendment during the controversy over the "Innocence of Muslims" video in September 2012;[36]

- A blog by Legislative Counsel Devon Chaffee applauding the Obama administration's issuance of an executive order to prevent human trafficking by government contractors;[37]

- A blog by Legislative Representative Ian Thompson and Legislative Counsel Joanne Lin noting efforts by House Minority Leader Nancy Pelosi (D-CA) and Senator Dianne Feinstein (D-CA), both up for re-election in November, to have the Department of Homeland Security consider the ties of same-sex partners and spouses as a positive factor in determining discretionary relief in deportation cases;[38] and

- An amicus brief submitted by the national ACLU and the D.C. affiliate, posted to the ACLU's website, noting Sen. Harry Reid's (D-NV) support for the contraceptive coverage rule in the ACA.[39]

To put a finer and final point on it, we note that ***these comments***, when posted to the ACLU's website and otherwise distributed, would likely qualify as CRPA under the proposed rule during the 60/30-day blackout period, including the rolling blackout period before the 2014 election.[40] The ACLU would have to either remove ***this*** document from its website or otherwise determine a way to account for the expense in creating it as CRPA expenditures.

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[35] Sarah Lipton-Lubet, Promoting Equality: An Analysis of the Federal Contraceptive Coverage Rule (Oct. 11, 2012), *available at* http://bit.ly/1j7Rwlt.

[36] Gabe Rottman, *A "Foreign Policy Exception" to the First Amendment*, ACLU.org (Sept. 28, 2012), http://bit.ly/LeWvmJ.

[37] Devon Chaffee, *President Issues Executive Order to Stop Human Trafficking in Government Contracts*, ACLU.org (Sept. 25, 2012), http://bit.ly/LLNNMn.

[38] Ian S. Thompson & Joanne Lin, *Important Breakthrough for LGBT Immigrant Families*, ACLU.org (Oct. 2, 2012), http://bit.ly/1g4N2fb.

[39] Memorandum of the Am. Civil Liberties Union and the Am. Civil Liberties Union of the Nat'l Capital Area, as Amici Curiae, *Tyndale House Publishers, Inc. v. Sebelius*, 904 F. Supp. 2d 106 (D.D.C. 2012) (No. 12-1635(RBW)), 2012 WL 5903980, *available at* http://bit.ly/19QCKws.

[40] Because they mention a clearly identifiable political party in the case of the 60-day general blackout and/or because they potentially refer to candidates in the 2014 race. *See Notice*, *supra* note 1, at 71,514 (§ 1.501(c)(4)-1(a)(2)(iii)(A)(2)).

The Court in *Buckley* recognized the clear danger in allowing campaign finance (or, by extension, tax code) restrictions on these "pure" issue advocacy communications. As noted, the Court adopted an express advocacy standard limited to "communications that in plain terms advocate the election or defeat of a clearly identified candidate [and contain] explicit words of advocacy of election or defeat."[41] It did so precisely because it recognized the impossibility of accurately separating electoral advocacy from policy advocacy, and the constitutional threat when the government burdens speech in an attempt to do so:

> The distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical operation. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and government actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.[42]

These protections for issue advocacy serve a wide array of liberty interests. They provide needed space in the public discourse for unfettered criticism of the government. Relatedly, they serve as an essential check on government abuse and corruption. They refine public policy debates, marginalize objectionable or unwise views and promote an engaged and informed citizenry. Occasionally, of course, these protections cover noxious speech and even misleading "sham" issue ads. They do so, however, to provide the greatest possible latitude for all speakers, at any point on the political and ideological spectrum.

For all these reasons, we respectfully urge the Service to abandon the "electioneering communications-plus" definition of CRPA in proposed § 1.501(c)(4)-1(a)(2)(iii)(A)(2). In addition to chilling a vast amount of core political speech about crucial issues of the day, the expanded definition of public communication will apply to virtually all documents, files and other elements of a social welfare group's website that happen to mention a candidate or, in a general election, just a party, a requirement that will pose insurmountable compliance issues. This goes beyond impracticality and raises First Amendment concerns of the highest order.

IV. Applying a "Functional Equivalence" Test Will Effectively Restore the Unbounded "Facts and Circumstances" Standard and Will Lead to Similar Problems

In addition to communications that contain clear words of support or opposition like "vote for" or "defeat," [43] the proposed rule troublingly expands the definition of "express advocacy" to communications that are "susceptible of no reasonable interpretation other than a call for or

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41 *Buckley v. Valeo*, 424 U.S. 1, 44-45 (1976).

42 *Id.* at 42-43.

43 *Notice*, *supra* note 1, at 71,541 (§ 1.501(c)(4)-1(a)(2)(iii)(A)(1)(i)).

against the selection, nomination, election, or appointment of one or more candidates *or* of candidates of a political party."[44]

The Service's expanded definition tracks, and expands upon, the Supreme Court's formulation in *Wisconsin Right to Life v. Fed. Election Comm'n* (*WRTL*).[45] There, the Court invalidated the "electioneering communications" ban in § 203 as applied to a non-profit group engaged in bona fide issue advocacy, and held that it could only be constitutionally applied to communications that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[46] This is often referred to as the "functional equivalence" or "functional equivalent" test.[47]

That functional equivalence test applied to § 203 until the Court's decision in *Citizens United*. There the Court found that a pay-per-view documentary critical of then-Senator Hillary Clinton was, indeed, the "functional equivalent" of express advocacy but still could not be constitutionally restricted under § 203. *Citizens United* overruled *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), which had upheld restrictions on express advocacy by corporations and labor unions using their own money that was not directed by a candidate or party (known technically as "independent expenditures").[48]

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[44] *Id.* (§ 1.501(c)(4)-1(a)(2)(iii)(A)(1)(ii)) (emphasis added). Notably, the definition is broader than the Federal Election Commission's ("FEC") current regulation defining express advocacy, which only applies to communications that reference a clearly identified candidate, not "one or more candidates or candidates of a political party" (for instance, perhaps, an ACLU communication critical of the DISCLOSE Act, support for which splits along partisan lines, which mentions one or more Democratic candidates in support). 1 C.F.R. § 100.22 (2014) (defining "expressly advocating" under 2 U.S.C. § 431(17) (2012)'s definition of "independent expenditure"). It also requires that the electoral portion of the communication be "unmistakable, unambiguous, and suggestive of only one meaning" and that "reasonable minds could not differ on whether it encourages actions to elect or defeat one or more clearly identified candidates." *Id.* And, it requires "limited reference to external events, such as the proximity to the election." *Id.* The Service's proposed definition contains no such limiting guidance and appears to apply to any functionally equivalent express advocacy at any time. In fact, it could even apply to communications that praise or criticize the *winner* of a presidential election, which clearly pose little to no risk of electoral corruption, because they could be construed as an exhortation to *electors*.

[45] 551 U.S. 449 (2007).

[46] *Id.* at 470.

[47] *Id.* at 481; *see also Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 325 (2010) ("[T]he functional-equivalent test is objective . . . ."); *The Real Truth About Abortion, Inc. v. Fed. Elections Comm'n*, 681 F.3d 544, 551 (4th Cir. 2012).

[48] *Citizens United*, 558 U.S. at 365. The functional equivalence test under § 100.22 is still applied in the Fourth Circuit with respect to FEC disclosure rules. *See supra* note 44; *The Real Truth About Abortion, Inc.*, 681 F.3d at 555. While the court affirmed the application of § 100.22(b)'s functional equivalence test in determining when a communication compels disclosure, it applied a lower standard of scrutiny because disclosure rules "do not restrict either campaign activities or speech." *Id.* at 549.

The ACLU offered an amicus curiae brief in *Citizens United* solely on the supplemental question of whether § 203's ban on electioneering communications—even as narrowed under *WRTL*—could withstand First Amendment scrutiny. We argued that any open-ended functional equivalence test would still invariably ensnare genuine issue advocacy and would therefore still be a violation of the First Amendment (with the offense of vagueness piled on top of both overbreadth and underinclusiveness).[49]

Those concerns stand with the Service's proposed rule and its inclusion of a similar functional equivalence test in the definition of CRPA.[50] In *Citizens United*, the ACLU offered several related reasons why § 203, even as narrowed to functionally equivalent express advocacy, should be declared facially unconstitutional. Several of these arguments counsel strongly in favor of dropping the functional equivalence test in the proposed rule.

First, vague "totality" tests like functional equivalence and the current "facts and circumstances" approach chill too much protected speech.[51] As an abstract matter, a hypothetically reasonable speaker should be able to predict with a reasonable degree of certainty how a hypothetically reasonable listener will interpret an advertisement. History suggests otherwise.[52] This uncertainty is compounded by the tendency of regulators to pile "prophylaxis-upon-prophylaxis" in an attempt to capture anything that could conceivably sway a vulnerable listener.[53] That is, in effect, the rationale behind both the functional equivalence and current facts and circumstances tests. They encourage the government to burn down the house to roast the pig.

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[49] Amicus Curiae Br. of the Am. Civil Liberties Union in Support of Appellant on Supplemental Question at 13-15, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (No. 08-205), 2009 WL 2365203, at *13-*15.

[50] Again, the definition in the proposed rule is actually broader than the functional equivalence test as articulated by Chief Justice Roberts in *WRTL* or as formulated by the FEC in 11 C.F.R. § 100.22(b) (2014). It applies not just to candidates, but to communications on nominations, appointments or to those that generically advocate for or oppose a political party (i.e., "candidates of" a political party).

[51] Amicus Curiae Br. of the Am. Civil Liberties Union in Support of Appellant on Supplemental Question at 14, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (No. 08-205), 2009 WL 2365203, at *13-*14.

[52] Shortly before the 1972 presidential elections, the ACLU sought to run an ad in the New York Times highly critical of President Nixon for his position on court-ordered busing (the ad opened with "[w]e write because we believe that you are taking steps to create an American apartheid"). *See Am. Civil Liberties Union v. Jennings*, 366 F. Supp. 1041, 1058 (D.D.C. 1973), *vacated as moot sub nom.*, *Staats v. Am. Civil Liberties Union*, 422 U.S. 1030 (1975). The New York Times refused to run the ad unless the ACLU registered as a political committee. The Times essentially took the position that the ad was an express advocacy wolf in issue advocacy sheep's clothing, and treated the ad as one "on behalf" of the reelection of the lawmakers named in the ad ("on behalf" being FECA's first attempt to restrict functionally equivalent express advocacy). The ACLU sued, and secured a declaratory judgment that the proposed interpretation of FECA violated the First Amendment. *Id.* at 1051. We attach the relevant advertisement, as published in the federal reporter, in Appendix I.

[53] *WRTL*, 551 U.S. 449, 479 (2007).

The *Buckley* Court rightly recognized the danger of a chilling effect in allowing the government to adopt a test based on the likely effect of the speech on a hypothetical listener:

> [W]hether words intended and designed to fall short of invitation would miss that mark is a question of both intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of the hearers and consequently of whatever inference may be drawn as to his intent and meaning.
>
> Such a distinction offers ***no security for free discussion***. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim.[54]

In other words, listener-centric tests such as "functional equivalence" force speakers like the ACLU, the National Rifle Association or Planned Parenthood to "steer far wider of the unlawful zone" than is actually necessary because their exhortations on civil liberties, gun rights or abortion *could* lead a hypothetical voter to vote a certain way.[55]

Second, and of particular import given the findings of the IRS inspector general audit report (the "TIGTA Audit") detailing the use of inappropriate criteria, vague laws and regulations invite discriminatory enforcement.[56] This failing is particularly troubling in the context of political communications, where open-ended laws and regulations allow those in power to selectively enforce speech restrictions to disadvantage political opponents. Although the TIGTA Audit found absolutely no evidence of political motivation in this case, and we emphatically do not question that finding or impugn the integrity of the Service, the IRS has indisputably been used on multiple occasions to that end.[57]

Further, even when selective viewpoint discrimination is a result of simple and honest human error, it is no less harmful as a practical and legal matter. And when applied to core political speech—by any group, on the left or right—the harm is ever greater. As the Supreme Court has

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[54] *Buckley v. Valeo*, 424 U.S. 1, 43 (1976) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)) (emphasis added).

[55] *Speiser v. Randall*, 357 U.S. 513, 526 (1958).

[56] Amicus Curiae Br. of the Am. Civil Liberties Union in Support of Appellant on Supplemental Question at 14, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (No. 08-205), 2009 WL 2365203, at *13-*14.

[57] *See* David Burnham, *Misuse of the I.R.S.: The Abuse of Power*, N.Y. Times, Sept. 3, 1989.

said, "speech concerning public affairs is more than self-expression, it is the essence of self-government."[58]

To illustrate the danger of a vague "functional equivalence" standard, attached to this submission as Appendix II is an advertisement sponsored by the ACLU that ran in the New York Times Magazine and the Economist in June 2004.[59] Part of an ongoing series of ads, it features the former Navy Judge Advocate General, Rear Admiral John D. Hutson (ret.), asking, "[h]ow can we fight to uphold the rule of law if we break the rules ourselves?" Although it does not expressly mention President George W. Bush by name or even hint at express electoral advocacy, under the Service's proposed rule, it is unclear whether it qualifies as CRPA.

First, to a "reasonable" observer, it is a transparent criticism of President George W. Bush, who, at exactly that point in time, was running for reelection largely on his record in the popular "war on terror" and the then-popular Iraq War.[60] As the New York Times reported when the initial set of advertisements ran, the ads "indirectly accuse the administration of trampling on the Bill of Rights, without actually mentioning the president."[61] Accordingly, there is an argument that the ad "express[es] a view . . . against the . . . election" of a candidate, despite, again, the ACLU's strict non-partisanship.[62]

Indeed, there's even an argument that the advertisement meets the requirement that it "clearly identif[y]" a candidate, despite President Bush not having been named in the advertisement. As noted, the proposed rule would find a communication that identifies a candidate not by name but "by reference to an issue or characteristic used to distinguish the candidate from other candidates" as one that "clearly identifies" that candidate.[63]

There is no question that the issues of civil liberties, due process and, especially, the rights of detainees in Iraq and Guantanamo Bay, all of which were expressly mentioned in the Hutson advertisement, were central in the then-white hot 2004 presidential race. In fact, two days after

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58 *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964).

59 News Release, ACLU, In ACLU Ad, Retired Navy Admiral Says U.S. Breaking Rules (June 16, 2004), http://bit.ly/1asyoXk. Note again that the functionally equivalent express advocacy provision in the definition of CRPA is not limited by the 30/60-day blackout window. This ad, however, would also qualify as CRPA under the "electioneering communications-plus" provision, assuming it meets the definition of "clearly identified," as it ran on June 20 and 26. The last Republican primary occurred on June 26, 2012.

60 *See, e.g.*, Gallup Historical Trends: War on Terrorism, http://bit.ly/1biVcsx (last visited Jan. 22, 2014); Gallup Historical Trends: Iraq, http://bit.ly/1aJNJpJ (last visited Jan. 22, 2014).

61 Nat Ives, *Celebrities Line Up to Criticize Bush in A.C.L.U. Campaign*, N.Y. Times, Sept. 12, 2003, *available at* http://nyti.ms/1at0ll4.

62 *See Notice*, *supra* note 1, at 71,541 (§ 1-501(c)(4)-1(a)(2)(iii)(A)(1)).

63 *See Notice*, *supra* note 1, at 71,541 (§ 1-501(c)(4)-1(a)(2)(iii)(B)(2)).

the advertisement ran in the Economist, the Supreme Court dealt a significant blow to the Bush administration—one that was praised by the presumptive Democratic nominee, then-Senator and current Secretary of State John Kerry (D-MA)—in the decision *Hamdi v. Rumsfeld*, which held that U.S. citizens detained as enemy combatants retain habeas corpus rights.[64]

Although we firmly believe this advertisement is far from being the "functional equivalent" of express advocacy, and, indeed, is permissible even for a § 501(c)(3) group subject to the more restrictive "facts and circumstances" test, the analysis above demonstrates the significant uncertainty that would flow from the proposed rule. And, while larger social welfare and charitable groups may have the resources to make these difficult determinations, smaller and single-issue advocacy groups have no such luxury and may totally avoid engaging in core political speech like the Hutson advertisement out of an overabundance of caution.

This hedging and trimming presents a direct restriction on non-partisan political speech—on a matter squarely in the public interest—that presents absolutely no threat of electoral corruption.

V. Non-Partisan Voter Registration Drives and Voter Education Guides Should Not Qualify as CRPA, Regardless of Any Incidental Effect on an Election

As discussed above, the ACLU engages in a significant amount of voter education and voter protection work, including our "Let Me Vote" resource and our legislative scorecard. The latter selects key civil liberties votes during each Congress and lists a numerical score for each sitting member's voting record. We also provide voters with various "know your rights" materials on voting issues. While it is difficult to state with specificity how much is spent on such activities, it is safe to say they are much more than a negligible part of the work of both entities.

By way of preview, we recommend that non-partisan voter education, registration or mobilization drives, as well as voter education guides, should be completely exempt from the definition of CRPA and, further, the Service should also abandon the existing facts and circumstances test as applied to these efforts. To the extent any of these activities contain express advocacy, they can be regulated under the narrow bright-line test we propose.

The proposed rule would define as CRPA both "voter registration" and GOTV drives, as well as "[p]reparation or distribution of a voter guide that refers to one or more clearly identified candidates or, in the case of a general election, to one or more political parties . . . ."[65]

Although these terms are not defined in the proposed rule, we anticipate that the Service may look to the definitions of "voter registration" and "get-out-the-vote" activity under the

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[64] 542 U.S. 507 (2004); *see also* Todd S. Purdum, *In Classic Check and Balance, Court Shows Bush It Also Has Wartime Powers*, N.Y. Times, June 29, 2004, at A17 (highlighting split between candidates on issue).

[65] *Notice*, *supra* note 1, at 71,541 (§ 1-501(c)(4)-1(a)(2)(iii)(A)(5), (7)).

regulations implementing the BCRA's restrictions on party funding.[66] Under such an approach, the ACLU's non-partisan voter education and protection activity may qualify.

With respect to the definition of "voter registration activity," among other things, the ACLU's national organizations and affiliates encourage voters to vote,[67] provide detailed information about how to vote,[68] and offer links and/or access to voter registration materials.[69] With respect to the definition of GOTV activity, ACLU national and affiliates encourage voters to vote,[70] and inform potential voters about voting hours, polling locations and early and absentee voting.[71]

Despite the non-partisan nature of all of this activity, the proposed rule would nevertheless apply the definition of CRPA, meaning that all of the voter education and voter protection work could imperil our tax-exempt status. Indeed, were the Service to apply the proposed definition of CRPA to political activity by charitable groups, *any* amount of voter education by the ACLU Foundation, Inc. could result in revocation of its tax-exempt status.

Although *partisan* voter registration and GOTV activity directly or indirectly supported through tax policy raises more complicated constitutional questions,[72] there should be no question that *non-partisan* voter education, registration, mobilization and protection activities receive full First Amendment protection, and, indeed, are central in the promotion of a healthy and informed representative democracy.

The proposed rule, however, would dramatically chill such unbiased and non-partisan activity by the ACLU and other voting rights groups. Further, the proposed rule goes against decades of IRS guidance permitting tax-exempt social welfare and charitable groups to engage in non-partisan voter education, voter registration and GOTV drives without endangering their exempt status.[73] Indeed, the breadth of the proposed rule may even lead groups engaged simply in

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66 11 C.F.R. § 100.24 (2014).

67 *Id.* § 100.24(a)(2)(i)(A) ("Encouraging or urging potential voters to register to vote . . . by any other means").

68 *Id.* § 100.24(a)(2)(i)(B) ("Preparing and distributing information about registration and voting").

69 *Id.* § 100.24(a)(2)(i)(C) ("Distributing voter registration forms or instructions . . .").

70 *Id.* § 100.24(a)(3)(i)(A) ("Encouraging or urging potential voters to vote . . . by any other means").

71 *Id.* § 100.24(a)(3)(i)(B)(1)-(3).

72 *See infra* Part VIII.

73 The main guidance on the subject pertains to § 501(c)(3) groups, but, as noted, guidance on charitable groups has often been seen by practitioners as instructive for social welfare groups (and vice-versa). Rev. Rul. 2007-41, 2007-1 C.B. 1421, 1422; Rev. Rul. 81-95, 1981-1 C.B. 332 (citing rulings under § 501(c)(3) as authority for § 501(c)(4) political intervention determinations and allowing non-partisan voter education, registration and GOTV activity).

"know-your-rights"-style voter education, which objectively does not encourage voters to register and/or vote, to limit such activity for fear the proposed rule could apply.

The same analysis applies with equal force to voter guides, though, unlike voter registration and GOTV drives, we acknowledge that existing guidance does suggest that a voter election guide identifying specific candidates, even one without any editorial content or other evidence of bias, may potentially constitute political intervention if the guide is focused on a narrow issue or set of issues selected by a group advocating on those issues.[74] Conversely, there is also guidance suggesting that something like the ACLU's legislative scorecard, which is maintained without regard to the timing of elections and only lists the past votes of sitting members who may incidentally be running for office, will not constitute political intervention.[75]

Regardless, the First Amendment is implicated even by tax law restrictions on non-partisan voter guides, including those that are geared toward a particular election, identify sitting lawmakers running for re-election and score them based on their position on a set of issues.[76] Again, the constitutional questions raised are more difficult when a voter guide affirmatively includes explicit language of support or opposition, but the proposed rule is decidedly not so limited.

The Service asks for comment on "whether any particular activities conducted by section 501(c)(4) organizations should be excepted from the definition of candidate-related political activity as voter education activity and, if so, a description of how the proposed exception will both ensure that excepted activities are conducted in a non-partisan and unbiased manner and avoid a fact-intensive analysis."[77]

As with the impossibility of accurately cleaving issue advocacy from functionally equivalent express advocacy, we respectfully submit that one cannot and should not try. Voter guides, for instance, especially those that are intended to present a public official's view on a narrow issue of public interest, are quintessential issue advocacy. They are designed to facilitate voter pressure on incumbents to take a particular position on legislation or regulation, and only incidentally influence voters (because some voters don't like anti-abortion or pro-gun control

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[74] Rev. Rul. 78-248, 1978-1 C.B. 154.

[75] Rev. Rul. 80-282, 1980-2 C.B. 178.

[76] That was the precise issue in *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251-52 (1986) ("*MCFL*"), in which the Supreme Court found the pre-*Citizens United* independent expenditure ban unconstitutional as applied to a narrow subset of non-profit organizations. As discussed in Part VIII *infra*, we acknowledge that the restriction here is less direct than the blanket prohibitions at issue in MCFL and the other campaign finance cases (though it would present a flat ban if applied to § (c)(3) groups). Nevertheless, the public policy harm of a broad CRPA definition is quite similar and, legally, the rule would be so burdensome on § (c)(4) groups that many would be forced to either forgo a sizeable amount of totally non-partisan issue advocacy or would have to disclose their donors, both of which present significant and new First Amendment concerns.

[77] *Notice*, *supra* note 1, at 71,540.

candidates). Accordingly, they should not constitute political intervention in any case. The same analysis applies with equal force to voter education, registration and GOTV activities.

In sum, with respect to voter registration and GOTV drives, we respectfully submit that the Service should remove them from the definition of CRPA completely *and* abandon the current facts and circumstances test for when they constitute political intervention. Including them in the definition of CRPA will create too great a risk that valuable, non-partisan voter protection and education activities will be harmed. To the extent these activities include actual express advocacy, the Service would be able to regulate them under the bright-line test we propose.

With respect to voter guides, we again argue that the Service should abandon both the approach in the proposed rule and the facts and circumstances test, and only consider voter guides as political intervention by all tax-exempt groups when they contain express words of advocacy.[78]

Finally, we would just note the serious public policy harm in the Service applying the definition of CRPA to non-partisan voter education, registration or mobilization activities. While there may be some debate over whether the original understanding of the § (c)(4) exemption even contemplated legislative or political advocacy, there is no question that the provision was enacted to provide tax benefits for groups that may not qualify strictly as charitable, educational or religious but nevertheless provide some benefit available to the community at large.[79]

It is difficult to conceive of a more publicly beneficial service than the provision of non-partisan voter information and education. Just as an expansive definition of the First Amendment is cited as a guardian of other rights and liberties, an informed, engaged and active citizenry safeguards our liberal democracy itself.[80] To the extent this proposed rule would create disincentives for groups to expend resources on non-partisan voter support, it could result in disastrous unintended consequences in areas as diverse as the promotion of civil rights, public education, health care, religious freedom and many others.

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[78] That said, to the extent the Service maintains voter guides in the final rule, it should still exempt completely all publications that merely report on the legislative records of sitting lawmakers even when they focus on one set of issues, like civil liberties or the environment, and even when they list the organization's position on the vote. Although not ideal, that would provide a bright line rule and much less of a burden on speech.

[79] *See generally* 1981 EO CPE Text, *available at* http://1.usa.gov/1lv2Hqp; Laura Chisholm, Exempt Organization Activity: Matching the Rules to the Rationales, 63 Ind. L. J. 201, 290 (1988); Rev. Rul. 62-167, 1962-2 C.B. 142 (distinguishing non-exempt subscription provider of closed-circuit television carriage of broadcast signals from exempt organization providing such service to all members of the public).

[80] *See, e.g.*, Jennifer L. Hochschild, *If Democracies Need Informed Voters, How Can They Thrive While Expanding Enfranchisement?*, 9 Election L. J. 111, 111-13 (2010) (describing studies on role of voter education in health of modern democracy and beneficial policy outcomes).

VI. Non-Partisan Candidate Events Should Not Qualify as CRPA

The proposed rule would extend the definition of CRPA to events hosted or conducted by a § 501(c)(4) during the 60/30-day blackout periods at which one or more candidates "appear as part of the program."[81] Under current regulations, non-partisan candidate forums would not count against a § (c)(4) group's permissible allotment of political intervention. They are, also, protected fully by the First Amendment and quite valuable for voter education.

During the 2012 presidential election, for instance, the ACLU invited all candidates to speak at its annual staff conference as part of its "Liberty Watch" initiative. Only Libertarian candidate Gary Johnson and one time-GOP candidate Buddy Roemer showed up. The sessions with Johnson and Roemer were conducted without any of the hallmarks of a campaign event but were extremely useful in introducing civil libertarians to many of their positions on ACLU issues.[82]

Under current rules, these events would have been permissible without any limits at any stage in the election. Under the proposed rules, they would qualify as CRPA if held during the blackout period, and would thus count against the ACLU's permitted allotment of CRPA.

Campaign events lacking indicia of express advocacy—where multiple parties are invited, for instance, or town hall-type forums where a candidate faces unscripted questions from the audience—should be excluded from any definition of CRPA.

On the other hand, we do not oppose defining candidate forums that feature explicit indicia of express advocacy as CRPA. Such indicia would include, for instance, extending an invitation to only a single candidate to give a speech promoting her candidacy or signage at the event with *Buckley* magic words of support.

VII. The Service Should Apply a Bright-Line Definition of Political Intervention to all Relevant § 501(c) Groups and Provide Greater Clarity and Coordination With Respect to that Definition and That of Exempt Function Activity Under § 527(e)(2)

By its terms, the proposed rule would apply only to § 501(c)(4) groups.[83] Assuming the issues discussed above can be satisfactorily addressed, we respectfully recommend that the IRS expand the rule uniformly to all relevant organizations under § 501(c).

We further suggest that the Service should offer better clarity and coordination regarding the definition of political activity by § 501(c) groups and the definition of exempt function activity under § 527(e). If the definition of exempt function is broader than the definition of political

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81 *Notice*, *supra* note 1, at 71,541 (§ 1-501(c)(4)-1(a)(2)(iii)(A)(8)).

82 Mike Riggs, *Gary Johnson Braves the ACLU*, Reason.com, Jan. 31, 2012, http://bit.ly/1ffVH9R.

83 Though again, if past is prologue, we anticipate that the Treasury Department and the IRS will look to the § 501(c)(4) guidance for other exempt organizations, *and* that practitioners will rely on it in providing guidance to other groups.

activity for § 501(c) groups, which may be warranted given the statutory purpose of § 527, then tax pursuant to § 527(f) should only apply to § 501(c) groups on the activities that are within the definition of § 501(c) political intervention.

Assuming the rule can be properly narrowed, there are three reasons why the application of a uniform definition across all affected groups would be beneficial.

First, the Service has already been accused of political favoritism, in that the narrow application of the rule to § 501(c)(4) groups will disadvantage many conservative groups while sparing organized labor, which historically favors Democrats.[84] Regardless of the merits of this claim, and we do not suggest there are any, a special rule for § 501(c)(4) groups, especially one with a broad functional equivalence test, creates the *potential* for abuse by unscrupulous regulators against groups on both the right and left. Regulators could, for instance, cite the different standards as reason to treat the U.S. Chamber of Commerce, a § 501(c)(6) group, more leniently than the Natural Resources Defense Council, a § 501(c)(4).

Second, it actually makes sense from both a First Amendment and compliance perspective to have a unified definition across all relevant exempt organizations. Part of the problem with the facts and circumstances test historically has been confusion and lack of certainty on the part of tax practitioners as to whether the definition of § 501(c)(4) political intervention, which is allowed so long as it is not the primary activity of the entity, is coextensive with § 501(c)(3) political intervention, which is totally disallowed. Such added simplicity will reduce the need for advocacy groups to "hedge and trim," which will serve the First Amendment interest in encouraging vigorous public debate over government policy.

Finally, the different standard for § 501(c)(4) groups promises to create odd results. Charitable groups, for instance, would not be subject to the expansive definition of "public communication" and would therefore not have to purge their websites of "electioneering communications-plus" documents and files during the 60/30-day blackout. It would be incongruous to hold § 501(c)(3) organizations, which are statutorily barred from engaging in any political intervention, to a lesser standard than § (c)(4) groups, which may conduct actual express electioneering so long as it is not their primary activity. Of course, we do not support expanding such a broad definition to § (c)(3) groups. We want conformity, but with a true bright-line rule.

Likewise, applying a different standard to labor groups and business leagues, which are now considered to be subject to similar restrictions as § 501(c)(4) groups, would result in potentially far reaching advantages to certain political constituencies, which could benefit particular parties, candidates or ideological groups.

For instance, under the rule as proposed, the AFL-CIO would be able to circulate, with no tax consequences, a legislative scorecard for citizens interested in right-to-work laws.[85] By contrast,

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[84] *See, e.g.*, Kimberly A. Strassel, IRS Targeting and 2014, W.S.J., Jan. 16, 2014, http://on.wsj.com/1b1S5sQ.

[85] Assuming it is limited to past votes and meets the criteria suggested in Rev. Rul. 80-282.

Americans for Tax Reform, a group often critical of labor, would have to count its voter guides as CRPA. Likewise, the U.S. Chamber of Commerce would remain subject to the arguably narrower "facts and circumstances" test while MoveOn.org Civil Action or the American Association of Retired Persons ("AARP") would face the expanded IRS guidance and definition of CRPA.

VIII. The Service Should Abandon Both the Proposed Definition of CRPA *and* the "Facts and Circumstances" Test in Favor of a True Bright-Line Approach

We believe the IRS can effectively address concern over anonymous express advocacy by social welfare groups without tamping down on issue advocacy. Consequently, we urge the Service to abandon both the approach in the proposed rule and the existing "facts and circumstances" test. We respectfully submit that the Service needs to offer a clear and easily interpreted rule on what constitutes express advocacy *and* a firm answer on how much such activity will result in denial or revocation of exempt status.[86]

Otherwise, the proposed rule threatens serious unintended consequences. It will result in self-censorship of fully protected speech by tax-exempt organizations fearful of imperiling their exempt status through sharply worded issue communications. Such groups will be forced to radically curtail their speech on matters of public policy during the 60/30-day blackout periods, and, during the 60 days before a general election, will not be able to even mention a political party or parties represented in the election. They will also be significantly constrained in their ability to engage in non-partisan voter support efforts, which will, under the proposed rule, count against the permitted allowance of non-social welfare activity.

The definition of CRPA should be limited to public communications that use express terms of support for or opposition to a candidate or nominee for public office.[87] The rule should only apply to voter registration or GOTV material and voter guides if they themselves include express terms of advocacy. We recognize that the *Buckley* "magic words" list is illustrative, not exhaustive, but it must clearly protect all issue advocacy.[88]

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[86] We offer no opinion on that question in this submission. We expect that other commenters will suggest a sliding scale approach, where a higher percentage of allowable CPRA permits a more expansive definition and vice-versa. Because we believe that the definition of CRPA should be crystalline and limited as closely as possible to magic words express advocacy, we do not have a view on the quantitative question. Were the Service to adopt a magic words definition, we stand ready to help it work through the more difficult statutory and constitutional question of when and how Congress and the Service can limit express political advocacy by § (c)(4) groups in exchange for tax-exempt status. *Cf. Regan v. Taxation with Representation of Washington*, 461 U.S. 540 (1983) (upholding lobbying restriction on § (c)(3) groups); *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000) (finding no First Amendment violation on campaign intervention ban for § (c)(3) groups); *Christian Echoes Nat'l Ministry v. United States*, 470 F.2d 849 (10th Cir. 1972) (same).

[87] *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976).

[88] We hope to issue separate comments elaborating on our view of the *Buckley* test.

In fashioning the express advocacy doctrine in election law, the Supreme Court was not wearing blinders. It knew full well that groups could devise "expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited [a] candidate's campaign."[89] It chose, however, to accept that risk rather than extend the restriction to all issue communications that could conceivably be seen by someone as a campaign ad.

The Court has adopted this "tie goes to the speaker, not the censor,"[90] perspective repeatedly in holding that protected speech that resembles unprotected speech cannot constitutionally be restricted to suppress unprotected speech.[91] The proposed rule unabashedly does so by covering issue advocacy that inherently poses no risk of unduly influencing voters or officials.

We acknowledge that the practical effect of the lack of a bright line rule under the tax code is different than the outright muzzle on electioneering communications in the BCRA. Here, § 501(c)(4) groups are allowed to engage in express advocacy, just not too much. BCRA, by contrast, was a flat ban on corporations and labor organizations, even as narrowed to apply only to functionally equivalent express advocacy.

Regardless, the harms of a tax restriction are nonetheless similar and perhaps worse. Though they can still engage in advocacy, both express and issue, exempt organizations are at risk of denial or revocation of their status for engaging in too much genuine issue advocacy even if they *avoid* express advocacy. That clearly gives the tie to the censor.

To be clear, denial or revocation of such status can prove harmful, especially for controversial groups that rely on assurances of anonymity to attract donors. Denial or revocation is also unwarranted for the thousands of legitimate social welfare organizations that avoid electioneering but engage in policy and legislative advocacy that tangentially implicates partisan politics through mention of candidates or nominees for public office.[92] Finally, the uncertainty generated by the proposed rule will disproportionately affect smaller and single-issue groups with limited resources. All of these consequences will chill or sanitize public debate over issues squarely in the public interest, which threatens to harm—not help—our policy outcomes.

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89 *Buckley*, 424 U.S. at 45.

90 *WRTL*, 551 U.S. 449, 474 (2007).

91 *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002) ("The argument, in essence, is that protected speech may be banned as a means to ban unprotected speech. This analysis turns the First Amendment upside down.").

92 Interestingly, our understanding is that the only "be-on-the-lookout" targeted § 501(c)(4) groups actually denied tax-exempt status were all state affiliates of Emerge America, a non-profit dedicated to training female Democratic candidates. (Several of the conservative groups whose applications were delayed withdrew, however.) The IRS found that their exclusive focus on Democrats provided a private benefit, not a community good. Oddly, while several of the denied groups' applications were pending, *other* state affiliates of the same group, engaged in the same activity, saw their applications granted, which just serves to further illustrate the danger in a non-bright-line approach. Stephanie Strom, *3 Groups Denied Break By I.R.S. Are Named*, N.Y. Times, July 20, 2011.

Further, as a constitutional matter, while it is true that the courts apply a greater degree of deference to political speech regulations in the tax code,[93] and accepting for the sake of argument that this is appropriate, the rules governing what constitutes political intervention should still be limited to *political*—i.e., partisan—activities. And even if subject to a lesser standard of scrutiny than an outright prohibition on speech, such restrictions would still need to have an appropriate relationship to a legitimate or important government purpose.[94] In extending the definition of CRPA to concededly non-partisan activity, the Service cannot articulate such a purpose.

The Service's proposed rule also fails to provide a "safety valve" for protected speech, which the courts dismissing First Amendment challenges to tax provisions limiting political speech often cite in doing so.[95]

In *Regan*, an unsuccessful challenge to the lobbying restriction in § 501(c)(3), the unanimous decision by the Supreme Court found that the lobbying restriction on charities is not an "unconstitutional condition" but a rational attempt to prevent the subsidization of direct lobbying through the use of donor-deductible contributions. Groups that want to engage in substantial lobbying are just required to do so through a separate but affiliated § 501(c)(4) group where only the group enjoys the tax benefit.[96] That the Court said was okay.

In the *Regan* concurrence, however, Justices Blackmun, Marshall and Brennan stated plainly that the § 501(c)(3) lobbying restriction *absent* the § 501(c)(4) safety valve *would* have amounted to an unconstitutional condition.[97] As Justice Blackmun argued, "[i]f viewed in isolation, the lobbying restriction contained in § 501(c)(3) violates the principle . . . that the Government may not deny a benefit to a person because he exercises a constitutional right."[98]

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93 *See supra* note 86.

94 *Regan v. Taxation With Representation*, 461 U.S. 540, 547 (1983).

95 *See Alliance for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev.*, 430 F. Supp.2d 222, 259 (S.D.N.Y. 2006) (using term "safety valve" to describe concurrence's reasoning in *Regan*), *aff'd*, 651 F.3d 218 (2d Cir. 2011), *aff'd*, 133 S. Ct. 2321 (2013).

96 *Regan*, 461 U.S. at 544, 552 ("The constitutional defect that would inhere in § 501(c)(3) alone is avoided by § 501(c)(4). [Appellant] may use its present § 501(c)(3) organization for its nonlobbying activities and may create a § 501(c)(4) affiliate to pursue its charitable goals through lobbying. . . . Given this relationship between § 501(c)(3) and § 501(c)(4), the Court finds that Congress' purpose in imposing the lobbying restriction was merely to ensure that 'no tax-deductible contributions are used to pay for substantial lobbying.'") (Blackmun, J., concurring).

97 *Id.* at 552.

98 *Id.* (internal citations omitted).

There appears to be no such safety valve here and, indeed, the unconstitutional condition is different in kind, and much more serious, than forbearance from the use of donor-deductible contributions for lobbying activities.

The safety valve argument in the context of CRPA would be that a group that wants to have as its primary purpose the conduct of CRPA would presumably be treated as a § 527 group, subject to § 527's tax exemption. This might hold water under three conditions: (1) the proposed definition of CRPA were actually limited to express political advocacy; (2) the Service is correct that Congress intended to exclude political intervention from the definition of social welfare; and (3) Congress was able to do so without imposing an unconstitutional condition. But the definition of CRPA is not so limited and there is no indication that Congress intended to exclude *issue* advocacy from the definition of social welfare, and nor could it.[99]

So, aside from the different tax treatment of § 501(c)(4) and § 527 groups, which, for the sake of argument, *might* be analogous to the difference between § (c)(3) and § (c)(4) groups in *Regan*, there is still one major difference between the two types of groups: § 527 groups have to ***publicly disclose the identity of their donors***. The proposed definition of CRPA therefore places legitimate social welfare groups in a Catch-22; either they self-censor genuine issue advocacy or they disclose their donors. It is well and long established that forced donor disclosure for any controversial political group—even partisan groups—is unconstitutional.[100]

The proposed rule therefore may impose an unconstitutional condition on § (c)(4) groups by forcing them to disclose their donors in exchange for tax-exempt status. This could present an unconstitutional condition even in the case of express political advocacy. It almost certainly does in the case of legitimate issue advocacy.

A true bright line test—limited to actual express advocacy—is the better approach.

IX. Conclusion

In sum, the proposed "bright-line" rule offers a triple whammy for free speech. It suffers from an overabundance of clarity through application to virtually all legitimate issue advocacy during the 60/30-day blackout periods and the presidential rolling blackout. It repeats the sin of the "facts and circumstances" test through its application to all communications "susceptible of no

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[99] *See, e.g.*, *Notice*, *supra* note 1, at 71,540 (acknowledging that proposed rule will extend to non-partisan voter guides, candidate events, etc.).

[100] *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995) (recognizing constitutional right to distribute anonymous campaign literature); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982) (requiring exemption from donor disclosure for controversial groups subject to reprisal or harassment); *Nat'l Assoc. for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958) (prohibiting state from requiring donor disclosure as condition for in-state operation). *NAACP* also expressly recognized that tax policy burdening speech could pose as severe a First Amendment concern as a direct restriction. *Id.* at 461 ("Statutes imposing taxes upon rather than prohibiting particular activity have been struck down when perceived to have the consequence of unduly curtailing the liberty of freedom of press assured under the Fourteenth Amendment.").

reasonable interpretation" other than express advocacy. And, it paints with too broad a brush in its proposed application to unbiased and non-partisan voter registration activity, GOTV drives, voter education guides and candidate forums.

We have no doubt that the Service is acting with the best of intentions, but the proposed rule threatens to discourage or sterilize an enormous amount of political discourse in America.

* * *

We look forward to working with the Service to address these concerns. Please do not hesitate to contact Legislative Counsel/Policy Advisor Gabe Rottman at grottman@aclu.org or 202-544-1681 if you have any questions or comments.

Sincerely,

Laura W. Murphy
Director, Washington Legislative Office

Gabriel Rottman
Legislative Counsel/Policy Advisor

Appendix I: 1972 ACLU Busing Ad (Text Follows on Next Page)[101]

[101] *See supra* note 52 and accompanying text.

Appendix I (cont'd)

It took a court order to get this advertisement printed.

An open letter to President Richard M. Nixon in opposition to his stand on school segregation.

Dear Mr. President:

We write because we believe that you are taking steps to create an American apartheid. That, we know, is a nasty charge. Yet that is the direction the House of Representatives took us on August 17, 1972. On that date, the House voted 282-102 to prohibit federal courts from taking effective action to end school segregation.

The reaction of every civil rights and civil liberties organization was justifiably bitter. The mood of Congress was ugly, and threatened to roll back the progress made by the federal courts during the last two decades in the effort to desegregate America.

But we do not believe that this mood could possibly have the widespread support of the American people. We believe instead that the ultimate source of pressure behind this shameful bill has been you, Mr. President.

During the last six months, you have encouraged the resentments and fears of whites, and made open enemies of blacks. You have made scapegoats of the federal courts, and attacked the rule of law itself. You have cut the middle ground out from under the feet of reasonable men. We find it hard to imagine a more cynical use of presidential power.

In the House of Representatives only 102 members stood fast against you.* Now the issue is before the Senate. We urge you to back off from the path to apartheid, and withdraw your support for this bill.

* Honor Roll of U.S. Representatives. The following 102 representatives voted against the bill to block effective action by the courts in ending school segregation. Let them hear from you. They deserve your support in their resistance to the Nixon administration's bill.

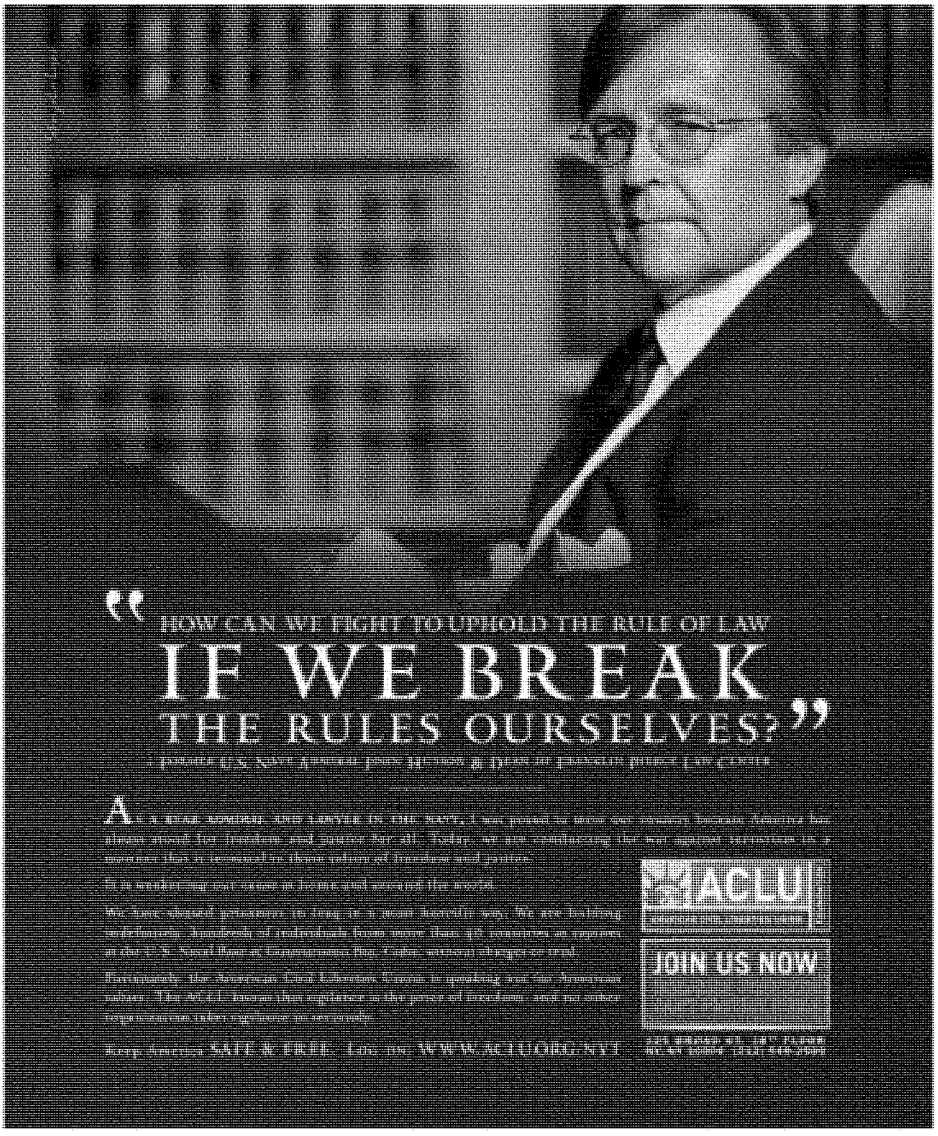
Aryeh Neier, Executive Director
American Civil Liberties Union

Ira Glasser, Executive Director
New York Civil Liberties Union

September 25, 1972

[HONOR ROLL LIST]

Appendix II: ACLU Hutson Issue Advertisement[102]



102 *See supra* pp. 15-16.

107

48) Provide a copy of the May 17, 2012 email(s) referenced in the TIGTA report.

The document requested includes return information protected by the confidentiality provisions of Section 6103. We have provided an unredacted copy of this document to the persons authorized by the Chairman of the Committee to receive such information, which cannot appear in the public record of the hearing.

49) According to the timeline provided by the TIGTA report, on May 17, 2012 "The Director, Rulings and Agreements, issued a memorandum outlining new procedures for updating the BOLO listing. The BOLO listing criteria were updated again."

Did the Director, Rulings and Agreements submit the revised BOLO criteria for approval to the Director, EO, or any other IRS official?

We are not aware of whether the Director, Rulings and Agreements submitted the revised BOLO criteria for approval. However, the Director, Rulings and Agreements, requested feedback on the revised language before it was finalized from:

- Judith Kindell, Senior Technical Advisor to the Director, EO;
- Sharon Light, Senior Technical Advisor to the Director, EO;
- Nancy Marks, Senior Technical Advisor to the Commissioner, Tax Exempt and Government Entities;
- Lois Lerner, EO Director; and,
- Cindy Thomas, Determinations Unit Program Manager.

50) Did any official from the office of the president or the White House have any form of communication with any IRS official employed in the Tax Exempt and Government Entities Division between January 20, 2009 and the present?

List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)

We have no knowledge of any communications between the White House and any employee in the Tax Exempt and Government Entities Division.

51) Did Colleen Kelley, Frank Ferris, or any other officer, president, vice president, or official of the National Treasury Employees Union contact any supervisor or manager in the Tax Exempt and Government Entities Division, or the Chief Counsel's Office, or the Commissioner of the IRS (or his deputies or Chief of Staff), or the office of the Deputy Commissioner for Services and Enforcement between January 1, 2010 and January 1, 2013.

We have no knowledge of any communications between any of the listed people and any employee in the Tax Exempt and Government Entities Division.

52) Did any employee of the Treasury Department (excluding the IRS) who was appointed by the President have any form of contact with any employee of the Tax Exempt and Government Entities Division between January 1, 2010 and May 1, 2013?

List the days any communication occurred and the form it took (i.e., phone, email, in person, etc.)

We have no knowledge of any communications between Presidential appointees at the Department of the Treasury and any employee in the Tax Exempt and Government Entities Division.

regulations.gov

Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities (REG-134417-13)

Docket Folder Summary View all documents and comments in this Docket

Docket ID: IRS-2013-0038
Agency: Internal Revenue Service (IRS)
Parent Agency: Department of the Treasury (TREAS)

Summary:
The proposed regulations provide guidance under section 501(c) relating to political campaign intervention.

RIN: 1545-BL81 **Impacts and Effects:** None
CFR Citation: 26 CFR 501
Priority: Substantive, Nonsignificant

+ View More UA and Regulatory Plan Information and Docket Details

UA and Regulatory Plan Information

Publication Period: Fall 2014
Agenda Stage of Rulemaking: Proposed Rule
Major Rule: Undetermined
Legal Authorities: 26 USC 7805
Legal Deadlines: None
Government Levels Affected: No
Federalism Implications: No
Unfunded Mandates: Undetermined
Requires Regulatory Flexibility Analysis: No
Small Entities Affected: No
International Impacts: No
Energy Effects: No
Included in Regulatory Plan: No

Primary Documents View All (1)

Timetable

Action	Date	FR Citation
NPRM	Guidance for Tax-Exempt Social Welfare Organizations 05/13/2013	Comment Period Closed Feb 27, 2014 11:59 PM ET

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169,016
Comments Received*

Regulatory Timeline

Pre Rule

Proposed Rule
Current Stage

Final Rule

Agency Contact

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Action	Candidate-Related Political Activities	FR Citation
	Proposed Rule Posted: 11/29/2013 **ID:** IRS-2013-0038-0001	78 FR 71535
NPRM Comment Period End	02/27/2014	
Second NPRM	03/00/2015	

Supporting Documents

Docket Details *No documents available.*

Related RINs: None
Related Dockets: None
Organization: CC:TEGE
Keyword(s): 501(c)(4)
Type: Rulemaking

Comments View All (143,855)

See Attached"
View Comment
Submitter Name: Colvin, Gregory
Posted: 02/24/2015
ID: IRS-2013-0038-143873

See Attached"
View Comment
Submitter Name: Wang, Eric
Posted: 12/11/2014
ID: IRS-2013-0038-143872

Attached, please see the cover letter, report " IRS and TIGTA Management Failures Related to 501 (c)(4) Applicants Engaged in Campaign Activity", and related..."
View Comment **Posted:** 09/23/2014
ID: IRS-2013-0038-143871

See Attached"
View Comment
Submitter Name: Azlinj, Suzanne
Posted: 06/26/2014
ID: IRS-2013-0038-143870

See Attached"
View Comment
Submitter Name: Aprill, Ellen
Posted: 06/20/2014
ID: IRS-2013-0038-143869

Washington, DC 20224

*This count refers to the total comment/submissions received on this *docket*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

Rev. Rul. 81-95, 1981-1 C.B. 332

What effect does engaging in political campaign activities have on an organization that is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code?

FACTS

The organization is primarily engaged in activities designed to promote social welfare and is exempt from federal income tax under section 501(c)(4) of the Code. In addition, it carries on certain activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. These political activities take the form of both financial assistance and in-kind services.

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)(i) of the Income Tax Regulations provides that an organizations 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.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulation provides that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.

Section 527(b) of the Code imposes a tax on the taxable income of certain political organizations.

Section 527(f)(1) of the Code provides, in part, that if an organization described in section 501(c) which is exempt from tax under section 501(a) expends any amount during the taxable year directly or indirectly for political activities described in section 527(e)(2), then such amount shall be subject to tax under subsection (b) as if the amount constituted political organization taxable income.

Section 527(e)(2) of the Code describes the type of political activities the expenditures for which will subject an exempt organization to tax. These activities are influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, state, or local public office of office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individuals or electors are selected, nominated, elected, or appointed.

ANALYSIS

In order to qualify for exemption under section 501(c)(4) of the Code, an organization must be primarily engaged in activities that promote social welfare. Although the promotion of social welfare within the meaning of section 1.501(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 primarily engaged in activities that promote social welfare.

For an example of an organization whose participation and intervention in political campaigns bars its exemption under section 501(c)(4), see Rev. Rul. 67-368, C.B. 194. That revenue ruling holds that an organization whose primary activity is rating candidates for public office does not qualify for exemption under section 501(c)(4) because such activity does not constitute the promotion of social welfare.

See also Rev. Rul. 67-71, 1967-1 C.B. 125, Rev. Rul. 74-574, 1974-2 C.B. 160, Rev. Rul. 76-456, 1976-2 C.B. 151, Rev. Rul. 78-248, 1978-1 C.B. 154, and Rev. Rul. 80-282, 1980-41 I.R.B. 7, for other examples of what constitutes participation or intervention in political campaigns.

Section 527 of the Code, which was added by Pub.L. 93-625, January 3, 1975, 1975-1 C.B. 510, 515, and amended by Pub.L. 95-502, October 21, 1978, 1978-2 C.B. 393-395, affect the treatment of political activities of exempt organizations. The report of the Senate Finance Committee on Pub.L. 93-625 specifically indicates that the provisions of section 527(f) apply to organizations that are exempt under section 501(c)(4). It states:

> "Exempt organizations which are not political organizations.--Under present law, certain tax-exempt organizations (such as sec. 501(c)(4) organizations) may engage in political campaign activities. The bill generally treats these organizations on an equal basis for tax purposes with political organizations. Under the bill organizations which are exempt under section 501(a) and are described in section 501(c), that engage in political activity, are to be taxed on their net investment income in part as if they were political organizations...." S.Rep.No.93-1358, 93d Cong., 2d Sess., 29 (1974), 1975-1 C.B. 517, 533.

HOLDING

Since the organization's primary activities promote social welfare, its lawful participation or intervention in political

campaigns on behalf of or in opposition to candidates for public office will not adversely affect its exempt status under section 501(c)(4) of the Code. Further, this organization will be subject to the tax imposed by section 527 on any of its expenditures for political activities that come within the meaning of section 527(e)(2).

FILING INSTRUCTIONS FOR POLITICAL EXPENDITURES

Under section 527(f) of the Code, organizations exempt from federal income tax under section 501(c) that expend over $100 for political activities must file Form 1120-POL in accordance with the instructions to that form.

Part I

Section 501.—Exemption from tax on corporations, certain trusts, etc.

26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals.

Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007)

Organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) 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.

ISSUE

In each of the 21 situations described below, has the 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)?

LAW

Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does 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.

Section 1.501(c) (3)-1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations defines an "action" organization as an organization that 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" is defined as 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. The regulations further provide that activities that 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 statements or the making of oral statements on behalf of or in opposition to such a candidate.

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. For example, certain "voter education" activities, including preparation and distribution of certain voter guides, conducted in a non-partisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code. Other so-called "voter education" activities may be proscribed by the statute. Rev. Rul. 78-248, 1978-1 C.B. 154, contrasts several situations illustrating when an organization that publishes a compilation of candidate positions or voting records has or has not engaged in prohibited political activities based on whether the questionnaire used to solicit candidate positions or the voters guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. See also Rev. Rul. 80-282, 1980-2 C.B. 178, amplifying Rev. Rul. 78-248 regarding the timing and distribution of voter education materials.

The presentation of public forums or debates is a recognized method of educating the public. See Rev. Rul. 66-256, 1966-2 C.B. 210 (nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption from federal income tax under section 501(c)(3)). Providing a forum for candidates is not, in and of itself, prohibited political activity. See Rev. Rul. 74-574, 1974-2 C.B. 160 (organization operating a broadcast station is not participating in political campaigns on behalf of public candidates by providing reasonable amounts of air time equally available to all legally qualified candidates for election to public office in compliance with the reasonable access provisions of the Communications Act of 1934). However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, 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 participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. See Rev. Rul. 86-95, 1986-2 C.B. 73 (organization that proposes to educate voters by conducting a

series of public forums in congressional districts during congressional election campaigns is not participating in a political campaign on behalf of any candidate due to the neutral form and content of its proposed forums).

ANALYSIS OF FACTUAL SITUATIONS

The 21 factual situations appear below under specific subheadings relating to types of activities. In each of the factual situations, all the facts and circumstances are considered in determining whether an organization's activities result in political campaign intervention. Note that each of these situations involves only one type of activity. In the case of an organization that combines one or more types of activity, the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention.

Voter Education, Voter Registration and Get Out the Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted 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.

Situation 1. B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth.

Situation 2. C is a section 501(c)(3) organization that educates the public on environmental issues. Candidate G is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the

upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

Situation 3. President A is the Chief Executive Officer of Hospital J, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate T, Candidate T publishes a full page ad in the local newspaper listing the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by Candidate T's campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J.

Situation 4. President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled "My Views." The month before the election, President B states in the "My Views" column, "It is my personal opinion that Candidate U should be reelected." For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Situation 5. Minister C is the minister of Church L, a section 501(c)(3) organization and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church L, his actions do not constitute campaign intervention by Church L.

Situation 6. Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, "It is important that you all do your duty in the election and vote for Candidate W." Because Chairman D's remarks indicating support for Candidate W were made during an official organization meeting, they constitute political campaign intervention by M.

Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,

• Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
• Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
• Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Situation 7. President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three Congressional candidates for the district in which Society N is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention.

Situation 8. The facts are the same as in Situation 7 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.

Situation 9. Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.

Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A

candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Situation 10. Historical society P is a section 501(c)(3) organization. Society P is located in the state capital. President G is the president of Society P and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attends a meeting of the historical society. President G acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Y." President G makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Society P has not engaged in political campaign intervention as a result of President G's actions.

Situation 11. Chairman H is the chairman of the Board of Hospital Q, a section 501(c)(3) organization. Hospital Q is building a new wing. Chairman H invites Congressman Z, the representative for the district containing Hospital Q, to attend the groundbreaking ceremony for the new wing. Congressman Z is running for reelection at the time. Chairman H makes no reference in her introduction to Congressman Z's candidacy or the election. Congressman Z also makes no reference to his candidacy or the election and does not do any political campaign fundraising while at Hospital Q. Hospital Q has not intervened in a political campaign.

Situation 12. University X is a section 501(c)(3) organization. X publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter.

After receiving an update letter from Alumnus Q, X prints the following: "Alumnus Q, class of 'XX is running for mayor of Metropolis." The newsletter does not contain any reference to this election or to Alumnus Q's candidacy other than this statement of fact. University X has not intervened in a political campaign.

Situation 13. Mayor G attends a concert performed by Symphony S, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S's board addresses the crowd and says, "I am pleased to see Mayor G here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor G in November as he has supported us." As a result of these remarks, Symphony S has engaged in political campaign intervention.

Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on 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. 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.

Key factors in determining whether a communication results in political campaign intervention include the following:

- 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 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 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.

Situation 14. University O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C represents State V in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State V residents to attend college, but Senator C has opposed similar measures in the past. The advertisement ends with the statement "Call or write Senator C to tell him to vote for S. 24." Educational issues have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator C's position on the issue as contrary to O's position, University O has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator C, education issues have not been raised as distinguishing Senator C from any opponent, and the timing of the advertisement and the identification of Senator C are directly related to the specifically identified legislation University O is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

Situation 15. Organization R, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under funded. While the advertisement does not say anything about Governor E's position on funding for public education, it ends with "Tell Governor E what you think about our under-funded schools." In public appearances and campaign literature, Governor E's opponent has made funding of public education an issue in the campaign by focusing on Governor E's veto of

an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education. Organization R has violated the political campaign prohibition because the advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

Situation 16. Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for a new mass transit project in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports funding the new mass transit project. Candidate B opposes the project and supports State X funding for highway improvements instead. P is the executive director of C, a section 501(c)(3) organization that promotes community development in District W. At C's annual fundraising dinner in District W, which takes place in the month before the election in State X, P gives a lengthy speech about community development issues including the transportation issues. P does not mention the name of any candidate or any political party. However, at the conclusion of the speech, P makes the following statement, "For those of you who care about quality of life in District W and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District W. Use that power when you go to the polls and cast your vote in the election for your state senator." C has violated the political campaign intervention as a result of P's remarks at C's official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

• Whether the good, service or facility is available to candidates in the same election on an equal basis,

• Whether the good, service, or facility is available only to candidates and not to the general public,

• Whether the fees charged to candidates are at the organization's customary and usual rates, and

• Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Situation 17. Museum K is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum K has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum K rents the hall on a first come, first served basis. Candidate P rents Museum K's social hall for a fundraising dinner. Candidate P's campaign pays the standard fee for the dinner. Museum K is not involved in political campaign intervention as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner.

Situation 18. Theater L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater L has never rented its mailing list to a third party. Theater L is approached by the campaign committee of Candidate Q, who supports increased funding for the arts. Candidate Q's campaign committee offers to rent Theater L's mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to Candidate Q's campaign committee. Theater L declines similar requests from campaign committees of other candidates. Theater L has intervened in a political campaign.

Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

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.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the

organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Situation 20. Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate.

Situation 21. Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. B, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its web site, "Lend your support to B, your fellow parishioner, in Tuesday's election for town council." Church P has intervened in a political campaign on behalf of B.

HOLDINGS

In situations 2, 4, 6, 9, 13, 15, 16, 18 and 21, the organization intervened in a political campaign within the meaning of section 501(c)(3). In situations 1, 3, 5, 7, 8, 10, 11, 12, 14, 17, 19 and 20, the organization did not intervene in a political campaign within the meaning of section 501(c)(3)

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling contact Ms. Kindell on (202) 283-8964 (not a toll-free call).

Summary of Staff Discussion Draft: Tax Administration

Chairman Max Baucus
U.S. Senate Committee on Finance

11/20/13

Overview

As part of his work towards federal tax reform, Chairman Max Baucus is releasing a staff discussion draft today of proposed reforms to the administration of the tax laws. The Chairman and his staff are grateful to the Joint Committee on Taxation (JCT) and Senate Legislative Counsel for their assistance with this draft.

Each year Americans spend more than 6 billion hours filing over 150 million federal income tax returns. In addition to paying their taxes and filing income tax returns, each year individuals and businesses file an additional 1.4 billion information returns, such as Forms W-2 and 1099. The tax code is so complex and difficult to comply with that nearly 90 percent of taxpayers now rely on paid tax return preparers or software to complete and file their returns. Collectively, Americans spend nearly $170 billion each year on tax compliance. And small businesses spend approximately $1,500 per employee on tax compliance.

Moreover, tax refund fraud through identity theft has grown to alarming levels. In 2010, there were nearly a half million reported incidents where a stolen identity was used to file a tax return and fraudulently claim a tax refund. These incidents more than doubled to over a million cases in 2011. These crimes cause great hardship on identity theft victims because the tax refunds lawfully owed to them are greatly delayed. They are also very difficult and labor intensive for the IRS to resolve. The Treasury Inspector General for Tax Administration recently reported that it takes the IRS, on average, over 400 days to resolve a single case. In addition to the hardship that it imposes on victims, tax-related identity theft costs the government billions of dollars annually.

Non-compliance with the tax laws also continues to be a significant problem. Most Americans voluntarily comply with the tax laws and approximately 83% of income taxes properly owed are paid. Nevertheless, the IRS estimated that the difference between the amount of tax owed and the amount ultimately paid was $345 billion in 2006 (the most recent "tax gap" estimate available). Compliance improves to nearly 95 percent when third parties report income and transactions through information reporting processes.

Over the past three years, the Finance Committee has held over two dozen hearings related to tax reform. Many of those hearings have involved tax administration issues, with most witnesses calling for tax simplification. The Committee has also issued a paper on tax reform options in this area. This staff discussion draft proposes a package of reforms to modernize tax administration, minimize compliance burdens, reduce tax-related identity theft, and shrink the tax gap. These proposals should be considered as a package and not as stand-alone proposals.

Summary of the Staff Discussion Draft

Tax Filing Reforms

The first set of proposals in the staff discussion draft would simplify the tax filing process, remove deadwood from the tax code, and leverage the dramatic technological advances that have occurred since Congress last reformed the tax code in 1986. The proposals are summarized below.

Improving the Information Return Filing Process

- Taxpayers are no longer required to file corrected information returns if the error is less than $25.
- The IRS must develop a simple internet platform for preparing and filing Forms 1099 that is functionally similar to the *Business Services Online* platform (http://www.ssa.gov/bso/bsowelcome.htm) that employers use to file Forms W-2.
- Returns generated by a computer but filed on paper must contain a scannable code, which will enable the IRS to more efficiently upload the return information. This proposal is based on a provision in S.1289 (112th), TAX GAP Act of 2011, sponsored by Sen. Carper.
- Information returns, including Forms W-2 and 1099, must be filed with the government by February 21st of each year, rather than by the current law dates of February 28th (for paper forms) and March 31st (for electronic forms). Information returns must still be delivered to recipients by January 31st.

Common Sense Filing Deadlines

- Under current law, tax returns for calendar year corporations, including S corporations, are due on March 15th (September 15th if an extension is filed). Calendar year partnership and individual returns are due on April 15th (October 15th if an extension is filed). Individuals and corporations often depend on tax return information provided by

partnerships and S Corporations to complete their returns. The staff discussion draft changes certain filing deadlines so that taxpayers will receive the information needed to file complete returns on a more timely and orderly basis. This proposal is based on a provision in S.420 (113th), Tax Return Due Date Simplification and Modernization Act of 2013, sponsored by Sen. Enzi.

Expansion of Electronic Filing

- The number of returns that trigger an electronic filing requirement is gradually reduced over a three year period from 250 returns per year to 25.
- Paid return preparers must electronically file all tax returns and information documents that they prepare for their clients.
- Forms M-3 and 990 must be filed electronically. The Treasury Department has authority to delay implementation if appropriate.
- Electronic filing of Forms 5500 by employee benefit plans is increased. This proposal is based on a provision of S.1289 (112th), TAX GAP Act of 2011, sponsored by Sen. Carper.

Repeal of Deadwood Provisions and Technical Corrections

- A JCT document listing 129 provisions that may be obsolete is being released with the staff discussion draft. The Chairman's staff proposes to repeal these provisions to the extent that doing so is consistent with other aspects of tax reform.
- JCT has also prepared legislative language addressing a number of provisions in the tax code in need of technical correction. The Chairman's staff proposes to address these technical issues to the extent that doing so is consistent with other aspects of tax reform.

Tax-Related Identity Theft and Other Tax Fraud Prevention

The second set of reforms in the staff discussion draft provides the IRS with new tools to combat tax-related identity theft and assist the victims of this crime.

Tax-Related Identity Theft

- Access to the Social Security Administration's public death data – the Death Master File (DMF) – is restricted for three years. An exception is provided for individuals or entities with a legitimate fraud prevention or business need for the information and who agree to keep the data private. Disclosure to third parties is permitted if they agree to protect

the information. Penalties apply to any unauthorized disclosure. In the case of unauthorized disclosure by third parties, penalties apply to both the third party and the original recipient of the information. Individuals and entities can use existing customer, client, or patient information protection systems to meet the requirements of the proposal. This proposal is based on a provision in S.676 (113th), Identity Theft and Tax Fraud Prevention Act of 2013, sponsored by Sen. Nelson.

- Form W-2 will no longer include the taxpayer's full Social Security Number (SSN); instead, the IRS may require use of only the taxpayer's truncated SSN or other taxpayer identification number.

- The IRS is granted authority to use the Department of Health and Human Services' National Directory of New Hires to verify employment data.

- The staff discussion draft establishes new criminal penalties for tax-related identity theft. Filing a tax return using another person's identity is a felony subject to a fine of not more than $250,000 fine and/or up to 5 years in prison. This proposal is based on a provision in S.676 (113th), Identity Theft and Tax Fraud Prevention Act of 2013, sponsored by Sen. Nelson.

- The staff discussion draft provides aid to taxpayers who have been victims of tax-related identity theft by requiring the IRS to notify taxpayers that it determines to be victims of identity theft. In addition, the IRS is required to assign each victim a single point of contact to help facilitate rapid case resolution. This proposal is based on a provision in S.676 (113th), Identity Theft and Tax Fraud Prevention Act of 2013, sponsored by Sen. Nelson.

- The IRS is required to report to Congress on the viability of expanding the existing personal identification number (PIN) program available for victims of tax-related identity theft. The report must consider whether allowing all taxpayers the option of obtaining a PIN from the IRS to secure their return filing is an effective way to combat tax-related identity theft. The report must also determine whether the IRS should authenticate taxpayer identity and distribute PINs to participating taxpayers through an internet platform similar to *my Social Security* (http://www.ssa.gov/myaccount/) used by the Social Security Administration.

Other Tax Fraud Prevention

- The due diligence requirements currently imposed on tax return preparers with respect to the Earned Income Tax Credit are extended to include the Child Tax Credit. A tax

return preparer who does not comply with the Child Tax Credit due diligence requirements must pay a penalty of $500 for each failure.

Reducing the Tax Gap

The third set of reforms in the staff discussion draft reduces the tax gap by increasing information reporting in certain areas, providing the IRS with additional collection tools, and clarifying that the IRS may regulate tax return preparers.

Narrowly Targeted Information Reporting Enhancements

- Banks must report the existence of bank accounts, including accounts on which no interest was earned, during the taxable year. This proposal is based on a provision in S.1289 (112th), TAX GAP Act of 2011, sponsored by Sen. Carper.
- Information returns on mortgage interest must include the outstanding balance of the mortgage; the address of the encumbered property; property taxes, if any, paid from escrow; and the loan origination date. This proposal is based on a provision in S.1289 (112th), TAX GAP Act of 2011, sponsored by Sen. Carper.
- Life insurance companies must file information returns on the sale of a life insurance policy into the secondary market. The staff discussion draft also clarifies that the basis in a life insurance policy is not reduced by the cost of insurance, and that certain transfers of interests in trusts or partnerships that hold life insurance policies are treated as transfers for valuable consideration. This proposal is based on a provision in S.2048 (112th), A bill to amend the Internal Revenue Code of 1986 to clarify the tax treatment of certain life insurance contract transactions, and for other purposes, sponsored by Sen. Casey.
- Colleges and universities must report the amounts received (rather than either amounts received or billed) for tuition and other higher education expenses on Form 1098-T.
- Businesses must show how much of their gross receipts and expenses are reflected in separately filed Forms 1099 by breaking those amounts out on their Form 1040 Schedule C. The staff discussion draft also requests a report from the Treasury Department on how to improve tax compliance by sole proprietors. This proposal is based on a provision in S.1289 (112th), TAX GAP Act of 2011, sponsored by Sen. Carper.

Additional Tools for Collections

- The IRS is authorized to impose a levy of up to 100 percent on payments to Medicare providers that are seriously delinquent in their taxes. This proposal is based on a

provision in S. 3457 (112th), Veterans Jobs Corps Act of 2012, sponsored by Sen. Bill Nelson.

- The State Department is authorized to revoke passports of individuals with seriously delinquent tax debts in excess of $50,000.
- The IRS is authorized to waive fees for installment agreements if the taxpayer agrees to make payment through automated withdrawals. This proposal is based on a provision in H.R.1528 (108th), the Tax Administration Good Government Act, sponsored by then-Rep. Portman.

Regulation of Tax Return Preparers

In the recent case, *Loving v. I.R.S.*, the Unites States District Court for the District of Columbia concluded that the IRS and Treasury Department do not have the authority to regulate tax return preparers that only prepare returns for their clients. This case is currently on appeal to the United States Court of Appeals for the District of Columbia.

The staff discussion draft amends 31 U.S.C. 330 to make it clear that the Treasury and IRS have the authority to regulate all paid tax return preparers. No negative inference is intended or should be taken with respect to whether the IRS and Treasury Department have the authority to regulate return preparers in past periods.

Other Reforms

In addition to the proposals detailed above, the staff discussion draft includes several other administrative changes, including expanding taxpayer access to the U.S. Tax Court, and permitting the IRS to share certain tax information with the Bureau of Labor Statistics.

Request for Comments and Unaddressed Issues

Comments are requested on all aspects of the staff discussion draft as well as other areas of tax administration practice and procedure. Comments on the additional issues listed below that are not addressed in the discussion draft but that the Chairman's staff is considering are of particular interest. All comments should be submitted to tax_reform@finance.senate.gov. While comments will be accepted at any time, the staff requests comments by January 17, 2014 in order to be able to give them full consideration.

The unaddressed issues that the Chairman's staff is considering are listed below:

- Streamlining and Reducing the Number of Information Returns. Currently, there are 17 distinct Forms 1099. Each applies to different types of income or transactions, requests different information, and often has a different filing threshold. As part of its efforts to simplify tax compliance, the Chairman's staff is looking at ways to combine the existing forms so that a single form can report multiple types of information. Comments are requested on ways to reduce the number of Forms 1099, what information is critical in the information return process, and whether a universal filing threshold is appropriate.

- Roll-Over of Small Information Return Errors. In addition to the proposed de minimis error rule for correction of Forms 1099, the Chairman's staff is considering whether a process should be established that permits taxpayers to roll small errors forward into the subsequent year. The goal would be to ensure that small errors (for example, between $25 and $150) are reported and corrected, but in a manner that avoids issuing corrected documents and filing amended returns. Comments are requested on whether such an approach would effectively reduce taxpayer compliance burdens and how such a program could be structured to be administratively efficient while protecting government revenues. Comments are also requested on the type and magnitude of errors that should be eligible for roll-over correction.

- Correctable Taxpayer Errors. Currently, the IRS has authority to correct math errors without subjecting the taxpayer to a full audit. Math errors must be clear on the face of the current return without cross-referencing any other information. Given advances in technology that make access to prior year tax records easier, the Chairman's staff is considering whether similarly clear errors that are confirmable based on other return information should also be automatically correctable by the IRS. This class of errors could include errors relating to filing thresholds, lifetime maximums or caps, age criteria, and other requirements that the IRS can verify based on the taxpayer's prior returns or third party information reporting. Comments are requested on whether math error authority should be expanded in this manner and, if so, what specific errors should be automatically correctable by the IRS. Comments are also requested on what taxpayer protections would be necessary to make sure that the IRS does not overstep such authority, and what third party information, if any, is sufficiently reliable to be used as a basis for automatic corrections.

- Role of IRS Appeals. The IRS Appeals function helps resolve disputes between the IRS and taxpayers by providing an additional review of proposed audit adjustments. Comments are requested on whether to create a statutory taxpayer right to review by the Appeals office prior to the IRS issuing a notice of deficiency, and whether such a

right would protect taxpayers and create a more efficient dispute resolution environment.

- Penalties. It has been 24 years since Congress last overhauled the tax penalty regime. The Chairman's staff is interested in reforming the current penalty structure to ensure that penalties are used appropriately to effectively promote taxpayer compliance. Comments are requested on how best to target penalties, when penalties should be waivable, and when a strict liability standard should apply. Comments are also requested on how to ensure that similarly-situated taxpayers are treated similarly within a penalty regime. Finally, comments are requested on how to structure penalties to avoid overlap and which penalties are obsolete, unnecessary, or otherwise ineffective.

- Electronic Filing. Comments are requested on whether, and how, to penalize a taxpayer who violates a requirement to electronically file a return by instead filing a paper return.

- Death Master File Access. Under the staff discussion draft, parties that satisfy requirements, including a "legitimate fraud prevention or business purpose" test, are allowed immediate access to the Death Master File. The Chairman's staff recognizes that various parties without obvious legitimate interests, such as forensic or genealogical researchers, may have a legitimate need for immediate access. Comments are requested on how the concept of "legitimate fraud prevention or business purpose" should be defined.

- Taxpayer Privacy. The U.S. tax system is at its core a voluntary system. A cornerstone of this system is that taxpayers know that the IRS will protect their private, personal information. That is why the tax laws impose strong penalties when taxpayer information is made public. The Chairman's staff recognizes that taxpayer privacy is now under threat more than ever. The recent hacking of the South Carolina Revenue Department highlights the importance of securing taxpayer information. Nevertheless, taxpayer information can provide valuable information for administering other government programs and, when anonymous, researching the effects and effectiveness of tax and other government policies. Therefore, the Code provides exceptions that allow sharing of taxpayer information in very limited circumstances, similar to the proposed sharing of information with the Bureau of Labor Statistics contained in this staff discussion draft. Comments are requested on how to modify and update the Code's privacy protections to ensure that they are effective, while at the same time recognizing the benefits that limited information sharing can provide for detecting and preventing fraud in other government programs and improving tax and other government policies.

- Protecting Taxpayer Rights. Protecting taxpayer rights must always be a top priority of Congress, the IRS, and the Treasury Department. Congress last acted on taxpayer rights in the Taxpayer Bill of Rights II ("TBOR II") in 1998. Given that it has been 15 years since taxpayer rights were last updated and the National Taxpayer Advocate has recommended adding TBOR II to the tax code, the Chairman's staff is considering whether to update TBOR II. Comments are requested on whether the current TBOR II adequately protects taxpayers, whether new rules are needed, and whether those rules need to be included in the Internal Revenue Code.
- Interested parties are encouraged to suggest other proposals that improve or simplify tax administration, reduce the tax gap, and reduce compliance or enforcement burdens.

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MINORITY STAFF REPORT

INVESTIGATION OF JACK ABRAMOFF'S USE OF TAX-EXEMPT ORGANIZATIONS

PREPARED BY THE MINORITY STAFF OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

CHARLES E. GRASSLEY, *Chairman*
MAX BAUCUS, *Ranking Member*

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SFC 003859

INVESTIGATION OF JACK ABRAMOFF'S USE OF TAX-EXEMPT ORGANIZATIONS

INTRODUCTION

In September 2005, the United States Senate Committee on Finance ("the Committee") began an investigation into the actions of tax-exempt organizations relating to the lobbying operations of Jack Abramoff. The role tax-exempt organizations played in Mr. Abramoff's client relationships first came to light during an investigation by the Senate Committee on Indian Affairs. In that investigation, e-mails from and to Mr. Abramoff showed that he furthered his lobbying enterprise with the help of several tax-exempt organizations, which took contributions arranged by Mr. Abramoff and undertook actions on Mr. Abramoff's clients' behalf. In the final report on its investigation, the Committee on Indian Affairs observed that tax-exempt organizations were apparently "serving or being used as extensions of for-profit lobbying operations."[1]

The Senate rules give the Committee on Finance jurisdiction over revenue matters, and thus the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving abusive acts by tax-exempt organizations. The Committee takes particular interest in ensuring that tax laws affecting donors and exempt organizations operate in a manner that benefits the American public. This investigation has been conducted not only to inform the Committee and the public about the specific organizations connected to Mr. Abramoff, but also to provide a broader picture of issues to be considered by Congress and the public with regard to tax-exempt organizations, including charitable organizations.

On September 22, 2005, Senator Charles Grassley and Senator Max Baucus, Chairman and Ranking Democratic Member of the Committee, authorized, on behalf of the Committee, the issuance of subpoenas to Mr. Abramoff's former employers, Greenberg Traurig LLP and Preston Gates LLP. The subpoenas sought any and all communications of Jack Abramoff as well as financial records.

Along with the e-mails and other documents provided to the Committee in response to the subpoenas, Committee Minority staff reviewed e-mails made public by the Committee on Indian Affairs. The Committee on Indian Affairs also shared with the Committee e-mails within the jurisdiction of the Committee that the Committee on Indian Affairs had not previously made public.

[1] *"Gimme Five"—Investigation of Tribal Lobbying Matters,* Senate Committee on Indian Affairs, June 22, 2006, hereinafter referred to as the "Gimme Five" report.

In its review of the materials, the Committee's Minority staff discovered actions taken by several tax-exempt organizations that raise serious legal and policy questions. The Minority staff focused on five organizations that appeared, in the context of the reviewed material, to be willing to provide certain services for Mr. Abramoff's clients in exchange for payments. They are:

- Americans for Tax Reform,
- National Center for Public Policy Research,
- Toward Tradition,
- Council of Republicans for Environmental Advocacy, and
- Citizens Against Government Waste.

FINDINGS

The Minority staff found that some officers of these organizations were generally available to carry out Mr. Abramoff's requests for help with his clients in exchange for cash payments. The help they provided varied from organization to organization, but included:

- helping to hide sources of funds by laundering payments and then disbursing funds at Mr. Abramoff's direction,
- taking payments in exchange for writing newspaper columns or press releases that put Mr. Abramoff's clients in a favorable light,
- introducing Mr. Abramoff's clients to government officials in exchange for payment, and
- agreeing to act as a front organization for congressional trips paid for by Mr. Abramoff's clients.

Media reports indicate that employees of other organizations have resigned when similar allegations came to light. In December 2005, a senior fellow at the Cato Institute, Doug Bandow, resigned after admitting that Mr. Abramoff paid him for op-ed articles that were favorable to Mr. Abramoff's clients. Mr. Bandow admitted to taking money for writing between 12 and 24 articles over a period of years, beginning in the mid 1990s. Mr. Bandow called his actions a "lapse in judgment" and resigned.[2]

E-mails subpoenaed by the Committee do not implicate the Cato Institute. The correspondence clearly shows, however, that the tax-exempt organizations listed above—not just the individuals directly involved—took payments when their employees agreed to write such articles favorable to Mr. Abramoff's clients.

This type of activity indicates that these tax-exempt organizations engaged in what amounted to profit-seeking and private benefit behavior inconsistent with their tax-exempt status. And by virtue of the tax benefits, other taxpayers implicitly subsidized this behavior. Thus, these tax-exempt organizations appear to have perpetrated a fraud on other taxpayers.

[2] Eamon Javers, *Op Eds for Sale,* BusinessWeek Online, Dec. 16, 2005. See Appendix.

GENERAL OVERVIEW OF THE INVESTIGATION

All the groups in question are organized under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986 (IRC). Unless otherwise specified, all sections referenced in this report are found in the IRC. The 501(c)(3) organizations are the National Center for Public Policy Research (NCPPR), Toward Tradition and Citizens Against Government Waste (CAGW).[3] The 501(c)(4) organizations are Americans for Tax Reform (ATR) and Council of Republicans for Environmental Advocacy (CREA).[4]

In conducting its investigation, the Committee Minority staff:

- reviewed e-mails provided to the Committee in response to subpoenas issued in September 2005,
- reviewed e-mails provided to the Committee by the Senate Committee on Indian Affairs,
- reviewed e-mails that the Committee on Indian Affairs released to the public,
- reviewed publicly available Forms 990, Return of Organization Exempt from Income Tax, for the organizations in question,
- reviewed publicly available information relating to the organizations in question, including reports, financial statements and press releases,
- interviewed representatives of the organizations, both in person and through written questions,[5]
- reviewed media accounts published since the *The Washington Post* first reported on Mr. Abramoff's financial relationships with Indian tribes in February 2004,
- obtained the assistance of the staff of the Joint Committee on Taxation, with respect to technical explanations of present law pertaining to tax-exempt organizations and charitable contributions, and
- obtained the assistance of Senate legal counsel in seeking documents.

LIMITATIONS

The reviewed materials describe scenarios in which current tax law may have been violated. The Minority staff notes, however, that additional information may be required to make such determinations.

[3] Citizens Against Government Waste is affiliated with a 501(c)(4) organization called Council of Citizens Against Government Waste, but the reviewed materials do not mention Council of Citizens Against Government Waste.

[4] Americans for Tax Reform is affiliated with a 501(c)(3) organization, Americans for Tax Reform Foundation.

[5] Committee staff invited Italia Federici, president of CREA, to be interviewed by staff. Her attorney declined the request on Ms. Federici's behalf, stating that she would plead her Fifth Amendment rights rather than answer staff questions.

CURRENT LAW

Organizations described in IRC section 501(c)(3) generally are exempt from federal income tax and are eligible to receive tax-deductible contributions. A section 501(c)(3) organization must be organized and operated exclusively for one or more tax-exempt purposes constituting the basis of its tax exemption. A section 501(c)(3) organization is not operated exclusively for exempt purposes if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.[6]

The Supreme Court has held that the "presence of a single [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes.[7] Applying this test, the Court held that an organization with an "important" nonexempt purpose was subject to tax.

An organization described in section 501(c)(4) must be organized primarily for the promotion of social welfare. This "primary purpose" test is satisfied if an organization is primarily engaged in promoting in some way the common good and general welfare of the people of the community. If an activity that does not promote the social welfare, alone or taken together with other activities that do not promote the social welfare, constitute the primary activities of an organization described in section 501(c)(4), the organization would not be eligible for continued exemption from tax as an organization described in section 501(c)(4). Some courts have held that a section 501(c)(4) organization is not entitled to continued exempt status if its non-exempt activities are "substantial". See, e.g., *Vision Service Plan v. United States,* 2006–1 U.S.T.C. (CCH) paragraph 50, 173.

Similarly, if a section 501(c)(4) organization's activities are merely incidental to, or secondary to, benefits provided to private persons, the organization generally would not be eligible for continued exemption from tax as an organization described in section 501(c)(4).

Private Inurement and Private Benefit

Organizations described in section 501(c)(3) and 501(c)(4) are subject to the prohibition against private inurement, under which no part of the net earnings of the organization may inure to the benefit of insiders of the organization, such as officers, directors and key employees. An organization that violates this prohibition may have its exemption revoked. As an alternative, or in addition, to revocation, a violation of the inurement prohibition may give rise to intermediate sanctions under IRC section 4958 against the disqualified person who receives an excess benefit and an organization

[6] Treas. Reg sec. 1.501(c)(3)–1(c)(1).
[7] *Better Business Bureau of Washington, D.C. v. United States,* 326 U.S. 279, 283 (1945).

manager who participates in an "excess benefit transaction" (essentially an inurement transaction) knowing that it is an excess benefit transaction.

In general, section 501(c)(3) (but not section 501(c)(4)) organizations also are prohibited from conferring more than an incidental private benefit on any individual or entity. This private benefit prohibition is broader than the private inurement proscription, in that the private benefit prohibition is not limited to benefits provided to insiders of the organization. If private benefit exists, it must be incidental in both a qualitative and quantitative sense to the public benefit. To be qualitatively incidental, a private benefit must occur as a necessary concomitant of the activity that benefits the public at large; in other words, the benefit to the public cannot be achieved without necessarily benefiting private individuals.[8] Such benefits might also be characterized as indirect or unintentional. To be qualitatively incidental, a benefit must be insubstantial when viewed in relation to the public benefit conferred by the activity.[9] If an activity provides a direct benefit to private interests, however, it does not matter if the benefit is qualitatively insubstantial—"the direct benefit is 'deemed repugnant to the idea of an exclusively public purpose' and the organization cannot be exempt under section 501(c)(3)."[10]

Unrelated Business Income Tax

The unrelated business income tax generally applies to (1) income derived from a trade or business, (2) that is regularly carried on by the organization and (3) that is not substantially related to the performance of the organization's tax-exempt purposes. In very general terms, to be a trade or business, an activity must be carried on with the intent to earn a profit. To determine whether a trade or business is "regularly carried on," one generally must compare the activity to similar activities conducted by taxable organizations.[11] In general, to be substantially related to an exempt purpose for purposes of unrelated business income tax, there must be a causal relationship, and the activity must contribute importantly to the achievement of the purpose.[12]

Lobbying and Campaign Activities

Organizations described in section 501(c)(4) generally may engage in an unlimited amount of lobbying, provided the lobbying is related to the organization's exempt purposes. A section 501(c)(4) organization, however, may only engage in lobbying that is unrelated to its exempt purposes provided that such lobbying, together with other "unrelated" activities, are not the primary activities of the organization.

As indicated above, some courts have held that a "substantial" amount of nonexempt activity will defeat exemption as an organization described in section 501(c)(4). Unlike section 501(c)(3) organizations, section 501(c)(4) organizations are not subject to speci-

[8] See *American Campaign Academy v. Commissioner*, 92 T.C. at 1076.
[9] Bruce R. Hopkins, The Law of Tax-Exempt Organizations, sec. 19.10 (8th ed. 2003).
[10] G.C.M. 37789 (Dec. 18, 1978).
[11] See, e.g., Treas. Reg. sec. 1.513–1(c)(2)(i).
[12] Treas. Reg. sec. 1.513–1(d)(2).

fied limits on the amount of lobbying activity that they may undertake; rather, the organization's lobbying activities (like its other activities) are examined to determine whether they are exempt or non-exempt activities for purposes of the section 501(c)(4) primary purpose test.

Other Relevant Tax Penalty Provisions

IRC Section 6701 generally imposes a monetary penalty against any person (1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document, (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws and (3) who knows that such portion (if so used) would result in an understatement of the liability for tax of another person. If, for example, it were established that an exempt organization had unrelated business taxable income, but did not report such income, persons involved in the failure to report the income could be liable for aiding and abetting the understatement of tax liability, provided that the specific requirements of section 6701 are met with respect to the assistance or advice provided in connection with the preparation of Form 990 or Form 990–T.

IRC Section 7206 imposes substantial criminal penalties (including monetary fines and/or imprisonment) in the event that a person (among other things) (1) makes and subscribes any return, statement or other document, that contains or is verified by a written declaration that is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or (2) willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim or other document, that is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document. If, for example, an exempt organization had, but did not report, unrelated business taxable income, and the person who signed the organization's return under penalty of perjury knew that such income improperly was excluded from the return, then that person potentially could be subject to criminal penalties under section 7206. Also, any person who did not sign the return, but willfully aided in or advised regarding the preparation of a false or fraudulent return, arguably could be subject to penalties under section 7206.[13]

IRC Section 7201 imposes substantial criminal penalties (including fines and/or imprisonment) for tax evasion. Specifically, section 7201 provides that any person who willfully attempts in any manner to evade or defeat any federal tax or the payment of tax shall, in addition to other penalties under law, be guilty of a felony.

Charitable Contribution (and Other) Deductions

Under certain circumstances, a contribution to a membership organization (whether or not a section 501(c)(3) organization) that

[13] See also section 7207 (regarding fraudulent returns, statements or other documents).

would not be deductible as a charitable contribution may be deductible as a business expense under section 162. However, such a deduction generally is disallowed under IRC section 162(e) if the contribution is made for the purposes of facilitating lobbying. In addition, a charitable deduction for a contribution to a section 501(c)(3) organization generally will be denied in situations where the donee organization conducts lobbying activities on a matter of direct financial interest to the donor's trade or business, where a principal purpose of making the contribution is to avoid the lobbying expense disallowance rule under section 162(e).[14]

The definition of lobbying under section 162(e) is broader than the definition that is used, for example, for purposes of determining whether a section 501(c)(3) organization exceeded its lobbying limits. For example, under section 162(e), the term "lobbying" includes certain communications with the general public or with executive branch officials.

In general, a section 501(c)(4) organization that incurs lobbying and political expenditures (as described in section 162(e)) must provide notice to its members of the portion of dues allocable to such expenditures and must report such expenditures to the IRS.[15] If a membership organization does not provide the requisite notices to its members, the organization must pay a tax at the highest corporate income tax rate on the amount of such expenditures.[16]

[14] Sec. 170(f)(9).
[15] Sec. 6033(e).
[16] Sec. 6033(e)(2).

AMERICANS FOR TAX REFORM

Americans for Tax Reform ("ATR") describes itself as an organization that advocates for a system in which taxes are "simpler, fairer, flatter, more visible, and lower than they are today."[17] It states that government's power to control one's life derives from its power to tax and that such power should be minimized. On its IRS Form 990, the section 501(c)(4) organization lists its primary exempt purpose as increasing public awareness about the size and regulations of government and rallying support for lower taxes and smaller government.

ATR was founded in 1985 by Grover Norquist, who is its current president. According to media reports, he and Mr. Abramoff have been friends since they were college students in Massachusetts, where they organized support for Ronald Reagan's presidential candidacy in 1980. When Mr. Abramoff became national chairman of the College Republicans, he made Mr. Norquist his executive director. The two later worked together at the conservative advocacy group Citizens for America (before Mr. Norquist founded ATR).

After Mr. Abramoff became a lobbyist in the mid-1990s, the two corresponded by e-mail, occasionally discussing proposed payments from Mr. Abramoff's clients and what those clients wanted from ATR. Other ATR employees corresponded with Mr. Abramoff and his colleagues, as well.

Those e-mails from and to Mr. Abramoff, his colleagues and ATR officials indicate that ATR:

- accepted payments from clients of Mr. Abramoff with the agreement to write checks to third parties as Mr. Abramoff directed, with ATR retaining a portion of the funds on at least one occasion,
- accepted payments from clients of Mr. Abramoff with tacit or explicit agreements to perform services such as writing newspaper columns favorable to the clients, and
- accepted payments from clients of Mr. Abramoff while agreeing to introduce them to government officials, including then-White House Senior Advisor Karl Rove.

In the organization's response to Minority staff questions, ATR's attorney responded that as long as ATR spends its funds in keeping with its general purpose and permissible activities under the law, "there is no 'abuse' of ATR's tax status by virtue of ATR's involvement in state level, grassroots campaigns on issues." ATR declined to respond to questions regarding the identity of, or contributions from, any donor.[18]

In an e-mail to Jeffrey Ballabon, then executive vice president of public affairs for Primedia Inc.'s Channel One Network, Mr.

[17] ATR website, *http://www.atr.org/home/about/index.html.*
[18] Letter from Cleta Mitchell, attorney for ATR, July 24, 2006.

Abramoff indicated how much he valued his relationship with Mr. Norquist. Mr. Abramoff told Mr. Ballabon that he strongly opposed putting another lobbyist in contact with Mr. Norquist: "We should not fully (or perhaps even partially) trust this guy and certainly we should not be giving our hard won assets or contacts. The quickest way to lose the interest of Sheldon, Grover et al is to 'hand them over' to another lobbyist." Mr. Ballabon responded, "ABSOLUTELY! We are not sharing our friends."

A. DISGUISING THE SOURCE OF FUNDS

According to statements Mr. Abramoff and others made in their e-mail correspondence, ATR received payments from Mr. Abramoff's clients[19] and then wrote checks for similar amounts to organizations working with Ralph Reed, the president of Century Strategies. Mr. Reed worked with Mr. Abramoff fighting gambling initiatives that could potentially provide competition for Mr. Abramoff's clients. In e-mails from Mr. Abramoff to his colleagues, Mr. Reed, Mr. Norquist and to himself, Mr. Abramoff discussed initiating and completing "pass through" financial arrangements in which contributions would flow through tax-exempt organizations to disguise the original source of the funds.

Last year Mr. Norquist told the *Boston Globe* that ATR passed along $1.15 million of the $1.5 million that ATR received from the Mississippi Band of Choctaw Indians to anti-gambling groups trying to block a casino in Alabama.[20] E-mails indicate how those financial arrangements were made.[21]

On September 24, 1999, Mr. Abramoff sent himself a reminder:

> Call Ralph re Grover doing pass through

On October 3, 1999, Mr. Abramoff sent another reminder to himself:

> Grover and Ralph, we need a check to Ralph by Wednesday

On January 28, 2000, Mr. Abramoff asked Mr. Reed for names of groups through which to pay Mr. Reed:

> Rabbi Lapin does not have a c4. Please give me the name of the c4 you want to use (include address) and we'll divide it among the three groups.

On February 2, 2000, Mr. Abramoff wrote to Mr. Reed regarding Amy Ridenour, president of the National Center for Public Policy Research:

> She does not have a c4, only a c3, so we are back to ATR only. . . . Let me know if it will work just to do this through ATR until we can find another group.

[19] Lobbying disclosure reports for eLottery Inc. and Mississippi Band of Choctaw Indians indicate that Abramoff represented them at the time of the payments described in the e-mails.

[20] Michael Kranish, *Antitax activist says he got $1.5 million from tribes,* The Boston Globe, May 13, 2005. See Appendix.

[21] The text of the e-mails included in this report appears as written in the original e-mails. In most cases, only excerpts are included. All e-mails cited in this report are included in the Appendix.

Mr. Reed wrote back:

> Yes, it will.

On February 7, 2000, Mr. Abramoff told Mr. Reed:

> I need to give Grover something for helping, so the first transfer will be a bit lighter. No fear, though, since I have already started the next transfer.

In her interview with the Committee on Indian Affairs, Nell Rogers with the Choctaw Tribe said she remembered discussing this idea with Mr. Abramoff. The Committee reported that Ms. Rogers said she discussed a vehicle for a pass-through to Century Strategies, "that Jack had told me that Grover would want a management fee. And we agreed to that, frankly didn't know any other way to do it at the time."[22]

On February 17, 2000, Mr. Reed told Mr. Abramoff that pro-gambling forces were saturating the radio waves and aggressively lobbying the legislation:

> They are now introducing a different local bill each day, trying to keep us on the defensive.

Mr. Abramoff responded by telling Mr. Reed to keep him posted on the anti-gambling initiative they were financing:

> ATR will be sending a second $300K today. How much more do we need? We can't lose this. Thanks.

On February 22, 2000, Mr. Abramoff sent himself a message with the subject line:

> grover kept another $25K!

On March 2, 2000, Mr. Abramoff asked Nell Rogers of the Mississippi Band of Choctaw Indians for a $300,000 check to Americans for Tax Reform. Someone in his office [redacted][23] wrote back the following day:

> Once ATR gets their check, should the entire $300k be sent to the Alabama Christian Coalition again?

Mr. Abramoff replied:

> Yes, but last time they sent $275K, so I want to make sure that, before we send it to ATR I speak to Grover to confirm.

On June 22, 2000, Susan Ralston, Mr. Abramoff's assistant, told Mr. Abramoff that she had checks from eLottery Inc., an Abramoff client. She asked about sending money to ATR and to Rev. Louis Sheldon, chairman of Traditional Values Coalition ("TVC"):

> (1) 2 checks for $80K payable to ATR and (2) 1 check to TVC for $25K. Let me know exactly what to do next. Send to Grover? Send to Rev. Lou?

Mr. Abramoff responded:

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[22] "Gimme Five" report, p. 27.
[23] Redacted by Senate Committee on Indian Affairs.

> Copy all. Send TVC check to Lou. Call Grover, tell him I am in Michigan and that I have two checks for him totaling 160 and need a check back for Faith and Family for $150K. If that is OK, send over to him via courier. If you don't get him or there are any problems, try to get me on the cell constantly.

Tax Issues

The documents reviewed by the Minority staff raise several issues with respect to ATR's compliance with current tax laws. As a threshold issue, many of the activities alleged in the e-mails reviewed by the Minority staff indicate that ATR may not be primarily operating to further social welfare purposes, which is a necessary condition of tax-exempt status as a section 501(c)(4) organization. In addition, the documents raise questions whether ATR should have reported income from some of its activities as taxable income. Finally, the e-mails raise questions as to whether insiders at ATR, including Mr. Norquist, used ATR primarily for their own or Mr. Abramoff's private benefit. Violations such as these could, under certain circumstances, result in penalties under current law, including excise taxes on officers of ATR, revocation of ATR's exempt status, and even criminal tax fraud penalties.

First, if it were established that the transfers through ATR were undertaken for the sole purpose of concealing the identity of the transferors (pro-gambling interests) from the ultimate transferees (anti-gambling interests), ATR's facilitation of such transfers would not further ATR's tax-exempt purposes (or any legitimate social welfare purpose). Second, Ralph Reed told Abramoff that pro-gambling forces were engaging in aggressive lobbying and "introducing a different local bill each day, trying to keep us on the defensive." Abramoff responded, "ATR will be sending a second $300K today." If it were established that ATR used the $300,000 for lobbying relating to gambling issues, arguably such activity could be considered as unrelated to ATR's tax-exempt purposes.

If these transactions, together with any other activities that are unrelated to ATR's exempt purposes, constituted the primary activities of ATR, then ATR's primary purpose would not be a social welfare purpose and ATR would not be eligible for continued exemption from tax as an organization described in section 501(c)(4).

In addition, if it were established that the benefits to the community resulting from ATR's activities were merely incidental to, or secondary to, benefits provided to Mr. Norquist and other private persons, ATR might not be eligible for continued exemption from tax as an organization described in section 501(c)(4).

A strong case can be made that the "pass through" of anti-gambling funds was not related to ATR's exempt purposes, and that it constituted a trade or business regularly carried on by ATR. To the extent ATR recognized revenue as a result of the transactions, such revenue would be taxable as unrelated business taxable income. Whether the activity is a trade or business and is regularly carried on would require an inquiry into, among other issues, whether the activity was undertaken for a profit and whether the activity was undertaken with the frequency with which similar activities are undertaken by for-profit organizations.

The e-mails do not contain facts sufficient to show whether Mr. Norquist received more than fair market value compensation for the services he provided to the organization. In one e-mail, Mr. Abramoff states that he "need[s] to give Grover something from helping" with a "pass through" transaction. If it were established that this fee were in fact paid to Mr. Norquist by ATR (or if it were paid directly by Mr. Abramoff to Mr. Norquist for services that ATR provided to Mr. Abramoff or his clients) and Mr. Norquist did not earn the compensation by providing services to ATR with a value equal to or greater than the fee, the payment potentially could have resulted in an excess benefit to Mr. Norquist, who is an insider (or "disqualified person"). Under such circumstances, private inurement arguably also would have occurred, ATR could face revocation of its exempt status, and Mr. Norquist (in his capacity as a disqualified person and also possibly as an organization manager) could face penalty excise taxes ("intermediate sanctions") under section 4958.

If it were established that contributions by an Abramoff corporate client to ATR were for lobbying within the meaning of section 162(e), then a business expense deduction should not have been claimed for such a contribution.

B. LOBBYING

According to e-mail correspondence, Mr. Norquist and others at ATR appear to have accepted payments to the organization in exchange for taking up the causes of Mr. Abramoff's clients. There was even a discussion about whether such payments should become public on lobbying disclosure reports. In a January 30, 1996, e-mail, Bruce Heiman, a colleague at Preston Gates, wrote that he "thought that if it would be more than 10K and they were asking ATR to get involved on issues that their contributions to ATR would have to be disclosed."

In written answers to Minority staff questions, Mr. Norquist and ATR officials declined to disclose information about donors to ATR, whether Mr. Abramoff's clients contributed and when.

Brown-Forman

On October 22, 1995, one of Mr. Abramoff's colleagues at Preston Gates suggested that they solicit help from Mr. Norquist as tax reconciliation legislation proceeded to conference. Mr. Abramoff responded by saying that Mr. Norquist did not want to personally represent Brown-Forman; instead, Mr. Norquist wanted a payment to ATR. Of Mr. Norquist, Mr. Abramoff wrote:

> He said that, if they want the taxpayer movement, including him, involved on this issue and anything else which will come up over the course of the year or so, they need to become a major player with ATR. He recommended that they make a $50,000 contribution to ATR. It seems that, on another "sin tax" matter, he is getting a similarly large contribution to get involved. It is possible that we could get away with less—possibly even half—but I'll have to push, of course. . . . He does not want to do any additional

> personal representations. He would prefer donations to ATR. Please let me know what you want to do on this.

The next day, a colleague of Mr. Abramoff's responded, asking what Mr. Norquist would do in exchange for a payment of that amount to ATR. Pamela Garvie at Preston Gates wrote:

> For example, would he send letters, make calls, do meetings, and offer advice?

Mr. Abramoff responded on October 24:

> Yes, he would do everything they need for him to do to win. He would be very active. What is most important, however, is that this matter is kept discreet. We do not want the opponents to think that we are trying to buy the taxpayer movement. This approach should be kept as close to the vest as possible and, in any event, might be best achieved by doing it indirectly.

Microsoft

On January 30, 1996, Bruce Heiman, a colleague of Mr. Abramoff at Preston Gates, discussed the fact that Microsoft had retained Mr. Norquist as a lobbyist and mentioned that under the then-new Lobbying Disclosure Act, Mr. Norquist would have to register:

> That raises other issues (publicity). So one question occurs whether they could instead contribute to ATR. However, I thought that if it would be more than 10K and they were asking ATR to get involved on issues that their contributions to ATR would have to be disclosed.

Business Software Alliance

On May 10, 1998, James Lucier with ATR wrote to Mr. Abramoff asking for help getting money he thought was owed to him from an Abramoff client, Business Software Alliance ("BSA").[24] Mr. Lucier complained that the contribution to ATR was meant for him but that he had not received it.

> What's more, there is a real risk that I will not get the staff support and resources I need to do the work on encryption that we are committed to do and which BSA, Heiman et al are expecting from us. I am also not getting the staff support I need to help Heiman in his postal issues, despite a $20,000 contribution to ATR. I think I have a good relationship with Heiman, but sooner or later he is going to be very frustrated and disappointed that he is not getting better results for the inputs he supplies.

Channel One Network

In 1999, as a coalition of opponents sought to remove Channel One from public school classrooms, Mr. Abramoff and his clients looked in part to tax-exempt organizations to provide public sup-

[24] Lobbying disclosure reports from the period covered in the e-mails indicate that Mr. Abramoff represented Business Software Alliance.

port for Channel One. One argument was that Channel One offered tax savings for state and federal governments.

Mr. Ballabon with Channel One wrote to one of the Preston Gates lobbyists, Amy Berger, on January 12, 1999:

> I think that next I want to get credit from the Pentagon public affairs dept & then from ONDCP (office of drug policy) & then from minority groups, &c &c . . . & Grover & CAGW & Rabbi Lapin . . . we should get these guys crazy! & lots & lots of interviews w/members of Congress! At least one press release every week or two

Mr. Ballabon wrote to Mr. Abramoff on January 18, 1999:

> The only thing I think Paul really needs before he gets on C-SPAN on Thursday is a statement he can attribute somehow to Grover or CAGW that rebuts Molnar's charge that we are a waste of tax dollars. Can you help us get something somehow (between now and then) that Paul can refer to which argues that we are, in fact, a huge and creative tax savings?

Ms. Berger wrote to Abramoff the next day as a reminder:

> Call Council Nedd and/or Tom Schatz or even Grover to get a statement hat Ch 1 is a huge and creative tax savings!!!!!

Mr. Abramoff wrote to Mr. Ballabon on January 20, 1999:

> I set in motion today a piece by Peter Ferrara (the chief tax counsel of ATR and former fellow of Heritage and Cato) which deals with the cost to taxpayers issue. He'll have a draft real fast for us. It'll run in the Investors Business Daily, and probably reprinted in Human Events.

Mr. Ballabon replied:

> Excellent. Thanks, Jack. ALSO—tell Grover he can redeem himself by blasting the coalition in a letter to the NYT responding to today's story.

Mr. Abramoff wrote back and included Ms. Berger:

> Good idea. Amy, hold on getting this to Ferrara. Let's draft something from Grover to respond to this and I'll get it to him. Have Daniel draft it up fast. I'll run it by Grover. We'll send it him and voila, it should work. Thanks Jeff.

Ten days later, Mr. Norquist published an op-ed in the *Washington Times* titled "Tuning in to Channel One."[25]

Mr. Abramoff wrote to Mr. Ballabon on February 3, 1999, regarding providing money to ATR for a dinner series.

> . . . especially in light of the huge hit Grover delivered, I think this would be a very nice gesture on your part.

[25] Grover Norquist, *Tuning in to Channel One,* Washington Times, Jan. 30 1999. See Appendix.

On April 20, 1999, Mr. Abramoff wrote that they needed to agree on the price to pay Peter Ferrara at ATR for an economic analysis related to Channel One.

> Jeff, we need to agree on the price we are going to pay him. I think he wants $5K, but we have offered him $3K. We can put this on our bill as a subcontract, but the firm will not want to have to pay for this out of our fees. Give me some guidance. He is, meanwhile, working on it. . . .

Ms. Berger then wrote to Mr. Abramoff:

> i have offered him $2000 and he said ok!!! I am calling right now to make the appointment.

Mr. Abramoff replied:

> You're a bargain shopper! Tell him we'll give him $3K, but we want him to do press and talk radio on this. That way I don't look like an idiot with Jeff. Wait till I tell Glen what a bargain you can drive!

Dennis Stephens (a government affairs counselor at Preston Gates) wrote to Mr. Abramoff on May 17, 1999, that "Peter with ATR is in," referring to Peter Ferrara at ATR:

> When I talked with Peter this morning, he was planning to draft a press release hammering the "anti technology" crowd per Jeff B's request and will also be distributing Grovers nice piece on Channel One. A nice balance, a positive piece on the good guys and a hit piece on the bad guys. Sound good?

On May 19, 1999, ATR published a policy brief authored by Mr. Ferrara entitled "The Clear Benefits of Channel One."[26] On May 20, 1999, Mr. Abramoff wrote to Mr. Norquist to say "thanks Grover" after receiving a copy of an ATR press release defending Channel One.

On April 24, 2000, ATR was included in a list of organizations to contact on Channel One:

> Grover Norquist (ATR)—Damon in his office is revising K. Ring Draft letter and intends to send out this Friday . . . to all GOP senators and maybe to Dems also—

The same day, Mr. Abramoff wrote to Mr. Norquist to say a need for "a hard-hitting op-ed has arisen" regarding Channel One. Mr. Abramoff asked whether Mr. Norquist would be willing to do it himself:

> Ariana Huffington has now joined Ralph Nader and George Miller in attacking Channel One. . . . We want to do an oped which smacks her big time, and also swipes at Nader's guy and the other loonies on this. We have $1,500 to do this piece and get it placed. Are you interested (we can write it for you)? If not, let me know if I can approach Peter [Ferrara].

[26] Peter Ferrara, *The Clear Benefits of Channel One,* Americans for Tax Reform policy brief, May 19, 1999. See Appendix.

Mr. Norquist wrote back to Mr. Abramoff the next day:

> Jack, yes, go ahead and draft a copy for me. I have just spoken with the head of the Washington Times op-ed about a piece for Bruce Heinman. They said they are full for a while due to Elian article. I will talk to Helle Wed morning and make a case for this piece. yes, ATR will do this piece and push to have it in the Washington Times and the Investors Business Daily. Also I will share it with all our state groups. Grover

Mississippi Band of Choctaw Indians

In its "Gimme Five" report, the Committee on Indian Affairs concluded that Mr. Abramoff reached out to ATR in making the case for the Choctaw tribe to help contact members of the House Ways and Means Committee. Nell Rogers, the tribe's planner, told the Committee on Indian Affairs that the money was not to support the "general work" of ATR but for specific tax issues important to the tribe. According to the report, the Choctaw paid ATR $60,000 in 1995 and $25,000 in 1999.

On May 20, 1999, Mr. Norquist wrote to Mr. Abramoff:

> What is the status of the Choctaw stuff. I have a $75K hole in my budget from last year. ouch.

In its response to Minority staff questions, ATR maintained that it had a long history of working with the Mississippi Choctaw tribe and its representatives.

Magazine Publishers of America

On March 13, 2000, Mr. Heiman of Preston Gates informed colleagues that the lobbying team won a new client, Magazine Publishers of America (MPA). The organization opposed a proposed postal increase. Mr. Heiman's lobbying budget included a $20,000 contribution to ATR. On March 15, 2000, Mr. Abramoff sent Mr. Heiman a message with the subject line "Grover":

> Spoke with him this evening and he is very happy. Said he spoke to Gloria. He wants you to be in direct touch with him when we need an op-ed.[27]

On March 30, 2000, Mr. Heiman told Mr. Abramoff that he met with Mr. Norquist and Damon Ansell at ATR:

> Rev'd up and ready to go. Will do ATR fact sheet, letter to leadership and gov reform committee R's, and oped for Investors Business Daily. Grover outlined his substantive thoughts/approach. sounded good. Damon will draft. Hopefully we can look at/review before it goes out.

DH2 Inc.

In late 2003 and early 2004, e-mails show there was an effort to obtain funds from DH2, Inc., a mutual fund firm and a client of Mr. Abramoff's, for ATR to publish a newspaper column favorable

[27] Mr. Norquist published two *Washington Times* op-eds on the subject of postal increases during this time period: *Marvin Runyon: Former postmaster makes a killing,* March 31, 2000; and *Harry Potter Goes Postal,* July 25, 2000. See Appendix.

to DH2's stance on mutual fund legislation pending in Congress. On November 18, 2003, Michael E. Williams with Greenberg Traurig wrote to Mr. Abramoff:

> We need to get our notes together on their goals per yesterday's conversation. He discussed it again today with me. Can you get an e-mail with the items and then we'll come up with a list and a strategy? We should also amend the retainer to reflect the next couple of months. He is also going to do a contribution to ATR.

On December 12, 2003, Peter Ferrara with ATR wrote to Mr. Williams to say that he did not feel comfortable signing a newspaper column he had written regarding mutual funds because of his efforts on a separate issue. Mr. Williams wrote back:

> Peter, the deal was for ou to place this. If you feel you are conflicted, do you think you can get Grover to put his name on it. Our client read your bio and thought having you author it would add a little punch.

Mr. Ferrara said he would try to get Mr. Norquist to appear as the author of the already-drafted column. Mr. Williams then wrote to Mr. Abramoff, presumably referring to Robert Rubin with DH2:

> We will see if he can get Grover to do it. Can you talk to Grover? If Grover signs, we can demand the $$$ from Rubin!!

On December 14, 2003, Mr. Abramoff wrote to Mr. Norquist:

> . . . can we take his op-ed and put you on as signatory for submission to the Washington Times? That should free up these guys to move forward. I have attached the draft here for you to review. Please let me know. Thanks.

Mr. Norquist responded the same day:

> Almost certainly yes. Dan clifton of my office will organize this. he is our mutual fund person.

On January 7, 2004, Mr. Williams told Mr. Abramoff that they finalized the op-ed piece:

> I told Rubin he needs to round up some $$$ for ATR

Mr. Abramoff wrote to Mr. Williams:

> Get the money from Rubin in hand, and then we'll call Grover.

Mr. Williams asked how much. Mr. Abramoff responded:

> 50K

The next day, Mr. Abramoff wrote to Mr. Williams:

> I spoke with Grover tonight and I think we can really start making use of him after we get some money over there. any updates on that? As for the issues, this is fine, but please get me an email going over our party line on all of this. what should we be doing, in your view? Give me a starting point and I'll be able to sound fine. Thanks.

On January 15, 2004, Mr. Williams wrote to administrative assistants at Greenberg Traurig asking for the tax indentification number for Americans for Tax Reform:

> A client wants to write them a check. Who do they make it out to?? ATR??

On February 10, 2004, Mr. Abramoff wrote to Mr. Norquist:

> . . . I have sent over a $50K contribution from DH2 (the mutual fund client). Any sense as to where we are on the op-ed placement?

Mr. Norquist wrote back:

> The Wash Times told me they were running the piece. This is ms. Forbes. I will nudge again. Grover

Investment Banking Coalition

On February 18, 2004, Dan Clifton at ATR apparently was trying to solicit contributions from an investment-banking coalition. Kenneth Newton, a senior director for Commonwealth Capital Advisors, told Mr. Clifton in an e-mail that his coalition was unsure about the arrangement.

> The sense of our coalition right now is that we are still unsure whether to try to get ATR directly involved in the fight on economic substance since it has already passed the Senate . . .

Mr. Clifton wrote back:

> Thx for the update. We were anxious to get involved in this effort on your behalf.

Mr. Newton responded the next day:

> We appreciate very much your interest in our issue and your patience as we develop our strategy. We have determined, however, that we will not ask ATR to step into this on our behalf at this point. Instead, we will wait to see what develops with the Treasury proposals that we expect will be picked up in both houses . . .

Kevin Ring, a Greenberg Traurig lobbyist who received copies of the e-mails, wrote to Mr. Newton that he was surprised to hear the group would not be interested in ATR's help. Mr. Newton responded:

> Kevin, we just couldn't reach a consensus on getting Grover on board given what the expected donation would be.

Tax Issues

The activities illustrated by the e-mails in the above section mark a troubling practice by ATR—the use of tax-exempt dollars to further a lobbying agenda through paid advocacy that appears indistinguishable from lobbying undertaken by for-profit, taxable firms. However, to the Committee staff's knowledge ATR did not report any income from these numerous activities as unrelated business taxable income. Further, the quantum of such activities

and the possible benefits to insiders of ATR raise questions about whether excise taxes should apply to such transactions and whether ATR is a bonafide tax-exempt organization.

Actions taken by ATR were arguably not consistent with the organization's exempt purposes, and, if such activities together with other "unrelated" activities described in this report constituted the "primary" activities of ATR, it could be determined that ATR should not qualify for continued exempt status under section 501(c)(4).

Another issue relates to retaining a fee for purposes of publishing articles. If it were determined that the articles were not substantially related to an exempt purpose of ATR, and the activity was a trade or business regularly carried on, then the income from the activity should be taxable as unrelated business taxable income. This would require an inquiry into, among other issues, whether the activity was undertaken for a profit and whether the activity was undertaken with the frequency with which similar activities are undertaken by for-profit organizations.

The e-mails do not appear to contain facts sufficient to indicate whether any officers, directors or other "insiders" of ATR may have received more than fair market value compensation for the services provided to the organization.

Further, if contributions by a corporate client of Mr. Abramoff to ATR were for lobbying within the meaning of section 162(e), a business expense deduction should not have been claimed for such a contribution.

C. INTRODUCING LOBBYING CLIENTS TO GOVERNMENT OFFICIALS

Mr. Norquist told *The Boston Globe* last year[28] that Indian tribes were invited to meetings at the White House from 2001 through 2004 because the tribes supported President Bush's tax policies. E-mails show that the tribes were asked to make a donation to ATR in order to be invited; after the donation and invitation the tribes went on record as being in support of the tax policies.

E-mails indicate that ATR invited Mr. Abramoff's tribal clients to take part in the dinners with President Bush and state legislative officials and even arranged a meeting with Karl Rove after Mr. Abramoff promised a donation from an African nation.

White House Meetings

In an April 27, 2001, e-mail to Mr. Abramoff, Mr. Norquist wrote:

> Jack, can we get these tribes to endorse the tax bill and pass a resolution like the states did. Then I can insist that the tribal leaders be in the meeting not just as financial supporters of the effort, but as republican leaning governments that endores the bush tax legislation. I intend to get all seven in. . . .

In a September 27, 2002, e-mail, Mr. Abramoff wrote to Terry Martin, a representative of the Chitimacha tribe:

[28] Michael Kranish, *Antitax activist says he got $1.5 million from tribes,* The Boston Globe, May 13, 2005. See Appendix.

> Do you recall last year when Al and you came to that meeting in the White House with Bush, and speakers of the house from across the country, and got pictures with Bush? Grover is hosting a similar meeting this year and has asked me to see if four of the tribes were interested in sponsoring the costs, at $25K each.

It is not normal practice to charge people or organizations for meetings with the President.

Introductions for Congo Representative

On July 9, 2002, Mr. Abramoff told Mr. Norquist that he needed his help with regard to someone who would be attending a function that night:

> I am not sure we can pull it off on our end, but if we can, it will be a representative of the Congo. I have asked them for $100K for ATR. If they come, I think we'll get it. If he is there, please go up to him (he'll be African) and welcome him. It will probably not be the person with whom I have been dealing (their special Ambassador), but will probably have heard my name from him. If you could introduce him to Karl and make sure he gets a picture, that would be great. I am in California. Please email me tonight if you can as to whether he does come and if it goes smoothly, since I want to hit him fast on the ATR $. Thanks Grover.

Mr. Norquist wrote back:

> Jack. I am assuming this is very important and therefore we are making it happen. It is tough. Remind me: who is the British guy. When I introduce him to Karl Rove, what is the connection I should stress. I will be sure and introduce Chris Petras to karl. How do I introduce the congo guy. Which congo . . . Brazaville or kinchasa? grover norquist.

Mr. Abramoff responded:

> The british guy is very friendly with Karl. He has known him for 2 yrs, so no need to intro them. He is however someone I want you to meet since he could be the source of some UK funding for ATR. The intro to Karl of Petras with the connection to my name is important as is the Congo guy. No need for more than a quick intro and pic for either. It is kinshasa congo. Thanks grover.

The next day, Mr. Abramoff wrote to Mr. Norquist:

> Grover, thanks so much for accommodating Scott Hamilton and Ambassador Nkashama last night. I am only sorry I was unable to attend. I spoke with the Ambassador today and he is moving my ATR request forward. Hope to see you soon.

Department of the Interior

On November 7, 2003, Michael Smith, a lobbyist at Greenberg Traurig, wrote to Todd Boulanger at Greenberg Traurig:

> . . . ATR has done nothing to this point. If there is a way to get Grover to call [Secretary Gale] Norton, I can get the cash gates back open.

Tax Issues

Mr. Norquist's introduction of a client of Mr. Abramoff's to Mr. Rove should be weighed with the other activities that do not further ATR's stated social welfare purposes in order to determine whether these activities constituted the primary activities of ATR. If the primary purpose test is not met, then ATR would not be eligible for continued exemption from tax as an organization described in section 501(c)(4).

If it were established that any payment by Mr. Abramoff's client to ATR was a payment for the service of introducing the client to Mr. Rove, and such service was a trade or business not substantially related to ATR's exempt purposes and was regularly carried on, the payment could be unrelated business taxable income.

NATIONAL CENTER FOR PUBLIC POLICY RESEARCH

The National Center for Public Policy Research ("NCPPR"), which represents itself as a "conservative think tank," is organized under IRC section 501(c)(3).[29] The organization, founded in 1981, describes its primary exempt purpose as educating Americans about the free market solutions to today's public policy problems. On its website, NCPPR is described as a research organization dedicated to a strong national defense and to providing free-market solutions to today's public policy problems. The website states: "We believe that the principles of a free market, individual liberty and personal responsibility provide the greatest hope for meeting the challenges facing America in the 21st century."

Amy Ridenour, NCPPR's president and a founder of the organization, first met Mr. Abramoff when they were members of the College Republicans. In testimony before the Committee on Indian Affairs and in an interview with Finance Committee staff, Ms. Ridenour said that her organization accepted donations from Mr. Abramoff's clients and routed money as Mr. Abramoff directed. Mr. Abramoff served on NCPPR's board of directors.

E-mail exchanges among Ms. Ridenour, Mr. Abramoff, and Mr. Abramoff's colleagues and clients indicate that CREA/Ms. Ridenour:

- accepted payments from Mr. Abramoff's clients and then acted as the front organization to pay for trips by members of Congress, their staff members and others,
- accepted payments from Mr. Abramoff's clients and then wrote checks as Mr. Abramoff directed, and
- accepted contributions from Mr. Abramoff's clients and then performed services such as writing favorable newspaper columns and speaking in favor of clients' causes.

A. ACTING AS A FRONT ORGANIZATION FOR TRAVEL

Mr. Abramoff arranged for Members of Congress and others to travel extensively at the expense of clients, while funneling the money through NCPPR, which would then be named as sponsor of the trips on official disclosure forms. Nell Rogers with the Choctaw tribe told the Committee on Indian Affairs that the tribe paid NCPPR $65,000 in 2000, which apparently was used to help finance a golf trip to Scotland for members of Congress and others. Ms. Rogers told staff of the Committee on Indian Affairs that the money was intended for anti-tax and other work and not for a Scotland trip.[30]

[29] National Center for Public Policy Research website, *http://www.nationalcenter.org/*.
[30] "Gimme Five" report, p. 36.

U.S. Commonwealth of the Northern Mariana Islands

Ms. Ridenour said Mr. Abramoff believed that the "full story" on the U.S. Commonwealth of the Northern Mariana Islands ("CNMI") was not getting out, so he arranged "fact-finding" trips for employees of think tanks, Members of Congress, congressional staff, and others. She said Mr. Abramoff asked that NCPPR become a sponsor so that Members of Congress and their staffs could attend and abide by the rules. She said she had no objections because she had gone on such a trip and it had been truly educational. "As far as I knew for years, he, they went, sat in a room like I did, talked about OSHA violations, I don't know," Ms. Ridenour told Committee staff.

Patrick Pizzella, a colleague of Mr. Abramoff's at Preston Gates, wrote to Mr. Abramoff on July 1, 1996, to explain how they planned to funnel money to NCPPR to pay expenses related to a trip to the CNMI. Mr. Pizzella is referring to Doug Bandow, who went on the trip:

> Jack, the airplane tickets were paid by PG [Preston Gates]; the hotel bills were paid by CNMI (each traveler just signed bill—no credit requested); that leaves basically the fees for Bandow's services and report; and the reimbursement for the bills he accumulated (mostly hotel and food) in Guam and Samoa. That should come to about $10,000. That is the amount CNMI should provide as a grant to NCPPR. Then they can cut check to Bandow. I do not see need for us to send airplane bills to NCPPR and then CNMI sending money ($30,000) to cover those—do you? Let me check further with Doug to nail down amount of bills he accumulated. I would like to finish up the $$ aspect of this as soon as possible—it will impress Doug and Amy—both of who we will want to call on again in the future. Thanks.

On December 17, 1999, Mr. Abramoff wrote to Willie Tan, a Saipan garment manufacturer who was a client. Mr. Abramoff said that Mr. Tan needed to wire $25,577 to NCPPR to pay for a trip to Saipan and Tinian.

> As I indicated, this should be wired to the National Center for Public Policy Research so they can pay it. Here is their wiring information. Please confirm to me when this has been sent so I can coordinate it on this side, which will be a bit tricky.

The same day, Ms. Ridenour wrote to Mr. Abramoff:

> OK regarding the reimbursables. I'll do what you want, of course.

On December 29, 1999, Mr. Abramoff told Ms. Ridenour that a wire for $25,577 was coming her way:

> . . . When you receive it, please let me know. Once it is received, please draw two checks: One payable to me in the amount of $17,488 (for airfare) and one in the amount of $8,129 to Alexander Strategy Group (for hotel and other

associated costs). Please let me know if you want invoices for these payments. If so, no problem at all. Thanks Amy.

On December 30, 1999, Mr. Abramoff wrote to an associate in his office, Viola Llewellyn, asking her to buy plane tickets for three congressional travelers:

> The tickets should not in any way say my name or our firm's name. They should, if possible, say "National Center for Public Policy Research". . . .

Ms. Llewellyn wrote back:

> . . . I have stipulated and reminded her that no mention of PGE or Jack Abramoff should show on the tickets. They should, if possible, say "National Center for Public Policy Research."

On January 4, 2000, Ms. Ridenour wrote to Mr. Abramoff to confirm that she would write the checks:

> This is not only good for us, but if the IRS should later inquire, it is proof for you and Ed that you do not owe income tax on this money.

Scotland

On January 20, 2000, Mr. Abramoff wrote to Ed Buckham at Alexander Strategy Group to say that he was planning a golf trip to Scotland that clients would sponsor:

> Terry and Willie would be the sponsors/hosts, though we would use National Center for Public Policy Research as the organization.

On May 31, 2000, Mr. Abramoff wrote to Ms. Llewellyn asking her to call Ms. Ridenour with information about an invoice for the trip to Scotland:

> . . . tell her that this invoice is only for records and they owe me nothing more than the funds which come in. Tell her we are happy to put that in writing if they want, but I didn't think she would want to have that kind of document around. Her call, though.

In July 2003, Mr. Abramoff and his colleagues were planning another Scotland trip. Michael E. Williams at Greenberg Traurig asked if there was any information about the trip he could provide to Representative Chocola, a Member of Congress.

> He may be able to do it and he's a 2 handicap. What "official" events do we have?

Mr. Abramoff wrote back:

> We don't have paper but the national center for public policy research is hosting a meeting with scottish parliamentarians.

Mr. Williams responded:

> What else can I tell him? How is the trip reported?

Mr. Abramoff said it was a trip for an educational meeting with legislators, and Mr. Williams asked:

Who should I tell them is funding the trip?

Mr. Abramoff wrote back:

NCPPR

Tax Issues

The e-mails between Mr. Abramoff and NCPPR indicate that NCPPR functioned as an appendage of Mr. Abramoff's lobbying operation.

A section 501(c)(3) organization must be organized and operated exclusively for exempt purposes. If it could be determined that congressional trips financed through NCPPR, taken alone or together with any other activities that are unrelated to NCPPR's exempt purposes, comprised more than an insubstantial part of NCPPR's activities, this could result in revocation of NCPPR's tax-exempt status. In addition, if it were established that facilitating transfers for private parties became an important purpose of NCPPR, a compelling argument could be made that NCPPR has a substantial nonexempt purpose and is not entitled to tax exemption under section 501(c)(3).

If it were established that NCPPR's financing of congressional trips was not substantially related to NCPPR's exempt purposes and that the activity was a trade or business that was regularly carried on, the income from that activity would be taxable as unrelated business taxable income. This would require an inquiry into, among other issues, whether NCPPR undertook the activity for a profit and whether NCPPR undertook the activity with the frequency with which similar activities are undertaken by for-profit organizations.

With significant additional factual development, it may be possible to show that legislators who participated in trips that were not of an educational nature (but were instead merely golf trips) and those who financed such trips might have received a more than incidental private benefit from NCPPR. The penalty for providing a more than incidental private benefit would be revocation of NCPPR's tax-exempt status.

If it were established that the trips coordinated by NCPPR were undertaken for the purpose of contacting Members of Congress or their staffs about specific legislation, the trips could have constituted lobbying activity for purposes of determining whether NCPPR has exceeded applicable section 501(c)(3) lobbying limits.

If it were established that an Abramoff client received a substantial return benefit for a contribution to NCPPR, the contribution should not have been deductible as a charitable contribution. If NCPPR engaged in lobbying (within the meaning of section 162(e)) on matters of direct financial interest to an Abramoff client and the contributions were made with a principal purpose of avoiding nondeductibility as a business expense under section 162(e), then the contribution should not have been deductible as a charitable contribution. Further, if contributions by a corporate client of Mr. Abramoff to NCPPR were for lobbying within the meaning of sec-

tion 162(e), a business expense should not have been claimed for such a contribution.

B. LOBBYING AND PUBLIC RELATIONS WORK FOR ABRAMOFF CLIENTS

In her interview with Committee staff, Ms. Ridenour said that she thought that Mr. Abramoff and his colleagues would tell clients "that you know, that if you were making donations to think tanks, it's more likely they're going to pay attention to you and take you seriously." E-mails indicate, however, that the lobbyists expected to direct the actions of employees of tax-exempt organizations.

Slate reported on an April 16, 1999, e-mail from Ms. Ridenour to Mr. Abramoff in which Ms. Ridenour stated that she sent a letter to *Insight* magazine regarding labor practices in the CNMI. She states that she sent the letter "at Shawn and Dennis's request," referring to members of Mr. Abramoff's lobbying team.[31] Twelve days later, she sent the lobbying team a copy of a news release that she wrote on the same subject. "I will mail you some paper copies to Dennis's attention in case you want pretty ones for the client or circulation anywhere else," Ms. Ridenour wrote in the e-mail included in the *Slate* article.[32]

Channel One Network

E-mails indicate that Ms. Ridenour wrote newspaper columns at the direction of Mr. Abramoff's client Primedia Inc. She maintains that she did such work "independent of" and "without regard to" Primedia's contributions.[33]

In 1999, Mr. Abramoff and his associates discussed with Jeff Ballabon, who at the time was executive vice president of public affairs for Primedia's Channel One Network, the best way to fend off a coalition seeking the network's ouster from public school classrooms.

Mr. Abramoff's colleague, Amy Berger, wrote on April 12, 1999:

> In preparation for hearings on Channel One, it would be extremely useful to have a white paper issued by a conservative think tank group like Heritage or CATO. I know that you have excellent contacts with these think tanks. Would you be able to work with a think tank to produce this type of a paper?

Patrick Pizzella, another colleague, wrote back:

> my guess is it would cost about $5000 and we would want them to promote it. . . . and we ought to use a smaller outfit . . . maybe Amy R., maybe CEI. . . .

Mr. Abramoff replied to Mr. Pizzella:

> I think Amy is the way to go. I am meeting with her this week. I'll raise it with her.

Mr. Abramoff wrote to Mr. Ballabon on May 19, 1999:

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[31] Dennis Stephens and Shawn Vassell were lobbyists at Preston Gates.
[32] Timothy Noah, *Think Tanks for Sale,* Slate, March 28, 2006. See Appendix.
[33] Committee staff interview with Amy Ridenour, June 26, 2006.

> When we are through the hearing, we have to discuss getting Amy a contribution as we discussed. She was going to do 5 pieces for $10K. We can chat on this next week.

Mr. Ballabon responded:

> yup—I have not forgotten (was it $10?—I wrote it down—whatever it was, she'll get it.)

Mr. Abramoff wrote to Ms. Ridenour the same day:

> I just want to thank you again for all you to do help us. Jeff is so grateful and, as soon as the dust clears, is going to make his gratitude tangible. Thanks for all you do!

On May 23, 1999, Mr. Ballabon wrote to Mr. Abramoff saying that Ms. Ridenour "really does deliver." Mr. Abramoff wrote back:

> We should get her a check as soon as we can. She can really help us with the Approps battle (we have used her before for this kind of battle before).

The next day, Mr. Abramoff wrote to Ms. Ridenour:

> Amy, can you get me an invoice for a contribution for $10,000 which I can push through Channel One? Jeff has asked for this so we can get something to you asap. Thanks.

On March 13, 2000, Dennis Stephens forwarded a commentary from R.D. Davis, a member of NCPPR's Project 21, a national leadership network of black conservatives:

> I note for the files, that Amy Ridenour has a member of Project 21 who is a writer and radio talk show host in Huntsville, Alabama. With the proper education, etc, he might be recruitable for Channel One support and Metrock bashing. Thoughts?

Mr. Abramoff forwarded the message to Ms. Berger, who responded:

> worth keeping in mind—esp. if we get a contract with [Channel One]!

In an interview with Committee staff, Ms. Ridenour denied that NCPPR was engaged in any "Metrock bashing."

On October 29, 2001, Mr. Ballabon at Primedia wrote to Mr. Abramoff regarding Ms. Ridenour:

> Any way to get some paperwork from her on the 50k asap so I can get a check cut?

Mr. Abramoff wrote back with an attached NCPPR invoice requesting a contribution of $49,000 from Primedia "to support public programs."

> I used one of their other invoices for another project and made it work. Let me know the next step. Please get the check directly to me. Thanks.

Mr. Ballabon wrote back on November 8, 2001, to say that a check had been cut and that he was sending it to Ms. Ridenour. Mr. Abramoff objected:

> No! Send it to me. I have to work this through with her carefully.

Magazine Publishers of America

On March 17, 2000, Bruce Heiman at Preston Gates told Mr. Abramoff that a $10,000 contribution to NCPPR would be part of the lobbying budget for their new client, Magazine Publishers of America:

> Would like to get . . . Ridenour to distribute op-ed through Knight Ridder and her National Policy Analysis. . . . Something along the lines of abuse of power—supposed to cover costs but here going way beyond and in fact seem to have ignored identified cost savings.

Ms. Ridenour did write such a column, distributed through Knight-Ridder.[34] In her interview with Committee staff, Ms. Ridenour said she would not necessarily have taken Mr. Abramoff's advice on what to write: "So even if they had said, 'Could you write on this,' I would have said, 'Sure, thanks for the advice.' And then I would have wrote what I thought best."

Ukraine

Mr. Abramoff wrote to his colleagues on February 19, 2000, to inform them that they had a new client: Ukraine. Dennis Stephens, a colleague, wrote to Abramoff on February 22:

> Will NCPPR be assisting on this client . . . ? Or other think tanks?

Mr. Abramoff responded:

> Of course.

In her interview with Committee staff, Ms. Ridenour said that she could not recall anything about Ukraine and had no record of NCPPR doing any work for Ukraine.

Tax Issues

The e-mails cited above show a pattern of NCPPR producing public relations materials favorable to Mr. Abramoff's clients. Actions taken by the organization potentially were not consistent with the organization's exempt purposes, and, if such activities taken alone or together with other unrelated activities including those described in this report, were substantial in relation to exempt activities, or if such activities amount to a substantial nonexempt purpose, it could be argued that the organization should not qualify for continued exempt status under section 501(c)(3).

Another issue is whether one or more private persons received a more than incidental private benefit as a result of the actions of NCPPR. For example it could be argued that Mr. Abramoff or his

[34] Amy Ridenour, *Postal Service's exorbitant price increases may stamp cancel on your favorite magazine,* Knight Ridder/Tribune News Service, May 13, 2000. See Appendix.

clients received a substantial private benefit from NCPPR's publication of an article favorable to them. Such an approach would be supported by the finding of additional facts that demonstrate that the organization undertook the activity primarily to benefit Mr. Abramoff or his clients and only secondarily to further exempt purposes.

If it were established that a client of Mr. Abramoff received a substantial return benefit from a contribution to NCPPR, then the contribution should not have been deductible as a charitable contribution. If NCPPR engaged in lobbying (within the meaning of section 162(e)) on matters of direct financial interest to an Abramoff client and the contributions were made to avoid nondeductibility under section 162(e), then the contribution should not have been deductible as a charitable contribution. Further, if contributions by a client of Mr. Abramoff to NCPPR were for lobbying within the meaning of section 162(e), a business expense deduction should not have been claimed for such a contribution.

C. DISGUISING THE SOURCE OF FUNDS

The e-mails to and from NCPPR indicate that, as with ATR, officers at NCPPR took contributions from Abramoff clients and in turn distributed the money as Mr. Abramoff directed. The money in one example went from Mr. Abramoff's clients through NCPPR and then to Mr. Abramoff's own foundation, to a company operated by a partner in his scheme, Michael Scanlon, and to Ralph Nurnberger, to whom Mr. Abramoff appears to have owed a personal debt. In her interview with Committee staff, Ms. Ridenour said that she did not know why the Choctaw tribe, the source of funds, could not simply write its own checks to those entities. At the time, she said she thought it was possible that the Choctaw tribe did not want to become known as a big donor "because every time you're known as a big donor, people hit you up for money."[35]

On May 25, 2000, Mr. Abramoff wrote to associates in his office:

> Did we receive in Federal Express today a check from eLottery for National Center for Public Policy Research? . . . If we did, please let me know, and then send the check over to David Ridenour at the National Center for Public Policy Research and collect from him a check post dated to Tuesday (or Wednesday if he wants) of next week for $25K (the amount of the check we are sending to him. Thanks.

Mr. Abramoff wrote to Ms. Ralston on July 11, 2000, saying he had just spoken to Ms. Ridenour:

> We should prepare the receipts so that there is $7K and change left over from the $40K contribution (I think we now have it that there is just $5K left over for the National Center). . . .

Ms. Ridenour also apparently asked for such "pass through" arrangements. In an e-mail dated October 1, 2002, Mr. Abramoff wrote to Michael Scanlon:

[35] Interview with Ms. Ridenour, June 26, 2006.

> Amy Ridenour has asked if we can run any funds through them to pump up their non e-mail donations (they will give us back 100%). Let's run some of the non CAF money through them to the camans.

Michael D. Smith at Greenberg Traurig wrote to Mr. Abramoff on October 9, 2002:

> Jack: We need to provide Casini an entity to pay the $500,000 provided we are succesful. Please let me know what entity you would like to use.

Mr. Abramoff responded:

> Probably best to use something like the National Center for Public Policy Research. They are a c4 and can direct money at our discretion, anywhere if you know what I mean. Does that work?

Mr. Abramoff wrote to Ms. Ridenour on October 9, 2002, with the subject line "I might have $500K for you to run through NCPPR":

> Is this still something you want to do? Is NCPPR a c3 or c4?

Ms. Ridenour wrote back:

> Yes, we would love to do it. We are a (c)(3).

Mr. Abramoff then asked her to make out an invoice for $1 million to the Mississippi Band of Choctaw Indians, one of his clients. Ms. Ridenour responded:

> A sum of that size *very* definitely will assist us in having better ratios. So I am grateful for the opportunity you have given us here (and very happy to entertain any other similar projects).

Ms. Ridenour told Mr. Abramoff that the money could not be for influencing specific pieces of legislation, and Mr. Abramoff responded:

> No problem. It will be payments either to companies for research or to other c3's.

On October 21, 2002, Ms. Ridenour asked for descriptions for her records:

> If possible, why don't you tell me very briefly what they really are doing, and I'll write back with a great-sounding phrase for each. I'll promise not to tell anyone about the projects, save if the IRS ever audits us, in which case, what I say will match exactly with what the recipients say if the IRS asks them, and everything would be on the up and up. In the meantime, we'd have nice-sounding by vague phrases in the written files in the (very unlikely) event anyone reads them.

In January 2003, Mr. Abramoff asked Ms. Ridenour if she still needed "transactions like the one we did last year." Ms. Ridenour responded:

> Sure, they are always helpful and appreciated. By the way, you and I still need to chat briefly about the past transactions we did because I need to have information about the educational activities we supported through last year's transactions, in case we are ever audited.

Tax Issues

Disguising the source of funds is not a tax-exempt purpose. As Marcus Owens, the former head of the IRS Tax Exempt Organizations Division, recently stated, "It's not a tax-exempt activity to act as a bag man for Jack Abramoff."[36] A section 501(c)(3) organization must be organized and operated exclusively for exempt purposes. If it were established that the transfers through NCPPR were undertaken for the sole purpose of concealing the identity of the transferors from the ultimate transferees or from other third parties and/or to enhance NCPPR's financial ratios, the transactions would not further a legitimate section 501(c)(3) tax-exempt purpose. Therefore, if such transfers, taken alone or together with any other activities that are unrelated to NCPPR's exempt purposes, comprise more than an insubstantial part of NCPPR's activities, then NCPPR potentially would not be eligible for continued exemption from tax as an organization described in section 501(c)(3). In addition, if it were established that facilitating transfers for private parties became an important purpose of NCPPR, it could be argued that NCPPR has a substantial nonexempt purpose and is not entitled to tax exemption under section 501(c)(3).

If it were established that NCPPR retained a fee for purposes of facilitating transactions designed solely to disguise the identity of the transferor, and that the activity was a trade or business regularly carried on, then the income from the activity would be taxable as unrelated business taxable income. This would require an inquiry into, among other issues, whether the activity was undertaken for a profit and whether the activity was undertaken with the frequency with which similar activities are undertaken by for-profit organizations.

With additional factual development, it may be possible to show that NCPPR directly provided a more than incidental private benefit to Mr. Abramoff. As mentioned above, certain e-mails suggest that Mr. Abramoff may have owed a personal debt to Ralph Nurnberger and that he satisfied this personal debt by directing that a portion of a $1 million contribution made by his client to NCPPR be disbursed by NCPPR to Mr. Nurnberger's company. If the use of NCPPR's charitable assets to satisfy Mr. Abramoff's personal debt constituted a prohibited private benefit, then the penalty could be revocation of NCPPR's tax-exempt status.

With additional factual development, it might be determined that the NCPPR transactions conferred a prohibited private benefit on: (1) Ralph Nurnberger or his company; (2) any Abramoff client who benefited from a "pass through" transaction; and/or (3) other recipients of grants from NCPPR that resulted from a pass through

[36] Susan Schmidt and James Grimaldi, *Non Profit Groups Funneled Money for Abramoff*, Washington Post, June 25, 2006. See Appendix.

transaction designed to conceal the identity of the original contributor.

If it were established that an Abramoff client received a substantial return benefit for a contribution to NCPPR, then the contribution should not be deductible as a charitable contribution. If it were established that NCPPR engaged in lobbying (within the meaning of section 162(e)) on matters of direct financial interest to an Abramoff client and the contributions were made to avoid nondeductibility under section 162(e), then the contribution should not have been deductible as a charitable contribution.

Certain e-mails suggest that Ms. Ridenour undertook certain pass through transactions with the intent of "pumping up" certain of NCPPR's "ratios." The e-mails do not make clear what ratios Ms. Ridenour was attempting to inflate. If it were established that such ratios comprised part of NCPPR's Form 990 or another filing with the IRS (such as a computation of NCPPR's public support for purposes of its non-private foundation status), then it could be argued that Ms. Ridenour or others at NCPPR could be liable for aiding and abetting the understatement of NCPPR's tax liability.

In testimony by Ms. Ridenour before the Committee on Indian Affairs ("Gimme Five" report, page 302), she indicated that $450,000 was to be disbursed by NCPRR to the Capital Athletic Foundation, Mr. Abramoff's private foundation. If it were established that Mr. Abramoff had contributed such funds to NCPPR and earmarked the funds for distribution to Capital Athletic foundation and obtained a greater charitable deduction than he would have received if he had contributed the money directly to the foundation, it could be argued that Mr. Abramoff should be liable for tax evasion under section 7201. In addition, if it were established that persons affiliated with NCPPR knowingly facilitated the arrangement, it is possible that such persons aided and abetted the understatement of Mr. Abramoff's income tax liability.

Mr. Abramoff pleaded guilty to conspiracy, mail fraud and tax evasion on January 3, 2006. In pleading guilty to tax evasion, Mr. Abramoff admitted to using a public policy organization (unnamed in the plea agreement) for which he served as director to receive income and to make expenditures for his own personal benefit. "Through these activities, Abramoff and others intended to and did benefit Abramoff, the entities he controlled or financially supported, and the public policy organization."[37]

[37] Abramoff plea agreement, Jan. 3, 2006. See Appendix.

CITIZENS AGAINST GOVERNMENT WASTE

Citizens Against Government Waste ("CAGW") reports that its mission is "to eliminate waste, mismanagement and inefficiency in the federal government."[38] It was established in 1984, following the release of the Grace Commission report, a private-sector effort established by President Reagan with an aim of highlighting waste in government spending.

CAGW's primary exempt purpose, as listed on its IRS Form 990, is "to perform nonpartisan research and analysis on waste and inefficiency in the government and to conduct educational programs to eliminate government waste." It is organized under section 501(c)(3).

The group is listed in e-mails as one that Mr. Abramoff and his colleagues thought they could turn to for a friendly op-ed piece or letter to the editor in exchange for a payment to the organization. In his response to staff questions, CAGW's president, Tom Schatz, stated that the organization is independent and nonpartisan and that it was not "affiliated" with Mr. Abramoff and therefore did not play a role in Mr. Abramoff's client relationships.

Nevertheless, Mr. Abramoff and his colleagues appear in their correspondence to have assumed such a relationship existed. When Mr. Abramoff's client Magazine Publishers of America ("MPA") opposed a proposed postal-rate tax increase, and Mr. Abramoff and his colleagues sought public relations help to make the case against the increase to Congress, they turned to CAGW.

Magazine Publishers of America

On March 13, 2000, Bruce Heiman at Preston Gates informed his colleagues that the firm had won a contract to represent MPA. Mr. Heiman suggested that $80,000 of the budget be used for "think tanks," with the $80,000 to be allocated among several groups, including $10,000 to CAGW. On March 17, 2000, Mr. Heiman wrote to Mr. Abramoff to ask him to approach Tom Schatz, president of CAGW:

> would like to get CAGW to put it in their next monthly "Waste Watcher Monthly" . . . I have in mind some angles for each—CAGW would be a cross subsidy argument—[U.S. Postal Service] is zapping magazines (and books and rural newspapers) to pay for ecommerce forays—Leslie Page did a letter to ed of W. Post criticizing USPS ecommerce in February so this is a good follow on. . . . Would also like to make each available to do talk radio (grover too).[39]

[38] The Citizens Against Government Waste website is at *www.cagw.org*.
[39] Leslie K. Paige, *Mail Monopoly*, CAGW Wastewatcher, May 2000. See Appendix.

In May, Leslie K. Paige, then senior vice president of CAGW, wrote a commentary called "Mail Monopoly" that made the arguments suggested by Mr. Heiman regarding subsidies to pay for the Postal Service "venture" into e-commerce. That same month, the Postal Service was declared the CAGW "Porker of the Month."

Mr. Schatz, in his response to Committee staff's questions, said that CAGW did receive a donation from MPA but would not say how much, other than that it was less than one-half of 1 percent of CAGW's total revenue in 2000. Mr. Schatz said CAGW had a history of working on issues related to perceived waste at the Postal Service and that MPA never required that CAGW undertake a specific activity. He said CAGW did exchange information with representatives of MPA but only as part of its use of a broad array of sources. "However, final decisions to write, edit, and produce specific documents are made exclusively by CAGW staff," Mr. Schatz stated in his written response.

Mr. Schatz said further that magazine publishers may have incidentally benefited but that the primary purpose of CAGW's involvement was to save Americans money.

Channel One Network

In 1999, Mr. Abramoff and his associates solicited help from several tax-exempt organizations, including CAGW, for help serving their client, Channel One Network. In a written response to Minority staff questions, Mr. Schatz said CAGW has never received a contribution from Channel One. He reiterated in a telephone interview that the organization also never received a contribution from Channel One's parent company, Primedia Inc.

On January 25, 1999, Amy Berger wrote to Mr. Abramoff about Council Nedd, at the time a CAGW employee:

> Just heard from Council Nedd. He is getting calls from his members about the press release on Channel One including an Alabama member (not Metrock). I faxed him the release and offered to be of help answering questions raised by his members about Channel One. He asked that we keep all of this quiet.

Mr. Abramoff replied:

> Is he OK? Which members? Please let me know as soon as possible.

Ms. Berger wrote back later that day:

> I just talked to Council. He's ok—at least for now. It turns out that a member of CAGW from Alabama and Jim Metrock called. The message is the usual Metrock stuff. Council was concerned that Tom Schatz would be upset but Schatz is completely fine on this. Council asked me to reassure you that they are fine on their position and I said if there's a problem and/or they need bolstering, we are here!

Mr. Nedd wrote to Mr. Abramoff on March 3, 1999:

> I just talked to Tom. He is also going to be on Washington Journal on C-SPAN this morning, and he going to try to get in a plug about Channel One.

Mr. Abramoff forwarded the e-mail to his staff, saying, "Let's run a tape on this one!" But Ms. Berger wrote later that day to Mr. Abramoff and Mr. Ballabon at Channel One:

> I talked to Tom Schatz this morning. Just as he was about to mention Channel One on CSpan he was cut off by the House of Representatives! He said that he will mention Channel One in his press conference today on the CAGW pig book. Also, Channel One is in the pig book as an example of an antidote to government waste. I am sending over a messenger to pick up copies and will distribute them.

On May 13, 1999, Ms. Berger wrote to colleague Dennis Stephens with the subject line, "one pagers by conservative groups (ridenauer, ATR, CAGW, TVC):

> You may recall that Jack asked you yesterday to arrange for these groups to hand out one pagers following the hearing. With Jack's approval, would you please coordinate this? Thanks.

The next day, Mr. Stephens wrote back to Ms. Berger and Mr. Abramoff:

> . . . Council with CAGW is in . . . Hope to get our groups wrapped up today and follow up, follow up all next week.

In an e-mail to Mr. Abramoff on July 28, 1999, Mr. Schatz asked Mr. Abramoff a favor:

> First, Shawn McBurney is now on board at CAGW. We are coming over on Monday for the Channel One event and I will make sure to introduce you to him at that time. Second, would you happen to have two or three tickets in your box to see Bruce Springsteen at the MCI Center, either Aug. 31 or Sept. 3? That would be greatly appreciated!!

Mr. Abramoff replied:

> Look forward to seeing you Monday. We are oversubscribed at the box at this time for all the concerts, but let me see what I can do. Since we are definitely tight, would two work, or do you need three? Please let me know.

On October 14, 1999, Ms. Berger informed Mr. Abramoff that another lobbyist had discussed soliciting help from CAGW and other organizations. Mr. Abramoff replied:

> We should not hand over our friends to this guy. In fact, we should tell our friends to stand clear of him . . .

An October 18, 1999, e-mail from Ms. Berger to Mr. Abramoff indicates that several organizations, including CAGW, had agreed to sign letters to the editor in support of Mr. Abramoff's client Channel One after an article appeared in New Republic. The subject line is "Ok to send these to Jeff [Ballabon?]":

> Daniel has drafted these letters to respond to the New Republic piece. Can you review these asap so we can get them to Jeff for his approval? We also may need your help getting Rabbi Lapin and CAGW to submit these letters to the New Republic. Is there anyone else who you think should write a response to the New Republic?

On November 3, 1999, Mr. Abramoff wrote to his assistant regarding Crosby Stills Nash and Young tickets that cost $211 each:

> I would like four tickets and a parking pass. Attending would be Tom Schatz (Pres. Of CAGW and his wife), myself and Carie . . .

Tax Issues

The e-mails show a pattern of CAGW producing public relations materials favorable to Mr. Abramoff's clients. A case can be made that such actions were not consistent with the organization's exempt purposes, and, if it were established that such activities taken alone or together with other unrelated activities were substantial, it could be determined that the organization should not qualify for continued exempt status under section 501(c)(3). In addition, if the articles produced by CAGW were found not to be consistent with the organization's exempt purposes, and it were established that publication of articles was a quid pro quo for contributions or favors by Mr. Abramoff or his clients, it could be argued that the organization had as a substantial nonexempt purpose to help carry out a public relations strategy devised by Mr. Abramoff and his colleagues on behalf of a client.

Another issue is whether one or more private persons who are not insiders of the organization directly received a more than incidental private benefit as a result of the actions of CAGW. For example, depending on the facts, it is possible that Mr. Abramoff or his clients received more than incidental private benefit as a result of CAGW's publication of an article favorable to them. Such an approach might be bolstered by any facts that demonstrated that the organization undertook the activity primarily to benefit Mr. Abramoff or his clients and only secondarily to further exempt purposes.

If it were established that a client of Mr. Abramoff's received a substantial return benefit from a contribution to CAGW, the contribution should not have been deductible as a charitable contribution. If it were established that CAGW engaged in lobbying (within the meaning of section 162(e)) on matters of direct financial interest to a client of Mr. Abramoff and the contributions were made to avoid nondeductibility under section 162(e), the contribution should not have been deductible as a charitable contribution.

COUNCIL OF REPUBLICANS FOR ENVIRONMENTAL ADVOCACY

Council of Republicans for Environmental Advocacy ("CREA") was founded in 1997 by Italia Federici, with Gale Norton and Grover Norquist as honorary co-chairpersons.[40] CREA is organized under section 501(c)(4). It lists as its mission "to foster environmental protection by promoting fair, community-based solutions to environmental challenges, highlighting Republican environmental accomplishments and building on our Republican tradition of conservation."[41]

After Ms. Norton became Secretary of the Interior, Mr. Abramoff arranged to meet Ms. Federici[42] and, e-mails show, directed his clients to make payments to CREA. Later, he referenced those payments when encouraging Ms. Federici to make his clients' arguments with senior officials at the Department of Interior. In her responses, Ms. Federici seemed eager to comply.

Ms. Federici raised funds from Mr. Abramoff's clients, and then contributors were given a chance to speak one-on-one with Interior Department officials.

Through her attorney, Ms. Federici declined an interview request by Committee staff investigators.

The Committee on Indian Affairs reported that from 2001 to 2003, Mr. Abramoff arranged for Indian tribes to contribute at least $250,000 to CREA, sometimes under false pretenses. Ms. Federici told staff of the Committee on Indian Affairs that Mr. Abramoff or his clients contributed about $500,000 to CREA. The Committee on Indian Affairs' report concluded that, with the exception of the Choctaw tribe, there is "no evidence that the tribes gave to CREA because of any interest in CREA's mission. . . . Ample evidence indicates that she [Ms. Federici] repeatedly told Abramoff that she would talk with a particular senior Interior official to help ensure that the concerns of Abramoff's clients were addressed."[43] Indeed, the Committee on Indian Affairs concluded that documents suggest that Mr. Abramoff helped CREA "because, or in exchange for, special favors that Federici had promised to do for him or his tribal clients at Interior."[44]

Hiring at the Department of the Interior

On January 30, 2001, Ms. Federici wrote to Mr. Abramoff:

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[40] "Gimme Five" report, p. 323.

[41] The CREA website is at *www.crea-online.org*.

[42] According to the "Gimme Five" report, p. 323, Ms. Federici told staff of the Committee on Indian Affairs that she met Mr. Abramoff at a football game with Mr. Norquist.

[43] "Gimme Five" report, pages 13 and 14.

[44] *Id.*

> I very much appreciate your generous offers regarding CREA and I've been working on the document you requested regarding grassroots and strategy. . . .

Mr. Abramoff wrote back:

> Thanks so much Italia. Please let me know what I can do to help Dennis Stephens, Mark Zachares (Office of Insular Affairs) and Tim Martin (Bureau of Indian Affairs) be placed. . . .

Coushatta Tribe

On March 22, 2001, Mr. Abramoff wrote to Kathy Van Hoof, Coushatta attorney:

> I met with the Interior guys today and they were ecstatic that the tribe was going to help. If you can get me a check via federal made out to "Council for Republican Environmental Advocacy" for $50K that would be great. This is really going to help.

Mr. Abramoff wrote to Ms. Federici on April 19, 2001, regarding the chief of the Coushattas:

> Do you think we could get him a meeting with Secretary Norton and Steve? I'd also like him to meet you, since I want to go back to the well and get more $ from them soon for CREA.

Ms. Federici told him the money from last month went to briefings with government officials:

> I think you'll be very pleased with the fresh slant on things.

On April 25, 2001, Mr. Abramoff wrote to Ms. Federici, asking if she could arrange a meeting between Secretary Norton and Coushatta Chairman Lovelin Poncho:

> Can you attend the meeting as well? It would be so nice if she could thank him for the contribution. He is in town May 9 and 10 and will see the President as well, as part of Grover's group meeting. They also contributed (less, so don't tell Grover!) to ATR.

Ms. Federici wrote to Mr. Abramoff on May 7, 2001, regarding Poncho:

> In the hubbub of trying to get Gale's schedulers to get their act together and getting Steve's endorsements, I didn't even ask . . . is there anything else that I can do for the chief's visit? Is there something else that I can do to say thank you for his support for CREA—besides the time with Secretary Norton?

On June 29, 2001, Abramoff wrote to Ms. Federici:

> I just want to thank you for all you do for me. I hope to continue to merit your kind friendship. Please do not for-

> get to send me the letter for [redacted][45] so I can get that $ for you. . . .

On July 17, 2001, Tony Rudy, a colleague of Mr. Abramoff's, said he needed Amy Ridenour to send a letter on behalf of the Coushatta and asked if they had offered her any money lately. Mr. Abramoff suggested CREA as well:

> Italia Federicci from CREA might also be willing to do something. Coushatta gave her some money. Call her if you think she could help with this.

Trustees Circle

In 2001, CREA put together a Trustees Circle that provided contributors one-on-one access to Interior Department officials for a $50,000 contribution. On August 7, 2001, Mr. Abramoff wrote to Kevin Ring at Greenberg Traurig:

> CREA is putting together a trustees circle which will participate in small dinners throughout the year. The first one will be in September and will include Norton, Griles, McCaleb and a number of other assist secs, including Bennett Raley, asst sec Water and Science, or something like that. Coushatta and Choctaw are already members of the group ($50K/year). Do you think Hoppi wants to join?

Mr. Ring replied:

> The hopi aren't good republicans, but I will check it out.

Mr. Abramoff wrote back on August 8, 2001:

> Whether they are good Republicans or not, they need clout with the Interior Dept, I would imagine.

Mr. Ring responded:

> Again, I will ask. But my sense is that they will say that's why they hired us. I am not sure they have an extra $50K lying around. Let me ask this: Besides the September meeting with Norton, Griles, etc, what other events are planned?

Mr. Abramoff stated:

> Other dinners will be Senators, Congressmen and White House folks (including Rove).

On August 9, 2001, Mr. Abramoff wrote to Terry Martin of the Chitimacha tribe with suggestions for political contributions:

> The CREA contribution helps those inside DOI who helped us on insurance.

Mr. Martin asked for additional information on CREA, and Mr. Abramoff wrote back on August 16, 2001:

> This is a 501c4 group which used to be chaired by Gail Norton. They are the unofficial outside advocacy group for DoI and are going to be holding a series of dinner meet-

[45] Redacted by Senate Committee on Indian Affairs.

> ings, the first of which is with Norton, McCaleb, Griles and others. . . . CREA does advocacy for environmental issues and has been incredibly helpful on the insurance issue[46] (its current head is Italia Federici who is very close to Griles).

Mr. Abramoff served as a fundraiser of sorts for CREA, soliciting funds for the group from his tribal clients. He wrote to Ms. Federici on October 23, 2001, with the subject line "guess what I'm holding":

> I am in Mississippi, returning tonight. I have the $50K CREA check in hand. You'll have it tomorrow.

Ms. Federici wrote back:

> That's great news! Thanks you, Thanks you!

Mr. Abramoff replied:

> My great pleasure! Now on to Kickapoo, and then to reload for Coushatta!

Acting as a Liaison to Various Federal Agencies

On January 3, 2002, Todd Boulanger at Greenberg Traurig wrote to Mr. Abramoff regarding Ms. Federici:

> Can she get some general requests into the President's budget? Funding for the Choctaw [redacted],[47] For Homes in Fossil Energy, etc. . . .

Mr. Abramoff replied later:

> Put together an email which I can send to her and I'll see what we can do.

On January 17, 2002, Kevin Ring wrote to Mr. Abramoff asking if Thomas Sansonetti, then an associate attorney general, "might be able to help at Justice." Mr. Abramoff wrote back:

> Yes! Good idea. Call Italia and ask her to help us with this. Choctaw gave them $50K.

Jena Choctaw issue

On January 27, 2002, Mr. Abramoff wrote to Ms. Federici:

> Thanks Italia. Great you are back on line. I have another urgent issue which has come up and which we need to get to Steve immediately. There is a tribe in Mississippi and Louisiana called the "Jena Choctaw." They are a federally recognized tribe and are trying to get a gambling compact in Mississippi and/or Louisiana. The Jena are also trying to get land put into trust (ostensibly for "economic development," but really for gambing). This is totally horrible for both the Choctaw in Mississippi and the Coushatta. The Interior Department BIA has sent a letter out (I will fax this to you right now . . .) We have to quash this very, very hard and fast. . . .

[46] "Gimme Five" report indicated, p. 331, that Mr. Abramoff wanted help with the Bureau of Indian Affairs' tribal insurance policy.

[47] Redacted by Senate Committee on Indian Affairs.

Mr. Abramoff wrote to Ms. Federici on January 30, 2002, with an update:

> Just wanted to let you know that I had a great discussion today with the Choctaws and they are moving their next $50K contribution very quickly. I hope we'll have it very soon. Also, [redacted][48] and we expect they will approve it (also $50K) with this week. Just thought I'd give you some happy news. Regards.

On January 31, 2002, Mr. Abramoff suggested that a $50,000 contribution be added to list of clients' political contributions:

> Please add in $50,000 for CREA and put a note in the candidate column as follows: Sec. Norton.

On February 12, 2002, Mr. Abramoff discussed a list of political contributions with Todd Boulanger at Greenberg Traurig:

> Todd, did we not request money for CREA from them? that's our access to Norton. We need $ for them more than many of these others. I can't find them on the list. . . .

Mr. Boulanger wrote back, asking in part what CREA stands for. Mr. Abramoff replies:

> CREA is Council for Republican Environmental Advocacy [sic]. The trustees group (which the other tribes do) is $50K. this is the group which Norton was chairman of before she went to DoI and which she supports still. Asking him [Chris Petras at Saginaw Chippewa tribe] for another $50 is going to knock his socks off. Call him and tell him this was inadvertently left off the list and ask what we should do, since Norton is very soon going to host another dinner of the trustees (he is aware of the last one) and we want to make sure they are included.

On February 20, 2002, Mr. Abramoff wrote to Ms. Federici:

> Gale is meeting with Louisiana Governor Foster next week. He is going to lobby her to approve the compact he signed in the dead of the night. She needs to tell him no. how can we get in there?

On December 2, 2002, Mr. Abramoff asked about the Jena issue again:

> It seems that the Jena are on the march again. if you can, can you make sure Steve squelches this again? thanks!!

Ms. Federici replied:

> Thanks for the update. I'll bring it up asap!

Gun Lake Band of Pottawatomi Indians

Mr. Abramoff solicited Ms. Federici's help in helping his client, the Saginaw Chippewa tribe, fight a casino project proposed by the Gun Lake tribe. Mr. Abramoff called the project a "disaster in the making."

[48] Redacted by Senate Committee on Indian Affairs.

On December 4, 2002, Mr. Abramoff wrote to Ms. Federici:

> This is the casino we discussed with Steve and he said that it would not happen. it seems to be happening! The way to stop it is for Interior to say they are not satisfied with the Environmental Impact Report. Can you get him to stop this one asap? they are moving fast. Thanks Italia. This is a direct assault on our guys, Saginaw Chippewa.

Ms. Federici replied, including updates on other projects they were working on:

> I will call him asap. Also, Aurene . . . is not going to be selected for the job being vacated by McCaleb. They will appoint an acting temporarily. He asked for names and I told him about Tim Martin but that you thought they needed someone with real stature. He agreed. If you have any other names let me know. The other issue about the tribe in California has been headed off. He looked into it and it is being handled. All lines of communication are being shut off. A BIG thank you to you!

Mr. Abramoff wrote back:

> My pleasure. The important part is that Steve clearly understands what a great friend he has in you. he is a great guy and we need to make sure he is always protected. . . .

Two days later, Mr. Abramoff forwarded Ms. Federici a news article about the Gun Lake tribe:

> This is what we have to stop.

Ms. Federici replied:

> Seeing him at 4pm today

Use of Signatures Restaurant

CREA began hosting dinners at Mr. Abramoff's restaurant, Signatures, and Mr. Abramoff picked up the tab.

Mr. Abramoff wrote to Ms. Federici on April 5, 2002:

> Thank you for going to Signatures with Steve and Tom. Wish you had let me know, though, since I want to host you there! I am getting you a Club Card for the place, which will have a private discount for you (don't tell others!). Regards.

In a July 10, 2002 e-mail with "RE: CREA" in the subject line, Rodney Lane at Signatures wrote to Mr. Abramoff:

> It looks like the bill was slightly over $300 plus $50 tip. What do you want me to do in the future?

Abramoff wrote back:

> I might have to cover this if it is not more than once every couple of months.

Federici wrote to Mr. Abramoff on July 19, 2002, to say that CREA planned to file its annual report for the IRS and that it used the same accounting firm that ATR did:

> Anyway, the report to the IRS shows that 71.5% of the money we took in went to "fostering environmental education through grassroots education and research—program services." That's a good number. We are also on track to show growth for our next report—thanks to you—which is the type of thing that the IRS looks for. Thanks for everything Jack!

Ms. Federici continued hosting events at Signatures at no charge to CREA. Mr. Lane at Signatures wrote to Abramoff on March 17, 2003, to say that CREA planned a party that Thursday that would amount "to a few thousand bucks." Abramoff replied to Lane:

> We have to comp it, but submit the receipt to me and we'll put it on the SagChip bill . . .

Meeting with Stephen Griles

Mr. Abramoff wrote to Ms. Federici on September 24, 2002:

> The chief of the Cherokees is meeting with Steve Griles tomorrow afternoon. This is the one I have talked to about representation and giving to CREA. If Steve could mention both your name and mine to him, it would be a big help. He can just say "we have mutual friends" or something if that is possible. It would really help Thanks so much!!!

Access to the White House

On December 16, 2002, Mr. Abramoff wrote to his former assistant, Susan Ralston, suggesting that her new employer, Karl Rove, meet with Ms. Federici:

> They are getting ready to launch a huge effort in some key target states and wants to give a 10 minute briefing to Karl on it. I am raising/have raised a bunch of $ for them. might be worth his hearing her. They know each other. Can I have her contact you directly? I will not be in this meeting. thanks.

Requesting Assistance for Tribes

On January 6, 2003, Mr. Abramoff asked Ms. Federici for a favor regarding the Mashpee Wampanaog Tribe:

> Hi Italia. Is there any way you might be able to discreetly find out whether this recognition is being held by one of our guys, or one of the bureaucrats? They want me to help, but I don't want to get into something which might cause any problems for Steve or the Secretary . . .

Ms. Federici wrote back the same day:

> Hi Jack: I will find out asap . . .

On January 9, 2003, Ms. Federici asked Mr. Abramoff for a favor:

> I hate to bother you with this right now, but I was hoping to ask about a possible contribution to CREA. As usual, we budgeted and spent all of our money from last year, on last year, and have started out the new year with practically nada. I thought I'd see if there was any way you could help us reach out to some of your folks who were so generous last year? (. . . and just after you praised our budgeting skills!)

Mr. Abramoff wrote to himself, "get her money," and then replied to her later:

> Absolutely. We'll get that moving asap. The Coushattas are coming to DC next Thursday so I'll hit them immediately. By the way Gov. Foster (Louisiana) just sent Gale another letter pushing a new compact he signed for jena. Can you make sure Steve knows about this and puts the kibosh on it?

On February 6, 2003, Mr. Abramoff wrote to Ms. Federici with the subject line "Jena emergency":

> [Redacted] just returned from Interior where he was told by the BIA . . . that they were going to approve the Jena compact and land in trust!!! This is a total disaster as you can imagine. Can you call Steve asap and try to get him to stop this. The land these Jena are trying to game on was historical [redacted] (our client) [redacted] land!!!! Please call me as soon as you can.[49]

One of Mr. Abramoff's colleagues, Stephanie Short, wrote to Mr. Abramoff on March 7, 2003:

> Can we find out anything from inside BIA on timing?

Mr. Abramoff forwarded the message to Ms. Federici on March 9:

> I am not sure what more you can do on this, but it seems it's crunch time on Jena.

Ms. Federici replied:

> Hi Jack: I will call you on Monday with whatever I can find out . . .

Mr. Abramoff wrote to Ms. Federici on March 17, 2003, asking for help getting federal recognition for the Mashpee tribe.

> Can you read this and let me know if you think this is something we can raise urgently with Steve? It seems like an incredibly reasonable approach and would benefit Interior, but we have to get to him. can we?

Ms. Federici replied the next day:

> Hi Jack: I will call Steve tonight—not a problem. . . . Re: Jena—can you get me the most complete list of Congressional opposition to Jena that you have? I heard that there was at least one congressman in support . . . Need to make

[49] Redactions by Senate Committee on Indian Affairs.

> sure that congressional opposition—the most update info and their activities—is seen by all. By the way . . . CREA event at Signatures on Thursday evening!

Meanwhile, Ms. Federici was helping make the case to Mr. Griles that the Saginaw Chippewa should get funding for a school even though staff inside the Bureau of Indian Affairs ("BIA") disagreed. Mr. Abramoff wrote to Ms. Federici on March 24, 2003:

> Italia, what's going on? Is Steve buying the line from the BIA?

Ms. Federici wrote back:

> Don't worry. He just came back with what their line was and I got him the right info. He knew they would say something we disagreed with.

Mr. Abramoff replied:

> Phew! Thanks!

On April 28, 2003, Mr. Abramoff wrote to Ms. Federici with news:

> Are you around on cell to chat? We were just handed a major screw job from DoI, totally opposite of what Steve told me on the phone. Saginaw does not know yet, but might even terminate our contract over this. I am dumbfounded. Don't do anything until we chat.

On May 6, 2003, Mr. Abramoff suggested that the Agua Caliente tribe contribute $50,000 to CREA. His colleague, Duane R. Gibson, said that was "a lot of dough." Mr. Abramoff responded:

> Since CREA is Norton/Griles . . . I would say that it's probably worth it, no?

Ms. Federici appeared to be helping Mr. Abramoff with many projects for his clients. He wrote to her on June 2, 2003:

> Want to see if we can get a sense as to where we are on the following:
>
> 1. Sac and Fox (very important and urgent—they are now in town)
> 2. Saginaw and Chippewa school cost share program (he got a big time letter from the chairmen of the House and Senate Interior Approps committee; no reaction)
> 3. moving the Inspector General from Choctaw Mississippi to Coushatta election (too late since Coushatta election was Saturday, but we need to get that guy (Larry Gill) out of Choctaw.
> 4. Mashpee (probably nothing up there)
> 5. Jena (just to reconfirm that that is not moving)
>
> Thanks.

Mr. Abramoff wrote to Ms. Federici on July 31, 2003, regarding the Saginaw Chippewa's school cost-share:

> This is that tribe's key issue for the year. You might recall that Lynn Scarlett sent that letter, to which the chairmen of House and Senate Interior Approps responded strongly.

> Now we have heard nothing. I can't chat with Steve, as you know. what can we do? they are really pissed at me. anything possible?

Tax Issues

It is apparent from e-mail communication that CREA became an extension of Mr. Abramoff's lobbying operation. Mr. Abramoff arranged for his clients to donate to CREA; then he called in favors for those clients through Ms. Federici's connections at the Department of the Interior. Through e-mail correspondence, she appears willing to do Mr. Abramoff's bidding, even asking what else she can do for his clients that she has not done yet.

The "contributions" to CREA described above should be characterized as fees paid by Mr. Abramoff or his clients in exchange for CREA's services in lobbying individuals at the Department of the Interior. Lobbying for a fee should be viewed as inconsistent with CREA's (or any other nonprofit's) tax-exempt purpose. It could be argued that CREA was acting on behalf of Mr. Abramoff's firm for purposes of lobbying the government, which should not be an exempt purpose for CREA. If these activities, taken alone or together with any other activities that are unrelated to CREA's exempt purposes, constituted the primary activities of CREA, CREA arguably should not be eligible for continued exemption from tax as an organization described in section 501(c)(4).

In addition, issues outlined in the Committee on Indian Affairs report raise questions of private inurement. In her deposition to the Committee on Indian Affairs staff, Ms. Federici said she could not recall having drawn a salary from CREA from 1997–2000. "It is noteworthy that Federici's salary from the CREA appears to have spiked during the period that Abramoff's tribal clients contributed to the CREA," the Committee on Indian Affairs concluded.[50]

If, as suggested by the e-mails above, CREA retained a fee in exchange for taking actions that were unrelated to CREA's exempt purposes on behalf of an Abramoff client, the fee income arguably is not derived from an activity that is substantially related to the performance of the organization's tax-exempt purpose. Under such circumstances, if the activity also constitutes a trade or business and is regularly carried on, arguably the income from the activity should be taxable as unrelated business taxable income. This would require an inquiry into, among other issues, whether the activity was undertaken for a profit and whether the activity was undertaken with the frequency with which similar activities are undertaken by for-profit organizations.

If it were established that contributions by a corporate client of Mr. Abramoff's to CREA were for lobbying within the meaning of section 162(e), a business expense deduction should not have been claimed for such contributions.

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[50] "Gimme Five" report, p. 323.

TOWARD TRADITION

Toward Tradition describes itself as "working to restore America's respect for the dignity and morality of business." Rabbi Daniel Lapin, its director and founder, described Toward Tradition in an e-mail as "essentially an anti-defamation organization defending the institution of business against unfair attack." A second area of work, he stated, is "building an alliance of Jews, Christians and other Americans to help restore America's founding ethic of limited government, centrality of the family, and a strong defense."[51] Toward Tradition is organized under section 501(c)(3).

Mr. Abramoff served on the organization's board of directors until 2004. He served two terms as its chairman. E-mails show that Mr. Abramoff could turn to Rabbi Lapin for a friendly newspaper column that put a client in a positive light. Indeed, the e-mail communication indicates that Mr. Abramoff planned how best to use Rabbi Lapin as a resource.

For example, in an e-mail exchange with Amy Berger, an associate at Preston Gates, Mr. Abramoff suggested that they avoid having Lapin write a letter on behalf of a client, Channel One Network. Ms. Berger already had a copy of such a letter and wanted to "get them to Jeff [Ballabon, with Channel One] for his approval." Mr. Abramoff's response indicates that he needed to use Lapin for another purpose to benefit the same client: "I don't want Rabbi Lapin to do this. We are going to need him to discreetly call [James] Dobson to get Jeff a meeting, so I don't want to put him out publicly again yet."[52]

In a telephone call with Minority staff, Rabbi Lapin said Toward Tradition is in the process of shutting down as a result of negative publicity related to the investigation of Mr. Abramoff. He said the corporation had not "folded" yet but that legal steps were being taken to do so.[53]

Channel One Network

On March 11, 1999, Rabbi Lapin sent a copy of a proposed newspaper column to Mr. Abramoff and Mr. Ballabon of Channel One. The op-ed piece[54] was titled, "Is Making an Honest Living Immoral? Your Children Think So." Mr. Ballabon wrote back to Lapin and Mr. Abramoff:

> First of all, let me say that this is a terrific piece (I'm not surprised, just grateful). . . . I have just one lingering concern: It is important to realize that 10,000 of our 12,000

[51] E-mail from Rabbi Lapin to Susan Ralston, Abramoff's assistant, May 10, 2000.
[52] E-mail from Mr. Abramoff to Amy Berger, Oct. 18, 1999.
[53] Telephone call with Minority staff, July 17, 2006.
[54] Rabbi Daniel Lapin, *Channel One and its generosity under attack from those who would prefer to use tax dollars for same equipment,* Knight Ridder/Tribune News Service, April 15, 1999. See Appendix.

> schools are, indeed, public schools. There are two places (see my notations in the document itself) where you attack the schools themselves. . . . I think it might be more fruitful to direct your criticism at our real detractors: none of them are educators at all. They are just radical anti-business political operatives and academics who argue against Channel One despite our support from teachers of all kinds of schools with all kinds of philosophies. . . . Rather than drive in a wedge, I'd like to bring them together to attack these outside commie agitators. Once again, I think it is only an issue raised by two comments in the piece, which is magnificent. Jeff

On July 11, 1999, Amy Berger with Preston Gates wrote to Mr. Abramoff:

> At last week's meeting with Jeff you suggested getting groups like TVC [Traditional Values Coalition] and Toward Tradition to give awards to Channel One. Is there anything I can do to help facilitate this? For example, there may be some Channel One specials that Toward Tradition would like (but I need dto know what Toward Tradition cares about). Your thoughts?

In an August 11, 2006 letter to the Minority staff Rabbi Lapin stated that "I have no recollection of any donations that Toward Tradition received from Channel One Network and/or Primedia." He also stated that "I do not believe that Toward Tradition ever gave any award to Channel One", and that the article on Channel One "never saw the light of day."

Magazine Publishers of America

Toward Tradition is one of the organizations that Mr. Abramoff and his colleagues turned to in 2000 when it needed public-relations help for its client, Magazine Publishers of America.

Mr. Abramoff wrote to Mr. Heiman on May 9, 2000, with the subject line "replacement for Americans for Economic Growth":

> As soon as I hear back from you that this is OK, I'll see if I can get Lapin to do a piece for us for free so we have two-fer.

Mr. Heiman wrote back to Mr. Abramoff, discussing the issue of a donation with James Cregan of MPA:

> terrific. I don't see a problem. I'll raise with Cregan. Will need something on the group. Is it 501c3? Maybe the theme should be its immoral to keep other people's money—when you know you can save money and won't.

On May 13, 2000, Mr. Abramoff wrote to Susan Ralston on the same subject:

> Yes, MPA is going to give to Toward Tradition. Choctaw and elot will give to National Center. Can you call Betty to see how we are doing on turning that check around?

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"Awards" for Mr. Abramoff

On September 15, 2000, Mr. Abramoff asked Rabbi Lapin for a list of awards they could say he won to help him get into the Cosmos Club in Washington.

> . . . most prospective members have received awards and I have received none. I was wondering if you thought it possible that I could put that I have received an award from Toward Tradition with a sufficiently academic title, perhaps something like Scholar of Talmudic Studies? . . . It would be even better if it were possible that I received these in years past, if you know what I mean. Anyway, I think you see what I am trying to finagle here! . . .

Rabbi Lapin wrote back on September 19, 2000:

> Yes, I just need to know what needs to be produced . . . letters? Plaques? Neither?

Mr. Abramoff replied:

> Probably just a few clever titles of awards, dates and that's it. As long as you can be the person to verify them (or we can have someone else verify one and you the other), we should be set. Do you have any creative titles, or should I dip into my bag of tricks?

Mr. Lapin later wrote a column saying that on no occasion did Toward Tradition or any organization he was affiliated with create an award or present one to Mr. Abramoff.[55] However, in an e-mail Mr. Lapin sent on October 5, 2000, Lapin wrote to Mr. Abramoff saying he had found records of awards at three organizations and that he understood Mr. Abramoff may have trouble finding the "long forgotten (but well deserved)" awards in movers' boxes:

> Pacific Jewish Center, Los Angeles, California.
> President: Michael Medved. Rabbi: Daniel Lapin.
> In February 1988 you were honored with the award that recognized you as PJC Distinguished Professor of Talmudic Law in recognition of the lectures you delivered during 1987. Very pretty blue granite looking type of plaque if I recall correctly.
>
> Toward Tradition, Mercer Island, Washington.
> President: Daniel Lapin. National Director: Yarden Weidenfeld
> In the summer of 1994 you were given the award that identified you as Toward Tradition's Scholar of Biblical and American History.
>
> Canadian Business Institute, Seattle and New York City
> President: Lewis Kaufman. Director: Julian Hurst

[55] "Jack Abramoff and Toward Tradition," by Rabbi Daniel Lapin, *www.towardtradition.org/jack_abramoff_and_TT.htm*. See Appendix.

> In October 1999 you accepted the award that recognized your service in establishing CBI's course in Biblical Mercantile Law in which you served as adjunct professor.
>
> Hope that helps

In the August 11, 2006 letter to the Minority staff Rabbi Lapin stated that Mr. Abramoff had "humorously inquired as to whether I could create an award for him to which I responded equally frivolously along the lines of filling a wall of awards for him."

On December 13, 2000, Mr. Abramoff sent an e-mail to Ms. Ralston:

> I told R'Lapin that I probably need to step down as chairman of Toward Tradition.

Tax Issues

If it were established that actions described above taken by Toward Tradition were not consistent with the organization's exempt purposes, and that such activities taken alone or together with other unrelated activities were substantial in relation to exempt activities, or if such activities amount to a substantial nonexempt purpose, it is possible that the organization would not qualify for continued exempt status under section 501(c)(3).

With additional factual development, it may be possible to show that one or more private persons who are not insiders of the organization directly received a more than incidental private benefit as a result of the actions of Toward Tradition. For example, depending on the facts, it may be possible to show that Mr. Abramoff or his clients received a substantial private benefit from Toward Tradition's publication of an article favorable them. Such an argument might be bolstered by any facts that demonstrated that the organization undertook the activity primarily to benefit Mr. Abramoff or his clients and only secondarily to further exempt purposes.

If it were established that an Abramoff client received a substantial return benefit from a contribution to Toward Tradition, the contribution should not have been deductible as a charitable contribution. If it were established that such organizations engaged in lobbying (within the meaning of section 162(e)) on matters of direct financial interest to an Abramoff client and the contributions were made to avoid nondeductibility under section 162(e), the contribution should not have been deductible as a charitable contribution.

CONCLUSIONS AND RECOMMENDATIONS

Sufficiently serious issues have been raised about the behavior of nonprofit organizations, based on the materials reviewed by the Senate Finance Committee's Minority staff, to justify referral of this report to the Department of Treasury, the Internal Revenue Service and the Department of Justice for further review. Final judgments will be reached by those Federal Departments, which have the ultimate responsibility to enforce the law and regulations relating to nonprofits, the personnel to conduct full investigations, and full subpoena power.

The Minority staff found a large number of questionable activities by the nonprofits named in Mr. Abramoff's and other's e-mails. It appears that lobbying, public relations work and, in some cases, disguising the source of funds was conducted by the nonprofits examined in this report. A variety of tax-law standards for the operation of nonprofits may have been violated.

In general, a substantial part of a tax-exempt entity's activities cannot be for the benefit of a for-profit entity. Mr. Abramoff used nonprofit organizations for his lobbying practice. These organizations clearly acted to benefit Mr. Abramoff and his lobbying interests. If it is found that these activities were a substantial or a primary activity of these organizations, then the exemption from taxes for these nonprofit entities could be revoked.

The private inurement and private benefit prohibitions also are at issue. Although the staff did not find direct evidence of violations of these two prohibitions, there are significant indications that such violations occurred.

Substantial issues related to the unrelated business income tax are raised by the e-mails. In general, charities and social welfare organizations are subject to tax on income from for-profit activities that are not substantially related to exempt purposes. Based on the information contained in this report, there is a strong likelihood that lobbying, public relations work and disguising the source of funds for a specific "client" for a fee are not charitable or a social welfare purpose and income from such activities may be subject to the unrelated business income tax.

IRC Section 162(e) provides that business expenses can be deducted, including contributions to nonprofit organizations. However, if a contribution to a section 501(c)(3) or 501(c)(4) organization is made in connection with lobbying by such organizations, then that payment *cannot be deducted.* Did companies or organizations deduct as a business expense payments to nonprofit organizations involved with Mr. Abramoff that were then used to advance a lobbying agenda?

At least three additional provisions of the tax code should be analyzed in light of the materials described in this report:

- Section 6701 generally imposes a monetary penalty against any person who assists in the preparation of a document that understates the liability for tax of another person.
- Section 7206 imposes substantial criminal penalties on a person who produces a tax return made under penalty of perjury which that person does not believe to be true. If it were established that the exempt organization had, but did not report, unrelated business taxable income, and the person who signed the organization's return under penalty of perjury knew that such income improperly was excluded from the return, such person arguably could be subject to criminal penalties under Section 7206.
- Section 7201 imposes substantial criminal penalties for tax evasion—any person who willfully attempts in any manner to evade or defeat any federal tax on the payment of such tax could be guilty of a felony.

Again, law enforcement entities with greater resources should make a final determination on these issues.

Regardless of the outcome of additional investigations, what should not be tolerated are tax breaks given to so-called nonprofit organizations that perform lobbying, public relations and/or disguising the source of funds for a fee. These activities cannot be defended because they violate the principle that these section 501(c)(3) and 501(c)(4) organizations are to be organized for charitable or social welfare purposes.

Activity that is no different from the operations of lobbying and public relations firms—who are paid by clients to lobby and do public relations on a specific issue—should not be treated as a social welfare activity and granted tax-favored status. What is the rationale for allowing tax-favored entities, organized as nonprofits, to engage in the same behavior as lobbying and public relations firms? If this activity is permitted, then should not lobbying firms and public relations firms enjoy the same tax-exempt status?

We recommend the Committee consider legislation clearly addressing the practices exposed in this report. The Minority staff has developed the following options for discussion with the Majority staff and Members of the Finance Committee.

REFORMS RELATING TO SECTION 501(c)(3) ORGANIZATIONS

The following are potential reforms that should be examined in light of the findings of this report:

1. Provide that, for purposes of section 501(c)(3), "lobbying" includes payment of travel, meals, and similar expenses of a government official by a section 501(c)(3) organization if a registered lobbyist (or person related to the lobbyist, including the lobbying firm) is a disqualified person or substantial contributor of the section 501(c)(3) organization.

2. Require section 501(c)(3) organizations that pay the travel, meal, and similar expenses of a government official publicly to disclose (1) their corporate donors, and (2) contributions of a registered lobbyist above a certain amount.

3. Increase the rate of tax on excess lobbying expenses imposed on the organization and on the organization manager under section 4912.

4. Expand the definition of lobbying activity under section 501(c)(3) to cover the lobbying of the Executive branch (including administrative agencies) and lobbying with respect to federal appointments.

5. Provide that, in general, the present law proxy tax (section 6033) would apply to section 501(c)(3) organizations. Under such an approach, a section 501(c)(3) organization would have to calculate the percentage of expenses of the organization that go to lobbying. The 501(c)(3) organization then would either have to inform donors that such percentage of their contribution would not be deductible, or otherwise the organization would have to pay a proxy tax.

6. Consider whether to provide for special rules for section 501(c)(3) organizations with respect to which a Member of Congress is a founder or exercises control (alone or together with related parties and paid staff of the Member). For example, section 501(c)(3) organizations could be required to disclose any contributions made by a corporation or a registered lobbyist.

REFORMS RELATING TO SECTION 501(c)(4) AND OTHER 501(c) ORGANIZATIONS

1. Provide that corporate contributions to section 501(c)(4) organizations that engage in lobbying either are not deductible under section 162 as business expenses or are subject to an excise tax or treated as income from an unrelated trade or business.

2. Alternatively, provide that if a contribution is accepted by a section 501(c)(4) organization (whether or not it engages in lobbying activity) with any expectation of a quid pro quo, then the contribution income is treated as income from an unrelated trade or business (and thus is subject to unrelated business income tax).

3. Require that section 501(c)(4) organizations that engage in lobbying publicly disclose all corporate donors.

4. Impose an excise tax on section 501(c) organization managers that knowingly accept and disburse contributions for the primary purpose of facilitating a transaction for the benefit of the contributor if the transaction does not directly further exempt purposes.

[redacted]

From: Simmons, Nancy
Sent: Wednesday, September 22, 2010 11:14 AM
To: Pilger, Richard; Smith, Jack; Hulser, Raymond; Shur, Justin
Subject: RE: 501 non profits

I agree. This area has been the subject of much debate and press articles over the past , but I don't see a viable way to make a prosecutable federal case here.

-----Original Message-----
From: Pilger, Richard
Sent: Wednesday, September 22, 2010 11:08 AM
To: Smith, Jack; Hulser, Raymond; Shur, Justin
Cc: Simmons, Nancy
Subject: RE: 501 non profits

It would be good to gear up some enforcement, but very challenging as criminal work in the near term unless there is coordination with campaigns. Absent coordination, the Department's way in is probably most directly through Tax Division (or at least Tax Division has standing to see it that way, and probably owns charging approval). Once engaged with investigators, the government will still have the problem highlighted in the article, i.e. the government hasn't got a clear regulatory standard, so trying to get out in front with Klein conspiracy cases would pose the type of problems that has led us away from criminal enforcement in prior campaign finance inquiries.

-----Original Message-----
From: Smith, Jack
Sent: Tuesday, September 21, 2010 9:52 PM
To: Hulser, Raymond; Shur, Justin; Pilger, Richard
Subject: 501 non profits

Check out article on front page of ny times regarding misuse of nonprofits for indirectly funding campaigns. This seems egregious to me - could we ever charge a 371 conspiracy to violate laws of the USA for misuse of such non profits to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)?

IRS Comssioner sarah ingram oversees these groups. Let's discuss tomorrow but maybe we should try to set up a meeting this week.

SFC 003915

[redacted]

Subject: 501 non profits

Subject: 501 non profits
Location: Jack's office

Start: Wed 9/22/2010 4:00 PM
End: Wed 9/22/2010 4:30 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Smith, Jack

SFC 003916

[redacted]

From: Pilger, Richard
Sent: Wednesday, September 22, 2010 2:59 PM
To: Simmons, Nancy
Subject: Meeting with jack at 4 re 501 cases -- he forgot to include u on that calendar invite thing

Richard C. Pilger
Director, Election Crimes Branch &
Senior Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
SFC [redacted] (f)

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SFC 003917

[redacted]

Subject: Possible 501 / Campaign Finance Investigation

Subject: Possible 501 / Campaign Finance Investigation
Location: Jack's Office

Start: Thu 9/30/2010 12:30 PM
End: Thu 9/30/2010 1:00 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Tentatively accepted

Organizer: Smith, Jack
Required Attendees: Shur, Justin; Simmons, Nancy; Pilger, Richard; Hulser, Raymond

When: Thursday, September 30, 2010 12:30 PM-1:00 PM (GMT-05:00) Eastern Time (US & Canada).
Where: Jack's Office

Note: The GMT offset above does not reflect daylight saving time adjustments.

~~*~*~*~*~*~*~*

SFC 003918

[redacted]

From: Lerner Lois G <[redacted]>
Sent: Saturday, October 02, 2010 8:49 PM
To: Pilger, Richard
Subject: Re: Meeting

Sure-that's a good idea. I have a meeting out of the office Monday morning, but will try you when I get back sometime early afternoon. You can try me at SF [redacted].
Lois G. Lerner----------
Sent from my BlackBerry Wireless Handheld

From: Pilger, Richard <[redacted]>
To: Lerner Lois G
Sent: Thu Sep 30 09:32:38 2010
Subject: RE: Meeting

Hi Lois—it's been a long time, and you might not remember me. I've taken on Craig's duties. I'm looking forward to meeting you. Can we chat in advance? I'm at SF [redacted].

From: Brown Cynthia A [[redacted]]
Sent: Wednesday, September 29, 2010 6:06 PM
To: Pilger, Richard
Cc: Lerner Lois G
Subject: RE: Meeting

Mr. Pilger,

Sorry, Ms. Ingram is not available to meet with you, she has arranged for Ms. Lois Lerner, Director of Exempt Organizations to meet with you. Ms. Lerner may be reached at [redacted]@irs.gov.

Thanks,
Cynthia A. Brown
Staff Assistant
Office of the Commissioner (TE/GE)
Office Telephone: 20 [redacted]
VMS-[redacted]
Fax: [redacted]

From: Pilger, Richard [[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 the SFC Building, SF [redacted]. Thank you for your assistance.

SFC 003919

Richard C. Pilger
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
(SF
(SF [redacted] (f)

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SFC 003920

[redacted]

From: Fitzpatrick, Brian K. <[redacted]>
Sent: Thursday, October 07, 2010 10:49 AM
To: Pilger, Richard
Cc: [redacted] (FBI)
Subject: Re: DATA FORMAT ISSUE -- TIME SENSITIVE

Rich - [redacted] will be attending the IRS meeting with you tomorrow in my absence.

[redacted]

From: Pilger, Richard <[redacted]>
To: Fitzpatrick, Brian K.
Sent: Thu Oct 07 10:44:23 2010
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Got it—20535. See, the prsctrs can investigate too

From: [redacted]@ic.fbi.gov]
Sent: Wednesday, October 06, 2010 6:03 PM
To: Pilger, Richard
Subject: Re: DATA FORMAT ISSUE -- TIME SENSITIVE

[redacted] NW
Room [redacted]
Washington, DC

I need to get the zip for you

From: Pilger, Richard <[redacted]>
To: [redacted]
Sent: Wed Oct 06 17:55:41 2010
Subject: FW: DATA FORMAT ISSUE -- TIME SENSITIVE

[redacted], can you respond with your address?

From: Lerner Lois G [redacted]]
Sent: Wednesday, October 06, 2010 4:34 PM
To: Whitaker Sherry L; Pilger, Richard
Cc: Simmons, Nancy; [redacted] (FBI)
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Thanks guys

Lois G. Lerner
Director, Exempt Organizations

SFC IRS 000034

SFC 003921

From: Whitaker Sherry L
Sent: Wednesday, October 06, 2010 2:11 PM
To: Pilger, Richard
Cc: Simmons, Nancy; [redacted] (FBI); Lerner Lois G
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Raw format it will be. Please send me the address that you would like the DVDs sent to.

Thanks

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone - SF [redacted]
Fax - SF [redacted]
Cell - SF [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[redacted]@irs.gov
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

---

From: Pilger, Richard [redacted]
Sent: Wednesday, October 06, 2010 12:05 PM
To: Lerner Lois G
Cc: Whitaker Sherry L; Simmons, Nancy; [redacted] (FBI)
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.

From: Lerner Lois G [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 IRS 000035

SFC 003922

[redacted]

From: Whitaker Sherry L <[redacted]>
Sent: Thursday, October 07, 2010 10:49 AM
To: Pilger, Richard
Cc: [redacted] (FBI); Simmons, Nancy
Subject: RE: Address for 501 data

Thanks

Sherry L. Whitaker, Manager
SE:T:BSP:SPP
Office Phone - SF [redacted]
Fax - SF [redacted]
Cell - SF [redacted]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[redacted]@S.SF
Life isn't about waiting for the storm to pass ..... It's about learning to dance in the rain

---

From: Pilger, Richard [[redacted]]
Sent: Thursday, October 07, 2010 8:47 AM
To: Whitaker Sherry L
Cc: [redacted] (FBI); Simmons, Nancy
Subject: Address for 501 data

Please forward the properly available IRS 501 filing data to –

SSA [redacted]
FBI
SFC [redacted] NW
Room SFC
Washington, DC 20535

Thanks very much.

From: Lerner Lois G [[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 003924

[redacted]

Subject: 501(c)(4) issues--Meeting with IRS

Subject: 501(c)(4) issues--Meeting with IRS
Location: PIN Chief's Office

Start: Fri 10/8/2010 10:00 AM
End: Fri 10/8/2010 11:00 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Pilger, Richard
Required Attendees: Smith, Jack; Hulser, Raymond; Shur, Justin; Simmons, Nancy

IRS (Sarah Hall Ingram) invited, has not responded yet

SFC IRS 000038

SFC 003925

[redacted]

From: Lerner Lois G <[redacted]>
Sent: Wednesday, January 26, 2011 3:31 PM
To: Pilger, Richard
Subject: RE: Lois, are you available for a call on a new (and sensitive) matter?

you can call now 202[redacted]

Lois G. Lerner
Director, Exempt Organizations

From: Pilger, Richard [[redacted]]
Sent: Wednesday, January 26, 2011 3:30 PM
To: Lerner Lois G
Subject: RE: Lois, are you available for a call on a new (and sensitive) matter?

Thanks Lois, what is your number?

From: Lerner Lois G [[redacted]]
Sent: Wednesday, January 26, 2011 3:27 PM
To: Pilger, Richard
Subject: RE: Lois, are you available for a call on a new (and sensitive) matter?

I'm on the phone, but if you call 10 minutes, I can talk.

Lois G. Lerner
Director, Exempt Organizations

From: Pilger, Richard [[redacted]]
Sent: Wednesday, January 26, 2011 3:25 PM
To: Lerner Lois G
Subject: Lois, are you available for a call on a new (and sensitive) matter?

Richard C. Pilger
Director, Election Crimes Branch &
Senior Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice

SFC 003926

Washington, D.C. 20530
(202) [redacted]
(202) [redacted] (f)

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SFC 003927

[redacted]

From: Pilger, Richard
Sent: Wednesday, May 08, 2013 5:02 PM
To: Lerner Lois G
Subject: RE: Sad news

Yes—my direct is 514-[redacted]

From: Lerner Lois G [redacted]
Sent: Wednesday, May 08, 2013 5:00 PM
To: Pilger, Richard
Subject: RE: Sad news

Thank you for telling me about SFC [redacted]-how horribly sad. Are you available in 10 minutes to talk.

Lois G. Lerner
Director of Exempt Organizations

From: Pilger, Richard [redacted]
Sent: Wednesday, May 08, 2013 3:21 PM
To: Lerner Lois G
Subject: Sad news

Lois, SFC [redacted]

Also, when you have a moment, would you call me? I have been asked to run something by you.

Richard C. Pilger
Director, Election Crimes Branch
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
(202) [redacted]
(202) [redacted] (f)

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SFC 003928

[redacted]

From: Pilger, Richard
Sent: Friday, May 10, 2013 5:27 PM
To: Hulser, Raymond
Subject: FW: Follow-Up Meeting

FYI in progress

From: Lerner Lois G [redacted]
Sent: Friday, May 10, 2013 4:47 PM
To: Pilger, Richard
Cc: Marks Nancy J
Subject: Follow-Up Meeting

As I mentioned on the phone, I am out of town next week, but Nan Marks, TEGE Commissioner Senior Technical Advisor, will be working on trying to schedule the right folks for a meeting. Her number 202 [redacted].

Lois G. Lerner
Director of Exempt Organizations

From: Pilger, Richard [redacted]
Sent: Wednesday, May 08, 2013 5:02 PM
To: Lerner Lois G
Subject: RE: Sad news

Yes—my direct is 514-[redacted]

SFC 003929

[redacted]

From: Donsanto, Craig
Sent: Friday, March 06, 2009 2:32 PM
To: 'Lerner Lois G'
Subject: RE: Campaign Finance Reform hits Sudan!!

And as always, Lois - - you were clairvoyant! I missed this one. It's quite funny.

-----Original Message-----
From: Lerner Lois G [mailto:S[redacted]@irs.gov]
Sent: Friday, March 06, 2009 2:30 PM
To: Donsanto, Craig
Subject: RE: Campaign Finance Reform hits Sudan!!

Before I even looked at the top I said to myself--this should be in the Onion!!!

Lois G. Lerner
Director, Exempt Organizations

-----Original Message-----
From: Donsanto, Craig [SFC[redacted]
Sent: Friday, March 06, 2009 1:27 PM
To: mshonkwiler[SFC[redacted]; Simmons, Nancy; Welch, William; Williams, Grace; Pilger, Richard; Lerner Lois G; nb[SFC[redacted]; Hoff, David (USAILC)
Subject: Campaign Finance Reform hits Sudan!!

I just got this from Marcin Walecki, who's a fellow at IFES (with whom I at one time travelled to some of the World's true Hell Holes. Marcin is an internationally known authority on the subject of the corruptive effects of mixing money and politics in emerging democracies.

In this one, Sudan's National Legislature -- fresh off seeing its President indicted by the International Court in The Hauge -- tries to replicate the BCRA in local terms.

http://www.theonion.com/content/node/29567?utm_source=onion_rss_daily

SFC 003930

From: Siegel, Nicole (OLA)
Sent: Thursday, July 01, 2010 4:31 PM
To: 'Lowe Justin'; Giuliano Matthew L; Beckwith Andrew D; Parrish Matthew C; Patel Neil R; Buller Siri; Jarrin Pilar; Brown Chelsea E; Strelka Andrew C
Subject: RE: HH next week?

I'll do my best. Would be great to see you all (besides my monthly cubicle drop bys).

For your afternoon amusement my new favorite tea partier . . . he's coming for you . . . .
http://voices.washingtonpost.com/right-now/2010/06/gather_your_armies.html

Nicole M. Siegel
Attorney Advisor
Office of Legislative Affairs
U.S. Department of Justice
Office SFC [redacted]
Cell SFC [redacted]
[redacted]

From: Lowe Justin [mailt [redacted]@irs.gov]
Sent: Thursday, July 01, 2010 9:27 AM
To: Giuliano Matthew L; Siegel, Nicole (OLA); Beckwith Andrew D; Parrish Matthew C; Patel Neil R; Buller Siri; Jarrin Pilar; Brown Chelsea E; Strelka Andrew C
Subject: RE: HH next week?

What, no shatner pic from hizzhonor?

From: Giuliano Matthew L
Sent: Thursday, July 01, 2010 9:25 AM
To: Lowe Justin; 'Nicole.Sieg SFC [redacted]'; Beckwith Andrew D; Parrish Matthew C; Patel Neil R; Buller Siri; Jarrin Pilar; Brown Chelsea E; Strelka Andrew C
Subject: RE: HH next week?

Sounds good.

From: Lowe Justin
Sent: Wednesday, June 30, 2010 5:29 PM
To: 'Siegel, Nicole (OLA)'; Beckwith Andrew D; Giuliano Matthew L; Parrish Matthew C; Patel Neil R; Buller Siri; Jarrin Pilar; Brown Chelsea E; Strelka Andrew C
Subject: HH next week?

Hey guys, it has been a while since we did a happy hour and there are a few new people in the office. How about meeting at Cafe Asia after work next Wednesday (7/7)?

Tea Party

From SourceWatch

The **Tea Party Movement** is a political movement that gained national attention in the summer of 2009 when organized protests occurred at Congressional town hall meetings on healthcare reform. The **Tea Party** itself is not a political party; it is a conglomerate of loosely affiliated "grassroots" organizations such as the Tea Party Nation, Tea Party Patriots, Tax Day Tea Party, and others. While the Movement has no formal political affiliations, many members endorse Republican candidates for office. There is also a **Tea Party Caucus** in the United States Congress. Although the **Tea Party** has no official platform, most of the groups associated with the Movement share the same basic ideological position on domestic and foreign affairs in that they are anti-government, anti-spending, anti-immigration, and anti-compromise politics.[1]

While promoted as a spontaneous "grassroots" movement, many of the activities of Tea Party groups were organized by corporate lobbying groups like Freedomworks and Americans for Prosperity.

Koch Wiki

The Koch brothers -- David and Charles -- are the right-wing billionaire co-owners of Koch Industries. As two of the richest people in the world, they are key funders of the right-wing infrastructure, including the American Legislative Exchange Council (ALEC) and the State Policy Network (SPN). In SourceWatch, key articles on the Kochs include: Koch Brothers, Koch Industries, Americans for Prosperity, American Encore, and Freedom Partners.

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Financial support

In an article in the August 30, 2010 issue of *The New Yorker* magazine, author Jane Mayer links the billionaire brothers David Koch and Charles Koch, owners of Koch Industries to tea party movement funding. Mayer writes,

SFC_003932

> The anti-government fervor infusing the 2010 elections represents a political triumph for the Kochs. By giving money to "educate," fund, and organize Tea Party protesters, they have helped turn their private agenda into a mass movement. Bruce Bartlett, a conservative economist and a historian, who once worked at the National Center for Policy Analysis, a Dallas-based think tank that the Kochs fund, said, "The problem with the whole libertarian movement is that it's been all chiefs and no Indians. There haven't been any actual people, like voters, who give a crap about it. So the problem for the Kochs has been trying to create a movement." With the emergence of the Tea Party, he said, "everyone suddenly sees that for the first time there are Indians out there—people who can provide real ideological power." The Kochs, he said, are "trying to shape and control and channel the populist uprising into their own policies.[2]

Reports indicate that the Tea Party Movement benefits from millions of dollars from conservative foundations that are derived from wealthy U.S. families and their business interests. It appears that money to organize and implement the Movement flows primarily through two conservative groups: Americans for Prosperity and FreedomWorks.

In an April 9, 2009 article on *ThinkProgress.org*, Lee Fang reports that the principal organizers of Tea Party events are Americans for Prosperity and Freedom Works, two "lobbyist-run think tanks" that are "well funded" and that provide the logistics and organizing for the Tea Party movement from coast to coast. *Media Matters* reported that David Koch of Koch Industries was a co-founder of Citizens for a Sound Economy (CSE), the predecessor of FreedomWorks. David Koch was chairman of the board of directors of CSE.[3] CSE received substantial funding from David Koch of Koch Industries, which is the largest privately-held energy company in the country, and the conservative Koch Family Foundations, which make substantial annual donations to conservative think tanks, advocacy groups, etc. *Media Matters* reported that the Koch family has given more than $12 million to CSE (predecessor of FreedomWorks) between 1985 and 2002.[4][5]

Koch Industries has denied specifically funding Freedomworks or tea parties directly, however. The company's director of communications wrote ""Koch companies value free speech and believe it is good to have more Americans engaged in key policy issues. That said, Koch companies, the Koch foundations, Charles Koch and David Koch have no ties to and have never given money to FreedomWorks. In addition, no funding has been provided by Koch companies, the Koch foundations, Charles Koch or David Koch specifically to support the tea parties." Koch's director of communications did affirm, however, that the company funds Americans for Prosperity (AFP). TPM's Lee Fang reports that "AFP was founded in part by the company's Executive Vice President, David Koch. He is currently the chairman of the board of the Americans for Prosperity Foundation." [6][7]

Media Matters also lists the Sarah Scaife Foundation as having given a total of $2.96 million in funding to FreedomWorks.[8] The Sarah Mellon Scaife Foundation is financed by the Mellon industrial, oil, and banking fortune. [9]

The Claude R. Lambe Foundation, also controlled by the Koch family, has donated more than $3 million to Americans for Prosperity. [10]

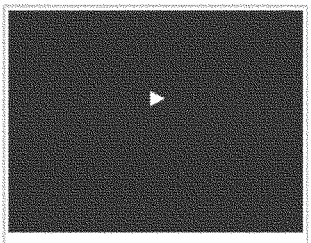
Media support

Fox News support

The Tea Party has also gotten substantial support in the form of promotion from Fox News Channel and its talk show hosts, including Glenn Beck. Karl Frisch of *Media Matters* wrote that Fox News "frequently aired segments imploring its audience to get involved with tea-party protests across the country." Fox has also provided organizing information for the events on air and online. [11]

Media Matters also noted that,

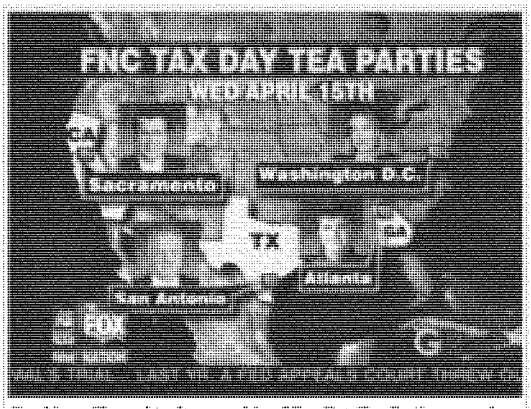
> While discussing the April 15 protests on his April 6 program, Glenn Beck suggested that viewers could "[c]elebrate with Fox News" by either attending a protest or watching it on Fox News. Beck stated that in addition to himself, hosts Neil Cavuto, Greta Van Susteren, and Sean Hannity would be "live" at different protests. While Beck spoke, on-screen text labeled those protests as "FNC Tax Day Tea Parties." [12]



Brendan Steinhouser, Dir. of Federal and State Campaigns for FreedomWorks, discusses FreedomWorks' role in organizing Tea Party movement events

Tax Day Tea Party protests

The Tax Day Tea Party protests first occurred on April 15, 2009. This event was organized by Americans for Prosperity (AFP) and Freedomworks, corporate astroturf organizations. Freedomworks hosted the Tax Day Tea Party again in Washington, D.C. again in 2010[13] According to Freedomworks, "On Tax Day, April 15th, hundreds of thousands of Americans will protest big government around the country. They will protest in big cities and small towns, from Los Angeles, California to Burlington, North Carolina."[13]



Fox News Channel took ownership of Tax Day Tea Parties around the nation by promoting them on-screen as "FNC Tax Day Tea Parties"

The Tax Day Tea Party is an organization of the Tea Party Movement now known as the **Patriot Action Network** (PAN). According to its website, the Patriot Action Network "is the official news, resource and social network of Grassfire Nation. PAN comprises a family of dozens of websites designed to help patriotic citizens get informed, engaged and networked with like-minded citizens....PAN seeks to provide patriots with a new level of networking resources as we serve the Tea Party/Patriot movement.[14] According to its website, "Grassfire Nation -- a division of Grassroots Action, is a privately-held Internet activism services organization that provides news, information and grassroots activism services and strategies to individuals and organizations.[15]

Articles and resources

Related SourceWatch articles

- Tea Party Nation
- Astroturf
- Dick Armey
- Front groups
- Grassroots
- Koch Industries
- Missouri puppy mills & Prop B
- Tea Party Patriots
- Tea Party Express
- FreedomWorks
- Citizens for a Sound Economy
- Americans for Prosperity

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Tea Party Platform - The Platform of the Tea Party Movement

Tea Party Movement

The History of the Tea Party

The Tea Party Movement has grown quickly as an American grassroots movement aided by social networking sites such as Twitter and Facebook as well a viral videos. The loyal following grew to include many who felt taxes and spending were excessive and leading to the country's demise.

Santelli Viral Video Responsible for Rise of Tea Party Movement

CNBC reporter Rick Santelli is often credited with the birth of the modern-day Tea Party movement. It all happened when he was reporting live from the Chicago Mercantile Exchange on February 19, 2009 and began expressing his disgust for a government proposal to assist homeowners who were facing home foreclosures refinance their home mortgages.

"Do we really want to subsidize the losers' mortgages?" Santelli asked, adding "This is America! How many of you people want to pay for your neighbor's mortgage that has an extra bathroom and can't pay their bills?"

Santelli then said that he wanted to organize, in July of 2009, a Chicago Tea Party so that capitalists could dump "some derivative securities into Lake Michigan." A video of Santelli's rant went viral on the internet on YouTube and within weeks the era of Tea Party protests all around the United States had begun.

However, giving Santelli all the credit for the birth of the modern-day Tea Party movement wouldn't really be fair since others had been conducting similar protests, laying the groundwork for the grassroots movement to really take hold.

Below is a date by date Timeline of the Tea Party Movement which accounts for the other people who have played a role in the rise of the Tea Party movement.

Tea Party Platform - Tea Party Movement

Timeline of the Rise of the Tea Party Movement

1990s - During this decade and even earlier anti-tax protesters were known to use the theme of the Boston Tea Party as a rallying point for Tax Day protests (on April 15).

December 16, 2007 - Ron Paul, a Republican Party Congressman, commemorates the 234th anniversary of the Boston Tea Party as part of a fundraising event for the presidential primaries. Among the issues advocated were an end to the Federal Reserve System and fiat money. Also advocated was an upholding of States' rights and an end to U..S. involvement in Afghanistan and Iraq.

January 24, 2009 - Trevor Leach who was serving as the Young Americans for Liberty in New York chairman was the organizer of a "Tea Party" protest against more than one hundred taxes (including an "obesity tax") being proposed by the state's governor, David Paterson.

Also protested was the government's overspending. Some of the protesters at this event were adorned with the traditional headdresses of Native Americans like the colonists in the original Boston Tea Party wore during their protest when they threw tea in the Boston Harbor to protest British taxation.

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February, 2009 - A conservative Seattle blogger named Keli Carender organizes a protest which did not use the term "Tea Party" but carried a similar theme.

The protest took place in Seattle on February 16, 2009 on the day previous to the signing of the stimulus bill by President Obama. Carender called the event a Porkulus Protest and it was attended by about 120 people though they only had four days notice at most.

Among the many calls Carender made to draw interest to the event was a call to Michelle Malkin who was a contributor to Fox News and a conservative author. Carender requested that Malkin use her popular blog to publicize the event.

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February 27, 2009 - Carender holds a second protest and the attendance is more than double of the first protest.

April 15, 2009 (Tax Day) - Twelve hundred people gather for a Tea Party protest.

February 19, 2009 - Rick Santelli, a Business News editor for the CNBC television station, is broadcasting live from the floor of the Chicago Mercantile Exchange when he began commenting negatively on the government's plans to refinance mortgages in the U.S., which had been announced by the government on the previous day.

Among Santelli's comments were claims that the government was "promoting bad behavior" because it was subsidizing the mortgages of "losers." During his complaints about the government program Santelli suggested to his viewing audience that they should all hold a "tea party" on July 1, 2009 so the traders could dump their derivatives in the Chicago River.

The traders who were near Santelli on the trading floor cheered when they heard his comments and the show's hosts in the CNBC studio also displayed amusement at his comments. A video of this then became viral on the internet after it was shown on the Drudge Report.

Within a day a website called ChicagoTeaParty.com was live on the internet (the site was originally registered in August of 2008 by Zack Christenson, a radio producer in Chicago) and the website reTeaParty.com was purchased with the goal of coordinating Tea Party protests and demonstrations that were being organized for July 4, 2009.

Santelli's comments on the trading floor and the resulting publicity is believed by most to be the primary event that led to the rapid rise of the modern-day Tea Party movement and the coalescing of many people around the term "Tea Party" to signify a distaste for particular government actions.

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February 20, 2009 - A Facebook page is set up to rally people to organize Tea Party protests nationally. The result was the coordination of a Nationwide Chicago Tea Party protest in forty different cities on February 27.

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February 27, 2009 - The first modern-day Tea Party movement to take place on a national scale occurs.

March 4, 2009 - The website reTeaParty.com is receiving substantial traffic reported at up to 11,000 visits per day.

September 20, 2010 - Barack Obama attends a CNBC-sponsored town hall discussion during which he says that the challenge "for the Tea Party movement is to identify specifically what would you do" in regards to where spending should be cut.

April 15, 2009 - Newt Gingrich, the former Speaker of the House, talks at a new York City Tea Party rally.

January 19, 2010 - A special election to fill Ted Kennedy's Senate seat leads to the election of Scott Brown who has significant Tea Party support.

April 13, 2010 - Tea Party supported Charles Perry is victorious in the GOP primary against an established Republican opponent, the incumbent Delwin Jones. Perry wins unopposed in the general election on November 2, 2010.

May, 2010 - Rand Paul, backed by the Tea Party, wins the Super Tuesday GOP Senate primary in Kentucky against established Republican Trey Grayson. Paul gets about sixty percent of the vote and states that the Tea Party movement is about "saving our country from a mountain of debt." Rand goes on to win the Senate seat.

May 8, 2010 - The established Republican Senator Bob Bennett from Utah is defeated in the GOP primary by Mike Lee, an attorney from Utah. Lee's victory as seen as a Tea Party movement success as the Tea Party was against the return of Bennett.

June 8, 2010 - Established Republican party candidate Diane Gooch is defeated by Tea Party supported Anna C. Little in the New Jersey's Republican congressional primary.

July, 2010 - Michele Bachman, a U.S. Representative and a Republican from Minnesota, forms and chairs the House congressional Tea Party Caucus which focuses on the principles of the Tea Party movement including limited government, adhering to the United States Constitution, and insisting upon fiscal responsibility. In August of 2010 the Tea Party Caucus was comprised of forty-nine Republican representatives.

After the Caucus was formed Michele Bachman raised $10 million for the MichelePAC political action committee and funds were distributed to the election campaigns of Rand Paul, Marco Rubio, Sharon Angle and Christine O'Donnell.

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August 24, 2010 - United States Senator Lisa Murkowski is defeated by Joe Miller, an Alaska lawyer with Tea Party backing. Murkowski had been appointed to the Senate seat by her father, Frank Murkowski, the state's governor, who had held the Senate seat for three decades before becoming governor. Murkowski remained in the race as a write-in candidate and then won in the general election.

September, 2010 - The group Tea Party Patriots announces an anonymous one million dollar donation.

September 12, 2009 - A Taxpayer March on Washington is organized and Tea Party protesters walk towards the U.S. Capitol.

November, 2010 - In the midterm elections, nine candidates for the Senate and 129 candidates for the House receive significant Tea Party support. They are all Republicans and they upset established Republican party candidates in numerous primaries.

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Facts About the Tea Party Movement

The Tea Party is an American grassroots movement which is considered to be a populist movement of United States citizens advocating reductions in taxes and government spending.

Other major issues of the Tea Party Platform include reducing the U.S. National Debt and the budget deficit of the government. May Tea Partiers advocate for adherence to the United States Constitution and in particular prefer an originalist interpretation of that founding document.

The name Tea Party refers to the Boston Tea Party of 1773 in which the colonists were protesting taxes on their tea by the British. The protest involved throwing tea from ships in the Boston Harbor into the ocean. The colonist's rallying cry was "No taxation without representation."

Because the modern-day Tea Party movement is not a registered political party it's name has not yet appeared on any election ballots. The Tea Party movement does endorse candidates for elected office.

In the November 2010 midterm elections the Tea Party movement was shown to have a significant influence in helping the candidates the supported get elected. In that election all Tea Party supported candidates were members of the Republican party.

Because the modern-day Tea Party movement is a grassroots movement of local as well as national groups there is no one central leadership of the Tea Party movement.

Each Tea Party group determines its own priorities and sets its own agenda, though there are loose affiliations between groups and communication for the purposes of organizing particular Tea Party Protests and Tea Party demonstrations.

Some of the rallying points for Tea Partiers and issues against which they rallied to protest include the bank bailouts, stimulus spending, and health care reform.

In most all cases the underpinnings of the Tea Party movements protests and demonstrations involve advocating for reduced federal spending, the elimination of deficit spending, and the need for politicians to listen to the will of the people.

Thanks for visiting Tea Party Platform to read about the Tea Party Movement

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CQ CONGRESSIONAL TRANSCRIPTS
Congressional Hearings
Sept. 18, 2013 - Final

House Ways and Means Subcommittee on Oversight Holds Hearing on Oversight of the IRS Exempt Organizations Division After the Treasury Inspector General for Tax Administration's Audit

LIST OF PANEL MEMBERS AND WITNESSES

BOUSTANY:

Welcome to this afternoon's hearing on the Internal Revenue Service's Exempt Organizations Division. In May, the Treasury Inspector General for Tax Administration released an audit exposing the Internal Revenue Service's practice of targeting applicants for tax-exempt status base on name and policy position. The audit confirmed what many feared that the IRS was treating applicants differently based on their beliefs by subjecting them to endless delays and intrusive information requests. Today, we want to bring that disinfecting sunshine to the audit branch for the IRS as well.

Since the release of the Inspector General's report, the Ways and Means Committee has sought to determine the extent of the targeting and who is responsible. Additionally, we are working to ensure that the IRS is addressing the failures or wrongdoing that led to the targeting and making progress to restore the public trust in the agency.

To date, committee staffs have reviewed a total of 25 IRS officials and is reviewing -- I'm sorry, interviewed a total of 45 IRS officials and is reviewing roughly 300,000 internal IRS documents that have been provided. And while the investigation is far from over, it's now possible to make some provisional findings. We now know that in May of 2010, Lois Lerner, the former head of the Exempt Organizations Division, currently unpaid administrative leave, was told that Tea Party cases were being held pending guidance from Washington, D.C.

We now know that Lois Lerner took a special interest in Tea Party based -- on the Tea -- in the Tea Party based on an e-mail sent to colleagues in February of 2011 saying that "the Tea Party Matter was very dangerous," and in a follow-up e-mail suggesting how to deny the applications. We now know more then 298 applications were put on hold. And from Committee review of each individual case, investigators discovered that 246 or 83 percent were right leaning and 29 or 10 percent were left leaning. Of the right leaning groups, only 45 percent have been approved, while 70 percent of the left leaning groups have been approved. 100 percent of the groups with "Progressive" in their name were approved. We now know that of all the groups that were inappropriately subject to demands to divulge their donors, 89 percent were right leaning. And we now know four months after the audit's release, there continues to be some confusion in Cincinnati about how to handle so-called advocacy cases.

Investigations often take unexpected turns, and this one's no exception. In the fall of 2010, Lois Lerner explained to a group of Duke University students that following the Citizens United decision, 501(c)(4) organizations were getting involved in political activity. She said, and I quote, "Everybody is screaming at us, fix it now before the election." End quote. But Lerner explained, "I won't know until I look at their 990s next year whether they have done more than their primary activity as political or not, so I can't do anything right now."

To date, the investigation's focus has been on IRS' handling of applications for organizations seeking exemption. But Lerner's remark -- her remark which she said and I quote again, "I can't do anything right now," raises questions over the role of the Examinations unit which handle form 990s, the annual form that's filled by exempt organizations. Since spotting the issue, the Committee has begun to pursue a new branch of the investigation that is whether Lerner used the Exempt Organizations' examinations unit to target right leaning groups. Keep in mind, this is different from the determinations unit where the investigation is focused so far.

The Committee has discovered that among the hastily approved applications for exempt status in the early summer of 2012, a large number were flagged for IRS surveillance by Washington, D.C. Of those flagged, more than 80 percent of the groups were right leaning. The IRS surveillance program called a Review of Operations is conducted by the EO Examinations unit in Dallas and involves the monitoring of a group's activity. The consequence of being in the program is that surveillance can lead to an audit.

Additionally, we discovered that, through a process approved by Lerner, EO examinations itself flags groups for surveillance based on complaints received from inside and outside the agency. 94 percent of all organizations flagged for surveillance by the Examinations unit were right leaning. But most startling in all of these, of the organizations referred for audit from this process, 100 percent were right leaning.

To highlight the question of whether the examinations process is unbiased, the IRS informed the committee two weeks ago that it had suspended both surveillance -- the surveillance orders from D.C. and the audits pending further review.

News

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Four months after Lois Lerner's apology for the targeting, there are many questions that are still outstanding, and frankly, we still don't have all the answers that we need. What is clear is that the IRS faces a long road to recover its reputation, and the only way to get there is through transparency and accountability.

And with that, I'd be happy to yield to the Ranking Member, Mr. Lewis from Georgia, for an opening statement.

LEWIS:
Thank you very much Mr. Chairman. I want to thank you for holding today's hearing on Internal Revenue Service. I'm pleased to have Acting Commissioner Werfel before us today. I look forward to discussing the positive changes Mr. Werfel has made as result for the recommendation from his study day report.

From the outset, the Democrats have been crystal clear on this issue. The IRS was very wrong to use inappropriate criteria to single out organizations by name, rather than by actual activities, when processing tax exempt applications. Mr. Werfel, we appreciate the swift action you have taken to restore the public trust and to enhance and targeting of the IRS. We believe you're on the right path and we value your effort as we move forward.

Unfortunate, my friends on the other side of the aisle continue to frame this issue as a partisan one, as only effective and conservative group. Time and time again. The facts have shown that both Republican leaning and Democratic leaning groups was bringing (ph) out during the application process. In fact, the IRS Inspector General appointed our former President Bush justified many times on oath that he found no evidence of political motivation in a selection of tax-exempt application. These offers also find no evidence of political motivation as we're doing over 5,500 e-mails from IRS employees.

We know why we are here today. For republicans who just strike us from their lack of a positive legislative agenda to improve the economy, create jobs, and fund the government. In fact, a report released by the IRS Inspector General on yesterday stated the enforcement collection was down by $5 billion as 9 percent in fiscal year 2012 because a budget cut. The sequester is harming government operation. We need to be focused on any sequester and creating livable jobs.

I reach each and every member of this committee to come together and join a bipartisan effort. We must help the IRS, improve its service to the American people, (inaudible) continue rolling it to cast partisan blame.

Mr. Commissioner, I look forward to you and from your testimony and thank you very much. And that, Mr. Chairman, I yield back.

BOUSTANY:
I thank the Ranking Member. Now, it's my pleasure to welcome our witness today, Mr. Daniel Werfel, Acting Commissioner of the Internal Revenue Service. Acting Commissioner Werfel, thank you for joining us today. I know you've been very busy and we appreciate you being here with us today to provide testimony.

The subcommittee has received your written statement and it will be made part of formal hearing record. As customary, you'll have five minutes to give your oral remarks. And now, you may begin sir.

WERFEL:
Chairman Boustany, Ranking Member Lewis and members of the subcommittee, thank you for the opportunity to appear before you today to discuss current practices and procedures of the IRS Exempt Organizations division. The IRS has been moving aggressively to implement the robust action plan outlined in my 30-day report to correct the problems with 501(c)(4) application process described in the TIGTA report released in May. Through this action plan, we are making improvements throughout the Exempt Organizations area and are undertaking a major effort to examine other aspects of IRS operations to reduce future risks to the tax system.

The progress we are making is fostered by the new leadership team and solve within EO and also in the top echelons of the agency. The leadership team blends management experts from outside the agency with long-time IRS leaders from other divisions who have proven track records in their areas of expertise. Our progress is also a testament to the dedication and commitment of the employees within our determinations unit and throughout Exempt Organization.

The last few months have been extraordinarily active ones. We are carrying out a robust project management plan coordinated by the Commissioner's office to implement more than 60 action items. These 60 plus items encompass the nine recommendations included in the TIGTA report as well as other actions we are taking. Highlights of what we've accomplished to date include the following.

First, we have improved the screening criteria for applications for tax event status. Since the BOLO lists were suspended in June, we have issued guidelines and instructions to EO personnel requiring screening assessments to be based on activity, not names or labels.

Second, we have strengthened checks and balances in cases where additional detailed information is needed to process an application for tax exempt status. Managers are now reviewing these requests before they are sent out and we are working to standardize their language.

Third, we have enhanced training for the Exempt Organizations personnel in the proper ways to review applications to determine the extent of political campaign activities. Verbal and written instructions have been issued to managers and screeners and we are working to incorporate this information into our formalized instruction, particularly the Internal Revenue Manuals.

Fourth, we have reduced the inventory of 501(c)(4) applications including the group of 132 cases pending for 120 days or more as of late May. As of last week, 91 of those 132 cases or 69 percent have been closed of which 70 applications were approved. This includes 36 organizations that took advantage of a self-certification option we recently offered.

Fifth, we have broaden our scope beyond 501(c)(4) case inventory to also investigate ways to reduce the inventory of applications for 501(c)(3) status.

Sixth, we have launched the enterprise Risk Management program which will enhance our ability to identify and manage future risks wherever they may exist within the IRS.

Seventh, we are using a Lean Six Sigma management methodology within Exempt Organizations to and to further improve the determinations process and more efficiently process applications.

Eighth, we are implementing a comprehensive plan for reviewing audit selection criteria throughout the IRS to ensure fairness and impartiality.

And ninth, we are working with the National Taxpayer Advocate to increase taxpayers' awareness of mechanisms at their disposal for resolving issues within the IRS.

Amidst all the efforts the IRS is making to improve operations, we are still mindful of the responsibility we have to ensure tax compliance. While we work to ensure fairness and efficiency in making determination to that tax exemption, we will continue to uphold the law as it relates to Exempt Organizations and we will continue to meet our obligation to grant Tax-Exempt status only to those organizations that are fully eligible.

We are also mindful of the need to be transparent and to work closely with Congress. We seek to be as responsive as possible to request for information from congressional committees in order to help them carry out their responsibility to oversee our agency and its operations. For example, we have reviewed and produced roughly 390,000 pages of documents in response to requests from this committee. We still have a great work to do in setting a course for the IRS and many challenges remain, but I believe that we are moving in the right direction and we'll continue to make progress in the weeks and months ahead.

This concludes my statement and I'll be happy to answer any questions that you have.

BOUSTANY:
Thanks Mr. Werfel. And let me start by saying we received a number of documents for the end of August and we appreciate that. And we still have outstanding request in place and we expect that you'll continue on the same path to get these documents to assist quickly as possible.

WERFEL:
We will.

BOUSTANY:
One of the -- one of the alarming findings so far in our investigation is the effect or seaming effectiveness IRS surveillance program and trying to get a better handle on. The IRS gives it the name Review of Operations as part of the examination's program, but under the program, the IRS -- IRS may lack a compelling reason to deny an organization Tax-Exempt status that organizations approved but then the IRS then, I guess, secretly decides to keep tabs on it, monitoring the group's website and public documents and activities.

Sometimes, this can turn into a full blown audit, and worse of all, just based on some of the statistics we've seen in this, it appears that right leaning groups were targeted almost exclusively in, you know, statistics don't lie, I mean, we have statistics, so just to review that again, of all the groups, EO determinations referred to the surveillance program, 83 percent were right leaning. Of all groups selected for surveillance, 94 percent were right leaning. And finally, all groups that were subjected to surveillance were selected for a full blown audit, a 100 percent of them being right leaning.

I want you to give me that -- could you explain that because we saw those numbers and it certainly raised flags.

WERFEL:
I can explain. I can offer some additional information in context.

First of all, I think we need to pause on the numbers that you are reporting because I think there maybe some discrepancies between the information that -- that I have. There's...

BOUSTANY:

Well, this is the information we have...

WERFEL:
Right.

BOUSTANY:
...in these documents.

WERFEL:
Part of the challenge here in a limited time is to explain the -- the process for the Review of Operation so there's some background in context. You've referred to it earlier as secretive and intend to not be secretive at all and answer any questions that you have about that process.

But the way the process works in it as we get referrals for Exempt. We got referrals from Exempt from other part of the IRS. We get referrals from Exempt from other agencies and government, from members of Congress, from members of the public. And the question is how do we deal with all those referrals and how do we decide what to do with them in terms of whether an entity is an Exempts warranted or not.

And we have set up a process called the Review of Operations where if the referral is about the question of whether an entity is engaged in political activity such that it would potentially call into a question their tax exempt status, we set up a process to deal with that type of referral.

And we have someone in our examinations process who looks at that referral, and if it is a political and they determine that is political, we'll send it to a reviewer in the rule or the review of operation, and they will take a look and they will assess it, and research it, and determine is this a case that's potentially where they have exam and what priority should have been placed. So they'll take that case and know make it decision. They might decide know exam is necessary, they might decide an exam is appropriate, and they might decide it's high priority, or they might decide an exam is appropriate and they might decide medium priority.

If they decide that there's an -- that an exam should be happen -- should heppen, they will forward that to a committee and we call it the Committee of Three. And these are made of three people experienced civil servants, foreign (ph), or management officials and they decide by majority of votes whether yes, in deed, this referral does warrant an exam...

BOUSTANY:
So that's going to be unanimous vote, right? Unanimous by the three-person panel?

WERFEL:
It's my understanding, its majority, but I'll get confirmation for you on that...

BOUSTANY:
OK, I know.

WERFEL:
...OK? Now the numbers that you were -- and so there's a whole sub-statistics that I can try to get. I don't have that on my finger tips. But the numbers that you were citing related that came to something different. And that is, is that, at some point in a process, the determinations unit before I arrived and as the events in the TIGTA report were unfolding, the determinations process was forwarding certain applications to the rule for potential consideration, potential future action. And there were 60 somewhat odd cases that we forward for the review. And that's the numbers I think that you were citing.

But there's a whole broader set of referrals that coma into the rule and the percent of what's on one side of political spectrum or the other is something I don't have at my fingertips now.

BOUSTANY:
If I understand this correctly, these -- the numbers I cited, you're saying that these came directly from the determinations unit and not from outside sources to the examination?

WERFEL:
It came -- so these referrals came from the determination unit. But let me finish the story here which I think its important, which is when I install new leadership into EO, a gentleman by the name of Ken Corbin who's our Acting Director of Exempts Organization, he immediately sent those 60 right back to determinations unit and ask them to re-look at the issue because what Ken is doing, what Mr. Corbin is doing is essentially reviewing all the procedures associated with EO in general. That includes determinations, that includes exams. And he's taking

certain steps to make sure that everything is re-baselined and that everything that moves forward is done over appropriate safeguards. So all the numbers that just cited, all of those are no longer with the -- (inaudible), they've all been sent back.

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BOUSTANY:
If's my understanding that these numbers were -- these were numbers referred to exam, these were flag cases that then 100 percent of those that got audited were right leaning groups. And the others were referred to, but the number...

WERFEL:
Let me clarify that too. There's been no audit. In fact, and I know this is a question that the committee may have and I'm happy to delve into it. There have been no exams that have been completed of any organizations for political -- potential political activity from 2012 through 2013, and we're still in a period of suspending all exams. And if the exam was started, the taxpayer was contacted and said we are suspending the exam. Why? Again, because when I sent new leadership in, Ken Corbin, I ask him to make sure if all the appropriate safeguards are in place to ensure fair, effective, efficient process within EO. And so we paused any exam while we could examine in this entire process that you're referencing to make sure that it has those appropriate safeguards. And we will re start exam when that review is done and when we have assurances that all the safe guards are appropriate.

BOUSTANY:
Because these -- the cases I'm referring to were all -- they were referred by Dallas. These were already in Dallas, referred by Dallas for audit.

WERFEL:
Right, those 60 cases, and again, those had been sent back to Dallas and are no longer on a path towards potential exam at this time.

BOUSTANY:
So that whole process is on hold.

WERFEL:
The whole process is on hold.

BOUSTANY:
OK. Because, I mean, the bottom line is we want to make sure that this process is fair and the proper safeguards. And I know, according to IRS, the three-person committee process as put in place is "to ensure equity transparency that no one individual could select organizations within certain classification for examination...

WERFEL:
Absolutely.

BOUSTANY:
Right. Yes. So, as we look at this examination process, and again, we are - we've just started going down this pathway, do you have any information to suggest that Lois Lerner sought to influence in a particular audit selection decision?

WERFEL:
I had -- let me start with this, that we have safeguards in place that would prevent an individual from doing that. And you just describe, we have the...

BOUSTANY:
Well, that's a statement, but we're not sure if the process -- I mean, one thing to have, the directive, we're worried about the fact that, you know, with the numbers I cited that perhaps we saw some intervention.

WERFEL:
I have no evidence that I'm awara of where you can say from point A that an individual on the IRS directed that a certain audit should or shouldn't happen and that it actually did or did not happen. And...

BOUSTANY:
You can't rule it out yet though. You can't rule out that there were some nettling with...

WERFEL:
Well, we're working through all the documents and we're looking at all the issues and, you know, sending all those documents to you. And to the extent, there's something that should be flagged and looked at, we're ready to flag it and look at it. But I'm not aware, again, of this situation in which an individual intervened to make sure an entity got audited or not audited, and that actually happens.

BOUSTANY:
One last question.

WERFEL:
Yes.

BOUSTANY:
Did Lois Lerner seek to intervene in the examinations process or audit process?

WERFEL:
I'm aware, but I can't fully answer that question because all those documents in the Lois's e-mail file need to be further reviewed. I will say this, that there were e-mails that we turned over to you based on your request. Again, part of the -- my message here and part of my focus point is ensuring transparency. So you have the full compliment of Lois Lerner's e-mails. And there are certain documents that raised questions. And when I looked at them, I thought they raised questions.

And so what I've done is I provided the ones that I thought -- I've got them all to you. The ones that I thought raised questions, I provided directly to TIGTA. And I also provided them to the accountability review board within the IRS which is set up to review this matter to see what actions may warrant personnel action or discipline. And so a lot of these e-mails need to be looked at, they need to be evaluated, they need to be better understood, and so we're in the process of doing that.

BOUSTANY:
Right. And you could understand, when we saw the -- those initial numbers and then Lois Lerner's statement, you know, that I can't do anything right now, raise the flag. And so the fact that you cannot rule this out, that she sought to intervene in the process, the examinations or audit process, is something we need to continue both. You have to pursue, we have to pursue it.

WERFEL:
Yes, I provided relevant documants to the right processes including your committee to further pressure test on these questions. But again, one of the keys to my focus point is making sure that going forward, there are specific safeguards in place to prevent it. I don't know that it happened. I have no evidence that points to that someone influenced and we actually had an audit decision changed. But what I do now is right now, Ken Corbin and the team are looking to make sure that there are appropriate safeguards at every angle so that none of this -- no risk of undue influence in this process could ever occur.

That being said, I don't know and there's no evidence that it did occur. But there are e-mails that you referenced that we are looking at and asking questions about.

BOUSTANY:
And I will hope that if you do find the evidence in your review that there wes undue influence trying, you know, buying anyone, if the IRS trying to influence that process, that you would share that with us promptly.

WERFEL:
Absolutely. I've mentioned sort of a couple of times, just worth reiterating. I have two very critical focus points, so what I think is most important from you to be doing right now. One is making sure I'm getting all the facts for the relevant party seeking those facts including your committee and other committees, and two, fixing the problems within the Exempt Organization unit. And we heve -- we are to an extremely strong start in doing so.

BOUSTANY:
Thank you. Mr. Lewis?

LEWIS:
Thank you very much, Mr. Chairman, for yielding. Thank you, Mr. Commissioner, for being here. Let me just ask you, have there been any finding to date that the processing of tax exemption application was political motivated?

WERFEL:

No, I'm not aware of any finding of that -- like that.

LEWIS:
Have there been any finding that the process of tax exempt application was influenced by anyone outside the IRS?

WERFEL:
No, I'm not aware of any evidence of that.

LEWIS:
You don't have any proof, you don't have any...

WERFEL:
No.

LEWIS:
...in a knowledge of anything like that?

WERFEL:
I do not.

LEWIS:
Based on your review, what organization that represented most side of the political spectrum bring up for additional review?

WERFEL:
Yes, there were -- there was what I'd like to call diversity across the political spectrum at various stages of the process, diversity in -- beyond the lookout list, diversity in the type of agencies that perceived unnecessary questions. There were activities across a political spectrum.

LEWIS:
Mr. Commissioner, if my understanding that the IRS's Inspector General released a report yesterday saying that the year 2012 enforcement collection was down by $5 billion. That's 9 percent. Could you please explain how budget cuts have reflected the IRS operation? What effect has the sequester had on the ability to collect revenue and provide taxpayers service.

WERFEL:
It's been significant. We are down from fiscal year 2010 to the present roughly $1 billion in budget authority. Our staffing is down by 8,000 or 9 percent staffing reduction. And that has an impact. The IG report that was issued yesterday is a manifestation that these budget cuts have consequences. Those consequences include less people on the job, doing debt collection, doing enforcements, and we are down -- actually $7 billion in revenue from enforcement between 2010 and 2012.

And it also impacts our ability to serve the taxpayer. We don't have as much as many people on the phones answering questions, and therefore our metrics in terms of ensuring that we're serving tax payers and getting their questions answered are down, things like our tax payers assistant centers have reduced hours and some of them are closed.

So across the board, you know, our budget cuts are having an impact. Now, we are doing everything we can to work effectively and efficiently within them. And we're cutting costs wherever we can. We have 68 percent cut in our travel training, 45 percent cut in other travel, we've cut our printing by 30 percent, we've cut professional and technical services by 25 percent. So we're doing what we can to stem the impact of these budget cuts, but the reality is they are taking a toll on our mission critical operations.

LEWIS:
Mr. Chairman, last question. Let me just ask you, Mr. Commissioner, initial 30-day report, new leadership has been installed at all five levels of management responsible for Exempt Organizations including top IRS leadership. As a result of those actions, what improvements have you seen in the agency?

WERFEL:
I think there's been significant improvements, and it's, you know, it's a blend. I mean, myself I brought some expertise to the table. I brought in two individuals in particular from outside the IRS that are long civil servants, republic sector expertise. What I did that I think was very important is I brought in expertise from other parts of

IRS. Like Heather Maloy who is the head of our Large Business Division, was the Acting Commissioner -- Acting Deputy Commissioner for Service and Enforcement. And she has been overseeing working with Michael Julianelle who's now the Acting GED Commissioner, and Ken Corbin. All of these folks have IRS expertise from elsewhere.

They're working closely with the EO determinations unit. And I've said -- I said it in my statement. And there's a dedicated team of people in the EO Determinations Office that are working really hard. And the changes -- it's (inaudible). And we really are reengineering the process. And this is an unfortunate situation, and in my 30-day report and today, I'll reiterate. There's some very serious concerning findings from that TIGTA report that needs to be corrected.

But there are some -- I think exciting changes that are starting to take hold within EO. For example, the self-certification process that we'd put in place. We now have a process where a taxpayer can get a quick streamlined C4 approval just by certifying to certain commitments in terms of not spending a certain amount of the resources on political activity. And we've had 36 applicants that were on this backlog for a long time. And all they had to do is come in, sign the certification, and they were good to go with their C4 approval. That's the type of change and reform that I think is going to help us manage our backlog going forward.

And I can go on and on, but there are very specific changes, both to improve our safeguards, our controls, and our checks and balances, and also to improve the customer -- the taxpayer's experience by giving them streamlined options, a bit in this process and the ability to manage their process through the IRS more effectively.

It's been a very busy few months.

LEWIS:
And thank you very much, Mr. Commissioner. I yield back.

BOUSTANY:
I thank the gentleman. Ms. Black.

BLACK:
Thank you, Mr. Chairman.

On this, Mr. Werfel, TIGTA reported that in addition to inappropriately screening applicants for tax event status, that the IRS also took additional step of requesting donor information.

WERFEL:
Yes.

BLACK:
This is particularly dangerous because a confidential donor name, if released through the application process, would be subject for disclosure. So despite assurances that the donor lists were destroyed, this committee's investigation has found that the sensitive donor information remains in the IRS files for these groups, putting these individuals at risk for even further targeting.

Mr. Werfel, can you assure us right now that these donor lists are not being use to target donors?

WERFEL:
Let me answer the question in two parts. One, I just learned last night about the potential presence of these donor lists which were intended to be destroyed. And I'm not exactly sure yet why the media is reporting or there was a press realease, I think. I think we -- this committee and my team need to get together to understanding exactly why this committee believes that those donor lists were not destroyed as intended because they were supposed to be destroyed in the August 2012 timeframe. If they have not been, if you have evidence that they not been, then we need to -- because maybe, for example, that we gave you a case file before August 2012 and that you found it in there before we put our destruction order in, there may be some other explanation or we may have missed it. And if we did, we need to figure out why we missed and make sure it gets destroyed.

Your second question, absolutely, my commitment. One of the absolute fundamental directions that I have provided and my team is operating on is there is no longer, in any way, shape, or form, is acceptable to use a label or aname in order to screen an applicant for additional scrutiny. It has to be based on activity. It absolutely has to be based on activity. And we are doing everything in our power to make that as clear as possible, to put it in to our written guidance and instructions, to have on-site review of managers of that fundamental principles because that did -- that's exactly what the TIGTA report found in May, that we're using labels or names to drive decisions in terms of whether a taxpayer receive extra scrutiny. That policy is no longer in place at the IRS and we're doing everything in our power to make sure that it's abided by.

BOUSTANY:

The gentleman would yield. It's my understanding, you know, from staff that those case files were submissions from the IRS to our committee.

WERFEL:
And I just don't know the time -- in other words, what I want to make sure, and again, I've just learned this information last night. One of the possibility is that it could be is that you're reviewing a case file that went over before a destruction order went in, or maybe not. Maybe there was a -- there was an intent to destroy all of those donor lists that were obtained and should not have been obtained. And for whatever reason a donor was did not get destroyed, then I need to do two things. One, make sure that is destroyed, and two, to figure out what went wrong in our process that it flipped through. And I commit to doing both those things.

BOUSTANY:
Thank you.

BLACK:
Let me now go to staying on the topic of donor list to remind you of the statement made by your predecessor, the Acting Commissioner, Mr. Miller, at the committee's hearing right here in May. And Mr. Miller tried to dismiss these requests as innocent mistakes. And we're on so far as to say, "More then half of those were not Tea Party cases that got these donor lists requests, by the way." That answer was misleading and the committee's investigation has now established 24 out of 27 groups asked for donor information were right leaning.

That's right, it was an overwhelming majority. 89 percent of all groups inappropriately asked for donor names were right leaning groups. Your own report indicate that the IRS has not been forthcoming or accurate in this response to Congress about targeting. Are you looking who's responsible for briefing Mr. Miler on the facts which appeared to be intended to mislead? And can you tell us who would've told Mr. Miller to say this?

WERFEL:
A couple of things. First of all, I think, again, this maybe an area where my staff and your staff can get together on the numbers because we have different number than you have. So we just need to come together, cooperate in a collaboratively way and figure out, make sure that we have -- and maybe your numbers are right, maybe our numbers are right, but I'm just pointing out at the potential discrepancy.

To answer your other question, again, my focus point is making sure that all the facts are put on the table for the appropriate committees and processes to review. So, all of the information that you requested and you just suggested needs to be investigated, I would agree. I want to investigate every single element of the IG report and make sure that we understand root cause, what happened, who needs to be held accountable, what needs it.

And therefore, we're working very closely with the Inspector General, providing all the documents that we're providing to you, to them. In fact, flagging some of them and saying this is one that you may want to look into. They're conducting interviews with employees in conjunction with the Justice Department to get to the bottom of this issue. And I'm absolutely committed to making sure the IG, the Justice Department, this committee and other committees have access to IRS employees that you want to interview, access to all the documents that you're requesting. And together, we can have a -- an approach that gets to the bottom of these questions. And as important, division (ph) for the IRS or to be successful on all the reforms I outlined today.

BLACK:
Thank you, Mr. Chairman. I yield back.

BOUSTANY:
I thank the gentlelady. Mr. Davis, you're recognized.

DAVIS:
Thank you very much, Chairman. Let me thank you for holding the hearing. And I thank you Mr. Werfel for being with us to -- this afternoon.

Could you walk us through an application, say, when a person submits an application or a 501(c)(3) or (c)(4) approval?

WERFEL:
I can. I can. So what happens is they get the application -- and the first person at the IRS to touch it would be what we call a screener. OK. And the application is Form 1024 and you can pull it down off the IRS website and take a look at it.

The Form 1024 has two parts. I think this is important. Part one deals with the identity of the applicant, information about who they are, their name as an example. And part two is a description of thair activity. What activity are they planning to engage in or will engage in as a 501(c)(4).

You know, as a backdrop, I think it's important to note that under the law, they don't have to come in to apply to be a 501(c)(4). They can be a 501(c)(4) and just file a return at the end of the year that says that they were 501(c)(4). But there is an option to come and get an -- so this is the taxpayer's option come in and get this approval.

Now, what happens is the screener takes a look at it, and one of the important points that exist today that is absolutely critical is the screener is reviewing it without regards to any of the identity information in part one. They only look at part one for completeness. And there are very specific instructions now to the screeners that that's the only thing they should be looking at part one for, just, is it complete?

Then they turn to part two and completely divorce and separate from anything that was in part one, they make an assessment about the activity. And looking at it, they may determine, (inaudible), and many times, they do. But there's no political activity that's anticipated here or it's very demanding (ph). And they were what call close it in merits (ph). They will approve it without any further development. And that happens, and it happens often.

They may say that -- they may market to what's called intermediate processing where they don't have a significant number of concerns, but there's a missing pieces to the applications, missing consent, they just want to get confirmation, so the market is intermediate. Or they have questions. And it's going to be a more fuller review. And we call that full development. They look at the activities and they see things in the activity description that the applicant has provided that raised potential questions that there maybe, for example, significant political activity that goes beyond what's allowed in the tax code and relevant Treasury and IRS regulation.

So, they will say, for example, let's say they market full development. And then it goes to a manager. And a manager will assign the cases they receive to an agent to start working the file. So if it's a full development case, they will assign it to an agent and said, "Here's a full development case for you to look at it and work through." So, one of the things that would happen at the agency -- to the agent at this point in time will determine, "Well, because there's some questions there, I'm going to ask the taxpayer what they meant by certain things so we can get a handle on the nature of how much political activity they're going to be involved in," because that's what the law requires. We have to figure out not the type of political activity. It doesn't matter what the name of the party is and what they're (inaudible), it's, are they spending a certain level of their resources on political campaign intervention.

And so they'll ask the taxpayer a question. Under our new process, that agent cannot go ask questions of the taxpayer without a manager reviewing those questions and making sure that the appropriate form and content. This is one of the reforms we've made based on the findings in the TIGTA report that we're asking unnecessary and burdensome questions.

So now, we have specific instructions, new training for our managers and our staff to say this is the appropriate scope of a question you can ask. And we're also developing right now a process where we're going to put together standardized questions. These are the questions that you asked. Don't -- there's no creativity here. There's a standard template. You, this committee, will get to understand what that standard template is so you can give us feedback as an example in terms of appropriate form and content. And that will take some of the subjectivity out of it.

Based on the answers we get back from the taxpayer, in terms of their -- in response to those questions, we can then make an assessment. We may make an assessment. This all make sense now. Now, that they clarified, it looks like there's a relatively limited amount of political activity. Let's approve it. Or, they could say, you know, this raises more questions. I'm going to go back to the taxpayer again, and if I do, again, the manager has to approve the questions. Or, you could get a sufficient amount of information. Honestly, this looks like a denial. And asking the taxpayer the questions they've revealed to us that there is going to be a substantial amount of political activity, political campaign intervention that this applicant is going to engage in.

So, I'm going to propose a denial even at that point and time. After all that, you still haven't denied. What you've done is you sent another letter to the taxpayer and saying, "Based on all these information, I believe there's a denial that's pending." And then the taxpayar has an opportunity to respond again and even seek a meeting with that agent and the agent's manager. And if it can't be resolved at that point, then a final denial letter is issued. And even then, the taxpayer still has another recourse which they can go to the IRS Appeals Division and appeal that.

So that's the process, and then, actually, on the critical things that we've trained on, again, is in that part one, part two distinction. Very clear that when you're screening the applicant, you only work at part two to determine activity in tarms of whether that they should be approved or further developed. And the other key change is when before we ask taxpayer questions to confirm, we get managers to review those questions, we've retrained the managers in terms of what the appropriate (inaudible) and content of questions are, and we're working towards standardized questions to take any subjectivity out of it. That is the process in a nutshell I've tried to amplify where we've made some improvements.

DAVIS:
Thank you very much. Thank you, Mr. Chairman.

BOUSTANY:

I thank the gentleman. Ms. Jenkins

JENKINS:
Thank you, Mr. Chairman. Thank you for holding the hearing and thank you for being here. Let's pick up where you left off because in your 30-day report, you said you are no longer going to slag organizations based on name alone.

WERFEL:
Correct.

JENKINS:
And you are sure that organizations are going to be judged on the contents of their application where you (inaudible).

WERFEL:
Correct.

JENKINS:
And even in your written testimony, you talked about the IRS's new enhanced training which you just went through again, yet committee interviews with IRS employees indicate that instructions given by managers regarding the screening of Tea Party groups hasn't changed. In fact, a Cincinnati screener told the committee that his manager's instructions were to send Tea Party applications to a secondary screening. And I just can't realize how you can explain this because you sent out memo after memo that appears that the policy in substance hasn't changed at all.

So, I guess what I'd like to hear is what then beyond sending a memo to ensure that the managers' directives are not leading traditional targeting because it certainly doesn't sound like the enhanced training is working at all.

WERFEL:
So, let me respond with couple of points. First, with regard to the transcript that you're referencing, at first, I'd only look at the same strips (ph) of that transcript. I haven't seen the full transcript, and I think if I could see the full transcript, I could get a better sense of the employees' questions, issues, potential confusion, but not having seen the full transcript is challenging.

When I saw a broader transcript, I was able to detect at least, and again, I want to be careful about reaching full conclusions without the full transcript, that I think what the employee was indicating that in the absence of the BOLO list and of an abundance of caution, I'm pushing things to my manager as things settle out and I got what I'm supposed to do which is different than an ongoing, you know, use of political label as part of this systemic program. It's more of, as I look at the broader excerpt, more of as we transition from BOLO list to non-BOLO list, I'm seeking help from my manager on a broader set of cases to make sure that everything is good.

Now, what we did as soon as we saw that transcript excerpt, just having an abundance of question and not having seen the full transcript, was I immediately had the manager, again, issue another memo clarifying, just to make sure everyone's clear. I had them pull the entire team together, go over the memo, make sure everyone understood the exact requirement here that names, labels are no longer relevant, and that you don't need to send something to your manager simply because you're seeing name on a file. That is not appropriate, you send something to your manager if you see activity on the file that raises questions if you have a question for your manager, but the name is irrelevant. The only thing you need to know about the name is the name is completed, and you have that that type of information.

And I've asked Ken -- Ken Corbin, the director of this organization, to be very focused on it. And he's reported back to me that he continuously re emphasize it with the team. He even told me that he will sit side by side with team members on the floor in Cincinnati if they're going through this to make sure they understand in a post-BOLO environment exactly what to do.

I would love to see that full transcript come back and answer more questions about it. In the interim, I want to assure you that we take any such concern or potential confusion that an employee has seriously and I have reemphasized a number of times through written, verbal and trainings instructions for the staff that the name has to be irrelevant. The only basis by which to move an application for any further review is activity and activity alone.

JENKINS:
Well, sometimes, that may not be enough. There might need to be a consequence for a mistake like this because I have the transcript that I'm sure you've read all of the relevant parts because they are asked currently today. And this is well passed to the date that we were assured this was no longer going on. That was back in June. It

says as of August 1st, asking currently if, today, a Tea Party case were to come out and come before you, would you treat a Tea Party group as a political advocacy case even if there was no evidence of political activity on application, is that right? And the answer is plain as day based on my current manager's direction.

I don't know how you can read that any other way, and I'm just frustrated because it sounds like somebody made a mistake, no one is being held accountable. And when my constituents make a mistake on their tax return, there's a consequence. They get a penalty; they get interest on top of the penalty. They get subsequent audits. Their companies get audited, and yet, this is the kind of a shoddy workmanship that we see and it's based on political targeting and that's just unacceptable. I hope there'll be a consequence.

WERFEL:
Well, let me -- I know we have a limited time, but let me just make this point. That the entire framework that led to this confusion was identified in the figure four and we are going to a process to ensure accountability for those leaders and managers who were responsible for letting this emerge and not doing enough to prevent it and offer clarifications.

As I've said many times, that from where we are right now, compared to the day the TIGTA report was issued, every single leader in the leadership chain, from the commissioner down to the lowest level senior executive in this chain of the IRS is now replaced to the different leader. And that's part of the process, and we still have more work to do but the notion that there's no accountability is not correct. There is, I think, a significant accountability underway and in process to make sure that mistakes that were made, poor judgment that was happening is dealt with, with respect to these individual employee, and I really feel like I need the full transcript to understand the issue and the context. But I can assure you, we are doing everything we can to make sure these instructions are clear.

BOUSTANY:
Mr. Marchant.

MARCHANT:
Thank you, Mr. Chairman. This administration brought in to get to the bottom of this. To find out if there was politically motivated actions by the IRS and to take corrective action. You agree with that?

WERFEL:
Yes. I was brought in to help facilitate a process to make sure that all the facts were uncovered and that I correct the problems within this area of the IRS.

MARCHANT:
How is it possible that your investigation so far which had them included reviewing the e-mails of Lois Lerner and the e-mails that you have submitted to the committee. How is that possible that you've reached the conclusion that there was no political motivation?

WERFEL:
I haven't reached that conclusion. What I've said and let me clarify and I appreciate the question. The conclusion that I've reached is that there's more work to be done, there's more we haven't -- we're going to (inaudible) for every documents to this committee, but, you know, we have more documents and process and I committed to the chairman earlier to get those documents.

What -- where I see things right now is when I see a problem or an issue with the document and there's certainly questions that are raised into the documents that we've provided, I immediately provide them and flag them for the Inspector General who is working with the Justice Department to further review and investigate.

Where we are right now on September 18th is we have a lot of different facts out there and they need to be synthesized, and they had not yet been synthesized yet. I think Mr Lewis pointed to findings and evidence of different types of political groups receiving extra scrutiny. And so that has to be factored in and balanced against some of these other questions.

MARCHANT:
But reclaiming my time Mr. Werfel, if after everything that we have seen over the last month...

WERFEL:
Yes.

MARCHANT:
..it really now appears that there was really more political activity going on in the IRS than among the groups that the IRS was investigating. What is the -- what is the current employment status of Lois Lerner?

WERFEL:
She is technically still employed by the IRS.

MARCHANT:
Do you have any press in the history of the IRS where a high ranking IRS official took the fifth amendment before a standing committee of the House of Representatives and remained in employment?

WERFEL:
I'm not aware of that press, and it have to do...

MARCHANT:
That's why other people back in my district have lost confidence in this process, have lost confidence in this investigation and really are being -- becoming very suspicious about the fact whether we will really every get to the bottom of this. Do you -- what do you intend to do as all of these e-mails come forward, as you see growing evidence? You said you've asked the Justice Department to step in. Have you ask the Justice Department...

WERFEL:
There's a -- when I arrive at the IRS back in late May, already in place was a joint TIGTA Justice Department investigation. And on my first or second day there, I met with the Inspector General and he explained the rules. He explained to me how the investigations is -- what my role was, what his role wes. I'm going to -- I went to do everything by the book within appropriate legal requirements and follow all of relevant laws and regulations. I will not do anything outside of the strict laws, regulations and processes that govern this investigation. But within those lines, I am being as absolutely aggressive as possible in making sure that all the facts and all the relevant information gets into these parties.

I hava, for example, this is in my testimony, 150 people, many of them attorneys at the IRS working day and night to get this nearly 400,000 pages of documents up to you so you can do exactly what you should be doing which is raising questions about.

MARCHANT:
The other issue. When I go back home every weekend and I talk to the groups in my district that are still waiting, some of them over the years, still waiting for just a simple yes or no. And the assurance have been given by you, your predecessor, and by the IRS that that process has been streamlined, that it's been -- that it's getting attention, these people back home deserve an answer.

WERFEL:
They do. I agree.

MARCHANT:
Please follow through up on this.

WERFEL:
I will. It pains me too. And I'm doing -- I assure you, we're doing everything we can to re-look at this process to make sure that it moves more quickly and swiftly. It's too slow right now, I absolutely agree. But the reforms that we put in place, and I'm happy to send more time with you and your staff detailing exactly how we're looking at the reengineering these processes to make these improvements. We're going to do everything in our power to make sure that they take effect and take effect quickly.

MARCHANT:
Thank you.

BOUSTANY:
I thank the gentleman. Before I go to Mr. Rangel, Mr. Werfel...

WERFEL:
Yes.

BOUSTANY:
...could you clarify first right now, what is the complete C3 and C4 backlog? Do you have those numbers?

WERFEL:

I do. The overall backlog combined C3, C4 is 65,213 applications as of August 23rd, 2013.

BOUSTANY:
That's the combined number?

WERFEL:
That's combined for C3 and C4.

BOUSTANY:
OK.

WERFEL:
Yes.

BOUSTANY:
And maybe you can get us the split that's going...

WERFEL:
Yes, I don't have the exact split. It's mostly C3.

BOUSTANY:
OK.

WERFEL:
And that's because -- and that's only because we get many more C3 receipts. So, for example, I do know in the chart I have here that so far year to date we've received 58,000 roughly C3 applications, we've received roughly 13,000 C4 applications. So you can do some rough percentages to get the 10, 20...

BOUSTANY:
Yes. And one last question on that, how many of those or, you know, we use by a year or more?

WERFEL:
That, I would have to get back to you on...

BOUSTANY:
OK.

WERFEL:
...Mr. Chairman...

BOUSTANY:
You could do that. You want to make sure the process is not (inaudible).

WERFEL:
It's -- no, yes, absolutely. You should absolutely have those numbers. What I was just telling to Marchant, you know, it is -- it's a process that needs fixing and we are fixing it.

BOUSTANY:
Thank you. Mr. Rangel.

RANGEL:
Mr. Chairman, thank you so much for this courtesy. And let me thank you for your public service. I know you've heard it before, but Republicans and Democrats truly believe that the integrity of the tax collection service, that fairness is so necessary if we are going to have the successes we've had in the past. And so I want to make it clear that it's not so much whether or not that we're dealing with the question of honesty and dishonesty, but even the perception in the taxpayers not getting aid (ph) is the primary thing that we have to live with.

Now, I want to ask a question. Do you see any reason why any political activities and/or should enjoy tax exceptions?

WERFEL:
So that's a question that I don't think it's my role as Acting IRS Commissioner to answer. I have a responsibility to affect and implement the tax code and the...

RANGEL:
We'll try to frame the question in one that you could answer because you are an expert in tax rule (ph) and this tax rising (ph) to many. We know there are (inaudible) posted for us in regulations, but in addition to that, you're supposed to give us advice as to how we can perfect and make they system better.

WERFEL:
Let me answer the question this way.

RANGEL:
Good.

WERFEL:
I think, you know, obviously, the tax code says -- and I think this maybe what you're reading (ph). The tax code indicates that a C4 organization has to be exclusively in a business of social welfare. In 1959, a Treasury regulation has issued that the (inaudible).

RANGEL:
I know.

WERFEL:
Now, this...

RANGEL:
I saw this from the beginning. Do you think we should be involved in any tax exempt privilege used for political activities?

WERFEL:
I don't have an opinion on it. I don't have...

RANGEL:
(inaudible). As a tax expert, do you think we need incentives with people to make contributions toward a tax codes (ph)?

WERFEL:
I'm completely focused on administration and implementation of the tax code.

RANGEL:
OK. Well, it's my fault because my intent is so clear that I have no reason to believe that you should not be able to answer it. But I want to move on and ask you, do you believe that the IRS had the authority to change the legislation to make it possibly a political activity? Do you believe they had the constitutional authority to do that?

WERFEL:
It's a big question, I think...

RANGEL:
I don't want a good question, I'm only asking what you think -- I'm not asking you to be a constitutional scholar, but you are the Acting Commissioner.

WERFEL:
I will say this. I think that transition from the word exclusive in the law to primary in the reg raises questions. And it's for that reason, if you allow me, one of the recommendations the IG had was to engage in a process to re-look at that regulation. And we committed to doing that and we started that process. Treasury issues something called the priority guidance plan and issues what regulations we're going to be pursuing. And we put on that priority guidance plan which is just issued, I think, in August that we will investigate a regulatory process to re-look at this question.

RANGEL:
I don't know what re-look means, but in the -- I'm worried there that you think that political activity should be included under the privilege of tax exemption?

WERFEL:
Basically, what we're going to do is we're going to after the public. And we're going to have a public dialog about this question about of what reg should say. Should it be more narrowed towards exclusive? Should it be more on this spectrum towards primary? We're going to have...

RANGEL:
In -- for all of these questions, if someone ask your opinion, you would say it's up to the people industry that...

(CROSSTALK)

RANGEL:
That you don't think that it's proper for you to give a professional opinion about the existing tax code as you relete to tax preferences for a political activity?

WERFEL:
I think the appropriate lead official for that is the Treasury Secretary. And I think my role is to advise him and others in this process on what is administrable in the IRS, what can we effectively administer within our resources and within our capacities. That's what I think the role of the IRS Commissioner.

RANGEL:
Thank you so much, Mr. Chairman.

(OFF-MIKE)

BOUSTANY:
Mr. Paulsen.

PAULSEN:
Thank you, Mr. Chairman also for holding the hearing.

Mr. Werfel, keeping taxpayer information secure is vital to protect taxpayer privacy, secure (ph) fraud and identity theft, but it's also the law. Leaks of taxpayer information are referred to TIGTA, of course, which investigates each case and then determines whether to refer that case to the Department of Justice for prosecution.

Back in August, you assured the committee that the Obamacare Data Hub would be very secure in securing -- securely conveying taxpayer information. And you said the IRS already transmits taxpayer data, and of 8 million transactions that happened in 2012, there were only 24 improper disclosures of taxpayer information.

Now, committee staffs spoke with TIGTA to verify the number that you provided, the 24 number, and TIGTA said that in 2012, there were actually not 24 but 200 different leaks of taxpayer information reported to TIGTA. Where did you get your information on the 24 number because even TIGTA does not know where that number where that number came from? In fact, just during the course of the last few months, my understanding is that the committee has made you aware of at least eight unauthorized disclosures of confidential taxpayer information.

So how can your groups such as the National Organization for Marriage, of course, will just come up in this hearing after hearing here in this part of the investigation, whose donor information was actually leaked, have any confidence that IRS is going to safeguard that confidential information from public disclosure?

WERFEL:
Well, first of all separating out any specific taxpayer to make sure that I'm clear of any 6103 issues. I'm listing the question up more generally. Let me start with the data discrepancy.

I would love to meet with TIGTA and understand, make sure that we're making the same assumptions. My numbers, I think, were reflecting any data breaches that might have happened by state and local government that are receiving information, for example, on Medicaid, they might have a broader definition of what they're talking about in terms of capturing the 200 versus the 28. So I will work with TIGTA and we will get back to you on a particular reconciliation of those numbers.

The process is extremely robust but not absolutely risk-free. And we are, again, we are required under the law, again, this goes to (inaudible) ability to administer the tax code, to furnish this information to effectively run programs such as Medicaid and now the Affordable Care Act. And we have a very robust plan and action that we

go through to validate the security of that data as it goes, as it leaves the IRS, and in the case of the Affordable Care Act, as it travels through HHS into the exchanges.

And as we get closer to October 1st, we are working extremely diligently with HHS, with the exchanges, to make sure that all those protocols around IT and data security are in place. And they're extremely robust. They're not absolutely risk free, unfortunately. I wish they could be because any breach of sensitive taxpeyer information is enormously troubling and should have consequences. Sometimes, it's inadvertent and the consequences are on the IRS to re- look at our controls and safeguards and updates. Sometimes, it's advertent, and in those cases, we refer those to Justice Department.

PAULSEN:
Let me ask you another question. The dispel any (ph) accusations of wrong doing, your agency released the names of dozens of different targeted groups that had been since approved. However, our investigation has found out that of these groups, 83 percent of those that were flagged for the IRS Surveillance Program, described by Chairman Boustany earlier, just happened to be right leaning. And now, you told us that the surveillance program has been suspended for these organizations.

So the suspension of the program as well as the number has certainly seemed to suggest that extra scrutiny was somehow inappropriate in the first wave. So Mr. Werfel, were agents under instruction to flag right leaning groups for surveillance?

WERFEL:
I'm not aware of any such evidence of that. The reason why we suspended it was out of an abundance of caution. I sent a new leadership team in there and I said, "I want you to make sure that you're comfortable that not only is the process as efficient as it needs to be, not only as it's efficient and meeting the demands of the law, but that all the appropriate safeguards are in place, whether it was mentioned in the TIGTA report or not, I wanted a comprehensive review of all appropriata safeguards.

So in abundance of caution, not because there was particular evidence, we suspended activities until my and new leadership team and effort get comfortable that all the process and safeguards are effective. And it's not going to be forever. We're working very hard to make sure that those confirmations can be done quickly so we can restart this process because exempts is a critical part of what we do in order to enforce the tax code.

PAULSEN:
Are you aware or did anyone inappropriately influenced -- inappropriately influencad the selection of groups -- these groups for surveillance?

WERFEL:
Again, I shrug with the word surveillance, I mean, in terms of referral to the rule (ph) if that's what you mean, I'm not aware of it.

PAULSEN:
Let me just ask you this too. Did Lois Lerner have a role in the way that these groups were flagged or processed?

WERFEL:
Off the top of my head, I don't know that she did but -- specifically, but I will say this, the Director of the Exempts Organization Unit has a responsibility for overseeing the operations. This is one of the operations. I can talk to you about what I think of the appropriate types of overview that that individual should have. And that appropriate (ph) is making sure that doing what I'm doing, making sure we have the right leadership in place, putting in the right processes, the right safeguards. But to the extent it ever would lead into a specific direction that this entity, that the process that should be audited, going in and changing that conclusion, to me that would reach inappropriate behavior.

PAULSEN:
And in this room, I know (inaudible), but you mentioned earlier that Lois Lerner is still on paid leave. How long do you expect that she will be on paid leave? Have you had asked her to resign?

WERFEL:
So let me answer that question. First of all, let me articulate that I can -- under the constraints of the Privacy Act, I can an employee status, but I can't go beyond that. But what I can do is list up out of Ms. Lerner and talk generally about our process. And what our process is that I committed to running a process to ensure that there is accountability for individuals who could no longer hold the public trust because of certain responsibilities they had in the findings of the TIGTA report. That process involved -- I put together an accountability review board

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which is looking at all the documents, all the issues and understanding what different managers or leaders, what responsibilities they had. That process is going through, and looking all those documents and doing those inquiries.

It takes time. I'm as frustrated as anyone. I want the process to go quick, but as we described, there's 400,000 pages of document, so it's not something that can happen over night. What I will say is this, we are making process, we're closer to the finish and we are in the starting line in terms of running through these process. And I expect that in the near term, we'll start seeing conclusions coming out of these processes.

PAULSEN:
And Mr. Chairman, as you know, I mean, this is -- Lois Lerner is the one person who knows the most, who can answer the most and who has refused to testify.

BOUSTANY:
I thank the gentleman. Mr. Kelly.

KELLY:
Thanks Chairman. And, Mr. Werfel, thanks for being here. Can you -- just kind of describe for us what does public trust mean? Define it for me.

WERFEL:
It's only -- I've given a lot of thought about it. Actually, I'm a 16-year civil servant. Public trust involves making sure that we are acting consistent with the principles of the mission of our agency, principles of our impartiality that we're meeting our various ethics, responsibilities, that we're following a rule of law. And I am of, you know, and I think my team would tell you this and it dates back to the course of my career, I'm very stringent around the rule...

KELLY:
And I understand that, I understand that. Then let's move on to Ms. Lerner. How long has she been on leave with pay?

WERFEL:
Again, I wish I could answer that question for you. I potentially could answer that question in a different setting, but because of the privacy, I can't get into the specifics of a given employee personal process.

KELLY:
OK. Well, you told this group that Ms. Lerner was not going to be involved. In fact, it goes on to this that says that the -- you told the committee that Ms. Lerner is on administrative leave, still being paid by taxpayers. She does not have access to any IRS systems, not even her e-mail, and that she has no functional control over any division. In fact, you even hired a new Acting Director Exempt Organization after the TIGTA report. In this committee's investigation, taxpayers are still getting letters signed by Ms. Lerner. Well, this letter I have here is dated August the 7th, 2013, that's why I asked when was she put on administrative leeve? When did she leave the 5fth? And if it's that's the case, why is she still sending out information? (Inaudible).

WERFEL:
I'm not aware of the issue that you're raising. I have never seen the document that you're holding in your hand, and if you provide...

KELLY:
When we got the new folks.

(CROSSTALK)

WERFEL:
I will look into it and get back to you.

KELLY:
And I know you'd say -- please don't take this personally, but I've never seen anybody come here and answer about how many new committees, new panels that you're going to get to and you're going to hold, again, accountability. Who has been held accountable for anything that's happened so far in the IRS?

WERFEL:
Well...

KELLY:
And this is odd, I mean, some people described it as phony scandal. It's not a phony scandal, the only I think phony so far is the investigation of it. Tell me, where exactly are we on this?

WERFEL:
Let me...

KELLY:
The short version. Give me the short version.

WERFEL:
I'll give you the short version of this again. I said it earlier, all five levels of leadership from the commissioner down to the SES in charge are no longer in their job.

KELLY:
I understand that.

WERFEL:
OK, that's one. Two, in order to hold...

KELLY:
But they're still working somewhere. They're still being paid by taxpayers, is that a yes or no?

WERFEL:
Not in all cases.

KELLY:
Not in all cases?

WERFEL:
Yes. In order to hold an individual accountable in the federal government, there is a process. It is one that is driven...

KELLY:
Mr. Werfel, I want you to understand something. You know the American public has heard enough of this. This Washington spin about how people are held accountable. Accountability in Washington has put you into another agency and go to work there. If they're ever holding anybody accountable for wrong doing, you come here today, we're asking you very specific questions.

The first time you came, it was too early to ask you. I understand, this is a great thing you put together for us, this is great. On page 12, you say, "All the various fact finding efforts underway will have a direct bearing and decisions we will make about addition with accountability measures." Consisting with our approach today, if there is sufficient evidence to conclude then an individual can no longer hold a position of public trust with the IRS, we will take appropriate personal action." What is appropriate personal action? Is it being transferred to another agency? Or is it actually holding somebody accountable to the American people the way they would be held accountable if they gave false information or they did something that the IRS didn't find in accordance with what taxpayers supposed to do? See, that's what the disconnect is here.

WERFEL:
Congressman, there are many situations in government where people or an agency move to dismiss or terminate...

KELLY:
I'm not talking about many agents, I'm talking about wrong doing, there is overwhelming evidence right now. And if we're saying that we're just not sure yet, we're not sure with 83 percent of these groups were right leaning, when 94 percent of these groups that are being selected for surveillance are right leaning. The audit selection statistics arising from EO surveillance program are the most alarming. 100 percent of the groups that were audibly selected for a full-blown of audit were right leaning. And we're waiting to see if we can connect the dots to see if there was possibly anything that could have linked this activity at the IRS to wrong doing.

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This is appalling that we even have to have this meeting. And I'm being told that Lois Lerner can take 5th, Loir Lerner is still signing letters on IRS head -- stationery, there's a huge question there. You know, if you are in charge of 97,000 agency that has about $12 billion budget. This is incredible. Interesting how tough it would be, but don't the American people deserve an answer some time about people being held accountable for what they did was wrong mainly to be not just sanctioned, maybe even put in jail for the wrong doing that they did.

I yield back, Mr. Chairman.

BOUSTANY:
I thank the gentleman. Mr. Crowley

CROWLEY:
Thank you, Mr. Chairman. Just a quick follow-up, Mr. Werfel. Are you constrained by law in the action against -- yes or no...

WERFEL:
Absolutely.

CROWLEY:
...against Mr. Lerner? You are constrained by the law?

WERFEL:
In general, I'm constrained by -- and I don't know if I like the word constrained. There is a process, it's a legal process input in place...

CROWLEY:
Can you fire her -- can you fire her today?

WERFEL:
I can not fire any employee today without going through a very robust and thorough process that is set out in law and regulation.

CROWLEY:
Mr. Werfel, maybe what we're suggesting, if the gentleman put a bill in to change the law that exist today...

(CROSSTALK)

CROWLEY:
Then see it forward, Mr. Chairman, I have the time. Can the gentleman can have the ability as a member of Congress to see that bill is forward but not to budget the gentleman with at time. I, by the way, would like budget a little bit myself. So, I'm reclaiming my time.

Thank you for being here today. And thank you, Chairman Boustany, for holding the meeting and hearing in Mr. Lewis as well.

If you were to go the same subcommittee, held the simple hearing on tax exempt division of the IRS and host it, a woman we're speaking about right now, Ms. Lerner, as a witness. I've had hearing -- that hearing was held two days before that same witness, Ms. Lerner, informed the world for implanting questions the IRS has been inappropriately talking civic and public affairs who's seeking nonprofit exempt status. I was actually angry at that -- at this disclosure.

As -- at that hearing, I previously mentioned just two days before her plan to confession. I directly asked about the issue of politicalization at the IRS and was given a basic non-answer. Months later and after several investigations hearings, a lot of noise and unfounded accusations, we've been able to uncover a few important truths that I would like to go through. But what I will suggest is that maybe Ms. Lerner took the 5th amendment because of her attempt to mislead this Congress, this subcommittee at that particular hearing, and two days later planted that question.

Maybe that's why I believe she took the 5th amendment and regardless to any other criminal investigation we're going on, it is a crime to mislead Congress. It is a crime not to be truthful and ask a direct member from this committee and get a nod answer for a full sense only two days later to do what in a public setting.

Now, let me just -- the few important truths, there was no political motivation in the selection of applications review. Both progressive and Tea Party groups received additional review. There was absolutely no interference or coordination in this political targeting by anyone at the White House or Treasury. No IRS agents have ever been

sided or even been accused of forcing their own personal political ideology onto the process of granting nonprofit status. In fact, the screening manager of Tax Exemption Applications is itself identified Conservative Republican as well as the person who first reviewed and screened the application to see if any of them could be approved.

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But America start at something else, something we see all too often in this Congress, a double standard. We saw and we heard it again today, the outrage my Republican colleague that the Tea Part groups were targeted but no similar outrage from progressive groups were targeted. I was outraged as many of my Democratic colleagues were outraged when Tea Party groups were targeted, but I didn't hear that same level of outrage when it was focused on progressive groups.

We have -- well, I'm pleased you are here, Mr. Werfel, to give us a progress report. It is time for this committee to also demand honest answers from the Treasury's Inspector General as well and a complete report on this issue.

No American should be targeted, no American should be targeted for the political beliefs about the conservative or progressive, for this investigation into the abuses of Americans will not be settled until we hear from every party. And that means the time is now for our Republican colleagues to the join us in demanding the answers from the IG.

And speaking of continued abuse of Americans, just a few months ago, I was informed that our Republican colleagues released a bill from the government and include in the continuing resolution language that forces the U.S. government to prioritize its payments so that foreign banks and creditors will always be paid first before any American if our country is to fall from its debt. What this means in the real world is the Republicans that roam the Congress today believe it's OK to bring our nation to the point that it falls on its bills. And if we go with the cliff, mandate to treasury pay foreign credits and banks, like the Bank of China, before social security recipients, (inaudible) pensioners, Medicare recipients, doctors, or just about any other Americans.

Mr. Werfel, I fear that if the Republicans page on the first act is enacted, Americans will see delays and costly denials of their tax refund checks as the dollars will be diverted to pay foreign banks first. Do you have any comment on that?

WERFEL:
Yes, well, you know, there's two issues there. I think government shutdown, there if this the debt limit is breached, it all has extremely chaotic impacts on the government, obviously, but talking specifically about IRS, very chaotic impact on the IRS. And it can, in essence, be in a shutdown situation of the entire -- most of the IRS footprint is shutdown, not all of it but most of it. We can't process taxes, we can't enforce, we can't collect debts. There's so many things we can't do that have a direct impact on our bottom line deficits, so there's irony there. But absolutely, I'm extremely concerned about the mission critical operations to the IRS given the potential for government shutdown.

CROWLEY:
Thank you and thank you, Mr. Chairman.

BOUSTANY:
I thank the gentleman. It's not the intent of the Republican side at all to shut the government down and we're hopeful that we'll get to a solution on this.

And now, I recognize...

(CROSSTALK)

BOUSTANY:
We're recognizing Mr. Reed now.

REED:
Thank you, Mr. Chairman, and thank you Mr. Werfel, and watching -- listening to my good friend from New York, Mr. Crowley, demonstrate that I think Ms. Lerner...

CROWLEY:
Will the gentleman yield?

REED:
No, the gentleman...

CROWLEY:
Are we really good friends now after this (inaudible).

REED:
It sounds to me that Ms. Lerner has very few friends left here on this hill. And then, right, we saw from the testimony or the questioning that Mr. Crowley asked of you and how she misled this subcommittee. So I want to focus in particular on this Ms. Lerner, and Ms Lerner's e-mail. First and foremost, you said you have reviewed e-mail from Ms. Lerner. How many e-mail accounts did Ms. Lerner have?

WERFEL:
I'm only aware of one within the IRS, but I do know that she also used a private e-mail account as well. I don't know if you're going to count that but one e-mail account -- and I do understand through the e-mail discovery that she also used her personal e-mail account.

REED:
She used her personal e-mail account, that's correct. And you have (inaudible), be truthful to us too, Mr. Werfel.

WERFEL:
Helplessly

REED:
So, I appreciate and I just advise you of your responsibility to us. I would like to ask you -- then we have some e-mails that I'd like to go over with you that had been made pretty tough, and display them and ask your input on them. I believe there's three e-mails in particular that I want to look at. Where -- and we could it up on the display the first one where Ms. Lerner is addressing an e-mail to her subordinate. And you see that in the e- mail it says, "Tea Party matter, very dangerous." Have you seen that e-mail before?

WERFEL:
I have.

REED:
And have you talked with anybody in regards to that e-mail as to what that e-mail was intended to mean?

WERFEL:
I did. I asked questions.

REED:
Who'd you ask questions of?

WERFEL:
I asked question of members of my leadership team.

REED:
Who are those leadership members? Name?

WERFEL:
OK. I have my Acting Deputy Commissioner, is no longer the Acting -- Heather Maloy. I talked to Beth Tucker who's the Deputy Commissioner for Operation Support. I talked to Chris Sterner who's the Deputy Chief Counsel. These are just various members of the leadership team...

REED:
Did you have any conversation with Ms. Lerner herself?

WERFEL:
No.

REED:
OK. And when you -- and this is Ms. Lerner's e-mail account. This is from her. This is no doubt coming from her e-mail account, correct?

WERFEL:
That's my understanding, yes.

REED:
So what do you think Ms. Lerner meant when she said, "Tea party matter, very dangerous." In particular, "Very dangerous."

WERFEL:
I will say this, I don't know what she meant but I was concerned when I saw the e-mail. And it's for that reason that I flagged it for the IG and for the Accountability Review Board.

REED:
OK. And let's go the second e-mail that we're going to tag here. This is another e-mail that cama from Ms Lerner's e-mail account. And in that e-mail, it says, "It would be great if we can get there without saying the only reason they don't get a three is political activity." I believe is the full reading of that. And in particular, I direct your attention to the statement, "It would be great if we can get there without saying the only reason they don't get a three is political activity." So I want to ask you a question, where is -- what does "get there" means?

WERFEL:
Again, I don't know.

REED:
Actually again, it's Ms. Lerner's e-mail, correct?

WERFEL:
I agree. I agree it raises the question and the concern, and I think it would be helpful, for example, to talk to people that are on that e-mail chain as well and see if they can help dissect what that means. And it's for that reason that I provided e- mails like these to the Inspector General who's doing those very interviews, and in this committee. And so my hope is that in interviewing thee employees on that chain, we can get a better sense of what she meant there.

REED:
And do you think she wes trying to say that somehow they were trying to approve or deny these applications?

WERFEL:
Part of the challenge, I just don't know teking that at context. But again, we produce these -- I mean, I just want to point out if I could, Congressman. In some ways, this is part of the process working the way it was intended. I made to...

REED:
I'm reclaiming my time, reclaiming my time. I mean, you've found a great pain in the opposition -- members on the other side of the aisle have gone to great pain instead. But there's no political activity here, this was just something that wes across the spectrum. But when you see things like Tea Party is very dangerous, and we need to get there some other ways, and for political activity. That means some bias, and we'll let the American people judgment. So either you're trying to say one thing but this incriminating evidence leads me to believe there's something else going on there.

Let's go the third e-mail, if we could. Are you familiar with this e-mail between Ms. Lerner and some of her staff and other colleagues...

WERFEL:
Yes, I am.

REED:
... in regards to the FEC?

WERFEL:
Yes.

REED:
And it says, "Perhaps the FEC." -- and we're referencing Tea Party applications. And it was in reference to, I believe, a medium article that Ms. Lerner was giving some opinion or expressing some opinion on, and it said that in response to that, "Perhaps the FEC will save the day." Do you know what she was referring to?

WERFEL:

Again, I'm not exactly sure. I would be speculating.

REED:
Do you know what article she was referring to?

WERFEL:
I don't remember off the top of my head but I do remember asking questions and raising a concern and this is the one...

REED:
Sure. And who'd you ask a question?

WERFEL:
My leadership team.

REED:
And did they find to give you any information as to what articles...

WERFEL:
I -- Again, just off the top of my head, I don't remember the exact article. I apologize if you want to...

REED:
Do you remember the substance of the article?

WERFEL:
I -- I don't. I apologize.

REED:
It was something about the Senate activity and the contributions from these organizations going to -- in regards to the Senate majority being held by the Democrats and it was a threat to the Senate majority...

WERFEL:
That's -- OK.

REED:
Does that refresh your memory?

WERFEL:
That does refresh my memory, I appreciate that.

REED:
So when Lois Lerner who is in charge to these applications, the Tea Party applications, makes a statement in an e- mail, "perhaps the FEC will save the day," do you think there's any political connection or opinions she's trying to express this?

WERFEL:
I don't know. The initial conclusion I reached is that it warrants additional questions. It's definitely worth flagging, but I just don't know, just speculation on my part.

REED:
Now, let me ask you -- let me ask you one question. Isn't it true the agency asked Ms. Lerner to resign?

WERFEL:
Again, that's information that's protected by...

REED:
No, it's not. I'm asking what your agency did, it has nothing to do with what Ms. Lerner did or what she did, it's asking what you did on behalf of the agency. Did you ask her to resign?

WERFEL:
Can in consult with my team to make sure, because again, I don't...

(CROSSTALK)

REED:
It's what you did. Did you ask Ms. Lerner to resign?

WERFEL:
I don't want to answer the question unless I got...

REED:
You have an obligation to answer that question as a member of this committee else you will face criminal sanction as a result of it. Did you ask her to resign?

WERFEL:
I'm being told by my attorney sitting behind you that I can not answer that questions under the privacy. I can -- I potentially can answer that...

REED:
Why -- Why is that a privacy act what you did? How is that a privacy act? I want your attorney then to be put under oath and get up here and explain to me, you are not answering my question as to why you did in regards to this investigation.

(UNKNOWN)
Mr. Chairman, the gentlemen yields?

REED:
No I won't yield, I want an answer.

(UNKNOWN)
He's time has expired. Mr. Chairman, the gentleman's time has expired and will yield for question.

REED:
No, I will not yield. I want an answer.

CROWLEY:
Mr. Chairman, point of information...

REED:
You have an obligation...

(CROSSTALK)

REED:
I will hold you accountable. I will hold you accountable...

(CROSSTALK)

BOUSTANY:
Mr. Reed, please stand. Mr. Reed, your time has expired.

CROWLEY:
(inaudible), Mr. Chairman.

BOUSTANY:
You're raising a court of order?

CROWLEY:
Court of order. point of information, I'm asking a question with the committee.

BOUSTANY:
Ask your question.

CROWLEY:
The first...

BOUSTANY:
Be brief about it.

CROWLEY:
Sorry?

BOUSTANY:
Be brief about it.

CROWLEY:
This -- This particular memo in the previous memos, who redacted these memos?

BOUSTANY:
It's my understanding that these redactions are to protect private information...

CROWLEY:
My questions, Mr. Chairman, who redacted the memos? Was it done by the IRS?

BOUSTANY:
The committee staff

CROWLEY:
Can we go back to the first memo, Mr. Chairman? "The Tea Party matter very dangerous." Without knowing what else is behind there, let's take another context. I'm sure Holly's (ph) protection was not important because Holly(ph) is mentioned. I don't know who Holly (ph) is.

BOUSTANY:
The gentleman will -- and...

CROWLEY:
Her...

BOUSTANY:
The gentleman -- well, tha gentlemen's dismissed. Mr. Leven (ph) has access to the -- that information.

CROWLEY:
That's somebody -- that's my question. I asked who redacted it. And unless the public which is before a public committee can see if we have access to it, why is it certain answers were redacted...

(UNKNOWN)
Well, the gentlemen yield. The Gentleman yield.

(UNKNOWN)
I still want the answer of my questions.

(UNKNOWN)
Hold on -- Hold on.

(UNKNOWN)
Mr. Chairman, I don't have the time to yield.

BOUSTANY:
Well, you have not time, so therefore, I...

(CROSSTALK)

BOUSTANY:
Both gentlemen will suspend.

CROWLEY:
We're not friends anymore. Just kidding, just kidding.

BOUSTANY:
Mr. Crowley suspend (ph).

(UNKNOWN)
Thank you. Mr. Leven (ph) has that information that's as more -- as much as I'm going to say about that.

(UNKNOWN)
But, Mr. Chairman, again...

BOUSTANY:
No, no, no.

CROWLEY:
The point information, Mr. Chairman.

(CROSSTALK)

CROWLEY:
What is the purpose of redacting this matter? That's the question that...

BOUSTANY:
Mr. Crowley, you're out of order.

CROWLEY:
Chairman, I'm asking you a simple question. What's the purpose of redacting this thing and not redacting the policy, well, obviously...

BOUSTANY:
The gentleman will suspend. All times has expired. This committee has now reached the conclusion of this questioning of the witness.

Mr. Werfel, I want to thank you for appearing before us today.

WERFEL:
Can I just make one clarification which starts from the series questions?

BOUSTANY:
(Inaudible)

WERFEL:
If the record for this hearing is going to be kept open for a few days, what I like to do, because I really do want to be as responsive as I can, is go back to IRS, confer with my attorneys, what are the appropriate legal constraints I have an answer in the question. If I can answer that question and the record is still open, I will submit an answer officially for the record. If I can not answer that question I'll reach out directly to you, Mr. Reed, explain it and have ourselves together -- us get together in person to work through the issue together. That's my commitment.

REED:
I appreciate it.

BOUSTANY:

SFC 003966

Thank you Mr. Werfel. And as we conclude this, once again, I want to reiterate how important it is to get these documents to the committee so that we can fully investigate this and complete this investigation and being in your best interest, the IRS's best interest and in the best interest for the American people. There are very disturbing things that we found in the documents we've seen so far with regard to the examination process and that we'll going to continue to look at this.

So, Mr. Werfel, we thank you. Please be advised that members may submit additional written questions that can be answered in writing on those answers as well as the questions will be made part of the formal hearing record.

The subcommittee now stands adjourned.

CQ Transcriptions, Sept. 18, 2013

List of Panel Members and Witnesses PANEL MEMBERS:

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REP. LYNN JENKINS, R-KAN.

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REP. CHARLES B. RANGEL, D-N.Y. EX OFFICIO

WITNESSES:

DANIEL WERFEL, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE

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Congressional Hearings
Dec. 10, 2013 - Final

Senate Finance Committee Holds Confirmation Hearing on the Nomination of John Koskinen to be IRS Commissioner, Part 1

LIST OF PANEL MEMBERS AND WITNESSES

BAUCUS:

Committee will come to order.

The famed journalist Grantland Rice once wrote, and I quote him, "You can develop good judgment, as you do the muscles of your body, by judicious daily exercise."

That's a valuable lesson for anyone, especially one who serves the government, and in the wake of the charges of political targeting that erupted last spring, it is vital for those who serve the IRS.

With us today is John Koskinen, the president's nominee to be the commissioner of the Internal Revenue. If confirmed, Mr. Koskinen will face many challenges.

The IRS plays an important role in tax reform. It's key to the Affordable Care Act's implementation, for example, and perhaps most importantly, it must win back the American people's trust.

That means undoing the damage done by the inspector general's reporting on the IRS' handling of 501(c)(4) applications.

The American people were willing to pay their taxes. They understand it's their civic duty, but then there are charges of political bias at the IRS that makes everyone feel like the deck is stacked.

This committee is in the midst of a bipartisan investigation of those charges. In the meantime, IRS needs to do its job in a fair and evenhanded manner. The acting commissioner, Danny Werfel, deserves credit for his steady management assisting (inaudible) the IRS in May.

And last month, the administration proposed clear new standards for the treatment of tax exempt social welfare organizations. That was a positive step, but there's more work to be done.

We need to install new safeguards to ensure the mistakes identified in the inspector general's report don't happen again. Winning back the public's trust will not happen overnight. It will take time, and in Grantland Rice's words, judicious daily exercise of good judgment.

I believe Mr. Koskinen will exercise that judgment. He is the right person for the job, but the task won't be easy. The IRS must be an active partner in tax reform. This committee is hard at work fixing the nation's broken tax code and as we develop ideas, we need the IRS's input.

No reform proposal is worth the paper it's printed on unless the IRS can implement and manage it as intended, and that's why productive communication between the IRS and this committee is so critical.

Last month, my office was to release three staff discussion drafts on tax reform proposals. The first focused on modernizing our international tax system; the second focused on improving tax administration, fighting fraud and making filing safer, easier and more simple.

And the third focused on making the tax code more neutral for American businesses. Now we are gathering feedback on those proposals from stakeholders, from the public and from businesses, and the work will continue. More drafts are coming and we will need the IRS' input on those as well.

The IRS must also continue to play its part in implementing the Affordable Care Act, helping individuals, families, businesses, pay for health insurance as a cornerstone of the health reform law. According to the independent Kaiser Family Foundation, 17 million people will qualify for assistance.

The IRS must be ready to handle that task, and by all accounts, preparations are on track. It needs to keep up the good work.

Mr. Koskinen has a history of succeeding in demanding roles. At Freddie Mac in the heat of the financial crisis, at the helm of the District of Columbia's financial turnaround in the early 2000s, as a turnaround artist in the private sector and even as leader of the team that addressed Y2K concerns.

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Former Sen. Baucus, M. (D-Mont.) | Political MoneyLine Profile

Sen. Hatch (R-Utah) | Political MoneyLine Profile

He's the right person to take on this challenge. And with filing season approaching, the IRS needs a leader in place. The IRS has been without a confirmed commissioner for more than a year. Before this year, the longest any nominee for IRS commissioner had waited before a confirmation was 100 days.

Mr. Koskinen was nominated 132 days ago.

Mr. Koskinen, with your knowledge, experience, expertise, I expect you to be highly sought after by many employers in the private sector. Instead, you have chosen to continue your career in public service, and for that we thank you.

Thank you for accepting the nomination to this position. The IRS commissioner may not be the most glamorous job in the administration, but it certainly is one of great importance.

BAUCUS:
Again, the acting commissioner, Danny Werfel, deserves credit for taking on a very tough job in the wake of the inspector general's report, and I believe he has performed very well.

But Mr. Werfel will be leaving the IRS at the end of this year, so now is the time for us to act. The IRS needs its commissioner. John Koskinen is the right man for the job. He's earned broad support from Democrats and Republicans, and I hope we can approve this nomination quickly and take it to the full Senate for a vote. It's time we get this done.

Senator Hatch?

HATCH:
Thank you, Mr. Chairman.

Today we're here to discuss the future of the Internal Revenue Service and hear testimony from President Obama's nominee to head the agency, John Koskinen.

Mr. Koskinen, I don't think that I have to tell you that if you are confirmed, and I expect you to be, you will have a difficult job ahead of you. The IRS is one of the most powerful agencies in our government. Consequently, it is both feared and loathed by millions of Americans.

That being the case, it is vital that the IRS maintain its credibility.

The American people should be able to trust that the IRS will enforce our nation's tax laws without bias or prejudice. Any hint of impropriety on the part of the IRS, which leadership damages their credibility and that of our entire government.

Unfortunately, over the last two years, the credibility of the IRS has been eroded by actions taken by the IRS itself and the agency has, in large part, lost the trust in the American people. As proof, one needs to look no further than the targeting scandal currently under investigation by this committee. When this scandal was revealed, President Obama said, quote, "I have got no patience with it. I will not tolerate it, and we will make sure that we find out exactly what happened on this," unquote.

Senate Majority Leader Harry Reid expressed similar views on the Senate floor stating, quote, "I have full confidence in the ability of Senator Baucus and the Finance Committee to get to the bottom of this manner and recommend appropriate action," unquote.

Now, I share both President Obama's desire to find out exactly what happened and Leader Reid's view of the Finance Committee investigation abilities. Indeed, if there's one thing we should all be able to agree on, it is that the IRS should enforce the tax laws as they are written by Congress without considaration of political views.

That being the case, I had hoped to hold off on proceeding with this nomination until the finance committee's bipartisan investigation had concluded. The confirmation of an IRS commissioner should not and must not be a partisan issue. And, like I said, with an agency this powerful, the leadership should have the confidence of members of both parties.

I had hoped thet the next commissioner would begin his time with the benefit of the findings of our investigation so he would be in a better position to fix the problems we've uncovered and to move the agency forward with strong bipartisan support.

Chairman Baucus has chosen to go a different direction, which, of course, is his right.

My hope is this will not impede our efforts.

Also, I'd like to personally pay tribute to Danny Werfel, as well. I think he took over a very tough situation, and he's handled himself with great skill and dignity and integrity, in my opinion. And he has worked pretty closely with us in trying to get to the bottom of some of these problems.

Mr. Koskinen, I hope that today you will commit to continuing the cooperation the committee has enjoyed thus far in its investigation, and that you encourage others to do the same at the agency. As far as I'm concerned, the top priority for the next IRS commissioner should be to restore the agency's damaged credibility with the American

people and their trust that the actions taken by the IRS are fair and impartial.

Toward that end, it is essential that we continue to receive full and open cooperation in our investigation. There are many other issues the next leader of the IRS will have to address, for example, there's the IRS's significant role in the implementation of Obamacare. If what we've seen thus far is any indication, this is going to be a difficult proposition, both in terms of operation and enforcement.

Just last week, the treasury inspector general for tax administration issued a report that found the IRS has an inadequate system in place for preventing fraudulent Affordable Care Act premium subsidy payments from occurring, and that people's personal information would be at risk. Insurers and others have raised questions about the income verification for the premium subsidies. I have also raised this concern on a number of occasions. Similar tax subsidy programs, including, for example, the earned income tax credit, have improper payment rates as high as 25 percent.

Can we expect the same for the Obamacare premium subsidies?

These are just a few of the many potential issues IRS will be facing as implementation continues. On top of that, there are proposed regulations addressing the political activities of tax exempt organizations.

These proposals have been controversial for a number of reasons, not the least of which is the widespread doubt that -- as to whether the IRS is able to perform its duties in an independent nonpartisan fashion.

Mr. Koskinen, I hope to get a sense of your views on these and other issues during the course of today's hearing. Like I said, the IRS is an agency rife with problems, most of which are at least in my opinion, I think opinion of many people, self inflicted.

If you are confirmed, I hope that you'll be working jointly with Congress and members of both parties to fix these problems.

I want to personally pay tribute to you for being willing to take this very difficult job at this very difficult time, and for the excellent work that you've done in the past in so many ways.

I believe you'll make a great IRS commissioner, and I intend to support you.

Thank you.

BAUCUS:
Thank you.

Senator, I also join your compliments of Danny Werfel. I'm very impressed with how frequently he's called you, called me, giving us updates what he's doing before items break in the press. I think he's been a terrific acting commissioner. Thank you very much for making your praise on Danny Werfel.

Joining us today is John Koskinen, nominated to be the commissioner of the Internal Revenue Service, thank you for coming, Mr. Koskinen, and I ask you at this time -- (inaudible) your family.

KOSKINEN:
Thank you, Mr. Chairman.

I'm delighted my wife Pat is here immediately behind me. My daughter, Sheera (ph) who lives in Bethesda, was planning on coming before they closed schools, so she's at home with her two young children. I'm also joined -- my son and his wife live in Los Angeles. His in-laws, who are now part of our extended family, are in Annapolis and so they called this morning again and regretted that they couldn't join us, but their son, Scott Cantor and his fiance, Kathleen Sheerar (ph) are with us, along with a long-time friend of mine, Roger Waltman who work -- started out -- when I started my career in government service working on the Kerner (ph) Commission Staff, a long time ago, came today to join us with his friend Barbara Coe.

So that's my support staff. I've told them they can't use their noise makers until later in the hearing.

BAUCUS:
Well wonderful. Why don't you all stand so we can recognize you. All of you. Thank you very, very much for joining us.

(APPLAUSE)

OK, Mr. Koskinen, go ahead. This is time for you to tell us why you want this job.

(LAUGHTER)

KOSKINEN:
Thank you, Chairman Baucus, Ranking Member Hatch, and member of the committees. I'm honored to appear before you this morning to be the next commissioner of the Internal Revenue Service.

With your permission, Mr. Chairman, I will summarize my prepared statement here this morning and submit the full statement for the record.

SFC 003970

This past May when I was asked whether I would be willing to serve as the next commissioner, I agreed, because I believe that the successful operation of the Internal Revenue Service is vital for this country. The activities of the IRS touch virtually every American. The agency collects over $2.5 trillion a year, over 90 percent of the revenues collected by the government. And this is a challenging time for the agency as it confronts new responsibilities, while dealing with a budget that has declined substantially since 2010. And, of course, as already mentioned on top of that all are the management problems that have shaken public trust in the agency.

I've had a longstanding commitment to public service, and most of my career has been spent helping large organizations in both the public and private sectors respond a significant financial and management challenges. If confirmed, I look forward to leading the IRS as commissioner and to working with this committee to deal with the range of challenges that it confronts.

In our meetings, as part of this confirmation process, many of you asked what my plans for the agency are if I'm confirmed as commissioner. While I still have lots to learn and thousands of employees yet to meet and listen to, it is clear that the responsibility of the commissioner is to make sure that the agency fairly, efficiently, and effectively collects the taxes owad by every business and individual, that the agency provides taxpayer services in the form of easily understandable information and prompt answers to questions, to make it as simple as possible for people and firms to pay their taxes, and that the agency creates a working environment that allows employees to reach their full potential and generates an enthusiastic, energetic and high-performing workforce.

KOSKINEN:
In every area of the IRS, taxpayers need to be confident they will be treated fairly, no matter what their background or affiliations. Public trust is the IRS's most important and valuable asset.

There are immediate challenges in each of these areas. To protect government revenues, the agency has to continue to increase its efforts to combat refund fraud.

Taxpayer services need to be improved, particularly in the areas of tax exempt organization filings and operations. There are several investigations ongoing into the delays encountered by many of those seeking to establish themselves as 501(c)(4) social welfare organizations. And I look forward to working with this committee as it concludes its investigation of that matter.

And then, Senator Hatch has asked, and I am actually more than delighted to commit that if confirmed as commissioner, I will continue the good work that the acting commissioner, Danny Werfel, has done in this area and cooperate fully with the committee and its members as it seeks to bring this investigation to a close, providing you all of the information that you need.

The IRS also needs to continue its successful implementation of the Affordable Care Act. Its responsibilities at the front end of the process have been effectively implemented, thanks to long planning and a smooth I.T. implementation.

The new commissioner also needs to address employee morale. My experience is that the people in an organization who know most about what is going on are the front-line employees. The next commissioner needs to listen to those employees and make sure they understand that they are seen as part of the solution, not part of the problem.

The IRS is fortunate to have an experienced workforce, committed to the mission of the agency. We need to provide them with the leadership, systems, and training to support them in their work.

We have to listen not just to employees, but also others who are most likely to know about the challenges the agency faces. A government manager's best friends can be the inspector general and the Government Accountability Office.

They don't create the problems they highlight, they just help you know about them before they get bigger.

In addition, the IRS benefits from the information and perspective generated by the Office of Taxpayer Advocate and the Whistleblower Office.

And another important source of information is congressional inquiries. An individual complaint or question may be simply anecdotal. A series of them from various areas is a source of valuable information that needs to be pursued.

To make all of this happen and to protect the revenues coming into the government, we need to solve the funding problem facing the IRS. This is a view shared today by the IRS Oversight Board, the taxpayer advocate, and most recently, the Treasury general -- the Treasury inspector general for tax administration and the Internal Revenue Service's Advisory Council.

As the inspector general report earlier this fall noted, the government has saved a billion dollars in cuts to the IRS budget on an annual basis and lost $8 billion in compliance revenues.

Even with all the challenges the IRS faces, or, in fact, because of them, I am excited about the opportunity, if confirmed, to work with the employees of the agency as the IRS moves forward into the future.

The IRS has a long and honored tradition of service to this country and is filled with a great number of public servants who take pride in their work to help the IRS achieve its mission with integrity and fairness to all.

SFC 003971

I appreciate the time each of you has spent with me individually, sharing your interests and concerns. If confirmed, I look forward to working with you and your staffs to help make the IRS the most effective, well run, and admired agency in government.

Thank you.

BAUCUS:
Thank you, Mr. Koskinen, very much.

I have four standard questions that are asked of all nominees. Number one, is there anything that you're aware of in your background that might present a conflict of interest to the duties of the office to which you have been nominated?

KOSKINEN:
There is not.

BAUCUS:
Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

KOSKINEN:
No.

BAUCUS:
Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

KOSKINEN:
I do.

BAUCUS:
Do you commit to provide a prompt response in writing to any questions addressed to you by any senator of this committee?

KOSKINEN:
Yes.

BAUCUS:
Thank you. That last one was added fairly recently, because we've had problems from other nominees, so thank you very much.

I want to start out by asking -- you want to recess now? OK.

OK. I apologize, there's a vote going on now. There's a few minutes left, remaining on the vote. We'll recess for -- regrettably, we have to -- we might have to recess for up to a half hour. There are two votes. And so, we'll make those two votes and come back as quickly as possible.

BAUCUS:
So we'll -- the committee will stand in recess for one- half hour.

(RECESS)

BAUCUS:
I just have a couple of questions.

If you could just very briefly (inaudible) and tell me what you learned in your prior jobs or crisis jobs or near-crisis jobs, whether it's Freddie Mac or D.C. or Y2K or just what lessons did you learn there that you can bring to this job?

KOSKINEN:
Well, I think as I said in my opening comments, the first thing you need to do especially if you're running a very large organization is to create a system where information flows freely, both from the front line workers up to the people at the top of the organization, but, again, across silos that inevitably get created in an organization.

Because you need to know as quickly as you can what's actually going on with the organization.

You also need to involve people within the organization as well as externally in discussions about what the problems are and what the solutions are.

Because my experience has always been a group of people addressing a problem will always come up with a better solution than any single member of that group, no matter how smart they think they are or how smart they might actually be, that it's important to get as many different perspectives on a possible solution as you can.

Also the more people you involve in the decision-making process, the easier it is to execute that decision because, to the extent they were involved in it, they then understand the reasoning behind it. And they will go out and make it happen.

So in an organization this large, you need to have consistent messaging and you need to ensure that people are participating. And I have found that it energizes people.

If you spend your life simply being told what to do and nobody ever asks you what your view is, you have one response to your job. If you're regularly asked not only what you think the problems are, what potential solutions are, but people listen to those answers, you're much more enthusiastic about your participation in the day-to- day operations of that organization.

BAUCUS:
Do you ever see the Sunday "New York Times" business section -- I think it's business section -- has a corner office page, which are lessons that CEOs and other managers have learned about managing? By chance ever glanced at any of those?

KOSKINEN:
I have not had the opportunity.

BAUCUS:
Well, I urge you, Sunday mornings, business section. It's page -- I forgot what page it is but it's -- they're very interesting.

Thank you very much for that answer.

Senator Hatch?

HATCH:
We've got to get back over and vote, but let me ask you this one question, maybe two.

As you know, Mr. Koskinen, Chairman Baucus and I have been conducting a joint bipartisan investigation into the IRS targeting scandal.

If you're confirmed, will you assure us that you will cooperate with our investigation by continuing to produce all documents we deem relevant and by making any IRS employees who want interview available for interviews? You can answer that yes or no.

KOSKINEN:
Yes, Senator, as you and I have talked personally, I am delighted to be able to make that commitment to you.

(CROSSTALK)

KOSKINEN:
As both of you have said, I think Danny Werfel has done an excellent job. And I'm -- look forward to continuing his working relationship with this committee.

HATCH:
I do, too.

Let me just say, I would like to talk for a moment about the IRS scandal involving 501(c)(4) organizations.

In my opinion, the greatest single challenge facing the IRS is its need to recover the trust of the American people. It is not -- it is not possible to overstate the amount of damage the IRS has done to its reputation by selectively targeting politically conservative tax exempt social welfare groups for harassment during the last two elections.

But rather than staying focused and cleaning up the mess ceused by a scandal of its own making and waiting until this committee completes its bipartisan investigation, last month the IRS published a proposed regulation that once again targets social welfare groups only.

The political activity rules for tax exempt 501(c)(4) organizations, also applied 501(c)(5) labor unions and 501(c)(6) trade associations.

Now as the Treasury inspector general to tax administration take this said in a report issued last May, describing the IRS scandal, all three groups may engage in limited political campaign activities as long as it is not the primary activity of the organization.

I know that the IRS asked for comments from the public on whether to apply the new regulations to unions. But the regulations drafted only applies to 501(c)(4)s. That is strong evidence that the IRS intends to hammer social welfare groups and in the end let the unions slide by.

Will you commit to this committee that, if confirmed, you will ensure that any political activity regulation the IRS finalizes will apply equally to 501(c)(4), 501(c)(5) and 501(c)(6) organizations?

KOSKINEN:

Senator, it's an important question. The IRS and Treasury, as you know, had issued for comment and suggestions draft regulations. I think it's important for us to get active participation in that comment period because there are, as you know, a wide range of organizations.

And one of the specific questions the regulation asked for is for people to comment on just this issue, that is, what the definition of acceptable and unacceptable political activity ought to be and to which organizations should it apply?

Should it apply to the other (c) organizations or not?

It also asks for comments on the amount of activity that can be allowed before you run the risk of losing your exemption.

Overall, my sense is that what we need, and I hope will come out of that comment period in the final regulations, is clarity for all organizations making applications about what the permissible level of political activity is and what the definition of that political activity is.

Because the clarity is important, not only for people when they make their applications; greater clarity is needed by the IRS employees whan they review those applications. And then people running the organizations in the future need to know what the rules are so they can be comfortable that they are operating within them and are not exceeding whatever the limitations are.

And part of the problem in the past has been the definition of what is allowable political activity has not been clear, nor has it been clear what the amount that is acceptable of that activity before you run the risk of losing your exemption.

So I think the question you raise is an important one. And I will commit that, I will actively participate in the review of the comments that come in and try to make sure, as we said earlier, that people view the IRS and its regulations in the applications as fair, that you are not discriminated against because of either your background, your views or your affiliations.

HATCH:
Well, thank you.

I think we are going to have to wrap it up for the day.

Mr. Chairman?

BAUCUS:
Thank you, Mr. Koskinen, and I regret that, because of the votes, we are unable to have a complete hearing at this point.

And second, the other side of the aisle, the Republican Party, has objected, as is their right under the Senate rules, for this committee to meet two hours after this Senate convene at two hours, expires at noon today. So we'll -- unable to have e hearing after noon today.

But we will reconvene at the earliest possible time, given the complexities and special rules of the Senate.

And I again, regret that we cannot continue the hearing now but we will resume the hearing at the appropriate time. But I cannot resume the hearing after this next vota which is occurring right now because the other -- the Republican Party has said, which is their right, that the Senate hearings cannot continue two hours after the Senate comes into session.

Committee stands in recess until call of the chair.

CQ Transcriptions, Dec. 10, 2013

List of Panel Members and Witnesses PANEL MEMBERS:
SEN. MAX BAUCUS, D-MONT. CHAIRMAN

SEN. JAY ROCKEFELLER, D-W.VA.

SEN. RON WYDEN, D-ORE.

SEN. CHARLES E. SCHUMER, D-N.Y.

SEN. DEBBIE STABENOW, D-MICH.

SEN. MARIA CANTWELL, D-WASH.

SEN. BILL NELSON, D-FLA.

SEN. ROBERT MENENDEZ, D-N.J.

SEN. THOMAS R. CARPER, D-DEL.

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SEN. BENJAMIN L. CARDIN, D-MD.

SEN. SHERROD BROWN, D-OHIO

SEN. MICHAEL BENNET, D-COLO.

SEN. BOB CASEY, D-PA.

SEN. ORRIN G. HATCH, R-UTAH RANKING MEMBER

SEN. CHARLES E. GRASSLEY, R-IOWA

SEN. MICHAEL D. CRAPO, R-IDAHO

SEN. PAT ROBERTS, R-KAN.

SEN. MICHAEL B. ENZI, R-WYO.

SEN. JOHN CORNYN, R-TEXAS

SEN. JOHN THUNE, R-S.D.

SEN. RICHARD M. BURR, R-N.C.

SEN. JOHNNY ISAKSON, R-GA.

SEN. ROB PORTMAN, R-OHIO

SEN. PATRICK J. TOOMEY, R-PA.

WITNESSES:

JOHN KOSKINEN, NOMINATED TO BE COMMISSIONER, INTERNAL REVENUE SERVICE

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SFC 003975

THE DIANE REHM SHOW

Tuesday, Sep 21 2010 • 10 a.m. (ET)

Campaign Spending

Campaign spending for this year's midterm elections is breaking records, but recent Supreme Court and Federal Election Commission decisions mean we know less about where the money is coming from. Diane and guests explore campaign finance and the influence of secret donors.

Guests

Jan Baran attorney in private practice specializing in election law and former general counsel to the Republican National Committee

Jane Mayer staff writer, "The New Yorker"

Brody Mullins reporter, The Wall Street Journal

Rep. Chris Van Hollen Democrat of Maryland, Chairman of the Democratic Congressional Campaign Committee

Sheila Krumholz executive director,the Center for Responsive Politics, OpenSecrets.org.

Transcript

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MS. DIANE REHM

Thanks for joining us. I'm Diane Rehm. Now that the primaries are over, the real battles begin. They're increasingly expensive, and this year there's a twist. Organizations advocating for a particular candidate are no longer required to disclose their donors. Joining me to talk about implications of the new rules on campaign spending, Sheila Krumholz of the Center for Responsive Politics, Jan Baran, he's an attorney in private practice, specializing in election law, former general counsel to the Republican National Committee, Brody Mullins is a reporter for The Wall Street Journal, and Jane Mayer is staff writer at The New Yorker. Do join us, 800-433-8850. Send us your e-mail to drshow@wamu.org. Feel free to join us on Facebook, or send us a tweet. Good morning, everybody.

MR. JAN BARAN

Good morning, Diane.

MS. SHEILA KRUMHOLZ

Hi, Diane.

REHM

Jan Baran, explain what the rules are this time around, how they're different and why?

BARAN

Well, we're talking about spending by outside groups and individuals that is regulated by federal law in connection with federal campaigns. So we're talking about this year campaigns for the U.S. House and U.S. Senate. And the rules, for some time have been that certain individuals and certain groups can spend money without limit. As long as they're not collaborating with the campaigns, they're called independent expenditures. And we've had some changes over the last 10 years, partly caused by the McCain-Feingold law, partly caused by Supreme Court decisions, which define who can spend money and under what circumstances and when the money that's being spent is subject to public disclosure through filings with the Federal Election Commission

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IG: Audit of IRS actions limited to Tea Party groups at GOP request

By Bernie Becker - 06/26/13 12:11 AM EDT

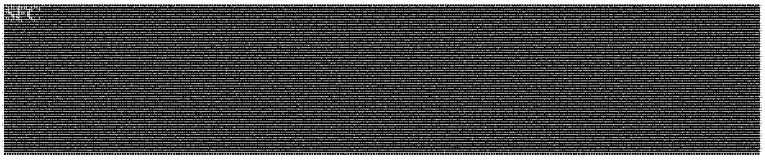
The Treasury inspector general (IG) whose report helped drive the IRS targeting controversy says it limited its examination to conservative groups because of a request from House Republicans.

A spokesman for Russell George, Treasury's inspector general for tax administration, said they were asked by House Oversight Chairman Darrell Issa (R-Calif.) "to narrowly focus on Tea Party organizations."

The inspector general's audit found that groups seeking tax-exempt status with "Tea Party" and "patriots" in their name did receive extra attention from the IRS, with some facing years of delay and inappropriate questions from the agency.

But top congressional Democrats have wielded new information from the IRS this week that liberal groups were also flagged for extra attention on the sorts of "be on the lookout" lists (BOLOs) that also tripped up conservative groups.

The spokesman for the Treasury inspector general noted their audit acknowledged there were other watch lists. But the spokesman added: "We did not review the use, disposition, purpose or content of the other BOLOs. That was outside the scope of our audit."



The admission from the inspector general comes as Democrats have sharpened their criticism of George, with Rep. Sandy Levin (D-Mich.) dubbing the audit fundamentally flawed on Monday.

Levin, the top Democrat on the tax-writing House Ways and Means Committee, stressed to The Hill on Tuesday that the inspector general did not say the audit was limited to Tea Party groups when it was released in mid-May.

The Michigan Democrat also maintained that the audit's shortcoming had emboldened Republicans to try to link the targeting of Tea Party groups to the White House.

"You need to get at the facts. And those facts weren't given to us, even when asked," Levin said. "The Republicans used the failure of the IG to spell out what they knew as an opportunity to totally politicize this."

Levin's office first disclosed on Monday that the term "progressive" was also included in the lists until this year and urged the Ways and Means Committee Chairman Dave Camp (R-Mich.) to bring George back for more testimony.

And while the inspector general's office has not said they knew about BOLOs flagging liberal groups, Ways and Means Democrats said Monday that progressive organizations were among the almost 300 groups the inspector general examined for his audit.

Rep. Gerry Connolly (D-Va.), who questioned George about whether liberal groups were singled out at an Oversight hearing last month, also said Tuesday that it appears the inspector general's answers "were at best incomplete, if not misleading."

Camp and other Republicans have insisted that the evidence so far points to conservative groups receiving more scrutiny from the IRS, even if organizations across the political spectrum were on BOLOs.

Republicans at the House Oversight panel, for instance, have noted that the watch lists specifically said that Tea Party applications should be sent to Washington for examination, while the progressive entry does not.

GOP lawmakers have lobbed their own criticism at George, with Issa noting that the inspector general allowed Holly Paz, an IRS official at the center of the controversy, to sit in on interviews.

"It's one thing to say we listed them all down," said Rep. Jim Jordan (Ohio), a senior Republican on the Oversight panel. "To me, it's still the exact same fact. They targeted conservative groups. Some groups still haven't had any resolution to their application for tax-exempt status."

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The Mozilla Blog

News, notes and ramblings from the Mozilla project

APR 5 2014

FAQ on CEO Resignation

Mozilla

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On April 3, 2014 Brendan Eich voluntarily stepped down as CEO of Mozilla. It has been well documented that Brendan's past political donations led to boycotts, protests, and intense public scrutiny. Upon his resignation, Brendan stated: "Our mission is bigger than any one of us, and under the present circumstances, I cannot be an effective leader." The intense pressure from the press and social media made it difficult for Brendan to do his job as CEO and effectively run Mozilla.

Since then, there has been a great deal of misinformation. Two facts have been most commonly misreported:

1. Brendan was not fired and was not asked by the Board to resign. Brendan voluntarily submitted his resignation. The Board acted in response by inviting him to remain at Mozilla in another C-level position. Brendan declined that offer. The Board respects his decision.

2. Around the time of Brendan's appointment as CEO, three members of the Board of Directors resigned from the Mozilla Corporation Board. None of these board members resigned over any concerns about Brendan's beliefs. Gary Kovacs and Ellen Siminoff had previously stated they had plans to leave, and John Lilly did not resign over any concerns about Brendan's personal beliefs. Katharina Borchert was appointed to replace one of the empty Board seats after Brendan was appointed CEO.

Mozilla

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About This Blog

The Mozilla Blog is the official source for Mozilla-related news, opinions, events and more.

SFC 003979

Currently, Mitchell Baker continues to lead Mozilla as Executive Chairwoman and co-founder. The executive team is reporting directly to Mitchell, and she is also leading the search for a new CEO with support from the Board. The executive team is committed to moving forward with Mozilla's 2014 goals under guidance from Mitchell and the Board.

Mozilla was built on the mission to promote openness, innovation and opportunity on the Web. Every day, we bring together over half a billion users and thousands of contributors from more than 80 countries to advance the cause outlined in the Mozilla Manifesto. The Web is a vital public resource and Mozilla exists to protect it. That is what we do at Mozilla, our singular point of focus.

Additional facts have been provided in the FAQ below.

FAQ:

Q: What was the sequence of events around Brendan's appointment and eventual resignation as CEO?

A: The events unfolded as follows:

- 1998: Brendan Eich and Mitchell Baker co-founded the Mozilla Project
- 2003: Brendan and Mitchell co-founded the non-profit Mozilla Foundation
- 1998-2014: Brendan served in a variety of technology leadership roles at Mozilla, including CTO and SVP Engineering of the Mozilla Corporation
- 2012: The *Los Angeles Times* reported that Brendan made a political contribution in 2008 to California Proposition 8
- March 24, 2014: Because of his unique and proven ability to build both Mozilla and the Open Web, Brendan was appointed CEO of the Mozilla Corporation
- March 25: Initial blog posts, social media and media stories appeared citing Brendan's past political donations and raising concerns about his appointment as CEO
- March 25: CREDO, a social change organization and mobile phone

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company that supports activism and funds progressive nonprofits, contacted Mozilla to inform that they planned a petition in response to Brendan's appointment

- March 26: Mitchell published a blog post in support of Mozilla's commitment to inclusiveness
- March 26: Brendan published a blog post re-affirming his commitment to inclusiveness at Mozilla
- March 27: Media coverage began to focus on fewer than 10 Mozilla employees who used Twitter to ask Brendan to step down from the role of CEO
- March 29: Mozilla Chairwoman Mitchell Baker wrote a blog post about Mozilla's support for marriage equality
- March 30: CREDO petition calling for Brendan's resignation launched
- March 31: OkCupid launched an action asking its users to boycott Mozilla, impeding access to their site from Mozilla products
- April 1: Brendan spoke to national media to respond to public concerns
- April 3: Amid organized boycotts, protests and intense public scrutiny, Brendan resigned and stepped down as CEO

Q: Was Brendan Eich fired?

A: No, Brendan Eich resigned. Brendan himself said:

"I have decided to resign as CEO effective April 3rd, and leave Mozilla. Our mission is bigger than any one of us, and under the present circumstances, I cannot be an effective leader. I will be taking time before I decide what to do next."

Brendan Eich also blogged on this topic.

Q: Was Brendan Eich asked to resign by the Board?

A: No. It was Brendan's idea to resign, and in fact, once he submitted his resignation, Board members tried to get Brendan to stay at Mozilla in another C-level role.

Q: Was Brendan Eich forced out by employee pressure?

A: No. Mozilla employees expressed a wide range of views on Brendan's appointment as CEO: the majority of them positive and in support of his leadership, or expressing disappointment in Brendan's support of Proposition 8 but that they nonetheless felt he would be a good leader for Mozilla. A small number (fewer than 10) called for his resignation, none of whom reported to Brendan directly. However media coverage focused disproportionately on the small number of negative comments — largely ignoring the wide range of reactions across the Mozilla community.

Mozilla's culture of openness extends to encouraging our staff and community to be candid about their views on Mozilla's direction, including during and after Brendan's appointment as CEO. We're proud of that openness and how it distinguishes Mozilla from most organizations.

Q: Did Board members resign over Brendan's Prop 8 donation?

A: No. Gary Kovacs and Ellen Siminoff had previously stated they had plans to leave. John Lilly did not resign over Proposition 8 or any concerns about Brendan's personal beliefs. Katharina Borchert was appointed to replace one of the empty Board seats after Brendan was appointed CEO.

Q: Do I need to support Mozilla's marriage equality statement to be a Mozillian?

A: No. The Mozilla Project is the overall umbrella for Mozilla's global community, and as a community organization does not take stands on issues outside the scope of the Mozilla Manifesto. Every Mozillian is free to have his or her view, and we welcome all. The Mozilla Corporation and Mozilla Foundation, like many of their peers in the US tech industry a) have provided benefits and support to same-sex couples and b) recently issued the following statement about marriage equality. You do not need to agree with these actions or statements to be a Mozillian.

Q: Is Mozilla becoming a social activist organization?

A: No. Mozilla is committed to a single cause: keeping the Web free and open. Our specific goals as an organization are outlined in the Mozilla Manifesto. We are activists for the open Web. Mozilla has a long history

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of gathering people with a wide diversity of political, social, and religious beliefs to work with Mozilla.

Q. Do you need to support marriage equality to contribute to Mozilla as an employee, volunteer, or in a leadership role?

A: No. There is no litmus test to work at Mozilla.

Everything from Mozilla's own Community Participation Guidelines, to employment law, to the Mozilla Mission mandates that employees and community members can and should hold whatever beliefs they want. We are an organization made up of a global community of people with widely diverse views coming together for a common shared goal: protecting and building an open Web.

CATEGORIES: About Mozilla, Mozilla News

mozilla

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SFC 003983

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

May 4, 2012

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter dated March 27, 2012, requesting information about the tax-exempt sector. This response supplements my April 26, 2012 letter, and addresses the remaining question # 7.

Question 7. Each of the requests for information, listed below that has appeared on an IRS questionnaire is beyond the scope of IRS Form 1024. For each of these requests, listed below, please state: a) the IRS's authority for asking for the information; b) the IRS's rationale for needing this piece of information; c) whether any precedent exists for the IRS asking for this type of information; d) the objective standards the IRS will use when reviewing the response; and e) how the IRS will use the information to determine tax-exempt status.

As discussed in my prior response and per our discussion with your staff, we understand that references in your letter to "questionnaires" relate to development letters the IRS sends to organizations in the ordinary course of the application process. These letters are sent to obtain the information necessary to make a determination about whether the organization meets the legal requirements for tax-exempt status. As noted in my earlier letter, the law allows section 501(c)(4) organizations to self-declare and hold themselves out as tax-exempt without IRS approval of status or to apply to the IRS for recognition as tax-exempt. Development letters relate to those organizations that apply to the IRS for recognition of tax-exempt status.

Preliminarily, we wish to clarify that under the appropriate facts and circumstances, the requests for information set forth below are not beyond the scope of the Form 1024. To establish tax exemption, the organization must meet the statutory requirements of the particular section of the Internal Revenue Code under which exemption is sought. As set forth in Revenue Procedure 2012-9, the applicant has the burden of establishing that it meets the particular requirements of the statute and regulations under which it seeks exemption through information in its application and supporting materials. A copy of the Revenue Procedure as well as all cited documents is included for your convenience in the enclosed CD-ROM.

As discussed in my prior response and in more detail below, the particular facts and circumstances of an application will determine the specific information requested. Section 6103 of the Internal Revenue Code prohibits the IRS from disclosing the particular facts and circumstances of an application that may lead to a particular question being asked of the organization.[1] The revenue agent working a case uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. Follow-up information requested would be based on the facts and circumstances set forth in the particular application. Because of the facts and circumstances nature and the need for professional judgment on the part of the revenue agent doing the review, there will naturally be some variances in how cases are developed and how questions back to the applicant are articulated. To minimize possible variances, the IRS utilizes training and tools to promote quality and consistency in similar cases.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.[2] 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. 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. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.[3]

Whether an organization meets the statutory requirements of section 501(c)(4) depends upon all of the facts and circumstances, and no one factor is determinative. A section 501(c)(4) social welfare organization can engage in some non-exempt activity so long as its primary activity is exempt social welfare activity. Because the facts and circumstances of the particular applicant are considered, determinations letters are not precedential and cannot be relied on by anyone except the organization who received the letter. Consequently, a revenue agent must first determine whether particular activities undertaken by the organization further an exempt or non-exempt purpose. If the organization is engaged in some non-exempt activities, then the agent must review the scope of the activities to determine whether, based on all the facts and circumstances, the organization's exempt activities are the primary activities when compared to the aggregate of its non-exempt activities.

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[1] Section 6103(f) sets forth the means by which congressional committees may obtain access to returns and return information. We are available to discuss these rules in more detail with your staff.
[2] IRC § 501(c)(4);Treas. Reg. § 501(c)(4)-1.
[3] Reg. § 1.501(c)(4)-1(a)(2)(i) - (ii).

Whether the IRS needs additional information depends on the completeness of the information provided in the application, as well as the specific activities in which the organization is engaged. Some organizations include in their application all the information necessary to determine whether they meet the statutory requirements for tax exemption. Others may not provide complete information, such as how the organization's activities further their exempt purpose. As explained in our initial response dated April 26, 2012, when a Form 1024 application needs further development, the IRS contacts the organization and solicits additional information in order to have a complete administrative record on which the IRS can make a determination as to whether the requirements of the Code and regulations are met. That record could include answers to questions, copies of documents, copies of web pages and any other relevant information exchanged between the parties as exemption is discussed.

Because we are legally prohibited from responding with respect to any particular application, the responses below explain why each of the questions you specified might be asked to an applicant (but without reference to case-specific information). We have responded in the format you requested. It would be necessary to know the contents of an application file to know why particular information may have been requested from any specific organization. Because our responses cannot address how the information is relevant to any specific application, we have provided a selection of precedents that could apply to the question depending upon the facts. Consequently, there is some necessary repetition in our responses. We have advised applicant organizations that if they believe that the information requested to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application. We remain open to considering whether compliance with the legal requirements can be satisfied in an alternative manner. We have also provided additional time to respond.

A) For all the events you have conducted or will conduct for 2012 and 2013, provide the date of each event, Issues presented at the event, copies of materials provided, speakers invited, details of speeches made at the event and actions promoted by the speakers, and expenses incurred.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1[4]

[4] Treas. Reg. § 1.501(a)-1(a)(3). In general; proof of exemption. An organization claiming exemption under § 501(a) and described in any paragraph of § 501(c) (other than § 501(c)(1)) shall file the form of application prescribed by the IRS and shall include thereon such information as required by such form and the instructions issued with respect thereto. For rules relating to the obtaining of a determination of exempt status by an employees' trust described in § 401(a), see the regulations under § 401. Treas. Reg. § 1.501(a)-1(b)(2). In addition to the

- Treas. Reg. § 1.501(c)(3)-1(c)(3) ("action" organization)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)-(ii)[5]

b) the IRS's rationale for needing this piece of information;

Form 1024, Part II, Question 1 requests that the organization provide a detailed narrative description of all of the activities of the organization – past, present and planned. Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or non-exempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

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information specifically called for by this section, the IRS may require any additional information deemed necessary for a proper determination of whether a particular organization is exempt under § 501(a), and when deemed advisable in the interest of an efficient administration of the internal revenue laws, the IRS may in the cases of particular types of organizations prescribe the form in which the proof of exemption shall be furnished.

[5] 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 civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of Reg. § 1.501(c)(3)–1 and is not an action organization as set forth in paragraph (c)(3) of Reg. § 1.501(c)(3)–1. 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. Nor is an organization 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 which are operated for profit.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1[6]
- Form 1024, Part II, Question 16[7]
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)-(ii)
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 86-95, 1986-2 C.B. 73[8]
- Rev. Rul. 81-95, 1981-1 C.B. 332[9]
- Rev. Rul. 80-282, 1980-2 C.B. 178[10]
- Rev. Rul. 80-107, 1980-1 C.B. 117[11]

[6] Form 1024, Part II, Question 1: "Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: (a) a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; (b) when the activity was or will be initiated; and (c) where and by whom the activity will be conducted. As noted on Form 1024, this question must be completed by all applicants.

[7] Form 1024, Part II, Question 16: "Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? If "Yes," attach a recent copy of each." As noted on Form 1024, this question must be completed by all applicants.

[8] Rev. Rul. 86-95 determines that, in the context of a § 501(c)(3) organization, 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 participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. The facts and circumstances of this case established that both the format and content of the proposed forums would be presented in a neutral manner.

[9] Rev. Rul. 81-95 provides that "an organization may carry on lawful political activities and remain exempt under § 501(c)(4) as long as it is primarily engaged in activities that promote social welfare."

[10] Rev. Rul. 80-282 provides that a § 501(c)(3) organization that published partisan voter guides was participating in prohibited political campaign intervention.

[11] Rev. Rul. 80-107 denied exemption to an "advocacy" organization due to private benefit. The ruling held that because the primary beneficiaries of the organization's activities were its members, "together with other individuals who own shares in the public utility companies," it was primarily operated to serve private interests rather than the community as a whole. Thus, it did not qualify for § 501(c)(4) exemption.

- Rev. Rul. 78-248, 1978-1 C.B. 154[12]
- Rev. Rul. 78-131, 1978-1 C.B. 156[13]
- Rev. Rul. 75-286, 1975-2 C.B. 210[14]
- Rev. Rul. 74-574, 1974-2 C.B. 160[15]
- Rev. Rul. 74-361, 1974-2 C.B. 159[16]
- Rev. Rul. 74-298, 1974-1 C.B. 133[17]
- Rev. Rul. 68-656, 1968-2 C.B. 216[18]
- Rev. Rul. 68-224, 1968-1 C.B. 262[19]

[12] Rev. Rul. 78-248 provides that whether a § 501(c)(3) organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case.
[13] In Rev. Rul. 78-131, an organization whose purpose is to develop and encourage interest in painting, sculpture, and other art forms by conducting, in a noncommercial manner, a community art show qualifies for exemption as an organization operated exclusively for the promotion of social welfare under § 501(c)(4).
[14] Rev. Rul. 75-286 provides that an organization exempt under § 501(c)(4) must be operated exclusively for the promotion of social welfare. It may not benefit select individuals or groups, but must instead benefit the community as a whole.
[15] Rev. Rul. 74-575 concludes that a § 501(c)(3) organization operating a broadcasting station presenting religious, educational, and public interest programs, is not participating in political campaigns on behalf of public candidates in violation of the provisions of that section by providing reasonable air time equally available to all legally qualified candidates for election to public office.
[16] Rev. Rul. 74-369 provides that 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.
[17] Rev. Rul. 74-298 held that a nonprofit organization, whose membership was limited to local residents, and whose sole activity was sponsoring an annual professional golf tournament for which it leased a golf course and charged admission, was not operated primarily for the promotion of social welfare and did not qualify for exemption under § 501(c)(4).
[18] Rev. Rul. 68-656 concludes that an organization that was organized and operated for the purpose of educating the public on controversial subjects and attempts to influence legislation germane to its program may qualify for exemption under § 501(c)(4). The organization sought changes in the law and informed the public about a currently illegal activity, by circulating printed material and legislative proposals.
[19] Rev. Rul. 68-224 concludes that an organization that conducted an annual festival centered around regional customs and traditions engaged in activities that promoted the common good and social welfare of the people of the community and may qualify for exemption under § 501(c)(4). The organization provided the community with recreation and provided a means for citizens to express their interest in the community's history, customs, and traditions.

- Rev. Rul. 67-368, 1967-2 C.B. 194[20]
- Rev. Rul. 66-256, 1966-2 C.B. 210[21]
- Rev. Rul. 60-193, 1960-1 C.B. 195[22]

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

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[20] In Rev. Rul. 67-368, an organization formed for the purpose of promoting an enlightened electorate, whose primary activity was rating candidates for public office, was not exempt under § 501(c)(4) because such activity does not "the promotion of social welfare." The ruling stated that comparative rating of candidates, even though on a non-partisan basis, constitutes participation or intervention in a political campaign on behalf of candidates favorably rated and in opposition to those less favorably rated.

[21] Rev. Rul. 66-256 provides that an organization whose primary purpose was to bring about a fair and open-minded consideration and debate of social, political, and international questions by the promoting and sponsoring public forums at which debates and lectures are conducted qualifies for exemption under § 501(c)(3). The presentation of public lectures, forums, or debates is a recognized method of educating the public, even though some of its programs include controversial speakers or subjects. Therefore, the organization was organized and operated for charitable and educational purposes.

[22] Rev. Rul. 60-193 concludes that an organization whose purpose was to encourage greater participation in governmental and political affairs promoted social welfare and therefore qualified for recognition of exemption under § 501(c)(4). Activities of the organization included conducting nonpartisan seminars and workshops relating to the American political system. All lecturers were required to maintain certain technical standards and were not allowed to advocate for any particular political group. Seminars and workshops were moderated by permanent staff personnel of the organization in order to prevent the program from becoming partisan in character.

B) Provide the time, location, and content of each of your meetings, copies of any material provided at the meeting, lists of speakers who have attended the meetings, topics discussed, contents of speeches, and expenses incurred on these meetings.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9[23]
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)-(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

[23] Rev. Proc. 2012-9, section 3.08(3).

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Q1 (and instructions)
- Form 1024, Part II, Question 15
- Form 1024, Part II, Question 16[24]
- Form 1024, Part III (Financial Data)[25]
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 78-248, 1978-1 C.B. 154
- Rev. Rul. 76-81, 1976-1 C.B. 156
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 74-361, 1974-2 C.B. 159
- Rev. Rul. 68-45, 1968-1 C.B. 259[26]
- Rev. Rul. 66-256, 1966-2 C.B. 210

[24] Form 1024, Part II, Question 16: Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? If "Yes," attach a recent copy of each. The instructions to Form 1024, Question 16, provide that, "This includes any printed material that may be used to publicize the organization's activities, or as an informational item to members or potential members.

[25] As provided in Form 1024, Part III, this information must be competed by all organizations.

[26] Rev. Rul. 68-45 provides that 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.

- Rev. Rul. 60-193, 1960-1 C.B. 195

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

The Form 1024 asks organizations whether they publish pamphlets, brochures, newsletters, journals, or similar printed material. If the response is "yes," to the organization must attach copies of such materials. If the organization completes the application fully, no additional information for this type of material is requested. If the organization does not provide this material with the application, it will be requested in further development. Whether an organization is requested to provide additional information depends on all the facts and circumstances of the organization's application.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

C) Provide copies of any lease or rental agreements.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)[27]

[27] Reg. §1.501(c)(4)-1(a)(2) provides that an organization is not operated primarily for the

b) the IRS's rationale for needing this piece of information;

Form 1024, Part II, Question 14 asks whether the applicant leases or plans to lease any property. If the organization responded in the affirmative, the second part of the same question clearly states to explain in detail, including descriptions property and amount of rent, as well as "attach a copy of any rental or lease agreement." To minimize burden, the question offers the organization to "attach a single representative copy of the leases" if it is a party to multiple leases of property under similar agreements.

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists; whether the organization is engaging in potential unrelated business activities; whether section 4958 taxes on excess benefit transactions apply[28]; and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1

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promotion of social welfare if its *primary* activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

[28] Section 4958 taxes on excess benefit transactions applies to any transaction in which an economic benefit is provided by [a] tax-exempt organization directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

- Form 1024, Part II, Question 14[29]
- Form 1024, Schedule A, Question 5
- Form 1024, Schedule B, Question 2[30]
- Form 1024, Schedule C, Question 1[31] (section 501(c)(5)s and 501(c)(6)s)
- Form 1024, Schedule D, Question 1[32] (section 501(c)(7)s)
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 70-535, 1970-2 C.B. 117[33]
- Rev. Rul. 68-455, 1968-2 C.B. 215[34]

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[29] "Does the organization now lease or does it plan to lease any property? If "Yes," explain in detail. Include the amount of rent, a description of the property, and any relationship between the applicant organization and the other party. Also, attach a copy of any rental or lease agreement. (If the organization is a party, as a lessor, to multiple leases of rental real property under similar lease agreements, please attach a single representative copy of the leases."

[30] "Does the organization perform or plan to perform (for members, shareholders, or others) services, such as maintaining the common areas of a condominium; buying food or other items on a cooperative basis; or providing recreational facilities or transportation services, job placement, or other similar undertakings? If "Yes," explain the activities in detail, including income realized and expenses incurred. Also, explain in detail the nature of the benefits to the general public from these activities. (If the answer to this question is explained in Part II of the application (pages 2, 3, and 4), enter the page and item number here.)"

[31] Form 1024, Schedule C, Question 1, regarding §§ 501(c)(5) and (6) organizations: "Describe any services the organization performs for members or others. (If the description of the services is contained in Part II of the application, enter the page and item number here.)"

[32] Form 1024, Schedule D, Question 1, with regards to § 501(c)(7) organizations, "Has the organization entered or does it plan to enter into any contract or agreement for the management or operation of its property and/or activities, such as restaurants, pro shops, lodges, etc.? If "Yes," attach a copy of the contract or agreement. If one has not yet been drawn up, please explain the organization's plans."

[33] Rev. Rul. 70-535 provides that a nonprofit organization formed to manage low and moderate income housing projects for a fee does not qualify for exemption under § 501(c)(4). The organization entered into agreements with a number of nonprofit corporations exempt from Federal income tax under § 501(a) to manage low and moderate income housing projects for a fee. The organization operates in a manner similar to those providing such management services for profit. All of its income is from management fees. Its funds are used to meet expenses incurred in providing the management services. Managing these housing projects is the organization's primary activity. Its other activities are negligible. Since the organization's primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for profit, the organization is not operated primarily for the promotion of social welfare. The fact that these services are being performed for tax exempt corporations does not change the business nature of the activity.

[34] Rev. Rul. 68-455 states that an organization qualifies for exemption under § 501(c)(4) if its

- Rev. Rul. 68-46, 1968-1 C.B. 260[35]

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

D) Provide copies of any materials or other communications prepared by another person or individual that you have or will distribute, when the distribution was or will be conducted, and who has distributed or will distribute the materials.

a) the IRS's authority for asking for the information;

- Treas. Reg. § 1.501(a)-1

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primary activity is the promotion of social welfare, notwithstanding the business activities from which it derived the major part of its income was the carrying on of a business with the general public in a manner similar to organizations which are operated for profit. The organization had the exclusive right to operate a bathhouse and bathing beach, from which the major portion of its income derived. The organization's activities, other than those incident to the concession, included participation in various civic and charitable drives, organizational welfare activities. The IRS concluded that if the promotion of social welfare remained the primary activity of the organization it would qualify for exemption under § 501(c)(4).

[35] Rev. Rul. 68-46 concludes that an organization does not qualify for exemption from Federal income tax under § 501(c)(4) where it is primarily engaged in renting a commercial building and operating a public banquet and meeting hall having bar and dining facilities. Although the organization carries on veterans' programs and other benevolent, welfare, patriotic, and civic activities, the organization's business activities relating to the rental of the office building and meeting room space and the food and bar catering services exceeded all its other activities.

- Rev. Proc. 2012-9
- Form 1024

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Rev. Proc. 2012-9
- Form 1024, Part II, Question 1[36]
- Form 1024, Part II, Question 5[37]

[36] "Provide a detailed narrative description of all the activities of the organization—past, present, and planned. Do not merely refer to or repeat the language in the organizational document. List each activity separately in the order of importance based on the relative time and other resources devoted to the activity. Indicate the percentage of time for each activity. Each description should include, as a minimum, the following: (a) a detailed description of the activity including its purpose and how each activity furthers your exempt purpose; (b) when the activity was or will be initiated; and (c) where and by whom the activity will be conducted."

- Form 1024, Part II, Question 16[38]
- Form 1024, Schedule B, Question 1[39]
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 78-248, 1978-1 C.B. 154
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 66-256, 1966-2 C.B. 210

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

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[37] "If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees)."

[38] "Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? If "Yes," attach a recent copy of each." The Form 1024 Instructions, Question 16 also provide that, "This includes any printed material that may be used to publicize the organization's activities, or as an information item to members or potential members."

[39] Has the Internal Revenue Service previously issued a ruling or determination letter recognizing the applicant organization (or any predecessor organization listed in Question 4, Part II of the application) to be exempt under § 501(c)(3) and later revoked that recognition of exemption on the basis that the applicant organization (or its predecessor) was carrying on propaganda or otherwise attempting to influence legislation or on the basis that it engaged in political activity.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

E) Provide copies of all solicitations your organization has made regarding fundraising, including pamphlets, flyers, brochures, and webpage solicitations. Provide all sources of fundraising expenses.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1
- Form 1024, Part II, Question 2[40]
- Form 1024, Part II, Question 5[41]
- Form 1024, Part II, Question 15[42]
- Form 1024, Part II, Question 16
- Form 1024, Part III, Financial Data
- Form 1024, Schedule B, Question 2[43]
- Form 1024, Schedule C, Question 1[44]
- Form 1024, Schedule D, Question 2[45]
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)
- Rev. Rul. 2007-41, 2007-1 C.B. 1421

[40] "List the organization's present and future sources of financial support, beginning with the largest source first."
[41] "If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees)."
[42] Has the organization spent or does it 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? If "Yes," explain in detail and list the amounts spent or to be spent in each case.
[43] "Does the organization perform or plan to perform (for members, shareholders, or others) services, such as maintaining the common areas of a condominium; buying food or other items on a cooperative basis; or providing recreational facilities or transportation services, job placement, or other similar undertakings? If "Yes," explain the activities in detail, including income realized and expenses incurred. Also, explain in detail the nature of the benefits to the general public from these activities. (If the answer to this question is explained in Part II of the application (pages 2, 3, and 4), enter the page and item number here.)"
[44] "Describe any services the organization performs for members or others. (If the description of the services is contained in Part II of the application, enter the page and item number here.)"
[45] "Does the organization seek or plan to seek public patronage of its facilities or activities by advertisement or otherwise? If "Yes," attach sample copies of the advertisements or other requests. If the organization plans to seek public patronage, please explain the plans."

- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 81-95, 1981-1 C.B. 332
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-574, 1974-2 C.B. 161
- Rev. Rul. 66-256, 1966-2 C.B. 210

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

F) Provide all newsletters, emails and other items distributed to your members or other interested individuals.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Rev. Proc. 2012-9
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii)
- Form 1024, Part II, Question 7[46]
- Form 1024, Part II, Question 16 (and instructions)[47]

[46] "State the qualifications necessary for membership in the organization; the classes of membership (with the number of members in each class); and the voting rights and privileges received. If any group or class of persons is required to join, describe the requirement and explain the relationship between those members and members who join voluntarily. Submit copies of any membership solicitation material. Attach sample copies of all types of membership certificates issued."

[47] "Does the organization publish pamphlets, brochures, newsletters, journals, or similar printed material? If "Yes," attach a recent copy of each. The instructions to Form 1024, Question 16,

- Form 1024, Part III, Financial Data, Part A, Line 1 (Gross dues and assessments of members)
- Form 1024, Part III, Financial Data, Part B, Line 12 (Disbursements to or for the benefit of members)
- Form 1024, Schedule B, Question 2[48]
- Form 1024, Schedule C, Question 1[49]
- Form 1024, Schedule D, Question 2[50]
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 80-107, 1980-1 C.B. 117[51]
- Rev. Rul. 78-248, 1978-1 C.B. 154
- Rev. Rul. 78-132, 1978-1 C.B. 157[52]
- Rev. Rul. 75-286, 1975-2 C.B. 210

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also states: "This includes any printed material that may be used to publicize the organization's activities, or as an informational item to members or potential members."

[48] "Does the organization perform or plan to perform (for members, shareholders, or others) services, such as maintaining the common areas of a condominium; buying food or other items on a cooperative basis; or providing recreational facilities or transportation services, job placement, or other similar undertakings? If "Yes," explain the activities in detail, including income realized and expenses incurred. Also, explain in detail the nature of the benefits to the general public from these activities. (If the answer to this question is explained in Part II of the application (pages 2, 3, and 4), enter the page and item number here."

[49] "Describe any services the organization performs for members or others. (If the description of the services is contained in Part II of the application, enter the page and item number here.)"

[50] "Does the organization seek or plan to seek public patronage of its facilities or activities by advertisement or otherwise? If "Yes," attach sample copies of the advertisements or other requests. If the organization plans to seek public patronage, please explain the plans."

[51] Rev. Rul. 80-107 concludes that an organization does not qualify for recognition of exemption under § 501(c)(4) where it is operated for the private benefit of its members. The organization represented the interests of its members before administrative agencies and legislative bodies. Because the primary beneficiaries of the organization's activities were its members, it was primarily operated to serve private interests rather than the community as a whole. Thus, it did not qualify for § 501(c)(4) exemption.

[52] Rev. Rul. 78-132 concludes that an organization did not qualify for exemption under § 501(c)(4) because the organization was operated primarily for the benefit of private interests, and not the community as a whole.

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

G) Provide all copies of your corporate and meeting minutes from your organization's inception to present.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)(i)[53]
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)[54]

[53] 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 civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of § 1.501(c)(3)–1 and is not an action organization as set forth in paragraph (c)(3) of § 1.501(c)(3)–1.

[54] 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. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii)
- Rev. Rul. 80-107, 1980-1 C.B. 117
- Rev. Rul. 75-286, 1975-2 C.B. 210

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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 which are operated for profit.

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

H) Provide the names of all donors, contributors, and grantors and the amounts of each donation, contribution, and grant.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention. Nevertheless, the IRS takes privacy very seriously when developing applications, and makes the effort to work with the organization to obtain the needed information so that the confidentiality of any potentially sensitive or privileged information is taken into account. As discussed, we have advised applicant organizations that if they believe that the requested information requested to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application. We remain open to considering whether compliance with the legal requirements can be satisfied in an alternative manner.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Rev. Proc. 2012-09
- Form 1024, Part II, Question 2[55]
- Form 1024, Part II, Question 5[56]
- American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989)[57]
- Rev. Rul. 80-302; 1980-2 C.B. 182[58]

[55] "List the organization's present and future sources of financial support, beginning with the largest source first."
[56] "If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees)."
[57] In American Campaign Academy, the court denied exemption under § 501(c)(3) to an organization that conducted activities for the primary benefit of a political party and the candidates it served. The court found that the private benefit to the group of individuals was more than incidental and, therefore, the organization was not organized and operated exclusively for exempt purposes.
[58] In Rev. Rul. 80-302, an organization did not qualify for exemption under § 501(c)(3) because

- Rev. Rul. 80-107
- Rev. Rul. 78-132, 1978-1 C.B. 157
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 70-186; 1970-1 C.B. 128
- Rev. Rul. 69-631; 1969-2 C.B. 119[59]
- Rev. Rul. 68-266; 1968-1 C.B. 270[60]

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

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the organization primarily benefited a family, instead of the community as a whole.

[59] Rev. Rul. 69-631 concludes that an organization qualified for exemption under § 501(c)(3) because no part of the organization's funds were used for the private benefit of any individual.

[60] Rev. Rul. 68-266 concludes that an organization was exempt under § 501(c)(7) because none of its income inured to the private benefit of any individual.

l) Provide the details of how your organization will use the donations, contributions, and grants.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part, II, Question 1

- Form 1024, Part II, Question 5[61]
- Form 1024, Part II, Question 9[62]
- Form 1024, Part II, Question 11[63]
- Form 1024, Part II, Question 15
- Form 1024, Part III, Financial Data
- Rev. Rul. 80-107, 1980-1 C.B. 117
- Rev. Rul. 75-286, 1975-2 C.B. 210

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

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[61] "If the applicant organization is now, or plans to be, connected in any way with any other organization, describe the other organization and explain the relationship (e.g., financial support on a continuing basis; shared facilities or employees; same officers, directors, or trustees)."

[62] Has the organization made or does it plan to make any distribution of its property or surplus funds to shareholders or members? If "Yes," state the full details, including: (1) amounts or value; (2) source of funds or property distributed or to be distributed; and (3) basis of, and authority for, distribution or planned distribution

[63] Has the organization made, or does it plan to make, any payments to members or shareholders for services performed or to be performed? If "Yes," state in detail the amount paid, the character of the services, and to whom the payments have been, or will be, made."

J) Provide a resume, total compensation package, and rationale for how each compensation package was determined for your past and present directors, officers, and key employees.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Internal Revenue Code § 4958 (taxes on excess benefit transactions)
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. §1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)
- Treas. Reg. §§ 53.4958-1 through 53.4958-8

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 3(a) and (b)[64]
- Form 1024, Part III, Financial Data, Part A[65]
- Internal Revenue Code § 4958 (taxes on excess benefit transactions)
- Treas. Reg. §§ 53.4958-1 through 53.4958-8
- Rev. Rul. 75-286, 1975-2 C.B. 210

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

[64] "Give the following information about the organization's governing body: (a) Names, addresses, and titles of officers, directors, trustees, etc., and; (b) Annual compensation." The instructions to Part III, Question 3, also state: "Furnish the mailing addresses of the organization's principal officers, directors, or trustees. Do not give the address of the organization." Further, the Instruction for Line 3(b) state: "The annual compensation includes salary, bonus, and any other form of payment to the individual for services performed for the organization."

[65] Form 1024, Part III, Financial Data (Part A) Statement of Revenue and Expenses, requires the applicant to report the compensation of officers, directors, and trustees, and to attach a schedule. The Instructions further state: "Attach a schedule that show the name of the person compensated; the office or position; the average amount of time devoted to business per week, month, etc.; and the amount of annual compensation."

K) Provide a list of all issues that are important to your organization, indicating your position regarding each issue.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)(iv)[66] ("action" organizations)
- Treas. Reg. § 1.501(c)(4)-1(a)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)[67]
- Treas. Reg. §1.501(c)(4)-1(a)(2)(ii)[68]

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

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[66] Treas. Reg. § 1.501(c)(3)-1(c)(3)(iv) provides that an organization is an "action" organization if it has the following two characteristics: (a) its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results there of available to the public.

[67] 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 civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of § 1.501(c)(3)–1 and is not an "action" organization as set forth in paragraph (c)(3) of § 1.501(c)(3)–1.

[68] 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. Nor is an organization 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 which are operated for profit.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1
- Form 1024, Part II, Question 15
- Form 1024, Part II, Question 16
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Proc. 86-43, 1986-2 C.B. 729[69]
- Rev. Rul. 81-95, 1981-1 C.B. 332

[69] Rev. Proc. 86-43 discusses the criteria that the IRS uses to determine the circumstances under which advocacy of a particular viewpoint or position by an organization is considered educational within the meaning of § 501(c)(3) and within the meaning of Reg. §1.501(c)(3)-1(d)(3). The Rev. Proc. provides that the presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its viewpoints or positions 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 purport to support the viewpoints or positions are distorted; (3) the organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and the approach used in the organization'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. This methodology test is set forth in Section 3 of the revenue procedure, and is used in all situations where the educational purposes of an organization that advocates a particular viewpoint or position are in question.

- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 80-107, 1980-1 C.B. 117
- Rev. Rul. 78-248, 1978-1 C.B. 154
- Rev. Rul. 76-81, 1976-1 C.B. 156
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 74-361, 1974-2 C.B. 159
- Rev. Rul. 68-656, 1968-2 C.B. 216
- Rev. Rul. 68-45, 1968-1 C.B. 259
- Rev. Rul. 67-368, 1967-2 C.B. 194
- Rev. Rul. 66-256, 1966-2 C.B. 210
- Rev. Rul. 60-193, 1960-1 C.B. 195

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

L) Provide details regarding all training your organization has provided or will provide, indicating who has received or will receive the training and providing all copies of the training material.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)(iv) ("action" organization)
- Treas. Reg. § 1.501(c)(4)-1(a)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1[70]
- Form 1024, Part II, Question 5
- Form 1024, Part II, Question 10
- Form 1024, Part II, Question 15
- Form 1024, Part II, Question 16
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 86-95, 1986-2 C.B. 73
- Rev. Rul. 81-95, 1981-1 C.B. 332
- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 80-107, 1980-1 C.B. 117
- Rev. Rul. 78-248, 1978-1 C.B. 154
- Rev. Rul. 75-286, 1975-2 C.B. 21
- Rev. Rul. 74-574, 1974-2 C.B. 160
- Rev. Rul. 68-656, 1968-2 C.B. 216
- Rev. Rul. 67-368, 1967-2 C.B. 194
- Rev. Rul. 66-256, 1966-2 C.B. 210
- Rev. Rul. 60-193, 1960-1 C.B. 195

[70] Form 1024 Instructions, Part II, Question 1, provides that: "It is important that you report all activities carried on by the organization to enable the IRS to make a proper determination of the organization's exempt status. It is also important that you provide detailed information about the nature and purpose of each of the activities. The organization will be contacted for such information if it is not furnished."

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

M) Provide the member application and registration form, the membership agreement and rules that govern members, and copies of your website that only members can access.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(i)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 7[71]
- Form 1024, Part II, Question 9
- Form 1024, Part II, Question 11
- Form 1024, Part II, Question 16
- Form 1024, Part III, Financial Data, Part A, Line 1
- Form 1024, Part III, Financial Data, Part A, Line 12
- Form 1024, Schedule B, Question 2
- Form 1024, Schedule C, Question 1
- Rev. Rul. 2007-41, 2007-1 C.B. 1421

[71] "State the qualifications necessary for membership in the organization; the classes of membership (with the number of members in each class); and the voting rights and privileges received. If any group or class of persons is required to join, describe the requirement and explain the relationship between those members and members who join voluntarily. Submit copies of any membership solicitation material. Attach sample copies of all types of membership certificates issued."

- Rev. Rul. 80-107, 1980-1 C.B. 117
- Rev. Rul. 80-282, 1980-2 C.B. 178
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-361, 1974-2 C.B. 159
- Rev. Rul. 68-45, 1968-1 C.B. 259

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

N) Provide a vendor list, a list of all merchandise items sold, your cost for each item, and the selling price for each item.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 990-T (unrelated business income tax)
- Form 1024
- Internal Revenue Code section 512 (unrelated business taxable income)
- Internal Revenue Code section 513 ("unrelated trade or business")

- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(4)-1(a)(1)
- Treas. Reg. § 1.501(c)(4)-1(a)(2)
- Treas. Reg. § 1.512(a)-1
- Treas. Reg. § 1.513-1

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists; whether the organization is engaging in potential unrelated business activities; and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 990-T
- Form 1024, Part II, Question 1
- Form 1024, Part II, Question 10

- Form 1024, Part II, Question 11
- Form 1024, Part II, Financial Data, Part A, Line 3
- Form 1024, Part II, Financial Data, Part A, Line 4
- Form 1024, Part II, Financial Data, Part B, Line 9
- Form 1024, Part II, Financial Data, Part B, Line 10
- Form 1024, Schedule D, Question 1
- Form 1024, Schedule D, Question 2
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-112, 2004-2 C.B. 985 (unrelated trade or business in §501(c)(6) context

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

O) **Provide all activities your organization has engaged in with the news media, including copies of articles printed or transcripts of items aired because of that activity.**

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)
- Treas. Reg. § 1.501(c)(4)-1(a)
- Treas. Reg. § 56.4911-2 (certain public charities)
- Treas. Reg. § 53.4945-2 (private foundations only)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1
- Form 1024, Part II, Question 5
- Form 1024, Part II, Question 15
- Form 1024, Part II, Question 16
- Treas. Reg. § 1.501(c)(3)-1(c)(3)
- Rev. Rul. 2007-41, 2007-1 C.B. 1421
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 74-574, 1974-2 C.B. 160[72]
- Rev. Rul. 70-79, 1970-1 C.B. 127[73]
- Rev. Rul. 68-656, 1968-2 C.B. 216

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

[72] Rev. Rul .74-574 concludes that a § 501(c)(3) organization that operates a broadcasting station presenting religious, educational, and public interest programs, is not participating in political campaigns on behalf of public candidates in violation of the provisions of that section by providing reasonable air time equally available to all legally qualified candidates for election to public office.

[73] Rev. Rul. 70-79 concludes that an organization created to assist local governments of a metropolitan region by studying and recommending regional policies directed at the solution of mutual problems qualifies for recognition of exemption under § 501(c)(3). The organization researches and analyzes problems discussed at meetings and distributes reports to the local governments and news media.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

P) Provide copies of all direct or indirect communication with members of legislative bodies.

a) the IRS's authority for asking for the information;

- Rev. Proc. 2012-9
- Form 1024
- Internal Revenue Code section 4911
- Internal Revenue Code section 4945 (exceptions to definition of lobbying)
- Treas. Reg. § 1.501(a)-1
- Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii)
- Treas. Reg. § 1.501(c)(3)-1(c)(3)(iv)
- Treas. Reg. § 1.501(c)(4)-1
- Treas. Reg. § 53.4945-2 (private foundations only)
- Treas. Reg. § 56.4911-2(b)(1)(i) (certain public charities)
- Treas. Reg. § 56.4911-2(b)(1)(ii) (certain public charities)
- Treas. Reg. § 56.4911-2(b)(2)(i) (certain public charities)
- Treas. Reg. § 56.4911-2(b)(2)(ii) (certain public charities)

b) the IRS's rationale for needing this piece of information;

Additional information is requested when the organization does not provide a sufficient response to questions in Form 1024 to meet its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

Depending on the facts and circumstances set forth in an organization's application, this additional information may be requested in order to help the agent determine if potential inurement or private benefit exists, and whether the organization's activities primarily further exempt purposes or nonexempt purposes, such as direct or indirect political campaign intervention.

Because the organization is permitted to engage in some non-exempt activities, the information provided must be analyzed not only to determine whether the activities further an exempt purpose, but also to review the scope of the activities to determine whether the primary activities are exempt or non-exempt.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it either supports exemption or denial. Further, if the application is approved, not only is the administrative record made publicly available (with certain limited exceptions), but organizations that act as described in the administrative record have reliance on the IRS determination.

c) whether any precedent exists for the IRS asking for this type of information;

Listed below is a selection of the applicable precedents that may apply in a given application. In specific cases, there may be additional precedents applicable to the particular facts of the circumstances of the organization.

- Form 1024, Part II, Question 1
- Form 1024, Part II, Question 1
- Rev. Rul. 2004-6, 2004-1 C.B. 328
- Rev. Rul. 70-449, 1970-2 C.B. 111 (§ 501(c)(3) context)
- Rev. Rul. 70-79, 1970-1 C.B. 127 (§ 501(c)(3) context)
- Rev. Rul. 76-81, 1976-1 C.B. 156
- Rev. Rul. 75-286, 1975-2 C.B. 210
- Rev. Rul. 68-656, 1968-2 C.B. 216

- Rev. Rul. 67-293, 1967-2 C.B. 185
- Rev. Rul. 67-163, 1967-1 C.B. 43
- Rev. Rul. 67-6, 1967-1 C.B. 135[74]
- Rev. Rul. 64-195, 1964-2 C. B. 138 (§ 501(c)(3) context)
- Rev. Rul. 62-71, 1962-1 C.B. 85

d) the objective standards the IRS will use when reviewing the response; and

Responses received from the applicant are evaluated based upon the requirements of the particular section in the Code and regulations under which the organization is claiming its exemption.

The IRS has experienced revenue agents, who use sound reasoning based on tax law training, to review applications and supporting materials and to prepare individualized questions and document requests based on the facts and circumstances set forth in the application. The general procedures for reviewing applications for tax-exempt status, which includes requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, as already mentioned. Also, see Revenue Procedure 2012-9, section 4 on the standards for issuing a determination letter or ruling on exempt status.

e) how the IRS will use the information to determine tax-exempt status.

This information is used to establish whether, based on the facts and circumstances, the organization's activities primarily further exempt or non-exempt purposes. The IRS will use the information gathered to determine, within the context of the organization's entire application, whether the organization has met its burden of establishing that it meets the requirements of the statute and regulations under which it seeks exemption.

[74] Rev. Rul. 67-6 concludes that an association whose activities are primarily devoted to preserving the traditions, architecture, and appearance of a community by means of individual and group action before the local legislature and administrative agencies with respect to zoning, traffic, and parking regulations may be exempt from Federal income under § 501(c)(4).

I hope this information is helpful. If you have questions, please contact me or have your staff contact Cathy Barre at SFC [redacted].

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosures

SFC 004028

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

DEPUTY COMMISSIONER

April 26, 2012

The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Hatch:

I am responding to your letter to Commissioner Shulman dated March 14, 2012, requesting information about the procedures to obtain tax exemption under section 501(c)(4) of the Internal Revenue Code. We appreciate your interest and support of the IRS efforts in the administration of the tax law as it applies to tax-exempt organizations.

Question 1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?

The law allows section 501(c)(4) organizations to self-declare and hold themselves out as tax-exempt. Organizations also can apply for IRS recognition as tax-exempt. An organization determined by the IRS to be tax-exempt can rely on that determination if their exempt status is ever questioned, so long as the organization has not deviated from the organizational structure and operational activities set forth in its application.

Once an organization that has applied to the IRS receives recognition of section 501(c)(4) status, it is not required to renew that recognition. If an organization's tax-exemption is later revoked, either through the examination process or automatically for failure to file the annual information return or notice for three consecutive years[1], it may reapply and the process is the same as the initial application process, as described in Revenue Procedure 2012-9, 2012-2 I.R.B 261 and below. As set forth in Revenue Procedure 2012-9, the organization has the burden of proving that it meets the particular requirements of the Code section under which it claims exemption through information in its application and supporting materials. Enclosure A is a copy of the Revenue Procedure.

All applications for tax-exempt status, including applications for status under section 501(c)(4), are filed with a centralized IRS Submission Processing Center, which enters the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent to the Exempt Organizations ("EO") Determinations office in Cincinnati, Ohio for initial technical screening.

[1] IRC § 6033(j)(1).

This technical screening is conducted by EO Determinations' most experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case.[2]

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances set forth in the application, the revenue agent requests additional information and documentation to complete the file pertaining to the exempt status application materials[3] (the so-called "administrative record") and makes a determination. Where an application for exemption presents issues that require further development to complete the administrative record, the revenue agent engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and it helps the IRS obtain all the information relevant to the determination.

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, in these cases, EO Technical (an office of specialists in Exempt Organizations) works with the IRS Office of

[2] Enclosure B describes the criteria used to determine the appropriate level of experience.
[3] This includes the application for recognition of tax exempt status, any papers submitted in support of the application, and any letter or other document issued by the IRS with respect to the application. See IRC § 6104(a), (d)(5); Tax Court Rule 210(b)(12).

Chief Counsel to develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it supports either exemption or denial. If the application is approved, not only is the administrative record made publicly available (with certain limited exceptions outlined below), but organizations that act as described in the administrative record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Office of Appeals. The Appeals Office, which is independent of Exempt Organizations, reviews the complete administrative record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. It is to the organization's benefit to have all of their materials in the file in the event that EO Determinations denies exemption and the organization seeks Appeals review. If, based on the information in the administrative record, the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, the 501(c)(4) applicant may pay the tax owed as a taxable entity and seek a refund in federal court.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations refers the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists, whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. EO Technical staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record. If, upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a "conference of right" where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the administrative record is made publicly available, and if the organization acts as described in the application filed, it has reliance on the IRS determination. If the application is denied, the applicant may seek relief by paying the tax owed as a taxable entity and seek a refund in federal court.

Question 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?

In order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 instructs the applicant to report, among other things, all of its activities – past, present, and planned. The Form and instructions tell the organization that it must

provide a detailed description of each individual activity, including the purpose of the activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a favorable determination, the applicant will not be asked additional questions. If, however, issues remain, then the IRS contacts the organization and solicits the information needed to establish or deny tax exemption.

The range of organizations eligible for tax-exempt status under section 501(c)(4), the requirements they must meet, and the diversity of the facts and circumstances presented by the applications, require individualized consideration, and each development letter will vary depending on the facts and circumstances of the application.

Question 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?

As noted in question 2, the IRS contacts the organization and solicits additional information when there is not sufficient information upon which to make a determination of tax exempt status. When an application needs further development, the case is assigned to a revenue agent with the appropriate level of experience for the issues involved in the application.

The general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual. Although there is a template letter that describes the general information on the case development process, the letter does not, and could not, specify the information to be requested from any particular organization because of the broad range of possible facts possible. Enclosure C is a copy of the template letter.

The amount and nature of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are attached to the above described general template letter. With certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, develops educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application.

Once responses are received, the entire application file is evaluated based upon the requirements in the Code and regulations.[4]

Question 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?

As noted in question 2, the IRS contacts the organization and solicits additional information if there is insufficient information to make a determination or if issues are raised by the application. All information gathered during the application process is evaluated based upon the requirements of the Code and regulations.[5]

The general procedures for reviewing applications for tax-exempt status, which include requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, which is made available to the public on the IRS website.[6] Enclosure D is a copy of IRM 7.20.2.

Question 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?

The nature of any development letter will vary depending on the facts and circumstances of a given application. Therefore, organizations receive different questions. As indicated earlier, in situations where there are a number of cases involving similar issues (such as, for example, credit counseling organizations, down payment assistance organizations, and advocacy organizations), educational materials may be developed to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

As to the specific matters you raised in your letter, Question 16 of Part II of Form 1024

[4] IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.
[5] IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.
[6] IRM 7.20.2 is available at http://www.irs.gov/irm/part7/irm_07-020-002.html.

asks organizations whether they publish pamphlets, brochures, newsletters, journals, or similar printed material. This includes material that may be used to publicize the organization's activities, or as an informational item to members or potential members. If so, the Form instructs organizations to attach a recent copy of each. If the organization's application indicates that it does publish such materials but it did not provide this material with the application, the material will be requested in further development.

The IRS recognizes that many organizations communicate through the internet and social media as well as through paper. Where relevant to the issues raised in an application, the IRS will ask for those materials as well. To ensure a complete administrative record for reliance and review purposes, copies of relevant internet materials must be included. The extent of any required submission depends upon the facts and circumstances of a given case and the professional judgment of the revenue agent involved.

As noted above, with regard to other activities such as public events, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 requires organizations to provide a detailed narrative description of all of the activities of the organization - past, present, and planned, listing each activity separately. Each description should include, at a minimum, a detailed description of the activity including its purpose and how each activity furthers the organization's exempt purpose, when the activity was or will be initiated, and where and by whom the activity will be conducted. If the organization does not provide this information or if it does not provide sufficient detail, more information may be requested as part of the development process in order to complete its application record. As previously discussed, EO staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record and make a determination. If an organization believes that the legal requirements can be satisfied without the requested documentation or the organization needs additional time to respond, the organization can discuss an alternative approach or timing with their agent. The IRS will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed and whether an extension of time is warranted.

As explained above, a complete application record is important for both the IRS and the organization. The administrative record must be complete so that it supports either exemption or denial.

Question 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.

In answering this question, we assumed that the language referred to in the question relates to the Form 1024 rather than the Form 1040. The quoted language refers to the fact that amounts received for the performance of an exempt function should be reported on line 3 rather than line 2 of the Form 1024.

As explained above, when a Form 1024 application needs further development, the IRS contacts the organization and solicits additional information in order to have a complete administrative record on which the IRS can make a determination as to whether the requirements of the Code and regulations are met. There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Nevertheless, the IRS takes privacy very seriously, and makes an effort to work with the organization to obtain the needed information so that the confidentiality of any potentially sensitive or privileged information is taken into account. We have advised applicant organizations that if they believe that the requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application. As discussed above, we will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed. We have also granted applicants additional time to respond.

IRS policy or practice does not govern whether or not donor information is made public. This matter is governed by statute. Public disclosure regarding tax exempt organization filings is principally governed by sections 6104 and 6110 of the Internal Revenue Code.

Section 6104 of the Code requires the IRS to make certain materials related to tax-exempt organizations available for public inspection, including an organization's application for recognition of tax exemption and Form 990 annual information returns.[7] If the IRS approves an organization's application for tax-exempt status, section 6104(a) requires that the application and supporting materials be made available for public inspection. The only exception to that requirement is found in section 6104(a)(1)(D), which exempts from disclosure information that the IRS determines is related to any "trade secret, patent, process, style of work, or apparatus of the organization" that would adversely affect the organization, or information that could adversely affect national defense.

The long-standing statutory requirements regarding the disclosure of exemption applications, including Form 1024, are separate from those requiring public availability of Form 990 annual information returns, which are contained in section 6104(b). Under section 6104(b), Form 990 annual information returns also are subject to disclosure for public inspection, with the sole exception of donor information contained in Schedule B of the Form 990.[8] The withholding of donor information from public disclosure applies only to Form 990; this exception does not extend to information obtained from Form 1024 and supporting materials.

In light of the statutory requirement to make approved applications public, page 2 of the Form 1024 instructions notifies organizations that information they provide will be available for public inspection. This notice is reiterated in any development letters sent to the organizations. Although the statute requires the administrative record to be made available for public inspection, the IRS does not affirmatively publish this information. It is available only upon request.

Additionally, under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information are subject to public inspection, with certain identifying and other information redacted, to assist the public understand the IRS reasoning while also protecting the identity of the organization and any person identified in the file (including individual donors).

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[7] The disclosure rules have been in place since 1958, and the legislative history provided the following rationale for public disclosure of exemption applications: "[the] committee believes that making these applications available to the public will provide substantial additional aid to the Internal Revenue Service in determining whether organizations are actually operating in the manner in which they have stated in their applications for exemption." H.R. Rep. No. 85-262, at 41-42 (1957). In 1987, Congress added what is now section 6104(d) to the Code, that requires organizations to make their returns available to the public, and in 1996 extended this rule to application materials.

[8] The withholding exception does not apply to donor information for organizations that file Form 990-PF or to those section 527 organizations that are required to file Form 990 or 990-EZ.

In response to your specific question, having inquired, I am informed that there have been no communications between IRS employees and the Department of Treasury or the White House with respect to requests for donor information from any 501(c)(4) applicant organizations. Requests for information, including donor information, of specific organizations that are currently in the application process are subject to the requirements of section 6103 of the Code. Section 6103(f) sets forth the means by which congressional committees may obtain access to return and return information (that is not otherwise made publicly available under sections 6104 and 6110). We are available to discuss these rules in more detail with your staff.

Question 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)?

Section 7.20.2.7.1 of the Internal Revenue Manual provides that a revenue agent seeking additional information from an organization applying for tax-exempt status, will give that organization 21 days to provide a response. Accordingly, this 21 day response time is given to all organizations whose application requires further development. Enclosure D contains the IRM provision.

Organizations can request more time to respond and if an organization fails to respond by the specified date the agent will contact the organization to inquire about the status of the information request and whether additional time is needed. These procedures are specified in section 7.20.2.7.1 of the IRM.

Organizations that may be engaged in advocacy activities, and have recently received development letters as part of the exemption application process have been advised that they have additional time to respond. We sent a follow-up letter advising the organizations that they have an additional 60 days to respond; and that if they believe that the requested information required to demonstrate eligibility for tax-exempt status can be provided through alternative information, they should contact the revenue agent assigned to their application. If they need more than the additional 60 days to respond, they should contact their revenue agent to request a further extension.

Question 8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection." 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 inquires 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.

Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status of organizations that have been recognized as exempt. Our records do not indicate that any organization with the name Priorities USA has been recognized as tax-exempt.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact SFC at SFC.

Sincerely,

Steven T. Miller
Deputy Commissioner
for Services and Enforcement

Enclosures

SFC 004038

From: Kutz Gregory D TIGTA
To: Paterson Troy D TIGTA
Subject: Re: Tax-Exempt Applications Audit Report for your Review and Feedback
Date: Friday, March 01, 2013 1:06:12 PM

Can you talk briefly?

From: Paterson Troy D TIGTA
Sent: Friday, March 01, 2013 01:01 PM
To: Kutz Gregory D TIGTA
Subject: RE: Tax-Exempt Applications Audit Report for your Review and Feedback

Greg,

We're not all available today to discuss; therefore, I would propose that we meet on Monday. Would you like me to set up a call with Emma? Would you also like me to ask Emma to schedule a call with Counsel at the first time available after we meet on Monday?

Troy
SFC [redacted]

From: Kutz Gregory D TIGTA
Sent: Friday, March 01, 2013 11:16 AM
To: Paterson Troy D TIGTA
Subject: FW: Tax-Exempt Applications Audit Report for your Review and Feedback
Importance: High

Let me know when you would like to discuss. Still haven't heard back from Mike on when he will have reviewed.

Greg

From: McCarthy Michael T TIGTA
Sent: Thursday, February 28, 2013 10:07 AM
To: Kutz Gregory D TIGTA; Paterson Troy D TIGTA
Cc: Creswell Lori L TIGTA; Carter Thomas E TIGTA; Hernandez Gladys M TIGTA
Subject: FW: Tax-Exempt Applications Audit Report for your Review and Feedback
Importance: High

Greg and Troy –

Thank you for forwarding the attached report to Counsel for comment. Having not been involved in the audit or having access to the audit work papers, our comments and concerns are premised solely upon the information in the written draft report.

According to the draft report, OA has concluded that the EO function "used inappropriate criteria that targeted Tea Party and other organizations applying for tax-exempt status based upon their names or values, instead of applications with indications of potential

political campaign intervention (hereinafter referred to as political cases)."

As an initial concern, "targeted" has a connotation of improper motivation that does not seem to be supported by the information presented in the audit report. I think "selected" or even "singled out" would be more accurate. Also, it is not clear why exactly we find the criteria used were "inappropriate." Is it because specific names associated with political activity shouldn't be used as a criteria? That would seem to make it difficult for the IRS to identify potential political applications for referral to the specialized unit. If this is the rationale, the information in footnote 11, that the use of organization names occurs in non-political cases as well, seems like it needs more attention, since it suggests both that the IRS was not politically motivated in this case, and that our recommendation might need to be broader. Or are we saying it was inappropriate because the use of names was one-sided, i.e. name criteria included only certain types of groups seen as conservative, and names of other political groups with different policies should have also been included? If that is the rationale, do we have evidence that similarly situated groups from the left side of the political spectrum should have been included by name in the criteria, but were not? The later sections of the report seem to suggest this, but it is not clear.

The report also refers to one of the selection criteria as an organization's "values," which we don't think is an accurate word based on the examples given. I think these would be more accurately described as "policy positions" or "policy goals" or "political statements."

On pages 8-9 of the report, we offer statistical information purporting to determine whether the use of "inappropriate criteria resulted in organizations being treated inconsistently." However, the statistical information does not actually address the use of the "inappropriate criteria." Instead, it really focuses on whether the application had information concerning potential political activity and whether it should have been processed by the political team.

Starting on page 10 of the report, the report talks about applications not being "process[ed] timely due to ineffective management of political cases." The report does not identify what standard OA used to define "timely." While it is clear that processing took a long time, can we say it is not timely if there is no time limit for processing? Also, it appears that the lengthy delay results from a lengthy wait for a legal opinion, which appears to be the basis for OA's conclusion that it was "ineffective management." It is unclear however how waiting for an opinion equates to "ineffective management."

We hope that this helps highlight our substantive concerns with the draft report. If you would like to discuss further, please let me know.

Thanks,

SFC 004040

Mike

From: Paterson Troy D TIGTA
Sent: Monday, February 25, 2013 8:19 AM
To: McKenney Michael E TIGTA; McCarthy Michael T TIGTA
Cc: Kutz Gregory D TIGTA; Davis Estine H TIGTA; Seidell Thomas F TIGTA; Medina Cheryl J TIGTA; McGovern Michael A TIGTA
Subject: Tax-Exempt Applications Audit Report for your Review and Feedback

Good morning,

Greg mentioned that, due to the sensitivity of the attached report, he would like for us to obtain your feedback before we issue a discussion draft report to the IRS. Therefore, I am attaching a copy of the report for your review. If you have any questions or would like to meet to discuss, please let me know. I look forward to hearing from you.

Troy Paterson
Director, Tax Exempt and Government Entities/Human Capital
Phone: SFC [redacted]
e-mail: SFC [redacted]

SFC 004041

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	September 5, 2014 9:05 AM
Activity or Interview of: Aaron SIGNOR Information Technology (IT) Specialist Internal Revenue Service (IRS) User & Network Services IT SFC [redacted]	**Conducted by:** Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On September 5, 2014, the reporting SAs interviewed Aaron SIGNOR, IT Specialist, IRS, User & Network Services, IT, Washington, DC, regarding the apparent hard drive failure associated with Ronald SHOEMAKER, Supervisory Tax Law Specialist, IRS, Exempt Organizations, Tax Exempt and Government Entities, Washington, DC, on March 7, 2011. SIGNOR signed Employee Notification Regarding Third Party Interviews Form 9142. He was represented by SFC [redacted], Steward, National Treasury Employees Union.

The purpose of the interview was to question SIGNOR about his recollection of and his involvement with IRS helpdesk ticket number 8115555 (attached), which documented the apparent failure and replacement of the hard drive in the laptop assigned to SHOEMAKER. The text of the helpdesk ticket, dated March 7, 2011, suggested SHOEMAKER had suffered a substantial laptop failure, originally diagnosed as a "registry file failure, possibly by SFC [redacted], IT Specialist, IRS, User & Network Services, IT, Washington, DC, who opened the helpdesk ticket. SIGNOR's notes on the incident indicated that he had been working with SHOEMAKER to resolve the issue and that "the drive is not recoverable," and that he was "imaging a new hard drive for the customer" on March 4, 2011. SIGNOR was provided a copy of the helpdesk ticket while being interviewed.

SIGNOR was placed under oath and stated the following:

When asked if he had specific recollection of helpdesk ticket number 8115555 (attached), SIGNOR indicated that he did not remember the ticket or any details of the helpdesk ticket. He did recall working with SHOEMAKER on several prior occasions. In review of the helpdesk ticket notes, SIGNOR indicated that it looked like he had followed the "normal process" for dealing with that kind of computer hardware failure.

SIGNOR explained that the standard process for replacing a laptop hard drive was approximately the same in 2011 as in 2014. He would first examine the system to look for any physical damage and

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

would then run Hewlett-Packard (HP) Basic Input-Output System tests in order to see if the test results indicated a specific problem. He would then see if the system would boot from a temporary hard drive to determine if the original hard drive or some other problem with the laptop was the cause of the problem. If the original hard drive was the apparent cause, he would attempt to decrypt the hard drive and perform data recovery and would also contact HP to get troubleshooting recommendations and order a new hard drive. SIGNOR stated that HP made the ultimate determination as to whether or not a hard drive was replaced. Lastly, he would work with the customer to restore data to a new hard drive, using the data he recovered or from any backups the customer might have.

SIGNOR could not state from his review of the notes of helpdesk ticket 8115555 whether he had ever determined what caused SHOEMAKER's hard drive to fail. He said it was common that they never confirmed a cause of hard drive failures. He indicated that the old IRS IT helpdesk ticket system, called IT Asset Management System (ITAMS) did not have a field within helpdesk tickets to document the cause. The new system that replaced ITAMS, called Knowledge Incident/Problem Service Asset Management (KISAM) did have a "cause" code field but that it was not very detailed.

SIGNOR was unsure why the helpdesk ticket was originally described as a "registry file failure." His notes indicated to him that it was a fairly routine hard drive failure. He agreed that a Microsoft Windows registry failure alone would not have necessitated a hard drive replacement.

SIGNOR identified Frank DEMATTEIS, IT Specialist, IRS, Enterprise Operations, IT, New Haven, CT, as an employee who worked for the Entire Disk Encryption (EDE) team and DEMATTEIS would have provided SIGNOR the decryption key needed to decrypt SHOEMAKER's hard drive in order to attempt a data recovery. He said that he would normally share a helpdesk ticket for which an EDE key was needed with the EDE group. A member of the EDE group would then normally e-mail the key to SIGNOR via IRS secure messaging.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

SFC 004043

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	July 1, 2014 3:30 PM
Activity or Interview of:	**Conducted by:**
Catherine DUVAL Counselor to the Commissioner Internal Revenue Service (IRS) Office of Chief Counsel SFC [redacted]	Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On July 1, 2014, the reporting SA interviewed Catherine DUVAL, Counselor to the Commissioner, IRS, Office of Chief Counsel, Washington, DC, regarding the additional custodians identified by the IRS Office of Chief Counsel as experiencing an apparent hard drive failure and possible data loss.

DUVAL substantially stated the following:

DUVAL provided a copy of a list of 18 custodians that were identified as having potential hard drive issues or failures that may have resulted in lost e-mails (attached). Six names were initially identified by querying the current helpdesk ticket system, Knowledge, Incident/Problem, Service, and Asset Management (KISAM) and additional names were identified once the old helpdesk ticket system, Information Technology Asset Management System (ITAMS) was resurrected and queried. Some of the IRS employee names on the list were added due to Congressional interest rather than being included as custodians of relevant e-mails or documents regarding the Exempt Organizations Determinations process.

There were ten custodians with no apparent gap in their e-mails as determined by reviewing Clearwell, the electronic discovery software utilized by the IRS Office of Chief Counsel to produce the e-mails to Congressional committees. DUVAL admitted it was an imperfect attempt to identify other custodians or IRS employees who may have lost e-mails. Some of the custodians had apparent hard drive failures outside the requested scope of documents and some custodians were merely noted as having few e-mails. The document production process was not ideal and it was impacted by how and where custodians stored e-mails on their computers. DUVAL cannot definitively say that no e-mails were lost.

The list includes notes from her team in the IRS Office of Chief Counsel as of June 27, 2014, but the process of identifying hard drive failures and lost e-mails is not complete. They were trying to answer questions from Congressional committees regarding potential hard drive failures and lost e-mails. DUVAL stated there were additional questions that she intended to ask but she was advised to stop

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

the process and consider the matter regarding hard drives and lost e-mails suspended. Therefore, the document she provided documenting their findings regarding hard drive failures and lost e-mails is not final. They (the IRS Office of Chief Counsel) stopped the process of determining hard drive failures and lost e-mails at the request of the Treasury Inspector General for Tax Administration (TIGTA).

DUVAL stated she met with United States Department of the Treasury (Treasury) Office of General Counsel employees and advised them in mid-April 2014 that there was an issue they (the IRS Office of Chief Counsel) were looking into regarding LERNER's e-mails. DUVAL had no knowledge of any communications between the Treasury Office of General Counsel and the White House. DUVAL related that IRS is part of Treasury and it was reasonable to advise them (Treasury) of issues being addressed in the IRS Office of Chief Counsel.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

SFC 004045

Name	Problem	Date	Source	Result / Notes	Other
Nikole Flax	Hard Drive Replaced on Secondary Laptop	12/15/2011	IT Review	Hard Drive Failure on secondary home computer (laptop) in December 2011, which did not result in any e-mail loss because she maintained her archives on her primary computer (desktop), which never failed.	No apparent gaps in CW.
Judy Kindell	Hard Drive Failure	Aug-10	CW email	Judy says she had one hard drive failure since January 2009 and that was in approximately July of 2010. She says they were able to recover some documents archived on an "I" Drive, but lost some e-mail and documents that were archived on her computer.	No apparent gaps in CW.
David Fish	Hard Drive Failure	Pre-2009 and June 2011	CW emails	David found an email that indicates he had a computer problem in June 2011. David does not have any recollection of losing e-mail or other data; his archives do not show any missing blocks of time. *However, he noted that he had a head injury in 2013, which affected his memory.*	No apparent gaps in CW.
Mitchell Steele		Aug-12	CW emails	Mitchell does not recall any crashes or lost data when computer was refreshed. He deleted his email in late 2012 or early 2013 after receiving a message that his inbox was full. Outlook currently shows e-mail dated back through Jan. 2, 2013. He deleted the e-mail rather than archiving it because he assumed it was all backed up somewhere.	No apparent gaps in CW.
Justin Lowe	Hard Drive Failure/Replaced	Jun-11	CW email	Per emails found in CW, Justin had some loss of documents. However, when asked, Justin does not remember any hard drive issues. He has gotten a new computer on a couple of occasions, including the recent migration to Windows 7. During one of those computer refreshes, he noticed that he was missing some documents on the new computer. MITS re-did the transfer from his old computer and the documents he knew he had been missing were on the new image. He cannot say whether other documents might also have failed to copy but is not aware of any data missing from his computer. He is limited in the amount of e-mail he can store on the e-mail server and archives old e-mail on his hard	No apparent gaps in CW.
Ron Shoemaker	Hard Drive Crash / Replaced	3/4/2011	IT Review	Ron says he lost all data stored on his laptop when his hard drive crashed in late 2010. He has a limit on the amount of e-mail that he can store on the exchange server and so had a lot of his e-mail archived on his laptop. He had no communications with anyone outside the Service on work matters, so all of his e-mail should also reside on the computers of those he corresponded with.	No email in CW prior to Jan 2011.
Kimberly Kitchens	Hard Drive Replaced	6/5/2012	IT Review	She is not sure whether or not she lost any e-mails, but she did lose case correspondence from some of her cases. She spoke to IT and believes that they were able to restore some data, but not all of it.	No apparent gaps in CW.
Julie Chen	Hard Drive Replaced	6/12/2012	IT Review	She routinely saved documents to an I: drive, but that was limited to 500 MB so she would move files from the I: drive to her D: drive as the I drive approached size limits. Everything she stored on the D: drive was lost as a result of the June 2012 hard drive failure. Other: She had a prior problem on 3/13/12 when she was told she had a Trojan virus on her computer, which IT removed successfully. Other: As part of her transition to Win 7, she was unable to find pst file to copy as directed prior to the transition. She contacted IT who told her that she had no pst, so she lost all	Only 244 emails in CW.
Nancy Heagney	Laptop Replaced [Non-system Disk Error]	11/6/2012	IT Review	She used personal folders extensively to store e-mail messages, and all of those were lost as a result of the November 2012 hard drive failure. She used her D: drive to store other documents (Word, Excel, Adobe) and all of those documents were lost as well.	Only 140 emails in CW.
Tyler Chumney	Laptop Replaced [Laptop/HD Freezes]	12/9/2011	IT Review	In December 2011 he experienced problem with his laptop that required him to reboot frequently (several times per day). They replaced his hard drive and copied all data to the new laptop so he suffered no data loss. He did report that they failed to copy one "older encryption key" so that he later discovered that he could not open some of his old encrypted e-mail.	Only 53 emails in CW.
Michelle Eldridge	Hard Drive Crash / PC Re-imaged	2/28/2014	IT Review	She is unaware of any loss of any e-mails or other data as a result of February 2014 hard drive failure. When she was provided a new computer it appeared that all of her e-mail and data was successfully copied from the old computer. She reports tha data was collected from her computer at least 4 or 5 times in the year preceding the hard drive failure as a result of litigation or congressional investigations.	No apparent gaps in CW.
John Koester	Hard Drive Replaced	7/19/2011	IT Review	Retired. Mr. Koester declined to be interviewed by us, but told his lawyer that he does not have any recollection of having a hard drive replaced in July 2011. According to his lawyer, Mr. Koester recalls that he may have received a new laptop around that time as part of a normal "refresh" of equipment, and he recalls receiving another new laptop in January 2014. He does not recall experiencing any data loss in connection with either laptop replacement.There is no mention of problems in his email in CW during the relevant	Only 2127 emails;10 gaps≥7 days
Cindy Thomas	Hard Drive Replaced	9/16/2009	IT Review	No apparent loss of data	No apparent gaps in CW.

SFC 004046

Andy Megosh		Aug-11	CW email	Andy reports he had no hard drive crashes or other issues since Jan. 1, 2009.	No apparent gaps in CW.
Carter Hull		~Sept-11	CW email	Mr. Hull, through his counsel, refused to speak with us. His counsel reported: "He did tell me that he recalls that he had a computer that crashed years ago---probably in 2005 or 2006---long before he had any involvement with Tea Party applications. He does not remember what happened to the files from that computer after it crashed."	No apparent gaps in CW.
Shawntel R. Sanders	System 32 HD Issues	12/20/2012	IT Review	HD was repaired per IT records. However, 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 MITS finally gave her a new computer. During that time, she said she was given loaner computers on at least 3 different occasions, each time after copying all her data for transfer to the loaner and back. She was never aware of any data loss on any of these occasions. On the contrary, she said she had a problem with the creation of duplicate data resulting from the transfers, which it took some time to remove.	Only 2,400 emails in CW; small gaps
Glenn W. Collins	HD Crashed	2/8/2013	IT Review	Per IT, HD was repaired. He had no specific recollection of that particular incident (2013) but said he has had numerous issues with his computer, especially since the migration to Windows 7. He could not say whether IT ever replaced his hard drive or simply repaired the computer. He said that on at least some of the occasions they have deleted program files and reinstalled them to fix software problems. He did not believe he has lost any data as a result of these issues. He did say he somehow lost a particular e-mail folder from his archive on one occasion. He has a practice of creating a folder for each manager in which he keeps correspondence with that manager. He was assigned to John Shafer's screening group for a time and at some point – he believes it was in 2012 – the folder disappeared from his computer. He put in a ticket to have IT try to restore it but they were unable to find it, and he created another folder to store his e-mails with Shafer. I asked him if he associated that loss with an equipment failure and he does not. The folder just somehow got deleted. Collins said that, although he was in Shafer's group for a while, he was not involved in the activities that are the subject of the Congressional inquiries, except that he acted as note taker at group meetings and training sessions.	543 emails
Elizabeth J. Marquez	Failed GEHD Encrypted System	1/10/2014	IT Review	HD recovery was successful. According to her attorney, Ms. Marquez did not remember losing any data as a result her computer issues. We were unable to speak with her directly.	Gap 7/20/09 to 4/27/11

SFC 004047

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	October 3, 2014 11:13 AM
Activity or Interview of: Frank DEMATTEIS Information Technology (IT) Specialist Internal Revenue Service (IRS) Enterprise Operations IT SFC [redacted]	Conducted by: Special Agent (SA) SFC [redacted] Location of Interview/Activity: IRS SFC [redacted]

Subject Matter/Remarks

On October 3, 2014, the reporting SAs interviewed Frank DEMATTEIS, IT Specialist, IRS, User & Network Services, IT, New Haven, CT, regarding the failed hard drive associated with Ronald SHOEMAKER, Supervisory Tax Law Specialist, Exempt Organizations (EO), Tax Exempt and Government Entities (TE/GE), IRS, Washington, DC. Prior to the start of the interview, DEMATTEIS read, signed, and dated Employee Notification Regarding Third Party Interviews Form 9142.

DEMATTEIS was placed under oath and stated the following information:

He is currently an IT Specialist assigned to the New Haven, CT, Post of Duty (POD), and for the last two years has been an ESX (Elastic Sky X) Host Administrator. His supervisor is SFC [redacted], Supervisory IT Specialist, IRS, Enterprise Operations, IT, Ogden, UT. From 2006 to sometime in 2012, he was a Systems Administrator assigned to the Enterprise Disk Encryption (EDE) Group while also located at the New Haven, CT POD. During this assignment, he provided encryption keys to IRS technicians working with or repairing IRS hard drives. He has been an IRS employee for eleven years. He was an IRS contract employee for four years prior to being hired as a full-time employee.

On June 24, 2014, he received a general e-mail from SFC [redacted], Senior Technical Reviewer, IRS, Procedure & Administration (P&A), Office of Chief Counsel, Washington, DC. As a result of this e-mail from SFC [redacted], it was determined on March 2011, he worked a computer-related issue for SHOEMAKER associated with IT Asset Management System (ITAMS) helpdesk ticket number 8115555. He did not specifically recall the issue until SFC [redacted] provided him with the helpdesk ticket information. After reviewing the helpdesk ticket, he confirmed with SFC [redacted] that he provided the key encryption code so the computer technician could make the needed accesses to SHOEMAKER's hard drive.

DEMATTEIS was shown an Excel spreadsheet copy of helpdesk ticket number 7413790, dated August 10, 2011, regarding a computer issue for a computer assigned to Judith KINDELL, Tax Law

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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

Specialist, IRS, EO, TE/GE, Washington, DC. SFC [redacted], former Contract Technician, IRS. User & Network Services, IT, was the technician assigned to the matter. According to the ITAMS helpdesk ticket, he provided the technician with the encryption key assigned to KINDELL's computer so the technician could access the hard drive. SFC [redacted] stated he does not know SFC [redacted].

DEMATTEIS does not specifically recall providing the encryption keys for those two specific helpdesk tickets. Standard procedure in 2011 after a computer user reported a problem would have been for the user to report the issue to their local IT Specialist. The IT Specialist would then, through the helpdesk ticket process highlighted above, contact him (DEMATTEIS) in order to obtain an encryption key to conduct service on the computer. After the encryption key is issued to the local IT Specialist, he (DEMATTEIS) is out of the process and removes himself from the helpdesk ticket. When he wrote "fixed" on any helpdesk tickets, he was referring to his written administrative fixes regarding the helpdesk tickets themselves, so the helpdesk tickets would comply with policy. He would not and did not provide any actual fixes to any computer hard drives. He would not and did not know the specific problems being addressed when IT Specialists were asking for the encryption keys. His only role in these processes was to provide the encryption key.

Since he does not specifically recall either of the two helpdesk tickets enumerated above, he does not recall any conversations which he may have had regarding the helpdesk tickets. He cannot state whether the IRS IT process was properly followed in the two helpdesk tickets because he is not privy to those processes. He is not an IT Specialist and therefore would not know if the hard drives in the two instances remain in a readable format in an unknown location, the repairable status of those hard drives, the documentation associated with those repairs, nor any indications the damage to the hard drives were intentionally inflicted.

The above information was reviewed with DEMATTEIS and he confirmed its veracity.

SFC 004049

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	June 19, 2015 2:00 PM
Activity or Interview of: The Honorable John KOSKINEN Commissioner Internal Revenue Service (IRS) SFC [redacted]	**Conducted by:** Deputy Assistant Inspector General for Investigations (DAIGI) SFC [redacted] Assistant Special Agent in Charge (ASAC) SFC [redacted] Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On June 19, 2015, The Honorable John KOSKINEN, Commissioner, IRS, Washington, DC, was interviewed regarding his knowledge and involvement with the identification and/or recovery of media, which might have contained e-mail or other responsive backup material relating to Lois LERNER, former Director, IRS, Exempt Organizations, Tax Exempt and Government Entities, Washington, DC.

Mr. KOSKINEN was placed under oath and provided the following information:

Mr. KOSKINEN characterized his work related experience as being a lawyer by training, and detailed to numerous government and quasi-government agencies wherein he has performed the role of a senior manager. Mr. KOSKINEN advised he was traditionally hired by agencies with problems in order to fix them, which he believed was the reason he was being asked to serve as the IRS Commissioner. Mr. KOSKINEN was nominated to become the IRS Commissioner in May 2013 or June 2013, and was subsequently advised by Senator Orrin HATCH during the confirmation process, that the IRS was not moving fast enough in the production of documents relating to LERNER and the IRS EO activity.

Mr. KOSKINEN was sworn in as the IRS Commissioner in December 2013, and recalls being briefed fairly soon after regarding the Congressional request for e-mails related to LERNER, which he stated, was the reason he believed he (Mr. KOSKINEN) was brought to the IRS. Mr. KOSKINEN received information from Catherine DUVAL, Former Counselor to the Commissioner, IRS, Office of Chief Counsel, Washington, DC, and William WILKINS, Chief Counsel, IRS, Office of Chief Counsel, Washington, DC, along with his senior staff regarding the e-mail discovery process and its status. No IRS Information Technology (IT) personnel were usually part of his staff meetings. Mr. KOSKINEN was told DUVAL spoke with IRS IT personnel regularly, but he did not know whom. When he started

with the IRS, the search for relevant e-mails had been occurring for approximately six months, but it was moving slowly due to the volume of information to be searched, issues with the Clearwell software used to review the e-mails, and the time it took to redact taxpayer information.

Mr. KOSKINEN advised the IRS was using search terms and e-mail present in approximately 88 custodian accounts previously identified by the IRS and Congress to complete the e-mail search. He also advised that there were 200 IRS employees working on this request, but due to the "mechanics of the process," it could not go any faster. When asked how this process worked, Mr. KOSKINEN said his understanding was they pulled the e-mails from hard drives, placed them in the Clearwell database, and searched for e-mails relevant to the inquiry. Mr. KOSKINEN stated, after he was appointed as the IRS Commissioner "the goal was to get the e-mail provided (to Congress) as quickly as they (IRS) could."

E-mails were first discovered missing in February 2014 by DUVAL and others involved in reviewing LERNER's e-mails in Clearwell. When they sorted e-mail by date, a large gap was identified between 2009 and 2011 where LERNER's files were listed as a source of the data. IRS IT subsequently identified LERNER's hard drive had suffered a failure. Mr. KOSKINEN was first told about LERNER's hard drive failure in April 2014 by DUVAL, but was advised that a hard drive failure did not necessarily mean a loss of data.

Mr. KOSKINEN was asked if it was standard for his staff to delay reporting of significant issues (e.g., missing e-mail, failed hard drives) for two to three months. Mr. KOSKINEN responded by stating that DUVAL was leading an effort to validate that e-mail were actually missing; and, not that the gap in e-mail was attributable to something like an error in the backup system, the download of e-mails files, or the Clearwell search software. This error checking was completed in April 2014.

After DUVAL notified Mr. KOSKINEN of the missing e-mail, Mr. KOSKINEN stated he directed his staff to search for missing LERNER e-mails from the relevant date range in the sent and received e-mail files of the 88 custodians. Mr. KOSKINEN was subsequently told his staff was able to retrieve 24,000 e-mails from the missing date range using the aforesaid process. When asked about the lapse in time from when he was notified of LERNER's missing e-mails to when he notified Congress, Mr. KOSKINEN said the delay was not intended to keep information from Congress. Mr. KOSKINEN advised he wanted to secure as many e-mails that the IRS could locate from the 2009 to 2011 time period in order to provide a more complete reporting to Congress as it related to the hard drive failure. The IRS completed and provided a report in July 2014 or August 2014 to Congress (could be June 2014), related to the LERNER hard drive failure, which detailed the attempts made to recover data. This was complicated by the Treasury Inspector General for Tax Administration (TIGTA) investigation because he (Mr. KOSKINEN) told IRS personnel not to follow-up on anything TIGTA was identifying in their investigation to ensure that the IRS did not inadvertently interfere with the TIGTA investigation.

Regarding the ability to retrieve information from the Microsoft Exchange Server backup tapes, Mr. KOSKINEN stated his understanding of the backup tapes was they were for "disaster recovery" and to allow the IRS to "reconstitute" the entire system. Mr. KOSKINEN had been advised by his staff that the information contained on the backup tapes was "inaccessible." When informed that this investigation had determined that IRS IT personnel were restoring several accounts per month from tape backups, Mr. KOSKINEN advised he was not aware of that information. Mr. KOSKINEN said he

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

was not aware of the possibility of individual e-mail accounts being retrieved from disaster recovery backup tapes.

Mr. KOSKINEN was aware that the backup tapes were retained on a six-month cycle until May 2013, when Terence MILHOLLAND, Chief Information Officer/Chief Technology Officer, IRS, Farmers Branch, TX, issued a directive to retain the tapes indefinitely. Mr. KOSKINEN advised that he has not personally reviewed the aforementioned directive. He stated he was made aware of MILHOLLAND's directive very soon after his appointment as IRS Commissioner, likely in December 2013 or January 2014. He believed the intent of the indefinite retention was to ensure current information was no longer being overwritten. When asked if he thought that only sending out the directive in an e-mail was enough, he stated that it probably could have been handled differently. Mr. KOSKINEN was told the oldest retrievable e-mail backups were created in November 2012, and advised he did not recall any discussion with his staff about the 2011 Microsoft Exchange Server architecture at the New Carrollton Federal Building (NCFB) in Lanham, MD. Mr. KOSKINEN stated the backup tapes were "never in the conversation as a viable alternative," after the LERNER hard drive failure was discovered. Mr. KOSKINEN stated the backup tapes were not considered as an option due the fact the furthest date they went back to was November 2012, which was after the date range for the LERNER hard drive failure.

Mr. KOSKINEN added that data present on the tapes before that time would have been overwritten in subsequent reuse of the tapes, making the data irretrievable. Mr. KOSKINEN related that other than periodic briefings from TIGTA, he was not initially informed by anyone on his staff when TIGTA had taken possession of 744 backup tapes back in July 2014, or of the existence older NCFB Microsoft Exchange Server backup tapes. Mr. KOSKINEN also did not know that 422 backup tapes from the 2011 Microsoft Exchange Server architecture were degaussed in March 2014. When specifically asked if he was aware of the fact that these backup tapes had been degaussed when he testified before the House Committee on Oversight and Government Reform on March 26, 2014, Mr. KOSKINEN stated he was not aware. When asked if he knew of anyone who would purposely hide the existence of these tapes, Mr. KOSKINEN said it did not make sense that anyone in IRS IT would be worried about protecting LERNER. He did not know anyone who would be motivated to purposely degauss backup tapes, then added that mistakes happen. Mr. KOSKINEN stated he believes TIGTA's investigation plays an important role and will be helpful in determining what the IRS can do to improve its processes. Mr. KOSKINEN reiterated the goal for the IRS was to find the e-mails as soon as possible and provide them to Congress.

When asked if anyone told him or his staff to withhold information from TIGTA, the United States Department of Justice, Congress, or to degauss or destroy information related to the backup tapes and hard drives, Mr. KOSKINEN responded he had not received any such request. When asked if there was any reason that anyone in the IRS might say he directed media relating to this investigation to be destroyed, Mr. KOSKINEN responded by stating, "absolutely not." Mr. KOSKINEN also denied ever directing anyone to hide or misrepresent any information associated with this investigation. He believes the more e-mails TIGTA finds in the investigation, the better it will be for the IRS as it "reduced the mystery" presented by missing e-mails. When asked if anyone had told him they were uncomfortable with anything they had been asked to do in the recovery or handling of data related to LERNER or EO data, Mr. KOSKINEN advised no one had approached him on the issue. Mr. KOSKINEN further advised he felt he would have been alerted to anyone in such a situation because he had established an e-mail account, called Enterprise Risk Management, which would allow any

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

IRS employee to notify his office if they became aware of any illegal or inappropriate behavior in the IRS.

The information generated during this interview was periodically recapped throughout and its accuracy verified with Mr. KOSKINEN. Mr. KOSKINEN declined to provide an affidavit at the conclusion of the interview citing the accuracy of the reviewed interview notes.

SFC 004053

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	August 6, 2014 10:00 AM
Activity or Interview of: Judith KINDELL Tax Law Specialist Internal Revenue Service (IRS) Exempt Organizations (EO) Tax Exempt and Government Entities (TE/GE) SFC [redacted]	**Conducted by:** Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On August 6, 2014, the reporting SAs interviewed Judith KINDELL, Tax Law Specialist, IRS, EO, TE/GE, Washington, DC, regarding her apparent hard drive failure on August 11, 2010, (per attached IRS helpdesk ticket) that may have resulted in data loss.

KINDELL was placed under oath and substantially stated the following:

KINDELL joined the IRS EO office in 1991, where she has remained. KINDELL's official job title is Tax Law Specialist and she is responsible for providing technical advice to the Director of EO. KINDELL also serves as the liaison for internal and external functions of the EO office and external government organizations. KINDELL worked for Lois LERNER, former Director, IRS, EO, TE/GE, Washington, DC, indirectly for five years and directly for at least five years up to LERNER's separation from the IRS. Since LERNER left her position, KINDELL has also reported directly to Kenneth CORBIN, former Acting Director, EO, IRS, TE/GE, Washington, DC, and Tamera RIPPERDA, Director, IRS, EO, TE/GE, Washington, DC. KINDELL regularly communicated and received e-mails from all three Directors of EO.

KINDELL was shown the August 11, 2010, Information Technology (IT) Asset Management System (ITAMS) helpdesk ticket number 7413790, which indicated she experienced a hard drive failure on her IRS laptop computer that resulted in her hard drive being replaced or re-imaged. The helpdesk ticket showed the resolution code as 'REIMAGE' but also showed 'Replaced HD' which made it unclear if the hard drive was replaced or reimaged. KINDELL could recall that her computer failed and stated this was the second time in her employment with the IRS that this had occurred. She did not remember specifics related to the incident in August 2011, but recalled trying to get some of the documents back that were on her failed hard drive. KINDELL had no recollection of the events that led her to believe her hard drive failed. She does not remember who repaired her computer. She could not remember if she was given a loaner laptop during the period in which her laptop was being repaired, but stated she was never without a laptop computer for a long period of time. KINDELL

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

does not know if her computer was replaced or if her hard drive was reimaged or replaced. All KINDELL remembered was her computer failed and someone from IRS IT fixed it.

According to KINDELL, all her e-mail archives and work documents were stored on her hard drive that failed. She stated that early in her career, she used to save information to the IRS shared network drive but at one point was instructed not to because the shared network drive was reaching its capacity. She could not recall who instructed her to do this, but stated she has always saved to her hard drive since this instruction. KINDELL stated that as a result of the August 11, 2010, hard drive failure, she lost all of her archived e-mail and work documents. She was able to recover the documents she had previously e-mailed to coworkers by having them resend them to her. She stated the types of documents lost were Microsoft PowerPoint and Word documents.

KINDELL also experienced a hard drive failure prior to August 11, 2010. She could not remember an exact year, but stated it had to have been sometime after 2003. She could only recall that all her data was lost when this hard drive failure occurred. She acknowledged that even though she had experienced a hard drive failure sometime after 2003, resulting in the loss of data, she still did not change her storage techniques or back-up files to a shared network drive to prevent loss.

The information provided by KINDELL during the interview was recapped and KINDELL confirmed its accuracy.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

SFC 004055

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	August 28, 2014 9:00 AM
Activity or Interview of: Julie CHEN Revenue Agent (RA) Internal Revenue Service (IRS) Exempt Organizations (EO) Tax Exempt and Government Entities (TE/GE) SFC [redacted]	**Conducted by:** Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On August 28, 2014, the reporting SAs interviewed Julie CHEN, RA, IRS, EO, TE/GE, IRS, Cincinnati, OH, regarding her apparent hard drive failure on June 12, 2012, (per attached IRS helpdesk ticket) that may have resulted in data loss. CHEN was provided Employee Notification Regarding Third Party Interviews Form 9142, which she acknowledged with her signature. CHEN was represented by SFC [redacted], Steward, National Treasury Employees Union.

CHEN was placed under oath and substantially stated the following:

She began her career with the IRS in 1989 at the IRS Cincinnati Service Center in Covington, KY, as a seasonal employee, and then became a Tax Auditor in 1991. In 1998, she transferred to Cincinnati, OH, as a Revenue Agent in EO.

She was contacted by an unrecalled person with IRS media relations in Washington, DC, and was advised her name would be released to the media regarding her hard drive failure. Several days or weeks later, another unrecalled person in the IRS Office of Chief Counsel contacted her and asked about her specific hard drive failure, and she provided details via telephone. CHEN provided copies of e-mails regarding her hard drive failure (attached).

At the time of the computer incident on June 12, 2012, she did not know it was a hard drive failure. She recalled that she could not log in to her computer and she called the IRS helpdesk, but they could not resolve the issue. She then went to Pamela MERRITT, Information Technology (IT) Specialist, IRS, User & Network Services, IT, Cincinnati, OH, and MERRITT attempted to resolve the issue. The next day or a few days later, CHEN was informed that her data could not be recovered from her failed hard drive and a new hard drive had been ordered. She received a replacement hard drive but not a new computer. She also recalled being told by IRS IT they could not image her computer and everything was gone from her hard drive. She does not believe she received a loaner

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

computer. She possibly did not have a computer for two days or as long as a week, but added she could have done some case work without a computer.

Her understanding of the steps taken by MERRITT included MERRITT attempting to reimage the failed hard drive to the new hard drive. MERRITT told CHEN she sought additional assistance from another more experienced IT Specialist.

She did not save e-mails to her hard drive but she did save case documents. She created a folder for each case on her hard drive. She does not know how to save e-mails and if her inbox was full she would delete old e-mails.

She did not recall what data was lost on her failed hard drive. She did not recall how many times she had a hard drive failure or when they occurred but the hard drive failure on June 12, 2012, was the most recent. She did not have much data on her hard drive because she had experienced so many hard drive failures in the past; sometimes her data was recovered after a hard drive failure and sometimes it was not able to be recovered. She recalled one hard drive incident in which she had a black screen, one incident she recalled in which she had a blue screen and another time she did not recall the specific problem.

She used the I Drive to save her most current information because she experienced so many hard drive failures. She would move data from the I Drive to the hard drive once she determined it was outdated or no longer frequently accessed.

CHEN believes she received a litigation hold when everyone else in EO did, sometime in May 2013 or June 2013. She disclosed the June 12, 2012 hard drive failure after receiving the litigation hold.

When her computer was transitioned to Windows 7 in 2013, she was told she was supposed to have Personal Storage Table (.pst) files but she "has no clue about .pst files," so she contacted IRS IT and IRS IT told her she did not have .pst files. She was directed to manually transfer e-mails to archive them but she was eventually set up with automatic archiving to transfer .pst files.

She did not receive any e-mails directly from Lois LERNER, former Director, IRS, EO, TE/GE, Washington, DC, but she did receive general e-mails from LERNER to all staff in Cincinnati, OH, regarding town hall meetings. She did not recall the nature of the e-mails and does not believe she saved any of the e-mails from LERNER.

She has no explanation for her hard drive failure such as dropping or spillage and there was no tampering to her knowledge. No one else had access to her computer and she did not relinquish it to anyone.

At the conclusion of the interview, CHEN was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

SFC 004057

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	July 9, 2014 1:03 PM
Activity or Interview of: Lois LERNER Former Director Internal Revenue Service (IRS) Exempt Organizations (EO) Tax Exempt/Government Entities (TE/GE) SFC [redacted]	**Conducted by:** Assistant Special Agent in Charge (ASAC) SFC [redacted] **Location of Interview/Activity:** Zuckerman Spaeder, LLP SFC [redacted]

Subject Matter/Remarks

On July 9, 2014, the reporting SAs interviewed Lois LERNER, former Director, IRS, EO, TE/GE, Washington, DC, voluntarily regarding her failed hard drive. This interview was coordinated between LERNER's attorneys, William TAYLOR and Paul HYNES, Zuckerman Spaeder, LLP, and SFC [redacted], Trial Attorney, United States Department of Justice (DOJ), Public Integrity Section, Criminal Division, Washington, DC. SFC [redacted] facilitated the interview and asked the majority of the questions on behalf of the United States Government. SFC [redacted], Treasury Inspector General for Tax Administration (TIGTA), Electronic Crimes and Intelligence Division, Lanham, MD, and SFC [redacted], TIGTA, Washington Field Division, Philadelphia, PA, were also present and periodically presented follow-up questions to issues posed by SFC [redacted]. Also present and presenting follow-up questions were, SFC [redacted], Federal Bureau of Investigation (FBI), Washington Field Office (WFO), SFC [redacted], FBI, WFO, and SFC [redacted], Senior Legal Counsel/Professional Responsibility Officer, DOJ, Criminal Section, Civil Rights Division, Washington, DC.

LERNER substantially stated the following:

LERNER described herself as having "rudimentary" knowledge with respect to computers, and as an example stated she was not familiar with how to use Microsoft Excel. She advised she knew the basic operations for the use of Microsoft Outlook, the e-mail client used by the IRS. When asked how she normally processed her IRS e-mail, LERNER advised she received 100 to 200 e-mails each day and frequently was unable to review all messages she received. She moved e-mail to various compartmentalized "folders" on her laptop representing different topics or programs in the left panel of Outlook. LERNER has "no idea" regarding the quantity of file folders, but it was "more not less." Many of these folders disappeared after her hard drive failed in June 2011. She advised she was not formally trained on the compartmentalization of e-mail topics, but had developed it as a tool over time. LERNER stated that her IRS e-mail account had a limit to the amount of e-mail it would hold. When the limit was reached, she would be unable to send additional e-mail. To resolve the issue, she went

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

to the oldest e-mails and deleted them. LERNER did screen her e-mail to determine if each e-mail may be important before deleting it. LERNER stated she was not familiar with the process for creating Personal Storage Table (.pst) files, and did not knowingly archive e-mail to her local hard drive. When asked about whether she used the "auto-archive" feature of Outlook to save her e-mail, she stated she always clicked "no" when the prompt appeared because she was afraid she would lose e-mail and not be able to retrieve them. LERNER did not know how .pst files containing her e-mail would have been created on her local hard drive. When asked if one of her assistants might have done it for her, she opined it was possible and confirmed they had access to her e-mail. LERNER identified the executive assistants she believed may have created the .pst files as Diane LETOURNEAU, former Executive Assistant, IRS, EO, TE/GE, Washington, DC, or Dawn MARX, Executive Assitant, IRS, EO, TE/GE, Washington, DC. LERNER provided both LETOURNEAU and MARX with her Windows password in order to access her Microsoft Outlook e-mail account. LERNER stated she did not regularly print out e-mail for archiving or preservation purposes, but did occasionally print out e-mail for reference as necessary.

MARX was LERNER's assistant from late 2010 until May 2013. LETOURNEAU was her assistant for about two years leading up to late 2010 when LETOURNEAU retired.

LERNER did not recall ever being issued multiple laptop computers at the same time, but believed she had more than one laptop and BlackBerry over the course of her employment with the IRS. She never "checked out" laptops on a temporary basis for travel or any other purposes. She did not recall ever being assigned a desktop computer, and had never been assigned any other types of computers, such as a tablet. LERNER denied ever being issued any removable media devices, such as Universal Serial Bus (USB) "thumb drives" or external USB hard drives, and had never backed-up her e-mail to any personally owned USB devices. She was also not aware of her Executive Assistants being assigned any such devices. When asked if she backed-up her e-mail to compact disc (CD) or any network drives that she was aware of, LERNER stated, "I don't know how." LERNER advised her laptop computer usually stayed in the docking station in her office because she was afraid it might be stolen. Her office remained locked, though her Executive Assistants had copies of the keys. LERNER advised she did not knowingly use network drives to store information, and was unfamiliar with the "I" and "P" network drives which may have been available to her for use.

LERNER remembered her hard drive failure in June 2011, which resulted in a significant amount of data being lost. She described coming into office in the morning and seeing "the blue screen." LERNER advised there had been no previous problems with the hard drive. LERNER stated that she asked MARX to help her and after MARX was unable to start LERNER's computer, MARX input a helpdesk ticket. LERNER believes that this helpdesk ticket was input by MARX shortly after her computer crashed and stated, "My recollection is right away." Someone, whom LERNER could not recall, told her the hard drive had failed, but that they might be able to recover the data. LERNER thought the work to recover the data had occurred almost immediately after the hard drive failure, but could not provide specifics about how the hard drive was handled. She advised she had requested approval from her supervisor, Joseph GRANT, former Commissioner, IRS, TE/GE, Washington, DC, for additional work to be accomplished in an attempt to recover the information from her hard drive. Although LERNER believed this additional attempt to recover data did cost an additional fee, she believed that this work would be done within the IRS and would be a worthwhile use of funds because all of her work files were contained on the hard drive.

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

LERNER recalled that this hard drive failure cost her "a lot of time" because so much of her current work was lost. LERNER was "surprised" that IRS IT could not do more to recover her e-mail, and she recalled asking IRS IT staff, "Is there anything else you can do?" LERNER did not recall how long IRS IT waited to inform her that her data is not recoverable or specifically what steps or tools that IRS IT staff used in order to recover the data. LERNER was hopeful that IRS IT personnel would be able to retrieve some of her data.

LERNER denied hitting or damaging the hard drive intentionally. LERNER did not recall any incidents that could have damaged her laptop. LERNER was not aware of anyone who might want to destroy the data on her computer.

When asked if she discussed the data loss with anyone, she advised she had complained to "everyone she knew" because she was frustrated with the loss of data she felt was important. LERNER was asked if anything was on the hard drive that was particularly important, and she responded that "all my work" was on the hard drive and that she had personal files she wanted, specifically speech notes and presentations.

LERNER did not recall being given a temporary or loaner laptop, or working on anyone else's computer after her hard drive failed on June 13, 2011. She also did not recall any other hard drive failures which resulted in lost data. LERNER did state that when she got her computer back, she continued saving files and e-mail to her local hard drive as she had done prior to the hard drive failure. When her laptop was returned to her, LERNER noticed many of the folders she saved e-mail to in Outlook were missing. After her laptop was returned, LERNER did not recall any technical issues with her replacement laptop that would have required a helpdesk ticket. LERNER did not ask for help rebuilding or restoring her e-mail.

LERNER was asked whether she worked from home with her laptop, and advised that she had only done so on perhaps two occasions. She encountered problems and elected not to do so again. When she was out of the office and needed to edit a document, LERNER advised she would send e-mail from her IRS BlackBerry to her personal e-mail account. From her personal account, she would access IRS documents on her personal computer, make necessary edits, then forward it back to her IRS e-mail account from her personal e-mail account.

LERNER did not recall any formal training which identified records that were required to be maintained as public records. LERNER also stated she did not receive any training on archiving documents, or archiving e-mail in order to preserve them. She stated she was never instructed that she was supposed to print out and keep e-mail. LERNER did print out e-mail occasionally for personal reference, and frequently printed out her speeches and presentations, but not for archival purposes. LERNER did not utilize any off-site storage for IRS documents.

SFC 004060

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	September 15, 2014 11:30 AM
Activity or Interview of: Marilyn (Dana) FLORENCE Information Technology (IT) Specialist Internal Revenue Service (IRS) User & Network Services IT SFC [redacted]	Conducted by: Special Agent (SA) SFC [redacted] Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On September 15, 2014, the reporting SAs interviewed Marilyn (Dana) FLORENCE, IT Specialist, IRS, User & Network Services, IT, Indianapolis, IN, regarding apparent hard drive failures associated with Justin PALMER, Revenue Agent (RA), IRS, Exempt Organizations (EO), Tax Exempt and Government Entities (TE/GE), Cincinnati, OH, and Nancy HEAGNEY, RA, IRS, EO, TE/GE, Cincinnati, OH. FLORENCE was provided Employee Notification Regarding Third Party Interviews Form 9142, which she acknowledged with her signature.

FLORENCE was sworn under oath and substantially stated the following:

She does not have any notes currently in her possession regarding the hard drive failures associated with PALMER and HEAGNEY but she will search her records when she returns to her office. She may have retained e-mails but is uncertain.

She did not recall the hard drive failure associated with PALMER. She was not advised that PALMER's hard drive should be recovered or that it may contain important information. PALMER's hard drive failure occurred in 2011 and there was no indication that PALMER's hard drive may be relevant to a Congressional investigation or any other investigation.

The steps taken in an attempt to recover data from PALMER's hard drive depended on the encryption software used at the time. If it was Guardian Edge Hard Disk (GEHD), then she ran a compact disc (CD), which is referred to as a "robo" CD for recovering data from a hard drive. If the drive is readable, the data can be saved to another location and then transferred to a new hard drive. If the hard drive is not readable, no further steps are taken. FLORENCE was advised that PALMER previously stated he recalled being informed his hard drive was placed in a freezer in an attempt to recover data. FLORENCE did not recall specifically putting PALMER's hard drive in the freezer but acknowledged she used that technique and it is an absolute last resort, which confirms the hard drive was not readable. If SecureDoc encryption software was used, then a security key was obtained to

access the hard drive and if the hard drive was readable, it was slaved to her computer. FLORENCE's computer is the only computer in Cincinnati, OH, used to slave hard drives with SecureDoc. She is not certain if PALMER had GEHD or SecureDoc at the time because it depends on the user and when they transitioned software.

FLORENCE stated she has always attempted to recover data from a failed hard drive. It is the user's responsibility to back-up their data in a location other than the hard drive in the event of a failure. FLORENCE uses every means of recovery available to her, including using more than one shell computer. As the lead IT Specialist, she trains all of the IT Specialists to take every step in an attempt to recover data. FLORENCE treats all users' data as if it were her own. She does not know where else the data from PALMER's hard drive could be backed-up or saved. PALMER would have to save data to the I Drive or a flash drive as a means of back-up in the event of a hard drive failure. If she is able to recover data from a hard drive, she saves the data to an external hard drive or flash drive. After verifying the data was recovered and transferred to a new hard drive, it is deleted. FLORENCE has never been advised of any other data recovery options beyond the steps she described. There has never been an option for additional steps or resources such as forensic support or outside vendors.

She did not recall PALMER approaching her after the hard drive failure and asking her to recover his data or locate his data elsewhere. PALMER's hard drive would have been excessed with other excess technical equipment. Excess equipment accumulated in boxes and was periodically shipped to Covington, KY. She does not know if PALMER's computer was damaged and did not determine a cause for the hard drive failure but she never pursues the cause of a hard drive failure. There was no indication of intentional data lost.

She recalled HEAGNEY returning to IRS IT for assistance multiple times over a several day period regarding her hard drive failure. HEAGNEY returned for assistance because the computer she received after the hard drive failure had to be re-imaged because the correct TE/GE software had not been loaded.

FLORENCE followed the steps previously explained for data recovery, which are dependent on the encryption software on HEAGNEY's computer. If the data from HEAGNEY's hard drive was backed up or saved in another location that would be known only to HEAGNEY. She does not know if the data from her (HEAGNEY's) hard drive is available in any other location.

FLORENCE was never advised data on HEAGNEY's hard drive was important or could be relevant to a Congressional investigation or any other investigation. The hard drive from HEAGNEY's computer would have been excessed with other technical equipment and sent to Covington, KY. The data on HEAGNEY's hard drive was not readable. She does not know if HEAGNEY's computer was damaged and did not determine a cause for the hard drive failure. The helpdesk ticket references HEAGNEY removing her computer from the docking station without shutting it down but does not know if that caused the hard drive failure. FLORENCE assumes HEAGNEY reported removing it from the docking station to the helpdesk when she initially reported the problem. There was no indication of intentional data lost.

The helpdesk ticket states "non-system disk error," which specifically identifies a hardware problem. FLORENCE cannot explain the IRS report ("Brown Paper" dated September 5, 2014) indicating HEAGNEY's hard drive failure was initially reported as a software problem. There was no software

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

issue associated with the hard drive failure but the recent entries on the helpdesk ticket in reference to Tivoli Endpoint software and image problems may be misleading. The software problems occurred with the new computer she received after the hard drive failure. It could have been three weeks until HEAGNEY received a new computer but she did not recall. There may have been issues running the GEHD recovery CDs, which can take days to run, and if there are problems with the hard drive it can take even longer. She recalled HEAGNEY's data was lost and HEAGNEY was advised as such. She (FLORENCE) failed to document the data lost in the helpdesk ticket. She did not recall HEAGNEY discussing personal folders or e-mails lost on her hard drive. HEAGNEY never came back and asked FLORENCE to locate or recover her data. HEAGNEY did not identify specific documents or data that she was specifically concerned about, and added users generally do not follow up and ask for their data after being advised their data was lost. There have been a few users that were adamant about their data being recovered but HEAGNEY was not one of them.

At the conclusion of the interview, FLORENCE was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

Subsequent to the interview, FLORENCE confirmed she did not retain any e-mails regarding the failed hard drive associated with HEAGNEY.

SFC 004063

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	August 28, 2014 10:03 AM
Activity or Interview of: Mauricio TERRAZAS Computer Technician Hewlett-Packard (HP) Managed Print Services Orlando, FL	Conducted by: Special Agent (SA) SFC [redacted] SA SFC [redacted] Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On August 28, 2014, the reporting SAs interviewed Mauricio TERRAZAS, Computer Technician, HP, Managed Print Services, Orlando, FL, regarding the failed hard drive associated with Lois LERNER, former Director, Internal Revenue Service (IRS), Exempt Organizations, Tax Exempt and Government Entities, Washington, DC. The interview was to ascertain information concerning a service call performed by TERRAZAS on June 17, 2011, regarding HP EliteBook 2530p Notebook, serial number MXL9270H19 under a service contract with the IRS. SFC [redacted], Assistant Special Agent in Charge, TIGTA, Electronic Crimes and Intelligence Division, Lanham, MD, and SF [redacted], Investigations Counsel, HP, Office of General Counsel, Wayne, PA, participated in the interview telephonically.

TERRAZAS was placed under oath and provided the following information:

He has worked in the computer field for approximately 25 years and he has been employed by HP as a computer technician for 15 years. Currently, he is assigned to HP Managed Print Services and he has been assigned there for about two years. He was previously assigned to HP Technical Services for approximately seven years and supported customers in the Washington, DC area. While assigned to HP Technical Services, he performed five to six service calls per day. HP's customers are both government and private customers and HP Technical Services is charged with keeping their equipment running. Prior to being employed by HP, TERRAZAS worked for Inacom for ten years, who had government and private computer service contracts in Washington, DC.

For service requests, a customer calls HP and the call is dispatched to the appropriate team for the specific service. HP practices diagnosis before dispatch, meaning when a customer reports an issue the person receiving the call diagnoses the issue and requests the computer hardware needed to correct the issue. HP Technical Services will replace broken parts, which are sent back to HP for recycling.

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

TERRAZAS was familiar with the contract between HP and the IRS. When he performed a service call on an IRS HP computer, he would set up a time to conduct the service call. When he arrived at the specific IRS facility, he would be escorted by an IRS employee at all times. The IRS would provide him a location to perform the service and bring the HP computers to him. Prior to TERRAZAS or any other HP employee performing a service call, the IRS would remove the hard drive from the computer to be serviced and a test hard drive would be used to determine the issue with the HP computer.

The IRS participates in data retention, meaning if there is an issue with an IRS hard drive the IRS retains the old hard drive; it is never returned to HP for recycling. The IRS also partakes in Customer Self-Repair (CSR) as it relates to HP hard drives, in which they can request a replacement hard drive if the one installed in the computer has failed. HP will send the new hard drive to the IRS and the IRS will install the hard drive.

TERRAZAS was not assigned to the IRS contract in Washington, DC. Only two HP computer technicians, SFC [redacted] and SFC [redacted], were specifically assigned to the IRS contract and both are no longer are employed by HP. TERRAZAS and other HP computer technicians would assist if SFC [redacted] and SFC [redacted] became overloaded with work, were on vacation, or if there was an emergency.

He stated he performed approximately ten service calls under the IRS contract and he has been to the IRS Office located at 1111 Constitution Avenue, NW and the IRS Office located at 1750 Pennsylvania Avenue, NW in Washington, DC.

The responsibilities of HP under the IRS contract are to keep the computers running and replace any hardware that is broken or failed. Hardware issues include keyboards, system boards, heat sinks, processors, memory, media cards and hard drives.

An HP computer technician will attempt to fix any issues so the computer is once again running and if they cannot, they will create a sub-case and recommend additional parts to repair the computer. If the computer cannot be repaired, it is replaced.

When asked if TERRAZAS remembered conducting a service call on June 17, 2011, at the IRS Office located at 1750 Pennsylvania Avenue NW, Washington, DC, he answered, "No." He did not recall specifically servicing an IRS HP EliteBook 2530p Notebook, serial number MXL9270H19. Prior to this interview, on August 27, 2014, TERRAZAS conducted research concerning serial number MXL9270H19 in the HP tracking system and found two service call logs. The first was opened at 3:34 PM on June 13, 2011, and detailed a complaint of a failed hard drive in which a replacement hard drive was shipped to the IRS on June 13, 2011. The second was opened at 6:57 PM on June 15, 2011, and detailed a complaint of the computer overheating and keyboard issues. He conducted the service call concerning the computer overheating and keyboard issues but he was unaware of the failed hard drive until he conducted the research prior to this interview. He did not know about the hard drive issues when he conducted his service call on June 17, 2011. Aaron SIGNOR, Information Technology (IT) Specialist, IRS, User & Network Services, IT, Washington, DC, was listed as the IRS point of contact for both requests.

During the service call on June 17, 2011, TERRAZAS replaced the keyboard, trackpad, heat sink, and fan, and returned the computer to service. He did not recall the computer showing any signs of

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

intentional damage, mistreatment, overheating or heat damage. If anything would have been observed, a sub-case would have been created to correct the identified issues and that is how he knows nothing out of the ordinary was discovered. He did not remember anything unusual about the particular service call. No IRS employees notified him of the previous hard drive failure on June 13, 2011.

He was not able to confirm overheating, which is difficult to determine, but there was no damage to the thermal sensors located on the computer's motherboard. The role of the thermal sensors is to monitor the internal temperature of the computer and to alert the user that the computer was overheating. If the user did not shut down the computer or was unavailable, the thermal sensors would initiate a shutdown so no damage would occur. If thermal damage was observed, there would have been a sub-case created, which there was not. TERRAZAS opined the thermal sensors were likely functional at the time or he would have initiated a sub-case to replace the motherboard.

Many different things including the environment can cause damage to a computer. From his experience, keyboards and trackpads are usually damaged by liquid spilling on them, although this was not observed in this specific incident. Excessive heat can cause damage to a hard drive and it also depends whether the hard drive is located under the laptop or on the side; hard drives located under the laptop tend to overheat more easily. There are many causes for hard drive failures, although overheating causing a hard drive failure is not often seen. If there was severe impact to a computer or hard drive, it could internally damage the mechanical components of the hard drive making it unusable. When asked what scenario could have caused hard drive heads to impact the platter of the disk, TERRAZAS opined an impact to the laptop or hard drive was the most likely cause. TERRAZAS further stated that in his 20 years as a computer technician, he has never seen a general mechanical failure cause the internal hard drive platters to be damaged by the hard drive heads. A hard drive could be removed from the laptop, damaged, and then reinserted into the laptop. With the HP EliteBook 2530p Notebook it may be more difficult as the hard drive is connected by a cable to the computer motherboard.

While employed with HP, he has never seen the keyboard, trackpad, heat sink, and system fan fail at the same time as they are all unrelated to one another. If a keyboard or trackpad fails, it does not affect the heat sink or system fan, and vice versa.

He was not aware of a problem with the HP EliteBook 2530p Notebook generating excessive heat when left on a docking station for an extended period of time or any other overheating issues. He was not asked to look at or recover any sensitive data from any IRS hard drives while performing IRS service calls. HP has several different tracking systems and databases which are used to track work completed by HP service technicians.

At the conclusion of the interview, TERRAZAS was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

TERRAZAS referenced the HP ISS Engineering Problem Management & Analysis, opened June 13, 2011, detailing the complaint of a bad hard drive and HP ISS Engineering Problem Management & Analysis, opened June 15, 2011, detailing the complaint of the computer overheating and keyboard issues, which will be provided through SFC [redacted] on a later date.

SFC 004066

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	August 28, 2014 2:00 PM
Activity or Interview of: Nancy HEAGNEY Revenue Agent (RA) Internal Revenue Service (IRS) Exempt Organizations (EO) Tax Exempt and Government Entities (TE/GE) SFC [redacted]	Conducted by: Special Agent (SA) SFC [redacted] Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On August 28, 2014, the reporting SA interviewed Nancy HEAGNEY, RA, IRS, EO, TE/GE, Cincinnati, OH, regarding her apparent hard drive failure on November 6, 2012, (per attached IRS helpdesk ticket) which may have resulted in data loss. HEAGNEY was provided Employee Notification Regarding Third Party Interviews Form 9142, which she acknowledged with her signature.

HEAGNEY was placed under oath and substantially stated the following:

She began her career with the IRS on January 2, 1990, as an Internal Auditor in the IRS Inspection Service-Internal Audit (IA). In 1998, she was due to be released in a Reduction-in-Force and went to work for TE/GE until March or April 1998 when she returned to IRS Inspection Service-IA, which later became TIGTA. In 2000, she came back to TE/GE as a Revenue Agent.

She was contacted by someone with IRS media relations and received a voicemail message that seven names would be released to the media regarding hard drive incidents, including hers. She was then contacted by two attorneys from the IRS Office of Chief Counsel, but not about her hard drive failure. She was asked about a PowerPoint presentation she gave regarding EO Determinations.

She recalled the November 6, 2012, hard drive incident reported in the helpdesk ticket; prior to this interview, she reviewed her helpdesk ticket history to refresh her memory. Prior to the hard drive failure, her computer had not been replaced approximately two years ago as anticipated. There were problems with the fans in some of the computers. When this hard drive failure occurred, she was without a computer for three weeks and worked on a desktop computer. She did not receive a loaner computer but ultimately received a new computer.

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

She recalled that her computer would not start and noted that the helpdesk ticket states she did not properly shut down her computer before removing it from the docking station. She admits she may have done that but does not know the relevance.

All of the data from her hard drive could not be recovered but she did back up some of her data to the I Drive. She was able to recover some of her old e-mails, but not all. Her computer was imaged in 2013 as a result of the EO Determinations investigation, which was after her hard drive failure. There was also a bed bug issue in the office which resulted in the disposal of paper records.

She made limited use of the network drives because of limited capacity but saved frequently used forms there. She saved letters to taxpayers and e-mails to her hard drive. She has more recently been saving data to the I Drive. She is not sure how Outlook works and does not know if she has archive folders for her e-mail. She did have folders to save e-mails and prevent her inbox from getting full. She cannot say what data was lost on her failed hard drive. She believes Marilyn (Dana) FLORENCE, IT Specialist, IRS, User & Network Services, IT, Cincinnati, OH, assisted her with the hard drive failure.

She received a litigation hold in June 2013 and has had no hard drive or significant computer incidents since.

She received a new computer in January 2013 with the Windows 7 upgrade but did not have a data loss in that transition. She did have a problem last week related to Windows 7 but she did not lose any data and had recently backed up her data to the I Drive.

She recalled one e-mail from Lois LERNER, former Director, IRS, EO, TE/GE, Washington, DC, regarding a taxpayer who provided accolades to her (HEAGNEY) for extending good customer service while working without a computer. She also received general e-mails from LERNER to all staff and probably kept e-mails from LERNER regarding program guidance and the screening group.

She has no explanation for her hard drive failure other than the reference to her removing it from the docking station. She is not aware of any tampering, dropping or spilling and no one else had access to her computer and she did not relinquish it to anyone.

At the conclusion of the interview, HEAGNEY was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

SFC 004068

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	September 15, 2014 3:10 PM
Activity or Interview of: Pamela MERRITT Information Technology (IT) Specialist Internal Revenue Service (IRS) User & Network Services IT SFC [redacted]	Conducted by: Special Agent (SA) SFC [redacted] Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On September 15, 2014, the reporting SAs interviewed Pamela MERRITT, IT Specialist, IRS, User & Network Services, IT, Cincinnati, OH, regarding the apparent hard drive failure associated with Julie CHEN, Revenue Agent (RA), IRS, Exempt Organizations, Tax Exempt and Government Entities, Cincinnati, OH, that may have resulted in data loss. MERRITT was provided Employee Notification Regarding Third Party Interviews Form 9142, which she acknowledged with her signature.

MERRITT was placed under oath and substantially stated the following:

She recalled CHEN bringing her computer to IRS IT for assistance. MERRITT did not initially know what steps to take and asked Marilyn (Dana) FLORENCE, IT Specialist, IRS, User & Network Services, IT, Cincinnati, OH, and FLORENCE explained what steps to take. MERRITT assumed it was a "looping" issue or something called a fatal error. MERRITT reviewed the helpdesk ticket to refresh her memory and recalled she ran a compact disc (CD) for Guardian Edge Hard Disk (GEHD), which is a recovery CD that decrypts the hard drive and then she ran the recover access utility CD, which allows recovery of data from the background if possible. MERRITT recalled letting the recovery CD run and upon completion, there was an indication of invalid partitions, which means the C Drive and D Drive merged as one drive. The invalid partitions could have led to the hard drive failure and is considered a software issue.

After the invalid partitions, she did not know what to do and had never seen it before, so she showed CHEN's computer to FLORENCE. FLORENCE advised her to order a new hard drive for CHEN from Hewlett-Packard (HP). MERRITT took no additional steps after discovering the invalid partitions and FLORENCE told her to order a new hard drive. If a computer is out of warranty, the computer is replaced but if the computer is in warranty, just the hard drive is replaced. The helpdesk ticket documented the hard drive was ordered to replace the failed hard drive from CHEN's computer.

SFC 004069

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

After MERRITT received the new hard drive, she contacted Altiris, which is staffed by helpdesk employees who run a server and push software to computers remotely. Altiris will also capture an image if a hard drive is functioning and hold it on a server. After CHEN's computer was rebuilt, MERRITT had CHEN sign-on and confirmed GEHD was properly installed and functioning. Once CHEN was provided her rebuilt computer, CHEN did not return with any follow-up questions or issues. MERRITT informed CHEN all the data was lost from her hard drive. The helpdesk ticket is not explicit in stating there was data loss; her (MERRITT's) documentation of invalid partitions indicates data loss. Sometimes she will document the recovery of data and that it was moved to another location. She may also document "total crash," which also means data loss.

If the computer shows invalid partitions, which is specific to Windows XP, there are no steps to recover data. MERRITT always attempts to recover data when possible. If data recovery is possible, she runs the access utility CD, which brings up a command prompt and then she can run a script to get data from the background, which is data that does not boot to the desktop. If she is running a recovery CD to decrypt a hard drive and there is a software issue, sometimes the hard drive can be decrypted and the bad software can be removed. The software can then be reinstalled.

She does not know where the data from CHEN's hard drive could be saved or backed-up. It would generally be located on the I Drive, a CD or flash drive. It is recommended that users back up their data other than on the hard drive but if CHEN's data is stored somewhere, MERRITT does not know. When a hard drive fails, all of the data is either recovered or lost. CHEN's hard drive was not readable but if it was, Altiris would have been involved in recovering and capturing the data.

CHEN's hard drive was failed to the extent she was unable to recover the data using resources available to her but she is not certain if there is absolutely no way to recover the data. There were no other steps she could have taken with the hard drive and she has never been presented with additional steps for failed hard drives such as forensic or outside vendors.

CHEN's hard drive was placed in a box with other technical equipment to be shipped to Covington, KY. Once excess equipment accumulated, it was shipped to Covington, KY with documents. At one point in time, the paperwork documented items with barcodes. Hard drives do not have barcodes but were generally labeled with the employee's name.

There was no indication that data on CHEN's hard drive was important or relevant to a Congressional investigation or any other investigation.

MERRITT did not recall any damage to CHEN's computer and did not determine a cause for the hard drive failure. There was no indication of intentional data loss.

MERRITT did not recall any additional hard drive failures associated with CHEN. She recalled an incident in which CHEN contacted IRS IT and notified IRS IT she runs an anti-virus scan every day and that particular day a virus was identified, quarantined and removed. CHEN did not lose any data as a result of the virus.

There was also an incident when MERRITT received notification from the Computer Security Incident Response Center (CSIRC) of corruption on CHEN's computer and it had to be wiped.

SFC 004070

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

CHEN did not approach her about her Personal Storage Table (.pst) files in conjunction with the Windows 7 migration. CHEN was aware that her data was lost after her hard drive failure in 2012. CHEN did not follow up and ask for the recovery of any e-mails or documents. MERRITT explained the Windows 7 team was from HP and they suggested users move their .pst files to one location. Windows XP has a C Drive and a D Drive and sometimes files on the C Drive are hidden. Moving the .pst files to one location was recommended in the instructions provided to employees to facilitate the transition. Some of the Windows 7 team from HP said to complete the migration and if an employee has a problem, they should contact the helpdesk. Employees had two weeks to complete the migration and transfer their data because the team was gone and their old computers were taken after two weeks.

At the conclusion of the interview, MERRITT was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

Subsequent to the interview, MERRITT provided copies of e-mails she retained in reference to the failed hard drive associated with CHEN (attached).

The attachment(s) referenced in this memorandum of interview/activity are enclosed within the DVD that accompanies this report of investigation.

SFC 004071

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	August 4, 2014 10:02 AM
Activity or Interview of: Ronald SHOEMAKER Supervisory Tax Law Specialist Internal Revenue Service (IRS) Exempt Organizations (EO) Tax Exempt and Government Entities (TE/GE) SFC [redacted]	Conducted by: Special Agent (SA) SFC [redacted] Location of Interview/Activity: IRS SFC [redacted]

Subject Matter/Remarks

On August 4, 2014, the reporting SAs interviewed Ronald SHOEMAKER, Supervisory Tax Law Specialist, IRS, EO, TE/GE, Washington, DC, regarding his apparent hard drive failure on March 4, 2011, (per attached IRS helpdesk ticket) that may have resulted in data loss.

SHOEMAKER was placed under oath and stated the following:

SHOEMAKER indicated he has worked for the IRS on two separate occasions. He initially worked for the IRS from 1978 through 1984 and returned to the IRS in 1994 and has remained here since that time. Since 1994, he has worked for EO, first with "Group Three" until 2008 and then as a supervisor with "Group Two," previously known as Group 7872. He indicated that he was a lawyer with a Masters Degree in Tax Law and had worked on tax law since 1978.

SHOEMAKER described the work of Group 7872 as working on cases for groups that were seeking tax exempt status and working on "private letter" rulings, wherein organizations wanted a ruling in advance so that they could have some certainty about tax ramifications of planned future actions. He indicated that he still performed some casework himself and often had to review the casework of his subordinates. He stated that the largest part of his job is personnel-related management activities.

He stated that his interactions with Lois LERNER, former Director, IRS, EO, TE/GE, Washington, DC, were mostly indirect, coming down through the two levels of management between himself and LERNER. When LERNER's office did contact him directly, it was usually as part of a group that included his immediate manager and one or more of his employees. The most common interaction he had directly with LERNER's office involved requests for his group to handle something that had originally come into that office and that would be more appropriately assigned to his group.

SHOEMAKER was asked for his recollection of his hard drive failure that happened on approximately March 4, 2011. He stated that he had lost all of his archived e-mail and saved files for the years 1994 through 2010 due to the hard drive failure. He initially stated that his recollection was that the failure

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

had occurred in January 2011, but after consulting saved e-mail involving the aftermath of the hard drive failure, he confirmed the failure occurred in March 2011. His recollection was that he had been experiencing "pretty severe computer problems" while working at his former office at 1750 Pennsylvania Ave, NW, Washington, DC. He reported the problem to an Information Technology (IT) technician at that facility. He was fairly sure that this technician was SFC , IT Specialist, IRS, User & Network Services, IT, Washington, DC. The technician (SFC) told him that his computer had a "pretty serious problem" and that recovery of his saved files and archived e-mail may not be possible. The technician (SFC) took possession of his computer and worked on recovering his data for a night or two but ultimately indicated that he was unable to recover the data.

SHOEMAKER stated that he had been "very concerned" about the loss of the data since it contained numerous files, including managerial files, that he needed to perform his work. He recalled SFC telling him that "your computer is shot" and that he had begged SFC to try and retrieve the files. He also said that he had complained about the data loss "for the next three months to anyone who would listen."

He thinks he might have been given a loaner laptop for the short period in which his assigned computer was being worked on but he was unsure. He could also not state with certainty that the laptop that had been returned to him after the hard drive failure was the same laptop he had originally been using.

SHOEMAKER indicated that his practice had been to archive e-mails whenever his e-mail box went over the size limit. He would drag the oldest e-mails to the archive folder within Microsoft Outlook. He was unsure where these archived e-mails were actually stored but confirmed that he lost his archived e-mails when his hard drive failed. He confirmed that he saved work-related files to the C Drive of his assigned computer.

SHOEMAKER indicated that he had been interviewed on several prior occasions on matters related to LERNER and lost e-mail. He said that he had first been interviewed by the Treasury Inspector General for Tax Administration (TIGTA) before the scandal broke and then was interviewed by the Federal Bureau of Investigation (FBI) and the U.S. Department of Justice (DOJ). He said that he was then interviewed by both the House Committee on Oversight and Government Reform (OGR) and the Senate Committee on Finance. Lastly, he was interviewed again jointly by TIGTA, the FBI and DOJ.

He recalled telling one or more of his interviewers about the lost e-mails and personal files, stating that he had not been keeping the fact of the data loss "a secret."

SHOEMAKER could not recall any other incident that resulted in personal data or e-mail loss and stated that his assigned laptops since 2011 had not suffered any major problems.

In 2013, he was asked to provide his laptop to IRS IT so that it could be reviewed related to the LERNER investigation. He had delivered it to IRS IT office and it was returned within two days.

He indicated that he did not have an IRS-issued thumb drive.

He stated that he had only begun to use Microsoft Office Communications Server (OCS) within the "past year or two" and that he generally only used it to reply to communications he received via OCS. He confirmed that he did not use OCS for substantive communications.

SFC 004073

MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

The information provided by SHOEMAKER during the interview was recapped and SHOEMAKER confirmed its accuracy.

The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

RESOLUTION_CODE	ACTION	UPDATE_ACTION	RESOLUTION
REBUILT	registry file failure. registry is corrupt	03/07/2011 08:17:58 US/Eastern (SIGNOR, AARON G): EUES DOMAIN: working with customer now to set up rebuild windows 03/04/2011 16:25:18 US/Eastern (SIGNOR, AARON G): EUES DOMAIN: System image process complete and added to DS domain. Runstreaming now. 03	Resolution code definition: REBUILT cwcc

SFC 004075

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	June 11, 2015 10:00 AM
Activity or Interview of: Terence MILHOLLAND Chief Technology Officer (CTO)/Chief Information Officer (CIO) Internal Revenue Service (IRS) Information Technology (IT) SFC [redacted]	**Conducted by:** Assistant Special Agent in Charge SFC [redacted] Special Agent (SA) SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On June 11, 2015, the reporting SAs interviewed Terence MILHOLLAND, CTO/CIO, IRS, IT, Farmers Branch, TX, regarding his involvement with the identification and/or recovery of media which might have contained e-mail or other responsive backup material relating to Lois LERNER, former Director, IRS, Exempt Organizations (EO), Tax Exempt and Government Entities, Washington, DC.

MILHOLLAND was placed under oath and provided the following information:

MILHOLLAND began his employment with the IRS as CTO in November 2008. Prior to joining the IRS, he worked in various IT senior management positions for companies such as Visa, Inc., Boeing, and Geico Insurance. MILHOLLAND has been working in IT related positions for approximately 45 years.

Prior to May 2013, the IRS was operating under a six month retention policy regarding e-mail backup tape retention, which was put in place as a cost-saving measure allowing the IRS to reuse tapes, as opposed to continually purchasing backup tapes required for longer retention periods. MILHOLLAND explained the retention period was not initially established with considerations for retrieving data in situations like the EO inquiry, because the IRS backup system was identified as a disaster recovery system, and not one that was meant as an "archival system" for retrieving large amounts of data.

MILHOLLAND advised that he was not aware of anything controversial regarding EO before May 2013, when stories about LERNER started to circulate in the news. MILHOLLAND recalled IRS IT was asked if they had all the backup tapes, and how far back they went. Discussions were under way within IRS IT to extend the recycle period to a year, but he was concerned about overwriting or losing data. In May 2013, MILHOLLAND sent an e-mail to his senior managers responsible for destroying media and asked them to preserve media that might contain e-mail or data related to "investigations" that were occurring. MILHOLLAND explained he sent it to managers, rather than sending it directly to all employees, to ensure they took the actions necessary to keep media from

being destroyed. He advised that his directive may have been interpreted differently by different groups of IRS employees, likely because there were many IT processes and groups that used tapes for non-e-mail purposes.

MILHOLLAND described his involvement with the search for EO data and LERNER's e-mail as generally aware of significant events, but not involved in the day-to-day discussions or decisions regarding the recovery and search efforts. MILHOLLAND appointed Stephen MANNING, former Deputy CIO (DCIO), IRS, Strategy and Modernization, IT, Washington, DC, as the IRS IT "point person" to assist the IRS Office of Chief Counsel to recover IT media and provide technical advice when requested, but in general, IRS IT was in a support role. The IRS Office of Chief Counsel made the decisions about what information to recover. Although MANNING provided general information to MILHOLLAND, he told MANNING he did not want to know any more than he needed to about the specifics of what they were working on.

MILHOLLAND expressed reservations about the capability of the IRS electronic discovery personnel and infrastructure when the first requests came to them in May 2013. MILHOLLAND advised the system was never designed to handle the volume of requests it started receiving, which went from three concurrent "cases" to 120 almost immediately. Initially, the system was unstable and took between three months to a year to stabilize. MILHOLLAND believed that near the end of May 2013, Daniel WERFEL, former Principal Deputy Commissioner, IRS, Washington, DC, became the Acting IRS Commissioner, and WERFEL told MILHOLLAND that the electronic discovery system was "the most important system in the IRS" and to focus on improving the system. When asked if e-mail backup tapes were used to provide information to the electronic discovery system, MILHOLLAND advised he never received any output from the process and was unsure what was used, including e-mail backup tapes. He did advise, however, that he would have recommended restoring information from e-mail backups and taking information from hard drives for the process. When asked if he had suggested using e-mail backup tapes, MILHOLLAND indicated WERFEL had come into the Acting Commissioner position and took an accusatory outlook towards IRS employees. MILHOLLAND characterized WERFEL as directing, or "pushing from above," when it came to the data recovery efforts. MILHOLLAND advised he was not asked for his advice. He also explained that IRS IT was responsible for ensuring the electronic discovery infrastructure functioned, and that IRS IT facilitated the technical means to recover data. MILHOLLAND reiterated that the decisions on what data to recover rested with the IRS Office of Chief Counsel.

MILHOLLAND was aware of e-mail backup tapes being turned over to TIGTA on two occasions, and that the tapes were numbered in the hundreds; however, he was not familiar with the specifics of how the tapes were identified. Prior to the interview, MILHOLLAND stated he assumed TIGTA SAs had personally identified the tapes at the Martinsburg Computing Center (MTB-ECC). He did recall the nine tapes discovered in the Automated Tape Library (robot) in the MTB-ECC because the discovery of tapes which may have had older data on them was a surprise. MILHOLLAND advised he sent MANNING to visit the computing center in Detroit, MI, and MTB-ECC, while he (MILHOLLAND) went to the Memphis, TN, ECC in order to see the operations himself. While on the tour, he asked the staff to physically show him the tape library and demonstrate that no more tapes were going to be unexpectedly found.

MILHOLLAND acknowledged participating in various briefings about backup tapes with IRS senior managers, including various IRS Commissioners and Acting Commissioners between May 2013 and the date of the interview. MILHOLLAND stated he had no specific recollection of any briefings

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relating to the details surrounding backup tapes from the Microsoft Exchange Server formerly housed at the New Carrollton Federal Building (NCFB) in Lanham, MD, which was decommissioned on May 2011. MILHOLLAND stated he had not briefed any of the various IRS Commissioners or Acting Commissioners about backup tapes from the Microsoft Exchange Server which had resided at NCFB. MILHOLLAND advised he was probably not present for a meeting on July 2, 2014, which had been called by MANNING to discuss the "questions" that would be generated from finding additional tapes; but did state, there was concern over the nine tapes which had just been discovered in the tape robot. MILHOLLAND believed he was on leave during the week preceding the July 4th holiday. MILHOLLAND stated he had not seen any documentation specific to the backup tapes from the NCFB Microsoft Exchange Server.

MILHOLLAND advised he was not clear on the information relating to the NCFB backup tapes, and could not recall who had told him about them, though he acknowledged hearing about them. MILHOLLAND was not aware of the discovery of any additional backup tapes or media relating to the EO inquiry. MILHOLLAND characterized the IRS IT work environment as "overloaded." MILHOLLAND advised his recollection of the EO data recovery was likely unclear because MANNING was handling the day-to-day operations, and he was involved with implementing several other major initiatives to include the implementation of the Affordable Care Act and the Foreign Account Tax Compliance Act, among others.

When asked if he knew that the NCFB backup tapes had likely been degaussed (magnetically erased) in March 2014; MILHOLLAND stated that he was not aware. MILHOLLAND subsequently opined that the destruction of the NCFB backup tapes was more significant than the loss of LERNER's hard drive. MILHOLLAND advised he was "blown away" at the revelation, and admitted that the IRS IT senior management was ultimately responsible. When asked specifically who would have been more directly responsible, MILHOLLAND stated his May 2013 directive would have applied to preserving the NCFB backup tapes, and that the organization who sent them to be destroyed would be responsible for their destruction.

MILHOLLAND stated he was not told to misrepresent or hide information related to the EO inquiry. MILHOLLAND advised he had not directed anyone to destroy backup tapes related to the electronic discovery process related to the EO inquiry, nor did he believe any IRS IT executives would have directed their destruction. No one approached him to recuse themselves from the process because of a friendship with LERNER; and similarly, no one reported feeling uncomfortable due to instructions issued by anyone involved in the process. MILHOLLAND advised he had told people to be open and tell the truth.

The specifics of this interview were recapped with MILHOLLAND periodically throughout to ensure accuracy. MILHOLLAND was offered the opportunity to provide an affidavit, but declined.

SFC 004078

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☒ Personal Interview ☐ Telephone Interview ☐ Records Review ☐ Other	October 22, 2014 1:00 PM
Activity or Interview of: Thomas KANE Deputy Associate Chief Counsel Internal Revenue Service (IRS) Procedure & Administration (P&A) Office of Chief Counsel SFC [redacted]	**Conducted by:** Special Agent (SA) SFC [redacted] Assistant Special Agent in Charge SFC [redacted] **Location of Interview/Activity:** IRS SFC [redacted]

Subject Matter/Remarks

On October 22, 2014, the reporting SAs interviewed Thomas KANE, Deputy Associate Chief Counsel, IRS, P&A, Office of Chief Counsel, Washington, DC, regarding the hard drive failure associated with Lois LERNER, former Director, IRS, Exempt Organizations (EO), Tax Exempt and Government Entities (TE/GE), Washington, DC, and the hard drive failures associated with other IRS employees and custodians identified by the Treasury Inspector General for Tax Administration (TIGTA).

KANE was placed under oath and substantially stated the following:

His most recent tenure with the IRS Office of Chief Counsel began in 2004 when he was rehired as Special Counsel with responsibilities including policy and guidance oversight, litigation, privacy law, collection and bankruptcy. In 2011, KANE became Senior Level Counsel and was assigned special projects for the Associate Chief Counsel. In June 2013, he began acting as Deputy Associate Chief Counsel and was confirmed in December 2013.

His day to day responsibility is overseeing the IRS Office of Chief Counsel Branches related to practice and procedure. This specifically includes rules of evidence, appellate practice, summonses, disclosure and privacy law and the legal processing function of the IRS Office of Chief Counsel. In May 2013, KANE was asked to advise the IRS Office of Chief Counsel staff in responding to Congressional committees regarding the TIGTA Audit of the EO Determinations process; in June 2013, he became responsible for the document productions to Congressional committees after it was determined to be a responsibility of the IRS Office of Chief Counsel rather than the IRS Commissioner.

In January 2014, the House Committee on Ways and Means requested a separate production of all the LERNER e-mails produced thus far in chronological order. The process began to gather records and respond to their request. It was difficult to sort the e-mails in a production set by date, so the e-

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mails were produced in an Excel spreadsheet that could be sorted by date with links to the e-mails. The spreadsheet contained the metadata with a link to the e-mail but the spreadsheet did not contain the body of the e-mails. The spreadsheet was finished and ready for review on February 2, 2014, which was a Sunday. KANE provided the spreadsheet to Catherine DUVAL, former Counselor to the Commissioner, IRS, Office of Chief Counsel, Washington, DC. Sometime late in the day on February 2, 2014, or early on February 3, 2014, DUVAL contacted KANE and advised him she noted a gap in the LERNER e-mails and brought it to his attention. DUVAL asked if KANE had noticed it but he had not. During their internal meeting on February 3, 2014, Christopher STERNER, Deputy Chief Counsel (Operations), IRS, Office of Chief Counsel, Washington, DC, Stephen MANNING, Deputy Chief Information Officer (CIO), IRS, Information Technology (IT), Washington, DC, DUVAL and KANE were present to discuss the issue of the gap in the LERNER e-mails and it was decided to backtrack through IRS IT to identify an explanation for the gap.

Clearwell, the electronic discovery software used for the document productions to Congress was reviewed to confirm there was a gap in the LERNER e-mails. It was concluded that the e-mails in Clearwell coincide with the spreadsheet indicating a gap in the LERNER e-mails. KANE does not know who reviewed Clearwell. The spreadsheet of the e-mails was associated with the e-mails already produced at that time and systemically generated by Clearwell. The e-mails produced to that point were contingent on search terms and the request was to provide them in chronological order. The e-mails had been produced in separate productions over several months, so the e-mails had to be consolidated into one production as well as sorted in chronological order. There were still more e-mails to be produced at this point.

On February 4, 2014, KANE sent attorneys from his group and others from the Office of Chief Counsel to meet with working-level IRS IT employees in Lanham, MD. The purpose was to identify anyone that worked on LERNER's computer. The attorneys met with IRS IT employees identified by MANNING and spoke to them and also reviewed records. They reviewed reports regarding the equipment assigned to LERNER and helpdesk tickets to determine what computer she had and when as well as any repairs made. On February 4, 2014, it was determined that LERNER experienced a hard drive failure in June 2011. Employees who worked for LERNER including Akaisha DOUGLAS, Staff Assistant, IRS, TE/GE, Washington, DC, and Dawn MARX, Executive Assistant, IRS, EO, TE/GE, Washington, DC, were contacted and confirmed the hard drive failure. Clearwell was searched using terms related to "hard drive" and it was discovered that at least one e-mail previously produced to Congressional committees referenced LERNER's hard drive failure in June 2011.

On February 5, 2014, or February 6, 2014, KANE, STERNER, DUVAL, and MANNING met to decide how to proceed. William WILKINS, Chief Counsel, IRS, Office of Chief Counsel, Washington, DC, was included in the discussion at some point. The discussion included whether to notify Congress or whether more information was needed. The discussion also included how much of LERNER's e-mails could be located elsewhere. They continued to produce their regular document productions to Congressional committees and attempt to complete the document requests related to EO Determinations. Around this time, one or two Congressional committees indicated their intent to release their report regarding EO Determinations. Senator Max BAUCUS, Chairman, Senate Committee on Finance, was nominated for the position of U.S. Ambassador to China and the Committee wanted to release their report at the end of February 2014 or early March 2014, prior to BAUCUS's departure. A decision was made not to report half or part of the story as LERNER e-mails were expected to be produced for some time in the future. The House Committee on Oversight and

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Government Reform (OGR) had previously requested all of LERNER's e-mails regardless of search terms.

John KOSKINEN, Commissioner, IRS, Washington, DC, was briefed regarding the LERNER e-mails at some point but KANE does not know how or when. Ultimately, the decision confirmed by KOSKINEN was to delay notifying Congressional committees until all the facts were known. The document productions to Congressional committees related to EO Determinations were completed on March 19, 2014. The document productions included 82 custodians and relevant search terms. The list of custodians was presented as 83 custodians but later determined to be only 82 custodians because one of the custodians on the list of 83 custodians, Sandra WOODS, IRS, Tax Examining Technician, Ogden Submission Processing, Ogden, UT, only had hard copy documents which were not produced. Once the document productions relevant to the 82 custodians and search terms were completed, they focused their attention on producing all of the LERNER e-mails regardless of search terms.

In an attempt to produce additional LERNER e-mails, they searched for any LERNER e-mails that had not already been produced within the data and documents previously obtained for the other 82 custodians. The scope of time searched was January 1, 2009, through April 27, 2013, or April 28, 2013, whichever is the date LERNER no longer had e-mail in the system. The LERNER e-mails located among the other 82 custodians amounted to an additional 24,000 e-mails and were added to all the LERNER e-mails to be produced in an effort to fill in the gap in LERNER's e-mail. The LERNER e-mails were pulled for review at the end of March 2014 or the beginning of April 2014 and provided to the review team the third week of April 2014. Clearwell was searched for LERNER e-mails not related to EO Determinations. In addition, electronically stored information (ESI) associated with LERNER was collected at the end of June 2011 in response to a separate and unrelated request from Congress. The ESI included all LERNER e-mail from the Microsoft Exchange server but it was collected after the hard drive failure. The June 2011 ESI was searched to identify e-mails not already obtained for production. There was not much data on the server at the time in June 2011 as much of it would have been on the hard drive. KANE does not recall how many LERNER e-mails were identified specifically from the ESI collected in June 2011. The June 2011 ESI was not directly related to the EO Determinations process. The ESI collected in June 2011 was a request from the House Committee on Ways Means regarding whether a donation to a 501(c)(4) organization would be subject to gift tax, which led to a review of the IRS position on the issue. A litigation hold was not issued because it was not determined to be necessary for a Congressional inquiry, which was affirmed in court. The LERNER e-mails were reviewed to confirm they were not limited to search terms, then consolidated and duplicates were removed. The LERNER e-mail production was finalized on April 29, 2014, resulting in a total of 67,000 LERNER e-mails, which includes e-mails previously produced relevant to search terms.

There are approximately 800 employees in EO and additional employees in TE/GE that could potentially have LERNER e-mails that have not been produced. Possibly thousands of employees could potentially have LERNER e-mails that have not been produced. The problem is that it is not possible to search across custodians centrally and access what is stored on hard drives. E-mails are typically stored on the hard drive in Personal Storage Table (.pst) files and removed from the network. The software, Encase, does not have the capability to search across custodians centrally, so the network is searched and the machine is physically secured and then imaged. It would be impossible to search 2,000-3,000 custodians considering the constraints, so the document productions to Congressional committees was focused on the 82 custodians, including LERNER, that Congressional

committees requested or were otherwise determined to be relevant to the EO Determinations process. Prior to being produced, documents are reviewed for redactions of tax information and other purposes, resulting in a lag between the unredacted and redacted document productions. Documents were generally produced first to tax writing Congressional committees authorized to receive tax information and then the redacted versions of the same documents were produced to the Congressional committees not authorized to receive tax information. All of LERNER's e-mails were produced by July 3, 2014, with the non-redacted e-mails being produced first.

In the beginning of the document productions, IRS IT searched the network, then physically secured the custodian's computer and imaged the data including e-mails as .pst files. IRS IT also gathered data stored on the network. The data was loaded into the software, Encase, then flattened and decrypted. All of the data had to be collected and then filtered using the search terms relevant to EO Determinations. After the data was flattened and encrypted, it was searched according to the search terms and the Office of Chief Counsel provided only the data that was identified after the search terms were applied, rather than all of the custodian's data. The names and search terms were provided to IRS IT from the Office of Chief Counsel. The Office of Chief Counsel would then load the filtered data received from IRS IT into Clearwell, which is used to analyze and redact the documents for production. That has since changed and the Office of Chief Counsel receives all of the custodian's data rather than having IRS IT search and filter the data and then provide them with the results. The search terms were previously used outside of the software Encase using DT Search but later changed to just using Encase to eliminate a step. Clearwell is a tool utilized by the Office of Chief Counsel while IRS IT is responsible for the forensic side of the document production process, which used to be handled by IRS Cybersecurity.

As of April 29, 2014, it was concluded that all of the LERNER e-mails were located that could be reasonably obtained. A total of 67,000 LERNER e-mails would be produced, which includes the e-mails already produced. Early on it was decided to wait and see to develop the most complete and accurate picture before officially making notification to Congress. It would have been premature to notify anyone, so they were generally cautious as a result of past experience with premature information being shared with the media. It was also important to explain the process leading up to the discovery of the missing e-mails and the events that followed. This was the genesis of the "white paper" document dated June 13, 2014, which served as the notification to Congress. The "white paper" served to notify Congress of the problem identified regarding the LERNER e-mails, how it was discovered and what steps were taken to fill in the apparent gap in her e-mails. It generally served as a means to understand the totality of the issue and the limiting factors in the process.

DUVAL was the driving force behind the "white paper" and the intention was to release the "white paper" when the production of all the LERNER e-mails was complete at the end of June 2014. A decision had been made to wait and generate the "white paper" to fully explain the details and circumstances surrounding the issue. KANE does not know when DUVAL decided to generate the "white paper" or when she began generating the "white paper." The "white paper" was released early because two Congressional committees were planning to release their reports; the House Committee on Ways and Means and the Senate Committee on Finance anticipated releasing their report in June 2014 and wanted a full explanation of what had already been produced and what is still expected. KANE believes the Senate Committee on Finance gave a deadline of June 13, 2014, for the requested information in advance of their report. The other Congressional committee expecting to release their report was the Senate Committee on Finance. The other possible explanation for the release of the "white paper" on June 13, 2014, was that DUVAL's departure from the IRS was

anticipated and there was possibly the intent to release it prior to her departure. At the end of April 2014, it was determined that all of the LERNER e-mails practically available were obtained and DUVAL began talking about the "white paper" but KANE did not see a draft until June 6, 2014.

Other than June 13, 2014, there were no other dates in which Congressional committees were aware of the issue with the LERNER e-mails. KANE sent an e-mail to Timothy CAMUS, Deputy Inspector General for Investigations, TIGTA, Washington, DC, on the evening of June 13, 2014, notifying him of the issue regarding the LERNER e-mails. SFC [redacted], Trial Attorney, United States Department of Justice (DOJ), Washington, DC, was also notified on June 13, 2014, because of his involvement with the investigation of criminal and civil violations related to EO Determinations.

KANE has no knowledge of any other notifications made regarding the issue with the LERNER e-mails but it does not surprise him that someone from the IRS would speak to the United States Department of the Treasury (Treasury) Office of General Counsel (OGC) regarding the issue. DUVAL was the point of contact for Treasury OGC and likely had regularly scheduled meetings with them. The IRS is subordinate to Treasury but a pertinent fact regarding the document productions to Congressional committees justifies advising Treasury OGC. When OGR issued their first subpoena for documents in August 2013, it was served on Jacob LEW, Secretary of the Treasury, effectively holding him legally responsible for the response. The substance of the February 2014 subpoena from OGR is the same and also made the Secretary of the Treasury responsible. KANE was made aware sometime after the fact that DUVAL briefed Hannah STOTT-BUMSTEDT, Attorney, Treasury, OGC, regarding the issue with the LERNER e-mails. STOTT-BUMSTEDT is DUVAL's counterpart at the Treasury OGC and they are friends. KANE did not participate in any meetings with the Treasury OGC or the White House. He does not know who at Treasury OGC notified the White House regarding the issue with the LERNER e-mails.

There are potentially many LERNER e-mails missing and they will continue to be produced as they are discovered. The current document production is a request for all e-mails associated with Holly PAZ, Deputy Director (Content Development), IRS, Large Business & International (LB&I), Washington, DC. While producing the PAZ e-mails, additional LERNER e-mails were located and have been produced and identified as new e-mails. The House Committee on Ways and Means requested all LERNER e-mails to and from any IRS employee not included as one of the 82 custodians, including for example, Sherry WHITAKER, Program Manager, IRS, TE/GE, Ogden, UT, and the e-mails associated with WHITAKER will potentially identify additional LERNER e-mails. Two assistants who worked for LERNER were interviewed by OGR within the last week and a half and their e-mails have not been requested but their e-mails could potentially contain additional LERNER e-mails. The two assistants, MARX and Diane LETOURNEAU, former Executive Assistant, IRS, EO, TE/GE, Washington, DC, were not included in the list of 82 custodians. The computer previously used by LETOURNEAU was recovered to collect ESI, while ESI for MARX and DOUGLAS was already collected.

On September 5, 2014, the "brown paper" was released, which detailed the extent of the internal investigation conducted by the IRS, including identifying additional custodians who experienced hard drive failures and a subsequent apparent data loss. The e-mails for the other custodians as well as names provided by Congressional committees were reviewed and some anomalies in Clearwell were noted, included having less than the typical amount of e-mails or an uneven distribution of e-mails or anything that raised a question. KANE began preparing a list, using information generated by his team, which identified custodians and other names provided by Congress that had anomalies in their

e-mail, potential hard drive failures or any potential data loss. An anomaly in their e-mail does not necessarily mean a hard drive failure occurred or any data loss occurred.

For example, Elizabeth HOFACRE, Revenue Agent (RA), IRS, EO, TE/GE, Cincinnati, OH, had a huge gap in her e-mail from 2008 through 2011; HOFACRE was a "serial deleter" who routinely deleted her e-mails until she began saving e-mails in 2011. HOFACRE is included on the list of 82 custodians and testified before Congress in 2013. The IRS Office of Chief Counsel started to review Clearwell to identify anomalies or gaps in e-mail but was directed by TIGTA to cease while TIGTA conducted an investigation. KANE is not certain if the IRS Office of Chief Counsel went back and continued to review Clearwell for gaps in the e-mails. The names of the six additional custodians with potential hard drive failures publicly released on June 16, 2014, were identified after KANE provided the list of 82 custodians to MANNING; he (KANE) then asked MANNING to search the helpdesk ticket systems (Information Technology Asset Management System (ITAMS) and Knowledge Incident/Problem Service Asset Management (KISAM) for helpdesk tickets referencing hard drive issues.

KOSKINEN testified in a Congressional hearing that the additional custodians were identified at his (KOSKINEN) request but KANE is certain that the names released on June 16, 2014, were identified as a result of his (KANE) request to MANNING. On June 16, 2014, Congressional committees were briefed and the six names were released to Congress. MANNING provided the names to the Congressional committees on June 16, 2014. Some of the names searched for anomalies in their e-mail were provided by Congressional committees' minority staff. Clearwell was also searched for references to hard drive in the body of e-mails. Some of the anomalies did not appear to be a result of a hard drive failure. Steven MILLER, former Acting Commissioner, IRS, Washington, DC, was not identified as having any gaps or anomalies in his e-mail although he is one of the 82 custodians. The IRS Office of Chief Counsel held off completing the process of identifying additional custodians until the first week of August 2014 when they received pressure from Congressional committees to complete the process.

The "brown paper" issued on September 5, 2014, summarizes their findings and concluded that in addition to LERNER, five additional custodians on the list of 82 custodians experienced hard drive failures resulting in a probable loss of e-mail. Each of the five custodians identified in the "brown paper", (Julie CHEN, RA, EO, IRS, TE/GE, Cincinnati, OH, Nancy HEAGNEY, RA, IRS, EO, TE/GE, Cincinnati, OH, Judith KINDELL, Tax Law Specialist, IRS, EO, TE/GE, Washington, DC, Justin LOWE, Tax Law Specialist, IRS, EO, TE/GE, Washington, DC, and Ronald SHOEMAKER, Supervisory Tax Law Specialist, IRS, EO, TE/GE, Washington, DC) were identified as having a data loss sometime after June 13, 2014 but generally between June 16, 2014 and August 2014. There was no discussion and no one thought of reviewing the other custodians for hard drive failures until June 13, 2014.

When a custodian was identified as having a potential hard drive failure, the custodian was contacted regarding the hard drive failure and potential loss of e-mails but they stopped contacting custodians at the request of TIGTA and resumed the first week of August 2014. Vincent FUSCO, Program Manager, IRS, EO, TE/GE, Independence, OH, was named in a Freedom of Information Act (FOIA) suit but was not involved the in the EO Determinations process. Since he was not included in the list of 82 custodians, FUSCO's e-mails were not reviewed for gaps or anomalies and KANE does not know whether FUSCO had a hard drive failure or data loss. Similarly, KANE also does not know whether Sonya ADIGUN, Supervisory Tax Examining Technician, IRS, EO, TE/GE, Cincinnati, OH,

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Justin PALMER, RA, IRS, EO, TE/GE, Cincinnati, OH, or Kenneth DREXLER, Attorney Advisor (Taxpayer Advocate), IRS, National Taxpayer Advocate, Washington, DC, experienced hard drive failures or a subsequent data loss. DREXLER was named because he handled EO Determinations cases in the National Taxpayer Advocate Office but was not included in the list of 82 custodians. PALMER and ADIGUN have never been addressed regarding EO Determinations.

The custodians or their attorneys were contacted, with the exception of FUSCO, ADIGUN, PALMER and DREXLER. They attempted to trace the five failed hard drives for the five custodians with probable lost e-mails identified in the "brown paper" but were unsuccessful because the hard drives are identified by serial numbers which are not tracked by the IRS. The computers are tracked but not the hard drives. The data for FUSCO, ADIGUN, PALMER and DREXLER was imaged but may not have been loaded into Clearwell, and IRS IT would still have a copy of the data whether it is in Clearwell or not. The team that researched the custodians and hard drives included SFC [redacted], Special Trial Attorney, IRS, Small Business/Self-Employed (SB/SE), Office of Chief Counsel, Richmond, VA, SFC [redacted], Supervisory General Attorney, IRS, LB&I, Office of Chief Counsel, Washington, DC, SFC [redacted], former General Attorney, IRS, SB/SE, Office of Chief Counsel, Washington, DC, and SFC [redacted], Associate Area Counsel, IRS, SB/SE, Office of Chief Counsel, New York, while SFC [redacted], Attorney, IRS, SB/SE, Office of Chief Counsel, Washington, DC, researched Clearwell. SFC [redacted], SFC [redacted] and SFC [redacted], Senior Technical Reviewer, IRS, P&A, Office of Chief Counsel, Washington, DC, drafted the memorandum issued in February 2014, which KANE previously provided to TIGTA. KANE believes they may have talked to the IRS IT Specialists who specifically handled the helpdesk tickets identified as potential hard drive failures.

Generic litigation holds were issued on May 16, 2014, and updated at least two times, once after a DOJ request and a second time to include personal computers. Litigation holds are intentionally generic and essentially advise employees not to delete any relevant information. The litigation holds referenced the TIGTA Audit regarding the EO Determinations process as an all-encompassing means to identify relevant records. The litigation holds did not specifically state Congressional committee interest in records and also did not advise employees to make notification of any hard drive issues. The language has since been changed to include notification of hard drive issues. When employees relinquished their computers to be imaged, they were not told what the purpose was or that it would be provided to Congressional committees.

At the conclusion of the interview, KANE was provided the opportunity to submit a written affidavit but declined after verifying the accuracy of the notes and information provided above.

SFC 004085

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity:	Date and Time:
☐ Personal Interview ☐ Telephone Interview ☒ Records Review ☐ Other	September 4, 2014 1:00 PM
Activity or Interview of: Review of Internal Revenue Service (IRS) Custodians and Hard Drive Failures	Conducted by: Special Agent SFC [redacted]
	Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) SFC [redacted]

Subject Matter/Remarks

On June 23, 2014, the Senate Committee on Finance provided a letter to TIGTA requesting an investigation of numerous issues regarding IRS employees' data loss, data recovery, data restoration, and deliberate efforts to withhold information from the Committee.

On June 24, 2014, Thomas KANE, Deputy Associate Chief Counsel, IRS, Procedure & Administration (P&A), Office of Chief Counsel, Washington, DC, provided a list of 83 custodians, which represents the 83 IRS employees associated with documents produced to Congressional committees as part of their investigation of the IRS Exempt Organizations (EO) Determinations process.

All of the IRS helpdesk tickets associated with the list of 119 IRS employees attached to the June 23, 2014, letter from the Senate Committee on Finance were obtained by TIGTA from the Information Technology Asset Management System (ITAMS) and the Knowledge, Incident/Problem, Service Asset Management (KISAM) system. A review of the helpdesk tickets identified 31 IRS employees or custodians that had apparent hard drive failures since 2009. The 31 IRS employees are as follows:

- Sonya ADIGUN, Supervisory Tax Examining Technician, IRS, EO, Tax Exempt and Government Entities (TE/GE), Cincinnati, OH
- Karen ALLEN, Work Unit Supervisor, IRS, EO, TE/GE, Cincinnati, OH
- Ronald BELL, Revenue Agent (RA), IRS, EO, TE/GE, Cincinnati, OH
- Kenneth BIBB, Supervisory RA, IRS, EO, TE/GE, Cincinnati, OH
- Christopher BROWN, RA, IRS, EO, TE/GE, Cincinnati, OH
- Julie CHEN, RA, IRS, EO, TE/GE, Cincinnati, OH
- Tyler CHUMNEY, RA, IRS, EO, TE/GE, Cincinnati, OH
- Glenn COLLINS, RA, IRS, EO, TE/GE, Cincinnati, OH
  Kenneth DREXLER, Attorney Advisor (Taxpayer Advocate), IRS, National Taxpayer Advocate, Washington, DC

- Michelle ELDRIDGE, Executive Officer, Communications, Communications & Liaison, Washington, DC
- Bonnie ESRIG, former Program Manager, IRS, EO, TE/GE, Cincinnati, OH
- Nikole FLAX, Special Assistant to the Chief of Appeals, IRS, Office of Appeals, Washington, DC
- Vincent FUSCO, Program Manager, IRS, EO, TE/GE, Independence, OH
- Nancy HEAGNEY, RA, IRS, EO, TE/GE, Cincinnati, OH
- Sarah INGRAM, former Project Director, IRS, Affordable Care Act Implementation, Deputy
- Commissioner for Services & Enforcement, Washington, DC
- Beverly JEFFERSON-WHITE, Supervisory RA, IRS, EO, TE/GE, Baltimore, MD
  Judith KINDELL, Tax Law Specialist, IRS, EO, TE/GE, Washington, DC
- Kimberly KITCHENS, RA, IRS, EO, TE/GE, Cincinnati, OH
- John KOESTER, former RA, IRS, EO, TE/GE, Cincinnati, OH
- Jason KROTINE, RA, IRS, EO, TE/GE, Cincinnati, OH
  Jovonnie LEWIS, Supervisory RA, IRS, EO, TE/GE, Cincinnati, OH
  Justin LOWE, Tax Law Specialist, Tax Law Specialist, IRS, EO, TE/GE, Washington, DC
- Andrew MEGOSH, Tax Law Specialist, IRS, TE/GE, Office of Chief Counsel, Washington, DC
  Steven MILLER, former Acting Commissioner, IRS, Washington, DC
- Justin PALMER, RA, IRS, EO, TE/GE, Cincinnati, OH
- Jeffrey PARRY, Senior Counsel, IRS, International, Office of Chief Counsel, Washington, DC
  Lori PERRY, RA, IRS, EO, TE/GE, Cincinnati, OH
- Shawntel SANDERS, RA, IRS, EO, TE/GE, Cincinnati, OH
  Ronald SHOEMAKER, Supervisory Tax Law Specialist, IRS, EO, TE/GE, Washington, DC
- Cindy THOMAS, former Program Manager, IRS, EO, TE/GE, Cincinnati, OH
  Carly YOUNG, RA, IRS, EO, TE/GE, Cincinnati, OH

The 31 IRS employees were interviewed and, of them, seven IRS employees stated they experienced data loss as a result of an apparent hard drive failure. The seven IRS employees who stated they experienced a data loss are as follows: ADIGUN, CHEN, DREXLER, HEAGNEY, KINDELL, PALMER and SHOEMAKER.

Of the seven IRS employees identified as having a data loss, four IRS employees (CHEN, HEAGNEY, KINDELL, and SHOEMAKER) are included on the list of 83 custodians previously provided by KANE. The list of 83 custodians represents all of the IRS employees identified as custodians of e-mails and documents relevant to the IRS EO Determinations process, which were ultimately produced to Congressional committees.

The remaining three IRS employees (ADIGUN, DREXLER, and PALMER) did not have e-mails or documents produced to Congressional committees. According to IRS Information Technology (IT), although ADIGUN experienced a data loss, it was not the result of a hard drive failure but may have occurred during the imaging process, which is the reinstallation of software. One additional IRS employee, FUSCO, was interviewed and confirmed his hard drive failure and subsequent data loss in September 2013 but also explained his computer was imaged in June 2013, which effectively means a mirror image of his data was created by IRS IT.

SFC 004087

When did TIGTA brief leadership in the IRS, Treasury, and the White House about its work on the tax exempt audit?

- On April 5, 2012, TIGTA staff participated in a conference call with the Exempt Organizations function Director, who stated that the Headquarters Rulings and Agreements office worked with the Chief Counsel office to develop additional guidance/questions for processing the applications.
- May 22, 2012 – Audit Director briefed the Exempt Organizations Director on our concerns with screening criteria and the upcoming briefing of the IRS Commissioner.
- May 30, 2012 – IG and function heads briefed the IRS Commissioner Doug Shulman and Deputy Commissioners Steve Miller and Beth Tucker on the new audit, specifically our concerns with criteria involving Tea Party, Patriots, or 9/12 and other policy issues that were being used in reviewing applications for tax-exempt status.
- June 4, 2012 – IG met with Treasury's General Counsel Chris Meade, which was part of his regular monthly meetings. Between June 2012 and the issuance of the report on May 14, 2013, the IG had standing monthly meetings with Mr. Meade, as needed, directly following the Bureau Heads meeting hosted by the Treasury Secretary. To the best of the IG's recollection, he advised Mr. Meade that TIGTA was conducting an audit of the IRS's processing of applications for tax-exempt status, and the IG may have advised him that TIGTA was looking at allegations that the IRS was using names such as "tea party" to identify tax-exempt applications for review.
- June 27, 2012 – Audit Director briefed the Acting Commissioner for TE/GE on the results to date (initial inappropriate screening criteria).
- June 28, 2012 – Audit Director briefed the Exempt Organizations Director on the results to date (inappropriate screening criteria) and the need to obtain case files.
- July 5, 2012 – Audit Director and Audit Manager held opening conference to discuss the scope of audit work with the Exempt Organizations function Director and other Exempt Organizations function officials.
- July 25, 2012 – IG met with Treasury Deputy Secretary Neal Wolin about the audit, only to acknowledge the audit was ongoing.
- September 14, 2012 – IG met with Treasury's Chief of Staff Mark Patterson. To the best of his recollection, the IG advised him that TIGTA was conducting an audit of the IRS's processing of application for tax-exempt status and conveyed the general sense that the IRS had selected applications from certain political

When did TIGTA brief leadership in the IRS, Treasury, and the White House about its work on the tax exempt audit?

groups for additional scrutiny, including using descriptors such as "tea party" to identify such applications.

- September 26, 2012 – Audit Director and Assistant Inspector General briefed the Acting Commissioner for TE/GE on the results to date (timeline of all the inappropriate criteria changes).
- October 1, 2012 – Audit Director briefed the Exempt Organizations function Director, the Rulings and Agreements Director, and other Exempt Organizations function officials on the timeline of issues uncovered and the status of the audit.
- January 15, 2013 – Audit Director held a conference call with the Exempt Organizations function Director and the Director, Rulings and Agreements, to discuss at a high level TIGTA's case reviews.
- January 31, 2013 – Audit Manager and the audit team met with the Exempt Organizations function Director, the Director, Rulings and Agreements, and other Exempt Organizations function officials to discuss TIGTA's case reviews.
- February 25, 2013 – Audit Director informed the Exempt Organizations function Director and the Director, Rulings and Agreements of items of lesser significance uncovered during the audit that would not be included in the audit report.
- March 15, 2013 – IG met with Secretary Jacob Lew.
- March 19, 2013 – Audit Director provided an early version of the report to the Exempt Organizations function Director and the Director, Rulings and Agreements, for review and feedback.
- March 25, 2013 – Meeting with the Exempt Organizations function Director regarding IRS feedback on an early version of the audit report.
- March 27, 2013 – IG and function heads briefed the Acting Commissioner and Deputy Commissioner on the report findings.
- May 16, TIGTA met with Deputy Secretary Neil Wolin, Mark Patterson, Christopher Meade, and Christian Weideman
- May 17, TIGTA met with Deputy Secretary Neil Wolin, Mark Patterson, Christopher Meade, and Christian Weideman
- May 17, 2013 – TIGTA held conference call with Department of the Treasury, Deputy Secretary Wolin, to discuss planned investigation with Department of Justice and the Federal Bureau of Investigation.

When did TIGTA brief leadership in the IRS, Treasury, and the White House about its work on the tax exempt audit?

- May 28, 2013 – TIGTA discussed the BOLO listings with the Acting Commissioner of the IRS and expressed our concerns and the importance of the IRS following up on this matter. In addition, TIGTA informed the Department of the Treasury's Chief of Staff and General Counsel about this matter. IG met with Christian Weidman.
- June 21, 2013 – TIGTA met with the IRS Principle Deputy Commissioner.
- July 12, 2013 – Acting Deputy Inspector General for Audit, Assistant Inspector General for Audit, and Audit Director met with the IRS Chief Risk Officer regarding a separate analyses he was conducting of the names of organizations that had applied for tax-exempt status (e.g., Tea Party, Patriot, 912, Progressive, Republican, etc.) and how these applications were handled, as well as questions regarding the audit report and how TIGTA had responded to congressional inquiries.
- April 11, 2014 – Audit Director spoke with the IRS Chief Risk Officer, who requested information about the names of organizations mentioned in the prior audit and the scope of the prior audit.

SFC 004090

REPORT OF INVESTIGATION

Title (Name and address):	Type of Investigation:	Type of Report:
EXEMPT ORGANIZATIONS DATA LOSS	2 - EMPLOYEE INVESTIGATION	☒ Final ☐ Supplemental

Social Security Number: N/A	☒ Employee ☐ Non-Employee ☐ Former Employee	
Date of Birth: N/A	Date Entered on Duty: N/A	Position and Grade: N/A
Post of Duty: N/A	Division and Office: N/A	

Period of Investigation: June 13, 2014 – June 29, 2015

Potential Violation(s):

OBSTRUCTION OF JUSTICE

INVESTIGATIVE SYNOPSIS

On June 13, 2014, the Treasury Inspector General for Tax Administration (TIGTA) was notified of the computer hard drive failure of Lois LERNER, former Director of the Internal Revenue Service (IRS), Exempt Organizations (EO), Tax Exempt and Government Entities (TE/GE) Division. The hard drive failure was reported by the IRS to have resulted in the loss of LERNER's e-mails, which had previously been requested by Congressional committees, the Department of Justice (DOJ) and TIGTA for their use in ongoing Congressional and criminal investigations of the IRS EO application determination process.

In a letter dated June 23, 2014, the Senate Finance Committee (SFC) requested that TIGTA formally investigate the matter, and that during the investigation TIGTA "perform its own analysis of whether any data can be salvaged and produced to the committee."

Distribution	No.	Case Number:	Signature of Special Agent Making Report:
Inspector General for Tax Administration	1	54-1406-0008-I	SFC [redacted]
Internal Revenue Service	1	Signature of Person Examining Report: SFC [redacted]	
Assistant U.S. Attorney	1		
Other *(Specify)*:		Title: Assistant Special Agent-in-Charge	Office *(City)*: Washington, DC
House Committee on Ways & Means	1		
Committee on Oversight & Government Reform	1	Division Office: SFC [redacted]	Date of Report: June 30, 2015
Senate Finance Committee	1		
Senate Homeland Security and Governmental Affairs	1		

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On June 23, 2014, the Commissioner of the IRS testified during a hearing before the House Committee on Oversight and Government Reform. During the hearing, additional questions were raised concerning the manner in which the IRS managed and stored LERNER's e-mails.

This investigation was conducted in order to determine if evidence existed that the IRS purposely destroyed or withheld e-mails in an effort to obstruct Congressional and criminal investigations; if any of the e-mails the IRS reported as lost could be recovered; and if the IRS complied with the Federal Records Management Act. The investigation included the interview of 118 witnesses and the review and processing of over 20 terabytes (TB) of data.

The investigation determined that there were six possible sources to examine in order to potentially recover the missing e-mails. These sources were LERNER's crashed hard drive, the backup or disaster recovery tapes, a decommissioned Microsoft (MS) Exchange 2003 e-mail server, the backup tapes for the decommissioned e-mail server, LERNER's BlackBerry, and loaner laptop computers that may have been assigned to her while her laptop was being repaired. An examination of four of these sources, the backup or disaster recovery tapes, the decommissioned Exchange 2003 e-mail server, LERNER's BlackBerry, and the loaner laptops produced e-mail that the IRS had not previously produced to Congress, DOJ or TIGTA. The investigation also determined that once it was discovered that there was a gap in the IRS' production of LERNER's e-mail, the IRS did not fully identify as a source or perform recovery attempts for e-mail on the following electronic media, all of which the IRS had in their possession: backup or disaster recovery tapes, the decommissioned Exchange 2003 e-mail server, the backup tapes for the decommissioned e-mail server or the loaner laptop computers.

As part of the investigative process, TIGTA reviewed and compared data the IRS provided to Congress against datasets independently and forensically obtained by TIGTA. The analysis involved two phases: phase one, a technical comparison; and, phase two, a manual review and comparison of recovered e-mail message body information and associated attachments to the e-mails the IRS produced to Congress. The technical comparison identified over 6,400 e-mails from the backup tapes. In order to determine the entire population of potential e-mails and to look for other useful information, the technical comparison also included the review of IRS e-mail transaction logs involving LERNER's e-mail communications obtained from the Department of the Treasury's (Treasury) Government Security Operations Center (GSOC). The e-mail transaction logs included e-mail communication that was logged as sent *To* or *From* (the log only recorded *To* and *From*, however, the *To* category included courtesy copies and blind courtesy copies) LERNER from February 1, 2010 through May 7, 2013. The message header information from these logs was compared to what the IRS had previously provided to Congress. The result of the comparison indicated that as many as 23,000 to 24,000 e-mail messages may not have been provided to Congress. As the logs contained message headers only, the body and attachments related to these e-mail messages were not present, and therefore, not recovered from any data sources gathered

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during this investigation. A manual comparison of the IRS e-mail transition logs to the IRS production to Congress was not possible, as these logs did not contain any message body or attachments, and therefore, the 23,000 to 24,000 estimate could be high.

In the second phase, TIGTA special agents (SAs) conducted a manual review of the aforementioned e-mail sources and identified 1,330 e-mails from the four sources that the IRS did not produce to Congress, the DOJ or to TIGTA.

The investigation also revealed that on or about March 4, 2014, one month after the IRS realized it was missing some of LERNER's e-mails, IRS employees in the IRS Enterprise Computing Center in Martinsburg, West Virginia (Martinsburg), magnetically erased 422 backup tapes that are believed to have contained LERNER's e-mails that were responsive to Congressional demands and subpoenas. However, the investigation did not uncover evidence that the IRS and its employees purposely erased the tapes in order to conceal responsive e-mails from the Congress, the DOJ and TIGTA.

The investigation revealed that the backup tapes were destroyed as a result of IRS management failing to ensure that a May 22, 2013, e-mail directive from the IRS Chief Technology Officer (CTO) concerning the preservation of electronic e-mail media was fully understood and followed by all of the IRS employees responsible for handling and disposing of e-mail backup media. In December 2011, IRS Information Technology (IT) employees in the IRS New Carrollton Federal Building (NCFB) disassembled the Exchange 2003 Server, as well as many other servers in the same room, and they treated the decommissioned server hard drives and backup tapes like junk, moving them from room to room in the NCFB until they could be shipped out for destruction. In April 2012, the majority, but not all, of the equipment from the decommissioned server room was destroyed by IRS contractor UNICOR. In December 2013, the IRS was preparing to renovate the room at the NCFB where the remaining Exchange 2003 components were stored. In order to clean out the room, the order was given to ship the server components and backup tapes to Martinsburg for destruction. On January 29, 2014, the server components and backup tapes were loaded on a truck and shipped to Martinsburg. The proper paperwork (Form 3210) did not accompany the shipment, so the employees at Martinsburg left the shipment untouched until March 4, 2014, when SFC [redacted], the IRS IT Specialist who was responsible for the shipment, sent the Form 3210 to ECC-MTB. Upon receipt of the Form 3210, the midnight shift employees at Martinsburg degaussed (magnetically erased) the backup tapes. The employees did not degauss the server hard drives that were shipped with the backup tapes because their interpretation of the CTO's May 22, 2013, e-mail directive was that it was meant to preserve hard drives only. This misinterpretation resulted in the continued destruction of tape media until June 2014, when management realized the misinterpretation and put a halt to the destruction of all of the tape media. Although they existed until March 4, 2014, the backup tapes containing LERNER's e-mails were destroyed because the IRS employees who shipped the backup tapes and server hard drives did not understand their responsibility to comply with the CTO's May

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2013 e-mail directive to preserve electronic backup media and the Martinsburg employees who destroyed the backup tapes on March 4, 2014, misinterpreted the directive.

In addition to interviewing the line and management employees involved in the processing of the e-mail backup tapes, the investigation included interviews of IRS Senior Executives, including The Honorable John KOSKINEN, IRS Commissioner, Terence MILHOLLAND, IRS CTO, and Stephen MANNING, former IRS Deputy Chief Information Officer, Strategy and Modernization.

When interviewed, MANNING stated that he was responsible for providing technical explanations to IRS senior management and Chief Counsel, as well as coordinating the internal flow of data from IRS IT personnel during the process of gathering data for the IRS' production process to Congress for the IRS EO matter. MANNING related that although the issue of e-mail backup tapes came up almost immediately in May 2013, specifically with respect to how far back the IRS maintained them, no e-mail was restored from backup tapes because nothing had been determined to be missing at that time. MANNING added that after the discovery that LERNER's hard drive had failed, a "second wave" of e-mail backup related questions came in during February or March 2014. MANNING stated that the decisions on whether or not to restore data from tape backups rested with IRS Chief Counsel, but it was not considered because the tape backups only went back to November 2012, which was significantly after LERNER's hard drive failure in 2011. MANNING admitted that the Exchange 2003 Server infrastructure retired in 2011, would still have been covered under the May 2013, CTO e-mail directive requiring e-mail accounts be preserved.

On May 22, 2013, MILHOLLAND issued a policy directive via e-mail that was titled "Information Retention Policy Revision," changing the backup tape recycle policy from six months to an indefinite retention period for all e-mail backup tapes. In this policy directive, MILHOLLAND also ordered that "Given the current environment and ongoing investigations, until further notice, do not destroy/wipe/reuse any of the existing backup tapes for email, or archiving of other information from IRS personal computers. Further, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS." MILHOLLAND added, "In other words, retain everything to do with email or information that may have been stored locally on a personal computer."

When interviewed, MILHOLLAND was asked if he knew that e-mail backup tapes from a decommissioned e-mail server had been degaussed in March 2014, MILHOLLAND stated that he was not aware of this, and he advised that he was "blown away" at the revelation. He further stated that IRS IT senior management was ultimately responsible. MILHOLLAND also stated that his May 2013 e-mail directive would have applied to preserving the NCFB backup tapes and that the organization that sent them to be destroyed would also be responsible for their destruction.

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When interviewed, Mr. KOSKINEN testified he was briefed by his senior advisors about the data loss and the "disaster recovery" tapes. Based on his briefing, he was under the impression that retrieving LERNER's missing e-mails from these tapes would not be feasible. Mr. KOSKINEN said he was not aware that the 422 backup tapes that most likely contained missing LERNER e-mails had been erased on March 4, 2014. Mr. KOSKINEN added that he believed that the investigation would play an important role and will be helpful in determining what the IRS can do to improve its processes. Mr. KOSKINEN stated that when he learned of the missing e-mails and that there was a gap in the production, he provided the idea to search the additional 83 custodians for LERNER e-mails in an effort to locate all of the pertinent e-mails. He also stated he was not directed to destroy, nor did he direct the destruction of any e-mails. Mr. KOSKINEN stated that he advised his staff to cooperate fully in the investigation and that obtaining any missing e-mails would be important.

The investigative synopsis is separated into four primary categories:

LERNER Hard Drive Failure: Details the identification and the apparent ultimate resolution of LERNER's failed computer hard drive.

Additional Custodian Hard Drive Failures: Details the hard drive failures of other IRS employees who may have sent or received e-mails pertinent to the IRS EO Determinations process.

Other Potential Sources of E-mail Messages: Details the efforts to identify, obtain, and analyze IRS MS Exchange server drives, backup tapes, IRS loaner laptops, LERNER's BlackBerry, Offsite Contractor Storage of Backup Tapes, and Network Transaction Logs.

Federal Records Management Act Compliance: Details the IRS' use and records retention of MS Office Communicator Server (OCS) and the "instant messaging" function of OCS; and, describes the IRS' compliance with the applicable IRS/National Archives and Records Administration policies for defining records and explains records retention requirements.

LERNER Hard Drive Failure

On June 13, 2011, IRS Information Technology Asset Management System (ITAMS) ticket number 8455435 was entered indicating LERNER's "computer screen is black and won't allow [the] employee to log in." IRS employee SFC , an IT Specialist, was identified as the IRS employee assigned to respond to LERNER's ticket. SFC was interviewed under oath and he confirmed he responded to the June 13, 2011, helpdesk ticket associated with LERNER's failed hard drive. SFC explained he was unable to recover any data from the hard drive, and following normal protocol, he replaced the hard drive in LERNER's computer with a new hard drive. SFC placed the damaged hard drive in a box with other damaged electronics awaiting to be destroyed. An ITAMS helpdesk ticket indicated that upon replacing the drive, SFC determined that LERNER's laptop

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needed a new system fan and possibly a heatsink due to overheating. Therefore, a request was made for technical support from Hewlett-Packard (HP).

SFC stated that he did not observe any indications of tampering or physical damage to LERNER's laptop.

The investigation identified SFC, a Computer Technician for Managed Print Services, HP, as the outside expert who worked on LERNER's laptop to replace the keyboard, trackpad, heat sink, and fan due to an overheating issue per the ITAMS ticket input by SFC. SFC was interviewed regarding his observations of the status of LERNER's laptop. SFC opined it was unusual for so many components to fail at the same time, but did not recall, or note in his records, any damage to the laptop. Had any damage been observed, SFC advised another ticket would have been initiated to repair any newly identified problems. SFC stated that many different things, including the environment, could cause damage to a computer. From his experience, keyboards and trackpads are usually damaged by liquid spilling on them, although this was not observed in this specific incident. Excessive heat can cause damage to a hard drive and it also depends whether the hard drive is located under the laptop or on the side; hard drives located under the laptop tend to overheat more easily. SFC related that there are many causes for hard drive failures, although overheating causing a hard drive failure is not often seen. If there was severe impact to a computer or hard drive, it could internally damage the mechanical components of the hard drive making it unusable. When asked what scenario could have caused hard drive heads to impact the platter of the disk, SFC opined an impact to the laptop or hard drive was the most likely cause.

This investigation was unable to confirm specific tracking of LERNER's failed hard drive because the IRS only tracked laptops and computers as singular entities, and did not track components, such as hard drives by serial numbers. The location and possession of LERNER's failed hard drive was established via reviews of documents, interviews, and the review of e-mail conversations between IRS employees.

Following normal protocol, SFC stored LERNER's failed hard drive with other failed IRS hard drives until SFC was contacted by IRS Program Manager Lillie WILBURN. WILBURN advised she was contacted by former IRS Associate Chief Information Officer, Carl FROEHLICH, who asked her to make an effort at recovering information off LERNER's hard drive because LERNER had made a special request claiming the hard drive contained LERNER's personal files.

On July 20, 2011, WILBURN directed SFC to ship the hard drive out for a more extensive data recovery effort. Following WILBURN's instructions, SFC retrieved the hard drive he believed to be LERNER's and he sent it, in WILBURN's name to the IRS Washington, DC IT Depot located at 1111 Constitution Avenue, NW, Washington, DC. Subsequently, LERNER's failed hard drive was

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hand delivered to SFC , Senior Analyst, IRS-Criminal Investigation Division (IRS-CI), in Alexandria, Virginia.

When interviewed, SFC stated he received LERNER's hard drive on July 22, 2011, and attempted to recover data from it but was unsuccessful despite using diagnostic tools and substituting known good parts from two donor hard drives. SFC noted concentric scoring of the hard drive platters, opining that the drive had failed because the drive heads had impacted the platters while in operation (SFC did not photograph the damage). SFC returned LERNER's failed hard drive to the IRS Washington, DC, IT Depot on August 5, 2011, and advised data could still potentially be recovered using a third donor hard drive or hiring an outside vendor. WILBURN confirmed data may have been recoverable by an outside vendor, but she (WILBURN) decided the expense was not justified due to financial constraints, as well as the fact that LERNER had categorized the data present on the drive as being personal in nature.

The hard drive believed to be LERNER's failed drive was signed for and received on August 8, 2011, by IRS Program Analyst SFC , in Washington, DC. An interview with SFC revealed he could not recall specifically the delivery of the hard drive, but advised he would have followed standard procedure for a failed hard drive , which involved placing it in a container with other failed hard drives to begin the process to being excessed and destroyed. Once the boxes of failed hard drives and other equipment become full at the IT Depot, the boxes are shipped to NCFB to be picked up for destruction by a vendor.

The Federal Prison Industries, Incorporated, (also known as UNICOR) is a Federal Bureau of Prisons, DOJ program that was operating under a Memorandum of Understanding (MOU) with the IRS to destroy electronic media, and periodically picked up failed media from the Washington, DC area at the NCFB. The next known UNICOR pickup after August 2011 (the last reference available to the location of LERNER's failed hard drive) was April 13, 2012. According to a "Department of Justice, UNICOR, Certificate of Destruction" dated April 16, 2012, this shipment, which contained "hard drives" and other computer equipment (believed to include LERNER's failed hard drive) was destroyed at the UNICOR Recycling Facility in Marianna, FL, on April 16, 2012.

SFC , the manager of the UNICOR Recycling Facility in Marianna, FL, provided the MOU between the IRS (customer) and UNICOR dated September 27, 2007. The MOU states in order to prevent the disclosure of data, all hard drives, flash drives, tape drives, magnetic tapes, floppy disks, compact disks, and other electronic media storage components containing sensitive data received from the IRS must be obliterated, not reconditioned and reassigned, by UNICOR. SFC was provided the hard drive serial number for LERNER's failed hard drive to determine if UNICOR had any record of the hard drive. SFC advised that under the MOU with the IRS, UNICOR did not track the IRS drives by serial number, so he had no specific record of the hard drive. SFC also explained that his staff disposes of the shipments shortly after arriving. SFC identified the AMERI-

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SHRED AMS-750HD, Serial Number 2308103-A, as the only hard drive shredder the UNICOR Recycling Facility has that would have been used to shred the 300 pounds of hard drives received from the IRS on April 16, 2012. TIGTA SAs viewed the remnants of hard drives that were processed through this shredder. The end-result of the shredding process is that pieces are cut into quarter-sized pieces that are then sold as scrap.

On July 29, 2014, TIGTA SAs inspected the UNICOR Recycling Facility and looked for any hard drives that were not destroyed. The inspection revealed that when shipments are received they are moved and destroyed. There was no holding area or bin of older shipments awaiting destruction.

Given that LERNER's laptop hard drive was more than likely destroyed and was not available for forensic inspection and examination for this investigation, no definitive, first hand conclusion could be reached regarding the cause of the LERNER's laptop hard drive failure.

TIGTA secured LERNER's assigned IRS laptop from the IRS on June 10, 2013. LERNER's laptop, which was placed into TIGTA evidence, was photographed by the TIGTA Forensic Science Lab to document its condition. There were no obvious signs of external damage noted, although several screws on the underside appeared to show signs of wear, consistent with what would occur when removing and replacing a hard drive or other internal components.

Analysis of available IRS network logs associated with LERNER's laptop was undertaken to determine the status of the laptop immediately prior to the hard drive failure. The IRS employs a custom network query tool to gather information from devices connected to the IRS network in two-hour intervals. A review of these historical network logs indicated LERNER's laptop containing the failed hard drive was powered on and connected to the IRS network almost non-stop between May 31 and June 11, 2011, with few exceptions reflected in missed query responses. These logs also revealed the laptop was assigned an Internet Protocol (IP) address, which could only have been assigned to a device residing inside an IRS facility for the entire period of May 31 through June 11, 2011. This was consistent with information provided by Akaisha DOUGLAS, LERNER's Staff Assistant who advised LERNER almost never took her laptop home or on travel.

The last query LERNER's laptop responded to before it was reportedly discovered on June 13, 2011, as having a failed hard drive, was on Saturday, June 11, 2011, at 5 PM Eastern Daylight Time (EDT). The laptop failed to respond to the subsequent network query at 7 PM EDT and every other query between June 11 and June 20, 2011, at which time the laptop had been repaired; a new hard drive installed, and the laptop was returned to LERNER.

A forensic analysis of LERNER's laptop revealed the first log in of the newly installed MS Windows Operating System was in fact near the date and time detected in the network query tool logs on June

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20, 2011, validating that this was the first time LERNER's laptop had been connected to the IRS network.

The lack of responses after 5 PM EDT, June 11, 2011, could have been caused by a number of factors, the most likely of which being that, the hard drive failed, that it was disconnected from the network, or that a network disruption interfered with the query being sent or received. At TIGTA's request, the IRS Computer Security Incident Response Center (CSIRC) researched the network segment for LERNER's laptop connection and the network query tool for any signs of irregular activity, or lack of activity during the period LERNER's laptop failed to respond. CSIRC advised the network query tool was functioning normally and was receiving responses from other computers on the same network segment as LERNER's laptop, indicating the lack of responses was not likely due to a network problem, or a network query tool problem.

A review of available IRS logs detailing new software sent to client machines on or about June 11, 2011, revealed LERNER's laptop was one of 359 IRS computers that were scheduled to receive an "uninstall" software package, which was being phased out on many clients across the IRS network. The delivery window for the software package was between June 8 and June 11, 2011, at 3:57 PM EDT. Interviews of IRS employees familiar with the process stated the electronic package delivery, which the logs indicated was "successful" with respect to LERNER's laptop, would have likely occurred as soon as the client machines were connected to the network during the window. Based on the fact that LERNER's laptop was communicating on the network on June 8, 2011, it is probable the software package was delivered on that date. It is also possible, however, that this software uninstall occurred as late as 3:57 PM EDT, June 11, 2011, which was one hour prior to the last documented network communication from LERNER's laptop. As background, Hummingbird Exceed was utilized to facilitate secure data communications between client systems and specialized IRS servers. There is no indication that the software uninstall would have caused LERNER's hard drive to crash.

In order to determine if anyone entered LERNER's office prior to the hard drive crash to tamper with or remove the laptop, attempts were made to recover security badge entry and exit logs to 1750 Pennsylvania Avenue NW, Washington DC, which housed LERNER's office at the time. TIGTA was informed by SFC [redacted], the security company responsible for maintaining the logs, that those logs were no longer available, as they were only kept for one year. A site survey of the building revealed there were no other systems or monitoring platforms that would have captured anyone entering or exiting the building in June 2011. During this investigation, it was also determined the EO Division no longer occupies office space at the 1750 Pennsylvania Avenue location, as the EO Division moved from this location in approximately December 2011.

LERNER was interviewed regarding the circumstances of, and data loss from, her failed laptop hard drive. LERNER described herself as having "rudimentary" knowledge with respect to computers.

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She advised she knew the basic operations for the use of MS Outlook, the e-mail client used by the IRS. When asked how she normally processed her IRS e-mail, LERNER advised she received 100 to 200 e-mails each day and frequently was unable to review all messages she received. She moved e-mail to various compartmentalized "folders" on her laptop representing different topics or programs in the left panel of MS Outlook. LERNER has "no idea" regarding the quantity of file folders, but it was "more not less." LERNER did not know how Personal Storage Table (PST) files containing her e-mail would have been created on her local hard drive. LERNER stated her IRS e-mail account had a limit to the amount of e-mail it would hold. When the limit was reached, she would be unable to send additional e-mail. To resolve the issue, she went to the oldest e-mails and deleted them. LERNER did screen her e-mail to determine if each e-mail may be important before deleting the e-mail.

LERNER remembered her hard drive failure in June 2011, which resulted in a significant amount of data being lost. She described coming into office in the morning and seeing "the blue screen." LERNER advised there had been no previous problems with the hard drive. Someone, whom LERNER could not recall, told her the hard drive had failed, but that they might be able to recover the data. Although LERNER believed this additional attempt to recover data did cost an additional fee, she believed the work would be performed within the IRS and would be a worthwhile use of funds because all of her work files were contained on the hard drive. LERNER recalled that this hard drive failure cost her "a lot of time" because so much of her current work was lost. LERNER was "surprised" that IRS IT could not do more to recover her e-mail. LERNER did not recall how long IRS IT waited to inform her that her data was not recoverable or specifically what steps or tools IRS IT staff used in order to recover the data. LERNER denied hitting or damaging the hard drive intentionally. LERNER stated that she typically left her laptop inside of her locked office for fear that it may be stolen. LERNER did not recall any incidents that could have damaged her laptop. LERNER was not aware of anyone who might want to destroy the data on her computer.

Thomas KANE, Deputy Associate Chief Counsel, IRS, Office of Chief Counsel, Procedure and Administration (P&A), Washington, DC, was interviewed under oath. KANE stated that on February 4, 2014, the IRS Office of Chief Counsel, with assistance from IRS IT, determined LERNER experienced a hard drive failure on June 13, 2011; the hard drive failure was documented by IRS IT helpdesk tickets and e-mail messages dated June 13, 2011. LERNER's hard drive failure was discovered after reviewing a list of LERNER e-mails already produced to Congressional committees, and it was noted she had substantially more e-mails after 2011. KANE further stated the decision was made to wait and develop the most complete and accurate picture before officially making notification to Congress; this was the genesis of a "white paper" document generated by the IRS and dated June 13, 2014, addressed to the SFC, which served as notification to Congress regarding LERNER's failed hard drive. According to KANE, Mr. KOSKINEN wanted to finish the production of LERNER e-mails and produce all of the LERNER e-mails with an explanation for the missing e-mails. The intention was to release the "white paper" when the production of all the LERNER e-mails was

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complete, which was anticipated at the end of June 2014. The "white paper" was released early, and prior to the completion of the LERNER e-mail production, because two Congressional committees anticipated releasing their reports in June 2014 and wanted a full explanation of what e-mails had already been produced and what was still expected.

KANE also stated Catherine DUVAL, former Counselor to the Commissioner, IRS, Office of Chief Counsel, Washington, DC, was the IRS point of contact for the Treasury Office of General Counsel (OGC) and likely had regularly scheduled meetings with Treasury. DUVAL briefed Hannah STOTT-BUMSTEDT, Attorney, Treasury OGC, Washington, DC, regarding the issue with the LERNER e-mails. KANE explained that the IRS is justified in advising the Treasury OGC about the production of records since the IRS is subordinate to the Treasury and because Congress issued subpoenas to Treasury Secretary Jacob LEW, requesting IRS e-mails and documents effectively holding him and Treasury responsible for the responsive documents, including LERNER's e-mails.

When interviewed, DUVAL stated that she was working with IRS Counsel on the production when they noticed they were missing e-mails. DUVAL stated that the focus was on trying to recover the missing e-mails from the other custodians who sent or received e-mails from LERNER. DUVAL stated the team was also trying to determine if any of the custodians had also suffered data losses. In approximately April 2014, she briefed the Treasury OGC and advised the OGC that the IRS was looking into an issue regarding LERNER's missing e-mails.

Additional Custodian Hard Drive Failures

On June 23, 2014, the SFC requested TIGTA determine if IRS employees LERNER, Nikole FLAX, Michelle ELDRIDGE, Kimberly KITCHENS, Julie CHEN, Tyler CHUMNEY, and Nancy HEAGNEY experienced a data loss because of hard drive failures. On June 16, 2014, the IRS provided these names to the SFC and other Congressional committees as individuals with potential hard drive failures and data loss.

In addition to the aforementioned June 23, 2014, request, the SFC presented TIGTA with a list of names of 119 IRS employees (which included the seven names listed in the prior paragraph) and requested that TIGTA determine if any of the 119 IRS employees experienced a hard drive failure and subsequent data loss. Through a review of IRS helpdesk tickets, and interviews of the IRS employees themselves and IRS IT Specialists, TIGTA concluded that IRS employees Julie CHEN, Kenneth DREXLER, Nancy HEAGNEY, Judith KINDELL, Justin PALMER, and Ronald SHOEMAKER experienced a data loss because of hard drive failures. TIGTA was also able to conclude that although Nikole FLAX, Michelle ELDRIDGE, Kimberly KITCHENS and Tyler CHUMNEY experienced hard drive failures, they did not experience a data loss. Also included on the list of 119 IRS employees, Sonya ADIGUN was identified as having data loss only; IRS IT believed the data loss was the result of an operating system/software error, and was not a hard drive issue. IRS IT

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generally did not have information concerning the specific hard drive failure incidents, but explained that the steps typically taken in an effort to recover data from a hard drive included running a diagnostic test and attempting to run the hard drive in a separate computer. IRS IT further explained there were no additional steps or resources available to recover data from the hard drives.

A review of IRS helpdesk tickets also identified Vincent FUSCO, Program Manager, IRS, EO, TE/GE, Independence, OH, as having experienced a hard drive failure. When interviewed, FUSCO stated his hard drive failure occurred in September 2013 and his computer data was previously copied in June 2013, therefore, any data lost on the computer was previously copied and retained by IRS IT. IRS IT confirmed the imaging of FUSCO's computer in June 2013.

TIGTA did not identify a data loss associated with former IRS Tax Law Specialist Justin LOWE because LOWE was interviewed by TIGTA and stated he did not recall a data loss. The IRS was not aware of the data loss which TIGTA identified associated with ADIGUN, DREXLER, Justin PALMER or FUSCO because the IRS only researched potential hard drive failures associated with the 82 custodians that represent the IRS employees identified with e-mails and documents (relevant to IRS EO Determinations) which were produced to Congressional committees. However, TIGTA researched potential hard drive failures associated with the individuals included on the list of 119 IRS employees presented by the SFC and ADIGUN, DREXLER, Justin PALMER and FUSCO were not on the list of 82 custodians. None of their e-mail was provided to Congress and any data loss would not have relevance to Congressional committees. The list of 119 names was generated by the IRS and provided to Congressional committees, but it was ultimately reduced to 82 custodians. The list of 119 names in the request from the SFC includes IRS employees with no relevance to or impact on the Congressional investigations.

The failed hard drives for three of the custodians identified in this investigation, including Justin PALMER, CHEN and HEAGNEY, who had posts of duty in Ohio, would have been sent to Martinsburg for destruction. Per a Certificate of Destruction dated May 7, 2012, an outside vendor destroyed 211,586 pieces of media, which most likely contained Justin PALMER's hard drive as his hard drive failed on September 9, 2011. TIGTA was able to locate and take possession of HEAGNEY's failed hard drive, but was unable to recover any information from the drive using standard forensic tools. TIGTA will contract with a vendor to determine if in fact any information can ultimately be recovered. The remaining custodian hard drive failures occurred after May 7, 2012.

Other Potential Sources of E-mail Messages

The IRS utilizes MS Exchange to provide enterprise e-mail accounts to employees. IRS IT reported that backups are performed incrementally on a daily basis (meaning only changes since the last incremental backup are recorded), while a full backup is performed weekly of all MS Exchange Server databases. On average, the IRS uses 27 tapes per week for full backups and four tapes per day for

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incremental backups. Up until April 2013, the IRS was reusing and recycling (putting tapes back into circulation to be written over with new backup data) backup tapes every six months as a cost saving measure.

This process was changed on May 22, 2013, when the CTO issued a policy directive via e-mail titled "Information Retention Policy Revision," changing the backup tape recycle policy to an indefinite retention period for all e-mail backup tapes. In this policy directive, the CTO also ordered that "Given the current environment and ongoing investigations, until further notice, do not destroy/wipe/reuse any of the existing backup tapes for email, or archiving of other information from IRS personal computers. Further, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS" and "In other words, retain everything to do with email or information that may have been stored locally on a personal computer."

Interviews of IRS IT personnel revealed that LERNER's e-mail account would have been housed on Exchange Servers located at two different locations during the period-of-time in question; first at NCFB, then at Martinsburg. On or around May 2011, the IRS e-mail server at NCFB was migrated from an Exchange 2003 Server to a new Exchange 2010 Server at Martinsburg. The migration was part of an IRS effort to consolidate from 11 e-mail data centers down to three, as a part of the Treasury driven Federal Data Center Consolidation Initiative (FDCCI), and was an attempt to enhance the stability of IRS e-mail servers. The server room at the NCFB was repurposed in accordance with the FDCCI, into an Enterprise Networks Command Center, which was approved on June 22, 2011.

The NCFB Exchange 2003 Server was connected to a large Storage Area Network (SAN) array collectively made up of hundreds of hard drives. When the NCFB Exchange 2003 Server was taken out of service, it was left in place because approximately 12 other servers were connected to the same SAN. Due to the shared architecture, those servers had to be decommissioned before the Exchange 2003 Server could be disassembled. Interviews and e-mail analysis indicate the NCFB Exchange 2003 Server was likely disassembled in the spring of 2012. Initial reporting to TIGTA regarding the status of this MS Exchange Server indicated "the legacy tape drives and all associated old equipment in NCFB were destroyed."

Active Microsoft Exchange Server Backup Tapes

As a result of the June 30, 2014, demand made by TIGTA for any backup tapes that would contain LERNER's e-mails from January 1, 2008, through December 31, 2011, the IRS Data Management Support and Services (DMSS) staff identified 744 tapes, which may have been utilized to back up the Exchange Server which contained LERNER's e-mail account. These tapes were identified based on queries of an electronic tape archive that tracked backup tapes actively in use by the IRS. TIGTA

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took possession of these tapes on July 1, 2014. During a subsequent review of tape archive information related to those tapes, DMSS identified a subset of 13 tapes which were believed to contain five sets of weekly backups beginning on November 20, 2012. These tapes constituted the oldest known LERNER e-mail account backups available at the time. At the time these tapes were identified, DMSS indicated it was "likely" the backup tapes from the NCFB Exchange 2003 Server decommissioned in 2011, "would have been destroyed or recycled" and that they were "collecting the appropriate documents to prove that the formal procedures were followed with appropriate approval for the destruction of tapes," indicating an update would follow.

During the process of identifying and recovering the 744 tapes, DMSS identified nine tapes in the automated e-mail archiving infrastructure known as the "robot" which they did not expect to find because they did not have a corresponding record in the electronic index responsible for tracking the tapes. These tapes were believed to be "expired in November of 2012," meaning they would have been marked for re-use under the policy in effect in November 2012. At the time they were provided, DMSS could not say when the last time these nine tapes had actually been written to, but it was possible they could contain the oldest copy of LERNER's e-mails. Due to the age of the technology and the uniqueness of the backup tapes, TIGTA provided these nine tapes to the Federal Bureau of Investigation (FBI) for forensic analysis. The FBI analysis revealed the nine backup tapes contained no logical information. A secondary analysis by Kroll Ontrack (Kroll), a well-established, third-party data recovery service provider, also revealed the nine tapes contained no logical (active) or forensically retrievable information. SFC [redacted], IT Specialist, IRS, Enterprise Operations (EOPS), DMSS, advised this finding was not entirely unexpected, as these nine tapes had likely been identified as "scratch," or bad, by the system, and thus, were likely never written to by the tape robot.

Recovery and extraction of the data residing on the 13 backup tapes by Kroll yielded nearly 15.1 TB of data consisting of approximately 83 million e-mail messages in addition to five MS Exchange database files containing five incremental backups of LERNER's e-mail boxes. The five e-mail boxes yielded approximately 80,000 e-mail messages, which, after removing duplicates, yielded approximately 32,000 e-mail messages, which ranged from the years 2001 to 2013. Due to the manner in which the IRS produced information to Congress, off- the- shelf software was not useful in conducting the comparison of the e-mails that TIGTA recovered to the e-mails the IRS had already provided to the Congress. Custom scripting compiled by TIGTA's Electronic Crimes and Intelligence Division personnel yielded the identification of approximately 6,400 e-mail items, which may not have been previously provided by the IRS to Congress. This custom program based these comparisons on technical features of the e-mail themselves, and did not make a judgment on the relative newness of the concepts relayed by their authors.

To assist in the expeditious completion of the various ongoing investigations being conducted by committees of the Congress, the DOJ and TIGTA, the 6,400 e-mails were provided to the requesting Congressional committees of Congress with authority to receive them, to DOJ, and to the IRS.

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TIGTA reviewed all of the e-mails for information or evidence that may be pertinent to the investigation. In addition, TIGTA manually reviewed all of the e-mails and determined that after individual manual inspection and the removal of spam e-mails, approximately 1,007 e-mails were actually new e-mails that were not previously provided by the IRS to the Congress, DOJ or to TIGTA. It must be noted that TIGTA is in the process of separately reviewing the entire 15.1 TB of data again to ensure all of the pertinent e-mails have been identified. This process will take as many as two additional months to complete. However, if new e-mails or information is identified, the new e-mails will be evaluated, a supplemental report will be written, and the new material will be provided to the investigating committees, the DOJ and the IRS.

Decommissioned Microsoft Exchange Server Hard Drives and Associated Backup Tapes

Continuing the search for backup tapes and hard drives, on July 11, 2014, a DMSS manager advised TIGTA that they had identified 760 hard drives, which they believed, were part of the decommissioned Exchange 2003 e-mail server from NCFB. These drives had been located in a storage facility at Martinsburg and had not been destroyed as previously thought, however, DMSS stated they believed the data on the hard drives would have been overwritten (in order to make data on them unrecoverable) prior to their shipment from the NCFB to Martinsburg per the standard procedure. There are discrepancies in IRS employee testimony and documentation concerning the actual number of hard drives. The Document Transmittal (Form 3210) that was associated with the server drives from the NCFB reported the number of drives as 300. SFC [redacted], IRS Supervisory Computer Assistant, the responsible DMSS onsite manager, reported that he personally counted 764 hard drives; two additional employees were directed to count the hard drives and reported their counts as 850 hard drives. This discrepancy remains of investigative interest, and is still under investigation. On July 11, 2014, TIGTA took possession of the 760 hard drives identified and provided by SFC [redacted], subsequently placing them into evidence. During the exchange of information regarding these hard drives, DMSS stated that the backup tapes associated with this server had been degaussed. The IRS defines the process of degaussing in accordance with the Internal Revenue Manual (IRM) section 2.7.4.5.4, Degaussing Methodology Summary, which states the following:

> *An alternating current (AC) bulk eraser (degausser) is used for complete erasure of data and other signals on magnetic media. Degaussing is a process where magnetic media is exposed to a powerful, alternating magnetic field. Degaussing removes any previously written data, leaving the media in a magnetically randomized (blank) state. The degausser must subject the media to an alternating magnetic field of sufficient intensity to saturate the media and then by slowly withdrawing or reducing the field, the magnetic media is left in a magnetically neutral state.*

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Over the course of the investigation, interviews routinely revealed that the IRS did not have a process that tracked individual hard drives that had been removed from a computer or server. Follow-up interviews with IRS EOPS personnel were conducted in February 2015, to determine what process was used by the IRS to track the 760 hard drives from the Exchange 2003 Server that was decommissioned at NCFB in May 2011, to Martinsburg, where, pursuant to the TIGTA demand for media they were found on July 11, 2014. IRS EOPS Media Management Midnight Unit personnel, were aware of the hard drives only because they had arrived on an unexpected shipment on January 29, 2014, and the disposition took several months to resolve. The hard drives were not degaussed upon receipt at Martinsburg because the Form 3210, which is required to destroy the media, was not present with the shipment. A copy of the Form 3210 was obtained by TIGTA on February 13, 2015, from IRS Supervisory Program Manager SFC, which indicated it had been completed and signed by the requestor, SFC, on March 4, 2014. Along with the 300 hard drives, the Form 3210 also listed "600 NEW in the box LTO tape media" and "600 LTO backup tape media – PII."

SFC staff and SFC were questioned about the presence of 300 backup tapes containing "PII" with the shipment to Martinsburg, which were subsequently described as an approximate count of tapes used to back up the decommissioned NCFB Exchange 2003 Server, as well as IRS user network storage. The count was approximate because SFC filled it out in March 2014, several months after the shipment had been loaded onto pallets, and he could not recall specific numbers. The existence of these hard drives came to the attention of TIGTA because, in response to TIGTA's demand for tapes on June 30, 2014, SFC had been asked by DMSS to look into this shipment and determine if the tapes had been degaussed. SFC subsequently advised SFC that the hard drives in the shipment were likely from a server array and may have been related to the backup tapes.

Martinsburg is one of three centers designated by the IRS as an acceptable alternate destruction site for IRS locations that are not able to destroy media themselves. Failed/inoperable hard drives associated with IRS employees located in the Cincinnati, OH, area were sent to Martinsburg for destruction. Similarly, the hard drives associated with the Exchange 2003 Server decommissioned in May 2011, and associated backup tapes were sent to Martinsburg for destruction. Prior to May 2013, when the CTO changed the policy on destruction of media, Martinsburg degaussed media, and then collected it in a large, secure storage room until a significant volume had been accumulated. IRS Agency-Wide Shared Services then bid out contracts to outside vendors for the destruction of the media. According to the interviews of IRS managers SFC and SFC, this occurred every year or year and a half prior to May 2013, when the policy was changed. Interviews of the IRS employees at Martinsburg and review of e-mails between employees revealed confusion relating to the CTO policy led to a staggered implementation of the degaussing of backup tapes and hard drives until June 2014, when both ceased at Martinsburg.

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SFC, the former Director of the IRS' DMSS Division, was interviewed regarding the handling and decisions to degauss tapes and stated that he was not aware of a specific policy in DMSS on excessing or destroying tapes they utilized. SOOSAI stated DMSS followed the guidance provided in the Internal Revenue Manual (IRM) section 2.7.4, *Information Technology (IT) Operations, Magnetic Media Management*, with regard to the process for disposing of electronic media once it had been decommissioned or determined to be no longer useable.

The backup tapes containing "PII" were degaussed by IRS EOPS Media Management Midnight Unit personnel at Martinsburg, likely on, or shortly after, March 4, 2014, when the completed Form 3210 was received. At the time, the Media Management Midnight Unit was staffed by: SFC, Lead Computer Assistant; and Computer Clerks SFC, SFC, SFC and SFC. SFC indicated that when these backup tapes were likely created, which was on or before May 2011, they were following the established policy, which was to preserve weekly backups for a six-month period. This means that these tapes likely contained full, weekly backups of the e-mail account for LERNER dating back to late November or December 2010. The practice of degaussing tapes at ECC-MTB continued until approximately June 2014, when a moratorium was put in place by local managers in an attempt to prevent accidental destruction of data in accordance with the CTO's May 2013 prohibitions relating to degaussing media containing e-mail information. The hard drives, however, were not degaussed because the IRS EOPS personnel had ceased degaussing hard drives in February 2014, as was their understanding of the CTO's May 2013 directive, which predated the receipt of the signed Form 3210.

Interviews and e-mail examinations revealed that SFC did not submit a timely Form 3210 with the shipment in January 29, 2014, because when the material was shipped from NCFB to Martinsburg, SFC was out of the office on leave for an extended period. When SFC returned to duty on or around February 17, 2014, he was asked by Martinsburg for the Form 3210, which he prepared and provided to Martinsburg in March 2014.

Interviews of, and e-mail traffic between, the IRS EOPS employees and other IRS employees indicated there was confusion about the status and requirements of the CTO's prohibitions. Interviews revealed that varying interpretations of the CTO's prohibitions led first to the cessation of degaussing all hard drives in February 2014 at Martinsburg, and subsequently the cessation of degaussing all backup tapes in June 2014. SFC staff, including the Media Management Midnight Unit, consistently advised that the media was sent to them was for destruction, and because they would have no knowledge of what was contained on the media, the responsibility for preserving that information would have resided with the individuals who sent the media to them.

SFC was asked by TIGTA to attempt to find the degaussed tapes from the January 29, 2014, shipment. He stated that once items have been degaussed, they are placed in a storage area for eventual physical destruction. At the time of this request, he estimated that Martinsburg contained

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around 600,000 pieces of electronic media awaiting destruction, which included many thousands of tapes. Based on the physical description of what the old tapes looked like, IRS EOPS located the media in storage, and secured 424 tapes which were turned-over to TIGTA on February 20, 2015. On March 3, 2015, IRS EOPS personnel found an additional 49 tapes underneath brand new tapes, which were still stacked on the original pallets delivered on January 29, 2014.

In May 2011, the NCFB's Exchange 2003 Server's decommissioning process began and lasted approximately two years and ten months. Interviews indicated that although the Exchange 2003 Server was no longer operational, it remained powered on and functional as a backup, in case the new servers became unreliable. On October 11, 2011, SFC [redacted], a Supervisory Management and Program Analyst, Facilities Management and Security Services, e-mailed SFC [redacted], an IRS IT Specialist, who was the representative from the IRS business unit responsible for the e-mail server, asking if the process for excessing the "Exchange SAN [Storage Area Network]" could begin; and, she responded in the affirmative. SFC [redacted], IRS Server Share Support Unit, whose group was also responsible for equipment in the server room input an ITAMS ticket, which resulted in the server being powered off on November 1, 2011. SFC [redacted] advised that he believed that all of the servers were removed from the NCFB's server room in late 2013.

Interviews of IRS employees involved in the search for the tapes and hard drives as well as those involved in the decommissioning process for the NCFB Exchange 2003 Server provided no evidence that the IRS employees involved intended to destroy data on the tapes or the hard drives in order to keep this information from Congress, the DOJ or TIGTA. No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA. However, the investigation revealed that the IRS did not put forth an effort to uncover additional, responsive e-mails. None of the IRS employees involved had been asked, prior to the June 30, 2014 request from TIGTA, to find any backup tapes, or the server hard drives associated with the NCFB Exchange 2003 Server, which would have contained responsive LERNER e-mails. The investigation determined that if the IRS would have conducted a search for the existence of backup tapes, they would have found the necessary backup tapes that contained LERNER's missing e-mails prior to when those backup tapes were degaussed in March 2014.

As a result of the technical challenges posed by the complexity of reassembling an unknown number of potentially damaged disk arrays, as well as the sheer volume of the data it represented, Kroll was contracted to recover any readable data from the 760 hard drives. As a result, approximately 12.5TB of data were recovered from the hard drives. After a review of the listings of recovered files, approximately 2.6TB of data in the form of MS Exchange database files were determined to be potentially relevant and subsequently further extracted for processing. From this additional data, five specific e-mail boxes belonging to IRS employees Nikole FLAX, Jill MACNABB, Robert MALONE, Christopher GIOSA, and Siri BULLER were recovered and filtered, resulting in 731 e-mail items sent to, copied to, or received from LERNER. A manual comparison to de-duplicate these items against

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the IRS production to Congress resulted in the discovery of 58 new e-mails that had not been previously provided to the Congress, the DOJ or to TIGTA.

The 424 tapes from the NCFB MS Exchange Server and the 49 other miscellaneous tapes that were discovered on the same shipment pallet were provided to Kroll for analysis; two tapes out of the 424 had recoverable data. One appeared as though it was damaged or may have been encrypted. According to IRS EOPS, the capability to encrypt Exchange backup tapes was not available during the time this tape would have been in use. This would indicate the tape would have belonged to another IRS group. Since the identifying labels were removed prior to degaussing, TIGTA was unable to determine the actual source or business unit owner of the tape or the possible location of its encryption keys. The other readable tape contained e-mail backup files created in January 2011, but were for IRS employees outside of the scope of this investigation. The 49 miscellaneous tapes were also analyzed and contained data from no later than 2003, which is also outside the scope of this investigation.

BlackBerrys

TIGTA took possession of LERNER's BlackBerry on June 10, 2013, after she left the IRS. This BlackBerry was assigned to LERNER on February 17, 2012. Forensic examination of the BlackBerry provided 2,972 readable e-mails. A manual comparison to de-duplicate these items against the IRS production to Congress resulted in the discovery of 190 new e-mails that had not been previously provided to the Congress, the DOJ or to TIGTA; 169 of the e-mails are from after 8:30 AM on May 16, 2013; six of the e-mails mentioned EO matters, but nothing responsive to Congress' request. TIGTA identified the BlackBerrys assigned to LERNER prior to the one TIGTA obtained on June 10, 2013. The investigation determined that the prior BlackBerrys issued to LERNER were more than likely destroyed when LERNER was issued a new one on February 17, 2012.

Interviews were conducted to determine if any e-mails could possibly reside on the BlackBerry server. The investigation determined that the BlackBerry server did not retain copies of e-mail traffic; rather it served as a router and conduit for e-mails getting to and from the device only. No e-mails were recoverable from this source.

Loaner Laptops

Interviews indicated a possibility LERNER had been assigned a "loaner" laptop while her laptop was being serviced. Nine computers, which were used by the IRS as loaner systems for employees who had suffered significant malfunctions were seized and forensically analyzed. A tenth loaner laptop had since been refurbished, and in doing so, the hard drive had been sanitized according to IRS policy and therefore forensic examination was not beneficial. Forensic analysis of the nine laptops found no indication LERNER herself had ever used them, although 137 e-mail items from other

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temporary users relating to e-mail communications and meeting notices involving LERNER were recovered and reviewed. A manual comparison to de-duplicate these items against the IRS production to Congress resulted in the discovery of 75 new e-mails that had not been previously provided to the Congress, the DOJ or to TIGTA.

Offsite Contractor Storage of Backup Tapes

During the course of this investigation, interviews also revealed the IRS utilized contractor Iron Mountain for offsite storage of backup media possibly from the late 1990s through 2012 or 2013, under numerous contracts for different locations and different business units. During some of this period, Iron Mountain was used to store backup tapes from the NCFB MS Exchange Server. Although SFC thought it was a possibility that some backup tapes pertinent to the investigation were maintained by Iron Mountain, the investigation determined this was not the case.

Network Transaction Logs

TIGTA was also able to identify the existence of e-mail header transaction logs in the possession of both the GSOC and Treasury contractor, AT&T. These logs were routinely collected by network operations personnel for the purpose of conducting network security monitoring activities, such as the detection of malicious e-mail activity. These transactional logs included the From, To, Date/Time and Subject line fields of all e-mail messages that come in and out of the IRS enterprise network. No message body, content or e-mail attachments were collected by the logs. After a technical comparison of these logs against the IRS production to Congress and of the e-mails obtained by TIGTA from the backup tapes, exchange server hard drives, LERNER's BlackBerry and the IRS loaner laptops, TIGTA estimates that the location of between 23,000 and 24,000 e-mails sent or received by LERNER could still be missing. Of those e-mails still not recovered, 4,274 were from 2010; 11,560 were from 2011; 7,952 were from 2012; one was from 2013.

Federal Records Management Act Compliance

Microsoft Office Communications Server

As an additional area of investigative interest, the online communications or OCS "chat" software utilized by IRS was investigated to identify any data that could be recovered from online communications associated with LERNER or other IRS employees. In addition, the investigation reviewed if the IRS had a duty to record and preserve as records OCS chat dialogue between IRS employees. IRS IT and the IRS Office of Chief Counsel confirmed LERNER, like most employees, had access to OCS, but stated OCS conversations and the usage history are not recorded by the IRS.

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An MOU between the IRS and the National Treasury Employees Union regarding the implementation of OCS, was executed on July 30, 2010, and went into effect later in 2010. OCS was an office collaboration software suite that integrated with existing MS Office products already in use within the IRS, such as MS Outlook for e-mail and MS Office for document creation and editing. Included within the features provided by OCS were an instant messaging function and the ability to engage in "live" online meetings and document sharing and collaboration. The terms of the MOU dictated that the IRS would not log or record the contents of OCS instant messages, would not record any online meetings without prior warning to all participants, and would not use OCS to track employee availability or productivity.

The investigation revealed the OCS sessions were not written to a server and the only way information from an OCS session between employees would be recoverable is if one of the participants cut and pasted the session into an e-mail or other document or if it was written to one of the employee's hard drives. The investigation was unable to recover any of the OCS sessions that may have occurred between LERNER and other employees.

Policy Regarding Records and Records Retention

SFC [redacted], former Supervisory Management and Program Analyst, IRS, Records and Information Management, stated the National Archives and Records Administration (NARA) considers e-mail as a "format or mechanism to automate messaging information," and therefore does not consider e-mail as a series of records unless it has been categorized as a record. SFC [redacted] explained NARA guidance regarding e-mail retention is based on applications outlined in Department of Defense (DoD) directive 5015.2. The directive indicates agencies should categorize e-mails into "subject files" and link these files to a traditional record series found in the Record Control Schedules (RCS). NARA considers e-mail as a "format or mechanism to automate messaging information," and therefore, does not consider e-mail as a series of records unless placed into such "subject files." When agencies cannot meet the parameters outlined in DoD 5015.2, NARA recommends that end-users "print and file" long-term records, to include the metadata contained in the e-mail, and dispose of them in compliance with their agency's RCSs. NARA also recommends that end-users "drag and drop" e-mails they wish to retain and then dispose of them when no longer needed for current business.

Paul WESTER, Chief Records Officer, NARA, was interviewed and he opined the IRS did nothing wrong as far as safeguarding records. WESTER stated the only thing the IRS did not do was to report the loss of data to NARA, but there is no timeframe for agencies to report the loss. NARA wants agencies to employ due diligence to recover and/or identify the records before filing a report. WESTER also stated NARA does not want agencies to report every hard drive failure, especially without first trying to determine what was lost. When told that between 2009 and 2011, the IRS did not have the technology to implement a DoD 5015.2 Standard compliant e-mail system and that the

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direction to "print and file or click and file" was the prescribed method of records retention, WESTER stated this falls within NARA's guidance.

The fact that the IRS utilizes OCS for instant messaging and does not log or record it, is not necessarily a violation of NARA's guidance. NARA does not issue specific guidance or policy to dictate what or how much should be saved electronically. NARA provides guidance as it relates to records management, which applies to OCS. Whether OCS is being used according to NARA's guidance, depends on how OCS end-users are utilizing the program. It is difficult to say definitively if the IRS is violating NARA's guidance by not logging or recording OCS, but it is necessary for the IRS to manage OCS to meet Federal Records Management Act requirements.

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TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

May 14, 2013

Reference Number: 2013-10-053

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HIGHLIGHTS

INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW

Highlights

Final Report issued on May 14, 2013

Highlights of Reference Number: 2013-10-053 to the Internal Revenue Service Acting Commissioner, Tax Exempt and Government Entities Division.

IMPACT ON TAXPAYERS

Early in Calendar Year 2010, the IRS began using inappropriate criteria to identify organizations applying for tax-exempt status to review for indications of significant political campaign intervention. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

WHY TIGTA DID THE AUDIT

TIGTA initiated this audit based on concerns expressed by members of Congress. The overall objective of this audit was to determine whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications, and 3) requested unnecessary information from targeted groups.

WHAT TIGTA FOUND

The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention. Ineffective management: 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months, 2) resulted in substantial delays in processing certain applications, and 3) allowed unnecessary information requests to be issued.

Although the processing of some applications with potential significant political campaign intervention was started soon after receipt, no work was completed on the majority of these applications for 13 months. This was due to delays in receiving assistance from the Exempt Organizations function Headquarters office. For the 296 total political campaign intervention applications TIGTA reviewed as of December 17, 2012, 108 had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 were open from 206 to 1,138 calendar days (some for more than three years and crossing two election cycles).

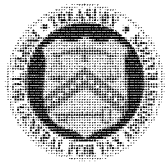
More than 20 months after the initial case was identified, processing the cases began in earnest. Many organizations received requests for additional information from the IRS that included unnecessary, burdensome questions (*e.g.*, lists of past and future donors). The IRS later informed some organizations that they did not need to provide previously requested information. IRS officials stated that any donor information received in response to a request from its Determinations Unit was later destroyed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS finalize the interim actions taken, better document the reasons why applications potentially involving political campaign intervention are chosen for review, develop a process to track requests for assistance, finalize and publish guidance, develop and provide training to employees before each election cycle, expeditiously resolve remaining political campaign intervention cases (some of which have been in process for three years), and request that social welfare activity guidance be developed by the Department of the Treasury.

In their response to the report, IRS officials agreed with seven of our nine recommendations and proposed alternative corrective actions for two of our recommendations. TIGTA does not agree that the alternative corrective actions will accomplish the intent of the recommendations and continues to believe that the IRS should better document the reasons why applications potentially involving political campaign intervention are chosen for review and finalize and publish guidance.

SEC 004114



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

May 14, 2013

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

SUBJECT: Final Audit Report – Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (Audit # 201210022)

This report presents the results of our review to determine whether allegations were founded that the Internal Revenue Service (IRS): 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted groups. This audit was initiated based on concerns expressed by members of Congress and reported in the media regarding the IRS's treatment of organizations applying for tax-exempt status. This review is included in our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

We would like to clarify a few issues based on the IRS response to our report. The response states that our report views approvals as evidence that the Exempt Organizations function should not have looked closely at those applications. We disagree with this statement. Our objection was to the criteria used to identify these applications for review. We believe all applications should be reviewed prior to approval to determine whether tax-exempt status should be granted. The IRS's response also states that issues discussed in the report have been resolved. We disagree with this statement as well. Nine recommendations were made to correct concerns we raised in the report, and corrective actions have not been fully implemented. Further, as our report notes, a substantial number of applications have been under review, some for more than three years and through two election cycles, and remain open. Until these cases are closed by the IRS and our recommendations are fully implemented, we do not consider the concerns in this report to be resolved. Management's complete response to the draft report is included as Appendix VIII.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

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Abbreviations

BOLO	Be On the Look Out
EO	Exempt Organizations
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Background

Organizations, such as charities, seeking Federal tax exemption are required to file an application with the Internal Revenue Service (IRS). Other organizations, such as social welfare organizations, may file an application but are not required to do so. The IRS's Exempt Organizations (EO) function, Rulings and Agreements office, which is headquartered in Washington, D.C., is responsible for processing applications for tax exemption. Within the Rulings and Agreements office, the Determinations Unit in Cincinnati, Ohio, is responsible for reviewing applications as they are received to determine whether the organization qualifies for tax-exempt status.

In Fiscal Year 2012,[1] 70 percent of all closed applications for tax-exempt status were approved during an initial review with little or no additional information from the organizations. If substantial additional information is needed, the application is placed in unassigned inventory until it can be assigned to a specialist in the Determinations Unit for further processing. The specialist develops a letter(s) requesting the additional information and issues it to the organization. Once the specialist receives all the necessary information to determine whether an organization should be afforded tax-exempt status, a final determination letter is issued to the organization either approving or denying the request for tax-exempt status.

If the Determinations Unit needs technical assistance processing applications, it may call upon the Technical Unit in the Rulings and Agreements office in Washington, D.C.[2] The IRS's goal for processing all types of applications for tax-exempt status was 121 days in Fiscal Year 2012; however, some cases may take substantially longer. For example, the EO function states in its *Fiscal Year 2013 Work Plan* that applications requiring additional information are not assigned for review until an average of five months after they are received.

Most organizations requesting tax-exempt status must submit either a Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, depending on the type of tax-exempt organization it desires to be. For example, a charitable organization would request exemption under Internal Revenue Code (I.R.C.) Section (§) 501(c)(3),[3] whereas a social welfare organization would request exemption under I.R.C. § 501(c)(4).[4]

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[1] A 12-consecutive-month period ending on the last day of any month. The Federal Government's fiscal year begins on October 1 and ends on September 30.
[2] For a high-level organizational chart of offices referenced in this report, see Appendix V.
[3] I.R.C. § 501(c)(3) (2012).
[4] I.R.C. § 501(c)(4) (2012).

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

The I.R.C. section and subsection an organization is granted tax exemption under affects the activities it may undertake. For example, I.R.C. § 501(c)(3) charitable organizations are prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office (hereafter referred to as political campaign intervention).[5] However, I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5)[6] agricultural and labor organizations, and I.R.C. § 501(c)(6)[7] business leagues may engage in limited political campaign intervention. Figure 1 highlights certain characteristics of common types of tax-exempt organizations.

Figure 1: Characteristics of Certain Common Types of Tax-Exempt Organizations

Characteristic	I.R.C. § 501(c)(3)	I.R.C. §§ 501(c)(4), (c)(5), and (c)(6)
May receive tax deductible charitable contributions.	Yes	No
May engage in political campaign intervention.	No	Limited (must not constitute primary activity of organization)
Must publicly disclose the identity of its donors.	No	No
May engage in lobbying[8] (*i.e.*, legislative activity).	Limited (must not be substantial)	Yes (unlimited amount if in furtherance of tax-exempt purposes)
May engage in general advocacy[9] not related to legislation or the election of candidates.	Yes (permitted as an educational activity)	Yes (unlimited amount if in furtherance of tax-exempt purposes)
Must apply with the IRS.	Yes	No

Source: Draft Advocacy Guide Sheet and Internal Revenue Manual.

[5] Political campaign intervention is the term used in Treasury Regulations §§ 1.501(c)(3)-1, 1.501(c)(4)-1, 1.501(c)(5)-1, and 1.501(c)(6)-1.
[6] I.R.C. § 501(c)(5) (2012).
[7] I.R.C. § 501(c)(6) (2012).
[8] 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.
[9] An organization engages in general advocacy when it attempts to 1) influence public opinion on issues germane to the organization's tax-exempt purposes, 2) influence nonlegislative governing bodies (*e.g.*, the executive branch or 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 basically includes all types of advocacy other than political campaign intervention and lobbying.

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

During the 2012 election cycle, the activities of tax-exempt organizations received media coverage concerning the amount of money spent on influencing elections. According to the Center for Responsive Politics, tax-exempt groups, such as I.R.C. § 501(c)(4), I.R.C. § 501(c)(5), and I.R.C. § 501(c)(6) organizations, spent $133 million in Calendar Year 2010 on Federal candidate-oriented expenditures. In Calendar Year 2012, this figure increased to $315 million.[10] In addition, as shown in Figure 2, the number of applications for tax-exempt status has increased over the past four fiscal years.[11]

Figure 2: Number of Applications for I.R.C. §§ 501(c)(3)–(6) Tax-Exempt Status Received by the IRS

Fiscal Year	I.R.C. Subsection			
	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)
2009	65,179	1,751	543	1,828
2010	59,486	1,735	290	1,637
2011	58,712	2,265	409	1,836
2012	66,543	3,357	1,081	2,338

Source: These data were provided by the EO function as background and were not validated for accuracy or reliability.

During the 2012 election cycle, some members of Congress raised concerns to the IRS about selective enforcement and the duty to treat similarly situated organizations consistently. In addition, several organizations applying for I.R.C. § 501(c)(4) tax-exempt status made allegations that the IRS 1) targeted specific groups applying for tax-exempt status, 2) delayed the processing of targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted organizations. Lastly, several members of Congress requested that the IRS investigate whether existing social welfare organizations are improperly engaged in a substantial, or even predominant, amount of campaign activity.

This audit focused on allegations that the IRS targeted specific groups applying for tax-exempt status, delayed the processing of targeted groups' applications, and requested unnecessary information from targeted organizations.

We initiated this audit based on concerns expressed by Congress and reported in the media regarding the IRS's treatment of organizations applying for tax-exempt status. We focused our

[10] The Center for Responsive Politics obtained its information from the Federal Election Commission. We only included expenditures reported to the Federal Election Commission specifically for advocating the election or defeat of clearly identified Federal candidates.

[11] Some of this increase may be due to the reapplication of those organizations whose tax-exempt status was revoked as a result of not filing information returns for three consecutive years.

efforts on reviewing the processing of applications for tax-exempt status and determining whether allegations made against the IRS were founded.[12] Tax-exempt application case files were selected for review in June 2012 and were reviewed as provided by the EO function between July and November 2012. We did not review whether specific applications for tax-exempt status should be approved or denied.

This review was performed at the EO function Headquarters office in Washington, D.C., and the Determinations Unit in Cincinnati, Ohio, during the period June 2012 through February 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

[12] A future audit is being considered to assess how the EO function monitors I.R.C. §§ 501(c)(4)–(6) organizations to ensure that political campaign intervention does not constitute their primary activity.

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)[13] were forwarded to a team of specialists[14] for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

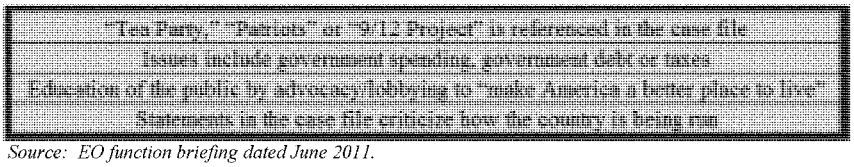
In early Calendar Year 2010, the Determinations Unit received an application for tax-exempt status from an organization that seemed similar to other organizations receiving recent media attention. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. Determinations Unit

[13] Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.
[14] Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

personnel noted that the applicant indicated it may spend some of its budget influencing elections. Soon thereafter, according to the IRS, a Determinations Unit specialist was asked to search for applications with Tea Party, Patriots, or 9/12 in the organization's name as well as other "political-sounding" names. EO function officials stated that, in May 2010, the Determinations Unit began developing a spreadsheet that would become known as the "Be On the Look Out" listing (hereafter referred to as the BOLO listing),[15] which included the emerging issue of Tea Party applications. In June 2010, the Determinations Unit began training its specialists on issues to be aware of, including Tea Party cases. By July 2010, Determinations Unit management stated that it had requested its specialists to be on the lookout for Tea Party applications.

In August 2010, the Determinations Unit distributed the first formal BOLO listing. The criteria in the BOLO listing were Tea Party organizations applying for I.R.C. § 501(c)(3) or I.R.C. § 501(c)(4) status. Based on our review of other BOLO listing criteria, the use of organization names on the BOLO listing is not unique to potential political cases.[16] EO function officials stated that Determinations Unit specialists interpreted the general criteria in the BOLO listing and developed expanded criteria for identifying potential political cases.[17] Figure 3 shows that, by June 2011, the expanded criteria included additional names (Patriots and 9/12 Project) as well as policy positions espoused by organizations in their applications.

Figure 3: Criteria for Potential Political Cases (June 2011)



Source: EO function briefing dated June 2011.

The mission of the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all. According to IRS Policy Statement 1-1, IRS employees accomplish this mission by being impartial and handling tax matters in a manner that will promote public confidence. However, the criteria developed by the Determinations Unit gives the appearance that the IRS is not impartial in conducting its mission. The criteria focused narrowly on the names and policy positions of organizations instead of tax-exempt laws and Treasury Regulations. Criteria for

[15] The BOLO listing includes a consolidated list of emerging issues the EO function identifies for dissemination to Determinations Unit specialists.

[16] We did not review the use of other named organizations on the BOLO listing to determine if their use was appropriate.

[17] During interviews with Determinations Unit specialists and managers, we could not specifically determine who had been involved in creating the criteria. EO function officials later clarified that the expanded criteria were a compilation of various Determinations Unit specialists' responses on how they were identifying Tea Party cases.

selecting applications for the team of specialists should focus on the activities of the organizations and whether they fulfill the requirements of the law. Using the names or policy positions of organizations is not an appropriate basis for identifying applications for review by the team of specialists.

We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS. Instead, the Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management. Specifically, only first-line management approved references to the Tea Party in the BOLO listing criteria before it was implemented. As a result, inappropriate criteria remained in place for more than 18 months. Determinations Unit employees also did not consider the public perception of using politically sensitive criteria when identifying these cases. Lastly, the criteria developed showed a lack of knowledge in the Determinations Unit of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) organizations.

Determinations Unit employees stated that they considered the Tea Party criterion as a shorthand term for all potential political cases. Whether the inappropriate criterion was shorthand for all potential political cases or not, developing and using criteria that focuses on organization names and policy positions instead of the activities permitted under the Treasury Regulations does not promote public confidence that tax-exempt laws are being adhered to impartially. In addition, the applications for those organizations that were identified for processing by the team of specialists experienced significant delays and requests for unnecessary information that is detailed later in this report.

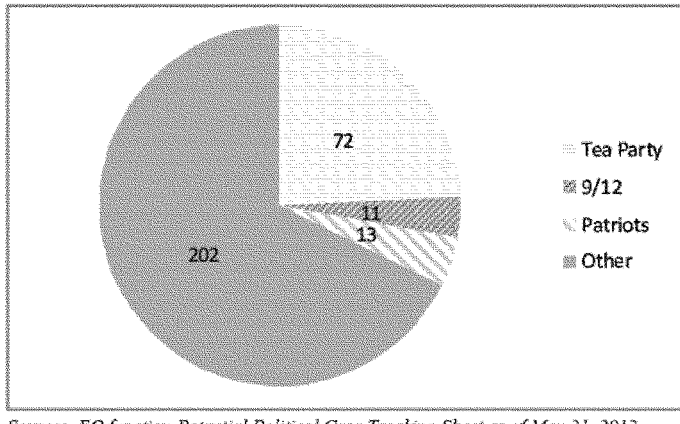
After being briefed on the expanded criteria in June 2011, the Director, EO, immediately directed that the criteria be changed. In July 2011, the criteria were changed to focus on the potential "political, lobbying, or [general] advocacy" activities of the organization. These criteria were an improvement over using organization names and policy positions. However, the team of specialists subsequently changed the criteria in January 2012 without executive approval because they believed the July 2011 criteria were too broad. The January 2012 criteria again focused on the policy positions of organizations instead of tax-exempt laws and Treasury Regulations. After three months, the Director, Rulings and Agreements, learned the criteria had been changed by the team of specialists and subsequently revised the criteria again in May 2012. (See Appendix VI for a complete timeline of criteria used to identify potential political cases). The May 2012 criteria more clearly focus on activities permitted under the Treasury Regulations. As a result of changes made to the criteria without management knowledge, the Director, Rulings and Agreements, issued a memorandum requiring all original entries and changes to criteria included on the BOLO listing be approved at the executive level prior to implementation.

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

The team of specialists processed applications by organizations with names other than Tea Party, Patriots, and 9/12

To determine if organizations other than those specifically identified in the inappropriate criteria were processed by the team of specialists, we reviewed the names on all applications identified as potential political cases.[18] Figure 4 shows that approximately one-third of the applications identified for processing by the team of specialists included Tea Party, Patriots, or 9/12 in their names, while the remainder did not. According to the Director, Rulings and Agreements, the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists.

Figure 4: Breakdown of Potential Political Cases by Organization Name



Source: EO function Potential Political Case Tracking Sheet as of May 31, 2012.

While the team of specialists reviewed applications from a variety of organizations, we determined during our reviews of statistical samples of I.R.C. § 501(c)(4) tax-exempt applications that all cases with Tea Party, Patriots, or 9/12 in their names were forwarded to the team of specialists.[19]

[18] We could not determine which potential political cases may have been identified based on an organization's policy positions.

[19] We determined this through two statistical samples of 338 (7.5 percent) from a universe of 4,510 I.R.C. § 501(c)(4) tax-exempt applications filed during May 2010 through May 2012 that were not forwarded to the team of specialists. See Appendix I for details on our sampling methodology.

Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Some applications with indications of significant political campaign intervention were not identified for review by the team of specialists

In May 2012, the Director, Rulings and Agreements, approved the current criteria for identifying potential political cases. The criteria are "501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention...." To determine if all cases with indications of significant political campaign intervention were sent to the team of specialists, we reviewed two statistical samples of I.R.C. § 501(c)(4) applications.

- **Applications That the IRS Determined Required Minimal or No Additional Information for Processing** – We reviewed a statistical sample of 94 I.R.C. § 501(c)(4) cases closed from May 2010[20] through May 2012 from a universe of 2,051 applications that the IRS determined required minimal or no additional information from the organizations (also referred to by the EO function as merit closures). We determined that two (2 percent) of 94 approved applications had indications of significant political campaign intervention and should have been forwarded to the team of specialists.[21] Based on our statistical sample, we project an estimated 44 merit closure applications were not appropriately identified as potential political cases during this time period.[22]
- **Applications Identified by the IRS That Required Additional Information for Processing** – We reviewed a statistical sample of 244 I.R.C. § 501(c)(4) cases closed from May 2010 through May 2012 or open as of May 31, 2012, from a universe of 2,459 applications that the IRS determined required additional information from the organizations applying for tax-exempt status (also referred to by the EO function as full development applications) but were not forwarded to the team of specialists. For the applications that were available for our review, we found that 14 (6 percent)[23] of 237 applications[24] included indications of significant political campaign intervention and should have been processed by the team of specialists.[25] We project an estimated 141 full development applications were not appropriately identified as potential political cases during this time period.[26]

[20] May 2010 was chosen because it is the first date that we were informed that the Determinations Unit was using criteria which identified specific organizations by name.
[21] Neither of the two cases involved a Tea Party, Patriots, or 9/12 organization.
[22] See Appendix IV.
[23] None of the 14 cases involved a Tea Party, Patriots, or 9/12 organization.
[24] We could not analyze seven sampled application case files because of incomplete documentation in the case files (six applications) or the case file could not be located (one application). See Appendix IV.
[25] We determined that eight applications were appropriately forwarded to the team of specialists. Five of the eight application case files involved Tea Party, Patriots, or 9/12 organizations.
[26] See Appendix IV.

To determine if cases without indications of significant political campaign intervention were sent to the team of specialists, we reviewed all of the applications identified as potential political cases as of May 31, 2012.

- **Applications That the IRS Determined Should Be Processed by the Team of Specialists** – We reviewed all 298 applications that had been identified as potential political cases as of May 31, 2012. In the majority of cases, we agreed that the applications submitted included indications of significant political campaign intervention. However, we did not identify any indications of significant political campaign intervention for 91 (31 percent) of the 296 applications[27] that had complete documentation.[28]

  We discussed our results with EO function officials, who disagreed with our findings. Although EO function officials provided explanations about why the applications should have been identified as potential political cases, the case files did not include the specific reason(s) the applications were selected. EO function officials also stated that applications may not literally include statements indicating significant political campaign intervention.[29] According to EO function officials, organizations may not understand what constitutes political campaign intervention or may provide vague descriptions of certain activities that the EO function knows from past experience potentially involve political campaign intervention. In these cases, the EO function believes it is important to review the applications to ensure that political campaign intervention is not the organizations' primary activity. To provide further assurance that Determinations Unit employees are handling tax matters in an impartial manner, it would be helpful to document specifically why applications are chosen for further review.

Recommendations

The Director, EO, should:

Recommendation 1: Ensure that the memorandum requiring the Director, Rulings and Agreements, to approve all original entries and changes to criteria included on the BOLO listing prior to implementation be formalized in the appropriate Internal Revenue Manual.

Management's Response: The IRS agreed with this recommendation and will ensure that the procedures set forth in the memorandum requiring the Director,

[27] We could not complete our review of two cases due to inadequate documentation in the case files. See Appendix IV.
[28] Seventeen (19 percent) of the 91 applications involved Tea Party, Patriots, or 9/12 organizations.
[29] It should also be noted that, in some cases, specialists obtained additional information after the application was received that indicated the organizations were involved in political campaign intervention which was not available in the initial application documentation we reviewed.

Rulings and Agreements, to approve in advance all original entries and changes to the BOLO listing are made part of the Internal Revenue Manual.

Recommendation 2: Develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (*e.g.*, evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).

> ***Management's Response:*** The IRS proposed an alternative corrective action to our recommendation. The IRS stated it will review its screening procedures to determine whether, and to what extent, additional documentation can be implemented without having an adverse impact on the timeliness of case processing.
>
> ***Office of Audit Comment:*** We do not believe this alternative corrective action fully addresses the recommendation. Developing procedures to better document the reasons applications are chosen for further review would help ensure that applications are being handled in an impartial manner. In addition, as detailed in the next section of this report, the average time these applications have been open is 574 days as of December 17, 2012. We do not believe documenting a brief explanation about why applications are chosen for review would have an adverse impact on the timeliness of case processing.

Recommendation 3: Develop training or workshops to be held before each election cycle including, but not limited to, the proper ways to identify applications that require review of political campaign intervention activities.

> ***Management's Response:*** The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Potential Political Cases Experienced Significant Processing Delays

Organizations that applied for tax-exempt status and had their applications forwarded to the team of specialists experienced substantial delays. As of December 17, 2012, many organizations had not received an approval or denial letter for more than two years after they submitted their applications. Some cases have been open during two election cycles (2010 and 2012). The *IRS Strategic Plan 2009–2013* has several goals and objectives that involve timely interacting with taxpayers, including enforcement of the tax law in a timely manner while minimizing taxpayer burden. The EO function does not have specific timeliness goals for processing applications, such as potential political cases, that require significant follow-up with the

organizations.[30] The time it takes to process an application depends upon the facts and circumstances of the case.

Potential political cases took significantly longer than average to process due to ineffective management oversight. Once cases were initially identified for processing by the team of specialists, the Determinations Unit Program Manager requested assistance via e-mail from the Technical Unit to ensure consistency in processing the cases. However, EO function management did not ensure that there was a formal process in place for initiating, tracking, or monitoring requests for assistance. In addition, there were several changes in Rulings and Agreements management responsible for overseeing the fulfillment of requests for assistance from the Determinations Unit during this time period. This contributed to the lengthy delays in processing potential political cases. As a result, the Determinations Unit waited more than 20 months (February 2010 to November 2011) to receive draft written guidance from the Technical Unit for processing potential political cases.

As a result, the IRS delayed the issuance of letters to organizations approving their tax-exempt status. For I.R.C. § 501(c)(3) organizations, this means that potential donors and grantors could be reluctant to provide donations or grants.[31] In addition, some organizations withdrew their applications and others may not have begun conducting planned charitable or social welfare work. The delays may have also prevented some organizations from receiving certain benefits of the tax-exempt status. For example, if organizations are approved for tax-exempt status, they may receive exemption from certain State taxes and reduced postal rates. For organizations that may eventually be denied tax-exempt status but have been operating while their applications are pending, the organizations will be required to retroactively file income tax returns and may be liable to pay income taxes for, in some cases, more than two years.

To analyze the delays, we: 1) reviewed the events that led to delays in processing potential political cases, 2) compared the amount of time cases assigned to the team of specialists were open to applications that were not assigned to the team of specialists, and 3) determined if organizations were eligible to sue the IRS due to delays in processing certain applications.

Potential political cases experienced long processing delays

The team of specialists stopped working on potential political cases from October 2010 through November 2011, resulting in a 13-month delay, while they waited for assistance from the Technical Unit. Figure 5 illustrates significant events and delays concerning potential political cases. For a comprehensive timeline of events related to potential political cases, see Appendix VII.

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[30] The EO function, however, had an overall goal to process merit and full development tax-exempt applications in 121 days for Fiscal Year 2012.

[31] Of 298 cases reviewed, 89 were I.R.C. § 501(c)(3) organizations.

Figure 5: Timeline of Events and Delays Involving the Processing of Potential Political Cases (February 2010 Through May 2012)

Date	Events and Delays
February 2010	An application is received by the Determinations Unit that is considered a high-profile case.
April 2010	The team of specialists is formed with one specialist who is assigned potential political cases and begins working on them with the assistance of a Technical Unit employee.
October 2010	The team of specialists stops processing potential political cases while waiting for assistance from the Technical Unit.
July 2011	The EO function decides to develop written guidance for the Determinations Unit to process the potential political cases.
November 2011	Draft written guidance is provided to the Determinations Unit.
December 2011	Additional specialists are added to the team of specialists.
January 2012	Specialists begin issuing additional information reqnest letters to organizations applying for tax-exempt status, requesting that the information be provided in two to three weeks. These time periods are standard responsc times given for any information request and are included in the Internal Revenue Manual.
February 2012	Concerns are raised in the media regarding requests for significant amounts of information from organizations applying for tax-exempt status. The Director, EO, stops specialists from issuing any more letters requesting information. Instead, letters allowing extensions of 60 days to respond to previous additional information letters were developed and issued in March and April 2012. These letters also noted that applicants should contact the IRS if they needed longer than 60 days to respond.
May 2012	A workshop is given to Determinations Unit specialists assigned to potential political cases. Afterwards, a review of all the open cases is completed to recommend whether additional processing is necessary or whether the cases can be closed (as of December 17, 2012, 160 applications were still being processed).

Source: Interviews of EO function employees and our review of EO function e-mails.

Ineffective oversight by management led to significant delays in processing potential political cases. In February 2010, the Determinations Unit Program Manager advised the Technical Unit via e-mail about the first high-profile case identified. In April 2010, the Determinations Unit Program Manager requested via e-mail a contact in the Technical Unit to provide assistance with processing the applications. A Technical Unit specialist was assigned this task and began working with the team of specialists. The team of specialists stopped processing cases in October 2010 without closing any of the 40 cases that were begun. However, the Determinations Unit Program Manager thought the cases were being processed. Later, we were informed by the Director, Rulings and Agreements, that there was a miscommunication about processing the cases. The Determinations Unit waited for assistance from the Technical Unit instead of

continuing to process the cases. The Determinations Unit Program Manager requested status updates on the request for assistance several times via e-mail. Draft written guidance was not received from the Technical Unit until November 2011, 13 months after the Determinations Unit stopped processing the cases. As of the end of our audit work in February 2013, the guidance had not been finalized because the EO function decided to provide training instead.[32]

Many organizations waited much longer than 13 months for a decision, while others have yet to receive a decision from the IRS. For example, as of December 17, 2012, the IRS had been processing several potential political cases for more than 1,000 calendar days. Some of these organizations received requests for additional information in Calendar Year 2010 and then did not hear from the IRS again for more than a year while the Determinations Unit waited for assistance from the Technical Unit. For the 296 potential political cases we reviewed,[33] as of December 17, 2012, 108 applications had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 cases were open from 206 to 1,138 calendar days (some crossing two election cycles).

In March 2012, the Deputy Commissioner, Services and Enforcement, asked the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, to look into concerns raised by the media about delays in processing applications for tax-exempt status from Tea Party groups and the nature of the questions being asked related to the applications. In April 2012, the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, along with a team of EO function Headquarters office employees, reviewed many of the potential political cases and determined that there appeared to be some confusion by Determinations Unit specialists and applicants on what activities are allowed by I.R.C. § 501(c)(4) organizations. We believe this could be due to the lack of specific guidance on how to determine the "primary activity" of an I.R.C. § 501(c)(4) organization. Treasury Regulations state that I.R.C. § 501(c)(4) organizations should have social welfare as their "primary activity"; however, the regulations do not define how to measure whether social welfare is an organization's "primary activity."

As a result of this confusion, the EO function Headquarters employees provided a two-day workshop to the team of specialists in May 2012 to train them on what activities are allowable by I.R.C. § 501(c)(4) organizations, including lobbying and political campaign intervention. After this workshop, potential political cases were independently reviewed by two people to determine what, if any, additional work needed to be completed prior to making a decision to approve or deny the applications for tax-exempt status. This review continued on any newly identified potential political cases. Prior to the hands-on training and independent reviews, the team of specialists had only approved six (2 percent) of 298 applications. After the hands-on training

[32] In response to the National Taxpayer Advocate's *2007 Annual Report to Congress*, the IRS commented that putting guide sheets for processing applications for tax-exempt status on its Internet site would result in fewer delays.

[33] By December 17, 2012, two cases were no longer being processed by the team of specialists.

and independent reviews began, the Determinations Unit approved an additional 102 applications by December 2012.[34] In addition, it was decided that applications could be approved, but a referral for follow-up could be sent to another unit,[35] which could review the activities of an organization at a later date to determine if they were consistent with the organization's tax-exempt status.

Potential political cases were open much longer than similar cases that were not identified for processing by the team of specialists

For Fiscal Year 2012, the average time it took the Determinations Unit to complete processing applications requiring additional information from organizations applying for tax-exempt status (also referred to by the EO function as full development cases) was 238 calendar days according to IRS data. In comparison, the average time a potential political case was open as of December 17, 2012, was 574 calendar days (with 158 potential political cases being open longer than the average calendar days it took to close other full development cases).[36] Figure 6 shows that more than 80 percent of the potential political cases have been open more than one year.

Figure 6: Number of Calendar Days Potential Political Cases Were Open (as of December 17, 2012)

Total Cases	Number and Percentage[37] of Potential Political Cases Open by Calendar Day Range				
	0–120 Calendar Days	121–180 Calendar Days	181–270 Calendar Days	271–365 Calendar Days	More Than 365 Calendar Days
160	0 (0%)	0 (0%)	3 (2%)	28 (18%)	129 (81%)

Source: Our analysis of EO function documentation.

[34] Of the 102 applications, 29 (28 percent) involved Tea Party, Patriots, or 9/12 organizations.
[35] The Review of Operations Unit completes compliance reviews on tax-exempt organizations to determine whether they are operating in accordance with their tax-exempt purposes and are current with their filing requirements. Unit personnel review information available on IRS systems, filed returns, applications for tax exemption, and the Internet to assess the organizations' operations and make recommendations for further actions.
[36] See Appendix IV.
[37] Percentages may not equal 100 percent due to rounding.

Some charitable organizations were eligible to sue the IRS for declaratory judgment due to the delays in processing applications

The Determinations Unit did not always timely approve or deny the applications for I.R.C. § 501(c)(3) tax-exempt status for potential political cases. However, the tax law provides organizations with the ability to sue the IRS to force a decision on their applications if the IRS does not approve or deny their applications within 270 calendar days.[38]

As of May 31, 2012,[39] 32 (36 percent) of 89 I.R.C. § 501(c)(3) potential political cases were open more than 270 calendar days, and the organizations had responded timely to all requests for additional information, as required. As of the end of our fieldwork, none of these organizations had sued the IRS, even though they had the legal right. In another 38 open cases, organizations were timely in their responses to additional information requests, but the 270-calendar-day threshold had not been reached as of May 31, 2012. These 38 organizations may have the right to sue the IRS in the future if determinations are not made within the 270-calendar-day period.

Recommendations

The Director, EO, should:

Recommendation 4: Develop a process for the Determinations Unit to formally request assistance from the Technical Unit and the Guidance Unit.[40] The process should include actions to initiate, track, and monitor requests for assistance to ensure that requests are responded to timely.

> ***Management's Response:*** The IRS agreed with this recommendation and will develop a formal process for the Determination Unit to request assistance and to monitor such requests.

Recommendation 5: Develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention. This guidance should also be posted to the Internet to provide transparency to organizations on the application process.

> ***Management's Response:*** The IRS proposed alternative corrective action to our recommendation. The IRS will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS

[38] Revenue Procedure 2012-09 provides further guidance on the implementation of this right.
[39] Tax-exempt application case files were selected for review in June 2012 based on a May 31, 2012, listing of applications being processed by the team of specialists.
[40] The Guidance Unit provides formal and informal guidance that explains how certain laws, such as regulations, revenue rulings, revenue procedures, notices, and announcements, may apply to exempt organizations.

noted that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Office of Audit Comment: We do not believe that this alternative corrective action fully addresses our recommendation. We believe that specific guidance should be developed and made available to specialists processing potential political cases. Making this guidance available on the Internet for organizations could also address a concern raised in the IRS's response that many applications appear to contain incomplete and inconsistent information.

Recommendation 6: Develop training or workshops to be held before each election cycle including, but not limited to: a) what constitutes political campaign intervention versus general advocacy (including case examples) and b) the ability to refer for follow-up those organizations that may conduct activities in a future year which may cause them to lose their tax-exempt status.

Management's Response: The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS reported that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Recommendation 7: Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.

Management's Response: The IRS agreed with this recommendation and stated that, while this is an ongoing project, it is closely overseeing the remaining open cases to ensure that it reaches determinations as expeditiously as possible.

The Acting Commissioner, Tax Exempt and Government Entities Division, should:

Recommendation 8: Recommend to IRS Chief Counsel and the Department of the Treasury that guidance on how to measure the "primary activity" of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.[41]

Management's Response: The IRS agreed with this recommendation and will share this recommendation with the IRS Chief Counsel and the Department of Treasury's Office of Tax Policy.

[41] The Department of the Treasury issues a Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

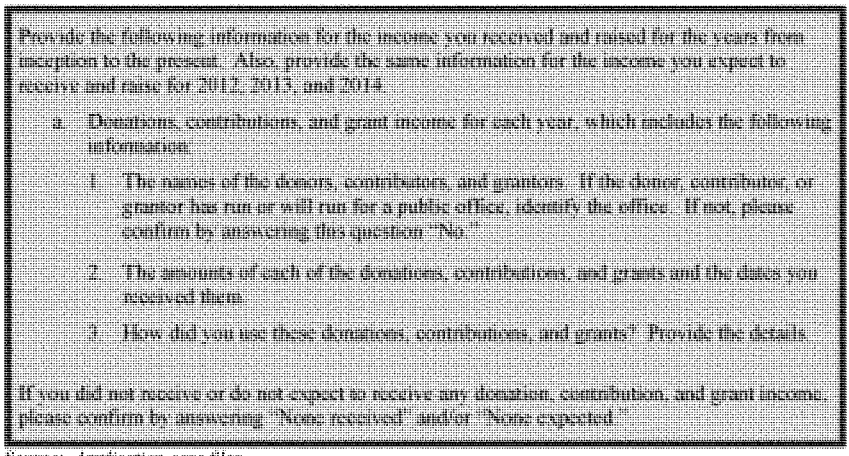
The Determinations Unit Requested Unnecessary Information for Many Potential Political Cases

The Determinations Unit sent requests for information that we later (in whole or in part) determined to be unnecessary for 98 (58 percent) of 170 organizations that received additional information request letters.[42] According to the Internal Revenue Manual, these requests should be thorough, complete, and relevant. However, the Determinations Unit requested irrelevant (unnecessary) information because of a lack of managerial review, at all levels, of questions before they were sent to organizations seeking tax-exempt status. We also believe that Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) tax-exempt organizations. This created burden on the organizations that were required to gather and forward information that was not needed by the Determinations Unit and led to delays in processing the applications. These delays could result in potential donors and grantors being reluctant to provide donations or grants to organizations applying for I.R.C. § 501(c)(3) tax-exempt status. In addition, some organizations may not have begun conducting planned charitable or social welfare work.

After receiving draft guidance in November 2011, the team of specialists began sending requests for additional information in January 2012 to organizations that were applying for tax-exempt status. For some organizations, this was the second letter received from the IRS requesting additional information, the first of which had been received more than a year before this date. These letters requested that the information be provided in two or three weeks (as is customary in these letters) despite the fact that the IRS had done nothing with some of the applications for more than one year. After the letters were received, organizations seeking tax-exempt status, as well as members of Congress, expressed concerns about the type and extent of questions being asked. For example, the Determinations Unit requested donor information from 27 organizations[43] that it would be required to make public if the application was approved, even though this information could not be disclosed by the IRS when provided by organizations whose tax-exempt status had been approved. Figure 7 shows an example of requests sent to organizations applying for tax-exempt status regarding donors.

[42] See Appendix IV.
[43] Of the 27 organizations, 13 had Tea Party, Patriots, or 9/12 in their names.

Figure 7: Example of Requests for Information Regarding Past and Future Donors in Letters Sent in January/February 2012



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:

1. 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."
2. The amounts of each of the donations, contributions, and grants and the dates you received them.
3. 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 "None received" and/or "None expected."

Source: Application case files.

After media attention, the Director, EO, stopped issuance of additional information request letters and provided an extension of time to respond to previously issued letters. The Deputy Commissioner for Services and Enforcement then asked the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, to find out how applications were being processed and make recommendations. The Senior Technical Advisor and a team of specialists visited the Determinations Unit in Cincinnati, Ohio, and began reviewing cases. As part of this effort, EO function Headquarters office employees reviewed the additional information request letters prepared by the team of specialists and identified seven questions that they deemed unnecessary. Subsequently, the EO function instituted the practice that all additional information request letters for potential political cases be reviewed by the EO function Headquarters office before they are sent to organizations seeking tax-exempt status. In addition, EO function officials informed us that they decided to destroy all donor lists that were sent in for potential political cases that the IRS determined it should not have requested. Figure 8 lists the seven questions identified as being unnecessary.

Figure 8: Seven Questions Identified As Unnecessary by the EO Function

Number	Question
1	Requests the names of donors.
2	Requests a list of all issues that are important to the organization and asks that the organization indicate its position regarding such issues.
3	Requests 1) the roles and activities of the audience and participants other than members in the activity and 2) the type of conversations and discussions members and participants had during the activity.
4	Asks whether the officer, director, *etc.*, has run or will run for public office.
5	Requests the political affiliation of the officer, director, speakers, candidates supported, *etc.*, or otherwise refers to the relationship with identified political party–related organizations.
6	Requests information regarding employment, other than for the organization, including hours worked.
7	Requests information regarding activities of another organization – not just the relationship of the other organization to the applicant.

Source: EO function review of additional information request letters.

We reviewed case file information for all 170 organizations that received additional information request letters and determined that 98 (58 percent) had received requests for information that was later deemed unnecessary by the EO function. Of the 98 organizations:

- 15 were informed that they did not need to respond to previous requests for information and, instead, received a revised request for information.
- 12 either received a letter or a telephone call stating that their application was approved and they no longer needed to respond to information requests they had received from the IRS.

Figure 9 shows excerpts from the approval letter developed for organizations that did not need to respond to a previous additional information request letter.

Figure 9: Excerpts From a Template Approval Letter, Which Includes a Statement That Previously Requested Information Is No Longer Needed

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)(4) of the Internal Revenue Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

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 the additional materials previously requested because your application and materials provide sufficient information.

Source: IRS template approval letter.

Recommendation

Recommendation 9: The Director, EO, should develop training or workshops to be held before each election cycle including, but not limited to, how to word questions in additional information request letters and what additional information should be requested.

> ***Management's Response:*** The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS reported that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

SFC 004139

MAY 5, 2015

True the Vote President Catherine Engelbrecht Slams IRS Abuse, Weaponizing of Government

Katie Pavlich

2/7/2014 7:39:00 AM - Katie Pavlich

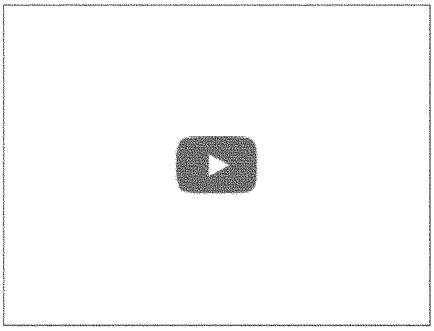
President and founder of the election integrity group True the Vote Catherine Engelbrecht testified in front of the House Oversight and Government Reform Subcommittee on Regulatory Affairs yesterday about the IRS targeting of her group and her personal business. Before 2009, Engelbrecht was not part of the political process, but after volunteering at the polls during Texas elections, she saw instances of fraud and abuse that she didn't think could go unexposed. Her decision to found her election integrity group would get her multiple visits from a handful of federal government agencies.

"My life before I spoke out for good government stands in stark contrast to the life I now lead. As a wife, a mother, and small businesswoman working with my husband, raising our children and participating in my church and PTA, the government collected my taxes and left me and my family in peace. But when I helped found and led True the Vote and King Street Patriots, I found myself a target of this federal government," she said. "Shortly after filing IRS forms to establish 501(c)(3) and 501(c)(4) tax exempt organizations, an assortment of federal entities including law enforcement agencies and a Congressman from Maryland, Elijah Cummings came knocking at my door. In nearly two decades of running our small business, my husband and I never dealt with any government agency, outside of filing our annual tax returns. We had never been audited, we had never been investigated, but all that changed upon submitting applications for the non profit statuses of True the Vote and King Street Patriots. Since that filing in 2010, my private businesses, my nonprofit organizations, and family have been subjected to more than 15 instances of audit or inquiry by federal agencies."

Engelbrecht was audited by the IRS, ATF and received multiple visits by OSHA and ATF.

"I found myself a target of this federal government," she said.

SFC 004140



After the hearing, Engelbrecht and her attorney Cleta Mitchell filed a complaint against Democratic Ranking Member Elijah Cummings for his intimidation and singling out of True the Vote. Back in 2012, True the Vote issued a formal request to Cummings asking him to retract defamatory statements he made about the Houston based group on national television and in writing.

"Congressman Cummings on three separate occasions sent letters on letterhead from this committee, stating that he had concerns and felt it necessary to open an investigation on True the Vote," Engelbrecht said.

On Fox News' The Kelly File, Engelbrecht described federal government intimidation as "weaponizing of government."

SFC 004141

THE IRS: TARGETING AMERICANS FOR THEIR POLITICAL BELIEFS

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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SFC 004144

THE IRS: TARGETING AMERICANS FOR THEIR POLITICAL BELIEFS

Wednesday, May 22, 2013

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:30 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, Meehan, DesJarlais, Gowdy, Farenthold, Hastings, Lummis, Woodall, Massie, Collins, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Lynch, Cooper, Connolly, Speier, Cartwright, Pocan, Duckworth, Kelly, Davis, Welch, Cardenas, Horsford, Lujan Grisham.

Staff Present: Ali Ahmad, Communications Advisor; Alexia Ardolina, Assistant Clerk; Kurt Bardella, Senior Policy Advisor; Brian Blase, Senior Professional Staff Member; Molly Boyl, Parliamentarian; Lawrence J. Brady, Staff Director; David Brewer, Senior Counsel; Caitlin Carroll, Deputy Press Secretary; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Brian Daner, Counsel; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Frederick Hill, Director of Communications and Senior Policy Advisor; Christopher Hixon, Deputy Chief Counsel, Oversight; Michael R. Kiko, Staff Assistant; Justin LoFranco, Digital Director; Mark D. Marin, Director of Oversight; Tegan Millspaw, Professional Staff Member; Kristin L. Nelson, Senior Counsel; Ashok M. Pinto, Chief Counsel, Investigations; Laura L. Rush, Deputy Chief Clerk; Scott Schmidt, Deputy Director of Digital Strategy; Jonathan J. Skladany, Deputy Chief Counsel, Investigations; Matthew Tallmer, Investigator; Rebecca Watkins, Deputy Director of Communications; Jedd Bellman, Minority Counsel; Meghan Berroya, Minority Counsel; Claire Coleman, Minority Counsel; Kevin Corbin, Minority Professional Staff Member; Susanne Sachsman Grooms, Minority Chief Counsel; Devon Hill, Minority Research Assistant; Adam Koshkin, Minority Research Assistant; Elisa LaNier, Minority Deputy Clerk; Dave Rapallo, Minority Staff Director; and Donald Sherman, Minority Counsel.

Chairman ISSA. The committee will come to order.

We exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. It's our job to work tirelessly in partnership with citizen watchdogs and the IG community to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

I would note today that what we read at the opening of every committee hearing is particularly questionable today—or appropriate today, when it says "government accountable to taxpayers." Our democracy was created by people and for the people. When government power is used to target Americans for exercising their constitutional rights, there is nothing we as Representatives should find more important than to take it seriously, get to the bottom of it, and eradicate the behavior.

Since 2010, there appears to have been a targeting of people based on their beliefs. These people, particularly those who use "Tea Party" in their name, were mocked by the liberal media, mocked by late-night television, and referred to by this administration regularly with disdain. Even here in the hallows of Congress, people would talk about who the Tea Partyers were, who was Tea-Party supported, when, in fact, there is no Tea Party. As the evidence has shown, there are hundreds and hundreds of organizations as independent as any single American who simply wanted to live up to the Constitution, to have their freedom, and have it protected by our country.

So last year when we received troubling complaints by groups across the country who were receiving what appeared to be inappropriate and unnecessary questions, in many cases after more than a year, sometimes 2 years, of inaction by the IRS, we went to the inspector general, who is here with us today.

In March of last year, upon the request of our staff and later in a formal letter from Mr. Jordan, the subcommittee chairman, and myself, the IG launched a formal investigation. We knew then that something seemed to be wrong. We knew then that there was smoke. We knew then that, in fact, something just didn't seem to be right. But we didn't know what was really wrong, and we could have never suspected an organized and pervasive denying of hundreds of applications, not by a reject stamped and sent back, but by deliberate inaction.

So our suspicions were just that. Only in the last few weeks have we begun to realize that this was, at least within the IRS, vast, because every single person who looked at one of these applications could have and should have been a whistleblower; could have and should have realized there was something wrong.

During this period of time of more than a year, we had an intervening election. Many people want to talk about this relative to the election. I will not do that here today. This is more important than any one election. We need to look at this relative to our democracy.

SFC 004147

The power to tax is the power to destroy. The power to grant tax status is, in fact, an enhancement of the right and liberties of our speech. That is what was at stake here. And it wouldn't matter one bit if a different group was targeted. It is wrong.

Congress produces laws, many of them complex. We may hear in the weeks and months to follow that it was the complexity of these applications that caused this. Complexity is created all more often than it exists. The IRS finds complexity when it is convenient, and simplicity when it is convenient. That is what we have begun to find out.

During the same period of time, at least two investigations were going on, one by the IG, and one internal. Congress was misled. The American people were misled. Just yesterday the committee interviewed Holly Paz, the Director of Exempt Organizations, Rulings and Agreements Division of the IRS. While a tremendous amount of attention centered about the inspector general report, or investigation, the committee has learned that—from Ms. Paz that she, in fact, participated in an IRS internal investigation that concluded in May of 2012, May 3rd of 2012, and found essentially the same thing that Mr. George found more than a year later.

Think about it. For more than a year, the IRS knew that it had inappropriately targeted groups of Americans based on their political beliefs, and without mentioning it, and, in fact, without honestly answering questions that were the result of this internal investigation.

Many people believe that the IRS is an independent agency. Nothing could be further from the truth. We define it deliberately as less political. It has only two political appointees. It is carefully scrutinized to have limited visibility to Congress, limited visibility because we are protecting American people's rights. But, in fact, Commissioner, former Commissioner, who is with us today will tell us he reports to the deputy of Treasury. In fact, he is a subordinate of a subordinate of a Cabinet officer. It is not an agency that gets to do what it wants to do or that cannot be challenged by Treasury.

As a result, when we discover that not only did Ms. Paz know about this, learn about this, and participate in the IRS's internal investigation, but she also played an integral role in the IG's report, or investigation.

We were shocked to find that Ms. Paz participated in virtually every one of the interrogations or interviews with her own subordinates. In those, of course, one of the questions the IG had to ask was, did anyone tell you to do this? If that question was asked, their own superior was in the room. Although it appears as though this was signed off by the IG, this committee finds it inappropriate, inappropriate for any inspector inspecting wrongdoing within an agency to include individuals in the agency who, in fact, could be and we now believe participated willingly in this activity.

It is also unclear why the inspector general did not inform the committee of his substantive findings when he first became aware of the targeting no later than July of 2012. And here is where I take a liberty of this committee, a liberty of the Congress. Despite numerous requests from the committee for information and updates, including an August 3rd letter, a request for the IG to inform Congress about serious or flagrant problems quickly, the IG

failed to do that. Ladies and gentlemen, that is existing law. That is under the IG Act. That has been a responsibility of IGs across the board since the '70s. And we, in fact, on this committee both support, defend, and promote the IGs, but we must also insist, particularly after situations like the GSA scandal that this committee dealt with, that we not wait 10 months to find out that there is a "there" there. That, in fact, is perhaps the greatest failing of an otherwise well-regarded inspector.

Today we will be looking at how things went so wrong, how multiple wrongdoings occurred, how no one in position of authority seems to know anything about it. And within the administration, there seemed to be a culture of insulation that puts higher priority on deniability than addressing blatant wrongdoing.

The American people don't expect perfection. Men and women, many of them working very hard and trying to do the best within government, make mistakes. A few make wrongdoings and do so deliberately. But the buck has to stop somewhere, so in this investigation the buck will stop with this committee. This committee will not stop this investigation until we know that the IRS is fixed.

In a one-on-one interview with the IG shortly after his report, I asked the inspector general a simple question that I expected to have a mixed answer on. The question was: Is this the only time? Could this happen again? In fact, his answer to me in an unambiguous way is, the internal controls are not there for me to say that it isn't happening somewhere else in the IRS, meaning the American people today should not have confidence that this is an isolated incident. But rather, like the days of Enron and WorldCom, you ask the question, has Congress made this organization auditable, and accountable the way they make us auditable and accountable? I paid a lot of taxes in my life; most people on the dais have. We know one thing: You cannot just say you are doing the right thing and expect the IRS to take your word and the check you send in. Documentation, the ability to verify it, is essential when dealing with the IRS. We can expect no less when we deal with the IRS.

Chairman ISSA. And I will recognize the ranking member for his opening statement.

Mr. CUMMINGS. Mr. Chairman, I thank you for calling this very important hearing.

Mr. Chairman, you are absolutely right. This is more important than one election. The revelations that have come forward so far provides us with a moment pregnant with transformation; Not transformation for a moment, but for generations to come and generations yet unborn. That's why this hearing must be about two essential things: truth and trust.

The American people expect the IRS to exercise its responsibilities in a fair and nonpartisan manner. When the IRS breaches that trust, it damages the ability of the agency to implement the Nation's tax laws effectively and efficiently.

The inspector general has called the actions by IRS employees in Cincinnati, quote, "inappropriate," unquote, but after reading the IGs report, I think it goes well beyond that. I believe that there was gross incompetence and mismanagement in how the IRS deter-

mined which organizations qualified for tax-exempt status. Again, this is about truth and trust.

By now we have all heard how IRS employees used terms like "Tea Party" and "Patriots" to single out conservative groups for enhanced scrutiny. But the IG report also discusses how some cases took more than 3 years to resolve. Ladies and gentlemen, we are better than that. We are simply better than that. IRS staff stopped working for more than a year, from October 2010 through November 2011, while they waited for guidance from supervisors on how to process these applications. This is simply unacceptable. When the IRS finally got to processing applications, employees with little or no oversight sent overly extensive requests for information to many of these groups, which understandably angered them.

New processes have been put in place to prevent these abuses in the future, but much more needs to be done. According to the IG audit, at least part of the reason—of the reason for this mismanagement is inadequate guidance on how to process these cases. The original statute passed by Congress requires 501(c)(4) organizations engage exclusively in social welfare activities, but in 1959, the Treasury Department issued a regulation that requires these entities only to be primarily engaged in social welfare activities. As a result, many groups now believe they can spend up to 49 percent of their funds on campaign-related activities.

Significant concerns also have been raised about groups that have already qualified for tax-exempt status, or whose applications are still pending, and are now openly engaging in campaign-related activities and spending millions of dollars with little or no IRS oversight of their activities. These concerns are not limited to just one political party, by the way. For example, good government groups like Democracy 21 and others have written to the IRS about Crossroads GPS, which was created by Karl Rove, as well as Patriots USA, which was created by former Obama administration officials.

I'm encouraged that the IG has already announced that he will be examining this issue in more detail in the upcoming audit, but it is also time to revisit a 1959 regulation and consider returning to the original standard set forth in the statute that bans political activity by these groups altogether, which is what Congress originally intended.

As we investigate the actions of IRS employees, I urge my colleagues to avoid making the investigation into a partisan attack.

Let me pause here to say that there are many great employees in the IRS. I'm sure the chairman would agree with me that it is not our intention to take a broad brush and say negative things about all of the employees at IRS, because there are many hard-working people who are probably looking at this event right now wondering, you know, why are they talking about me? Well, we say to all of those employees, we appreciate what you are doing, but we are trying to make sure that this organization is straightened out.

Mr. Shulman, who was the head of the IRS when all of these actions occurred, was appointed by President Bush. There is no evidence to suggest that he directed IRS employees to intentionally delay or harass Tea Party groups. Similarly, the inspector general

and all IRS officials who have appeared before Congress to date have agreed that no one outside the IRS participated in these activities or was aware of them when they occurred. These facts were confirmed again yesterday when the committee conducted a transcribed interview of Holly Paz, who served as manager of the Rulings and Agreements Office in Washington, D.C., which oversees the Cincinnati unit that processed these applications.

I share the chairman's very serious questions about why Mr. Shulman and Ms. Lerner failed to inform Congress about these problems. Again, ladies and gentlemen, we're talking about truth and trust. To me, this is one of their most significant failures, and I do not believe their answers to date have been sufficient. Truth and trust.

As the committee continues in what I hope will be a bipartisan and thorough investigation, I want to make a request of the chairman. Now that the President has designated Danny Werfel as the new Acting Director of the IRS, I believe the committee should hear from him about his plans to address the recommendations in the IG report and other steps he intends to take to restore the public trust in the IRS. That said repeatedly, to do our jobs on this committee, we must focus on oversight and reform. And reform. Holding a hearing with Mr. Werfel will allow us to do both.

Finally, Mr. Chairman, I would like to say a brief word about Ms. Lerner. Her attorney has written to the committee to inform us that she intends to invoke her Fifth Amendment right against self-incrimination. Of course, I am disappointed that we will not be able to ask her questions today. I believe that she could share much light on what we are trying to find, the truth. But every member of this committee takes an oath to support the Constitution of the United States of America, and this is Ms. Lerner's right under the Constitution. So I will honor her decision, and I respectfully urge all of my colleagues to do the same.

I ask unanimous consent to place into the record written answers that Ms. Lerner provided in response to questions posed by the inspector general, as well as similar answers provided by her boss Joseph Grant.

Chairman ISSA. They will not be accepted at this time. They have not been provided to us by the IG on a bipartisan basis, I have been informed. So at this time we will take them under advisement. They will be—I will take back my reservation if—after Mr. George has viewed them and agreed that, in fact, they are true, or someone else from the IG. And I must mention, I'm shocked that I'm finding things that we want delivered now.

Mr. CUMMINGS. They were provided last night, I understand.

Chairman ISSA. They were not provided to us.

The committee has respectfully requested all of these transcribed interviews from the IG. Mr. George, am I to assume that this was the only one provided, or were all of them provided to the minority?

Mr. GEORGE. Mr. Chairman, I have been informed that they were provided to both sides last night.

Chairman ISSA. Well, there is a way to get them to us to where we know they are there. Can we—no, that's all right. That's all right.

Will we expect to receive all transcribed interviews or only this one? We have asked for all of them equally.

Mr. GEORGE. We prioritized them, sir. We are still working on the requests.

Chairman ISSA. Can we get an estimate of times as long as we are at this point, this juncture?

By the way, I will take back my reserve.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. GEORGE. Sir, we are working on the request. We prioritized them as requested by the committee. I cannot give you at this very moment a definitive time for receiving—for your receipt of them.

Chairman ISSA. I trust it will be no greater time than we give taxpayers to respond.

With that, I ask—unanimous consent is accepted and will be placed in the record.

Mr. CUMMINGS. Mr. Chairman, let me just make one comment very briefly on what just happened.

Chairman ISSA. Sure.

Mr. CUMMINGS. Mr. Chairman, we would not submit—we were under the impression that you all had the document. And I would——

Chairman ISSA. And I fully understand that. It wasn't you blindsiding me, I assure you.

Mr. CUMMINGS. Very well.

And as I close, I want this committee to be very careful, and I have said it many times. This committee should act on the level of a Federal court. And I think we need to be very, very careful not to let partisanship undermine the integrity not only of the committee, but of our investigation and our work product.

The American people are depending upon us, and I have full faith and confidence in the chairman, and all of our Members, that we will do as I just said. And so I certainly look forward to our witnesses' answers to our questions today. I look forward to your opening statements. And with that, Mr. Chairman, I yield back.

Chairman ISSA. I thank you, Mr. Cummings.

We now go to the chairman of the subcommittee Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

Two rogue agents. That's what the White House tells us were the people responsible for this. In fact, I got a news report from May 15th that says, White House said two rogue IRS employees from Cincinnati were responsible for investigating conservative groups. Two employees in Cincinnati responsible for the systematic targeting of conservative groups over 2 years.

This administration would have us believe that. This administration, this agency, the very agency charged with enforcing Obamacare, systematically targeted groups who came into existence because they opposed Obamacare, and they started the targeting the very month, March 2010, that Obamacare became law, expects us to believe it was just the work of two rogue agents.

This administration, this agency, which, according to Mr. George's report, found out about this practice certainly as early as June of 2011, and after that date Ms. Lerner had 14 opportunities in direct and distinct interactions with the Ways and Means Committee and with this committee, 14 different occasions where she

could have set the record straight, and she chose not to do it. And yet they expect us to believe that the systematic targeting of conservative groups was just the work of two rogue agents in Cincinnati.

This administration, this agency, which was so calculating that they planted the question 12 days ago when Ms. Lerner gave the news that the IRS was engaged in this targeting before the IGs report came out, so calculating they all got together and said, let's do this, let's plant the question and break this story, and yet they expect us to believe it was just the work of a couple of employees, two rogue agents in Cincinnati.

And finally, Mr. Chairman, I would say this: The subject of this committee knows something about. This administration, this administration, which told us and told the American people that the attack that killed four Americans in Benghazi was the work—was caused by a video, is now the same administration who expects us to believe that this scandal was just a result of two rogue agents in Cincinnati.

Mr. Chairman, the people don't buy it. The American people get it, and they just want—they just want this administration to give them the truth. And that's why this hearing is so important.

And I yield back.

Chairman ISSA. I thank the gentleman.

I understand Mr. Lynch will—on behalf of the ranking member, Mr. Lynch is recognized.

Mr. LYNCH. Thank you very much, Mr. Chairman. I want to thank you and the ranking member for holding this timely hearing, I would also like to thank the witnesses for coming forward and helping the committee with its work.

Mr. Chairman, each year the State Department releases its Country Report on Human Rights and Practices. It is a comprehensive assessment of human rights conditions across the world. Notably the overview of the country report released this year provides that sustainable democracy means more than just elections, and includes a quote from President Obama's remarks at the United Nations in September of 2012 defining true democracy as dependent on the freedom of citizens to speak their minds and assemble without fear and on the rule of law and due process that guarantees the rights of all people. The country report goes on to conclude that these elements of democracy, particularly the freedom of expression and the freedom of speech, faced serious threats around the globe in 2012.

I just want to point to a couple of these examples offered by our own State Department. While the law in the People's Republic of China provides for freedom of speech and freedom of the press, the report states that authorities generally do not respect these rights in practice. In particular, those who made politically sensitive comments in public speeches, academic discussions and comments to the media remain subject to punitive measures. And the government frequently monitored gathering of intellectual scholars and dissidents where political or sensitive issues were discussed.

And similarly in the Republic of Belarus, the national Constitution provides for freedom of speech and freedom of press, but the authoritarian regime in place also does not respect the rights in

practice. Specifically it says, individuals could not criticize the government publicly or discuss matters of general public interest without fear of reprisal. Authorities videotape political meetings, conducted frequent identity checks, and used other forms of intimidation.

In my view, these and other blatant violations of individual freedom of expression serve to illustrate exactly what is at stake when a Federal agency, for whatever reason, targets U.S. citizens based on their political beliefs. Such a practice compromises one of the bedrock principles of our democracy: the commitment to ensure that all citizens are free to exercise their freedom of speech without fear of retribution from their government. And it constitutes a significant infringement on human rights in this country.

It is why the facts set forth in the audit report issued by the Treasury IGs are deeply troubling and reveal an IRS practice that is unacceptable. According to the inspector general, the criteria used by the IRS Determinations Unit in Cincinnati to identify tax-exempt applications for further review include specific organization names, such as "Tea Party" and "Patriots"; as well as policy positions, such as government spending, and any case file—and this is what gets me—any case file statements that criticize how the country is being run. Anything that criticizes the government on how this country is being run. That was subject to enhanced investigation by the IRS.

The inspector general has also reported that many of these organizations had not received an approval or denial letter from the IRS for more than 2 years after submitting their applications, and in some instances remained open as long as over 1,000 calendar days.

Moreover, the audit report notes that the same Determinations Unit sent out burdensome request letters for additional information, 58 percent of which the inspector general has characterized as unnecessary.

In light of these and other reports, it's my hope that today's hearing will serve to build upon the investigation conducted by Inspector General George by—and assist our committee in determining how we can better ensure that such practices are never repeated within the Federal Government.

But there's something else at play here. If we don't get, if this committee is prevented by obstruction or by refusal to answer the questions that we need to get to the bottom of this, you will leave us no alternative but to ask for the appointment of a special prosecutor or appointment to special counsel to get to the bottom of this. This is a very serious matter. We would like to handle it in this committee, but if—I watched the last hearing where the witness for the IRS had no names and no direction as to who led these investigations, who chose the terms to be used, and basically stonewalled the committee. That cannot continue. We know where that will lead. It will lead to a special prosecutor. It will lead to special counsel being appointed to get to the bottom of this. So I hope that is not the approach of the IRS going forward, because there will be hell to pay if that's the route that we chose to go down.

Thank you, Mr. Chairman. I yield back the balance of my time.

I thank the gentleman.

All Members will have 7 days in which to place their opening statements in the record.

We now recognize our panel of witnesses. Mr. Russell George is the Treasury IGs for the Tax Administration. Mr. Douglas Shulman is the former Commissioner of the Internal Revenue Service. Miss Lois Lerner is the Director of Exempt Organizations at the Internal Revenue Service. Mr. Neal S. Wolin is the Deputy Secretary at the Department of Treasury, as I previously noted, essentially the report 2 of the Commissioner.

Pursuant to the rules of the committee, all witnesses will be sworn. Would you please rise, raise your right hand to take the oath.

Do you solemnly swear that the testimony you will give will be the truth, the whole truth, and nothing but the truth?

Let the record indicate all witnesses answered in the affirmative.

Please take your seats.

For all of the witnesses, your entire opening statements will be placed in the record. We understand sometimes you are obligated to stay with your opening statement. If so, keep it within 5 minutes. If you would like to use the time to either add to or to summarize, that can be very helpful for the Members.

Mr. George, you are up first. Welcome.

WITNESS STATEMENTS

STATEMENT OF J. RUSSELL GEORGE

Mr. GEORGE. Thank you, Mr. Chairman.

Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to discuss our recent report concerning the Internal Revenue Service's treatment of groups that applied for tax-exempt status. As you noted, and as you are aware, Mr. Chairman, our audit was initiated based on concerns that you expressed due to taxpayer allegations that they were subjected to unfair treatment by the IRS.

The three allegations considered during our review were proven true. The IRS targeted specific groups applying for tax-exempt status. It delayed the processing of these groups' applications, and requested unnecessary information, as well as subjected these groups to special scrutiny.

It is important to note that the IRS conducted an audit that—rather, that we, TIGTA, conducted an audit of the IRS and not an investigation. Pursuant to the Inspector General Act, TIGTA is authorized to conduct both audits as well as investigations in our oversight of IRS programs and operations. Audits are generally reviews of IRS programs designed to identify systemic problems and recommend corrective actions, whereas investigations are focused on a person or persons and are usually undertaken in response to reports or complaints of misconduct. Investigations may be criminal or administrative in nature and can result in referral for prosecution or referral for management for administrative action.

Once again, the report we are discussing today is an audit of the IRSs processing of tax-exempt applications. It is not uncommon for audits to present specific issues that lead to additional reviews or

SFC 004155

investigations. The inappropriate criteria discussed in this audit were the IRSs targeting for review Tea Party and other organizations based on their names or policy positions, a practice started in 2012, and which was not fully corrected until May 2012. Actually the practice was started in 2010 and not fully corrected until May of 2012. These criteria were inappropriate in that they did not focus on tax-exempt laws and Treasury regulations. They remained in effect for approximately 18 months.

The organizations selected for review for significant political campaign intervention experienced substantial delays in the processing of their applications. In addition, many of these organizations received requests for unnecessary information, including lists of donors.

In closing, our overall assessment is that the IRS demonstrated poor judgment and gross mismanagement in the implementation of this program. The substantiated allegations are troubling and raise many questions.

Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the invitation to appear.

Chairman ISSA. Thank you.

[Prepared statement of Mr. George follows:]

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TESTIMONY
OF
THE HONORABLE J. RUSSELL
GEORGE
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION
before
the
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

"The IRS: Targeting Americans for Their Political Beliefs"

May 22, 2013

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for the invitation to provide testimony on the subject of the Internal Revenue Service's (IRS) processing of certain applications for tax-exempt status. The Treasury Inspector General for Tax Administration, also known as TIGTA, has provided ongoing oversight of the IRS's Tax Exempt and Government Entities Division, Exempt Organizations' (EO) customer service and compliance efforts, including those related to political activities. For example, several reviews have covered the IRS's political activities compliance initiative,[1] as well as the processing of political action committees' returns.[2] My testimony today focuses on the results of our most recently issued report.[3] In this report, TIGTA determined whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted groups. Our report is included as an attachment to the testimony, and I will provide highlights of our key findings.

Organizations, such as Internal Revenue Code (I.R.C.) Section (§) 501(c)(3)[4] charities, seeking Federal tax exemption are required to file an application with the IRS. Other organizations, such as I.R.C. § 501(c)(4)[5] social welfare organizations,[6]

[1] TIGTA, Ref. No. 2005-10-035, *Review of the Exempt Organizations Function Process for Reviewing Alleged Political Campaign Intervention By Tax-Exempt Organizations* (Feb. 2005);
TIGTA, Ref. No. 2008-10-117, *Improvements Have Been Made to Educate Tax-Exempt Organizations and Enforce the Prohibition Against Political Activities, but Further Improvements Are Possible* (June 2008).
[2] TIGTA, Ref. No. 2005-10-125, *Additional Actions Are Needed to Ensure Section 527 Political Organizations Publicly Disclose Their Actions Timely and Completely* (Aug. 2005);
TIGTA, Ref. No. 2010-10-018, *Improvements Have Been Made, but Additional Actions Could Ensure That Section 527 Political Organizations More Fully Disclose Financial Information* (Feb. 2010).
[3] TIGTA, Ref. No. 2013-10-053, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 2013).
[4] I.R.C. § 501(c)(3) (2012).
[5] I.R.C. § 501(c)(4) (2012).

may file an application but are not required to do so. The IRS's EO function's Rulings and Agreements office, which is based in Washington, D.C., is responsible for processing applications for tax exemption. Within the Rulings and Agreements office, the Determinations Unit in Cincinnati, Ohio, is responsible for reviewing applications as they are received to determine whether the organization qualifies for tax-exempt status. If the Determinations Unit needs technical assistance[7] processing applications, it may call upon the Technical Unit in Washington, D.C., which is within the Rulings and Agreements office.

Most organizations requesting tax-exempt status must submit either a Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*,[8] depending on the type of tax-exempt organization.

The I.R.C. section under which an organization is granted tax-exempt status affects the activities it may undertake. For example, I.R.C. § 501(c)(3) charitable organizations are prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office (hereinafter referred to as political campaign intervention).[9] However, I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5)[10] agricultural and labor organizations,[11] and I.R.C. § 501(c)(6)[12] business leagues[13] may engage in limited political campaign intervention.

The IRS receives thousands of applications for tax-exempt status annually. Between fiscal years 2009 and 2012, the IRS received approximately 60,000-65,000 applications for I.R.C. § 501(c)(3) status each year. In addition, receipts for

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[6] Organizations that promote social welfare primarily promote the common good and general welfare of the people of the community as a whole, such as a nonprofit organizations providing financial counseling, youth sports, and public safety.

[7] Assistance such as interpretation of the tax law or guidance on issues that are not covered by clearly established precedent.

[8] Form 1024 is used by organizations seeking tax-exempt status under a number of other I.R.C. sections, including I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5) agricultural and labor organizations, and I.R.C. § 501(c)(6) business leagues.

[9] Political campaign intervention is the term used in Treasury Regulations §§ 1.501(c)(3)-1, 1.501(c)(4)-1, 1.501(c)(5)-1, and 1.501(c)(6)-1. I.R.C. § 501(c)(3) defines political campaign intervention as directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

[10] I.R.C. § 501(c)(5) (2012).

[11] Agricultural organizations promote the interests of persons engaged in raising livestock or harvesting crops, and labor organizations include labor unions and collective bargaining associations.

[12] I.R.C. § 501(c)(6) (2012).

[13] Nonprofit organizations such as chambers of commerce, real estate boards, and boards of trade that promote the improvement of business conditions.

I.R.C. § 501(c)(4) applications increased between fiscal years 2009 and 2012 from approximately 1,700 to more than 3,300 annually.

During the 2012 election cycle, some Members of Congress raised concerns to the IRS about its selective enforcement efforts and reemphasized its duty to treat similarly situated organizations consistently. In addition, several organizations applying for I.R.C. § 501(c)(4) tax-exempt status made allegations that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed the processing of targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted organizations. Lastly, several Members of Congress requested that the IRS investigate whether existing social welfare organizations are improperly engaged in a substantial, or even predominant, amount of campaign activity.[14]

We initiated this audit based on concerns expressed by the Committee on Oversight and Government Reform and reported in the media regarding the IRS's treatment of organizations applying for tax-exempt status. We focused our efforts on reviewing the processing of applications for tax-exempt status and determining whether allegations made against the IRS were founded. Over 600 tax-exempt application case files were reviewed by TIGTA. We did not review whether specific applications for tax-exempt status should be approved or denied.

Results of Review

In summary, we found that all three allegations were substantiated. The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention. Because of ineffective management by IRS officials: 1) inappropriate criteria were developed and stayed in place for a total of more than 18 months, 2) there were substantial delays in processing certain applications, and 3) unnecessary information requests were issued to the organizations.

Inappropriate Criteria Were Used to Identify Potential Political Cases

The IRS developed and began using criteria to identify tax-exempt applications for review by a team of specialists that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions, instead of developing

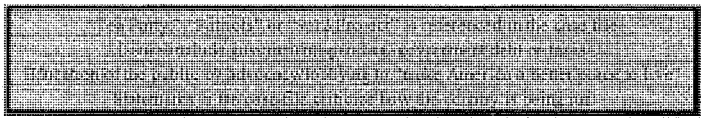
[14] A second audit is planned to assess how the EO function monitors I.R.C. §§ 501(c)(4)–(6) organizations to ensure that political campaign intervention does not constitute their primary activity.

criteria based on tax-exempt laws and Treasury Regulations. The criteria evolved during 2010.

- In early Calendar Year 2010, according to an IRS Determinations Unit specialist, the IRS began searching for applications with "Tea Party," "Patriots," or "9/12" in the organization's name as well as other "political-sounding" names (hereinafter referred to as potential political cases).
- In May 2010, a Determinations Unit specialist and group manager began developing a spreadsheet that would become known as the "Be On the Look Out" listing (hereinafter referred to as the "BOLO" listing), which included the emerging issue of Tea Party applications.
- In June 2010, Determinations Unit managers and specialists began training Determinations Unit specialists on issues to be aware of, including Tea Party cases.
- By July 2010, Determinations Unit management stated that it had requested its specialists to be on the lookout for Tea Party applications.

In August 2010, the Determinations Unit distributed the first formal BOLO listing. The criteria in the BOLO listing were stated as "Tea Party organizations" applying for I.R.C. § 501(c)(3) or I.R.C. § 501(c)(4) status.

EO function officials in Washington, D.C. stated that Determinations Unit specialists interpreted the general criteria in the BOLO listing and developed expanded criteria for identifying potential political cases. By June 2011, these criteria included:



The Director, EO, stated that the expanded criteria were a compilation of various Determinations Unit specialists' responses on how they were identifying Tea Party cases. We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS. Instead, the Determinations Unit developed and implemented inappropriate criteria due to insufficient oversight provided by management and other human capital challenges.

Specifically, first-line management in Cincinnati, Ohio approved references to the Tea Party in the BOLO listing criteria. As a result, inappropriate criteria remained in place for more than 18 months.[15] Determinations Unit managers and employees also did not consider the public perception of using these criteria when identifying these cases. Moreover, the criteria developed showed that the Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) organizations.

However, developing and using criteria that focus on organization names and policy positions instead of the activities permitted under the Treasury Regulations does not promote public confidence that tax-exempt laws are being applied impartially. The IRS's actions regarding the use of inappropriate criteria over such an extended period of time has brought into question whether the IRS has treated all taxpayers fairly, which is an essential part of its mission statement.[16]

After being briefed on the expanded criteria in June 2011, the Director, EO, immediately directed that the criteria be changed. In July 2011, the criteria were changed to focus on the potential "political, lobbying, or advocacy" activities of the organization and references to these cases were changed from "Tea Party cases" to "advocacy cases." These criteria were an improvement over using organization names and policy positions because they were more consistent with tax-exempt laws and Treasury Regulations.

However, the team of Determinations Unit specialists subsequently changed the criteria in January 2012 without senior IRS official approval because they believed the July 2011 criteria were too broad. The January 2012 criteria again focused on the policy positions of organizations, instead of tax-exempt laws and Treasury Regulations. After three months, the Director, Rulings and Agreements, in Washington, D.C. learned the criteria had been changed by the team of specialists and subsequently revised the criteria again in May 2012. The May 2012 criteria more clearly focus on activities permitted under the Treasury Regulations. We are not aware of any additional changes to the criteria during our audit. We are continuing to look into whether any violations of

[15] The 18 months were not consecutive. There were two different time periods when the criteria were inappropriate (May 2010 to July 2011 and January 2012 to May 2012).
[16] The IRS's mission is to provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

the Internal Revenue Service Restructuring and Reform Act of 1998[17] (RRA 98) have occurred and if any political influence caused the change in criteria.[18]

Potential Political Cases Experienced Significant Processing Delays

The organizations that applied for tax-exempt status and that had their applications forwarded to the team of specialists for additional review experienced substantial delays. As of December 17, 2012, many organizations had not received an approval or denial letter for more than two years after they submitted their applications. Some cases have been open during two election cycles (2010 and 2012).

Potential political cases took significantly longer than average to process due to ineffective management oversight. Once cases were initially identified for processing by the team of specialists in February 2010, the Determinations Unit Program Manager requested assistance via e-mail from the Technical Unit to ensure consistency in processing the cases. However, the Determinations Unit waited more than 20 months (February 2010 to November 2011) to receive draft written guidance from the Technical Unit for processing potential political cases.

The team of specialists stopped working on potential political cases from October 2010 through November 2011, resulting in a 13-month delay, while they waited for assistance from the Technical Unit. Many organizations waited much longer than 13 months for a decision while others have yet to receive a decision from the IRS. For example, as of December 17, 2012, the IRS had been processing several potential political cases for more than 1,000 calendar days (approximately 3 years). Some of these organizations received requests for additional information in Calendar Year 2010 and then did not hear from the IRS again for more than a year while the Determinations Unit waited for assistance from the Technical Unit. For the 296 potential political cases we reviewed, as of December 17, 2012, 108 applications had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 cases were open from 206 to 1,138 calendar days (some crossing two election cycles).

[17] Pub. L. No. 105-206, 112 Stat. 685, 1998 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

[18] For example, it is a violation of RRA 98 § 1203(b)(3) for IRS employees to violate a taxpayer's civil rights, a violation of RRA 98 § 1203(b)(4) to falsify or destroy documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative, and a violation of RRA 98 § 1203(b)(6) for IRS employees to violate the Internal Revenue Code, Treasury Regulations, or policies of the IRS for purposes of retaliating against or harassing a taxpayer. Proven violations of Section 1203 require the termination of the offending IRS employee.

The IRS Requested Unnecessary Information for Many Potential Political Cases

After receiving draft guidance in November 2011 from the Technical Unit on processing potential political cases, a different team of specialists in the Determinations Unit began sending requests for additional information in January 2012 to organizations that were applying for tax-exempt status. For some organizations, this was the second letter received from the IRS requesting additional information, the first of which had been received more than a year before this date. These letters requested that the information be provided in two or three weeks (as is customary in these letters) despite the fact that the IRS had done nothing with some of the applications for more than one year. After the letters were received, organizations seeking tax-exempt status, as well as Members of Congress, expressed concerns about the type and extent of questions being asked.

After this media attention, the Director, EO, stopped issuance of additional information request letters and provided an extension of time to respond to previously issued letters. EO function headquarters Washington, D.C. office employees reviewed the additional information request letters prepared by the team of specialists and identified seven questions that they deemed unnecessary, including requests for donor information, position on issues, and whether officers have run for public office. Subsequently, the EO function instituted the practice that all additional information request letters for potential political cases be reviewed by the EO function headquarters office before they are sent to organizations seeking tax-exempt status. In addition, EO function officials informed us that they decided to destroy all donor lists that had been sent in for potential political cases which the IRS determined it should not have requested.

The Determinations Unit requested unnecessary information because of a lack of managerial review, at all levels, of these information requests before they were sent to organizations seeking tax-exempt status. Additionally, as mentioned earlier, we concluded that Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) tax-exempt organizations. In May 2012, a two-day workshop was provided to the team of specialists to train them on what activities are allowable by I.R.C. § 501(c)(4) organizations, including lobbying and political campaign intervention.

IRS's Response to Our Recommendations

TIGTA made nine recommendations to provide more assurance that applications are processed in a fair and impartial manner in the future without unreasonable delay. The IRS agreed to seven of our nine recommendations and proposed alternative

corrective actions for two of our recommendations. However, we do not agree that the alternative corrective actions will accomplish the intent of the recommendations. One of these recommendations was that the IRS should clearly document the reason applications are chosen for further review for potential political campaign intervention. The second was that the IRS should develop specific guidance for specialists processing potential political cases and publish the guidance on the Internet. Further, the IRS's response also states that issues discussed in the report have been resolved. We disagree with this assertion. Until all of our recommendations are fully implemented and the numerous applications that were open as of December 2012 are closed, we do not consider the concerns in this report to be resolved. In addition, as part of our mission, TIGTA will also determine whether any criminal activity or administrative misconduct occurred during this process. The attached TIGTA report includes additional information on all nine recommendations and the IRS's planned corrective actions and completion dates.

We at TIGTA are committed to delivering our mission of ensuring an effective and efficient tax administration system and preventing, detecting, and deterring waste, fraud, and abuse. As such, we plan to provide continuing audit and investigative coverage of the IRS's efforts to administer the tax-exempt laws.

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to update you on our work on this tax administration issue and to share my views.

Chairman ISSA. Mr. Shulman.

STATEMENT OF DOUGLAS SHULMAN

Mr. SHULMAN. Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to appear before the Committee on Oversight and Government Reform to discuss the Treasury IGs findings.

I was the Commissioner of the Internal Revenue Service from March 2008 until November 2012, and during that time the agency was called upon to tackle a number of challenges. The agency played a key role in stimulus and economic recovery efforts during the economic downturn, aggressively addressed offshore tax evasion, and completed a major modernization of its core technology database. The agency also continued to deliver on its core mission of collecting the revenue to fund the government.

The IRS is a major operation with more than 90,000 employees who work on issues ranging from processing individual tax returns to building complex technology, to ensuring compliance with businesses, to educating the public about tax law changes, to administering a very complex set of rules governing tax-exempt organizations.

I have now read the Treasury IGs report. I was dismayed and saddened to read the inspector general's conclusions that actions had been taken creating the appearance that the Service was not acting as it should have; that is, as a nonpolitical, nonpartisan agency. Utilizing a list with keywords to select applicants for review based on organizations' names or policy positions is, in my view, inappropriate and damaging.

The IRS serves a critical function for our Nation. It collects the taxes necessary to run the government. Because of this important responsibility, the IRS must administer and must be perceived to administer our tax laws fairly and impartially. Given the challenges that the agency faces, it does its job in an admirable way the great majority of the time. And the men and women of the IRS are hard-working, honest public servants.

While the inspector general's report did not indicate that there was any political motivation involved, the actions outlined in the report have justifiably led to questions about the fairness of the approach taken here. The effect is bad for the agency and bad for the American taxpayer.

I'm happy to answer questions.

Chairman ISSA. Thank you.

[Prepared statement of Mr. Shulman follows:]

Doug Shulman Statement for House Oversight and Reform Committee
May 20, 2013

My name is Doug Shulman. Thank you for the opportunity to appear before the Committee on Oversight and Government Reform to discuss the findings of the May 14, 2013 report by the Treasury Inspector General for Tax Administration entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review."

I was Commissioner of the Internal Revenue Service from March 2008 until November 2012, and during that time the agency was called upon to tackle a number of challenges. The agency played a key role in stimulus and recovery efforts during the economic downturn, aggressively addressed offshore tax evasion and completed a major modernization of its core technology database. The agency also continued to deliver on its core mission of collecting the revenue to fund the government. The IRS is a major operation with more than 90,000 employees who work on issues ranging from processing individual tax returns, to building complex technology, to ensuring compliance with businesses, to educating the public about tax law changes, to administering a very complex set of rules governing tax exempt organizations.

I have read the recent Treasury Inspector General for Tax Administration's report entitled: "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review." I was dismayed and saddened to read the Inspector General's conclusions that actions had been taken creating the appearance that the Service was not acting as it should have – that is, as a non-political, non-partisan agency. Utilizing a list with keywords to select applications for review based upon the organizations' names or policy positions is, in my view, inappropriate and damaging.

The IRS serves a critical function for our nation: It collects the taxes necessary to run the government. Because of this important responsibility, the IRS must administer—and be perceived to administer—our tax laws fairly and impartially. Given the challenges that the agency faces, it does its job in an admirable way the great majority of the time—and that the men and women of the IRS are hard working, honest public servants. While the Inspector General's report did not indicate that there was any political motivation involved, the actions outlined in the report have justifiably led to questions about the fairness of the approach taken here. The effect has been bad for the agency and bad for the American taxpayer.

I am happy to answer any questions the Committee may have.

Chairman ISSA. Ms. Lerner, I note that you have not provided a written testimony for the committee. Do you wish to make an opening statement?

Ms. LERNER. Yes, sir, I do.

Chairman ISSA. Please proceed.

STATEMENT OF LOIS G. LERNER

Ms. LERNER. Good morning, Mr. Chairman and members of the committee. My name is Lois Lerner, and I'm the Director of Exempt Organizations at the Internal Revenue Service.

I have been a government employee for over 34 years. I initially practiced law at the Department of Justice and later at the Federal Election Commission. In 2001, I became—I moved to the IRS to work in the Exempt Organizations office, in 2006, I was promoted to be the Director of that office.

Exempt Organizations oversees about 1.6 million tax-exempt organizations and processes over 60,000 applications for tax exemption every year. As Director I'm responsible for about 900 employees nationwide and administer a budget of almost $100 million.

My professional career has been devoted to fulfilling responsibilities of the agencies for which I have worked, and I am very proud of the work that I have done in government.

On May 14th, the Treasury IGs released a report finding that the Exempt Organizations field office in Cincinnati, Ohio, used inappropriate criteria to identify for further review applications from organizations that planned to engage in political activity which may mean that they did not qualify for tax exemption. On that same day, the Department of Justice launched an investigation into the matters described in the inspector general's report. In addition, members of this committee have accused me of providing false information when I responded to questions about the IRS processing of applications for tax exemption.

I have not done anything wrong. I have not broken any laws. I have not violated any IRS rules or regulations, and I have not provided false information to this or any other congressional committee.

And while I would very much like to answer the committee's questions today, I've been advised by my counsel to assert my constitutional right not to testify or answer questions related to the subject matter of this hearing. After very careful consideration, I have decided to follow my counsel's advice and not testify or answer any of the questions today.

Because I'm asserting my right not to testify, I know that some people will assume that I've done something wrong. I have not. One of the basic functions of the Fifth Amendment is to protect innocent individuals, and that is the protection I'm invoking today. Thank you.

Chairman ISSA. Thank you for your testimony.

Chairman ISSA. Ms. Lerner, earlier the ranking member made me aware of a response we have that is purported to come from you in regards to questions that the IG asked during his investigation. Can we have you authenticate simply the questions and answers previously given to the inspector general?

Ms. LERNER. I don't know what that is. I would have to look at it.

Chairman ISSA. Okay.

Would you please make it available to the witness?

Ms. LERNER. This appears to be my response.

Chairman ISSA. So it's your testimony that as far as your recollection, that is your response?

Ms. LERNER. That's correct.

Chairman ISSA. Ms. Lerner, the topic of today's hearing is the IRS improper targeting of certain groups for additional scrutiny regarding their application for tax-exempt status. As Director of Exempt Organizations of the Tax-Exempt and Government Entities Division of the IRS, you were uniquely positioned to provide testimony to help this committee better understand how and why the IRS targeted these groups. To that end, I must ask you to reconsider, particularly in light of the fact that you have given not once, but twice testimony before this committee under oath this morning. You have made an opening statement in which you made assertions of your innocence, assertions you did nothing wrong, assertions you broke no laws or rules. Additionally, you authenticated earlier answers to the IG.

At this point I believe you have not asserted your rights, but, in fact, have effectively waived your rights. Would you please seek consult for further guidance on this matter while we wait?

Ms. LERNER. I will not answer any questions or testify about the subject matter of this committee's meeting.

Chairman ISSA. We will take your refusal as a refusal to testify.

The witness and counsel are dismissed.

Mr. GOWDY. Mr. Chairman, a point of order.

Chairman ISSA. The gentleman will state a point of order. Please wait.

Mr. GOWDY. Mr. Issa, Mr. Cummings just said we should run this like a courtroom, and I agree with him. She just testified. She just waived her Fifth Amendment right to privilege. You don't get to tell your side of the story and then not be subjected to cross examination. That's not the way it works. She waived her right of Fifth Amendment privilege by issuing an opening statement. She ought to stay in here and answer our questions.

Mr. CUMMINGS. Mr. Chairman.

Chairman ISSA. Mr. Cummings.

Mr. CUMMINGS. I—first of all, with all respect for my good friend Mr. Gowdy, I said I would like to see it run like a Federal court. Unfortunately, this is not a Federal Court, and she does have a right, and I think—and we have to adhere to that.

Chairman ISSA. Thank you.

We'll pause for a moment.

Ms. Lerner, I'll ask you just a couple of additional questions.

Is it possible that we could narrow the scope of questions, and that there are some areas that you would be able to answer any questions on here today?

Ms. LERNER. I will not answer any questions or testify today.

Chairman ISSA. Ms. Lerner, would you be willing to answer questions specifically related to the earlier statements made under oath before this committee?

Ms. LERNER. I decline to answer that question for the reasons I have already given.

Chairman ISSA. For this reason I have no choice but to excuse the witness subject to recall after we seek specific counsel on the questions of whether or not the constitutional right of the Fifth Amendment has been properly waived. Notwithstanding that, in consultation with the Department of Justice as to whether or not limited or use of unity could be negotiated, the witness and counsel are dismissed. The clerk will please rearrange the seating.

For all of the Members on both sides of the dais, I think it is important that we take a moment, though I think I speak for Mr. Cummings and myself. This is a committee that is investigating more than anything else the ultimate right of free speech and the First Amendment. So as we go on with the rest of this hearing, I would admonish all of us to remember that it is not the First Amendment, or the Second Amendment, or the Fifth Amendment, or the 10th amendment in a vacuum. We have to respect them all.

The gentlelady who has departed was entitled to assert her Fifth Amendment. Although there is some questions about how it was done, there could be no question that we have to respect it; additionally, that her assertion is not to be viewed or used during this hearing to make any determination, plus or minus, as to actions that were taken.

We have the inspector general with us today, we have other fact witnesses, and this committee has more than 10 additional witnesses that will be called either to hearings or to interviews already on the schedule.

I believe that this committee has a long history of very few, during my tenure of 12 years, of these occasions, and we should not use this either for political gain or for any indication that it is anything other than somebody's right.

It is the committee's work to find out what went terribly wrong. I will take one liberty mentioning Mr. Cummings' earlier statement. At this point this committee is not investigating wrongdoing for political purposes by high-ranking individuals in or out of this government. We are investigating something which has now been entered as fact that wrongdoing occurred, and occurred over a group, and that group happened to be keyworded things that are generally called conservative.

In my research on this, and I think Mr. Cummings would agree, this is not new to government. This has happened before, and it has not always been conservative groups. So as we go through this, I would ask all of us to avoid talking about who was liked by President Bush, who is liked by President Obama, who is liked by Republicans or Democrats. Let's all be "Republicrats" and "Democans" today.

Mr. Cummings.

Mr. CUMMINGS. Mr. Chairman, first of all, I appreciate you saying what you just said. And I agree with what you just said, and I would associate myself with your words.

Mr. JORDAN. Mr. Chairman.

Chairman ISSA. Thank you.

For what purpose does the gentleman seek recognition?

Mr. JORDAN. If the gentleman will just yield for 1 minute.

Chairman ISSA. A fraction thereof.

Mr. JORDAN. Okay. I just want to say the same. I appreciate what the chairman said, I think he is right on target, but the irony is inescapable. Ms. Lerner gets to exercise her constitutional rights, but she won't stay here and answer questions about the constitutional rights of thousands of Americans who were denied by their action.

Chairman ISSA. I thank the gentleman. It is this committee's goal to get to the truth. If we have to go circuitous routes, we will eventually get there. The dots will be connected.

With that, Mr. Wolin, would you move over? It will be less distracting, and we will remove the other chair.

Actually I'll take note of the gentlelady's opening statement. She made it very obvious, with 90,000 IRS individuals, 900 working for her, and more or less 9 out of 900 involved in this, or maybe slightly more, we're talking about a fraction of 1 percent of the IRS. And I join with the gentleman in recognizing that this is not to disparage the men and women of the IRS.

Mr. Wolin, you're recognized for 5 minutes.

STATEMENT OF NEAL S. WOLIN

Mr. WOLIN. Thank you, Mr. Chairman.

Chairman Issa, Ranking Member Cummings, members of the committee, thank you for the opportunity to appear before you today.

Last week the Treasury Inspector General for Tax Administration Mr. George published a report on the Internal Revenue Service's use of inappropriate criteria to identify tax-exempt applications. Like President Obama and Secretary Lew, I believe that the activities described in the report are absolutely unacceptable and inexcusable. The IRS must operate without bias or even the perception of bias. It must act in an utterly nonpartisan manner. It must act with the utmost integrity.

The IRS did not do that here. Upon learning of the IGs findings, President Obama and Secretary Lew took immediate action. First, within 24 hours of receiving the IGs report, Secretary Lew asked for and accepted the resignation of the Acting Commissioner. The next day the Acting Commissioner for Tax Exempt and Government Entities tendered his resignation. The day after that the President appointed Danny Werfel to be the new IRS Acting Commissioner and charged him with holding accountable anyone responsible for improper conduct.

Second, Secretary Lew instructed Mr. Werfel to implement fully and promptly all nine of the recommendations in the IG report. Secretary Lew also directed Mr. Werfel to examine and correct any failures in the system that allowed this behavior to happen.

Third, the Secretary asked Mr. Werfel to conduct a broader review to see whether the inexcusable conduct reflects larger management failures and cultural issues at the IRS that require systematic change.

Mr. WOLIN. Secretary Lew directed Mr. Werfel to take action and implement the necessary changes. Within 30 days Mr. Werfel will report back to Secretary Lew and the President on his progress and on any future actions he expects to take.

Before I describe Treasury's interactions with the IG related to this audit, it is important to underscore two critical points. First, there is no indication that Treasury was involved in the improper conduct at the IRS. The IG report did not find any evidence that Treasury or others outside the IRS had any role. Mr. George confirmed this point in his testimony before the Ways and Means Committee last Friday and before the Senate Finance Committee yesterday.

Second, the improper conduct already had ended by the time Mr. George informed Treasury of the facts of his audit. Mr. George's report states that the improper conduct ended in May, 2012. Mr. George has testified that he first notified Treasury of the fact that he was conducting an audit in June of 2012. At some point in 2012, though I do not recall precisely when, Mr. George notified me at his initiative that he had undertaken an audit of the IRS' review of tax-exempt applications. He told me only of the fact that he had undertaken such an audit and did not provide any findings. That is my recollection, and that is what Mr. George testified before the Ways and Means Committee last Friday and before the Senate Finance Committee yesterday.

In that conversation, I told him that he should follow the facts where they lead. I told him that our job is to stay out of the way and let him do his work. I told him to let us know if he wanted our help and otherwise to let us know when he had more to tell us. I understand that Mr. George also notified this committee in July 2012 that he had begun his review. And similarly in October 2012, he provided a notice on his public Web site that he was conducting his review.

Again, to be clear, Mr. George told me that he was conducting an audit. And I told him to follow the facts wherever they lead. Our core principle is that we do not interfere in any way with the independent review of an Inspector General. When an Inspector General tells us he is conducting a review, we step back and leave him to do his work. That is how the process functions, that is how the process should function, and that is how the process functioned here.

Let me reiterate that there is no indication that Treasury was involved in the inexcusable behavior at the IRS and Treasury only learned of the fact that the IG was conducting a review after the unacceptable conduct had already ended. It is important in this context to make clear that Treasury's longstanding practice, spanning Republican and Democratic administrations, is not to involve itself in the details of the IRS' administration and enforcement of the Nation's tax laws. It is critical that the Nation's tax laws are administered and enforced in a way that neither involves political influence nor the perception of political influence. This is particularly true with respect to decisions affecting specific taxpayers.

Over the past 12 days, President Obama and Secretary Lew have taken decisive act to address what happened at the IRS. The President named a new Acting Commissioner and we charged him with holding parties, responsible parties accountable and with taking immediate actions to prevent these inexcusable acts from happening again.

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Treasury is committed to taking all measures to restore the public's confidence in the IRS, and toward that end we have asked the IG for its continued assistance, and we are operating fully with this committee and with the Congress.

Thank you again for the opportunity to appear before you today.

[Prepared statement of Mr. Wolin follows:]

EMBARGOED UNTIL 9:30 A.M. 5/22/13

Statement of Neal S. Wolin
Deputy Secretary of the Treasury
before the
Committee on Oversight and Government Reform
United States House of Representatives
May 22, 2013

Chairman Issa, Ranking Member Cummings, members of the Committee, thank you for the opportunity to appear before you today.

Last week the Treasury Inspector General for Tax Administration (TIGTA), J. Russell George, published a report on the Internal Revenue Service's (IRS) use of inappropriate criteria to identify tax-exempt applications. Like President Obama and Secretary Lew, I believe that the activities described in the report are absolutely unacceptable and inexcusable. The IRS must operate without bias or even the perception of bias. It must act in an utterly nonpartisan manner. It must act with the utmost integrity. The IRS did not do that here.

Upon learning of TIGTA's findings, President Obama and Secretary Lew immediately took action.

First, within twenty-four hours of receiving the TIGTA's report, Secretary Lew asked for and accepted the resignation of the Acting Commissioner. The next day, the Acting Commissioner for Tax Exempt and Government Entities tendered his resignation. The day after that, the President appointed Daniel Werfel to be the new Acting Commissioner and charged him with holding accountable anyone responsible for the improper conduct.

Second, Secretary Lew instructed Mr. Werfel to implement, fully and promptly, all nine of the recommendations in the TIGTA report. Secretary Lew also directed Mr. Werfel to examine and correct any failures in the system that allowed this behavior to happen.

Third, the Secretary asked Mr. Werfel to conduct a broader review to see whether the inexcusable conduct reflects larger management failures and cultural issues at the IRS that require systemic change. Secretary Lew directed Mr. Werfel to take action and implement the necessary changes.

Within 30 days, Mr. Werfel will report back to Secretary Lew and the President on his progress and any future actions he expects to take.

Mr. Werfel is ideally suited for his charge. He is a career public servant. He has worked in both Democratic and Republican administrations. He is an effective leader who serves with the kind of professionalism, integrity, and skill that the American people deserve. He has our full support. Today is his first day, and we are confident that he will hit the ground running.

Before I describe Treasury's interactions with TIGTA related to this audit, it is important to underscore two critical points.

EMBARGOED UNTIL 9:30 A.M. 5/22/13

First, there is no indication that Treasury was involved in the improper conduct at the IRS. The TIGTA report did not find any evidence that Treasury or others outside the IRS had any role. Mr. George confirmed this point in his testimony before the House Ways and Means Committee last Friday and before the Senate Finance Committee yesterday.

Second, the improper conduct already had ended by the time Mr. George informed Treasury of the fact of his audit. Mr. George's report states that the improper conduct ended in May 2012. Mr. George testified that he first notified Treasury of the fact that he was conducting the audit – but not any results – in June 2012.

At some point in 2012, though I do not recall precisely when, Mr. George notified me, at his initiative, that he had undertaken an audit of the IRS's review of tax-exempt applications. He told me only of the fact that he had undertaken such an audit, and he did not provide any findings. That is my recollection, and that is what Mr. George testified before the House Ways and Means Committee last Friday and before the Senate Finance Committee yesterday.

In that conversation, I told him that he should follow the facts wherever they lead. I told him that our job is to stay out of the way and let him do his work. I told him to let us know if he wanted our help and otherwise to let us know when he had more to tell us.

I understand that Mr. George also notified this Committee in July 2012 that he had begun his review. Similarly, in October 2012, he provided a notice on his public website that he was conducting his review.

Again, to be clear, Mr. George told me that he was conducting an audit, and I told him to follow the facts wherever they lead. Our core principle is that we do not interfere in any way – or do anything to create the perception of interference – with the independent review of an inspector general. When an inspector general tells us he is conducting a review, we step back and leave him to do his work. That is how the process functions. That is how the process should function. And that is how the process functioned here.

On March 15, 2013, Mr. George had a short introductory meeting with Secretary Lew. At that meeting, Mr. George informed Secretary Lew of a number of matters TIGTA was reviewing. He also indicated that this audit report would be forthcoming. Mr. George did not describe any details of his audit findings. This was also in line with standard practice.

Let me reiterate that there is no indication that Treasury was involved in the inexcusable behavior at the IRS. And Treasury only learned of the fact that TIGTA was conducting a review after the unacceptable conduct already had ended.

It is important in this context to make clear that Treasury's longstanding practice – spanning Republican and Democratic administrations – is not to involve itself in the details of the IRS's administration and enforcement of the nation's tax laws. It is critical that the nation's tax laws are administered and enforced in a way that neither involves political influence, nor the perception of political influence. This is particularly true with respect to decisions affecting

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Over the past twelve days, President Obama and Secretary Lew have taken decisive action to address what happened at the IRS. The President named a new Acting Commissioner, and we charged him with holding responsible parties accountable and with taking immediate action to prevent these inexcusable acts from happening again.

Treasury is committed to taking all measures to restore the public's confidence in the IRS. Toward that end, we have asked TIGTA for its continued assistance, and we are cooperating fully with this Committee and this Congress. Thank you again for the opportunity to appear before you today.

Chairman ISSA. Thank you, Mr. Wolin.

I'm going to comment that I've never heard a defense of not knowing and I'm disappointed.

Let me go through a line of questioning primarily with Mr. George.

Mr. George, before the Ways and Means Committee you told Representative Danny Davis the following: Our audit, sir, began with the request of Congressional staff in what I want to give you, I want to give you the exact date, sir, I do not have it here, March 1st of 2012 is when there was an initial contact with the Government Reform and Oversight Committee and our audit began or roughly, and then you go on with May or March et cetera et cetera.

So essentially this began in your mind when you were made aware of it in March of 2012 by members of my committee, staff members of my committee correct?

Mr. GEORGE. Yes.

Chairman ISSA. So, oddly enough, we have with us and put it up on the board from Holly Paz a document just released to us yesterday, I guess in preparation for yesterday's interview, that says forward TIGTA document request, the following are issues that could indicate a case to be considered a potential Tea Party case and sent for secondary screening, one Tea Party Patriots of 9/12 project, two or Number 4 statements in the case file that are critical of how the country is being run.

Now, that's May 20th of 2013. To your knowledge, is that—and that's from, that is essentially a result of an internal investigation done by the IRS not your investigation.

I'm sorry, that's July 23rd, I'm looking at emails which unfortunately are this year, but that's July 23, 2012. Is your understanding that the IRS concluded that they had wrongdoing through their own internal investigation by July, 2012.

Mr. GEORGE. I have no information on that, but let me consult with my counsel.

I have been informed that they conducted an internal review, sir, that was completed before that period.

Chairman ISSA. Okay. So it's your testimony that, in fact, independent of your activity, Mr. Shulman's report conducted and concluded wrongdoing and could have, in fact, reported that up the chain and taken appropriate action independent of your activities?

Mr. GEORGE. That is certainly an option, sir.

Chairman ISSA. So Mr. Shulman, before I go back to Mr. George, it was your watch, your people did an internal review. How is it you did not know that things were rotten in your shop in time to not only make sure it stopped and stayed stopped, but, in fact, that Treasury, your boss sitting next to you, was aware of it?

Mr. SHULMAN. I've said that I learned about this some time in the spring and by this, I mean I learned the fact that there was a list and the fact that Tea Party was on it.

Chairman ISSA. Okay. So you knew at that time that you had mistreated Americans within your organization and saw no need to report it up the chain, is that your testimony?

Mr. SHULMAN. My testimony is that I at that point I had had a preliminary verbal report. I had been told at that same point that

the activity was being stopped, and I was told that the IG was looking into the matter.

Chairman ISSA. Okay. Stop there. I don't really care about the IG right now. The IG probably prompted the internal report. The IG, in fact, has been the reason that we didn't hear about this until long after the election, until months or actually a year had gone by. I'm asking you a question. It was your job to make sure people weren't abused. It was your job to stop abuse but also to report it. Americans had been injured by the activity, wrongful activity, of your organization. You say you got it vocal, I don't care that the IRS doesn't keep paperwork. I know when I have to pay my taxes, I don't do it based on what I say I made or what I say my deductions are that I need paper, however, you knew, you did not report it or did you report it to anyone else within your chain?

Mr. SHULMAN. I had some of the facts, not all of the facts. I had no idea of the scope and severity. I didn't know the full list. I didn't know who was on the list. And I did not report it up the chain.

Chairman ISSA. I'm not going to belabor that because "I don't know" has been your answer previously.

I'm going to move back to the IG.

Mr. George, September 24, 2012, committee staff mentioned, you mentioned your report would be ready in September. Now, these are exchanges we're putting up here that are back and forth. They are not all personally with you.

So September 24, 2012, the answer to our request about this IG report was, field work for this audit is still ongoing, meaning we don't get an answer. December 18, 2012, any update on this? Sorry for the delayed response. I was studying for a final.

Okay, that's when it was pushed off to March. These are staff.

Committee staff, just wanted to know, to check on the progress of this—this is February 12, 2013—of this, are you at a point where you can schedule a briefing?

From your organization. We are leaving no stone unturned. This is February 22nd of 2013. We won't be able to provide a detailed, substantive briefing until late April, early May.

My time is limited, so I'll put the rest in for the record.

Mr. George, I could go on, as late as May 19th, I'm sorry, May 9th, where the committee staff had said on the 8th, can we go ahead and schedule a briefing? May 9th, I'll get back to you. And it goes on.

Mr. George, this committee and the entire Congress has existing laws. Yesterday I spoke before all of your fellow IGs. Under existing law, you have a peer level report, a peer level report of substantial misconduct or problems, including waste, fraud and abuse. The act describes your establishment, which means in this case the IRS, and Congress in the same sentence. On August 3rd, this committee, I sent you a letter explaining the 7-day rule, explaining the statute as it has been written for decades. You have a responsibility to keep us continuously and, according to statute, equally informed. In this case, it appears as though you certainly did not. Would you agree with that?

Mr. GEORGE. No actually.

Chairman ISSA. So when you conducted day after day after day with Mr. Shulman's subordinates, Ms. Paz, one after another inter-

views in which she's in the room, she's listening to all of these, you're doing that. You know at some time, and I'm going to close with just a question, on what day did you know over this year period, did you know personally that, in fact, the IRS had abused Americans in the process of approval? What was that day? What was the aha moment and didn't you have an obligation to report that to Congress at that time?

Mr. GEORGE. Mr. Chairman, I have a detailed timeline which goes from almost month to month as to the interactions that we had with your staff and then the subsequently with the Commissioner as well as with officials at the Department of the Treasury, and I would appreciate the opportunity to give you a sampling of that.

Chairman ISSA. We're are going to accept that and I just want to close and then I'll let you take as much time as you need. If your timeline essentially says you kept us informed so we knew that, in fact, there was a pattern and could speak to Ways and Means to find out that hundreds of people, hundreds of organizations still languished not being approved even after "the abusive behavior began," they still didn't get their answer in a timely fashion. And if you're saying that you informed Mr. Wolin so that he would understand what was going on or others at Treasury and you informed us and Mr. Shulman, here's my problem: Mr. Shulman has already said under oath he didn't know. Mr. Wolin has already said they didn't know, and although I'm not under oath, I have reviewed my committee staff documents and of course it's a bipartisan relationship, we certainly did not have the information in any way, shape or form that could be understood so that Congressional action could occur until practically today.

Mr. GEORGE. Mr. Chairman, there are established procedures for conducting an audit and once again this is an audit. And to ensure fairness and to ensure that we are completely accurate with the information that we convey to Congress, we will not report information until the IRS has had an opportunity to take a look at it to ensure that we're not misstating facts.

Chairman ISSA. Mr. George, that is not the statute. That is not the statute.

Mr. GEORGE. Sir, but it would be impractical for us to give you impartial information which may not be accurate. It would be counterproductive, sir, if we were to do that.

Chairman ISSA. Well, I appreciate that. I've taken a lot of time and I will give the same amount of time of course to my ranking member. But this committee last August made it very clear that the statute, as written, does not give you the ability to—or any IG—to use us as a whipping boy when you want to and, in fact, keep us in the dark until in fact an investigation is completed.

Mr. Shulman, I will admonish you as best I can as one member of government to a former member of government that, in fact, there was a "there" there. People in your own internal operation knew, if you didn't know you were derelict in your duty or your management style was such that you didn't get informed. Either way, that is certainly not something you should be proud of.

To the extent that you did know or suspected Mr. Wolin is standing here, sitting here implying that Treasury didn't know is astounding.

Mr. George, the fact is if these individuals did not know then you did not allow them in a timely fashion to take corrective action even while you continued with what could be a criminal investigation/audit.

In the case of Congress, I will work with the ranking member to reiterate with clarity Congress' absolute right to have, according to the statute, continuous information and that is not waiting for the final conclusion. The act did not say audits and investigations shall upon their conclusion 7 days after being given to the principal be delivered. That is not the portion that we referred to in August of last year. I give you the last word.

Mr. GEORGE. Sir, I would welcome the opportunity to work with you and other Members of Congress to clarify exactly what the, quote/unquote, 7-day rule is under the Inspector General Act. But, once again, I think it would behoove all of us to ensure that accurate information is given to Congress so that we don't act precipitously. And as you I'm sure are aware, many times when information is conveyed to the Hill it is sometimes not retained in the Hill, on the Hill rather, and that is not fair to the people who are investigating or——

Chairman ISSA. I apologize, I said I would give you a last word but right now we are seeing an awful lot leaking out of the administration and the IRS leaked in this particular case. This organization maliciously leaked this information.

Mr. Wolin, the only other thing, and I apologize, Mr. Cummings, I'm going way past where I normally would, it is our understanding that today as we speak dozens if not hundreds of applicants who have been waiting years are still being essentially denied justice. If they continue to be denied justice every clock tick is a clock tick of your not meeting your obligation. Mr. Shulman has left office. He left office without making sure that those "Tea Party" groups and others had a legitimate adjudication in a timely fashion which means they were already overdue because of the prior abuse, to the extent that there is one applicant that comes forward to this committee that today has not been approved or denied for cause, you are now derelict in your duty.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Shulman, I want to pick up where the chairman left off with you. You were the head of the IRS from 2008 to 2012. All of this activity happened on your watch. The development of these terms, the use of the terms and the targeting of conservative groups, the IG called this activity inappropriate but I think it's far worse than that. And it undermines the public trust in the IRS and that is very, very unfortunate.

I want to ask you about two major issues. First, I'd like you to address the allegation that the administration was engaged in some kind of effort to use the IRS to target its political enemies. So I want to walk through this very quickly with you. Who nominated you to be the head of IRS?

Mr. SHULMAN. President Bush.

Mr. CUMMINGS. Are you biased against conservative groups?
Mr. SHULMAN. No.
Mr. CUMMINGS. Do you think they deserve more scrutiny than liberal or progressive groups?
Mr. SHULMAN. No.
Mr. CUMMINGS. Did you ever order IRS employees to target conservative groups?
Mr. SHULMAN. No.
Mr. CUMMINGS. Did you ever encourage or prompt them to do so in any way?
Mr. SHULMAN. No.
Mr. CUMMINGS. Did you ever receive instructions from anyone at Treasury to target conservative groups?
Mr. SHULMAN. No.
Mr. CUMMINGS. Did you ever receive instructions from anyone at the White House to target conservative groups?
Mr. SHULMAN. No.
Mr. CUMMINGS. So these misguided actions, Mr. Shulman, were initiated by IRS employees, they were not part of any administration conspiracy, and you had no knowledge of them before 2012, is that right?
Mr. SHULMAN. I personally don't remember ever hearing about this until the spring of 2012.
Mr. CUMMINGS. Now we've dispensed with that issue.
I want to address the very serious question of why you failed to inform Congress about these activities last year when you learned of them. And I must tell you, Mr. Shulman, I want to remind you that you are under oath. And I tell you when I watched your testimony the other day, I was, it was very troubling, as a matter of fact, some of your testimony this morning has been troubling. So I want you to give us your answers and I know you will be truthful.
Members of Congress wrote numerous letters to you expressing concern that conservative groups were being targeted by the IRS. When asked about these allegations at a hearing before the Ways and Means Committee in March, 2012, you answered, "there is absolutely no targeting."
Even if you did not know it was going on when you testified, you learned about it soon after but you never corrected the record. You were the head of IRS. Why didn't you ever come back to the Congress to explain that you were mistaken?
Mr. SHULMAN. So, what I can recall is that I learned about the list after that testimony. And when I learned about the list, I learned two other things. First, I learned that the activities were stopped, so by the time it got to me, the list was no longer being used with inappropriate criteria. And I also learned that the matter was in the hands of the IG. And my standard procedure as head of the IRS is when I knew something that sounded of concern, as the chairman called smoke, that, and I didn't have all the facts, I didn't know what was on the list, exactly how it was used, were there liberal groups as well as conservative groups, I didn't have the facts that—and it was in the hands of the IG, that the IG would do a thorough review of the matter, and when he had all of the facts, would report that to the IRS, to the Treasury and to Congress. And so, at that point, I didn't have anything concrete. I

didn't have a full set of facts to come back to Congress or the committee with.

Mr. CUMMINGS. That answer would be more acceptable if you had not given the answer that you did in March, 2012.

When Congress asked you a question, and then you say these words, there's absolutely no targeting, it seems to me that even given what you just said you knew that Congress was concerned about this issue, you knew then that the information, you just said it had been corrected, but it seems to me that if you say to the Congress, absolutely not, absolutely no targeting, it seems to me that you would come back even if it was a phone call, a letter, or something, I mean common sense. People, I mean a reasonable person would expect you as the head of the IRS communicating with Congress to come back and do that. You didn't feel that way though?

Mr. SHULMAN. I mean I guess I would repeat——

Mr. CUMMINGS. I don't want you to repeat. I don't want you to repeat. I just, I take it that you disagree with what I just said.

Mr. SHULMAN. At the time I learned about this list I felt I was taking the appropriate actions and that my course was the proper one, and I still feel that way today.

Mr. CUMMINGS. Well, I'm sorry. That's simply not good enough. It's simply not good enough, Mr. Shulman. The IRS conducted an internal investigation of his own, not the IG investigation, but your own investigation. You personally knew there was a target list. You knew it said Tea Party on it. You put new processes in place and you took personnel actions. You reassigned at least one individual back in 2012.

Come on, Mr. Shulman. I mean help us. Help us help the taxpayers. Am I missing something? Did you have an investigation? Was there an internal investigation?

Mr. SHULMAN. I never understood that word of internal investigation.

Mr. CUMMINGS. Did you ever assign, reassign at least one person back in 2012?

Mr. SHULMAN. Not that I was aware of.

Mr. CUMMINGS. You don't know that?

Mr. SHULMAN. To best of my knowledge I was not involved in the reassignment of people in the Determinations Unit. I have no recollection of that.

Mr. CUMMINGS. So when you heard, when you learned about the targeting, apparently you made some kind of inquiry because you said you found out that it had been resolved.

Who did you go to and who told you that it had been resolved and what did they say the resolution was? You were the head of the IRS.

Mr. SHULMAN. I was the head of the IRS.

Mr. CUMMINGS. And you've got Congress people that were upset about targeting. They had been asking questions. You had come and said there was absolutely no targeting. And so help me with this.

Mr. SHULMAN. First of all, let me express this is a very serious matter and I fully recognize that. This was a 90,000-person agency, and this was a unit that was working on applications by definition for organizations that had political activity. My general operating

style as the only one of two Presidential appointees in the building was to have the responsible career officials be the hands-on people in sensitive case matters that involve political activity. So my deputy informed me of this.

Mr. CUMMINGS. And who was your deputy?

Mr. SHULMAN. Steve Miller.

Mr. CUMMINGS. Okay.

Mr. SHULMAN. And at or about the same time he informed me that we found this list that had Tea Party on it. I have no memory of having knowledge of what was on the list, what else was on the list, to the best of my understanding, didn't know how it was being used, didn't know if it also had the target word "progressive" on it. He said, look, it's not being used any more. It's being stopped. The IG is looking into it. And I was aware that some of these cases were languishing because we had gotten letters from Congress and he said and we put extra people on there and we're moving cases. That's my memory of this.

And as I said, once the IG has this, my practice was to support IG reviews and investigations but not interfere with the full confidence that he would get the information.

Mr. CUMMINGS. But this has nothing to do with interfering with an IG investigation. This is merely coming back to Congress. You have to understand why I'm getting to this. Remember in my opening statement I said two words just two—two—two: truth and trust. And we need, we want to be able to trust the IRS. But for this moment on this day, we need to be able to trust your word. And what I'm saying to you, you keeping telling me, you almost, you act as if something that was of paramount concern to the Congress, paramount concern to the chairman of the top investigative committee in the Congress, and you find out information and you know it's a concern, did you get upset when you heard this from Miller?

Mr. SHULMAN. Yeah, I had concern. I didn't know the scope and severity of it. As head of the IRS, I felt comfort that the IG was going to look into it, find the scope and severity and report it back to Congress at the appropriate time.

Mr. CUMMINGS. Mr. Shulman, as I close, you know, you headed up an organization, you were responsible for that organization, you don't even know that an employee was reassigned back there, and you did not come back to Congress and let Congress know what you knew. You didn't have to give us a lot of details, it's just that, if I had said something to Congress and it was just the opposite of what it was, it seems like just logic would tell me to go back and say, look, I thought that, I acted on certain information that I didn't have, now I have it, this is what it is, I have limitations, there's an IG investigation going on but at least I want to set the record straight.

I take it that you disagree with what I just said.

Mr. SHULMAN. I told you before I think I took the proper course.

Mr. CUMMINGS. Very well. Thank you, Mr. Chairman.

Chairman ISSA. Thank you, Mr. Cummings. I now recognize the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman, and as I look around I end up being the most senior member of this panel and having seen a

number of scandals and also participated in various investigations, I don't think I've ever seen any investigation or review by this committee or subject that has so riveted and shocked the American people. Going home last weekend, almost to a person everyone asked me about this. Maybe it's because, what Mr. Cummings said, you know, people expect truth and trust in government. Everyone, just about everyone that I deal with or talk to pays taxes or has to deal with the IRS. So this has really come home to them in a very personal way. They want us to get to the bottom of this.

And Mr. George, you know, so far IRS would have us believe that this is a bunch of lower level IRS employees who got around the water cooler one day in Cincinnati and said who do we target this week and they sort of got out of hand and that's the end of the story. Do you think that's the end of the story?

Mr. GEORGE. I do not, Congressman.

Mr. MICA. And neither do the American people.

What's disturbing, too, is—I made this little chart that morning. Sort of a pattern, this isn't very fancy, the staff not highly paid graphics here, but this all started back in 2010. Here's long lists, Mr. Shulman, of Members of Congress who contacted you, and I see Sarah Hall Ingram, I see Lerner, on and on, not just people like Mr. Issa and myself of this committee but Senators and everyone else asking questions here, here, here, here, all the way through, and for 27 months you said you did all you could to expedite those requests for 27 months from here to here, nothing got done, none of those were approved were they? Not one. Not one.

Mr. SHULMAN. I defer to Mr. George who has looked into the details——

Mr. MICA. I'm just telling you, we checked, not in 27 months, none. So what you're saying doesn't hold true.

Now, the thing, too, and you may disagree with the Tea Party or conservative groups or whether you're liberal or conservative, Americans under the right of this little document, the Constitution, you know, maybe not in the framework of the Constitution but right at the beginning you have 10 amendments, the Founding Fathers to pass it put it in there, the first is the freedom of speech. You closed down or gagged for 27 months people, folks who work for IRS, closed them down for 27 months between 2010 and we're discussing policies of expanding government of health care important to the American people, of a whole host of issues, plus the election coming up, for 27 months you gagged or closed down the legitimate rights of those folks to participate in the process under the Constitution.

Do you disagree with that?

Mr. SHULMAN. Let me premise that I was, because, on purpose, I was not heavily involved in—let me finish—in tax exempt organizations but my best understanding is people were not closed down during this time.

Mr. MICA. You said you knew this was going on——

Mr. SHULMAN. No. No. My best understanding though is that people were operating at that time, and there's also my best understanding is——there is a whole other option—

Mr. MICA. Did you know Mr. Miller——

Mr. SHULMAN. There's a whole other option for someone to be a——

Mr. MICA. Did you know Mr. Miller——

Mr. SHULMAN. A 501(c)(4). They don't need to apply——

Mr. MICA. Did you know Mr. Miller had sent or had you sent approved of sending Ms. Lerner down to look at this?

Mr. SHULMAN. Mr. Miller informed me that some time in the spring that he was going to look into the matter further and find out what was going on——

Mr. MICA. You do.

Mr. SHULMAN. Down in the determination unit.

Mr. MICA. But did you know Ms. Lerner was doing it?

Mr. SHULMAN. My interactions on this were directly with my deputy.

Mr. MICA. Well, did you know, for example, Ms. Lerner, who's the head of it, got a total of $740,000 between 2009 and 2012, over $42,000 in bonuses, would you check off on bonuses? And she—and this is the one that used to sit there and was going to testify but didn't.

Do you check off on bonuses?

Mr. SHULMAN. That number does not sound familiar. I did not individually make decisions but I probably signed off on overall agency compensation.

Mr. MICA. And have you participated in the political process? Could you tell the committee of your political participations, donations?

Mr. SHULMAN. My whole life.

Mr. MICA. Well, yes. I don't know your background, I heard you were an appointee of one of the administrations but what is your history of participation?

Mr. SHULMAN. My full life history of participation in politics, I don't want to mislead——

Chairman ISSA. The gentleman's time is soon to expire. We could take a short version, please.

Mr. MICA. Have you donated for example, to parties and groups?

Mr. SHULMAN. Have I in the past? To the best of my recollection I have.

Mr. MICA. You have.

Mr. SHULMAN. Yeah, I mean, sorry. To the best of my recollection I have. I haven't in a long time, didn't make any contributions while I was IRS Commissioner.

Mr. MICA. Thank you. Thank you, Mr. Chairman.

Chairman ISSA. The chair now recognizes the gentlelady from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman. I believe we are united in this committee in being outraged at the alleged targeting of Americans for their political beliefs by the IRS.

Mr. George, is it illegal to target Americans in the IRS for their political beliefs? Is it illegal activity?

Mr. GEORGE. The way in which the Internal Revenue Service exercised their authority in this matter at this stage, Congresswoman, we do not deem it illegal. We do not believe that it was illegal what they did.

Mrs. MALONEY. Do you believe it should be illegal to target Americans in the IRS for their political beliefs?

Mr. GEORGE. Well, the IRS currently has policies which state that if there are willful actions taken that would violate civil rights of the taxpayer which would in other ways falsify documents, destroy documents, there are illegal activities that the Internal Revenue Service employee can engage in. But I have to note, Congresswoman, that the Secretary has delegated tax policy questions to the Assistant Secretary for Tax Policy and I have to defer to him.

Mrs. MALONEY. I personally believe it should be illegal. And I find it very troubling the allegation that the IRS not only targeted Americans for their political beliefs but also withheld information from this committee.

And specifically, Mr. George, in roughly March of 2012, Chairman Issa and Representative Jordan sent you, or rather Ms. Lerner asking for information about the potential targeting of Tea Party organizations by the Exempt Organization office, is that true?

And that in response to that letter and media reports and requests from this committee that you started an investigation of and reviewing the applications for tax-exempt status, is that correct?

Mr. GEORGE. Actually it is correct but we have had conversations with staff of this committee prior to the receipt of that letter and——

Mrs. MALONEY. But you did begin an investigation?

Mr. GEORGE. Yes, we did.

Mrs. MALONEY. And your staff informed us, Chairman Issa and this committee, about that investigation, correct?

Mr. GEORGE. That is correct.

Mrs. MALONEY. Mr. Shulman, in March of 2012, the IRS began conducting its own internal review of the Tax Exempt Organization Division. Is that true? Did that happen? And is that a common occurrence? Why did the IRS start their own internal review when you have an IG whose job it is to do the internal review and he had notified Congress that he was doing the review?

Mr. SHULMAN. Look, I don't have a direct recollection of the timeframe, but I read the report and saw that in the report in late March at least in the report it said that my deputy asked someone to go take a look, and I think that's what you're talking about——

Mrs. MALONEY. Absolutely——

Mr. Shulman. My understanding at the time—I'm sorry.

Mrs. MALONEY. What I'm talking about is you did not inform the committee that you were doing an internal review, which is the process, the IG——

Mr. SHULMAN. I don't remember it ever being called an internal review. I remember somebody coming to me and saying hey people from headquarters are going to go down and talk to the folks in Cincinnati and find out what's going on. And so I don't, I don't remember it being——

Mrs. MALONEY. Specifically the IRS not only chose not to alert Congress and this committee about the internal review or looking into it, whatever you want to call it, but on April 26th of 2012, Ms. Lerner responded to a letter from this committee with her own letter stating that information was gathered from these organizations,

"in the ordinary course of the application process to obtain the information as the IRS deems necessary to make a determination whether the organization meets the legal requirements for tax-exempt status."

And at no point in the letter did Ms. Lerner mention that IRS officials were conducting their own internal review. Mr. Shulman, why did she admit that fact?

Mr. SHULMAN. I'm not familiar with that letter. I'm sorry.

Mrs. MALONEY. And in fact Ms. Lerner never informed the committee of what was happening in the IRS tax-exempt status in any way. And I would just like to ask you do you think it's appropriate for the IRS to send such a misleading response back to this committee?

Mr. SHULMAN. I'd have to look at the whole response and, if it came from Ms. Lerner it's very unlikely that I knew about it or reviewed it.

Mrs. MALONEY. Well, I would say that we're all outraged but it's not too early to start talking about what we can do to fix it. And in your report, Mr. George, you mentioned that it needs to be clarified what is tax exempt, what is not, what is political activity, what is not. What is the status of changing it so that this doesn't happen in the future?

Mr. GEORGE. Once again, Congresswoman, that is a tax policy question. I don't know the answer to that and that would fall into the ambit of the Assistant Secretary for Tax Policy.

But if I may, may please just elaborate on my earlier response to your question. We are still in the process of looking at this matter. It is possible that criminal activity may have occurred. But it is too early at this stage to make that determination, Ma'am.

Mrs. MALONEY. My time is expired.

Chairman ISSA. Thank you. Mr. George, just to clarify in the gentlelady's question, you did talk about the complexity about the system but in no way did you say that this misconduct was the result of a lack of clarity, in other words, targeting these individuals is not because of complexity but rather something that was inappropriate whether it was complex or simple.

Mr. GEORGE. It's a combination, Mr. Chairman. The Determinations Unit did have some technical questions which they submitted along the chain to the appropriate people in Washington. It took over 13 months before they received a response. That was a cause of some of the delay in addressing some of the exempt issues. But I would attribute it mostly to a lack of training, sir, that there was very inadequate training of the people who were handling these applications, and I do fault the IRS for that.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Ohio, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman. I appreciate your holding this hearing. There are a number of investigations, congressional, internal IRS, Department of Justice, the IG, all targeting the issue of who knew what when, who was involved, who directed these targeting actions, and who is complicit? And the answer to all these questions we will find out. Through all these investigations we will find out who at the IRS, who, if any, at the White

House, and who for political reasons, targeted conservative groups, Tea Party groups and constitutional groups.

There are those who would have us believe that this was just spontaneous, that this just erupted in the organization, but I don't think anybody believes that.

Someone did this. Someone directed this, someone orchestrated this, and someone was complicit in this.

But that's not my focus today. My focus today is wanting to make certain that this never happens again. I was absolutely shocked when Ms. Lerner from the IRS made her statement of, we made mistakes, for that we apologize. I was shocked. And I think the American people were shocked because they were thinking that's it? An apology? That the actions of the Federal Government using its investigative arm to prosecute American citizens based upon their political beliefs and their affiliations, their membership, their activities and they get an apology?

Now, Ms. Lerner has invoked her constitutional right not to answer our questions about her involvement or the IRSs involvement ironically about denying others their constitutional rights. I believe that that should be a crime.

Mr. Shulman, it's reported in my community that you and I hail from the same hometown community. So I have a question of you, and it's not about what you knew when, it's about what you know now.

Do you believe that the actions of the IRS in targeting individuals based upon their political beliefs represents the values of our hometown community or our country or even our democracy?

Mr. Shulman.

Mr. SHULMAN. I've read this report and its use of the criteria used by the IRS was inappropriate. It's something that I'm incredibly sad about, I'm sad for, that it happened, I'm sad that it's cast a shadow over the rest of the good work of the agency, and——

Mr. TURNER. You would agree it doesn't represent our democratic values, correct, Mr. Shulman?

Mr. SHULMAN. So far, look, I didn't——

Mr. TURNER. Mr. Shulman, do you agree that it doesn't represent our democratic values to have the government persecute people based upon their political beliefs? Surely you can give me that one.

Mr. SHULMAN. I did not see those words in the report, Mr. Turner, and so——

Mr. TURNER. That's fine. Mr. George, you've been subject to criticism for the timing of the report but I want to thank you because but for your answers and your work we still would not know. If we waited for the IRS to tell us, we still would not have any understanding of what has occurred. Now you answered Carolyn Maloney from New York that you do not have any evidence of a crime and you have not concluded that a crime has occurred, is that correct, Mr. George?

Mr. GEORGE. As of this time, yes, sir.

Mr. TURNER. Mr. Shulman, if you had directed this, according to the United States Code, this would have been a crime. You would have been subject to 5 years of incarceration and $5,000 in a penalty. I personally believe that whether this happens from someone under you or by you, it should be the same.

I've introduced H.R. 1950 that would make this a crime for anyone in the IRS to target someone based upon their political beliefs or their religious beliefs. We have over 80 cosponsors, Marco Rubio has entered it into the Senate. I think this is an important step to say this will never happen again because no one should have a supervisor walk in their office and tell them to target Americans based on their political beliefs and have that employee do it without an understanding that not only are they violating somebody's Constitutional rights but they're violating the United States Code and they will go to jail.

Now, I happen to believe that even without this that there are people who are going to go to jail and that there were constitutional rights violated and I think there were laws violated and I think it's why we have to continue these investigations.

Mr. Wolin, you've continued to answer the question as to when you knew things based upon the assumption that the question that you're being asked is when did you know about the IG report?

I don't want to know when you knew about the IG report. I want to know when you knew that the IRS was targeting people based on their political beliefs and their statements such as Tea Party or constitutionally directed organizations. When did you know what was happening in the IRS, not when did you know what Mr. George was doing?

Mr. WOLIN. Congressman, I learned that when Lois Lerner made her public statement and then consequently a few days later when the Inspector general released his report. I did not know any of the findings or the details or the substance of what Mr. George looked into in his audit until then.

Mr. TURNER. Mr. Shulman, one more thing. You said that you are a political appointee and that if the employees beneath you had gotten political that you were not taking actions, I think it's is a travesty that you would have had a constitutional oath to execute your duties, and as a political appointee you decided that if the organization decided to take political actions against people, it was not within your responsibility because it absolutely was. And we're going to get to the bottom of this, and I certainly hope that in the future this is criminal and no one at the IRS is just subject to merely termination.

Thank you.

Mr. SHULMAN. Mr. Turner, you have misstated what I said.

Mr. JORDAN. [presiding.] Before yielding to Mr. Lynch, Mr. Wolin, just to follow up Mr. Turner's question, when did you learn of the internal investigation the IRS was conducting?

Mr. WOLIN. I learned through whatever testimony over the last few days, I hadn't heard of it before then.

Mr. JORDAN. You didn't know about it earlier?

Mr. WOLIN. No.

Mr. JORDAN. Thank you. Mr. Lynch, you're now recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. Shulman, I want to go back over your testimony before Congress. On March 27, 2012, you testified before the Committee on Ways and Means. Did you have a chance to talk to Mr. Miller prior to your testimony?

Mr. SHULMAN. On March 22?

Mr. LYNCH. March 22, 2012, any time prior to that did you have a chance to talk with—now you're testifying before Congress. Obviously you prepare for that. Did you speak to Mr. Miller before your testimony?

Mr. SHULMAN. To the best of my knowledge I did.

Mr. LYNCH. You did. Okay. How about Ms. Lerner, did you speak with Ms. Lerner prior to your testimony?

Mr. SHULMAN. I don't remember speaking with Ms. Lerner before my testimony.

Mr. LYNCH. I want to just describe what Chairman Boustany said to you in a dialogue.

You said, we have seen some recent press allegations that the IRS is targeting certain Tea Party groups across the country requesting what had been described as onerous document requests, delaying approval for tax-exempt status and that kind of thing. Can you elaborate—this is his question to you—can you elaborate on what is going on with that? Can you give us assurances that the IRS is not targeting particular groups based on political leanings?

In response to that question you answered: "there is absolutely no targeting."

Now, what was the basis of your answer?

Mr. SHULMAN. So I had received letters from Members of Congress I believe——

Mr. LYNCH. I know that. You received a lot of them.

Mr. SHULMAN. Excuse me?

Mr. LYNCH. You received quite a few.

Mr. SHULMAN. On this issue I believe I had received two but I'm not sure of the exact number before that testimony.

And I said no targeting in the sense, and if you read the full testimony, that there's two ways for a social welfare group or a 501(c)(4) to start operating——

Mr. LYNCH. Well, I'm not going to let you use up my time on that. Your answer was, the operative language was there is absolutely no targeting.

What was the basis for that statement?

Mr. SHULMAN. So——

Mr. LYNCH. Obviously you're the——

Mr. SHULMAN. I can give you my explanation and to the best of my recollection what is in my mind if you would like me to.

Mr. LYNCH. Yes.

Mr. SHULMAN. So I said there was no targeting in the sense that there's two ways——

Mr. LYNCH. No. You said there was absolutely no targeting. It was more affirmative than that. What I'm getting at is you definitely gave Congress the impression there was absolutely no targeting. Absolutely no targeting. That's what you said.

Mr. SHULMAN. If you give me a minute I can actually explain this.

Mr. LYNCH. Well, I only have a short amount of time. If you can explain it quickly.

Mr. SHULMAN. Well, first, let me just say I answered truthfully based on the information I had at the time.

Mr. LYNCH. That's what I'm getting at. That's what I'm getting at. What was the basis of the information you had at the time? How could you sit there under oath, testify before Congress and say there's no, absolutely no targeting going on and put Congress in that position to believe that you're telling the truth? What was the basis of your understanding when you, when you led Congress to believe that there was absolutely no targeting going on?

Mr. SHULMAN. That's what I'm actually trying to say, Congressman.

Mr. LYNCH. Okay.

Mr. SHULMAN. So I said there was no targeting in the sense that a 501(c)(4) had two options to operate. They could apply or they could start operating, there's no need to go through this application process. You can be a 501(c)(4), do your business and file a tax return at the end of the year. I said there was no targeting in the sense that in, from conversations that I had had that these people had voluntarily come in. And so the question that had been posed to me was why are they getting all these questions? And I had said that it's normal to have this kind of back and forth. So that was one piece of my understanding.

The second is my understanding at the time was that conservative groups, and this is to the best of my recollection——

Mr. LYNCH. I want to take back my time. I understand.

Mr. SHULMAN. My understanding was that conservative groups were not the only ones getting these questions. That was my memory.

Mr. LYNCH. So progressive groups were also being targeted?

Mr. SHULMAN. And finally I certainly don't——

Mr. LYNCH. Wait a minute. I want to back you up on that. Now you're saying they weren't being targeted because other groups were also being targeted for their political views. Is that what you're saying?

Mr. SHULMAN. No. That's not what——

Mr. LYNCH. Well, that's interesting because that's just what I heard.

Mr. SHULMAN. Well, I would love to explain it to you, Congressman.

Mr. LYNCH. Please.

Mr. SHULMAN. My understanding at the time was complaints had come in about letters, I had conversations about are these questions normal? Are these questions legitimate? Are these things we should be asking? At no time, to the best of my memory, did I, was I ever given the impression that these were only being asked of conservative groups.

Mr. LYNCH. All right. You've gobbled up most of my time. I just want to close with this. So after leading Congress to believe there's no absolutely no targeting going on, you learn later on that there's a list, there's a list of people being targeted. After telling Congress that no one, absolutely no one is being targeted, you learn that there's a list, a list of people being targeted. Tea Party, patriots, people who are critical of how the government is being run.

And what did you do after that point? You did nothing. You did nothing to straighten out the impression that you had left by your testimony before Congress.

Sir, you misled Congress. You misled Congress. Make no question about it. You told us one thing, when you learned, when you learned that our suspicions were true, when you learned that there was a list, you did nothing. You did nothing. You abdicated your responsibility, and you allowed Congress to proceed under your prior information that was false, that was untrue, and you never came back. You never notified Congress to say, sir, I gave you the wrong information. I misled you. You never came back to Congress to straighten out that impression. That's inexcusable. It really is.

I yield back the balance of my time.

Mr. JORDAN. I thank the gentleman for his questions.

The gentleman from Tennessee, Mr. Duncan, is recognized.

Mr. DUNCAN. Thank you very much, Mr. Chairman.

It was primarily conservative groups that were targeted but people of all political persuasions are very upset about this. President Obama said on May 15th, he said it's inexcusable and Americans are right to be angry about it, and I am angry about it, I will not tolerate this kind of behavior in any agency but especially in the IRS given the power that it has and the reach that it has into all of our lives, and as I said earlier it should not matter what political stripe you're from. The highest official of the ACLU here in this city said that even the appearance, "even the appearance of playing partisan politics with the Tax Code is about as constitutionally troubling as it gets." With the recent push to grant Federal agencies broad new powers, to mandate donor disclosure for advocacy groups on both the left and right, there must be clear checks in place to prevent this from ever happening again?

Mr. George, will you promise us or commit to us at this time that you will make it a high priority and make sure that something like this never happens again?

Mr. GEORGE. Sir, we will, I make a commitment to you to do our level best to work with the Internal Revenue Service and others involved to help establish procedures to help identify and avoid this from occurring. I cannot, obviously, sir, control what happens within the approximately 100 offices of the IRS.

Mr. DUNCAN. Mr. Shulman, on March 22, 2012, you testified that there was absolutely no targeting when asked this by Congressman Boustany at the Ways and Means hearing and that's been covered several times already this morning. But there was an internal IRS review that was completed in early May, just a little over a month later. And you said that when you met with Mr. Miller, you were assured that this activity had stopped. Was that—and so you took no further action. Did you ever discuss this with anybody at the Department of the Treasury, any Treasury official at all?

Mr. SHULMAN. I had—definitely had no substantive conversations with anyone at Treasury and did not report that that there was a list and that kind of thing.

Mr. DUNCAN. Mr. Wolin, when you learned that this had gone on, who did you discuss this with at the Department?

Mr. WOLIN. Well, I learned the details, Congressman, when the report was made public a week or 10 days ago and obviously at the Department at that point we discussed it with the Secretary and General Counsel and others to make sure that we began to put in place both the accountability with respect to people who were re-

sponsible for this misconduct but also to make sure that we put in policies and procedures that would make sure this wouldn't happen again, not just the implementation and the recommendations that the IG included within his audit report, but also to charge, as the Secretary of the Treasury has done, the new Acting Commissioner of IRS with a broader agenda to make sure this was looked at carefully and to make sure he had a broader review to make sure that this didn't happen again.

Mr. DUNCAN. Let me ask you this. Apparently, one of these groups called Coalition for Life was asked in their, was asked by IRS officials about prayer meetings that they had held and how much of their time was spent on prayer meetings and what went on at those prayer meetings.

Mr. DUNCAN. Do you think that questioning like that is proper?

Mr. WOLIN. No, Congressman. I think that the conduct that is outlined in the—in the IGs report obviously is inexcusable, deplorable. I can't be more clear than that. It's absolutely outrageous.

Mr. DUNCAN. Mr. Shulman, do you think that those types of questions should be asked in this situation about——

Mr. SHULMAN. It certainly sounds inappropriate to me.

Mr. DUNCAN. —about religious beliefs?

Mr. SHULMAN. No, I don't. It sounds inappropriate to me.

Mr. DUNCAN. Now, a few moments ago, you said that there was another method, that there's the 501(c)(3) and then there's the 501(c)(4). And you said that there are situations where people don't have to apply. What were you talking about there?

Mr. SHULMAN. My best understanding is that none of these groups, of the 300 that are talked about, or the 298 in the report, actually have to apply for 501(c)(4) status; that a 501(c)(4) can start operating, can hold itself out, can do all of its business, and then can file what's called a Form 990, which is the equivalent of a tax return for a tax-exempt organization. So I think that's an option that organizations have.

Mr. DUNCAN. That's what I thought you meant, but I wanted to be clear on that. Thank you very much.

I yield back.

Mr. JORDAN. I thank the gentleman for his questions.

I now recognize the gentlelady from the District of Columbia, Ms. Holmes Norton.

Ms. NORTON. Thank you very much, Mr. Chairman.

Even granted that the seed was planted for something bad to happen when somehow the interpretation of a law was changed from "exclusively" to "primarily," that's a terrible thing to put on civil servants, that they somehow have to take the unclear words of the statute that's now been changed in a way that I'm not sure how you're going to enforce that.

But one thing is clear, that we see here something—at least terrible incompetence and the absence of the normal kind of managerial oversight you'd expect in any Federal agency and certainly in the IRS. And I'm particularly troubled that the problems persisted for, it looks like, a year and a half because of what seems to have been very little oversight from management at the headquarters. So, you know, these civil servants are doing their incompetent best, I suppose.

But I want to make sure that's what it was. I'd like to ask Mr. George, because I saw something of your testimony in the Senate where you testified that your audit did not uncover any evidence that the Treasury suggested the use of screening criteria or approved of the screening criteria that was used.

Is that your—is that the case? Would you indicate whether you asked that question?

Mr. GEORGE. We did pose that question, Congresswoman. And, again, the response was that there was no direction from the Department itself to those in the determinations unit in Cincinnati, nor their affiliate office in Washington.

Ms. NORTON. Well, I ask these questions because the incompetence and the terrible handling of this, which has shaken confidence in the IRS, is bad enough, but it would be far worse if there were any evidence that there was outside influence outside the IRS.

And did you find any evidence that anyone in the White House, in particular, suggested that the IRS target conservative organizations or that they played any role whatsoever in selecting the criteria?

Mr. GEORGE. No, Congresswoman. But, in all honesty, we didn't look at the White House, we didn't question anyone as to whether or not they'd received any direction from the White House, and——

Ms. NORTON. So that specific question was not asked?

Mr. GEORGE. That's correct.

Ms. NORTON. Now, in the investigation, which continues, do you intend to ask that question?

Mr. GEORGE. And, again, if I may—and, again, this may seem like semantics. I want to be clear. At this stage, it is an audit still. And so——

Ms. NORTON. Well, it was an audit then, but you asked questions that——

Mr. GEORGE. Yes, yes. But, again—and even there, it was——

Ms. NORTON. Well, I'm asking you, in the continuing audit, do you intend to ask that question?

Mr. GEORGE. At this stage, I am not in a position to say whether or not, because as it's going to be continued, we will go wherever the facts lead us, Mrs. Norton, or Congresswoman. But I have to say that I'll just have to leave it at that. We'll go wherever the facts take us.

Ms. NORTON. Well, let me suggest, Mr. George, that it would be appropriate to ask whether anyone outside of the IRS, without fingering any particular agency or any particular individual, anyone outside of the IRS. The record needs to be clear on that.

Mr. GEORGE. May I clarify my answer then? We did ask if anyone outside of the IRS——

Ms. NORTON. And so you take that to imply the White House and anybody else we can think of?

Mr. GEORGE. At this stage, yes, we do.

Ms. NORTON. I want to—I guess it is Mr. Wolin I ought to ask, the Deputy Secretary.

Did you, yourself, ever suggest or did you, yourself, ever propose that IRS personnel use screening criteria of any kind to target conservative organizations?

Mr. WOLIN. Absolutely not, Congresswoman.

Ms. NORTON. Or other organizations?

Mr. WOLIN. Absolutely not, Congresswoman.

Ms. NORTON. Did you order or did you approve the inappropriate screening criteria used by the IRS personnel in Cincinnati, Ohio?

Mr. WOLIN. I did not, Congresswoman.

Ms. NORTON. Well, Mr. Chairman, I very much think the committee is pursuing the appropriate investigation and believe that, before it is all over, we get direct answers from all those involved. We will know what needs to be done next.

And I do want to say, Mr. Chairman, that, whatever we do, the difference between "exclusively" and "primarily" has to be clarified so that I think there is proper direction from the Congress so that the IRS can, in turn, give the proper direction.

Thank you very much.

Mr. JORDAN. Thank you.

Mr. Shulman, you've testified yesterday and today, and you said last spring you had a partial set of facts, you didn't have the full story, didn't fully understand what took place until you read the Inspector General's report. Is that accurate?

Mr. SHULMAN. That sounds accurate.

Mr. JORDAN. All right. In the 2 years that this targeting was taking place, did any Member of Congress contact you, write to you about this particular subject? Did you get any letters from Congress?

Mr. SHULMAN. Yes.

Mr. JORDAN. All right. Do you know how many?

Mr. SHULMAN. I do not.

Mr. JORDAN. We got some information from you all yesterday, a list of correspondence regarding 501(c)(4)s. And we counted them up: 132 different Members of Congress contacted you over the approximate time period.

Did you read any of those letters?

Mr. SHULMAN. The letters that I remember about this set of facts around the Attorney General——

Mr. JORDAN. No, did you read any of them?

Mr. SHULMAN. —started coming in in February of 2012.

Mr. JORDAN. Well, this is from the IRS. We got 132 Members of Congress contacted you about 501(c)(4) status.

Did you ever read newspaper articles about this issue in the time period in question, Mr. Shulman?

Mr. SHULMAN. To the best of my knowledge, yes.

Mr. JORDAN. Do you know how many news stories, could you hazard a guess, took place in the time period that we're focused on?

Mr. SHULMAN. I wouldn't guess.

Mr. JORDAN. Your staff—in our office, we have, like, a Google alert, and if my name comes up, they find out what the press is saying about me, and they let me know. Do you have that when you were at the IRS? Do you have, like, a Google alert? When stories about the IRS or Doug Shulman come up, did they let you know about those stories?

Mr. SHULMAN. IRS has press clippings that I saw on a regular basis when I was there.

Mr. JORDAN. Would you hazard a guess about how many major news stories took place in this time period that is in question when the targeting was going on, before you said you knew?

Mr. SHULMAN. No, I wouldn't.

Mr. JORDAN. Forty-two. We just did a quick search—42 major news stories.

So here's what everyone wants to know. You've got 132 Members of the United States Congress contacting you about this issue, 42 major news stories about this issue in the time period in question, and you never checked it out. You never researched it.

I mean, are you sure you're being square with us today, Mr. Shulman?

Mr. SHULMAN. I'm absolutely telling you the truth today.

Mr. JORDAN. Absolutely. Well, that's interesting because Mr. Lynch just cited your testimony from a year ago, and you used similar language when in front of the Ways and Means Committee.

"Can you give us assurances that the IRS is not targeting particular groups?"

"Thanks for bringing this up because I think there has been a lot of press about this"—there was, we found out—"and a lot of moving information, so I appreciate the opportunity to clarify. First, let me start by saying, yes, I can give you assurances." I don't think you can say it any stronger. "We pride ourselves on being a nonpolitical, nonpartisan organization."

And that's why people are wondering if you're being square with us today, because you said you could assure everyone, the American people and the Congress, then that nothing was going on. And the gentleman sitting besides you just issued a report last week that says what you told the Congress, what you told the American people a year ago is absolutely wrong.

And you're sure you're being square with us?

Mr. SHULMAN. Excuse me?

Mr. JORDAN. Did you ever talk to anyone at the White House about this issue?

Mr. SHULMAN. About this issue? Not that I remember.

Mr. JORDAN. Did you ever go to the White House? As IRS Commissioner, did you ever go to the White House for meetings?

Mr. SHULMAN. Yeah, I had a number of occasions to go to the White House.

Mr. JORDAN. How many times did you go to the White House?

Mr. SHULMAN. Many times around budget and policy matters of tax and other things like that.

Mr. JORDAN. Got a number? Any idea?

Mr. SHULMAN. I don't have a number.

Mr. JORDAN. We just looked at—we just look at the White House log. Now, we couldn't get 2012, but in 2010 and 2011, 118 times you were at the White House. I mean, that's a lot. I bet these Democrat Members of Congress in this administration haven't been there close to that many times.

A hundred and eighteen times you were at the White House; 132 Members of Congress contact you about this information; 42 major news stories about this very subject. And you told Congress a year ago, I can give you assurances, nothing is going on, everything's wonderful, we're not targeting conservative groups.

I mean, that's why the American people are—they're like, this is unbelievable.

Are you sure you didn't talk to anyone at the White House about this, Mr. Shulman?

Mr. SHULMAN. About singling out conservative groups for special scrutiny?

Mr. JORDAN. Well, that's what we are talking about, isn't it?

Mr. SHULMAN. I'm absolutely sure I did not talk to anyone at the——

Mr. JORDAN. In 118 visits, it didn't come up in a casual conversation after 132 Members of Congress contacted you about it? Are you sure you didn't bring it up with anybody at the White House?

Mr. SHULMAN. Not to my memory. And it wouldn't be appropriate. And so I certainly believe I did not have any conversations.

Mr. JORDAN. I recognize the—Mr. Lynch I think is—or, excuse me, Mr. Connolly is next up for questioning.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Shulman, you were appointed by President Bush when?

Mr. SHULMAN. I was nominated in 2007, confirmed in 2008.

Mr. CONNOLLY. And you served until?

Mr. SHULMAN. November 2012.

Mr. CONNOLLY. So you served both in the last year of the Bush administration and through the first term of the Obama administration. Is that correct?

Mr. SHULMAN. Correct.

Mr. CONNOLLY. There might be many reasons you would be at the White House. What would be some of the reasons you might be at the White House?

Mr. SHULMAN. The Easter Egg Roll with my kids——

Mr. CONNOLLY. Well——

Mr. SHULMAN. —questions about the administerability of tax policy they were thinking of, our budget. I was helping the Department of Education streamline application processes for financial aid.

Mr. CONNOLLY. I just want to be clear. You're very aware of the fact that you're under oath today?

Mr. SHULMAN. Yeah, very aware of that.

Mr. CONNOLLY. And your testimony, to be very clear, in response to Mr. Jordan's question is that you have never had any conversation with respect to this subject, the subject of this hearing, with anybody at the White House though you were at the White House 118 times. Is that——

Mr. SHULMAN. Yeah, I mean, just so I'm—just so I'm clear, I have no memory. It wouldn't have been appropriate—would not have been appropriate to have a conversation with the White House, with anyone at the White House, about the subject of discriminating against conservative groups in any part of our operation.

Mr. CONNOLLY. And let me be real clear about that. Because you answered a series of interrogatories from the ranking member, Mr. Cummings, a little earlier. And, again, in listening to your answers, I want to be clear, neither—no one from the Bush White House and no one from the Obama administration White House ever called you and said, there's a little list of groups or there's an

umbrella of titles I want you to be particularly sensitive about it if they apply for a nonprofit status.

Mr. SHULMAN. No. Nobody ever talked to me about——

Mr. CONNOLLY. That never happened. Is that correct?

Mr. SHULMAN. Right.

Mr. CONNOLLY. Thank you.

Mr. George, I'm looking at your report, and I want to make sure I understand it. I mean, we're talking about this like it happened in a vacuum. You know, some sinister plot was hatched by normally kind of, you know, colorless bureaucrats in Cincinnati to get somebody for their political beliefs.

Now, was there a triggering event that flooded the IRS with new applications between 2010 and 2012?

Mr. GEORGE. We have had some difficulty, Congressman, getting a definitive answer as to exactly how this began, the genesis of this program.

Mr. CONNOLLY. Well, can I just help you a little bit? I'm looking at your own report——

Mr. GEORGE. Uh-huh.

Mr. CONNOLLY. —and what seems to be the triggering event is the Supreme Court ruling, Citizens United. The number of applications between 2009 and 2012 for a 501(c)(4), even though Mr. Shulman points out, actually, it's sort of redundant, but doubled from 1,751 to 3,357. That's in your report.

Mr. GEORGE. There is no question that that event, the ruling of the Supreme Court, came down——

Mr. CONNOLLY. Yeah. Did IRS resources expand? Did Congress rush to IRSs aid here, saying, well, since you're flooded with new responsibilities, here's some more resources to help you hire up or to train—because you cited bad training—so you can handle this volume of applications? Did that happen?

Mr. GEORGE. I would have to defer to Mr. Shulman.

Mr. CONNOLLY. Mr. Shulman?

Mr. SHULMAN. Could you repeat the question?

Mr. CONNOLLY. Yes. Were you flooded with resources after Citizens United to deal with the volume that the inspections——

Mr. SHULMAN. Were we given resources?

Mr. CONNOLLY. Yes.

Mr. SHULMAN. No.

Mr. CONNOLLY. No.

All right. Mr. George, again, I'm looking at your report, and there's a pie chart I want to make sure I understand. Here's the pie chart. And we're focused particularly on conservative groups. And, of course, I think all of us feel, as Americans, irrespective of your political beliefs, nobody should be targeted, you know, in the proper exercise of their right to express themselves politically.

Now, you've got a pie chart with 298. Is that 298 cases you looked at?

Mr. GEORGE. That is correct.

Mr. CONNOLLY. Now, if I'm reading this right, 72 of those were Tea Party, had the name "Tea Party" in them. Is that right?

Mr. GEORGE. That is correct.

Mr. CONNOLLY. And 11 had "9/12." Is that right?

Mr. GEORGE. That is correct.

Mr. CONNOLLY. Thirteen had "patriots," correct?

Mr. GEORGE. Correct, sir.

Mr. CONNOLLY. But 202 are listed as "other." Were those all conservative groups, or could some of them have been progressive groups?

Mr. GEORGE. We were unable to make that determination, sir, because in many instances the names were neutral and that you couldn't necessarily attribute it to one particular affiliation or another.

Mr. CONNOLLY. And I know I have very limited time left, but I know the chair has been indulgent with my colleagues because this is so important, and all of us, as Americans, don't want the chilling effect of any government agency suppressing the expression of thought or the right of every American to express themselves politically irrespective of those beliefs.

To what do you attribute this, what seems to be kind of a rogue element in Cincinnati? It was told once to stop and ignored it, or returned to this activity. Is it just a natural perversion in Cincinnati? Or, I mean, what were they doing that they thought was proper, apparently?

Mr. GEORGE. It was—the conclusion that I can give you today, Congressman, is that it was a lack of oversight from management, both in—in Washington, primarily, and the fact that they did not go back to ensure that the directions, the instructions that were given to the determinations unit within Cincinnati were being complied with.

Once they found out that the initial inappropriate action had occurred, attempted to make corrective action and did direct a corrective action, they failed to go back to ensure, to follow up to make sure that those actions were being complied with.

So it was mismanagement. It was a lack of fulfilling the responsibility that they have, sir.

Mr. CONNOLLY. Uh-huh. Thank you very much, Mr. George, for your testimony, and Mr. Shulman.

And thank you, Mr. Chairman.

Mr. JORDAN. Thank you.

Mr. Shulman, a real quick follow-up. The 118 times you were in the White House in 2010 and 2011, who were you meeting with?

Mr. SHULMAN. First of all, I'm not familiar with that——

Mr. JORDAN. Straight from the White House log.

Mr. SHULMAN. —number, and I'm assuming that it counts when I go to OMB, which is, you know, the budget office, for resources, et cetera.

Mr. JORDAN. No, it counts when you go to the White House. That's what it was, the times you've been at the White House. That's when it counts.

So who did you meet with?

Mr. SHULMAN. I met with a variety of people——

Mr. JORDAN. Is there somebody—or what was the main subject you talked about? Did you talk about 118 different things, or were there just kind of some themes and focus?

Mr. SHULMAN. The themes of things I would've talked to people at the White House about would've been our budget; would've been about tax policy, fiscal cliff; would've been about streamlining the

FAFSA, the financial aid application; would've been when the tax for airport——

Mr. JORDAN. Did you talk about the implementation——

Mr. SHULMAN. —and——

Mr. JORDAN. Did you talk about the implementation of the Affordable Care Act?

Mr. SHULMAN. Implementation of the Affordable Care Act would've been one of the themes. And there could've been more. I'm not prepared to give you an exhaustive——

Mr. JORDAN. Which one—which one consumed the most of your time, of those subjects you just listed?

Mr. SHULMAN. Probably budget, general tax policy, and the Affordable Care Act.

Mr. JORDAN. So the Affordable Care Act was pretty important. You talked about it a lot.

Mr. SHULMAN. The IRS has a major role in the money flows of the Affordable Care Act.

Mr. JORDAN. Exactly. Exactly. And you started targeting the very groups who came into existence because they opposed what you were talking about in the White House 118 different visits there. You started targeting them the very month that the Affordable Care Act became law. And yet you didn't have any conversations about the subject matter at hand today on those 118 visits, when many of those visits were about implementation of the Affordable Care Act and the groups you were targeting were opposed to the Affordable Care Act.

That's a question.

Mr. SHULMAN. I'm sorry, but what is the question?

Mr. JORDAN. You went to the White House 118 times. One of the key subjects you talked about was the implementation, the enforcement of the Affordable Care Act. Going on in your administration at the time you acted as Commissioner, targeting of groups who came into existence because they opposed the Affordable Care Act.

And you never brought it up in any of those conversations and all those visits to the White House, when this is a major topic of conversation?

Mr. SHULMAN. No, I did not.

Mr. JORDAN. Okay. All right.

Mr. SHULMAN. I operated as——

Mr. JORDAN. That's all I wanted to know.

Mr. SHULMAN. —a nonpartisan, nonpolitical person trying to implement the laws that were on the books. It would have been inappropriate, and nobody ever asked me——

Mr. JORDAN. Well, that would——

Mr. SHULMAN. —nor did I ever——

Mr. JORDAN. —that would all be well and good, Mr. Shulman, but Mr. George issued a report that said just the opposite. That's the whole point. That's why we're here. And you said you'd give assurances that it wasn't happening. Mr. George issued a report that said it was. And you were at the White House 118 times talking about the Affordable Care Act. And you never had any conversations about the targeting that was going on of groups who opposed the Affordable Care Act. And the American people are supposed to believe that.

The gentleman from Utah?

Mr. CHAFFETZ. Thank you, Chairman.

Mr. Shulman, in your confirmation hearing on January 29th, 2008, you were asked by Senator Wyden, he said, "What do you intend to do to make sure that the IRS on your watch is not used as a political tool?" And your response, Mr. Shulman, was, "That's a great question. I believe that it is incredibly important that the IRS is seen as fair, is seen as a nonpolitical, nonpartisan, that really is a public service organization. I would be a public servant serving all American taxpayers and really the government."

How would you—based on that standard, based on the answer you gave, what letter grade would you give yourself in your tenure and what you did there?

Mr. SHULMAN. Look, I tried every day to be a good leader and public servant.

Mr. CHAFFETZ. I'm asking you for a letter grade on your assessment of how you did there.

Mr. SHULMAN. There was clearly a breakdown in our——

Mr. CHAFFETZ. I know that you know——

Mr. SHULMAN. —determinations process.

Mr. CHAFFETZ. I know that you know what letter grades are. You don't——

Mr. SHULMAN. I'm not going to grade myself.

Mr. CHAFFETZ. These 118 visits to the White House, did you ever have a discussion about 501(c)(4)s?

Mr. SHULMAN. First of all, you know, this is the first I've had an accounting of this 118——

Mr. CHAFFETZ. Did you ever go to the White House——

Mr. SHULMAN. So I just don't accept the, you know, the premise of there were 118 visits to the White House. It may or may not be true. So let me just stipulate that for the record broadly, if there's more questions about that.

Mr. CHAFFETZ. Did you ever talk about 501(c)(4)s at the White House?

Mr. SHULMAN. About our——

Mr. CHAFFETZ. Yes or no?

Mr. SHULMAN. —either determinations process or——

Mr. CHAFFETZ. Anything about 501(c)(4)s. Did you ever talk about the Citizens United case?

Mr. SHULMAN. Not that I remember.

Mr. CHAFFETZ. You never had a discussion?

Mr. SHULMAN. Not that I remember.

Mr. CHAFFETZ. No discussion around 501(c)(4)s?

Mr. SHULMAN. Not that I remember.

Mr. CHAFFETZ. It was a major thing. It was a big deal. And you never had one conversation.

Mr. SHULMAN. Not that I remember.

Mr. CHAFFETZ. You said you first heard about this problem in spring of 2012, correct?

Mr. SHULMAN. I heard that—I first heard about the BOLO list in spring of 2012.

Mr. CHAFFETZ. When did you first hear that there was a concern about the targeting of—based on political beliefs and political speech? When did you first hear that?

Mr. SHULMAN. To the best of my recollection, it was in the February-March time frame of 2012. And then——

Mr. CHAFFETZ. Okay, but——

Mr. SHULMAN. —there were also—can I——

Mr. CHAFFETZ. No. No. You can't.

On June 3rd, 2011, the chairman of the Ways and Means Committee, Dave Camp, sent you a letter, June of 2011. Second paragraph, "Now, with no warning, the IRS appears to have selectively targeted certain taxpayers who are engaged in political speech." And he goes on.

How is it that he, the chairman of Ways and Means, sends you, the head of the IRS, a letter like this and you say you know nothing about it?

Mr. SHULMAN. So that's where I was going to go. This is a very separate matter——

Mr. CHAFFETZ. No, you weren't.

Mr. SHULMAN. —about—this is a very——

Mr. CHAFFETZ. No, you weren't.

Mr. SHULMAN. —separate matter. That's a gift tax matter that I'm—that I'm aware of.

Mr. CHAFFETZ. This is exactly about political speech, and it continues to go on.

Then you hear from Charles Boustany, who sends a letter on October 6th requesting information about the tax-exempt sector. How is it that it takes you so long and you say you don't know this?

And, Mr. Wolin, you said you took immediate action. What happens with all of these letters?

Mr. Shulman, when you get a letter from a Member of Congress, who else is copied on that? Who else do you give it to?

Mr. SHULMAN. Who do I——

Mr. CHAFFETZ. You're not the only one that sees this letter.

Mr. SHULMAN. Who do I give it to? Letters, usually, as far as I know the process, go into our Congressional Affairs Office. They get farmed out to the appropriate staff who are subject-matter experts to try to get the best answer. And that's——

Mr. CHAFFETZ. Does Mr. Wolin get copied on these?

Mr. SHULMAN. Not that I'm aware of.

Mr. CHAFFETZ. Does anybody at the Treasury Department get these, outside of the IRS?

Mr. SHULMAN. I really don't know.

Mr. CHAFFETZ. Does anybody get—does anybody get these letters at the White House?

Mr. SHULMAN. At the White House?

Mr. CHAFFETZ. At the White House.

Mr. SHULMAN. Not that I'm aware of.

Mr. CHAFFETZ. So when you get a letter from the chairman of the Ways and Means Committee or the chairman of this committee, chairman of any, you're telling me that you don't—you have no idea where it goes and what happens to it.

Mr. SHULMAN. To the best of my knowledge, it goes into our Congressional Affairs shop; someone in the organization answers it.

Mr. CHAFFETZ. And who do they——

Mr. SHULMAN. If it comes up—if it's for my signature, the return, that would come up to me for review most of the time.

Let me also just note, of all the letters people are talking about, there's a lot of individual constituent mail that comes into the IRS, much of which I don't——

Mr. CHAFFETZ. So you get a lot of mail.

Mr. SHULMAN. —much of which I don't see.

Mr. CHAFFETZ. But do you see all the letters from Members of Congress?

Mr. SHULMAN. To the best of my knowledge, I do, the ones to me.

Mr. CHAFFETZ. So you got 132 Members of Congress——

Mr. SHULMAN. Let me actually repeat. If it's something that someone else is going to take care of, I might not have seen it. But the ones you are referring to, Mr. Boustany's, Mr. Camp's——

Mr. CHAFFETZ. Mr. Hatch, the 12 Senators, did you see that letter?

Mr. SHULMAN. Yes.

Mr. CHAFFETZ. When he says this is a lie by omission, how do you respond to that?

Mr. SHULMAN. You know, my belief is that—well, first of all, the letter in question was not under my signature. And, second of all——

Mr. CHAFFETZ. He's made a very serious charge.

Mr. SHULMAN. —second of all, I——

Mr. CHAFFETZ. I want to know what you think of this idea of lie by omission.

Mr. SHULMAN. I disagree with it.

Chairman ISSA. [Presiding.] And——

Mr. CHAFFETZ. I yield back.

Chairman ISSA. —that will have to conclude.

We now go to the gentlelady from California, Ms. Speier.

Ms. SPEIER. Mr. Chairman, thank you.

Mr. Shulman, you have been the head of the IRS for over 5 years. You're in charge of the Internal Revenue Service, correct?

Mr. SHULMAN. I was head of the IRS for 4 years and about 8 months.

Ms. SPEIER. All right, 4 years and 8 months. You get 132 letters from Members of Congress concerned about targeting, and you send them to Leg Affairs to deal with.

Did you feel any responsibility to go to the Cincinnati office and find out for yourself what was going on? Did you ever make a visit to the Cincinnati office?

Mr. SHULMAN. I guess I don't accept the premise that I got 132 letters about targeting. I certainly wasn't aware of that number until now. I knew about two questions——

Ms. SPEIER. Well, regardless, when Congress contacts you, whether it's 12 Senators or members of this committee, I mean, doesn't it alert you to the fact that, you know, if there's smoke, maybe there's fire?

So did you ever visit the Cincinnati office?

Mr. SHULMAN. I visited early in my tenure the Cincinnati office, which has, you know, many different operations. But I don't believe I went to Cincinnati, you know, during this 2012 time frame.

Ms. SPEIER. Do you take responsibility for what happened in the Cincinnati office?

Mr. SHULMAN. Do I take responsibility for the list——

Ms. SPEIER. Yes.

Mr. SHULMAN. —being done? You know, I don't take personal responsibility for there being a list with criteria put on it, but I do accept the fact that this did happen on my watch.

Ms. SPEIER. So you don't take responsibility, but you recognize the fact that it happened under your watch.

Mr. SHULMAN. I recognize that this happened on my watch. And I'm very sorry that this happened while I was at the Internal Revenue Service.

Ms. SPEIER. You know, one of the problems we have here is people are unwilling to take responsibility for actions that happened under their command.

And you had a duty, as far as I'm concerned, to find out what was going on in the Cincinnati office when Members of Congress, 132 of them or 50 of them or 10 of them, inform you that they think that there's some kind of targeting going on. And if that doesn't elevate your concern and interest, then something is fundamentally wrong between the way Congress interacts with the administration and the bureaucracy.

Now, Mr. George, the law is that a 501(c)(4) must operate exclusively for the social welfare. That's what the law says, correct?

Mr. GEORGE. That is my—yes, that's correct, ma'am.

Ms. SPEIER. Exclusively for social welfare purposes.

Mr. GEORGE. Yes.

Ms. SPEIER. And somewhere along the line, the IRS came out with a regulation that reduced it to "primarily." Is that correct?

Mr. GEORGE. That's my understanding.

Ms. SPEIER. So does the regulation trump the statute?

Mr. GEORGE. Well, I'm not here to give legal advice, but——

Ms. SPEIER. But in your——

Mr. GEORGE. —as an attorney, that is my understanding, that a regulation does not trump a statute. But a regulation can be used to elaborate on the intent of the statute and to help——

Ms. SPEIER. So if we just look at those two words, "exclusively" and "primarily," there is a dramatic difference, correct?

Mr. GEORGE. Yes, in my view.

Ms. SPEIER. And if regulation can't trump statute, then everything that's been going on here relative to authorizing 501(c)(4)s if they're not exclusively being used for social service purposes is violative of the law, correct?

Mr. GEORGE. I would say yes, but we have to keep in mind there may have been court interpretations between the passage of the legislation and the implementation of the—the passage of the statute and the implementation of the regulation. And I don't have the history of that, Congresswoman.

Ms. SPEIER. All right. In your review of this situation, have you identified in Cincinnati the individuals who have developed this BOLO list?

Mr. GEORGE. We have not yet, ma'am.

Ms. SPEIER. And why not?

Mr. GEORGE. We have had some difficulty in terms of getting clarity from some of the IRS employees we've interviewed.

Keep in mind, this is an audit. The people we have been interacting with were not under oath. And so, if this matter develops

further and changes its character, that might change the willingness of people to be more forthcoming with the information.

Ms. SPEIER. Now, the committee yesterday interviewed Holly Paz, who is the manager of the Rulings and Agreements Office in Washington, D.C. And for at least part of the time period in question, she oversaw approximately 300 employees in the Cincinnati unit that determines whether organizations qualify for tax-exempt status.

She said that she was the first person in the Washington office to learn about the use of inappropriate criteria in June of 2011. Do you agree with that? Is that consistent with your report?

Mr. GEORGE. I have no information on that, but if you'll—I beg your indulgence for 1 minute.

Chairman ISSA. The gentlelady's time has expired, but you can continue to answer.

Mr. GEORGE. We do not have any information on that, Congresswoman.

Ms. SPEIER. I yield back.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Michigan, Mr. Walberg.

Would you give me just 2 seconds of yielding?

Mr. WALBERG. Two seconds, I certainly will.

Chairman ISSA. For the gentlelady, my colleague from California, the Center for American Progress and Organize for American Action and others are 501(c)(4)s. This is not new. President Obama uses a 501(c)(4).

Ms. SPEIER. Will the gentleman yield?

Chairman ISSA. It's the gentleman's time.

Mr. WALBERG. I will yield briefly.

Ms. SPEIER. Thank you.

Mr. Chairman, regardless of whether it's a Democratic, a progressive, a conservative, or Republican organization, laws we have should be enforced. And a statute was trumped by a regulation, and we should all be concerned about that.

I yield back.

Chairman ISSA. And if I can clarify for all of us, this changed in 1959, there's a whole lot of water over the dam since 1959. And I think that it's important today to realize that, without congressional action, trumping a 1959 by the IRS would be legislating, without a doubt. And I think the IG, in including it in his audit, told all of us essentially that the Ways and Means Committee has, in fact, a challenge to deal with, which is, do we really want it the way it is, as it has evolved in use? But, ultimately, the decision since 1959 has caused organizations that perhaps all of us have grown to like—the 501(c)(3)s, like the American Lung Association, endorses legislative initiatives, as you know, in California. They promote initiatives and so on. They do it as a minority of what they do.

So I think one of the challenges for this committee—and I would only ask us all to think about it in these terms—is, Ways and Means has authority to change the law or to essentially trump a regulation. In our case, we have primary responsibility to ask questions like: Should the IG have known sooner and we have been reported? Should Mr. Shulman have been a better manager than he

was? And if so, how do we ensure in the future that Mr. Wolin, for example, would, in fact, have known and known with specificity sooner?

I think that's our lane, and I only would say that as chair, because our lane is not unlimited. The jurisdiction of the Ways and Means as to laws governing the IRS does not belong in this committee. And I know all of us on this committee are very proud that we do a lot of work. The one thing we don't do is we don't pass tax law. Although we all have opinions on it, let me assure you.

The gentleman is recognized.

Mr. WALBERG. I thank the chairman. And I'd ask unanimous consent to have my full 5 minutes restored.

I mean, it's been interesting listening to the counts here of 118 visits to the White House by Mr. Shulman; no talk about this specific issue, no talk about related issues during those 118 visits; 132 letters coming from Members of Congress; 42 articles in newspapers. And, frankly, we just had the opportunity now of having the press really get engaged with it, but 42 over that course of time.

I also looked at a train of events: September 2010, Senate Finance Committee Chairman Baucus wrote a letter to the IRS asking the IRS to survey tax-exempt organizations to ensure that political campaign activity is not the organization's primary activity.

October 2010, Senator Durbin wrote to the IRS to review the purposes and activities of several tax-exempt organizations.

February 2012, Senators Bennett, Franken, Merkley, Schumer, Shaheen, Udall, and Whitehouse wrote to the IRS about the issue.

Thirty-two Democrats in March of 2012, House Democrats, wrote to the IRS and the White House to ask that political activity of tax-exempt organizations be investigated.

July and August of 2012, Senator Levin sent letters to the IRS and said that the IRS appears to be passively standing by while organizations clearly ignore the Tax Code with no apparent consequences.

Now, this, to me, seems like a significant amount of requests for information and concerns that private citizens, organizations seeking tax-exempt status who happened to be of the conservative side would be checked on and questioned.

Now, I find it difficult, Mr. Wolin, to understand how that didn't come across your train of reference and responsibility earlier on.

Did you ever discuss congressional interest in the way the IRS was handling political nonprofits with the President?

Mr. WOLIN. I did not, Congressman. Never.

Mr. WALBERG. Did you ever discuss it with anyone at the White House or any agency outside the IRS?

Mr. WOLIN. I did not, Congressman.

Mr. WALBERG. Why didn't you discuss this, when you knew it was of such interest to Congress and you knew Congress was apparently not satisfied with whatever actions the agency had taken thus far on either side of the issue?

Mr. WOLIN. Frankly, Congressman, the correspondence to which you refer did not come to me. I think it was, in general, as you suggested, addressed to the IRS. And I, frankly, was unaware of this—of the concern until——

Mr. WALBERG. But Treasury has intense responsibility and ought to have intense scrutiny over the IRS, correct?

Mr. WOLIN. Well, Congressman, I think it's important for me to reiterate that, with respect to the details of tax administration and tax enforcement, it's been the longstanding practice of Treasury Departments, spanning administrations of Republican and Democratic Presidents, not to get involved in those details, specifically because we don't want—we don't want to have political influence over those kinds of detailed activities with respect to tax administration. I think this is a hearing and a subject matter that makes clear why that's not a good idea.

Mr. WALSH. Not a good idea.

Mr. Shulman, when did you learn about the second BOLO again and the failure of employees to follow explicit directions from their superiors?

Mr. SHULMAN. About the fact that there was a BOLO and then a second BOLO and that employees hadn't followed directions?

Mr. WALBERG. Yes.

Mr. SHULMAN. That I didn't learn about until, you know, this last week when the report came out.

Mr. WALBERG. Wow. Were you involved in any discussions about disciplining people who were being insubordinate in the Cincinnati office?

Mr. SHULMAN. Not that I remember.

Mr. WALBERG. In Politico today, I see this headline here: "Heads Won't Roll at the IRS." "Heads Won't Roll at the IRS." "Labor rules give workers protection."

The amount of ineptitude—and it's assuming that a Fifth Amendment was requested by Ms. Lerner, who is not here. We have to assume that there's some concern about criminality, as well.

What does it take for someone to get disciplined at the IRS?

Mr. SHULMAN. There's—you know, at the IRS, there's, you know, procedures that people follow that, you know, workers have——

Mr. WALBERG. And people don't follow, I would guess.

Mr. SHULMAN. And there's a union, so it depends if it's somebody in the union or not. The best of my knowledge, it's the kind of procedures you would think about in any organization, which is that——

Mr. WALBERG. Well, specifically, while you were Commissioner——

Mr. SHULMAN. —people go over it——

Mr. WALBERG. I only have 4 seconds. While you were Commissioner, for what reasons did you discipline some individuals at the IRS while you were Commissioner?

Mr. SHULMAN. Inappropriate conduct, not doing their job, those kinds of things.

Mr. WALBERG. Wow. And we missed all of this.

I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Pennsylvania, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Gentlemen, I want to say I am deeply troubled, and I know I speak for the entire panel, we are all deeply troubled by what has

happened at the IRS. And perhaps the most troubling part is that the IRS has been revealed to have targeted groups for their political beliefs, their political leanings. It's an outrage if this is true.

And I want to drill down a little bit with you, Mr. George. You're the Inspector General. Last week, you testified in front of the House Ways and Means Committee to the effect that, from your looking into this matter, whether you call it an audit or an investigation, from your looking into this matter, you saw no evidence that IRS employees were politically motivated in their creation or use of the inappropriate screening criteria.

Was that essentially your testimony?

Mr. GEORGE. That we received no evidence during the course of our audit to that effect, yes, sir.

Mr. CARTWRIGHT. All right. So that doesn't really square with the headline that the groups were targeted by the IRS for their political beliefs and political leanings.

And I want to ask you, I mean, isn't it true, people do things for a reason? If people at the IRS came up with improper ways of going about their business, improperly triaged groups with political-sounding names to the top of the list for extra scrutiny, if they did those things and it wasn't for political reasons, why did they do it?

Mr. GEORGE. Congressman, there are reasons for the IRS to issue "be on the lookout" types of directives and without violating any, I don't want to say secrets, but without giving the bad guys a way of avoiding detection.

I will point out that, in the case of terrorists, terroristic activities, both domestic and international, there may be a reason for the IRS to be on the lookout for a particular type of application or something of the like.

Mr. CARTWRIGHT. Well, one thing that Mr. Connolly mentioned earlier this morning was the doubling of the applications that we saw after the Supreme Court's decision in January of 2010 in Citizens United. And that's true; is that correct?

Mr. GEORGE. It is correct, but I want to make sure that I'm clear about that. I did—our audit did not say this was as a direct result of that.

Mr. CARTWRIGHT. Right.

Mr. GEORGE. It was coincidental.

Mr. CARTWRIGHT. And you're anticipating my next question. Whether or not we know there was a direct relation, we don't want to engage in, post hoc propter hoc reasoning, but whether or not we know what the cause was, we know that the applications doubled starting in 2010, right?

Mr. GEORGE. That's my understanding.

Mr. CARTWRIGHT. So we've got the workload doubling. We've also established that there were no additional resources given to the IRS to do this work.

Is one of the possible explanations that the staffers who were not acting for political reasons were actually acting to streamline their own work and try to get through a twice-as-high pile of work in a streamlined fashion so that they could actually get the work done?

Mr. GEORGE. Congressman, there are certainly valid reasons for the Internal Revenue Service to try to become more efficient in the

way they identify these types of cases. However, it is entirely inappropriate for them to use certain categories in which to accomplish that.

Mr. CARTWRIGHT. Exactly.

Now, one thing I want to ask you is, I think you've testified that you haven't really zeroed in on individuals because you've done an audit, not an investigation. Is that right?

Mr. GEORGE. That is correct, sir.

Mr. CARTWRIGHT. Why, Mr. George? In your testimony, you said that you were asked by several Members of Congress to do an investigation. Why have you not done one so far?

Mr. GEORGE. Many of our activities, sir, are covered by Privacy Act rules. And, again, in some instances, during the course of an audit, if an investigation were initiated, the audit would have to cease because of conflicts and a variety of other reasons.

Mr. CARTWRIGHT. So you do an audit first, finish that, and then move to an investigation. And I hope you will do that.

And I want to finish with this question: Did the IRSs improper prioritizing of certain groups for extra scrutiny, did that lead to any actual incorrect determinations of the tax-exempt eligibility of any groups?

And I'll open that up to all three of you gentlemen. Do any of you know, did this improper conduct lead to improper decisions?

Mr. GEORGE. I will say that this action led to the fact that not a single application for this status, this tax-exempt status, was denied. They were delayed, they were delayed for years at times, but not a single one of the ones that we examined were denied. So it does raise questions in that regard.

Mr. CARTWRIGHT. Mr. Shulman?

Mr. SHULMAN. Not that I'm aware of. But I defer to the Inspector General, who has done the—done the review.

Mr. CARTWRIGHT. Mr. Wolin?

Mr. WOLIN. I have no knowledge of this, Congressman. I, too, defer to the Inspector General, who has looked at this.

Mr. CARTWRIGHT. Thank you.

And I yield back.

Chairman ISSA. Thank you.

Just to clarify what the gentleman was asking, none were denied, but, by definition, not granting them is, in fact, not allowing them to happen. So you can actually deny better by not denying. Because if you deny, they have a right of appeal. If you just let them sit in limbo, they're screwed. And some are still screwed today; isn't that correct?

Mr. GEORGE. That's——

Chairman ISSA. A term of art.

Mr. GEORGE. Well, I was going to say I wouldn't use, necessarily, that word.

Chairman ISSA. But if you were a Tea Party organization, you'd use that term.

Mr. GEORGE. I would be very frustrated, sir, yes.

Chairman ISSA. Two quick things to clarify, because the gentleman made a very good point. This doubling—isn't it true that they began targeting Tea Party before there was any doubling, that your own testimony shows between 2009 and 2010 there was not

a marked increase and they began targeting with just one Tea Party application and then expanded it?

Mr. GEORGE. They did, yes, sir.

Chairman ISSA. Thank you. I think that makes it clear.

Oh, one more thing. There were 479 or so of these Tea Party groups that were targeted in total. Were there any BOLOs issued for progressive groups, liberal groups?

Because I'm assuming that your investigation—we can't see them—but your investigation showed liberal groups that flew right through during the same time and got their 501(c)(4)s. They were not stopped; isn't that correct?

Mr. GEORGE. Sir, this is a very important question. Please, I beg your indulgence.

Chairman ISSA. Of course.

Mr. GEORGE. The only "be on the lookout," that is, BOLO, used to refer cases for political review were the ones that we described within our report.

There were other BOLOs used for other purposes. For example, there were lookouts for indicators of known fraud schemes so that they could be referred to the group that handles those issues. For nationwide organizations, there were notes to refer State and local chapters to the same reviewers.

As we continue our review of this matter, we have recently identified some other BOLOs that raised concerns about political factors. I can't get into more detail at this time as to the information that is there because it's still incomplete—that we've uncovered, rather, because it's still incomplete.

And there are 6103 issues——

Chairman ISSA. Of course.

Mr. GEORGE. —involved here, too. I hope that provides context——

Chairman ISSA. So, clearly, it's fair to say, though, that there was a BOLO for Tea Party but not a BOLO for MoveOn or Progressive?

Mr. GEORGE. I'm not in a position to give you a definitive response on that question at this time, Mr. Issa—Mr. Chairman.

Chairman ISSA. So are you saying today that there were other 501(c)(4)s, not specific, so much as one other 501(c)(4) not previously identified during your IG audit that were, in fact, targeted and held in a similar way?

Mr. GEORGE. I cannot give you a definitive answer, sir, at this time. But I certainly will when——

Chairman ISSA. I only asked you if there's at least one. Are you aware of at least one that was targeted using a BOLO that was a 501(c)(4) in which they were targeted politically but did not fall into this current report we have before us?

I'm not asking for privileged information. I'm asking——

Mr. GEORGE. No, no, no.

Chairman ISSA. —for one.

Mr. GEORGE. Under the report, the review—the purposes of the audit that we conducted, which was to determine whether they were looked for in the context of political campaign intervention, there were no others.

Chairman ISSA. Thank you.

As I recognize the gentleman from Oklahoma, I want to express my deep condolences for the losses. I realize you flew through the night to come back and that you'll be leaving as soon as votes conclude. But, again, I think all of us on the dais would offer our heartfelt condolences.

Mr. LANKFORD. Thank you, Mr. Chairman. Tough day for the folks in Oklahoma, a tough—very tough time for a long time.

Mr. George, I want to clarify several things. One of them, you made the comment that, so far, none of them have been turned down. They just had this inordinately large amount of paperwork, and additional questions applied to them, and it's a long delay with no response, and it's basically, "We'll get back to you at some point." Is that correct.

Mr. GEORGE. That is correct, sir.

Mr. LANKFORD. Man, that sounds like the Keystone pipeline to me. But that's a whole different issue.

You had mentioned under your audit, people under investigation are not under oath. They're not under investigation, or audit—are not under oath and that the IRS staff has not been forthcoming on some of the things. Is that the statement that you used?

Mr. GEORGE. That's the inference that——

Mr. LANKFORD. Is that both staff and management that you've had conversations with? Or has staff and management been in that conversation where you feel like they've not been completely forthcoming on all the questions you've asked?

Mr. GEORGE. I'm sorry, is your question, is it because management has——

Mr. LANKFORD. No, staff and management both. When you say IRS personnel have not been completely forthcoming on some of the issues you've asked about.

Mr. GEORGE. That is an inference that can be made from the fact that we have not gotten clear answers.

Mr. LANKFORD. So that's what I'm trying to ask you, is staff, management, so two different levels of individuals. You're not getting completely full answers that you expect when you ask——

Mr. GEORGE. While I am not in those interviews personally, sir, that is my understanding.

Mr. LANKFORD. Okay.

Mr. Wolin, did you ever ask anyone at the IRS—because you had to—you had to hear about all these reports, as well, that possibly political activity was happening within the IRS. It's been mentioned before, already 42 different major news stories were out there that there was potential targeting.

Did you have a conversation with anyone anywhere in the IRS where you asked the question, "Is this true," or "Is this happening," sometime after May the 3rd, 2012?

Mr. WOLIN. I did not, Congressman. Again, with respect to the details of how the IRS administers the Tax Code, especially——

Mr. LANKFORD. No, I understand. I'm just asking, did you have that conversation where you asked someone, is this true, is this happening? Because there were a lot of media reports before this came out.

Mr. WOLIN. I didn't—the first I was aware of this, Congressman, is when the Inspector General came to me at some point in 2012

and said on the basis of some congressional inquiries he was going to begin an audit. And that was the first I'd learned it.

Mr. LANKFORD. Okay, so you didn't see any of the media reports over the group that you oversee?

Mr. WOLIN. I did not.

Mr. LANKFORD. Okay.

Mr. WOLIN. Not that I recall.

Mr. LANKFORD. Wow.

Mr. Shulman, in my office, before a letter goes out, there are four different people, including myself, that go through that letter as it goes through the process of edits and review and fact-checks and all those things. I assume it's very similar in your office, as well, that you're not actually penning every letter. There are multiple people that are involved in the process on it.

I am one of many that wrote a letter in 2012 to your office and received a response back from Steve Miller. In that response that I got back from Steve Miller about this exact issue, he said, "In those cases where the application raises issues for which there is no established published precedent"—I assume that's the Tea Party groups and everything else—"or no uniformity, EO Determinations may refer the application to EO Technical. At EO Technical, the applications are very reviewed by tax law specialists, whose job it is to interpret and provide guidance on the law and to work closely with IRS chief counsel attorneys on the issues." That's a lot of folks when there's new ground to be broken.

Now, from my district, this is one of those letters that came in from someone in my district that specifically contacted me and had a whole series of questions that came back to them with what is, in my area, the Oklahoma City Patriots in Action group. They were asked questions such as, "Have any candidates running for public office"—"Have any candidates running for public office spoken or will they speak at your function or organization? If so, include a transcript of any speeches given by candidates." Which is remarkable to be able to ask.

"Do you directly or indirectly communicate with members of legislative bodies?" And there is no definition for what indirect communication is given on that. It's just, have you had—I don't even know what that would mean.

My favorite question: "Who developed the Web site and has control over the data generated by the Web site?" Not only is that an insane question to ask, it's not even grammatically correct.

19A: "Provide all copies of your corporate minutes from inception to the present." This was asked—and at the beginning of the first page, it says, "Under penalty of perjury, I declare that I have examined this information," and goes through this long statement.

My issue is, this is new ground. And based on the letter that we received when I wrote the letter to you, it lists a long list of people that have to be involved in the formation of this. How do we get the list of individuals that were involved or at least the process of how these questions were done?

Because this assumption that this is a couple rogue agents does not match up with the letter and how we were told this was actually created. This includes technical folks, attorneys, chief counsel, EO. This is a pretty large list of people that are involved in cre-

ating this. Someone knew—in fact, a lot of someones knew about this, because you can't form this without this.

How do we get that information? Ms. Lerner is obviously the best person to ask. She's chosen not to answer questions. How do we get that?

Mr. SHULMAN. Look, as you said, there's probably other people who work on the details of that who you could ask. I would presume you ask it directly. I'd presume that the IG, who now has a better understanding of this, would be able to be helpful. And I would presume that the committee investigative staff will take letters like that and your questions and ask, you know, who was involved.

Mr. LANKFORD. If I can have the luxury here, Mr. George, is there any way to know about how many people? Has that been a part of your audit, to try to determine how many people went into creating this and how many different offices? Because this lists at least three different offices and multiple groups of people that were referenced just in their response to me in creating one of these surveys.

Mr. GEORGE. My understanding is we have not made that determination, sir.

Mr. LANKFORD. Well, that might be something we need to know.

Mr. GEORGE. We will take that under advisement, Congressman.

Mr. LANKFORD. I yield back.

Chairman ISSA. I thank you.

The gentleman from Wisconsin, Mr. Pocan.

Mr. POCAN. Thank you, Mr. Chair.

And, you know, in Wisconsin, we try to find silver linings. And in this one, Mr. Chairman——

Chairman ISSA. If you find one, then you can find a sunny day in a snowstorm.

Mr. POCAN. Well, I found a small one. You know, the inept, inexcusable actions of the IRS have done more to unify Democrats and Republicans than I've seen in my 5 months here so far. So that's what I'm going with. I'm going to try to work off of that.

Chairman ISSA. I'd use it until we lose it, and hopefully we won't.

Mr. POCAN. Exactly.

Let me drill down a little bit in a different area because I think a lot has been talked about, really, the ineptitude of what had happened.

But specifically, Mr. George, one of your recommendations, I think, that stands out the most is the better guidance to determine whether organizations are properly qualifying for the tax-exempt status, 501(c)(4).

Not related to the groups that have, but to the future, the fact that since the 2 years previous to Citizens United there's a pretty even number of applications and now in the last year that has more than doubled, so we're clearly seeing more activity in this area, if we really want to make sure, not through this sad way that was done through the IRS to try to find this out, but some other way, you in your report say that we need the Acting Commissioner for the Tax-Exempt/Government Entities Division to work with the IRS chief counsel and Department of Treasury to improve guidance

to help determine the primary activity of social welfare organizations. Is that correct?

Mr. GEORGE. That is correct, sir.

Mr. POCAN. Okay. And, to be clear, if a group's primary activity is political, they do not qualify for the 501(c)(4), correct?

Mr. GEORGE. Again, as long as they pass that test of, you know, not being their primary activity.

Mr. POCAN. All right. And the IRS, in your opinion, from the report, does not have adequate guidance so its employees can figure out this question. Was that your point?

Mr. GEORGE. That is definitely my point, sir, yes.

Mr. POCAN. Okay.

Mr. Shulman, you're no longer there, so I'm not going to ask you this question, but I am going to put it to Mr. Wolin.

You know, the Treasury oversees implementing regulations for the Tax Code passed by Congress. In this specific area, do you expect Treasury to come out with some guidelines measuring the primary activity of 501(c)(4) organizations so we can actually have some clear and concrete guidance for IRS employees?

Mr. WOLIN. Congressman, the existing guidance, as you know, is very old. This is a very complicated area. But as the IG report recommends and as this matter makes clear, we need to have some new guidance in this area. That's what the IG has recommended, and we have adopted all of his recommendations.

So we will work with the new Acting Commissioner, Mr. Werfel, to see what additional guidance we can provide so that we can bring better clarity to this area and help avoid the kinds of things that we've just learned were happening.

Mr. POCAN. And do you have a timeline on that?

Mr. WOLIN. Well, I think we're going to get to our work as soon as possible, but I don't have a specific timeline for you, Congressman, other than to say that the Secretary has charged the new Acting Commissioner with a report in 30 days that includes, among other things, how we're progressing with respect to the implementation of the various recommendations that Mr. George has put forward and that we have accepted.

Mr. POCAN. Okay. I just think this is probably one of the areas, you know, we can look at the problems that occurred, and they were significant. And, as you can see, there's complete unanimity in the room here, looking at this thing, this was inept and inexcusable.

Mr. POCAN. But I think the next step is how do we make sure that because of Citizens United the growth of these applications that we have are fair and level process to work off of. So as soon as you can do that, that would be much respected. And then finally, Mr. Chairman, I would just close in saying, I think this has been really great to have this in the open so everyone can see this and it's been a very good hearing. I would hope you would still consider tomorrow perhaps opening the Thomas Pickering hearing so that we could try to indeed have as I think he has requested a chance to do that.

Mr. JORDAN. Would the gentleman from Wisconsin yield?

Mr. CONNOLLY. Would my colleague yield?

Chairman ISSA. You've got so much yielding to do, I may have to give you more time.

Mr. JORDAN. Would the gentleman yield?

Mr. CONNOLLY. I thank my colleague.

Mr. George, in response to Mr. Cartwright, you said something that I don't think you're competent to say, and that is when looking at your own report that shows the doubling of applications of 501(c)(4)s you said, well, that's just coincidental to Citizens United. You don't know that. We don't know if it's causal or coincidental based on your analysis, and I want to give you an opportunity to acknowledge that.

Mr. GEORGE. I agree with your statement, but my point was that we did not indicate in our report that because of Citizens United, there was a doubling.

Mr. CONNOLLY. I understand. And is it not also true that a 501(c)(4), one benefit of that versus a 501(c)(3) is the donors don't have to be revealed, is that correct?

Mr. GEORGE. That is my understanding sir.

Mr. CONNOLLY. Thank you, Mr. George, and I thank my colleague.

Mr. JORDAN. Will the gentleman yield the last 15 seconds?

Mr. POCAN. He can have the last 10 seconds.

Mr. JORDAN. Mr. Wolin, yesterday Mr. Lew said senior aides at the White House, the Treasury Department and the IRS debated the best way to break this news when Ms. Lerner gave the speech and you had the planted question, how you were going to spin this, how you were going to bring this forward. Were you involved in those discussions on how this story was going to break to the American people?

Mr. WOLIN. No, I was not involved——

Mr. JORDAN. You weren't one of the people at Treasury involved, even though it's your responsibility to oversee the IRS?

Mr. WOLIN. Congressman, there were, and I think there's been press reporting on these conversations among folks in the chiefs of staff's office and among lawyers about these questions. And I was not directly involved in those conversations, no.

Mr. JORDAN. Who at Treasury was?

Mr. WOLIN. Again, we will work with you to get the names, Congressman, but there were people in the Chief of Staff's office——

Mr. JORDAN. Do you know the name Celia Roady? She was the person who planted the question. Do you know how she was chosen and why she was chosen?

Mr. WOLIN. Congressman, I had no involvement, no knowledge of that until we learned about it probably together when there was testimony from Mr. Miller on that question. I have no knowledge about.

Chairman ISSA. Thank you.

I just, Mr. George, following up on Mr. Pocan, just one quick thing. I had our staff check, and Citizens United was decided and announced on 21 January, 2010, and the IRS began targeting Tea Party groups in March of 2010. Isn't that correct?

Mr. GEORGE. I'm not sure of the date of the——

Chairman ISSA. Well, the first file pulled, according to Ms. Paz, would have been that less than 2 months later.

Mr. GEORGE. I'm not sure of the date of the issuance of the Supreme Court ruling.

Chairman ISSA. We can all get that at Google. That's a fact online. But essentially, if there's a coincidence, the coincidence the IRS began targeting less than 60 days Tea Party groups after Citizens United was started, I would assume that it's awful hard to have this supposed exponential increase in applications in less than 60 days, especially since they targeted, they had gathered starting with application one, isn't that essentially, without exceeding what Mr. Connolly would agree to, if there's a coincidence, isn't that the coincidence that it happened so close to the deciding of a Supreme Court not to the increase in applications?

Mr. GEORGE. It does seem coincidental, sir.

Chairman ISSA. Thank you. With that we go to the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

Mr. Shulman, are you familiar with any examples in which confidential information relating to the application for tax-exempt status of groups was leaked to any entity outside of the IRS?

Mr. SHULMAN. I'm familiar with some press reports and vague recollection of things happening.

Mr. GOSAR. We're going to pick up one in particular. Media reports asserts that Austan Goolsbee, then the President's Chairman of the Council of Economic Advisors, disclosed confidential tax information about Koch Industries to reporters on August 27, 2010.

Do you have any idea how Mr. Goolsbee obtained that information?

Mr. SHULMAN. Two things, one is, if I remember from the time, it wasn't confirmed that he had confidential information. And to the extent he did, if that's your premise, I have no idea——

Mr. GOSAR. It should have alerted you because that's something very, very important. It kind of hit the screen it's a pretty big deal.

So did you ask your staff at the IRS how this happened? And did you find out if anyone at the IRS provided Mr. Goolsbee with that information, because it caused you, I just saw you with your caution, it caused you to think about it and somebody in your nature should have gone back and asked. Did you ask anybody, yes or no, in the IRS looked into how he got that information?

Mr. SHULMAN. It was several years ago, but my best memory is, and I have a recollection that the Inspector General was, actually did an investigation to see if something had happened. But that's my best memory.

Mr. GOSAR. At that time?

Mr. SHULMAN. It's very vague.

Mr. GOSAR. Is that true, Mr. George? I didn't think you were at that time investigating.

Mr. GEORGE. Congressman this is one of the most frustrating aspects of implementing or overseeing the Internal Revenue Service, and those are some of the restrictions that the Tax Code places on me and my ability to communicate information to people outside of the Ways and Means Committee. The IRS has strict confidentiality rules which we actually enforce, and which I'm not allowed to provide you, sir.

Mr. GOSAR. I appreciate that. I want to keep going here.

So, Mr. Shulman, how would that information be obtained? From your understanding of the IRS, you're the head, you're the guy. How would that be obtained? It had to come from a leak, right?

Mr. SHULMAN. It shouldn't be obtained. Section 6103 prohibits IRS employees from disclosing specific taxpayer answers.

Mr. GOSAR. Thank you. You gave me my answer.

So, Mr. Shulman, 6 months after Mr. Goolsbee made that public information, you went to the White House and met with him according to the White House records on February 3rd 2011. Did you ask Mr. Goolsbee then or at any other time how he obtained that information?

Mr. SHULMAN. Not to my recollection.

Mr. GOSAR. Why not?

Mr. SHULMAN. Because there's lots of things that happen in the press that involve the IRS. I don't remember that meeting, but I do remember——

Mr. GOSAR. But my understanding is this is a very important piece, particularly as a Director, that you should have looked at because—by the way, sir, did you take an oath of office?

Mr. SHULMAN. I did take an oath of office.

Mr. GOSAR. Let's keep going. Are you familiar with the news organizations a propolitica publication of pending tax exempt applications from conservative leaning organizations?

Mr. SHULMAN. I'm sorry, could you repeat the question?

Mr. GOSAR. Are you familiar with those publications? The news——

Mr. SHULMAN. ProPublica?

Mr. GOSAR. Yes.

Mr. SHULMAN. I'm familiar with the organization, ProPublica.

Mr. GOSAR. And it is my understanding based on reports from that publication that your office provided that publication with the applications that were still pending which were confidential. Is that your understanding?

Mr. SHULMAN. That my office?

Mr. GOSAR. Mmh hmm.

Mr. SHULMAN. I saw news reports of issues around ProPublica that I remember, and I don't remember the time stamp, and again, my best recollection is when those news reports broke, that it was referred to the IG to look at, is my best memory.

Mr. GOSAR. So what contributed to the confidential pending applications making it through the internal review process and being provided to the publication?

Mr. SHULMAN. I don't have any knowledge of the premise that it happened. I saw news reports.

Mr. GOSAR. Well, but it should have alerted you because I mean, as the head person with these big things happening, you should have followed up. Give us the detail. I've watch you all day. You're really good at certain parts of detail, and then you obscure the rest. There's a disease going on in America. I see it in trials all over the country. We feign because somebody gets in our face that we don't acknowledge something.

I want to go further. Are you aware that in July 2012 Senator Harry Reid claimed Mitt Romney hadn't paid taxes for the last 10

years and claimed to have the information supporting that? Are you aware of that? I'm sure you are.

Mr. SHULMAN. I have a recollection of reading that in the paper.

Mr. GOSAR. Do you know how Mr. Reid obtained that information? Did you look into this?

Mr. SHULMAN. I have no idea.

Mr. GOSAR. Doesn't that alarm you that all of a sudden, this pertinent information comes up, you're the head of this agency and you're not asking questions? Shame on you. Absolutely shame on you.

Did you ask for any other leaks of any other information, confidential information, on anybody else? I mean, I've just now illustrated you three different incidences where for private information, and yet you did nothing. So did you—let me ask you again.

Chairman ISSA. If the gentleman would conclude his questioning?

Mr. GOSAR. Yes. Did you faithfully take this oath, and I want to highlight it, that I will bear true faith and allegiance to the same and that I will well and faithfully discharge the duties of the office of which I am about to enter. Did you take that oath?

Mr. SHULMAN. Yes, I took the oath of office, yes.

Chairman ISSA. Thank you. The gentleman has concluded. Mr. Wolin, do you want to answer the same set of questions? I think they were directed to Mr. Shulman as a former agency head, but you were his superior and still would be the superior to each of those questions.

Were you involved? Did you investigate? Did you have concerns, particularly for sensitive IRS information?

Mr. WOLIN. I would say a couple things, Mr. Chairman, one I was not involved in any of those things. I remember reading news accounts of the—is it ProPublica—when it happened. I want to be sensitive as to the Inspector General has sort of instructed us to 6103 issues. But the only thing I learned about one of those issues was from the Inspector General who said he was looking into it and, of course, I did as I always do, I said follow the facts where they may lead, and otherwise stay out of the matter.

Chairman ISSA. Mr. George.

Mr. GEORGE. Mr. Chairman, we at TIGTA do have exclusive jurisdiction to review these types of allegations and again, I——

Chairman ISSA. But you have no authority to go to the White House, go to here on the Hill or go anywhere else for that investigation, you're extremely limited, you can't, as I understand, you can't leave Treasury for your investigation.

Mr. GEORGE. No. That is not true. We do have the authority to go beyond Treasury, including the White House.

Chairman ISSA. Thank you.

Mr. CUMMINGS. Mr. Chairman, for further clarification, is it, some agencies, if they read something in the newspaper, as a matter of fact, Members of Congress, we can be subjected to an ethics investigation just by somebody reading something in the paper or hearing about it. How does that work there with the IRS? Some mention was made of Senator Reid and others. How does that work there? Maybe you can answer that so that we can all be clear, briefly.

Mr. GEORGE. I can assure you, TIGTA has exclusive jurisdiction to investigate unauthorized disclosures of return information, tax return information. Now these, again, these provisions prevent me from discussing in any detail other than what the chairman of the Ways and Means Committee and the chairman of the Senate Finance Committee, I can't even discuss these matters with the ranking member of the Ways and Means Committee nor the ranking member of the Senate Finance Committee. But also the member, the chairman of the Joint Committee on Tax.

So if a matter is in the newspaper and if it's publicized, and if they name names, if I were to repeat the names publicly, I'm in violation of 26, section 61 of the—notwithstanding the fact that is——

Mr. CUMMINGS. Could you do an investigation? That is the question I'm asking.

Mr. GEORGE. Yes certainly, certainly we could.

Mr. CUMMINGS. Thank you.

Chairman ISSA. The gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman. Americans have a good reason to be outraged by the actions of the IRS and I share their outrage. I'm just frustrated today listening to you, beyond the mismanagement and the miscommunication that is well documented at this point, what troubles me most is the violation of public trust. It's clear that at several levels, from the misguided actions of the IRS staff in Washington, the IRS employees in Cincinnati, to yourself, Mr. Shulman, in your failure to disclose information to Congress, I just feel that you've really violated the public trust, and it's troubling because the IRS has such an awesome responsibility, and such an incredibly important job to do, one that is central who to how well our government operates.

And as our Tax Code gets more and more complicated and IRS employees face furloughs and pay freezes which, by the way, Presidential appointees are exempt from, it is an increasingly difficult job to do.

So I want to get at your comments in yesterday's Senate finance hearing, and again today in response to my colleague, the gentlewoman from California, Ms. Speiers, you denied personal blame for inappropriate criteria used by the IRS.

So what will you accept personal responsibility for? How about the lack of training of the staff as identified by the IG? Will you accept personal responsibility for the failure to properly train the staff?

Mr. SHULMAN. Look, I wouldn't go down a long list. I was the leader of the IRS at the time that this happened. I accept the fact that this happened on my watch, and I'm very sorry that this happened while I was at the IRS. I feel horrible about this for the agency, for the people there, for the great public servants. I'm not sure what else I can say.

Ms. DUCKWORTH. Were you responsible for the training of the IRS personnel on your leadership?

Mr. SHULMAN. I did not hands-on decide the training of 90,000 people.

Ms. DUCKWORTH. So you will not accept responsibility for the training of the personnel under the IRS at your time there?

Mr. SHULMAN. I accept that this happened on my watch.

Ms. DUCKWORTH. So, yesterday, you said, talking about when someone found out about this problem, and you said when someone spotted it, they should have run it up through the chain, why they didn't, I don't know.

Do you accept responsibility for the forward reporting process up the chain all the way to you as you yourself have identified happened?

Mr. SHULMAN. As I said yesterday, it should have been brought up the chain earlier so that it could have been addressed. There was clearly a breakdown in this one unit of the IRS and of the chain that moved up, and I accept that this happened on my watch.

Ms. DUCKWORTH. So you won't accept responsibility that some sort of a process needed to be in place or a check and balance to make sure that if there was a breakdown that that would be corrected and if it were properly trained on how to report up the chain. No need to answer.

Now, do you accept responsibility for your failure to correct the public record once you found out your testimony was not accurate?

Mr. SHULMAN. I answered truthfully with the information I had, and I said before, when I found out that a list existed I did not have all the facts at that time. The Inspector General was going to investigate, and I feel very comfortable that the actions I took were appropriate.

Ms. DUCKWORTH. Mr. George, your report indicated that after Ms. Lerner discovered the IRS employees in Cincinnati were using inappropriate criteria, she stopped them immediately, is that correct?

Mr. GEORGE. Well, I don't know how you define immediately. She did halt that behavior, yes.

Ms. DUCKWORTH. Thank you. But then the employees started using slightly different but still inappropriate practices a few months later?

Mr. GEORGE. Correct.

Ms. DUCKWORTH. How were these employees allowed to resume these activities after management stopped them the first time?

Mr. GEORGE. That is the heart of the question, Congresswoman, which we still do not have a definitive answer to. My response is, at this stage would be a lack of oversight, a lack of follow-up on the part of Ms. Lerner and people within her immediate chain of command. No one went back to make sure that what was being told by them to do in Cincinnati was being done, and that is inexcusable.

Ms. DUCKWORTH. Mr. Shulman, do you accept responsibility for Ms. Lerner's failures as your employee to follow up and provide the oversight necessary?

Mr. SHULMAN. I have the same answer. This happened on my watch. I do not accept responsibilities for all the actions taken by all of the people outlined in the report.

Ms. DUCKWORTH. Well, I am deeply disappointed in your answer because right now, in forward operating bases in Afghanistan all over the world, we have 25-year-old buck sergeants and second lieutenants who know you can delegate authority, you can never delegate responsibility and that you're always responsible for the

performance, the training and the actions of the men and women under you. And I hope that you remember that in the next position you go to. Thank you, Mr. Chairman.

Chairman ISSA. If the gentlelady would yield, I'm going to work with the ranking member, and we are going to either formally or informally ask the designate to be the next Commissioner who has been the director of the Office of Management and Budget to come before us so that we can perhaps see in advance whether the management skills are there, and the plan is there for what has clearly been a dysfunctional period of time.

Mr. CUMMINGS. Mr. Chairman, I just want to thank you. I made that request in my opening statement and I thank you because I think that's a major move.

Chairman ISSA. Absolutely. And with that, we go to the gentleman from Pennsylvania who has been patiently waiting, Mr. Meehan.

Mr. MEEHAN. Thank you Mr. Chairman. Mr. Chairman I would like to begin to follow up a little bit on some of the information that was generated by my colleague from Oklahoma, because I'm standing and holding in my hand as well a questionnaire for one of the organizations that made an application. Their application was made in 2009. It's now 2013, and they still have not gotten a response, and yet here we are 39 questions that are being asked. This is the second level of questioning.

Now, we hear some of this is all being done for efficiency purposes and other kinds of things and yet we have people that have 39 questions that they're asking on subsequent organizations. So the issue I have for you is, is there an ability to have these questions resolved as was stated by your successor, by a few people down in Cincinnati, or is there another level of questioning that these matters are vetted? Mr. Shulman.

Mr. SHULMAN. I guess I'm not sure I understand your question but——

Mr. MEEHAN. The testimony—the testimony of Mr. Miller the other day, your successor, was that this matter was contained, it was his specific language, this was the result contained by a couple of low-level employees in Cincinnati. I'm having trouble really understanding where this is all coming from. And it was his testimony that it was a couple of low level people in Cincinnati.

And now I'm seeing 39 questions that are sophisticated and complicated. And the question becomes, is there somebody else beyond Cincinnati that is participating in the vetting of these questionnaires?

Mr. SHULMAN. So, the best of my understanding, I really don't know who approves all of the questions. It's pretty well outlined. I have made myself familiar with the IG report about requests for guidance and those kinds of things.

Mr. MEEHAN. Mr. George, what do you know about this?

Mr. GEORGE. Actually, Congressman, one of our recommendations which the administration has agreed would be——

Mr. MEEHAN. Mr. George, I'm not asking about a recommendation about what would be. I'm asking about what has happened because the testimony of Mr. Miller was this was contained to a couple of people back in Cincinnati.

Mr. GEORGE. Yeah, I'm not able to give——

Mr. MEEHAN. Let me give you a little bit of information because I have from the application. Now this is the attorney who has actually made the application and this is the words of the attorney, "Indeed more than one agent in Cincinnati has advised me that the instructions regarding the processing of the Tea Party related organization clients were coming from the Washington, D.C. office."

Were there other levels beyond Pittsburgh, I mean Cincinnati, as was testified by Mr. Shulman's successor?

Mr. GEORGE. That is still to be determined sir.

Mr. MEEHAN. What ambiguity is there? What have you looked at? What questions have you asked to determine that?

Mr. GEORGE. I have not been personally involved in the interviews but I do know that there have been conflicting information provided to, again, auditors not my investigators, sir, but my auditors as to how this came about.

Mr. MEEHAN. Did you ask the question specifically whether there was anybody asking or involved in these evaluations beyond the Cincinnati office back in Washington?

Mr. GEORGE. Yes. Yes.

Mr. MEEHAN. And what was the answer?

Mr. GEORGE. I beg your indulgence.

Sir, can I get——

Mr. MEEHAN. No, you can't get back to me. Your counsel just whispered something in your ear. What did he say?

Mr. GEORGE. I didn't hear.

Apparently, again, the determinations unit on a number of occasions not, obviously I don't know the instant matter you're discussing, had made requests to the technical unit in Washington for guidance on how to handle certain matters. The technical unit in Washington took 14 months——

Mr. MEEHAN. So you're saying that this was a request that was made from the floor that went up and asked the technical unit, there was no involvement from anybody in Washington in the form of participating or directing in which things came up?

Mr. GEORGE. The answer is yes, but in this matter——

Mr. MEEHAN. There was involvement in Washington in which these came up?

Mr. GEORGE. Yes, because the technical units——

Mr. MEEHAN. That contradicts the testimony of Mr. Miller, but please explain.

Mr. GEORGE. Well, the technical unit is located in Washington, and as I discussed much earlier at this hearing, the technical unit took an enormous amount of time to respond to many of the requests from the——

Mr. MEEHAN. Five years, 4–1/2 for this applicant.

Mr. GEORGE. Sir, but it's very important for me to point out the administration has agreed to our recommendations, our recommendations that they curb all, excuse me, all the backlogs such as the ones that you're referring to. And so, if they follow through on those recommendations, hopefully this matter that you're referring to now will be addressed.

Mr. MEEHAN. Well, I will have a series of other questions, but this is just so frustrating to me. The whole question here is we've

heard this from time to time just about accountability, and all the scandals we hear the same thing from time after time by the government officials that are involved—Benghazi, IRS, AP reporters, Fast and Furious, time after time we're hearing people, it wasn't my job. I don't know. It was the other office. I recused. I didn't find out about it until you found out about it.

Where does the accountability begin? People's lives are on the line, and these things overseas, people's constitutional rights are at stake here.

Where does the accountability begin?

I'll close with one comment. This was the President of the United States himself. These were his words on June 21, 2009, in the memorandum, "Governments should be transparent. Transparency promotes accountability and provides information for citizens about what their government is doing." Then he spoke to the heads of the organizations, and these were his words, Let me say it as simply as I can, transparency and the rule of law will be the touchstones of this Presidency. Don't let this President and this Nation down.

Mr. GEORGE. Thank you.

Mr. JORDAN. Mr. Chairman, point of order.

Chairman ISSA. The gentleman from Ohio seeks recognition.

Mr. JORDAN. I hope what Mr. Meehan says, I hope the chairman will look at calling in groups of the victims, 4–1/2 years, I would love to have them in front of us explaining what took place and what they had to go through. I hope we do at a subsequent date.

Chairman ISSA. I will direct staff to attempt to vet groups that can come before as witnesses. As the gentleman knows, and I think has been said here, there is tremendous sensitivity as to personal information, but we certainly would welcome those groups asking us and then vet an appropriate panel.

Mr. George, in my opening statement, I did talk about something we talked about personally which was that you could not rule out that there were other problems because of questions about internal controls, that discussion we had.

I assume, in response to Mr. Meehan, the same is true, today you may not be able to speak to intervention that came from above or any other place, but you can't rule out that there was some at some time?

Mr. GEORGE. That is correct, sir.

Chairman ISSA. Thank you.

We now go to the gentlelady from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chairman.

Mr. George, I want to ask about you a report that the IRS disclosed taxpayer information that it should not have. Section 6104 A of the Tax Code allows public disclosure of an application for tax-exempt status only after an organization has been recognized by the IRS as exempt.

Last November, ProPublica reported that they requested from the IRS applications for 67 different nonprofits. In response, the Cincinnati IRS office sent ProPublica applications or documentations for 31 groups. Nine of those applications were still pending and had not yet been approved, meaning they were not supposed to be made public.

Mr. George, during the committees's transcribed interview with Ms. Paz, committee staff asked her how this happened, and she explained that an administrative employee in Cincinnati who is supposed to check each application to ensure that it had been approved before disclosing it had made a mistake. Ms. Paz also told us that when the IRS discovered this disclosure, they referred the matter to your office. Is that correct?

Mr. GEORGE. I cannot even acknowledge the existence of an investigation, Congresswoman, pursuant to title 26 section 6103 of the United States Code.

Ms. KELLY. Well, can I read to you what she told us.

Ms. Paz told our investigators that your office determined that this disclosure was inadvertent. And I will read about the IGs review, and I quote, they found that there was no evidence that the employee had done it for any political reason, that there was no reason to believe that it was anything other than a mistake.

Can you tell us, Mr. George, did you, in fact, find any evidence that this release was intentional or that it was motivated by any political considerations?

Mr. GEORGE. Notwithstanding the fact that the victim is in a position to disclose his or her or its status, Congresswoman, I'm not able to comment on it, pursuant to law, and I don't want to go to jail.

Ms. KELLY. I don't want you to go to jail either. Can you recommend taking any actions even if it's generic? And you're not talking about a specific case.

Mr. GEORGE. If there is a matter that was sent to us for investigation I can assure you that we did investigate it ma'am. We have initiated over 143 unauthorized disclosure cases last year and counting.

Ms. KELLY. Okay. Also we do have a new acting Commissioner, and he's tasked with addressing problems and restoring faith in the IRS. What would be your best advice for the acting commissioner? And what are things you think he should undertake quickly in the next 30 days?

Mr. GEORGE. Thank you for asking that question. Mr. Werfel has reached out to me already and has requested a meeting as soon as this week to discuss some of the problems confronting the Internal Revenue Service. And I've made a commitment to work with him to help him become familiar with the problems within the IRS that we've identified and ways to hope in the future to avoid them, obviously to address the problems that currently exist and to avoid future problems.

Ms. KELLY. And do you foresee this meeting taking place within the next 30 days?

Mr. GEORGE. It's happening next week, ma'am.

Ms. KELLY. Thank you. I yield back.

Mr. CUMMINGS. Would the gentlelady yield? Let me just add just following up on what the gentlelady just asked you about. When Mr. Werfel comes in to meet with you, how much latitude do you have with regard to disclosure? You just cited, and rightfully so, things that you can't disclose and whatever, how much information can you provide him?

Mr. GEORGE. I have the ability to provide him, the Deputy Secretary and the Secretary of the Treasury, again, along with the chairman of the Ways and Means Committee, the chairman of the Senate Finance Committee and the chairman of the Joint Committee on Tax any and all information, sir.

Mr. CUMMINGS. So you'll be able to tell him about ongoing investigations and what you have found to date, is that correct?

Mr. GEORGE. That is correct, sir.

Mr. CUMMINGS. So he would be in a position therefore to—I'm not saying he will, but I hope he will—to be able to make corrections and try to create a better situation and correct some of the things that we've been hearing and reading about, is that right?

Mr. GEORGE. That is correct. But he is also confined by title 26 section 6103, so he'll be limited in terms of what he can publicly disclose but——

Mr. CUMMINGS. But the most important thing he will be supplied with adequate information so that he can begin to deal with this immediately because I think all of us want that trust restored with regard to the American people as soon as possible, so I'm hoping that you will disclose everything.

Mr. GEORGE. I certainly will sir.

Mr. CUMMINGS. Thank you.

Chairman ISSA. Thank you. Now we now go to the gentleman from North Carolina who has been in and out of here but who has been active on this issue. The gentleman is recognized.

Mr. MCHENRY. Thanks so much. Thank you, Mr. Chairman.

So, Mr. Wolin, so, do you have meetings with Mr. Shulman and his then-deputy Commissioner Miller? Did you do that on a fairly regular basis?

Mr. WOLIN. I had, Congressman, quarterly management review meetings where we looked at broad issues with respect to the budget and to how their IT refresh was going and so forth, again, taking full cognizance of this relationship with the IRS where we didn't engage in discussions, didn't work in the details of tax administration or tax enforcement.

Mr. MCHENRY. Right. Right, but, so, okay, roughly four times a year you sit down, go over the budget, talk things through, that's good. And in terms of report stream you are the appropriate person for that to happen in Treasury. I understand that.

So you are regularly have this meeting and you discuss budget issues. But this issue about IRS employees' targeting conservative groups, did that ever come up in any of these meetings?

Mr. WOLIN. It did not. I have no recollection of that at all, Congressman.

Mr. MCHENRY. So knowing what you now know, do you think there might have been a concerted effort to kind of prevent the report stream, I mean prevent this from coming to you?

Mr. WOLIN. I don't know, Congressman, exactly what was going on within the IRS on this. What I know is that, in general, and this is Treasury-IRS relationships with many administrations now of both political parties——

Mr. MCHENRY. No, no. I understand. I'm not saying that the IRS is a venerable organization but certainly not as bad as what we have come to find out in this problem. So, in May of 2012, the IRS

had completed an internal review and investigation. Were you informed of that internal review and investigation?

Mr. WOLIN. No, Congressman as I testified earlier this morning, I learned of that just in the last few days.

Mr. MCHENRY. But were you informed—you were informed in June 2012 that the IG was undertaking their audit or review right?

Mr. WOLIN. I'm not sure precisely, Congressman, when it was but at some point Mr. George came to me and said he was undertaking an audit.

Mr. MCHENRY. May, June, July, summer of 2012?

Mr. WOLIN. Some point in 2012.

Mr. MCHENRY. Some point in 2012? Was it perhaps before the first Tuesday after the first Monday in November? Just establish as a fact here.

Mr. WOLIN. It may have been, Congressman. Again, I don't precisely recall when it was.

Mr. MCHENRY. Mr. George, do you have some further vague recollection, was it perhaps hot outside or were you wearing an overcoat, some time frame for me? Not to be glib about it.

Mr. GEORGE. No, no, no, sir. It was in the summer of 2012.

Mr. MCHENRY. Thank you. So in summer 2012, you are informed the IG is undertaking its review. Does this raise any sort of concern with you?

Mr. WOLIN. Well, what it raises for me is what I said earlier which is once the IG is looking at an issue, we——

Mr. MCHENRY. I understand. I understand. I'm separate from that. I'm not saying you go to Mr. George and try to manhandle him and say don't do this. I'm not making that accusation okay. Just to be clear. What I'm saying is he brings this very serious matter to you, you've received letters from the left and the right in Congress to the Department of Treasury, among various other administration officials, right, they send letters to the Treasury and to the IG, there are press reports in the spring of that year, there is some concern your IG comes forward and says, look, we're going to take this review, don't you go, this is kind of a good thing, bad thing? Come on, give me some sort of sense of your emotions. You're a human person too.

Mr. WOLIN. Congressman, I did not have an awareness of this issue before. I don't believe——

Mr. MCHENRY. No, no, no, I'm not talking about your learning. I'm talking about your feelings. Let's talk about your feelings then when you heard the IG is going to do this. You're serving a President, the President appointed you, you're Senate confirmed, a very important position. You're there from the beginning of the administration. The IG comes to you and says we're looking into this very damning thing. It's a Presidential election year. You don't say for a minute this is kind of frightening?

Mr. WOLIN. He didn't come to me with conclusions, Congressman, he came to me with the fact of the audit. So what I said to him was, this is important and you should follow the facts where they lead.

Mr. MCHENRY. So then take me from there. Do you tell anybody?

Mr. WOLIN. No, not until much, much later.

Mr. MCHENRY. When? Like when?

Mr. WOLIN. I can't remember, but at some point later, I came to learn that the IG had also told the facts of his audit to some other folks.

Mr. MCHENRY. No, no, no, we're talking about summer of 2012. The election is coming up, it's unclear who's going to win, your guy that nominated you and I assume you still support him, but in 2012, you're looking at this election year and you don't pick up the phone and say to your contacts at the White House, which, you know, say, just as a heads up, this could actually hit the fan in a Presidential year.

Mr. WOLIN. I did not, Congressman.

Mr. MCHENRY. Okay. And you don't tell anybody in the Office of Counsel at the White House?

Mr. WOLIN. I did not.

Mr. MCHENRY. So the first time you'd learned about conservative groups being targeted by the IRS was when this report came out?

Mr. WOLIN. The first time I learned that there was, before the report came out, a draft of the report was shared with IRS and IRS staff, as I think is now public, I had conversations with some people at the Treasury Department. I didn't have any understanding of the details. But I understood from Mr. George I think at some point in the last 7 weeks that this was going to be a report that was going to reach a very damning conclusion, but I didn't have any understanding at that point——

Mr. MCHENRY. So did you give a heads up to the White House chief of staff?

Mr. WOLIN. I did not.

Mr. MCHENRY. Okay. Thank you, Mr. Chairman. Thanks for your indulgence. The absurdity of this is that when a huge accusation is being undertaken by an Inspector General in a Presidential year, I just, it is beyond me to think that an administration official wouldn't have made—let me ask another question. Did you contact Chicago about it?

Chairman ISSA. The gentleman's time is expired. Make it very quick.

Mr. MCHENRY. Did you contact the campaign about it?

Mr. WOLIN. I never had any contact with the campaign.

Chairman ISSA. Mr. George, just for the record, the date that the draft was shared to your recollection? I think it's on your timeline.

Mr. GEORGE. A draft was shared with whom, sir.

Chairman ISSA. With the Treasury.

Mr. GEORGE. Well, it would have been shared with the—we don't share drafts with the Treasury. We share them with the IRS.

Chairman ISSA. I'm sorry you share them with the IRS. And I thought there was a date you shared with the consult for Treasury. I don't have that draft in front of me. You shared an unofficial draft. I just want to know if you have an official date on that one event. I just want it in the record.

Mr. GEORGE. March 28, 2013, a discussion draft report was shared with the Internal Revenue Service.

Chairman ISSA. So that's the date with the IRS. And the 27th was the Acting Commissioner?

Mr. GEORGE. Yeah, I have monthly meetings with the Acting Commissioner, just principal deputy as we indicated——

Chairman ISSA. So outside of the Office of the Inspector General, before or after March 27, 28, were any other drafts or portions of drafts circulated outside of your direct reports?

Mr. GEORGE. If the question is whether TIGTA, my office, shared drafts, we would have shared drafts with the IRS, I believe.

Chairman ISSA. But in this discussion draft, or this set of timelines you gave us, we only had the IG function head briefing, including the Acting Commissioner and discussion draft issued to the IRS the next day.

Are there any other days in which discussion drafts or preliminary or portions were shared with anyone outside of your direct reports as the IG?

Mr. GEORGE. Sir, during the course of an audit, there is a back and forth sharing of information between the subject of the audit and our——

Chairman ISSA. The reason I ask is Mr. Shulman knows nothing. Mr. Wolin knows nothing in almost any of these areas, either he doesn't remember or he didn't know, so can you make available to us, to the greatest extent possible, those back and forth discussions that occurred with anyone including Ms. Paz and others so that we have a complete record of sort of who knew what when?

Mr. GEORGE. We will provide that.

Chairman ISSA. Because as you know, we didn't know any of this until long after the 28th of March.

Mr. GEORGE. Very good. We will provide that.

Chairman ISSA. Thank you. We now go to gentleman from Illinois. We are on a roll with the Illinois folks, Mr. Davis.

Mr. DAVIS. Mr. Chairman, thank you very much for holding these hearings. Mr. George, let me commend you for your stamina and composure. It seems to me that you've been testifying around the clock all week. This is my second encounter with you from another committee.

Let me ask you, according to your report, about one-third of the organizations selected for further review were groups with the words Tea Party, Patriots, and 9/12 in their names. Is that correct?

Mr. GEORGE. Yes. Yes, it is sir.

Mr. DAVIS. Your report also found that as of December 2012, none of the applications submitted by these targeted groups had been denied, is that correct?

Mr. GEORGE. That is correct, sir.

Mr. DAVIS. Several progressive groups have now come forward to say that they were also included in this enhanced review process. According to these groups, they also received requests for additional information similar to those sent to conservative groups. The IRS asked them for detailed information about the meeting minutes, officers and board members and specific activities they conducted. These groups also experienced substantial delays in the processing of their applications, and in some cases, were denied tax-exempt status.

Mr. George, how is it that these progressive groups were included in the enhanced review if their names did not have the words Tea Party or other designated words.

Mr. GEORGE. Mr. Davis, first of all, in the course of this review, we were looking at political intervention and that was the exclusive

charge that we had. I have subsequently received information that what you're indicating may have occurred. And as a result, we will be conducting a follow-up review to determine whether or not that is the case and if so, the extent of it.

Mr. DAVIS. Thank you. You testified yesterday that in conducting the audit, your office did not give further review to any of the more than 200 501(c)(4) applications in your statistical sample, and did not have Tea Party, 9/12, or Patriots in their title. Is that correct?

Mr. GEORGE. We looked, sir, I beg your indulgence——

Two hundred and two non-Tea Party cases and so, the various groups that you just enumerated, were reviewed for indications of significant political campaign intervention which was our key criteria, again, in this exercise, in this review, Congressman, we did not evaluate whether or not they were conservative groups or progressive groups or liberal groups or whatever term you want to use, because those groups did not again have the be-on-the-look-out terms, Tea Party, Patriot or 9/12 in their names.

Mr. DAVIS. But then it is true that conservative sounding groups, or with the names that some people would associate with being conservative were not the only groups who went through this process and were treated essentially the same way?

Mr. GEORGE. We were unable—we did not make that determination, sir, for fear of not being able to determine what groups did for what position. But it is a possibility.

Mr. DAVIS. Thank you very much. And I have one question, Mr. Wolin. What is your title?

Mr. WOLIN. I'm the Deputy Secretary of the Treasury, Congressman.

Mr. DAVIS. And the Internal Revenue Service reports up through you?

Mr. WOLIN. It does.

Mr. DAVIS. And did—when they encountered these applications, did anyone come to you for advice or come to you and say we're getting all of these applications, we're not sure what to do with them, what do you suggest or recommend?

Mr. WOLIN. No, they did not, Congressman.

Mr. DAVIS. Thank you very much. Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman. And I would like to let everyone know that the intent of the chair is not to stop during the upcoming votes. So as we get close to the votes, if some folks that are not in the queue want to go, there will be two votes, they can go to either one of them or both of them and then return. My expectation is that I will continue until concluded. If you are not here and we pass you by, and we get to the end, we will dismiss our witnesses. So do your best to get back quickly.

Immediately following the hearing, we will go into a markup. This is a bipartisan markup but we still want a quorum, so please make sure you're here. With that, we go to the gentleman from Tennessee, Mr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman, and I thank the witnesses for appearing here today. We start a lot of these hearings saying we don't want this to turn political, but we're almost in kind of a strange parallel universe today where Democrats and Repub-

licans alike are in agreement that what has happened here just shakes the very foundation of what this country was built on.

People are here today to get answers about what the outcome of this is going to be, and who's going to be held responsible. We all trotted off to our high school government classes and history classes, and we were told what a great country we are because of the freedom we have, the freedom of the First Amendment, freedom of speech, the right to hold elections without fear of tyranny or being oppressed. But now we have a Federal agency that has admittedly targeted, in this case, conservative groups, and I think both sides are equally concerned because this could go either way.

And I think what people want to know is who is going to be held accountable and how they're going to be held accountable, how high up this went or didn't go. And so we're here today to find those answers.

Now, Mr. Shulman, do you consider yourself a good leader?

Mr. SHULMAN. Excuse me?

Mr. DESJARLAIS. Do you consider yourself a good leader?

Mr. SHULMAN. I do.

Mr. DESJARLAIS. So you're, as an American, outraged like the President over what's happened within your agency; is that correct?

Mr. SHULMAN. I'm deeply saddened and dismayed that this happened at the agency.

Mr. DESJARLAIS. What would be justice to you? What would restore the faith in the American people in the IRS in your opinion? What should be done?

Mr. SHULMAN. I don't have all the facts, and I'm not in a position to, I'm outside of the government at this point, so it's not my decision what should be done.

Mr. DESJARLAIS. But you admit that people were targeted and you found out about that over a year ago. You knew that conservative groups were targeted?

Mr. SHULMAN. No, I, over a year ago, was informed that there was a list. I did not know the details I didn't know the severity——

Mr. DESJARLAIS. A list of people who were targeted? This is really hard for you to say. Everyone else is saying it, but you can't say that there were groups targeted.

Mr. SHULMAN. As of May 2013, so sitting here today, you can call it what you want——

Mr. DESJARLAIS. A year ago you didn't know people were targeted. Did Mr. Miller, your predecessor, did he know groups were being targeted?

Mr. SHULMAN. I can't tell you what he knew, I can tell you what he told me.

Mr. DESJARLAIS. What did he tell you?

Mr. SHULMAN. What I said that he told me there was a list, that the word Tea Party was on it, we didn't know what else——

Mr. DESJARLAIS. And when did you know this? You knew this before the election?

Mr. SHULMAN. What's that?

Mr. DESJARLAIS. You knew this before the election?

Mr. SHULMAN. Some time in the spring of 2012.

Mr. DESJARLAIS. Okay, that would be before the election I believe. You did know there was an election going on that year?

Mr. SHULMAN. I'm aware that there was an election last year.

Mr. DESJARLAIS. Do you think that that type of information could potentially harm the President in an election year? Did that cross your mind?

Mr. SHULMAN. No. That did not cross my mind. I was the Commissioner of the Internal Revenue Service, and when I got a piece of information of concern, I viewed my obligation not to think about elections, but to think about was—once information came to me, was it being handled properly, and as I've said before, I've been told that it had been stopped or was in the process of being stopped and that the——

Mr. DESJARLAIS. As a good leader, that was good enough for you?

Mr. SHULMAN. Excuse me?

Mr. DESJARLAIS. As a good leader that was good enough for you?

Mr. SHULMAN. I feel very comfortable with my actions.

Mr. DESJARLAIS. What about the credibility of the IRS moving forward with implementing the health care law? A year or so ago you and I had a conversation in this room about the IRS' readiness to implement the health care law. You felt that even though it took 55 minutes for a person calling about a tax question to talk to a human being to get an answer, that you felt comfortable that we would ready to implement this health care law, how do you feel about that today? I know this won't be your responsibility, do you still think the IRS is ready and has the confidence of the American people to share their most personal information with them? To go ahead and implement the new health care law?

Mr. SHULMAN. I think a couple of things. I think one, the last couple of years, Congress has not been funding the IRS sufficiently, and I would defer to the Inspector General who's done some look, at least when I left, had been looking at is the IRS ready to implement its portion——

Mr. DESJARLAIS. Are they competent to do it? Are they trustworthy enough? This is personal information people are going to have to share. We have to restore the confidence, and we don't even know what we're going to do in this case where our most basic freedom of speech has been violated, and you don't know whether anyone should go to jail, you don't know who should be held accountable.

Mr. SHULMAN. Look, I feel very confident in the men and women of the IRS to do the task they gave them. There was clearly a serious breakdown in this unit, and in the topic here, and it's very serious and the committee should be looking at it, et cetera. But I feel very confident in the capability of the IRS broadly and generally.

Mr. DESJARLAIS. We'll see if America shares your views. And I yield back.

Chairman ISSA. I thank the gentleman.

The gentleman from Vermont is recognized.

Mr. WELCH. I thank the gentleman for this hearing and support the aggressive investigation.

Mr. Chairman, you're known to be aggressive, you're known to be persistent and those are qualities that are going to serve us well in this effort.

There's really two issues. The first is vitally important, is has the principle of equal protection and equal enforcement of the law been violated? And the second question is whether First Amendment rights have been infringed? Those are the focus of this hearing. And I support the aggressive efforts of this committee led by our chairman and ranking member to, A, determine the facts and, B, follow the facts wherever they lead.

America deserves an answer, and the fundamental question here is whether or not at the end of this investigation the conclusion is, this was poor judgment and mismanagement or what really is actions politically directed and politically motivated by politically powerful people?

That's our oversight function. And you're pursuing that as you've said aggressively and we support that, both of you.

But there is an oversight function, as Mr. Cummings said, and the oversight question asks us the question as to what is going on in the campaign finance world that we all live in?

It also raises the question as to whether or not America's institutions are failing the American people that they serve. This was a failure by the IRS, whichever conclusion the facts lead us to. Just the conduct that raises legitimate questions as to whether or not there's been selective enforcement and politically motivated action compromises the ability of that institution, the Internal Revenue Service, to have credibility to do the job that the law requires it to do.

But this mess goes back to a decision by the United States Supreme Court in Citizens United. In that case, in my view, the court made what I think is an absurd decision. They said a corporation is a person. Corporations have rights and they should be protected. Corporations serve a very important function in our economy, and those should be promoted. But a person like you or like me? That's just nutty.

You know, when it comes to this question of personhood, Mr. Chairman, and I'm talking about this because of our oversight function where I hope we do find some common ground, the Supreme Court gets it wrong.

In 1857, in the Dred Scott decision, the Supreme Court said an African American was not a person. That is a stain on the court, it's a stain on our history. That was corrected by this Congress in 1868 with the 14th Amendment.

And one of the challenges we face as a Congress is whether or not we're going to acknowledge what has happened in campaign finance since Citizens United. And let me just give a few facts because this is really, I think, my view, a threat to the access to democracy by everyday people. Last Presidential election, our candidate spent 1.1 billion between what he raised and what outside groups——

Chairman ISSA. Put a B on that one, if you would. Billion.

Mr. WELCH. Thank you. And the Republican candidate spent about the same. And in the quaint old days when President Clinton ran for his first race, he spent about $42 million, that's an M, and Mr. Dole spent about $44 million. And the Congressional races that we've all been engaged in, the House races were $1.1 billion, and

the Massachusetts Senate race $82 million. The House race in Florida, $23 million.

And what has happened with all of this money coming into the political process—and I think we've all experienced this because I've talked to my colleagues, there's more 30-second attack ads they do nothing to elevate the debate or explain the sharp divisions we have on a legitimate issue of taxing and spending. There's less control that each of us as a candidate have over what it is we're promoting to the people we're trying to represent because outside groups are starting to spend more than the individual candidate does.

There's more despair by citizens that we all represent that this political system has anything to do with anything they care about. And this is something I've noticed as a Member of Congress, there's less ability for us to try to find common ground and make compromises that are in the public interest because some loopy billionaire on your side or ours, can flood the airwaves with an avalanche of cash criticizing us because we actually dare to make some compromises.

So this campaign finance system, in my view, Mr. Chairman, is in dire need of reform.

So, yes, let's get to the bottom of this situation. But let's also acknowledge that this money that is coming into the political system is the very threat to our ability of this institution to do the job that the people expect it to do and the Constitution requires us to do. I yield back.

Chairman ISSA. I thank the gentleman. We now go to a gentleman who got here based on his ability as an attorney, not on based on being a billionaire, Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Shulman, when you learned that conservative groups were being targeted by the IRS for discriminatory treatment, what did you do?

Mr. SHULMAN. When I learned of the existence of a BOLO list, in that same conversation, or right around that time, I also learned a couple of things. One, that it was being stopped so that——

Mr. GOWDY. All right, and who told you it was being stopped?

Mr. SHULMAN. That was Steve Miller, my deputy.

Mr. GOWDY. All right, and did you investigate further; can you give me the name of a single person who was involved in the original decision to target conservative groups for disparate treatment?

Mr. SHULMAN. I'm not aware of those names.

Mr. GOWDY. Why can't you give me a name?

Mr. SHULMAN. The same time that I learned and that it was being stopped, I was also told that the Inspector General was aware of it.

Mr. GOWDY. Mr. Shulman, is the Inspector General the only person who can investigate wrongdoing within the IRS?

Mr. SHULMAN. My general practice——

Mr. GOWDY. Can you answer my question and then you can explain? Is the Inspector General the only entity who can investigate wrongdoing?

Mr. SHULMAN. Congress can investigate.

Mr. GOWDY. How about you? Can you do it?

Mr. SHULMAN. The practice at the Internal Revenue Service that I inherited, and the one that I operated——

Mr. GOWDY. So if there is inappropriate conduct being done in your watch at the IRS, then that inappropriate conduct can last as long as the Inspector General's investigation lasts, is that what you are telling me? That you are not going to step in and stop it?

Mr. SHULMAN. No, I'm—what I'm telling you——

Mr. GOWDY. If there is someone wielding a knife in the parking lot, are you going to call the Inspector General? Are you going to wait until his or her investigation is over before you stop it?

Mr. SHULMAN. When I was told about this, these allegations, I was also told that they were being stopped, and so that the inappropriate criteria were not being used anymore.

Mr. GOWDY. Despite the seriousness and potential criminality of that conduct, you didn't investigate it yourself at all?

Mr. SHULMAN. So the procedure is that I inherited and that my general practice was——

Mr. GOWDY. Mr. Shulman, this is going to go much quicker if you will answer yes or no, and then you can explain.

Did you do anything to verify that the practice as insidious as it was, was stopped?

Mr. SHULMAN. The Inspector General was going to be looking into it. And that's where the investigation——

Mr. GOWDY. If you can, say yes or no, or are you just choosing not to say yes or no? Can you answer the question? Did you do anything, personally, to make sure that this insidious discriminatory practice was stopped? Yes or no?

Mr. SHULMAN. At the time that I learned about it, I also learned two things. The first was that it was being stopped, and the second was that the Inspector General——

Mr. GOWDY. And what did you do to verify that it was being stopped?

Mr. SHULMAN. The responsible deputy of the Internal Revenue Service told me it was being stopped. I had no reason to believe otherwise. I think it is borne——

Mr. GOWDY. Did you investigate why conservative groups were being targeted?

Mr. SHULMAN. Excuse me?

Mr. GOWDY. Did you investigate? So you can't give me a single name. You can't answer the who. Can you tell me the why? Why were conservative groups, why was the culture such that under your watch that an employee felt comfortable targeting conservative groups? Did you investigate that?

Mr. SHULMAN. You know, from my reading of the report, I can't tell if it was political motivation, or if it was tone deaf, somebody trying to expedite a way to get——

Mr. GOWDY. You still don't know that this was political?

Mr. SHULMAN. Excuse me?

Mr. GOWDY. You still don't know that this was political?

Mr. SHULMAN. I defer to the Inspector General.

Mr. GOWDY. Well, I will tell you this, Mr. Shulman, your predecessor said that he wasn't sure if it was partisan, and that requires the listener to be as stupid as the speaker, to utter a comment like

that. He just testified that policy positions dictated this. What does that mean to you if it is not partisan? What does that mean?

Mr. SHULMAN. I'm not sure I heard that testimony.

Mr. GOWDY. Well, we will be sure and get you a copy of the transcript and you can supplement your testimony. How is that?

Mr. SHULMAN. I would be happy to answer the committee's questions.

Mr. GOWDY. Do you agree with Dan Pfeiffer that the law is irrelevant, or do you think it is relevant?

Mr. SHULMAN. I think the law is always relevant.

Mr. GOWDY. Do you think 26 USC 7214 which provides for criminal penalties for this conduct would be relevant, and did you refer the matter to someone with law enforcement investigative jurisdiction?

Mr. SHULMAN. I'm—A, I'm not going to speculate what is appropriate legally in this matter, and Mr. George, I knew his operation was looking at it, I believe.

Mr. GOWDY. I thought it was an audit. I thought he just testified it was an audit, not an investigation. Did you refer it for criminal investigation?

Mr. SHULMAN. I didn't refer it. It was already being looked into at the time that it was brought to my attention.

Mr. GOWDY. So I want to be real clear because my time is up. The only recourse you have when there is an allegation of wrongful conduct on your watch, the only thing you feel comfortable doing is waiting on an Inspector General to finish his or her report?

Mr. SHULMAN. The general practice is to make sure the Inspector General will look into it.

Mr. GOWDY. No matter how insidious the conduct. If it were an allegation of racial discrimination, you would have waited until Mr. George finished his investigation? Is that your testimony?

Mr. SHULMAN. I'm really not going to answer hypotheticals.

Mr. GOWDY. I tell you what, instead of answering my hypothetical, why don't you answer the case at bar today? If there is an allegation that groups are being discriminated against based on political ideology, are you really going to wait until an Inspector General finishes his or her report before you take corrective remedial action?

Mr. SHULMAN. When I have a fact, but I don't have all of the facts, and I don't know the scope and——

Mr. GOWDY. Did you investigate the facts, Mr. Shulman? Did you lift a finger to identify the facts?

Mr. SHULMAN. I felt very comfortable with the facts, the Inspector General was going to run down the facts and once he had it, it would be reported out.

Mr. GOWDY. Let the record reflect that's a no. I yield back.

Mr. JORDAN. [Presiding.] I thank the gentlemen. I know you guys have been here a long time. We appreciate your patience. We are—we have to give you time to use the men's room, so we are going to take a short recess, 5 minutes. The chairman is headed over to votes—have the votes been called? Votes just got called, so in 5 minutes we are going to bring you back and when the chairman gets back from voting, and I'm going to try to run—we are not going to recess. We are just going to give you a restroom break.

[Recess.]

Mr. JORDAN. Take your seats, members who are still here. I want to thank our witnesses, and appreciate the time commitment and their patience. The gentleman from Nevada, Mr. Horsford, is recognized for 5 minutes.

Mr. HORSFORD. Thank you, Mr. Chairman. I agree with a number of my colleagues here today that the behavior of the IRS has been inexcusable in regard to this situation. You know, no group or person should be inappropriately scrutinized because of their political affiliation, and the bottom line, unfortunately, is that this is not the first time that this has happened. Focusing on groups because of their political beliefs was wrong when the IRS did it to Greenpeace. It is wrong when the IRS did it to the NAACP, and it is wrong now when they have done it to the 501(c)(4) applicants. Regardless of which party holds power, this behavior has to stop. What I would like to focus on is how we can reform this process so that it never happens again.

Following up on the ranking member, and Representative Speier's line of questioning, the Inspector General's report found that the IRS employees in Cincinnati: "Lacked knowledge of what activities are allowed by tax-exempt organizations." It explained in the report that we believe this could be due to a lack of specific guidance on how to determine the primary activity of an IRC 501(c)(4) organization.

Treasury regulations state that IRC 501(c)(4) organizations should have social welfare as their: "primary activity." However, the regulations do not define how to measure whether social welfare is in an organization's primary activity.

So Mr. Shulman, as the past agency head, in judging whether a 501(c)(4) has conducted an impermissible level of political activity, the IRS applies a wide-ranging, multi-factor facts and circumstances test, is that correct?

Mr. SHULMAN. Yeah. First of all, I'm not an expert in 501(c)(4) law and the details of how individual applications are reviewed, but, yes, I mean, the—broadly, they look, the IRS looks for—to see if political activity is the primary activity, which would disqualify an organization from being a 501(c)(4), and the inquiry's done, or at least should be done, is broadly done on a facts and circumstances basis.

Mr. HORSFORD. Okay. Well, someone who is an expert, Professor Ellen April, has explained that the IRS's facts and circumstances test: "reach broadly, gives discretion to the administrators, and leaves many organizations and their advisers with little certainty on how to conduct their activity day to day."

So, Mr. George, do you believe a clear, bright line test for what is permissible level of political activity would be helpful to the IRS specialist?

Mr. GEORGE. Well, again, I'm going to have to preface my response by saying that the Secretary has delegated tax policy to the Assistant Secretary for Tax Policy. There is no question that clarity in how—in the law and how to implement it would certainly help anyone who's trying to apply the law, in this instance——

Mr. HORSFORD. Has you—has your office made that recommendation?

Mr. GEORGE. We have. And one of the recommendations in this report is that the Internal Revenue Service work with the Department of the Treasury for clarity in this area, sir.

Mr. HORSFORD. Well, I think it's imperative, particularly since primary activity isn't even the standard. It is, according to the Federal law, exclusively. "Exclusively" is stated twice. In 501(c)(4)(a) of the Federal Tax Code, it is stated nowhere primary activity, and yet that is what the standard is that's being used by IRS, and that standard is not even clearly defined. So this is a major loophole that must be addressed.

Mr. Wolin, are you intending to revisit these regulations so that taxpayers are on notice of what legal requirements are and how auditors can enforce the rules fairly?

Mr. WOLIN. Congressman, the IGs report makes clear that additional guidance in this area is necessary, and we will work with the new Acting Commissioner to do just that. This is very old guidance, it's in a very complicated area, but we will endeavor to make sure that we can provide as much clarity as possible.

Mr. HORSFORD. Well, again, I would just hope, based on what the chair and the ranking member indicated, with the new Commissioner coming in, you're right, for years we have had this ambiguity. Tax and campaign finance experts have urged the IRS and the Treasury Department to better define electoral advocacy beyond the ambiguous facts and circumstances test and to set clear limits for how much political advocacy is too much, but the agencies have failed to respond. So I hope that based on the leadership of this committee within our oversight and reform role—this is a reform policy that cannot wait, because it did not just happen to this group or set of groups, it's happened before, and it must stop.

Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman. We now recognize the gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman.

Mr. George, earlier on you testified that some of the questions that were asked to some of these groups included a request for their list of donors. Do we know what happened to those lists of donors? Do we have any insurance that—or assurances that those lists weren't made public or somebody snapped a picture with their cell phone and sent it to an opposing group or a political candidate or somebody?

Mr. GEORGE. Very good question, Congressman. We were told by the IRS, the office that collected this information, that they did destroy the information. However, again, they were not under oath, we weren't there when it happened, but we have to take them at their word.

Mr. FARENTHOLD. Yes. But we have no conclusive evidence that somebody wasn't trying to create an enemies list or something like that.

Mr. GEORGE. That's correct, sir.

Mr. FARENTHOLD. All right. Let's talk a little bit about the IRS procedure. There was a Fox News report today that the President's brother, I think, got his 501(c)(4) approved in a matter of days, and we've got conservative groups and possibly other groups that are waiting multiple years.

Is there a standard of time within the IRS that these are expected to be handled? Are there some processes and procedures in place?

Mr. GEORGE. Addressed to me?

Mr. FARENTHOLD. I'll start with you, Mr. George.

Mr. GEORGE. Well, first of all, I cannot under—pursuant to Title 26.6103 make any comment that would in any way make——

Mr. FARENTHOLD. No. I'm asking about the procedures of the IRS.

Mr. GEORGE. Yes. Go ahead.

Mr. FARENTHOLD. There is a procedure in place to——

Mr. GEORGE. Yes.

Mr. FARENTHOLD. So after a certain amount of time, the computer says, what happened to this?

Mr. GEORGE. I don't know if—exactly how it works, but they do have target deadlines or dates for processing these. However——

Mr. FARENTHOLD. Mr. Shulman, are you aware?

Mr. SHULMAN. I don't know the specifics. Generally there's goals for processing of any sort of cases. Those goals generally in the last couple of years have been very difficult to meet, you know, with the budget——

Mr. FARENTHOLD. All right. You know, I practiced law for a while. We had a tickler system that when something came in, it got entered into the computer, and if after a certain number of days, it flagged it, and after a few more days, it would flag the boss.

Mr. George, you're indicating you——

Mr. GEORGE. Congressman, thank you. I was just informed by staff that the standard is 121 days for the processing of these, but unfortunately they average over 574 days.

Mr. FARENTHOLD. So when they get behind, does the—do the supervisors get notice? Are you aware of an escalation procedure? Again, you know, I've never managed an organization the size of the IRS. I think the most people I've ever supervised is around 50, but I had procedures and technology in place to where when somebody was screwing up, it moved up the chain of command.

Mr. George, Mr. Shulman, are either of you all familiar with any procedures like that?

Mr. GEORGE. I'm going to defer to Mr. Shumer—Shulman, rather, on this one.

Mr. SHULMAN. I'm—I don't have detailed knowledge of this specific unit handling these 300 cases.

Mr. FARENTHOLD. Well, a news station in Cincinnati obtained an employee directory for the IRS indicating who reports to whom. And of the six identified employees, they report to different managers, and then above them even to different territory managers. This sounds like a reasonable and, you know, rational organization. You know, I mean, the government, we love our chain of command here.

I guess my question is how in any sort of rigid chain of command do these extraordinary delays not move out of one department and get up to a supervisory level within that department and then on up within the chain of command to Washington, D.C.? It just seems

unfathomable to me that that wouldn't happen. Do either of you gentleman like to comment?

Mr. GEORGE. Unfortunately, Congressman, and it's not just in this context, but if you look at the processing of FOIA requests, Freedom of Information Act requests, many times, because agencies are overwhelmed by the number of those requests and the limited number of resources that they have to address those requests, they fall behind.

Mr. FARENTHOLD. Okay. And if I don't file my tax return or extension by April 15th, is there any chance it will fall through the cracks and get ignored for 3 years?

Mr. GEORGE. I'm going to yield to Mr. Shulman on that one.

Mr. SHULMAN. And I'll yield back to Mr. George.

Chairman ISSA. Why don't we go to Mr. Wolin, who is still involved.

Mr. FARENTHOLD. Yeah. I will address those questions to you. Is there not—the command structure is the one I want to get at. Isn't there—isn't there or shouldn't there be a command structure when this gets escalated to a level that this should have been caught long before it was?

Mr. WOLIN. I would say this, Congressman: I think the IGs report includes an important series of recommendations that speak to some of these management issues and training and making sure that these cases are handled in an appropriate way and in a way that's within the time frames that are meant to be. What we have done is we've asked the new Acting Commissioner, who started this morning, to be on top of that to make sure that these things get implemented quickly and to report back.

Mr. FARENTHOLD. And let's get some automation in there. Trust but verify is a good move.

Chairman ISSA. I thank the gentleman from Texas and admonish him to go vote. I now recognize the gentleman from Georgia for 5 minutes.

Mr. WOODALL. Thank you, Mr. Chairman. I appreciate the witnesses being with us for so long today. I appreciate the chairman's generosity in allowing that last restroom break to make—give you the ability to focus on my questions. They're fairly simple, and I wish Ms. Learner was here, because I think she explained part of it in her opening testimony.

Mr. George, about how many applications are we talking about in a year on 501(c)(3), (c)(4) categories?

Mr. GEORGE. It's approximately 60 to 65,000.

Mr. WOODALL. 60 to 65,000. And this problem, isolated in a Cincinnati office, but about how many of those 60 or 65,000 applications flow through the Cincinnati office?

Mr. GEORGE. It's my understanding that all of them do.

Mr. WOODALL. 100 percent of these ap—so it——

Mr. GEORGE. Yes.

Mr. WOODALL. When we're talking about what our—what our challenge is, it's not that it's some—a couple of rogue employees in one small branch somewhere. We're talking about a problem that exists in the center that processes 100 percent of all of these 501(c)(3), (c)(4) applications. Is that correct?

Mr. GEORGE. It's my understanding there may be one or two, you know, offices out in the field that might have a smaller role to play, but the vast majority are——

Mr. WOODALL. Vast majority are here.

Mr. GEORGE. Yes.

Mr. WOODALL. Mr. Shulman, I don't envy the job you had at all. In full disclosure, I have a bill that moves us away from an income tax to a consumption tax. I don't know how an agency can have the kind of responsibility and authority that the IRS have—has and not have really bad mistakes happen. It's just an—it's an awesome responsibility and it's one that I would argue that no agency ought to be entrusted with, but you took on that—that challenge. Mr. George has told me that virtually 100 percent of all of these tax exempt applications are handled in this one facility in Cincinnati.

I go back to your testimony in March of 2012 where Chairman Boustany said, can you give us assurances that the IRS is not targeting particular groups based on political leanings?

And your response is, thanks for bringing this up. There has been a lot of press on this and a lot of moving information. I appreciate the opportunity to clarify. First let me start by saying, yes, I can give you assurances.

We have 100 percent of these applications being processed in this one office in Cincinnati, where this problem was discovered and widespread. Who did you contact in order to give yourself the confidence to give the chairman of the subcommittee your assurances that this was not happening?

Mr. SHULMAN. Well, first of all, I'd note that that hearing, the focus was on the budget and our appropriations. This was a question that came. The chairman had written to me—or members to Congress had written to me in the month before——

Mr. WOODALL. Well, with due respect, I just—I just have limited time. Again, serious question——

Mr. SHULMAN. Serious question.

—off topic, granted, for the hearing, but you gave your assurances. Mr. George has several times said today, I can't give you an answer to that. I have to go back and reference more information. We're not prepared to give you a definitive answer on that today. But you said, in response to, can you give me assurances, yes, I can give you assurances. I'm just wondering from whom—from what research did you arrive at that conclusion?

So I said targeting in the sense that 501(c)(4) applicants did not need to apply. The ones that had applied had come in voluntarily, and my understanding was that there were questions being asked, that those questions were within the realm of authority of the IRS, and that those questions were not only being asked——

Mr. WOODALL. Understanding that that was your understanding——

Mr. SHULMAN. That was my understanding——

Mr. WOODALL. And, again, going on——

Mr. SHULMAN. —of the testimony——

Mr. WOODALL. And you, in fact, made that testimony. You said further in your testimony, there is absolutely no targeting. This kind of back and forth happens when people apply for 501(c)(4) status.

Knowing now what you know about that back and forth, would that still be your testimony? There is no targeting? This is the kind of back and forth that happens?

Mr. SHULMAN. In May 2013 sitting here before you today, I would have answered differently.

Mr. WOODALL. And that's my concern for folks. We saw a press conference with Jay Carney on this very issue. He—the reporter asked, can you categorically deny the White House had any involvement in this?

He said, yes, I can categorically deny it.

He said, well, how do you know? Have you done any investigation?

And Jay Carney said, no, I've done no investigation whatsoever. I just feel like it's probably true.

Here you are giving congressional testimony, your assurance. You could have said, I don't know, you could have said, it's outside the purview of this hearing. I haven't prepared, but you said, Mr. Chairman, there is absolutely no targeting.

As you sit here today, you would say there absolutely was targeting. But this line of questioning was absolutely inappropriate at that time, and yet with 100 percent of these applications being approved in one office, the office that has these problems, you contacted no one there before making these assurances, not just to this Congress, not just to the chairman of the subcommittee, but to the American people. That's my concern.

Whatever the truth is, we'll bring the truth out, but we can't bring it out if folks treat the truth in that cavalier fashion. Again, I don't envy you in your awesome responsibility, I would just encourage folks if the answer's no, say, I don't know. Being on the record about something as serious as this and being wrong does a great deal to undermine the trust in our government. And I thank the table.

Mr. SHULMAN. No. I appreciate your concern. If I could just say, I answered that question truthfully based on the information I had at the time.

Mr. WOODALL. But to be clear, you asked no one. The information you had was no information.

Mr. SHULMAN. I had had——

Mr. WOODALL. All of this office work goes on in one office in one city, in Cincinnati, but the chain of command of which runs directly to your office. You called no one in that chain of command. You asked no one in that chain of command. I'm not saying you were lying. I'm saying you were derelict in inquiring about what the truth was. It was a straight question about 501(c)(4) applications, all of which are processed in Cincinnati, and you made not one inquiry before testifying before Congress about what the truth of that is, a truth that now Mr. George says is not the truth whatsoever. That's troubling.

Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

Mr. George, on May 3rd—May 10th of 2013 committee staff sent the following. This is paraphrased—or not paraphrased. It's a portion in quotes. The fact that this information is now public and we have not been briefed, despite my repeated requests over the many

months, is completely unacceptable. And that was from my committee staff based on the release by the IRS of your audit information in an appropriate fashion.

Your ticked response was, and I believe it's one of your staff again, staff to staff on May 10th also, the IRS issued a press statement without our knowledge, consent or even advance notice.

Are you familiar with this exchange?

Mr. GEORGE. I am not familiar with that exchange, sir.

Chairman ISSA. Is it correct, though, that the IRS issued a press statement without our knowledge, consent or even advance notice?

Mr. GEORGE. And I want to make sure that we have the dates correct. If this is the event in which Ms. Lerner gave a speech and responded to a question——

Chairman ISSA. A planted question, we now know.

Mr. GEORGE. Yes.

Chairman ISSA. So she created a press release by planting a question which she was prepared to answer, and there appears to be an audit trail of that plan.

Mr. GEORGE. I had absolutely no inkling that that was going to occur, sir.

Chairman ISSA. I don't want you to overly go past the hypothetical, but release of this kind of information, advance information, is in fact not legal, right, roughly? It may be criminal.

Mr. GEORGE. You know, I cannot give you a definitive answer there, sir, but I can say it has never happened before.

Chairman ISSA. Okay. Will you agree to research this under your authority so that we may all know all of the details without us having to go and ask for those many, many papers that often take a long time to come?

Mr. GEORGE. Yes, but in all—let's see. Yes, because she's within IRS, so we do have the authority to do so. Yes, we will.

Chairman ISSA. Okay. I appreciate that. Yesterday I made—well, Ms. Lummis has arrived, so I'm going to cut short. I only have one quick question for Mr. Shulman.

The 5-year term that you received is, in fact, statutory. Isn't that correct?

Mr. SHULMAN. Yeah. The term is statutory.

Chairman ISSA. So you're appointed by a President to be a nonpartisan effectively, because you're a term appointee, so by definition, you and the President and the Senate come to an agreement on somebody who will normally transcend their—at least their one term—or always transcend at least one of their terms. Correct?

You're—the requirement for your position is management skills, isn't it? In other words—and this is not a—this is not just any political hack kind of a deal. This is one in which you're supposed to possess management, administrative skills. That's how you're chosen in an agency that only gets two political appointees, one who's the Commissioner and the other who is the Counsel to the Commissioner, as I understand it. So you have one lawyer and one manager. Is—am I just setting the tone correctly for the record?

Mr. SHULMAN. Generally the goal is to have a Commissioner who has a 5-year term to run the agency.

Chairman ISSA. Were you selected, in your opinion, because of your management skills?

Mr. SHULMAN. Yeah, I—yes, in my opinion.

Chairman ISSA. Okay. That was all I—that was what I was trying to get to for the record.

We now recognize the gentlelady from Wyoming for 5 minutes.

Mrs. LUMMIS. Thank you, Mr. Chairman.

Mr. Wolin, I want to go back to something Mr. Shulman said. He testified earlier that he inherited the practice of deferring to the IG for audits and investigations when problematic issues arise at the IRS. Mr. Wolin, did Mr. Shulman have the authority to change the management practices he inherited at the IRS? Yes or no.

Mr. WOLIN. Sure.

Mrs. LUMMIS. In this circumstance, do you think he should have changed the practice of deferring to the IG and looked into the targeting on his own?

Mr. WOLIN. Oh, if the question is—well, Congresswoman, I think that once an IG begins work, it's very important to stay clear of it. If a political appointee, for example, involves themself in the work of an IG or in topics that the IG is looking at, I think they run the very big risk, that's understandable, that that will be seen as interference, and that is why for many administrations for the longest time that I can recall, it has been a core principle of ours that when an IG begins their work, we stay clear.

Mrs. LUMMIS. What kind of activity do you think it would take to change the practice of deferring to the IG for audits and investigations?

Mr. WOLIN. Well, I'm not sure I understand your hypothetical, Congresswoman. I would say this, that here, of course, the—by the time, for example, I learned of the fact that the IG was conducting an audit, the offending conduct, we now learn, was no longer taking place.

I would expect that if the IG were looking at something and he determined that there was something that was ongoing that needed quick action, that he would raise that and that we would have a conversation so as specifically not to be either interfering with an IGs work or being seen to be interfering with an IGs work.

Chairman ISSA. Would the gentlelady yield for just 1 minute?

Mrs. LUMMIS. Yes, Mr. Chairman.

Chairman ISSA. I think it's important, Mr. Wolin, you keep saying, and Mr. Shulman kept saying that by the time you learned about it, the offending activity had finished. The offending activity is two parts. It's the abusive behavior of questions, inappropriate questions, questions that are probative that, in fact, make us doubt whether or not that information leaked. Let's leave that aside. I think the IG has determined a cutoff date. But are you here today to tell us that no entity has been denied approval or denial in a timely fashion, because I believe Mr. George will testify that as far as he knows people are still in limbo today.

Mr. WOLIN. No, sir.

Chairman ISSA. On your watch.

Mr. WOLIN. Not at all, Mr. Chairman. I think you're exactly right. The IG has made that clear. Now that we know that, we learned that last week, this needs to be fixed quickly, absolutely, and that's part of the charge that Mr. Werfel has, absolutely.

Chairman ISSA. But he's not—but he is the acting director at this time.

Mr. WOLIN. He's the Acting Commissioner as of this morning.

Chairman ISSA. Commissioner as of this morning. So we would expect that in spite of these Draconian budget cuts, that these hundred or more potential entities will, in fact, get a prompt and accurate adjudication, meaning days now that it's been years?

Mr. WOLIN. Well, I can't—I don't want to speak for Mr. Werfel in setting a precise timeline, Mr. Chairman, but——

Chairman ISSA. Well, you're his boss. You speak from the President, to the Secretary, to yourself, to him. What the heck appropriate timeline should we expect when you've been drowning these people for 3 years or more in some cases? What is the timeline today? If you're not accountable today, then you're not ever accountable. Could you give us a timeline? In your opinion, what would be the maximum time somebody should have to wait when they've waited for years?

Mr. WOLIN. Well, as we've—as I said, Mr. Chairman, what we've charged Mr. Werfel with is coming back within 30 days and to fully and promptly implement the various recommendations in the IGs report, of which this is one.

Chairman ISSA. Mr. George, and I'm taking a lot of gentlelady's time, but 3 years you wait. If you're sitting in that pile after 3 years, is 30 days to find out what the plan is to have you come out of that pile, when in fact other entities that were submitted 2 years after you also involved in this, quote, category have been approved? Is 30 days, in your estimation, before a plan is submitted, is a new Acting Commissioner the reason—first of all, none of these commissioners knew anything, apparently, or asked anything, so why is a new one important? If you could answer.

And I apologize to the gentlelady, give her back her time.

Mr. GEORGE. Yeah. If you will allow, Mr. Chairman, I believe—I've made a commitment to work with Mr. Werfel, and he realizes the high priority the President and that I and my organization have placed on the Secretary of the Treasury on this issue. I can't give you a definitive timeline, a date, but I will commit to you that we will work to expedite these—and help him, rather, expedite these applications, sir.

Chairman ISSA. I thank you.

And the gentlelady will be given 2 additional minutes. Thank you.

Mrs. LUMMIS. Thank you very much, Mr. Chairman.

And reclaiming my time, I want to take issue with one thing that our esteemed ranking member of our committee said earlier. He said that the trust in the IRS has been undermined. And the issue I would take with that is that trust has not been eroded or undermined, but it's been destroyed. That trust is gone. My constituents, the people I represent believe the Federal Government is out to get them. And when things like Watergate were going on, you had a battle of Titans. You had the politically powerful going after the politically powerful. But in this matter, you have the politically empowered going after the people who hired them, and people who don't have the weapons of the imprimatur of the Federal Govern-

ment to turn to. You have people who are relying on trust, and that trust is absolutely gone.

I have no idea how we can restore the trust that has been destroyed as a result of this. The IRS has let down the very people that they were employed to serve. In fact, the people think the IRS has turned against them, and it is on a stack of other concerns where they believe the Federal Government has turned against them. This is Goliath against David. These are the people who hired Goliath and empowered Goliath, and Goliath has turned against those very people. It's moms and dads at kitchen tables who are taking kids to soccer games who want to have a political organization like a tea party. It's people who believe they're patriots, and their own government is telling them, we will not allow you to exercise your patriotism in this way because we don't like your brands of patriotism.

This is far worse than anything we've seen in Watergate or that the government has done to the government, because this is the government turned against the very people who hired them, who trusted them, and who have destroyed that trust.

Mr. Chairman, I yield back.

Chairman ISSA. The gentlelady yields back. We now go to the gentleman from Washington, Mr. Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman. I think the tone of this hearing is the reputation of the IRS being at stake, but I recognize that may be an oxymoron, to be very honest with you.

Mr. Wolin, in response to a question by Mr. Lankford, you stated that you were not aware of the complaints of conservative and Tea Party groups that received extra scrutiny from the IRS until you were informed by Mr. George of the Inspector General's audit. Is that correct?

Mr. WOLIN. That's correct.

Mr. HASTINGS. And once again, when were you informed of that audit?

Mr. WOLIN. Well, I don't recall precisely, but I'm prepared to accept the IG——

Mr. HASTINGS. Well, give me a ballpark. Give me a ballpark.

Mr. WOLIN. The IG, I think——

Mr. HASTINGS. I thought it was the summer of last year, right?

Mr. WOLIN. That's right. 2012.

Mr. HASTINGS. Summer of two—2012. So do you not see any of the letters from Members of Congress about this matter?

Mr. WOLIN. I don't think there were many letters, if any.

Mr. HASTINGS. I didn't ask you that. I asked you if you were aware of them, not how many.

Mr. WOLIN. No. No, we're not aware.

Mr. HASTINGS. Did you—so you didn't see any news articles about this before that date. Is that correct?

Mr. WOLIN. I was not aware of this.

Mr. HASTINGS. Did you—I asked you if you did not see.

Mr. WOLIN. I don't recall seeing any news articles.

Mr. HASTINGS. Okay. And you had no conversations with anybody about the extra scrutiny of the Tea Party groups before that date?

Mr. WOLIN. I had no conversations about that.

Mr. HASTINGS. Okay. Good.

Mr. Shulman, just to clarify, when you get a letter from a Member of Congress, that goes to your personal attention or at least your signature when you respond. Is that—did I hear you correctly when Mr. Chaffetz asked you that questions?

Mr. SHULMAN. We get a lot of letters. Some——

Mr. HASTINGS. I didn't ask you that. I asked you questions from Members of Congress, if you personally sign those letters if they're addressed to you.

Mr. SHULMAN. Some come to me——

Mr. HASTINGS. Okay. Did Mr.——

Mr. SHULMAN. —I respond to and some come to me that other people respond to and sign.

Mr. HASTINGS. Would Mr.—would a letter from Mr. Camp, Chairman of the Ways and Means Committee, get your personal attention?

Mr. SHULMAN. If Mr. Camp wrote to me? Generally, yes.

Mr. HASTINGS. Generally yes. Well, he wrote you—he wrote to you in June 2011 about the Tea Party issue. So if you—now, does somebody sign your letters other than you?

Mr. SHULMAN. I don't, but to the best of my knowledge, that—in my memory is that was not about the same issue.

Mr. HASTINGS. Okay. Well, according to the records we have, he sent you a letter in June 2011 regarding this particular issue.

Mr. SHULMAN. That's not my memory. In June 2011?

Mr. HASTINGS. Well, that—that's our records. Let me ask this: When you testify in front of Congress, do you have a preparation prior to testifying before Congress?

Mr. SHULMAN. Yes.

Mr. HASTINGS. You do? Who participates in that preparation.

Mr. SHULMAN. It can depend on subject matter, but it was generally people in my direct office.

Mr. HASTINGS. Generally your Chief of Staff, probably your top aides?

Mr. SHULMAN. Yes.

Mr. HASTINGS. Does it change from subject to subject?

Mr. SHULMAN. It can change——

Mr. HASTINGS. It can.

Mr. SHULMAN. —from subject to subject.

Mr. HASTINGS. Okay. When you testified in front of the Ways and Means Committee, and this has already been brought up, where Mr. Boustany asked you the question and you—and then you had an exchange with Mr. Lynch. Let me see. Where is that? That is on—well, at any rate, the question was can you assure us, and you told Mr. Boustany that you could assure him that nothing was going on. Then you had an exchange with Mr. Lynch. Do you recall that brief conversation with Mr. Lynch earlier today?

Mr. SHULMAN. Yeah. I don't recall the exact words, but I recall the conversation.

Mr. HASTINGS. Well, let me—this is what you—this is what you said. And the issue was you can give—the phrase that you used in response was you can give assurances that there was no targeting. That's what you said in testimony.

Now, you said then in response, because he interrupted you, and you said, let me answer the question, and so you then said—in responding to Mr. Lynch, you said that—that those assurances of no targeting came from conversations. Who were those conversations with?

Mr. SHULMAN. I had—my understanding at the time in March of 2012——

Mr. HASTINGS. No. Who—no. The question was, the question Mr. Lynch said that is there no targeting, and you said I—you know, in conversations, that's what—you know, that's what I believe. Okay. Who—I'm asking you who those conversations were with.

Mr. SHULMAN. So I can't tell you these are the exhaustive conversations, but when the letters came in, I know I had——

Mr. HASTINGS. I'm talking about—yeah. I'm talking about the testimony from the question——

Mr. SHULMAN. Sure.

Mr. HASTINGS. —of Mr. Boustany.

Mr. SHULMAN. And in my mind was the letters that I had received about extensive questioning, and those conversations were most likely, my memory is not clear on this, but my deputy, with his deputy, with my Chief of Staff——

Mr. HASTINGS. Who are those by name?

Mr. SHULMAN. I would have most likely had conversations with Steve Miller.

Mr. HASTINGS. Steve Miller. Who else?

Mr. SHULMAN. Nicole Flack.

Mr. HASTINGS. Who?

Mr. SHULMAN. Nicole Flack.

Mr. HASTINGS. Nicole Flack.

Mr. SHULMAN. Who was deputy at the time?

Mr. HASTINGS. All right. Who else?

Mr. SHULMAN. Those are the two with the most knowledge of tax exempt organizations that I relied on the most.

Mr. HASTINGS. Okay. Now——

Mr. SHULMAN. Including other people on my staff as well. I just don't have a clear recollection.

Mr. HASTINGS. Which other people on your staff?

Mr. SHULMAN. My Chief of Staff was an obvious person that I have conversations, but didn't have knowledge of tax exempt organizations.

Mr. HASTINGS. Now, with your indulgence, Mr. Chairman, you said, in conversations, this is how you drew that conclusion. Now, you prepare for these hearings. Did you anticipate that question prior to this Ways and Means hearing?

Mr. SHULMAN. I didn't anticipate the precise question, but I generally familiarized myself with the letters and the questions about donors were the main things that were on my mind at that time.

Mr. HASTINGS. Okay. So that means that, then, you—prior to that question, when you gave assurances there was no targeting, because when you give assurance, that's—you know, that's pretty hard stuff, no targeting. So in preparation, you had discussions about this, and yet you answered to Mr. Boustany that gave assurances there was no targeting.

Now, the issue, of course, that we are concerned about is that you haven't apologized for not stating that correctly. You just now said that in preparation, you anticipated at least the subject of this question.

I have to say, Mr. Chairman, that I find once again, you know, the—I won't say non-answers or vague answers here, trying to find out who in fact did all of this is pretty hard to come by when we get, frankly, Mr. Shulman, answers like this. You prepare for these meetings, you—at least the subject of this question, and then you respond to questions here today that in conversations with people, you know, I feel very comfortable. There's something missing here, I have to say, in my mind, Mr. Shulman. I—and I suppose I'm sure that this committee will try to find those answers, but leave me in the dark on that.

Thank you, Mr. Chairman. I yield my time.

Chairman ISSA. Thank you, Mr. Hastings. I will note that this is a committee that was told that Justice didn't let guns walk at the ATF. So sometimes it's their definitions versus the commonsense real definitions.

At this time I'm asking unanimous consent that the page 16 from the GAO report from—which is entitled, Budget Data Fiscal Year 2008 to 2012, be placed in the record for the purpose of authenticating that Mr. Shulman, in addition to being detached from the running of his business, also is unaware that the fiscal 2008 budget of the IRS, $11.6 billion, rising to $11.9 billion, rising to $12.6 billion and roughly stable at $12.6 billion in fiscal year 2011.

Mr. Shulman, there are no budget cuts during the period of time in which you're claiming you don't have enough money to do your job.

Without objection, so ordered.

We now go to the gentlemen from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman. And let me thank Mr. George for being here and thanks also to your staff. They have given our committee staff several briefings now, and we appreciate their work.

I understand that you're—from your staff, that your office was not particularly happy about the way Lois Lerner at the IRS essentially tried to get out ahead of your audit. She basically orchestrated a question and answer at an ABA meeting on Friday, May the 10th. In your experience, have you ever seen an IRS official do something like that or was that a first?

Mr. GEORGE. It was a first during my tenure, Mr. Clay.

Mr. CLAY. And your audit was not finalized yet at that point. Is that right?

Mr. GEORGE. That is correct, sir. Well, let me double—that is correct. There's a clearance process, sir, that has to occur to ensure that any Title 26, Section 6103 information is not premature—is not released, period, and that clearance process had not been completed by then.

Mr. CLAY. So you hadn't completed your—your job yet, but—just to play devil's advocate, you had already briefed them on your findings, so what was the problem with them going public before the report was final?

Mr. GEORGE. They're privy to all of the information that we find, because they have, again, access to information under the Tax Code, Title 26 for the most part, but there is a provision within the Tax Code, again, Section 6103, which provides for potentially criminal results if you release information, sensitive return information is what they call it, but the bottom line is that it's taxpayer information, without the approval of the taxpayer. And a lot of the reports that we issue, this report included, contained information that would have been violative of the law had it been prematurely released.

Mr. CLAY. And the White House was informed about your audit on April the 24th, according to Jay Carney, the White House Press Secretary, but the White House took what I view as the more responsible approach. They were waiting until your report was final. To me that seems much more in keeping with how draft inspector general reports should be treated.

In fact, let me read a quote from our chairman, Mr. Issa, who said this, "this is one of those things where it's been in a sense an open secret, but you don't accuse the IRS until you've had a nonpartisan deep look. That's what the IG has done. That's why the IGs in fact exist within government, to find this kind of waste and fraud and abuse of power."

And on this rare occasion, I do agree with Chairman Issa's statement. Do you, Mr. George?

Chairman ISSA. You know.

Mr. CLAY. I'm asking the witness. Do you agree with the chairman's statement?

Mr. GEORGE. And I'm sorry, sir. I didn't—I missed the chair—what—the quote you were attributing to the chairman.

Mr. CLAY. Okay. I can read it again for you.

Mr. GEORGE. Thank you, sir.

Mr. CLAY. "This is one of those things where it's been in a sense an open secret, but you don't accuse the IRS until you've had a nonpartisan deep look, and that's what the IG has done. That's why the IGs in fact exist within government, to find this kind of waste and fraud and abuse of power."

And I agree with the chairman's statement in this instance.

Mr. GEORGE. I do also, sir.

Mr. CLAY. Okay. There has been a lot of discussion recently about why the White House did not come out publicly as soon as they knew about the IG report in late April instead of waiting for the final IG report to be issued. And I think the terrible way the IRS handled this proves the point. And thanks to the IGs hard work, we now have precisely the type of nonpartisan deep look Chairman Issa was talking about, so I want to thank you, Mr. George, for your hard work in this area.

And, Mr. Chairman, I will yield back.

Chairman ISSA. I ask the gentleman to yield briefly.

Mr. CLAY. I yield.

Chairman ISSA. Mr. George, exactly in that line of questioning, based on the timeline you gave us, on May 29th, 2012, the audit briefed the IG in advance of the IRS Commissioner's meeting. May 30th, IG and function heads briefed the IRS Commissioner, Doug Shulman, and the Deputy Commissioner, Steve Miller, and Beth

Tucker on the audit, comma, specifically that criteria targeting Tea Party Patriots or 9/12, another tea word, and other policy issues were being used to—used, too, in reviewing applications for tax exempt status.

You briefed, and that's your notes.

Mr. GEORGE. Yes. That's correct, sir.

Chairman ISSA. And so what you say on May 30th is, yeah, they're targeting these groups. That's a confirmation you reached a conclusion they're targeting using these key words.

Mr. GEORGE. Yes. Now, just to be clear, I didn't take these notes up, but these are accurate, sir.

Chairman ISSA. Right. And, I mean, I'm just using these because they were delivered to us from your staff. So on May 30th, there was a there there and you briefed Mr. Shulman and two others.

On June 4th, you went on to brief the IG—or you, the IG, briefed Treasury General Counsel Chris Mead on the same thing, correct?

Mr. GEORGE. That is correct, sir.

Chairman ISSA. So, in fact, the General Counsel at Treasury was aware that, in fact, these groups were being targeted in a conclusion that you made on May 30th and then again briefed them on June 4th, correct?

Mr. GEORGE. That is correct, sir.

Chairman ISSA. Mr. Wolin, were you also aware that, in fact, this conclusion has been reached by June 4th?

Mr. WOLIN. No. No, I was not, Mr. Chairman. I think that the——

Chairman ISSA. So this bypassed you and went to your General Counsel?

Mr. WOLIN. Well, I was not briefed on any findings when the Inspector General came to me. I think his testimony under oath in the Finance Committee and in the Ways and Means Committee was he briefed merely on the fact of the commencement of an audit.

Chairman ISSA. No. That is not what the IG just testified to here, Mr. Wolin. I walked him through his own notes—or these briefing notes that were given to us. The briefing was on the conclusion that specifically that criteria targeting Tea Party Patriots or 9/12 and other policy issues were being used in a reviewing—in review—too, in reviewing applications for tax exempt status.

That's a conclusion that they were being used. Mr. George.

Mr. GEORGE. Mr. Chairman, I may have to clarify my earlier response to you. On the 4th of June, I have a—I had a meeting, and I regularly meet with the General Counsel, Chris Mead, or whomever the General Counsel is at the Department of the Treasury. At that meeting, I certainly made him aware of the audit. I do not keep notes of those discussions. I don't recall verbatim what it is that I discussed with him. I may have characterized the overall object—audit, rather, but I certainly—to the best—I did not have findings then, because the audit obviously wasn't concluded.

Chairman ISSA. No. You had findings that you gave. And I'm calling them findings. Now, I'm—I have to remember I'm not an IG, that the term "finding" may be more technical, but you had reached a conclusion that criteria targeting Tea Party Patriots, 9/12 and other policy issues were being used in reviewing applica-

tions. That's a conclusion that these criteria, these key words were being used and that ultimately we now understand how horrific this is on the face of it, correct?

Mr. GEORGE. I would say, sir, that I would have characterized part of the audit looking at those issues. And so we obviously had not concluded the audit, so we did not have final determinations at that time, so I don't—and again, sir, I'm operating from memory here and it was a while ago, I had no idea this issue would come up in this manner, but the bottom line is I cannot say that—with certainty that I said to him this was definitively happening. I said we are—this is the allegation, this is what we're looking at, and——

Chairman ISSA. Right, but essentially you told Mr. Shulman sitting next to you that shots were fired, to use an analogy, that there was a there there. Now, a question of who fired them, what caliber it was, whether somebody was hit, you do a lot of detail in an IG report. As a matter of fact, it took a year.

So a year ago Mr. Shulman was told that in fact there had been targeting. Mr. Shulman has already testified that essentially the reason there wasn't further action was that it was over as far as he was concerned, in that although you were briefing him that they had targeted, I believe Mr. Shulman testified effectively, and I'm paraphrasing you, sir, so correct me if I'm wrong, that basically your reason for not doing anything further was although you now knew that they had inappropriately targeted people, that in fact it was now no longer happening. Is that correct?

Mr. SHULMAN. I said that—you know, to the best of my knowledge, earlier today, to be clear, I mean, when I learned, I learned that the IG was going to be looking into it and that the practice was being stopped.

Chairman ISSA. Okay. And the May 30th—what I read to you about that targeting, the May 30th briefing in 2012, the IGs briefing of you, Mr. Miller and Miss Tucker all occurred and you were in that meeting?

Mr. SHULMAN. Yeah, but the language you used there that there was a conclusion of targeting is not my recollection of the meeting. My recollection——

Chairman ISSA. Well, this is not my language. This is the IGs.

Mr. SHULMAN. No. I hadn't seen that language.

Chairman ISSA. Okay.

Mr. SHULMAN. But my recollection is, you know, that Mr. George said they were looking into the allegations.

Chairman ISSA. Thank you.

Mr. Massie

Mr. MASSIE. Mr. Chair—Mr. Chairman. Today we are here to repair the trust of the governed in their government, but to repair the public trust we have to fix the problem, and before we can fix the problem we have to define the scope and the type of problem that we have.

Mr. Shulman, how many employees work for the IRS?

Mr. SHULMAN. About—over 90,000.

Mr. MASSIE. So over 90,000 employees work for the IRS. And how many work for Ms. Lerner?

Mr. SHULMAN. She stated 900 today. I don't know the exact number, but that sounds about right.

Mr. MASSIE. Now, the behavior of some of those 900 employees has been described by Mr. Wolin today as inexcusable and deplorable. Do you accept responsibility for that behavior of those employees?

Mr. SHULMAN. I've said before that I am incredibly saddened by this event, that it occurred on my watch——

Mr. MASSIE. I heard that answer before. So I'm asking do you accept responsibility for their behavior?

Mr. SHULMAN. I don't accept responsibility for——

Mr. MASSIE. Okay.

Mr. SHULMAN. —putting a——

Mr. MASSIE. Thank you.

Mr. SHULMAN. —a name on a list with an appropriate——

Mr. MASSIE. Mr. George, did I hear you refer to some of the behavior as gross mismanagement earlier in your testimony?

Mr. GEORGE. That is correct, Congressman.

Mr. MASSIE. And that was at the Cincinnati office?

Mr. GEORGE. That's correct, sir.

Mr. MASSIE. Would you have been referring to either or both Ms. Paz and Ms. Lerner?

Mr. GEORGE. I wasn't referring to any individual in particular, but I—and I just want to actually revise what I just said. The gross mismanagement was not limited solely to Cincinnati. It extended to Washington and——

Mr. MASSIE. Okay. Mr. Shulman, realizing that you do not accept the responsibility for the behavior of all the employees at the IRS, do you accept the responsibility for the mismanagement that occurred at the IRS?

Mr. SHULMAN. Look, I'm very sorry that this happened while I was at the agency.

Mr. MASSIE. I understand you're sorry. You said that before. Can you answer that question?

Mr. SHULMAN. I don't know generally what you're talking about. I don't accept the responsibility for every single action of every single employee of the IRS, but——

Mr. MASSIE. Understood. Thank you.

Mr. SHULMAN. —this did happen on my watch and I accept that.

Mr. MASSIE. Mr. George, you mentioned before that there were lists that were used as triggers, they were called be-on-the-look-out lists, but some of these were used as triggers to refer cases to the Fraud Division or to State and local governments. Is that correct?

Mr. GEORGE. That is correct, sir.

Mr. MASSIE. Okay. So my constituents, whose trust has been damaged in their government, are now asking me were they audited because of lists.

And, Mr. Shulman, can you guarantee to us here today that there were practices in place in management such that none of these audits would have been triggered by a list such as we've seen the lists today?

Mr. SHULMAN. For your constituents?

Mr. MASSIE. Yes.

Mr. SHULMAN. Look, I don't believe that audits were triggered because of it. I have——

Mr. MASSIE. Can you guarantee that they were not?

Mr. SHULMAN. No, I can't.

Mr. MASSIE. Okay. That concerns me. We've got to fix that before we can fix the trust in the government.

Mr. George, you stated there were 143 unauthorized disclosure cases that were started in the last year?

Mr. GEORGE. That we looked at last year, yes.

Mr. MASSIE. And I know you can't comment on the particular cases, but would you expect some of those to be confirmed leaks from the IRS of confidential information? In the past have you ever——

Mr. GEORGE. Unfortunately, I'm being instructed by counsel that I cannot acknowledge the results of those investigations, Congressman.

Mr. MASSIE. Okay. Can you acknowledge prior results of investigations? Can you acknowledge that a leak has ever been confirmed, that anybody's private information has ever been released?

Mr. GEORGE. I don't—we don't have an answer to that, sir.

Mr. MASSIE. Okay. Mr. Chairman, we need more hearings, we need more investigations. We need to get to the bottom of this. I think people working for the government right now need to be fired for abusing the public trust. But let's not delude ourselves. We're just treating a symptom of the disease, and the disease is a bloated, abusive government that has become self-serving.

We've seen that Mr. Shulman has stated he can't be held responsible for 90,000 employees. I doubt any man or woman could be held responsible for a bureaucracy that's 100 years old that has that many employees. We sit here comfortably on the dais questioning three men here today, but I think Congress created this monster. We need to look inward. We have 70,000 pages of Tax Code, 90,000 employees that work for this bureaucracy. And a lot of these—this Tax Code is open to interpretation. I think it's ripe for corruption and abuse. And I think in order to restore trust, the public trust, we're going to have to address this issue and I think Congress needs to take it upon itself after today to shrink the size of the IRS, to simplify the Tax Code, and to restore the public trust.

Thank you, and I yield back.

Chairman ISSA. We now go to the gentlelady from New Mexico, Ms. Lujan Grisham.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. Certainly the tone of this hearing in a bipartisan fashion has been that any government agency targeting in any way any inappropriate investigations or information is deeply disturbing, and the fact that it's the IRS just makes that even more troubling. And I don't think there's a member on this committee who doesn't also agree that we want a thorough and complete investigation, and we want all those held accountable, and then we want steps implemented there and everywhere in government to make sure that this never happens again. And I certainly want to be on the record echoing those statements, and am deeply troubled as well. But I do want to talk about 501(c)(4)'s.

Now, Mr. George, your report explains the lack of clear guidance on how groups are determined to be eligible for tax exempt status, but were one factor that contributed to the terrible decisions made by IRS personnel. But one key reason, in my mind, that this problem even exists is because of the difference between the original statute Congress passed and the regulation the Treasury Department subsequently issued.

The original statute passed by Congress provides that any—that organizations may qualify under a 501(c)(4) only if they engage exclusively in social welfare activities. That seems fairly clear that political activities are not allowed at all. But in 1959 a regulation was issued provided that entities could qualify under 501(c)(4) as long as they engaged primarily in social welfare activities. These groups now believe they can spend up to 49 percent of their funds on campaign-related activities.

Now, this goes to Mr. Wolin. Requiring organizations to be primarily engaged in social welfare activities is significantly different than requiring them to be exclusively engaged in social welfare activities. Wouldn't you agree?

Mr. WOLIN. It is, Congresswoman.

Ms. LUJAN GRISHAM. All right. Mr. Shulman, would you agree?

Mr. SHULMAN. Yes.

Ms. LUJAN GRISHAM. And, Mr. George, would you also agree?

Mr. GEORGE. About whether or not clarification is necessary, most definitely.

Ms. LUJAN GRISHAM. And would the three of you support that maybe Congress should make this even clearer? It seems to me that this issue, this regulation was issued fairly arbitrarily.

Mr. WOLIN. Well, Congresswoman, as I said earlier, I think that this is an area that requires additional clarity. The IGs report recommends that we at Treasury, working with the IRS, provide that clarity, and we will get to that right away working with the new Acting Commissioner.

Ms. LUJAN GRISHAM. Mr. Wolin, while you do that, it is now my understanding that in addition, that the Treasury Department plans to start investigating further 501(c)(4)'s to determine if they have spent more than the 49 percent on political activity.

Now, if a 501(c)(4) in this review violated the law and used more than 49 percent for political activity, will the names of those donors who donated to those 501(c)(4)'s be released?

Mr. WOLIN. Well, Congresswoman, the Treasury will not be investigating 501(c)(4)'s. That's not within our purview. And, again, it's important, I think, just to reiterate that the Treasury not involve itself in matters that relate to the administration of the Tax Code, and in particular, ones that have these kinds of political overtones.

Ms. LUJAN GRISHAM. Well, and then maybe it's my understanding that this—or Mr. George?

Mr. GEORGE. Actually, yes, it will be my office. We have committed to doing just that type of an examination.

Ms. LUJAN GRISHAM. And will those donors' names be released?

Mr. GEORGE. It's highly unlikely because of, again, privacy and confidentiality restrictions that are placed upon us.

Ms. LUJAN GRISHAM. But the issue would be that those donors would then be required, if there's a violation, to pay taxes on those donations, would they not?

Mr. GEORGE. I cannot give that analysis.

Chairman ISSA. Will the gentlelady yield? If you go to Organizing for Action, President Obama's 501(c)(4), you will note that it says contributions are not tax deductible. This is about the entity not paying taxes, as I understand it. If you're declined a 501(c)(4) status, some of these organizations 3 years, under certain circumstances you then have to pay corporate taxes on this as though it was income, you then could even have your officers and directors personally responsible. But it's not a (c)(3). These are (c)(4)'s. And I'm sure that we have people here that could define the difference, but it's real important to understand this is about—if you, for example, were determined to be a 527, nothing would change except, as you said, the potential names. 501(c)(4)'s, 527's, the difference is not really a taxable event.

Ms. LUJAN GRISHAM. Mr. Chairman, I appreciate that clarification; however, if—if, though—I'm not clear that some of these organizations provide the right disclosures, I'm not clear that folks who are providing donations to those organizations are clear about those rules, I'm not clear, based on the scope of this investigation to date, that we've got clarity about whether folks really are qualified as a 501(c)(3) or a 501(c)(4). And as we uncover more information about those donors, those differences, those investments and the engagement of activity of these organizations, it seems to me if there are violations made, the disclosure of donors in a violation and taxes be recovered if they so apply should be done by the IRS.

Chairman ISSA. I appreciate the gentlelady's comments.

Would somebody clarify for the record the taxation policy so that that can be clear, because I think there's a—Mr. Shulman, you certainly know the difference. There's obviously a huge misunderstanding as to the taxability and the ramifications, what you really get on a 501(c)(4) versus 527.

Mr. SHULMAN. There's a chart actually in the Inspector General's report, I think, that has the different taxable entities and the difference——

Chairman ISSA. Right. I mean, 501(c)(3) is a big deal; 501(c)(4) less.

Mr. George? To the extent that you can answer to clarify for the lady.

Mr. GEORGE. Yes. Oh, certainly. A 501(c)(3) may do the following. They may receive tax deductible charitable contributions. They may engage—they may not engage in political campaign intervention. They must publicly disclose the identity of their donors. I'm sorry. They may not disclose the identity of their donors. They may engage in lobbying, limited, but must not be substantial. They may engage in general advocacy not related to legislation or the election of candidates, but it has to be as an educational activity. And they must apply with the Internal Revenue Service for their 501(c)(3) status.

Now, as to 501(c)(4), (5) and (6)'s, no, none of their contributions are tax deductible. They may engage in limited political campaign intervention, but again, it may not be their primary activity. They

do not have to disclose the identity of their donors. They may engage in lobbying, but it has to be in—actually, they have an unlimited amount of ability to do that if it's in furtherance of the taxes—purpose for which they were established. And as it relates to general advocacy, they may also do so in an unlimited way as long, again, as it is in furtherance of their tax exempt status. And they do not need to apply to the Internal Revenue Service for this status.

Chairman ISSA. Thank you.

The gentlelady, I presume, is satisfied?

Ms. LUJAN GRISHAM. I am not, Mr. Chairman.

Chairman ISSA. Well, we'll make additional information available, but I think it is——

Ms. LUJAN GRISHAM. Can I make one statement, Mr. Chairman?

Chairman ISSA. Of course.

Ms. LUJAN GRISHAM. Thank you so much.

To the issue that in a 501(c)(3), which I'm clear about the differences between—and I appreciate doing that for the record, sir—501(c)(3)s and 501(c)(4)s, donors are not required—the 501(c)(4) doesn't have to disclose the donors.

Chairman ISSA. Correct.

Ms. LUJAN GRISHAM. If they have violated that political activity premise, just like a 501(c)(3), I'm making the argument here that they should have to then disclose those donors. And now that they're disclosed, I want to make sure that appropriate taxes have applied to that person's personal income as a result of knowing that they've made contributions that were not disclosed in any form so that there is a double-check, in the same way that the IRS receives independent information about my income, what I receive and what I don't receive.

That's my point here, Mr. Chairman.

Chairman ISSA. Well, the gentlelady may turn the Tax Code upside down if she would like. I suggest you find cosponsors.

But the fact is that these individuals give money post-tax. They pay their taxes, and then they give the money out. And they do not control the organization. So the idea that they would take on personal responsibility for their contributions and somehow be double-taxed, perhaps the gentlelady would reconsider the chilling effect, whether it's a 501(c)(3) or a 501(c)(4).

And, with that, we go to the gentleman from Georgia, Mr. Collins.

Oh, I'm terribly sorry. We're going to Mr. Meadows. I'm reading a list. I should look at the gentleman first.

Mr. MEADOWS. That's all right. Thank you, Mr. Chairman. And I want to follow up on some of your line of questioning there.

And it relates to—and I want to make sure that I understand you, Mr. George. On May 29th of 2012, almost a year before the official report came out, you were briefed. And it is my understanding you specifically knew at that particular point that there was a criteria that was being used to target the Tea Party, Patriots, 9/12 group. Is that correct?

Mr. GEORGE. Actually, sir, I—that was my final briefing on this matter. During the course of the audit——

Mr. MEADOWS. Okay, but this is—this is May 29th, 2012. Is that correct?

Mr. GEORGE. That's correct.

Mr. MEADOWS. All right. And so, on May 30th, the day after that, you actually briefed Mr. Shulman, Deputy Commissioner Steve Miller, and Beth Tucker on this new audit, using that same criteria, that it was being used against Tea Parties. Is that correct?

Mr. GEORGE. Sir, I——

Mr. MEADOWS. That's what your notes say.

Mr. GEORGE. Yes, but, you know, my colleagues behind me, who were in attendance at the meeting——

Mr. MEADOWS. Right. It said "function heads," so I assume that they were your function heads.

Mr. GEORGE. And they indicated—we had some indication at the time that the allegations had merit, but we did not characterize—we cannot—I'm not in a position now to characterize the level of detail that we had at that point.

Mr. MEADOWS. I'm not asking about detail. Was there a separate criteria used for those groups, a separate criteria used for Tea Party groups that you just admitted to just a few seconds ago?

Mr. GEORGE. You know, again, sir, I'm not certain as to exactly——

Mr. MEADOWS. Well, as your function heads, are y'all familiar with it? We have notes that would indicate that, that there was a separate criteria used.

Mr. GEORGE. Yes, sir. I was just informed that we knew there was a criteria; we didn't know the nature of the extensiveness of it, sir.

Mr. MEADOWS. So we know that it was separate, though.

Mr. GEORGE. Yes.

Mr. MEADOWS. And you, the gentleman to your left, you did notify him of that on May 30th of 2012?

Mr. GEORGE. That is my recollection, sir.

Mr. MEADOWS. Okay.

Then on June the 4th, this note says that you briefed the general counsel, Mr. Chris Meade. So you briefed him of a separate criteria in the Treasury Department on June the 4th, 2012.

Because all of a sudden, you know, all of this is supposedly, it's just happened, but this is well over a year ago. So you briefed the general counsel, the chief general counsel of the Treasury Department well over a year ago.

Mr. GEORGE. I did. But I have to acknowledge that in the briefings that we hold with the Commissioner of the Internal Revenue Service I have my subject-matter experts in the room.

Mr. MEADOWS. So you went by yourself to the general counsel——

Mr. GEORGE. That's correct.

Mr. MEADOWS. —and so you may not have given him the complete story.

Mr. GEORGE. I'm certain that I did not give him the level of——

Mr. MEADOWS. Why would you have not given him the complete story if you had just done it a few days before?

Mr. GEORGE. Well, because the Commissioner is the person who we directly oversee. I actually have——

Mr. MEADOWS. So this was a courtesy call.
Mr. GEORGE. It is a courtesy call, sir.
Mr. MEADOWS. So a courtesy call to the general counsel.
Mr. GEORGE. Yes, it is.
Mr. MEADOWS. All right.
Let me go a little bit further, because I'm troubled by some of the things that have been said. We've got Lois Lerner. Why would she have been privy to all the interviews and know exactly what the interviews were going on during this process? Why would she have known that?
Mr. GEORGE. I'm glad you raise that, sir, because it was raised much earlier. My understanding—and, again, I was not privy to those meetings. I was not in attendance at those——
Mr. MEADOWS. Okay. But let me ask you another question, because my time is running out.
Mr. GEORGE. Sure.
Mr. MEADOWS. Holly Paz, why was she in all—almost all the interviews that you conducted?
You talked about original and proper protocol from an audit standpoint. She was in these meetings with her subordinates and other people. Why would you have somebody from the IRS in all of those meetings?
Mr. GEORGE. You know, well, first of all, in some instances, they——
Mr. MEADOWS. Is that proper protocol?
Mr. GEORGE. In some instances, it may——
Mr. MEADOWS. Well, I know when you get audited you keep people separate. Why would you do this and put them together?
Mr. GEORGE. Well, because in some instances—they have collective bargaining units.
Mr. MEADOWS. So this was all because of collective bargaining?
Mr. GEORGE. Well, no. I was just told that Holly was requested to leave when we were querying of the IRS staff about——
Mr. MEADOWS. Yeah, but she was in 36 of 41 interviews, Mr. George. Requested to leave? She was in 36 of 41 interviews.
Mr. GEORGE. I'm unaware of it. This is the first time I'm hearing this.
Mr. MEADOWS. So are you gentlemen aware of it? I mean, just talk to him. You've been going back and forth. So this is the first you're aware of it?
Mr. GEORGE. Well, none of the gentlemen here would have conducted those interviews directly, sir, and so——
Mr. MEADOWS. Well, this—I just was passed this. It was in the document that you've given us. It was in the document that you've given us. So are you just giving us stuff that you're not aware of, Mr. George?
Mr. GEORGE. I don't know which document you're referring to, sir.
Mr. MEADOWS. Well, I'll be glad to give it to you.
Mr. GEORGE. Okay. Thank you.
Mr. MEADOWS. I just find it highly inappropriate.
Mr. GEORGE. Sir, this was put together by auditors, as you can see, of—some of whom are in—many of whom are in Washington, but some of whom are not. These are, you know, level——

Mr. MEADOWS. Well, that's my point. This is not isolated to two people in Cincinnati. This has a whole lot of people in Washington, D.C.

And why would she have been part of it? Would you normally conduct an audit in that manner?

Mr. GEORGE. You know——

Chairman ISSA. The gentleman's time has expired. You may answer, though.

Mr. GEORGE. Congressman, I would respectfully request the opportunity to look further into this and to report back to the committee, because this is the first time that I was made aware of this, and I really don't have information about it.

Mr. MEADOWS. I thank the chairman.

Chairman ISSA. Thank you. And we will allow the gentleman time to do the research and get back with us.

Mr. GEORGE. Thank you.

Chairman ISSA. We now go to the gentleman from California, Mr. Cardenas.

Mr. CARDENAS. Thank you very much, Mr. Chairman.

TIGTA made nine recommendations detailing how the IRS can improve its process for reviewing applications for 501(c)(4) organizations.

Mr. Wolin, who at the Treasury is working with the IRS to ensure that these recommendations are fully implemented?

Mr. WOLIN. Well, most of them, Congressman, are focused on actions for the IRS to take, and so the new Acting Commissioner, Mr. Werfel, will be quick at work on those.

There's one that we've discussed here in this hearing that relates to better guidance with respect to this question of whether entities are meant to be 501(c)(4)s or not, and that has a role for Treasury as well as the IRS on that guidance.

But, in any event, the Secretary of the Treasury, Mr. Lew, has charged Danny Werfel with getting back to him within 30 days to report on his progress in implementing the recommendations from the IG report, plus whatever other steps he feels are necessary to make sure that this misconduct does not happen again.

Mr. CARDENAS. Okay.

And, Mr. George, what can you say about that?

Mr. GEORGE. Mr. Werfel reached out to me last week, Congressman, and requested my assistance in helping address many of the issues that we identified—actually, all of the issues that we identified in our audit report. And I have committed to doing just that to assist him. So we are going to do our level best to help guide him as he is attempting to address our recommendations.

Mr. CARDENAS. And what has the Tax-Exempt Division, regarding this implementation, what have they shared with you?

Mr. GEORGE. I have had no discussions with the Tax-Exempt Organizations Division thus far. I don't know whether my colleagues have. And if you'll—I beg your indulgence.

Mr. CARDENAS. Sure, please.

Mr. GEORGE. Apparently not yet, sir.

Mr. CARDENAS. Okay.

Mr. GEORGE. But we will, starting——

Mr. CARDENAS. That was my next question. When you say you will, is there an intended timeline? Is there a goal?

Mr. GEORGE. Mr. Werfel and I committed to meeting next Monday—or, I'm sorry, Tuesday. Monday is a holiday.

Mr. CARDENAS. So as early as next week?

Mr. GEORGE. Yes.

Mr. CARDENAS. Okay.

Eight of TIGTAs nine recommendations were directed towards the Exempt Organizations office and the Tax-Exempt and Government Entities Divisions of the IRS. In a few cases, the Exempt Organizations office and TIGTA did not see eye-to-eye on the specifics of some given recommendations.

Can you share with us what the disagreement was and why?

Mr. GEORGE. They—in a couple—well, first of all, it's overtaken by events, actually, Congressman, since—because when they initially provided us with their response to our recommendations, it was before the President directed them, and then through—and then the Secretary subsequently, to adopt all of our recommendations.

But to answer your question directly, in some instances, they indicated that they had already addressed the problems that we identified, on one or two, like posting information on the Internet for the public. I do have the detailed response, but it's not before me. Again, with the chairman's permission, I would like to submit that for the record.

Mr. GEORGE. But the bottom line is, they have subsequently now agreed to adopt all of our recommendations. And that's, I think, the ultimate goal.

Mr. CARDENAS. Including posting the process online so that people could understand what's going on behind that IRS curtain with their applications?

Mr. GEORGE. Now, if they come back with an extraordinarily plausible reason, again, citing confidentiality or security or what have you, we would obviously take that into consideration. That was not their initial objection, but, you know, so we're—but they have committed to adopting all of our recommendations, sir.

Mr. CARDENAS. So I anticipate this is not the last hearing we're going to have on this. So as you progress and have that dialogue and you have that back-and-forth, is there any reason that you anticipate that you could not share with this committee what their responses are and what their intended cooperation with these implementations are?

Mr. GEORGE. I will commit to doing so, but we've also committed to conducting a follow-up audit to ensure that they have accomplished the goal of reaching, of achieving these recommendations that we established.

Mr. CARDENAS. Okay.

And you mentioned that the President directed the Treasury to implement all of your recommendations. And so, as far as you can tell, there hasn't been any resistance to—since then?

Mr. GEORGE. I haven't, but I yet have had my meeting with Mr. Werfel. But I assume they're going to follow the President's instructions.

Mr. CARDENAS. Yes? Please.

Mr. WOLIN. Congressman, there will be no resistance. We accept the nine recommendations from the IG as they were written. I think the President and the Secretary and I have all made that clear to Mr. Werfel, and I think he is 100 percent on board.

Mr. CARDENAS. Well, I'm sure that with an organization like the IRS there's probably never going to be 100 percent contentment with every American with this particular department. Yet, at the same time, I think that the timeliness of you being able to—all of you being able to do your part and to restore confidence, at least around this issue, that we can do that as expeditiously as possible.

I yield back the balance of my time. Thank you.

Chairman ISSA. I thank you.

And I'll note to gentlemen, we have two additional Members to ask questions. Then we're going to go to 5 minutes a side as the limited second round. And then we'll dismiss our witnesses for today.

At this time, we go to the gentleman from Michigan.

Mr. BENTIVOLIO. Thank you, Mr. Chairman.

Mr. Shulman, I've got to hand it to you, 5 hours under all this questioning, and you've been able to maintain some coolness, calm. But, at any time, did you ever feel uncomfortable, intimidated by questioning going on?

Mr. SHULMAN. Congressman, my goal today is to try to answer your questions.

Mr. BENTIVOLIO. Okay, so you didn't feel the same thing my constituents feel when they get a letter from the IRS or that I felt when I was reading a memo that said how the IRS deemed educating on the Constitution and Bill of Rights to be a political act?

Does the IRS still believe that educating about the Constitution and Bill of Rights is a partisan political act?

Mr. SHULMAN. I don't know what the IRS believes, but if you're referring to the criteria in the report, I would agree it's inappropriate.

Mr. BENTIVOLIO. It's inappropriate. You know, can you imagine how I felt as a former schoolteacher teaching the Constitution and the Bill of Rights and thinking about, wow, I could be subject to an IRS audit simply because I'm doing my job?

Do IRS agents take a class on learning about the Constitution and Bill of Rights before joining one of the most powerful agencies in the Federal Government?

Mr. SHULMAN. I don't know the answer to that question.

Mr. BENTIVOLIO. Okay. You do teach ethics, correct?

Mr. SHULMAN. I do——

Mr. BENTIVOLIO. Or the IRS requires ethics training?

Mr. SHULMAN. Yes, there's a——

Mr. BENTIVOLIO. But not—but not the Constitution?

Mr. SHULMAN. I don't know the answer to that question.

Mr. BENTIVOLIO. Yeah, the answer is no. I understand that they take training classes in ethics, but specifically about the Constitution and Bill of Rights, you don't know that.

Given their power to destroy businesses and audit individuals, do you think it would be useful for the IRS to require all of its employees to take a class studying the Constitution and Bill of Rights in

order to make positively sure that they understand the concept of government restraint created at our founding?

Mr. SHULMAN. I think it's very important that IRS personnel be well-trained.

Mr. BENTIVOLIO. Did you study the Constitution? You're a lawyer, are you not, or an attorney?

Mr. SHULMAN. I went to law school.

Mr. BENTIVOLIO. You went to law school. Did you study the Constitution?

Mr. SHULMAN. I believe I took constitutional law, but I'm not prepared to take an exam at this time. Meaning I'll answer any of your questions, but I can't promise, you know, I'm an expert.

Mr. BENTIVOLIO. An expert. Well, you know the First, Second Amendment, and one of my favorites, the 19th, right? You know those?

Mr. SHULMAN. Excuse me?

Mr. BENTIVOLIO. You know those——

Mr. SHULMAN. I told you, I'm not a——

Mr. BENTIVOLIO. Excuse me. The constitutional amendments, you know the First, you know the Second, and you know the 19th.

Mr. SHULMAN. I don't necessarily have the Constitution memorized, sir.

Mr. BENTIVOLIO. Okay. Well, they're pretty general, I mean, you know, in what each one is. Like, the First Amendment is freedom of the press, freedom of religion, and freedom to petition the government for redress of grievances. The First Amendment, right?

Mr. SHULMAN. I really can't recite the Constitution, sir.

Mr. BENTIVOLIO. Okay. Do you understand what—do you know what the word "tea" in "Tea Party" stands for?

Mr. SHULMAN. I do not.

Mr. BENTIVOLIO. It stands for "taxed enough already." That's contrary to what the IRS wants, I think. Because they want to tax as much as possible, don't they?

Mr. SHULMAN. The IRSs job is to administer the tax laws that are on the books.

Mr. BENTIVOLIO. Mr. Chairman, I yield back my time.

Chairman ISSA. Would the gentleman yield?

Mr. BENTIVOLIO. Yes.

Chairman ISSA. Just briefly, I want to make sure this gets properly in the record. Yesterday we had a transcribed interview, and I'm going to ask unanimous consent to place, at this time, pages 189 and 190 in the record.

Without objection, so ordered.

Chairman ISSA. And I would just read very briefly from it.

This was to Ms. Paz. When we asked her about, did you ever accompany any other employees to their interviews with TIGTA? And she said, "Yes. I sat in on all the interviews, but they—the arrangement were—we had worked out with TIGTA was that I would leave the—at the end of the interview so they could ask anyone interviewed any questions they wanted to ask without anyone else present. So that was done."

That's correct, her testimony that she was in at least what she thought was all the interviews and that she left for a short time at the end?

Mr. GEORGE. I have been informed by staff that that is accurate, sir.

Chairman ISSA. Thank you.

And we went on with Mr. Hixon, one of my staff attorneys, asked—and he is an attorney; he didn't just go to law school—"How did that arrangement come about when TIGTA approached you about conducting their audit? Did you request that you be present at all of the interviews?"

Ms. Paz answered, "Yes, I believe—I can't remember if I made the request or Lois Lerner made the request. But we discussed that in order for the IRS to be able to respond to the report, we had to understand what information TIGTA had and what they were being told."

Mr. George, you're a seasoned investigator. Those individuals who did that on your behalf, is that routine, to basically let the target of an investigation/audit sit in so they know the questions and answers, when they later may be a target of misconduct?

Mr. GEORGE. You—the operative word, Mr. Chairman, is "audit."

Chairman ISSA. Okay, so I'm going to stop you there. Because this was an audit, it was conducted much more, if you will, like people coming in and just going through the books to find out, you know, how much more taxes you owe. Right? It wasn't conducted as an investigation.

Mr. GEORGE. That's correct. It was not conducted as an investigation.

Chairman ISSA. Okay. I'm going to conclude later during the last 5 minutes.

Mr. CUMMINGS. Can I ask one question?

Chairman ISSA. Sure. Go ahead, Mr. Cummings.

Mr. CUMMINGS. Let me make sure—this is for clarification and truth. Usually, when you are conducting an investigation—and I know this was an audit, I got that—you want to keep your witnesses separate because you're in search of the truth and you're trying to make sure that there is no advantage of a person hearing what somebody else says. As a matter of fact—I mean, that's just pretty standard procedure.

And can you tell us what the difference is and why there is—if there is a difference with the way you all proceed with regard to audit—that is, allowing somebody to listen to testimony? I think that would be clarifying for all of us.

Because, you know, maybe an audit is conducted differently, but it would seem to me that even in an audit you're in search of truth and accuracy. And then where there is a—if there is a conflict, then you figure out who's inaccurate or maybe who's lying, but then you figure out how to get to the truth. But when—do you follow me?

Mr. GEORGE. I do, Congressman. And, again, each case is different. I am not privy yet to the details of these interviews, and I just learned about this. But I have to say that, again, the operative word that you used is the "truth." And we want to make sure that the information that we receive and act upon is accurate.

And sometimes it is beneficial to have more than one person in the room who may have worked on the same matter so that, in case some person doesn't recall a particular decision, action, activ-

ity, the other person might, and that might click the memory of the person who we were originally questioning. So it really depends on the circumstances.

Now, in hindsight, given this matter, obviously, this seems somewhat unusual. I need to do a little more research——

Mr. CUMMINGS. This is just 30 seconds. Based on what the chairman just read, it sounded like Ms. Paz was—she felt like she needed to be in the room because she wanted to be able to defend herself, or the agency, I don't know, based on what may have been said or information gathered in that interview. And that seems like it goes against what you just said.

Mr. GEORGE. Well, again, hindsight is 20/20, sir.

Mr. CUMMINGS. Okay. All right.

Chairman ISSA. Thank you. I thank you for your comments.

We now go to the gentleman from Florida.

Mr. DESANTIS. Thank you, Mr. Chairman.

Thanks to the witnesses for toughing this out.

I'm just a little still stunned by the beginning of this hearing. We are investigating the IRS targeting groups who, among other things, educate about the Constitution and the Bill of Rights, and yet we have one of the officials potentially responsible for that invoking one of those constitutional rights. So it was—it was a startling thing.

Let me ask Mr. Wolin, just so I get this right, IRS reports essentially to the leadership of the Treasury Department and then the President? Is that the proper chain of command, so to speak?

Mr. WOLIN. It is, Congressman.

Mr. DESANTIS. Okay.

And, Mr. Shulman, I notice that you've made, obviously, a lot of trips to the White House. That was discussed. You also have met with the President in 2010, one occasion, and then twice in 2011; is that correct?

Mr. SHULMAN. Sorry,I don't—I don't know the exact dates of meetings, so——

Mr. DESANTIS. Well, I didn't ask you dates, but is that—about three times during that period, is that—I mean, that's—we just have the log. That's what it says. June 29th, 2010; February 3rd—or, excuse me, June 6th, 2011; and December 2nd, 2011.

Mr. SHULMAN. I have memory of two of the meetings. I'm not sure I have a memory of the——

Mr. DESANTIS. Now, we don't yet have the log for 2012, but did you ever meet with the President in the White House during 2012?

Mr. SHULMAN. Was the last date—could you give me the last date?

Mr. DESANTIS. The last date that we have is December 2nd, 2011.

Mr. SHULMAN. I'm sorry. I was referring to a December 2012, where I had a photo taken with my family.

Mr. DESANTIS. Is that the only date you remember from 2012?

Mr. SHULMAN. So, my memory, that's the only date I have any memory of with the President in 2012, except for perhaps a holiday party or some such.

Mr. DESANTIS. Okay. So when you were going there, were those discussions—or what were those discussions about? The Affordable Care Act? 501(c)(4)s?

Mr. SHULMAN. The discussions with——

Mr. DESANTIS. With the President.

Mr. SHULMAN. I don't remember having extensive conversations with the President. The first conversation that you referenced was about the tax gap and tax collection in general and how the IRS works and how to collect the proper amount of revenue for the government. That's my best recollection.

Mr. DESANTIS. So that is the extent of the substantive conversations you had, or were there other topics discussed? I mean, you know, I understand you're busy, I understand you meet a lot of people, but most people probably remember when they meet with the big guy.

Mr. SHULMAN. Yeah. No, I—that's the extent of my memory. And I also, now that you bring this up—I haven't looked at these dates. You know, I'm not at the agency anymore. I also had a discussion once where he convened a number of agency heads, talking about how to improve the government, generally.

Mr. DESANTIS. Now, according to these logs, it was pointed out that there were over 100 times where you visited the White House, generally, having 118. And there are 46 of them where there is a purpose of health care. And it looks like it started in April of 2010 and really continued throughout 2010.

So when you were going to discuss health care, was that specifically to discuss the Affordable Care Act, a.k.a. Obamacare?

Mr. SHULMAN. The IRS was tasked by Congress to have, you know, a role in the Affordable Care Act, and I had a number of conversations with—you know, at OMB and the White House about that.

Mr. DESANTIS. One of your predecessors, Commissioner Everson, he testified about this issues with the Affordable Care Act. He said that he didn't really recall ever going to the White House for policy discussions. I think he said he may have gone one time.

And he said that he worried about the IRS being this intimately associated with kind of a signature initiative, that it may actually hurt the IRSs ability to conduct its core function of tax collection.

Do you believe that there's a danger in that?

Mr. SHULMAN. You know, I believe the IRS is part of the executive branch, and when it's tasked with a major job of implementation, it needs to have proper coordination.

Mr. DESANTIS. Well, that didn't really answer the question. I mean, putting this new, which could be a very intrusive burden in terms of American citizens having their health care being involved with the IRS, to be able to do that is obviously going to require resources and manpower. And I guess my question is, is there a danger that that could take away from the traditional functions of the agency?

Mr. SHULMAN. The IRS is—when people think about the IRS, they think about collecting taxes. They don't think about figuring out application for tax-exempt status. They don't think about a lot of things.

So, over the years, Congress has loaded the Tax Code with many, many different functions, all within the Tax Code. And the job of the IRS is to administer the Tax Code. So I really—you know, the IRS is going to do what Congress asks it to do.

Mr. DESANTIS. All right. I would just note that that still didn't really answer the question, but I will yield back to the chairman. Thank you.

Chairman ISSA. I thank the gentleman.

We're now going to go for this last 5 minutes that I mentioned, each side.

Mr. Cummings?

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I'm going to be very brief. I—and this is something that we have not talked about yet, and it's something that I just want to get you all's opinions on.

Mr. George, there are some organizations that, if the test for tax exemption under these circumstances were administered fairly, might not meet the test. Is that a fair statement?

Do you understand what I'm saying? In other words, there's a law, there are standards. And some organizations—I'm not talking about the ones here, but I'm talking about generally—might not meet the test.

Mr. GEORGE. I guess in——

Mr. CUMMINGS. For tax-exempt status.

Mr. GEORGE. I'm sure, in theory——

Mr. CUMMINGS. Yeah, I'm talking about in theory.

Mr. GEORGE. —you're right. Yes.

Mr. CUMMINGS. Let me tell you what I'm really concerned about, in addition to all the other things that I've said. I'm concerned that all of this may have a chilling effect on employees, where they say, you know, when normally we would, you know, look at certain criteria fairly, not targeting anyone, but say, "Uh oh, I'm worried because I better let this go."

Let's say, for example, we were talking about audits. And they say, uh oh, I'm not going to do this because I may be called in and told that I didn't do things properly.

Are you following what I'm saying?

Mr. GEORGE. Yes.

Mr. CUMMINGS. And so then you—then the organization does not do what it's supposed to do. Are you following me?

Mr. GEORGE. And not only am I following you, sir, there is evidence to that effect. With the passage of the Restructuring and Reform Act of 1998 and with the deadly sins, top 10 deadly sins, there was a steep fallout in IRS enforcement because IRS employees were afraid to be very aggressive as it relates to trying to recover money.

Mr. CUMMINGS. And I'm just—I'm just wondering, you know, how do we strike that balance?

I know one thing, Mr. Wolin, is making sure the law is clear. Another thing is making sure that there's some kind of guidelines that are consistent with fairness. What else can we do?

Because we've got to have that balance. We cannot have employees who are sitting there shaking like a leaf on a windy day, believing that if they fail to properly do what they're supposed to do, they

may get in trouble. But they also have to know that they—you know, what their guidelines are.

And I'm just curious. Now, you said that you're going to have a conversation with Mr. Werfel, the new Commissioner, Acting. And I'm just telling you, I'm trying to figure out, how does all that—taking what I just said into consideration, how do we help him to create an atmosphere where the employees can still do what they are supposed to do in the way they are supposed to do it without feeling like—feeling threatened? Does that make sense?

Mr. GEORGE. It makes complete sense. And just to be clear, it's more than a conversation, Congressman. We are going to work with Mr. Werfel. If he has the ability to make sure that his employees are trained, if they know that they have his confidence and he has their back, I think it will help address some of the concerns that you're alluding to, sir.

Mr. CUMMINGS. Mr. Wolin, do you have a comment?

Mr. WOLIN. Congressman, I think that it starts with leadership. He has, I think, an impeccable record, Mr. Werfel, and is very well-suited to hit the ground running to make sure that he starts the path toward restoration of not just the public's confidence in the IRS but also, as you're pointing out rightly, sir, the employees' capability to do the job, the important job, they need to do.

And I think that that partly is about holding people accountable for misconduct that occurred, and it's partly about putting in place procedures and policies and a culture that makes sure that these kinds of things don't happen again, that people are appropriately trained, that there's clarity about what the rules are, and so forth. And that's a process that he has begun today and will really move forward with, focus on, and with our full support.

Mr. CUMMINGS. As I said at the beginning of the hearing, this is about trust and truth. And I want to thank all of you for being here today. This is an ongoing process.

But I want us never to forget that it's not enough to just investigate. We've got to bring about reform. And this is a—I think there are moments that come in life, as I close, Mr. Chairman, there are moments in life where incidents happen. And, at that moment, we must take advantage of the moment, because the moment will tell us that we need to change things and do something in a different way. But if we let that moment pass, usually things only get worse.

And so I'm hoping that you all will—I know you left, Mr. Shulman, but I hope that we can get your cooperation in any way that you may be able to do it. Mr. Wolin, Mr. George, I hope we can—you'll keep that in mind. Because the American people are very concerned about this.

And, Mr. Chairman, I want to thank you for I think what has been a very good hearing.

Chairman ISSA. Thank you, Mr. Cummings.

Out of the 5 minutes, I'll yield 1 minute to the gentleman from North Carolina.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Shulman, with this internal investigation that was done originally, am I correct in the person that headed that up, that left from Washington, D.C., and went to Cincinnati, was actually the

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special adviser to Sarah Hall, who is now over our health care. Is that correct? Mr. Miller employed her to go and do this internal investigation?

Mr. SHULMAN. As I stated earlier, I don't know it to——

Mr. MEADOWS. So you have no idea what happens below you at all?

Mr. SHULMAN. Congressman, that's not what I'm stating. I actually didn't know it and didn't—to be an internal investigation. But——

Mr. MEADOWS. But you agree that it was her, and she is the special adviser to Sarah Hall, who is now over our health care?

Mr. SHULMAN. To the best of my understanding—and I've read the report. That's where I see it was special——

Mr. MEADOWS. Did you ever talk to Mr. Miller about that, who was going to head it up?

Mr. SHULMAN. I think that——

Mr. MEADOWS. Do you know who Ms. Marks is?

Mr. SHULMAN. Yes, Nancy——

Mr. MEADOWS. Okay. Okay. Was she the special adviser to Sarah Hall?

Mr. SHULMAN. I don't know. I think, at the time, my best recollection is she was special adviser——

Mr. MEADOWS. You know, there's two C's here. Either there is a coverup, or it's an extreme lack of curiosity on your part.

I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Ohio, Mr. Jordan.

Mr. JORDAN. I thank the chairman.

And I want to direct my questions to Mr. George. And let me first—putting aside the fact that I do think the audit was compromised by what both the chairman and the ranking member asked you about and talked about earlier with the interviews being conducted in the way they were with Ms. Paz present in almost all of them, but what I want to go to is the timeline you gave us, the TIGTA timeline.

And on March 8th, you all meet with Oversight and Government Reform staff. You meet with the folks back here. And we talk about—you talk about this issue. Then you decide to do an audit. That meeting took place March 8th, 2012, when you first met with Oversight staff. Then you decide to do an audit. On May 29th, you brief the IRS—excuse me, May 30th, you brief the IRS about some preliminary findings. You give them a heads-up, but it's not just a heads-up about we're doing an audit. It's a heads-up, we're doing an audit, and, oh, by the way, we have discovered that "Tea Party," "Patriots," "9/12" identifiers were used in groups applying for tax-exempt status.

Looks like 4 days, 5 days later, June the 4th, you give the same kind of heads-up to the Treasury general counsel, Chris Meade.

So I really only have one question. Why didn't you give us the heads-up?

Mr. GEORGE. Actually, Congressman, if you look closer to the top of the timeline, it was March 1st that my office was contacted by staff of this committee.

Mr. JORDAN. Right.

Mr. GEORGE. And we were—and requested by this staff to look into the matter.

Mr. JORDAN. No, no, no, I get that.

Mr. GEORGE. All right.

Mr. JORDAN. We asked you to—but a few months later, you're telling both the IRS and the Treasury Department that, so far in this investigation, we have uncovered that "Tea Party," "Patriots," and "9/12" were used to identify groups and single them out for different kind of treatment.

Why didn't you tell us the same—we'd have liked to have known that information. All we knew from you was, okay, we're doing an audit. In fact, we hadn't formally requested the audit. Mr. Issa and I sent a letter to you on June 28th. You've already given those guys, the IRS and the Treasury, the guys sitting besides you, you've already given them a heads-up about some initial findings. We didn't—the first time we heard about that in any public way was a few weeks ago.

So all I'm asking you is, why didn't you afford us——

Mr. GEORGE. Yeah.

Mr. JORDAN. —the same opportunity you gave them and say, "Oh, you know what, we are doing an audit, and we have found that these terms were being used"?

Mr. GEORGE. But, again, sir, if you look through the timeline, there have been communications between——

Mr. JORDAN. No, no, I—yeah, but you have never once told us what you just wrote in writing you told them.

I think it makes sense for people to ask the question. You're giving a heads-up to the Democrat administration about the terms "Tea Party," "Patriot," and "9/12" being used, but you're not going to give a heads-up to the Oversight Committee, the very committee who oversees the inspector generals in our government, the very committee who asked for the audit, and you don't give us the same heads-up, which includes those identifier terms. You don't think that is unusual in an election year?

Chairman ISSA. The gentleman's time has expired. Please go ahead, Mr. George.

Mr. GEORGE. Sir, I was not at these briefings, so I'm not certain as to exactly what information was communicated——

Mr. JORDAN. This is your stuff. You lay it out. You tell them those terms, and you don't tell us? And somehow that's fair? And we're the ones asking for the audit?

Mr. GEORGE. But, once again, sir, this is not exhaustive in terms of what was communicated, and—but those were——

Mr. JORDAN. So are you telling us—you told this committee about the terms "Tea Party," "Patriot," and "9/12" being used in 2012. You instructed this committee that those things were being used in 2012. Did you ever communicate with anyone on the Oversight Committee or any Member of Congress about that?

Mr. GEORGE. I——

Chairman ISSA. The gentleman may answer, but that will be the end.

Mr. GEORGE. Yes, I did not have discussions with——

Mr. JORDAN. Of course you didn't. You just talked to them.

Mr. GEORGE. —but my staff did, sir.

Chairman ISSA. Thank you.

I really have no time left from the 5 minutes, so I will close this by saying that we will work—I've directed my staff to work, along with the minority staff, on an analysis with your office of the timeline of the initial audit period and, quite frankly, to come up with some future guidelines as to when an audit should turn into an investigation.

Now, I understand from your earlier testimony that when an investigation begins an audit ends. It is the consideration of this chair that there was a time during this audit in which the knowledge was sufficient of the primary activities that did occur that an audit at least possibly should have been converted into an investigation, which I think would've changed a great deal of the procedures that we've had a discussion about here today.

I'm not going to make any further judgment at this time. I'm going to ask my staff to work with your staff and the minority staff so that we can sort of put this together into a package and not be doing any—not limiting it to this preliminary timeline, if that's acceptable with you, Mr. George.

Mr. GEORGE. It is. But, again, sir—and we can speak offline because——

Chairman ISSA. Thank you.

Mr. GEORGE. —there are certain protocols. These are criminal versus civil——

Chairman ISSA. Right. And that's the reason I think this hearing is not the place to flesh it out further.

And, with that, at the beginning of this hearing, I called four witnesses. Pursuant to a subpoena, Ms. Lois Lerner arrived. We had been previously communicated by her counsel—and she was represented by her own independent counsel—that she may invoke her Fifth Amendment privileges.

Out of respect for this constitutional right and on advice of committee counsel, we, in fact, went through a process that included the assumption which was—which I did, which was that she would not make an opening statement. She chose to make an opening statement.

In her opening statement, she made assertions under oath in the form of testimony. Additionally, faced with the interview notes that we received at the beginning of the hearing, I asked her if they were correct, and she answered yes.

It is—and it was brought up by Mr. Gowdy that, in fact, in his opinion as a longtime district attorney, Ms. Lerner may have waived her Fifth Amendment rights by addressing core issues in her opening statement and the authentication afterwards.

I must consider this. So, although I excused Ms. Lerner, subject to a recall, I am looking into the possibility of recalling her and insisting that she answer questions in light of a waiver.

For that reason and with your understanding and indulgence, this hearing stands in recess, not adjourned.

[Whereupon, at 3:28 p.m., the committee recessed, subject to the call of the chair.]

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APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Statement for the Record
Congressman Matt Cartwright
Full Committee Hearing on: "The IRS: Targeting Americans for Their Political Beliefs"
May 22, 2013

Thank you Mr. Chairman and Ranking Member Cummings.

I am deeply troubled, like the rest of the nation, by the recent revelations that the IRS used inappropriate criteria to subject certain groups to special screening. As the Ranking Member of the House Oversight Panel's Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, I believe that we should use the committee's investigatory role to get to the bottom of why this happened and determine how to prevent it from ever happening again, instead of arriving with predetermined opinions and using this committee to score political points.

To that end, I look forward to finding out answers, today and in the coming weeks, to the reasons behind the IRS's conduct.

What we do know is that the recent Inspector General's report sheds some light on the situation.

As the report details, from 2010 onwards, there was a significant rise in the number of applications for tax-exempt status. In 2011, the IRS received almost 60,000 applications for tax-exempt status as 501(c)3 charities and more than 2,000 as 501(c)4 social-welfare organizations.

The Inspector General's staff reviewed almost 300 applications that the IRS field office had tagged as potential political cases and reported, '[i]n the majority of cases, we agreed that the applications submitted included indications of significant political campaign intervention.' In the end, of the 298 applications they flagged for further review, 207 were from organizations that actually did appear to be political groups.

In this context, I believe the following questions suggest themselves, I'd like answers to them, and I believe the American people are entitled to the answers:

1. Why did the IRS receive an extraordinarily high number of applications in 2010, 2011 and 2012? Was this affected by the Citizens United decision?
2. During this period, was the IRS provided with the proper staffing and funding to handle the increased workload? What would have helped the IRS cope with the influx of applications? Clearer regulations? More guidance from Congress?
3. Did the IRS's improper prioritizing of political groups lead to any actual incorrect determinations regarding their eligibility for tax-exempt status?
4. Did the IRS's improper targeting affect the 2012 election in any way? If so, specifically how?

The purpose of this committee is to find solutions, not engage in partisan bickering.

I look forward to having such a discussion and I yield back.

Budget Data, FY 2008 through FY 2012

Table 1: FY 2008 through FY 2010 Enacted Amounts, FY 2011 Requested, FY 2011 Annualized CR Levels, and FY 2012 Budget Request for IRS by Appropriation (in millions)

Appropriation	FY 2008 enacted	FY 2009 enacted	FY 2010 enacted	FY 2011 requested	FY 2011 annualized CR	FY 2012 requested [a]	Percentage change FY 2010 enacted through FY 2012 requested
Enforcement	4,780	5,117	5,504	5,797	5,504	5,967	8.4%
Taxpayer Services	2,191	2,293	2,279	2,322	2,279	2,345	2.9%
Operations Support	3,941	3,867	4,084	4,108	4,084	4,621	13.1%
BSM	267	230	264	387	264	334	26.4%
HITCA	15	15	16	19	16	18	12.5%
Subtotal	11,096	11,523	12,146	12,633	12,146	13,284	9.4%
Other resources available for obligation	566	390	539	444	526	384	(29%)
Total funding available for obligation	11,661	11,913	12,686	13,077	12,672	13,668	7.7%

Source: FY 2008 through FY 2012 IRS Congressional Budget Justifications.

Note: Dollars are nominal and not adjusted for inflation and numbers may not add due to rounding.

[a] Includes an approximately $402 million adjustment to reach the FY 2011 President policy level, minus salary increases.

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DCMN ROSEN

[1:35 p.m.]

BY MR. BREWER:

Q Ms. Paz, I want to turn to the TIGTA audit. Were you interviewed as part of this audit?

A Yes, I was.

Q How many times were you interviewed?

Mr. Campos. Approximately.

Ms. Paz. At least once. I met with them on several occasions. I think myself was interviewed once, but did meet with them on more than one occasion to discuss various aspects of the investigation documents that they needed or additional individuals that they needed to talk to.

BY MR. BREWER:

Q Okay. And were you interviewed alone or with other people?

A Alone.

Q So once alone and then other times it was the document --

A We had meetings. I mean, as you can see, they did an analysis of the cases, of a sample of cases, and we met to discuss the results of their review.

Q Okay. Did you ever accompany any other employees to their interview with the TIGTA folks?

A Yes. I sat in on all the interviews, but they, the arrangement we had worked out with TIGTA was that I would leave at the

end of the interview so they could ask everyone interviewed any questions that they wanted to ask without anyone else present, so that was done.

Mr. Hixon. How did that arrangement come about? When TIGTA approached you about conducting their audit, did you request that you be present for all the interviews?

Ms. Paz. Yes, I believe -- I can't remember if I made the request, or if Lois Lerner made the request, but we had discussed that in order for the IRS to be able to respond to the report, we had to understand what information TIGTA had and what they had been told, but, you know, obviously they did want to allow for employees to provide any information that they were uncomfortable, for example, of explaining in front of someone in the management chain, so we did provide for that. They had a period of time at the end of the interview where I was not present.

Mr. Hixon. And did every interview, did you leave the room at the end and the employee stayed and continued to speak with TIGTA?

Ms. Paz. Yes, unless I think there may have been a few times where TIGTA concluded that they didn't need -- they didn't have any questions that they wanted to ask without me present, and that was really a decision that was made by the two individuals from TIGTA who were conducting the interviews.

Mr. Hixon. Did any employee ever express concerns or reservations about, you know, being interviewed in that manner?

Ms. Paz. Not to my knowledge.

○

SFC 004274

Hearing on the Internal Revenue Service's Colleges and Universities Compliance Project

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

May 8, 2013

SERIAL 113-OS4

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SFC 004276

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Advisory of May 8, 2013 announcing the hearing

WITNESSES
Ms. Lois Lerner
Director, Exempt Organizations Division, Internal Revenue Service
Testimony

Hearing on the Internal Revenue Service's Colleges and Universities Compliance Project

Wednesday, May 8, 2013
U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:00 p.m., in Room 1100, Longworth House Office Building, Hon. Charles Boustany [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

members and the American job creators in legal jeopardy with the IRS to push a certain partisan viewpoint that doesn't reflect all the members of their membership or the American public.

I would urge the IRS to undertake an investigation immediately into this sector to ensure that when corporations pay their dues to these chambers of commerce, that there is an accounting of the receipts of these business leagues to ensure that every dollar that corporate members give and deduct are not used for political purposes.

And finally, in the summer of 2012 it was reported that the IRS was going to undertake a similar investigation into the one taken here on colleges and universities on political entities that fund political campaign ads that were taking donations anonymously and are tax exempt. These are the folks that put on hundreds of millions of dollars in campaign ads in 2012 elections, all with no accountability and with taxpayer subsidy.

This hearing highlights certain compliance problems in the tax-exempt sphere, and I hope the IRS aggressively looks into these political and business leagues to see if they are abusing the tax-exempt status. I don't want to speak for the chairman or for the ranking member, but I know my constituents in Queens do not want their tax dollars being used to subsidize political campaigns. I suspect neither do any of the members on this panel.

So, Ms. Lerner, if you could comment briefly on the status of the IRS investigation into these political not-for-profits, I would appreciate that as well.

Ms. Lerner. Well, there was a questionnaire that began this discussion and there is also a questionnaire out there, you can look at it on our Web site right now, that is seeking information from section 501(c)(4), (5), and (6) organizations, and a big piece of that questionnaire relates to their political activities. So that is our beginning.

Mr. Crowley. I appreciate that. Thank you.

And thank you, Mr. Chairman.

Chairman Boustany. I appreciate the gentleman's line of questioning, and this hearing was focused specifically on the report dealing with colleges and universities. But I know there is considerable interest on both sides of the aisle on this subcommittee to look at other areas of the tax-exempt sector, and it is my intent do so as we go forward. But I certainly appreciate the gentleman's line of questioning.

Mr. Reed, you are recognized.

Mr. Reed. Thank you, Mr. Chairman.

And thank you, Ms. Lerner, for being here today. I reviewed your report, and I am going to veer off a little bit into an issue because we have already covered a lot of issues in relationship to how that impacts IRS and things like that. But just so I can clearly understand the data that you compiled here when it comes to compensation of folks at these educational institutions, for the key employees and the officers, directors and trustees, what was the average salary you found for those individuals?

Ms. Lerner. I am going to have to look in my book.

Mr. Reed. Please do. I have got it in front of me, but I want this on the record.

Ms. Lerner. Are you talking about the questionnaire or in the exam?

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Transcripts

Hearing on Internal Revenue Service Operations and the 2012 Tax Return Filing Season

Washington, Mar 22, 2012 | 0 comments

Hearing on Internal Revenue Service Operations and the 2012 Tax Return Filing Season

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HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

March 22, 2012

SERIAL 112-OS10

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Advisory of March 22, 2012 announcing the hearing

WITNESS

The Honorable Douglas Shulman
Commissioner, Internal Revenue Service
Testimony

Hearing on Internal Revenue Service Operations and the 2012 Tax Return Filing Season

Thursday, March 22, 2012
U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:31 a.m. in Room 1100, Longworth House Office Building, Hon. Charles W. Boustany, Jr. [chairman of the subcommittee] presiding.

[The advisory of the hearing follows:]

*Ms. Jenkins. [Presiding] The Subcommittee will come to order on the hearing on the Internal Revenue Service budget request and the 2012 tax filing season.

Hard working American taxpayers have faced incredible challenges over the last several years. Many have struggled with unemployment, sluggish economic growth, and doubt about our country's economic future because of out of control spending and public debt, and then tax season comes around.

The Tax Code, which has tripled in size since 1975, continues to burden American families and small businesses with too many taxes, too many loopholes, and too many pages.

It is estimated that the average taxpayer spends 21 hours and over $250 complying with the Tax Code each year.

They must keep track with an increasingly complex and difficult to understand Tax Code or at least hire someone else who does.

The Internal Revenue Service, of course, has the unenviable job of administering and enforcing our convoluted Tax Code.

As we meet today, we are in the middle of the 2012 tax return filing season, and millions of taxpayers and employers are willing to meet their tax filing obligations.

Some have reported experiencing delays in receiving tax refunds, and programming errors at IRS have delayed some six million returns, which we will discuss in today's hearing.

We will also talk about the frustrating issue of tax fraud and improper payments. Taxpayers are exasperated because while they work so hard to comply with the Tax Code, they see press reports of thieves robbing the Treasury of billions of dollars each year.

One recent press report detailed how an identity theft ring in Florida committed $130 million in fraud through stolen Social Security numbers.

On top of this fraud, tens of billions of dollars in taxpayer money is lost every year through improper payments of refundable tax credits, including $17 billion a year for the earned income tax credit alone.

Finally, we will talk about the Administration's fiscal year 2013 budget request for the IRS. For fiscal year 2013, the Administration has requested nearly $13 billion in appropriations for the Agency, an increase of eight percent from fiscal year 2012.

Included in this request are over $360 million and nearly 900 new employees to implement portions of the Affordable Care Act, including a new instrument subsidy and the controversial individual mandate penalty.

We look forward to discussing this and the other new initiatives that the IRS plans for fiscal year 2013.

With that, I would like to welcome Commission Douglas Shulman here today. I look forward to a fruitful discussion of his Agency, his mission, and the ongoing tax return filing season.

Before I yield to the Ranking Member, Mr. Lewis, I ask unanimous consent that for all members, written statements be included in the record. Without objection, so ordered.

*Ms. Jenkins. I will also ask unanimous consent that GAO's report on the 2011 tax filing season and fiscal year 2012 budget request be included in the record. Without objection, so ordered.

[The information follows, The Honorable Lynn Jenkins#1, The Honorable Lynn Jenkins#2] SFC 004284

*Ms. Jenkins. Mr. Lewis?

*Mr. Lewis. Thank you very much, Madam Chair, for holding this hearing on the Internal Revenue Service.

I am pleased that we have the Commissioner before us today.

I have serious concerns about the effect of the recent budget cuts on taxpayers, tax collection, and Agency operations.

In the most recent report to Congress, the National Taxpayer Advocate stated that the most serious problem facing taxpayers is that the IRS is not adequately funded to serve taxpayers and to collect taxes. I fully agree with this statement.

This year, the Agency's budget was cut by over $300 million. This cut harmed taxpayers and telephone service. Telephone calls have increased by 34 percent, but the hours phones are answered have decreased by 20 percent.

Only 65 percent of taxpayers seeking telephone assistance are able to speak to an IRS employee, and they must wait an average of 17 minutes.

Taxpayers seeking in person assistance also have been harmed. This is clear from the very long wait time at Taxpayer Assistance Centers.

The budget cut also harmed Agency operations. The cut forced the Agency to lay off thousands of employees. The majority of these employees worked in Enforcement. They protected and collected revenue. This reduction does not help tax collection or reduce the deficit. It makes no sense.

I look forward to discussing these issues and the Agency's proposed budget for next year.

Madam Chair, finally, I would like to take a moment to thank Floyd Williams for his service and dedication to the Agency and to this Congress.

As many of you know, Floyd is the Legislative Affairs Director of IRS. He plans to retire this Summer.

Floyd began his Government service as a congressional page under Senator Fulbright of Arkansas many years ago. I think the Senator from Arkansas probably violated the child labor laws. You are not that old.

I have worked with Floyd in many roles on this committee, and I know he will be missed. I wish him the best as he retires. Thank you for your great service.

With that, Madam Chair, I yield back.

*Ms. Jenkins. Thank you, Mr. Lewis.

I would like to welcome back the Commissioner of the Internal Revenue Service, Mr. Douglas H. Shulman, who has served as Commissioner since March 2008.

Commissioner Shulman, thank you again for your time today. The Committee has received your written statement and it will be made part of the formal hearing record.

SFC 004285
You will be recognized for five minutes for your oral remarks, and you may begin when you are ready.

STATEMENT OF DOUGLAS H. SHULMAN, COMMISSIONER, INTERNAL REVENUE SERVICE

*Mr. Shulman. Thank you very much, to all the members of the Subcommittee, for giving me the opportunity to testify today.

I want to talk a little about filing season, our strategic initiatives, and the President's 2013 budget, which would give us a much needed increase over the 2012 enacted levels.

A significant portion of the President's 2013 budget would restore congressional reductions in IRS funding made over the last two years.

I want to start by saying that I believe it is incumbent on all of us in the Government to be as efficient as possible and to spend taxpayer dollars wisely.

For the IRS, that means finding savings where we can and continuing to invest in strategic priorities that allow us to improve service and voluntary compliance.

From fiscal year 2009 through the 2013 proposed budget, we will have achieved nearly $1 billion in budget savings and efficiencies in core IRS operations.

These savings and efficiencies reflect an across the board commitment at the IRS to find better and more efficient ways to administer the tax system.

At the same time, we collect $200 in revenue for every dollar spent on our budget. We also collected $2.4 trillion last year. We issued 110 million refunds for $345 billion to hard working American taxpayers.

Our compliance activities brought in a direct revenue of $55 billion, and we blocked another $14 billion from going out the door to taxpayers who were trying to commit fraud on the Government.

In this regard, I want to point out that the Administration's proposal for IRS funding includes critically important enforcement initiatives that would be funded through a program integrity cap adjustment.

Let me just say that this proposal makes sense and is a reflection of the President's and this Administration's belief that IRS funding actually helps reduce the deficit.

Congress is literally leaving money on the table if it does not enact this proposal, which would allow for deficit reducing initiatives in tax compliance, while leaving specific funding decisions to the normal annual appropriations process.

Let me just talk about a couple of things that we have done over the last few years that have moved the Agency forward to position it for the future and do a better job serving taxpayers and making sure they comply with the Tax Code.

Let me just start with filing season. E-File continues to grow. This year, we have issued about 59 million refunds for a total of $174 billion. That is about the same number as last year.

We deployed several new large technology systems. I would be happy to talk about those as we get further into filing season.

In strategic areas, this year for the first time in history, we have moved from a weekly batch cycle to daily processing of tax returns through CADE 2. CADE 2 delivers on the promise of IRS modernization

SFC 004286
going back two decades, and we are very proud of this achievement.

A couple of years ago, I told this committee we restructured our technology program, we were going to deliver our major technology initiatives, and this year, we have delivered those initiatives.

We also had the highest score ever last year on the American Customer Satisfaction Index Rating, which is the overall score we track for taxpayer satisfaction with their interactions with the IRS.

We scored 73 on this Index, and we are very proud of this achievement in a constrained budget environment.

Our return preparer program is now up and running. To date, more than 840,000 paid preparer's have registered with the IRS. Both the testing and education requirements are well underway.

This is going to be one of the most important initiatives in the tax system in several decades.

We have also made significant progress in our battle against offshore tax evasion. We have collected more than $4.4 billion to date through our offshore voluntary disclosure program. We are getting people back in the system through this and other offshore initiatives.

I think we have made significant progress, as I said. We have cut $1 billion out of our core operating budget through the 2013 budget proposal that we have given.

Let me conclude my opening statement with one concern that I want to emphasize for this subcommittee, and I think it is quite important for the Ways and Means Committee as a whole.

In recent years, it seems taxpayers increasingly face uncertainty about what the tax law will be for the next filing season. This year, we at the IRS are very concerned with the status of the AMT and so-called "extenders."

If the AMT and extenders are not dealt with in a timely fashion, we may have to delay the start of filing season for many millions of taxpayers as we have done in prior years.

I have written to this committee before that it is imperative that whatever action Congress decides to take on AMT and extenders, that this action happen by the end of the year, which would still be late from an operational perspective, but not longer than that, in order to prevent even more widespread disruption of next year's tax filing season.

[The statement of Mr. Shulman follows:]

*Ms. Jenkins. Thank you, Commissioner Shulman. I think we will turn to questioning now. We will alternate between sides with five minutes being given to every member.

Last year, you testified to the Committee that enforcement and customer service are not an either/or proposition, providing quality taxpayer service, especially during a filing season, is important to help taxpayers avoid unintentional errors, inadvertent non-compliance, and reduce other burdensome post-filing interactions with the IRS.

So far this filing season, access to live IRS assisters is down to 65 percent and taxpayers are waiting an average of 18 minutes to talk with an IRS assister.

The rate of taxpayers getting busy signals or that are disconnected from the IRS has roughly doubled, yet this is not a new problem but rather seems to be just a bad trend.

SEC 004287

Since 2004, the percentage of answered calls has dropped from 87 percent to 70 percent in 2011. Last year, the average wait time was 12 minutes, and in 2007, it was five minutes or less.

Personally, I have heard from Kansas CPAs that it is not uncommon to be on hold for 30 minutes.

According to GAO, this decline in customer service has occurred despite the number of full time equivalents dedicated to answering the phones, having increased from 8,000 in fiscal year 2007 to 8,800 in 2011, and despite greater use of automated answers and self service website options.

It seems to me that the IRS has placed greater emphasis on enforcement at the expense of service, yet as you told us last year, the lack of service for those who have questions will only lead to greater non-compliance than if those questions had been answered.

Can you help me better understand a few things? First, what actions are being taken to ensure that taxpayers are able to reach a live IRS assister?

Secondly, given your belief that the IRS must deliver both enforcement and customer service, do you think this budget request focuses too much on enforcement while sacrificing customer service, and then finally, does the IRS consider this to be an acceptable level of service?

*Mr. Shulman. Thanks for bringing up a set of important issues. First, let me repeat what I told you last year and what I talk about a lot with our employees, Members of Congress, and everyone involved in the tax system.

It is not an either/or proposition. We need to run service operations and compliance operations to make the nation's tax system work.

Let me put in context the resources that we have this year to put towards both enforcement and customer service.

We had a $300 million budget cut, which was $1.2 billion less than the President had requested for service and enforcement last year.

We also had to absorb for rent and other kinds of increases about $200 million of inflation, and $66 million was put into our technology accounts, which we are very appreciative of, so if you take 300, 200, 66, we had a $566 million reduction in our core services and enforcement accounts.

What we are trying to do is do the best we can with the resources we were given.

Last year, our phone level of service was about 70 percent. This year, it is running at about 66 percent, even though we had predicted about 61 percent, and the reason for that is we have really squeezed efficiency. We have routed calls. More people are using automated answering systems, and people are using our website.

As you said, the wait is longer. At a certain point, we can squeeze as many efficiencies out of technology and other efficiencies as we can, but it comes to how many people do we have answering phones.

Volume is up, so the numbers you gave that said we have more people, we also have much more volume. We have more taxpayers. We have a more complicated Tax Code right now.

Another number that is interesting to look at is how many people hang up in the first couple of minutes. We have added a feature that tells them how long a wait.

SEC 004288

We say if you want to, use our web, use our automated phone, or call back when there is less time, then our phone level of service this year is 77 percent, if you take away the people who hung up in the first couple of minutes.

I guess my view of this is we have taken a whole bunch of actions. At a certain point, we need money to invest. You need people to answer phones for live service.

I am pretty proud that while service is down, it has not degraded to a point where it could have gone given the cuts, and the answer to your last question, which is do we think it is acceptable, you know, I want everyone who contacts the IRS to get what they need from the IRS.

This year, everyone is not getting what they need from the IRS, but I think we are doing a pretty good job given the resources we were given.

*Ms. Jenkins. Okay. Thank you, Commissioner. I am just looking at data, and the budget cuts compared to the level of service, they do not always follow, given this information from the GAO.

We would just encourage you to continue to work on that, and we would be delighted to work with you in any way we can.

With that, I would recognize Mr. Lewis for five minutes.

*Mr. Lewis. Thank you very much, Madam Chair.

Mr. Commissioner, the GAO notes there has been a 34 percent increase in the number of calls for this filing season, and about a 50 percent increase in calls answered by the automated service.

Can you tell us what the taxpayers are calling about? What are the nature of the calls?

*Mr. Shulman. You know, calls can be anything from people want to set up a payment plan to people are curious, I am filling out my return and I am going to take this deduction, how does that work, just general tax law questions, to questions about where is my refund, I filed last Friday, and my preparer told me I would get a refund on Wednesday and I have not gotten it.

Calls vary. We can get you a specific breakdown of what the calls are.

*Mr. Lewis. Thank you very much. We understand IRS is requesting a cap adjustment of about $700 million for next year's budget to fund the enforcement program.

What are your plans if any if the Agency does not receive these resources?

*Mr. Shulman. Well, we are still early in the congressional budget and appropriations cycle, so we are quite hopeful. In the past, we have had broad bipartisan support for cap adjustments.

The most recent cap adjustment was 2006 in 2007 with a Republican President and a Democratic controlled Congress.

We actually think this is a bipartisan proposal. It reflects the Administration's belief that prudent investments in the IRS are good for deficit reduction, so that there should be cap adjustments for our budget. Investments for us is good for the long term for the tax system.

Right now, I think our position is that for this budget program, integrity cap adjustments are good for the system, that people should agree with it, and we have had good productive conversations in both the

House and Senate about it.

*Mr. Lewis. Mr. Commissioner, could you tell members of the Subcommittee, how has the $300 million budget cut impacted taxpayer service this year, and what taxpayer service has been reduced?

*Mr. Shulman. For Ms. Jenkins, I walked through the notion of there is $300 million at the top, but the impact is greater, given where the resources were put in our budget.

I think we have a slight dip in number of taxpayers served in walk-in centers, but we have had a corresponding increase in number of taxpayers served in volunteer VITA sites, where we encourage them to go, because we work in partnership with community organizations.

Our phone level of service is down by about four percent compared to last year, although automated calls are up, and the wait times are longer.

I guess the way I characterize it is there has been a predictable effect because of less resources. With that said, I am quite proud that we have been able to mitigate some of that effect by making sure we work smart and we really drive efficiencies as hard as we can.

*Mr. Lewis. Thank you very much, Mr. Commissioner. I yield back, Madam Chair.

*Ms. Jenkins. Thank you, Mr. Lewis. Now we will give five minutes to the Representative from Minnesota, Mr. Paulsen.

*Mr. Paulsen. Thank you, Madam Chair.

Thank you, Commissioner, for being here today. I just wanted to follow up on a letter I sent to you not too long ago.

In the last year, you have been talking a lot or a great deal about this concept of a real time tax system, and have had a number of actually public meetings on the issue as well.

I know there are benefits to receiving real time verification and having that information on hand, but I am concerned that the cost could outweigh the benefits, particularly in the sense that having this filing system could lead to a burden that is very similar to the 1099 provision that was being rolled out as a part of the President's new health care law, which would have been a nightmare for America's employers, small and large.

If the IRS is going to make this real time system work, I am sure you are going to want to have all the data earlier than is required today, you probably are going to want more 1099 data as well.

Just looking at what has been discussed today, it seems that compressing this reporting time line is going to make it more challenging for reporting requirements for pretty much a very onerous and burdensome process right now.

Let me ask you this, what are you doing right now to work with existing stakeholders, with the business community, you know, to kind of get their feedback, their buy in, as part of this?

There is no doubt increased regulatory and compliance costs are a big deal now for employers. It is one of the reasons I think on that level of uncertainty you mentioned on some tax rate issues and AMT and extender issues, but I know this is a factor as well.

Can you talk a little bit about that? Have you conducted any studies of the increased cost to

SFC 004290
businesses of changing deadlines, for instance, for reporting informational returns or increasing reporting requirements, or would you agree to an independent study as part of that process? Would that make sense?

*Mr. Shulman. Thanks, Mr. Paulsen, it is great questions and an important set of issues. Let me give you perspective on it.

I view one of my jobs as Commissioner to make sure I am helping prod the tax system forward so it works better for the American people ten years and 20 years from now than it does today.

The combination of consumer expectations of us working better and quicker and more timely with taxpayers with the advances in technology, clearly there is room for us to think about a future that works better for people.

What really struck me is the average taxpayer, if they have an interaction with us beyond just filing, that interaction is they have their economic activity one year, they file their return the next year, and it can take us a year to two years to reach out to them.

By the time we go back to them, they have either spent their refund or their records and all the memory is gone, whether it is a small business or individual.

I think the current system actually adds a lot of burden to people, and we have heard that.

I laid out this vision that said what if we could clear everything up rather than coming back to them on the back end at the time they filed, which is the simplest way to think about this.

I also recognize all the things you said, which is this is something that would affect all the stakeholders in the tax system, from taxpayers to tax preparers to information return filers.

The way we went about this is the way I think a public agency should go about this, which is we held a series of public meetings, which I hosted, with stakeholders, the broad range of stakeholders, to get their input.

What we heard universally is basically makes sense, we would all love to have everything work faster in the tax system, but we need to make sure we work through the details together in a constructive fashion so that we do not add burden in the process.

What we are doing now is taking the next step and really developing detailed vision about what this would mean.

I think there has been some misunderstanding. We have never suggested speeding up or adding more information reporting. We have asked questions about what do people have now, when is it ready, and when could they get it to us, not is there more or would they have to start doing what they already do faster.

We have asked ourselves internally, how do our systems work, and when could we do this kind of matching.

*Mr. Paulsen. Let me just ask you this, time is kind of running out here. How much will an upgraded system cost, to sort of encapsulate all of this, that would be needed to run this type of system?

How many years would it take to build and test? You are here justifying the budget in terms of the request that Congress would give to the President, for instance, or the Administration, to run your

operations.

*Mr. Shulman. Way too early. This is a vision that we are having conversations with stakeholders on. The first step is laying out exactly what it would mean.

There are a bunch of things we can do right away, which is just process things through our system quicker, so we could have quicker engagement.

I cannot tell you. There is no blueprint right now. We have laid out a vision. We have had a broad set of stakeholder engagements, and we are now moving in to have the next round of stakeholder engagements.

*Mr. Paulsen. Would it be safe to say that you plan to have an actual proposal for Congress to have feedback on at some point as a part of your vision?

*Mr. Shulman. I think for sure we will have public proposals. We will have plenty of time for interaction.

*Mr. Paulsen. Thank you.

*Ms. Jenkins. Thank you. We will recognize Representative Becerra for five minutes.

*Mr. Becerra. Thank you, Madam Chair.

Commissioner, always good to see you. By the way, thank you for the work that you are doing, given the real budgetary constraints that you are facing, and if you will pass along to each and every one of your employees who are doing yeoman's work, I cannot imagine the stress they are under given that you have thousands of Americans waiting to connect with them on the phone, who are waiting 10/20 minutes, and many of them very unhappy that they have to wait that long.

I think after two or three minutes, most Americans tend to hang up on any phone call where they are having to be put on hold.

I hope we will get this done in a smart way. I do not think the first thing we want to do is short change the Agency, which already has a tough task, and that is asking Americans to voluntarily pay their taxes, and where we have Americans who do so to watch as others do not, it is very frustrating.

We do not want to undermine the voluntary compliance rates that we have in this country by Americans who pay their taxes.

Please share with all the folks you work with that we thank them very much, and also tell that gentleman right over there, Mr. Williams, that we thank Floyd Williams for all his years of service.

We are going to miss him because he has been a tremendous asset to not just Congress but to the American people because of the service he has provided to the IRS and to us as the go between, between your Agency and the Congress. We are going to miss him, and we want to say, Floyd, to you, thank you for all the service you have provided over the years.

Your initiative on tax preparer's, that universe of people out there who are representing themselves as competent and qualified to prepare American's tax returns, and get paid to do it.

We know there are some great ones, but we know there have been some that have just ripped off the American public.

SEC 004292

It is hard to believe you need a license to cut someone's hair, but in America, you do not need a license to prepare someone's perhaps most important financial documents.

I thank you for the initiative to try to bird dog that industry and make sure competent folks are the ones that are preparing our taxes.

I am distressed. As I sit and listen to what you are saying, you have lost 5,000 employees. Your budget was cut $300 million.

We know when you do tax compliance enforcement, that dollar you spend to have that investigator and those folks who follow through to make sure people are complying with payment of the taxes they owe, that you return $6 for every $1 we invest in you to do that.

For us to be cutting $300 million from your budget, it is distressing. The last thing we want is stories of how some over zealous tax agent goes and busts someone's door down to try to collect taxes.

The truth is for the most part, you have employees who do just yeoman's work to try to help their fellow American's prepare their taxes.

I hope that you will sound the alarms, if they are alarms, on the ability for us to pay our taxes the right way voluntarily.

My understanding is, and correct me if I am wrong, that we now estimate that some $385 billion annually is not paid in taxes that are either avoided or intentionally not paid in this country.

Is that the estimate now, $385 billion?

*Mr. Shulman. That is the tax gap estimate for tax year 2006.

*Mr. Becerra. That is more money than we would fund you for how many years?

*Mr. Shulman. A lot.

*Mr. Becerra. It is just incredible. We have American's who are voluntarily paying their taxes. You have a whole bunch of other American's who unfortunately are not doing what they should or at the level they should, so the responsible taxpayers in this country are having to cover for those who are not.

You can go out and figure out who they are, if you just had the compliance money, the enforcement money, to go out there and find them.

Many of them make errors, simple errors. I think most of those American's are ready to pay their fair share. Others are not. Others are trying to send their money overseas and do things that they should not, and we should make them pay their fair share.

I just hope that we go out there and do this the right way.

Is there any hope that with the funding that you are getting that you can fulfill everything that we are asking you to do?

*Mr. Shulman. Well, it is very much the prerogative of Congress to fund us, and whatever Congress ends up giving us, we will do the best that we can.

I am quite proud of this Agency delivering on multiple fronts over the last several years and especially this year in a decreased budget environment, and really trying to balance compliance and service.

I think we are doing a good job.

*Ms. Jenkins. Thank you. The time has expired. Ms. Black is recognized for five minutes.

*Mrs. Black. Thank you, Madam Chair, and thank you, Mr. Shulman, for being here.

We are all talking about limited dollars. We need to spend our dollars in the best way we possibly can.

I was reading a report just recently from the Treasury Inspector General for Tax Administration, who found billions of dollars in Federal education credits that were issued in error.

What I am really trying to get to here is number one, to save, to make sure we are giving the money to the people that really deserve the money, so that we can use it in the budgetary process to fund those places, such as yourself, that can continue to do a good job.

It is very disturbing when I see here how much money this represents that was potentially given to those who do not deserve it.

I just want to read a couple of things out of that report. 1.7 million taxpayers received $2.6 billion in education credits for students for whom there was no supporting documentation in the IRS files that they even attended an educational institution.

Almost 380,000 of these individuals claims students were not eligible because they did not attend the required amount of time or were post-graduate students, resulting in an estimated $550 million in erroneous education credits, 64,000 of those taxpayers erroneously received $88 million in education credits for students claimed as a dependent or a spouse on the other one's return. It was a double payment. 250 prisoners erroneously received over $255,000.

It says here that it was identified that a valid Social Security number is required for Federal student aid, but not for these educational credits.

That just blows me away. I know when we were talking about the child tax credit at one of the other hearings, that was told to us, that it was not a requirement that they have a Social Security number.

I am not sure how you track that when you do not have a Social Security number being used.

I want to go to trying to find ways to help you, what we can do, what kind of tools we can do and give you so you can have the authority to say we are not going to process this return, it does not have the proper information on there.

A Social Security number just seems like an easy thing to me, not sending it to a prison would seem like an easy thing, as well as making sure they attended the classes, or at least attended a college, and perhaps maybe a valid school EIN number would also help, to make sure that when those credits are being processed, that you have all the information to verify that truly they qualify for those.

Can you help me out with that?

*Mr. Shulman. Sure. Thanks for bringing it up and I appreciate the offer of help. We can always use help.

A couple of things. One is we have significantly stepped up our effort to crack down on fraud. Last

year we stopped $14 billion in potentially either fraudulent or mistaken credits from going out the door.

The specific report that you referenced, I just want to point out a couple of things.

There was an Inspector General report a couple of years earlier that showed that there was huge error rate on the 1098's, which are the education reports we get.

While that report said there could have been that level of fraud, there is also a recognition that the documents they were using to match might not have been accurate documents, meaning the education institutions often do not send in the right information, so it is not always clear the student was not there, even though it came up.

With that said, the answer to what we can get to help, if we want to block a credit because we think there is not right documentation, if we do not have math error authority, we have to go through a full fledged audit, which is resource intensive, and it comes to people.

Even if we see an issue, if we do not have people who will follow up, answer the phone, engage with the taxpayer, we cannot block it, because we cannot change their return.

If we have math error authority tied to certain provisions, then we can block it and change the return without going through a full fledged audit.

We requested in this budget math error authority for a couple of things.

The second that you mentioned, prisoners, authorization for us to share information with prisons, so there can be a real punishment for a prisoner, like losing privileges or put in solitary confinement if they try to defraud the system, our authorization in Congress to actually share information back with prisons so we can have that kind of dialogue expired at the end of last year.

Re-upping that authorization is another thing you all could do to help.

*Mrs. Black. This math error authority, you need to be given that. Is that by law?

*Mr. Shulman. Yes.

*Mrs. Black. We do have to change the law. Do you already have the authority to require there be a Social Security number on that form?

*Mr. Shulman. That is a whole different issue. Certain tax credits, you have to have a Social Security number. Certain tax credits, you do not.

The ones you are mentioning, you do not. It is not a requirement. If Congress decides that only people with Social Security numbers can get that credit, then that would have to be up to Congress. We cannot stop it because it is not a requirement at this point.

*Mrs. Black. Okay. I know some ways we can help you. Thank you.

*Mr. Shulman. Thank you.

*Chairman Boustany. [Presiding] Commissioner Shulman, good to see you. I apologize for arriving very late to this hearing.

Before I recognize Mr. Reed for his questions, I want to take a moment to recognize Floyd Williams for his 15 years of service at the IRS. I think it is a total of what, 35 years of Government service? Sir, we

SEC 004295
want to thank you as you move on to what I hope is a good retirement. Thank you for your service.

With that, Mr. Reed, you are recognized for five minutes.

*Mr. Reed. Thank you very much, Mr. Chairman. Thank you, Commissioner, for being here with us today.

Commissioner, I would like to explore -- I really try to rely on data when we make decisions here in Congress.

One thing that I have a concern with is on the enforcement initiatives, you have certain projections on return of investment for those enforcement initiatives.

I am sure you are familiar with the issue we are going to talk about here.

I believe for 2013 you proposed an enforcement initiatives' return on investment will be 1.9 to 1. 2015, you project, it is my understanding, the return on the investment for those enforcement initiatives will be 4.3 to 1.

Historically, I read some reports that projected that by 2012, there was supposed to be a 7.8 return on investment to a dollar.

Do you confirm those numbers, those estimates, those projections with actual data? If you do, how do you do that? If you do not, why do you not do that?

*Mr. Shulman. It is a great question. Let me give you how I think about return on investment and exactly what backs it up.

First of all, we are very conservative in the numbers we give you. The people that we know do those jobs, a rolling ten year average on the exact enforcement initiatives.

If we are going to hire 20 Grade 13 examiners for an excise tax, we look at ten year rolling average, how much revenue comes in directly from those people making adjustments that actually comes into the Treasury.

It is a look back ten year rolling average of those numbers.

I actually think those way understate the impact because the real game of running the tax system and the real objective is the $2.4 trillion that comes in every year, which most of those people we do not engage with in that kind of activity.

Our job is to run good service, so when people call, they get answers to questions. Compliance coverage where there is the most risk, so that if you get an audit, your neighbors know that you get an audit around specific issues and it drives voluntary compliance.

Another way to look at our numbers is a $12 billion budget, give or take, $2.4 trillion in revenue, every dollar invested brings you $200, or a smaller way to look at it is we have what we call our turk numbers, which are real dollars in the door every year.

Last year, it was about $55 billion. The year before, it was 57. The year before, it was 49. That is literally people go out, make an adjustment, people go through the adjudicatory process, and bring money into us. That is a 5 to 1 return.

SFC 004296

The numbers you gave us are based on very specific activities in a granular way based on the kind of people that do those activities, looking back ten years, how does that tie to those turk numbers.

*Mr. Reed. Is it fair to say your testimony is they are based on actual data where you go back and confirm the numbers?

You are looking at actual data, when you project the 1.9 to 1 for 2013, return on investment, you will be able to show us at the end of 2013 the actual data that confirms whether or not you had an 1.9 to 1 return on investment?

*Mr. Shulman. I think we will be able to -- what I said was I think it is very good numbers. It is ten year rolling averages. I think things spike and they move, so this is an estimate.

2013 might not be exactly that. It might be higher in 2013 or lower, but over a ten year period, I think you are going to see it average out to be that amount.

*Mr. Reed. I guess that is my question. In 2012, it was projected to be a 7.8 to 1 return on investment. Was it 7.8? What was the number for 2012 on your enforcement initiatives' return on investment?

*Mr. Shulman. Again, I do not think you want to look at these things as year point in time, and you do not want to encourage us to do that.

What you want to encourage us to do is get the right resources that over time are going to drive the right taxpayer behavior.

These numbers are ones we certainly consult with GAO and OMB on. I think we are very comfortable with these numbers, and we have ongoing dialogue.

*Mr. Reed. You bring up a great point when you bring GAO into the conversation. My understanding in reading some of their materials is they are very concerned that you are not using actual data to confirm those projected return on investment numbers that you are giving to us.

*Mr. Shulman. I would not characterize it as very concerned. I think they have said we can together work on methodology, and we are actually having those staff conversations on a regular basis.

*Mr. Reed. Okay. You are working with GAO to come to some sort of --

*Mr. Shulman. Absolutely, but again, I feel very comfortable in our numbers, and if anything, I think they understate the return.

*Mr. Reed. I appreciate that. I appreciate the work you do, Commissioner, I really do. I appreciate all the work you do over there. It is a tough job.

*Mr. Shulman. Yes, I know. Thank you. These are great questions because we need to be accountable for delivering results.

*Mr. Reed. Thank you. With that, Mr. Chairman, I yield back.

*Chairman Boustany. Thank you. Commissioner Shulman, again, welcome.

Does the IRS have available resources with the current budget to tackle new enforcement responsibilities? Do you have the resources available to take on new enforcement responsibilities?

SEC 004297

*Mr. Shulman. Earlier I was saying we try to do the best we can with the budget that Congress gives us. Obviously, we have a big job to do, and we try to balance across the board all the things we do.

We have requested in the 2013 budget some new resources for some of the new legislation that has come through, and we are quite hopeful we will get that.

*Chairman Boustany. In reviewing the President's 2013 budget proposal, this proposes saddling the IRS with additional enforcement responsibilities by shifting alcohol and tobacco tax and trade bureau duties of enforcing tax provisions related to alcohol and tobacco to the IRS with no funding allocated in this budget to pursue those kinds of violations.

Is that something you have had internal discussions with others in the Administration about?

*Mr. Shulman. I am sorry, Mr. Chairman. What are you referring to in the budget? I do not think there is a major shift in the budget.

*Chairman Boustany. I think the 2013 budget proposes giving you additional enforcement responsibilities by shifting alcohol and tobacco tax and trade bureau duties to the IRS.

*Mr. Shulman. I should get back to you on this. I do not think there is a full shift proposed.

In the past, we have been reimbursed to have some of our investigators help them with some investigations, and that is what I am aware of that has happened in the past.

*Chairman Boustany. If you could just get me some clarification on that, I would appreciate it.

*Mr. Shulman. Sure.

*Chairman Boustany. One other question. It has come to my attention and I have gotten a number of letters just recently.

We have seen some recent press allegations that the IRS is targeting certain Tea Party groups across the country requesting what have been described as onerous document requests, delaying approval for tax exempt status, and that kind of thing.

Can you elaborate on what is going on with that? Can you give us assurances that the IRS is not targeting particular groups based on political leanings?

*Mr. Shulman. Thanks for bringing this up. I think there has been a lot of press about this and a lot of moving information. I appreciate the opportunity to clarify.

First, let me start by saying yes, I can give you assurances. As you know, we pride ourselves on being a non-political, non-partisan organization.

I am the only -- me and our chief counsel are the only presidential appointees, and I have a five year term that runs through presidential elections, just so we will have none of that kind of political intervention in things we do.

For 501(c)(4) organizations, which is what has been in the press, organizations do not need to apply for tax exemption. Organizations can actually hold themselves out as 501(c)(4) organizations and then file a 990 with us.

The organizations that have been in the press are all ones that are in the application process. First of

SFC 004298
all, I think it is very important to emphasize that all of these organizations came in voluntarily.

They did not need to engage the IRS in a back and forth. They could have held themselves out, filed a 990, and if we would have seen an issue, we would have engaged, but otherwise, we would not.

The basic rules around 501(c)(4) organizations are they need to be primarily engaged in promoting the common good and general welfare of their community. They can be involved in political and campaign activity, but it cannot be their primary purpose.

When people apply for 501(c)(4) status, what we do is engage them in a number of questions about making sure we understand their primary purpose around this and other sorts of engagement.

What has been happening has been the normal back and forth that happens with the IRS. None of the alleged taxpayers, and obviously, I cannot talk about individual taxpayers, and I am not involved in these, are in an examination process. They are in an application process, which they moved into voluntarily.

There is absolutely no targeting. This is the kind of back and forth that happens when people apply for 501(c)(4) status.

*Chairman Boustany. Finally, is it fair to say that there has been no change in IRS practice with regard to what triggers audits and so forth with regard to tax exempt organizations as a whole?

*Mr. Shulman. So, as a whole, we have audits based on risk criteria, coverage requirements, et cetera. In the area of political activities, just to make extra sure that folks are very insulated, we actually have a committee of three career professionals who are not based in Washington, D.C., that any time an audit will be triggered because of potential political activity or if there is a referral from a Member of Congress and other kinds of things that could be viewed as political, that group of three actually first looks at it, so no single individual can launch an audit. It has to be agreement amongst three.

Then the decision would be made for an audit based on resources, risk, allegations, facts, et cetera, and it would be shipped out to an auditor to do that audit.

That has been the practice for many years for anything to do with political activity, and that is the practice now.

*Chairman Boustany. I thank you for your answer. Dr. McDermott, do you want to inquire? You may inquire.

*Dr. McDermott. Thank you, Mr. Chairman.

I want to shift the questions just a little bit or the issues you have been dealing with here.

I have a lot of LGBT clients or constituents. They have been approaching me about the problems of dealing with the IRS on how to file their income taxes, and are having the experience of having more than one source give them a different answer.

They are not quite sure -- they are spending some of them twice as much as a married couple would spend to get their income tax done. They have gotten married under the law, but suddenly, when they ask questions about certain things, it is just not clear what the answer is.

I am wondering, is there any single place or perhaps should there be a single place where they can call and find out the answer to a question or some place in the IRS where somebody takes this issue and begins to give definitive answers?

SFC 004299

*Mr. Shulman. Great question. I am aware of the issue. We have actually tried to do a bunch.

First of all, it is a very complex issue for these taxpayers because under state law, these taxpayers have a different legal status than under Federal law, because of some of our Federal laws.

Under state law, they often split the income but under Federal law, they have to actually file separately.

We recognized there was a lot of confusion, so we actually consolidated and put a group together who worked and put out a whole set of frequently asked questions that answered a lot of these questions.

We realized that as laws have changed around the country, this has been an issue. We have been engaging with the community around this, and I think we have clarified a lot of questions.

Let me just say until you have state laws and Federal laws recognizing couples the same way, this is going to remain difficult for people.

Some of the things people have asked us to do, we cannot do under the law.

*Dr. McDermott. When they are filing their income tax federally, I suppose if you have a different thing at the state level, but federally, if they are doing it together, they cannot do it together. Is that what you are saying?

*Mr. Shulman. It all depends. Different states have different domestic partnership laws. State returns often piggy back on Federal returns, but recognizing couples as couples is different depending on which state and also Federal laws are different.

*Dr. McDermott. The piggy backing off the Federal tax return sort of works in reverse at the state level. They are going to have to change some state laws to actually make this rational.

*Mr. Shulman. It adds complexity to these taxpayers filing. We have tried very hard to make sure we do our job, like we do with all taxpayers, which is we have a set of taxpayers with specific issues, we get a team together. We worked on these things. We did outreach and engagement, and we tried to really clarify what we could clarify.

*Dr. McDermott. If I had a question, what number would I call to get the answer?

*Mr. Shulman. You would dial our 800 number.

*Dr. McDermott. That number should get you to somebody who will give you the same answer day after day, you will not get two different answers?

*Mr. Shulman. That is our hope. We track accuracy and consistency, and they are always in the high 90s.

*Dr. McDermott. All right. I appreciate that. It is an issue I hear from the District a lot, and I want to know what it is that you have tried to do, and we will see if we need to do something about it and we need to look at it.

Thank you.

*Chairman Boustany. With your indulgence, Commissioner Shulman, Mr. Becerra has one follow up question.

*Mr. Becerra. Mr. Chairman, thank you for generously allowing me to ask one last question.

Commissioner, two weeks ago, I sat down with my tax preparer and went over my taxes in preparation to file. He has been doing this forever. He is an enrolled agent. He is licensed and all the rest.

He said to me, you know, I was always supportive of what you all were doing with regard to the tax preparer's, trying to get us to be a more defined group.

He gets folks who come in to correct taxes that have been filed improperly by folks who prepared these things and charged people money and did it the wrong way.

He asked me a question. He said it seems to me like a lot of us who have done this for a long time are the ones that are being asked to go through the process to certify that we are competent and all the rest.

I said to him my sense is that everyone is going to be at some point touched by the IRS as it is moving toward the effort of trying to certify that folks are competent to be out there representing themselves as qualified preparer's of tax returns for money.

The Chairman was gracious enough to indulge me. I am wondering if you can tell us what the status is of the initiative at the IRS to try to help do the bird dogging, the oversight, of tax preparer's, and maybe respond to the question of who is being contacted in the tax preparer world by the IRS to follow up?

He said he had to go through some courses or programs to test his qualifications and so forth.

If you could just give us a quick sense of where things stand.

*Mr. Shulman. Sure. First, similar to what I talked about with the real time system, this is a big initiative. We had multiple public hearings around the country, vetted it with a report, put out regulations with lots of public comment, so we have had a lot of engagement with the preparer community around this.

This is really about partnering with the preparer community to make sure taxpayers are served well.

Status is we have had about 840,000 people apply and receive PTINs, which is preparer tax identification number. About 60 percent of those were not already an enrolled agent, a CPA, or a lawyer.

*Mr. Becerra. Wow.

*Mr. Shulman. Enrolled agents, your preparer and CPAs and lawyers who already had higher level qualifications, had already gone through their own set of competency testing, already had ongoing continuing education requirements, were not required to take the test, because they have already taken a test, or have continuing education.

Your preparer should not have had to take a test if he was already an enrolled agent.

We have about 840,000 people who have signed up. Last Fall, we started administering the competency examination, and we have a number of people through that.

One of our promises to the American people was that we were not going to cut out preparer services. We wanted to make sure people still could get service.

There are a lot of very competent preparer's who have been preparing returns for 20 to 30 years who have not taken a test in a while, so we gave them three years to pass the test.

SFC 004301

People are now starting to pass the test. You do not actually become a registered tax return preparer until you pass the test. All you do is have the PTIN right now.

Now people are starting to move through the test, and we have had several thousand who have taken the test, and we expect that number to grow.

We started approving continuing education providers. This year, continuing education requirements kick in.

We are well on our way to move there. The last thing I would say is this filing season, we had the PTIN. We had CADE processing everything faster. We have a lot better data analytics.

We were able to look at preparer's who had really egregious problems with their returns, go out to them immediately, in late January, with visits, letters, phone calls, and really start to engage the preparer community to make sure they are treating taxpayers well.

We are very pleased with the status of the initiative, and that is a broad overview.

*Mr. Becerra. Thanks very much. Mr. Chairman, thank you very much.

*Chairman Boustany. Mr. Kind, you may inquire.

*Mr. Kind. Thank you, Mr. Chairman. I apologize. I was a little bit late. I was tied up in another meeting.

Commissioner Shulman, thank you for your testimony and for the work you are doing. We really appreciate it.

Obviously, there are a lot of issues that are pending. I had a chance to review the National Taxpayer Advocate Report, and I am sure you all at the IRS pay attention to that as well.

Obviously, some of the disturbing trends that they see in that report is mainly the inadequacy of funding for the IRS in order to do your job adequately and serve the citizens of our country.

In particular, they were concerned because of funding cuts and the inadequacy of resources, what that means to the IRS' ability to address the non-compliance issue.

The concern is it is only going to go wider, if there is a lack of confidence or belief in the IRS when it comes to compliance measures, it is only to exacerbate the situation.

Do you agree with what the report was stating in regards to enforcement of non-compliance?

*Mr. Shulman. Well, we had budget cuts. We try to do the best we can with those budget cuts. We talked for a while before about service. We have not really talked a lot about compliance.

Clearly, we are doing less exam's this year, and we have to triage and find places. We are doing less collection activities. It is going to result in less money coming in than otherwise would have come in.

The big trend I am worried about is if we do not stem the tide in the 2013 and 2014 budget, you get to a point where there is enough news about compliance rates being so low, but still, a lot of people are going to pay their taxes because they are honest, hard working Americans, and they want to pay into the society they feel benefits them.

But if people want to push the envelope, which some do, and want to cut corners, if they think we are

not on the job, then they will do so.

I think the general comments about you cannot have a long term trend of degrading compliance resources, because that really starts to hit voluntary compliance, and I think the specific of just less funding means less dollars in the door. That is simple math.

*Mr. Kind. Let me ask you a couple of questions. We are approaching the second anniversary of passage of the Affordable Care Act.

One of the provisions is they did allow tax credits to small businesses who do provide health care coverage for their workers, 35 percent this year. It is supposed to go to 50 percent in 2014 with the creation of the exchanges.

There are moments back home when some small business owners come to me and complain about the complexity of that tax credit and having to fill that out.

What is your opinion on that? Is that an item where the IRS or us working with you can try to simplify that process to make it easier for small businesses to qualify for that tax credit?

*Mr. Shulman. Yes. One, it is obviously an important tax credit for small businesses, to help them afford paying for health coverage for their workers, which is a key component of the Affordable Care Act.

I think it is a very complex credit. We have heard from a lot of practitioners and small businesses that the phase out's around that and other issues have made it very hard for people to (a) understand if they can hit the sweet spot where you get the credit, and (b) sometimes discourages people from actually taking advantage of the credit.

The President's budget actually has a simplification proposal in it, which works on the phase out's and other issues to make it hopefully much more attractive to small businesses, and Congress taking up and passing that, I think, would be beneficial.

*Mr. Kind. You think that makes a lot of sense, what the Administration has looked at and what they are proposing?

*Mr. Shulman. Yes.

*Mr. Kind. What about in 2014, with the exchanges, there is going to be a lot of credits for the individuals within the exchange market?

Is the IRS making preparations in order to deal with that, and are you on track?

*Mr. Shulman. Yes. We are making preparations. We are on track. The majority of the work we are doing and the people we have to hire is to build technology systems to interact with the state exchanges and the Federal exchange, so that an estimated 30 million people can get over a ten year period $400 billion of tax credits.

I testified yesterday before our Appropriations Committee. What I said to them is I understand there is heartfelt policy debate about the Affordable Care Act, and there are some Members of Congress who do not like it. There are members who like it.

The bottom line is come 2014, there is going to be a lot of constituents in every District who are going to expect a tax credit when they show up at the exchange, and we need to get funded appropriately in the 2013 budget to prepare for that.

We are on track. We are spending money now based on authorization that came through the bill, but we are going to need to get financial support because we have a big job to do.

Again, we are not involved in health policy. We are involved in moving the money to help make the law work.

*Mr. Kind. Thank you, Commissioner. Thank you, Mr. Chairman.

*Chairman Boustany. You know, this broader question of the complexity of the Tax Code should give impetus to all of us to look at fundamental tax reform.

I know the Chairman has set that as a goal. I think it is something we should do in a bipartisan way.

Commissioner Shulman, thank you for appearing before us today. As is customary, please be advised that members may have additional questions that they may submit to you in writing, and those questions and your responses will be made part of the official record.

With that, we will conclude the Subcommittee hearing.

[Whereupon, at 10:39 a.m., the Subcommittee was adjourned.]

Member Inserts For The Record

The Honorable Lynn Jenkins#1
The Honorable Lynn Jenkins#2

Member Submission For The Record

The Honorable Scott R. Tipton

Public Submissions For The Record

National Community Tax Coalition
National Treasury Employees Union

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SFC 004304

CQ CONGRESSIONAL TRANSCRIPTS
Congressional Hearings
May 17, 2013 - Final

House Ways and Means Committee Holds Hearing on the IRS Tax-Exempt Investigation

LIST OF PANEL MEMBERS AND WITNESSES

CAMP:
The Committee on Ways and Means will come to order.

On May 10th, Lois Lerner, director of exempt organizations for the Internal Revenue Service division that oversees tax-exempt groups, finally acknowledged that the agency had been targeting conservative- leaning political organizations.

Four days later, the Treasury inspector general for taxpayer administration confirmed that, and I quote, "The IRS used inappropriate criteria to identify organizations applying for tax- exempt status," end quote.

The report also confirmed that this abuse of power began as far back as 2010. This revelation goes against the very principles of free speech and liberty upon which this country was founded.

The blatant disregard with which the agency has treated Congress and the American taxpayer raises serious concerns about leadership at the IRS.

Let's establish the facts that we do know: Based on the TIGTA report, we know that for an 18-month period beginning in spring 2010 IRS employees in the agency's determinations unit employed key words, such as tea party, patriot and 9/12, to target applications for tax- exempt status. These groups were then subjected to further IRS investigation and document requests.

IRS employees later expanded their search, to include groups concerned about government spending, debt, taxes, the Constitution, the Bill of Rights, or trying to, and I quote, "make America a better place to live," end quote.

Let me repeat that, people were -- were targeted to trying to make America a better place to live.

These Americans had their applications delayed for nearly three years. And at least 98 applicants were asked for improper and inappropriate information, such as donor lists, and whether family members planned to run for political

office.

During that delay and while applications of conservative groups sat untouched for more than a year, other applications with names like progress and progressive were approved in just a matter on months.

The headline in USA Today from earlier this week really says it all, "IRS Gave Liberals a Pass, Tea Party Groups Put on Hold."

TIGTA's audit found that some of those cases should have been set aside because of concerns related to their potential political activity. But no such review was done.

Without objection, I enter the USA Today news report into the record.

This week we learned that senior IRS officials knew about this activity almost two years ago in June of 2011, and IRS's leadership in Washington knew of in May 2012, a year ago.

Despite a two-year long investigation by this committee, the IRS never told the American people or their representatives about this simple truth. In fact, we were repeatedly told no such targeting was happening. That isn't being misled, that's lying.

But -- but now we know the truth, or at least some of the. We also know that these revelations are just the tip of the iceberg. It would be a mistake to treat this as just one scandal. This may be one generating -- this may be the one generating headlines, but in total I count at least five serious violations of taxpayer rights, the right to be treated fairly, honestly and impartially by their government.

First back in August of 2010, a White House official discussed the status of a private company, the tax status of a private company, a clear intimidation tactic. Second in June of 2010, the targeting of conservative groups began. Third, in May of 2011, the IRS started to threaten donors to conservative leaning nonprofits, that they were liable for certain taxes. And fourth, in March 2012, the Huffington Post published the confidential 2008 donor list of the National Organization for Marriage, a conservative tax-exempt organization.

And fifth, but unlikely the final transgression, ProPublica announced that the IRS had leaked confidential applications for tax- exempt status from conservative groups.

Mr. Miller, with all due respect, this systematic abuse cannot be fixed with just one resignation, or two.

And as much as I expect more people need to go, the reality is this is not a personnel problem. This is a problem of the IRS being too large, too powerful, too intrusive and too abusive of honest, hard-working taxpayers.

There isn't a person I come into contact with at home or anyone in this country, frankly, who does not fear the IRS. They fear getting something wrong on their tax filings, and they fear the IRS's ability to audit them and wreak havoc in their lives, especially when all they're trying to do is improve their lives. Let alone, God forbid, trying to make America a better place to live, which is what the IRS targeted them for.

Under that kind of thinking, every civic group in America is at risk: the Knights of Columbus, the Rotary, the Jaycees, the American Legion and VFW clubs.

I'm sure you're aware of the saying that the power to tax is the power to destroy. Well, under this administration the IRS has abused its power to tax, and it has destroyed what little faith and hope the American people had in getting a fair shake in Washington.

This will not stand. Trimming a few branches will not solve the problem when the roots of the tree have gone rotten.

And that is exactly what has happened with our entire tax system. It is rotten at the core and it must be ripped out so we can start fresh. Only then will the American people get a tax system that treats them fairly and honestly as they deserve.

And while that's a larger discussion, it is directly tied to the issue before us today, how and why our tax system has gone so far off track.

Many questions still remain. Why did the IRS repeatedly target the American people and then keep that fact covered up for so long? Who started the targeting? Who knew? When did they know? And how high did it to?

Who leaked the private taxpayer information? Why were the names of donors asked for? And what was done with those lists before they were supposedly discarded? And when did the administration know about each of these, and what was its reaction?

Listening to the nightly news, this appears to be just the latest example of a culture of coverups and political intimidation in this administration. It seems like the truth is hidden from the American people just long enough to make it through an election.

The American people have a right to the truth, to a government that delivers the facts, good or bad, no matter what. President Obama promised to be different and to deliver a better government. the most transparent in history.

He was right. America deserves better. It is time to end the corruption at the IRS and fix a tax code that allows Washington and the IRS to pick who wins and who loses in America.

I expect nothing less than total cooperation by the IRS and this administration as we investigate what happened and what we must do to fix it.

I now recognize Ranking Member Levin for the purpose of his opening statement, and thank him for his commitment to pursue this issue.

LEVIN:
Thank you, Mr. Chairman.

I'm going to read my opening statement. I will expand on it a bit now that I've heard the opening statement of chairman.

This committee on a bipartisan basis takes seriously its oversight role, and we are fully committed to ensuring an IRS that serves the American people fairly and efficiently.

What is now completely clear is that the management and oversight of the agency's handling of tax exemption applications have completely failed the American people. I emphasize that.

LEVIN:
As we know from the inspector general's audit, the agency used totally inappropriate criteria in its review of tax exemption applications, singling out organizations for review based on their name or political views, rather than their actual activities. These criteria changed four times over two years, with little management review or oversight. Applications sat for years. Work stopped for 13 months while one department waited to hear back from another. Questions were asked that were not necessary. Again, no oversight, no accountability.

All of us are angry at this on behalf of the nation, and we are determined to get answers to our questions about how this happened to ensure that it does not happen again. Finally, throughout this time, the IRS leadership has demonstrated a total disregard for the oversight role of the Congress and this committee.

SFC 004309

Former IRS Commissioner Shulman testified in front of us in March 2012 and said that, in quote, "no targeting," end of quotes, was going on. Two months later he was briefed on the I.G.'s investigation and was fully informed that, indeed, singling out by name had occurred on his watch. He had an obligation to return to this committee and set the record straight. So did Mr. Miller. Neither fulfilled their obligations.

A little more than a week ago, Lois Lerner was in front of our oversight subcommittee. She serves as the director of the Exempt Organization Division, and she has been directly involved in this matter. Yet, she failed to disclose what she knew to this committee, choosing instead to do so in an ABA conference two days later. This is wholly unacceptable and one of the reasons that we believe, and as I stated several days ago, Ms. Lerner should be relieved of her duties.

Chairman Camp and I put together this hearing on a bipartisan basis to get the facts. We must seek the truth, not political gain. And I just want to add in that regard, Mr. Camp has said, listening to the nightly news, this appears to be just the latest example of a -- culture of cover ups and political intimidation in this administration. It seems like the truth is hidden from the American people just long enough to make it through an election.

I totally, totally disagree. If this hearing becomes, essentially, a bootstrap to continue the campaign of 2012, and to prepare for 2014, we will be making a very, very serious mistake and, indeed, not -- meeting our obligation of trust to the American people.

You're here today, Mr. Miller. You're here today, the Inspector General, to talk about what happened, how it happened, where it happened, who knew what when. And if instead this hearing essentially becomes an effort to score political points, it will be a disregard of the duties of this committee.

So I conclude with the sentence, we must seek the truth, not political gain. We look forward to full and forthcoming answers to our questions today.

CAMP:
Thank you. Before the witnesses are recognized for the opening statements, I will first swear them in. While this is the prerogative of every committee committee chair, it has not been the custom here at Ways and Means, but then it's not customary for this committee to of been so repeatedly misled by an agency under its purview.

So while it's always against the law to provide false statements to Congress, the act of swearing in a witness impresses upon him or the gravity of the proceeding and the need to tell the full and complete truth.

Please raise your right hands.

Do you -- do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

MILLER (?):
I do.

GEORGE (?):
(inaudible)

CAMP:
Let the record reflect the witnesses answered in the affirmative. Thank you.

I would like to welcome J. Russell George, who has been the Treasury Inspector General for Tax Administration -- I think we'll wait for the camera pool to leave at this point.

Thank you. I'd like to welcome J. Russell George, has been the Treasury Inspector General for Tax Administration since 2002, and Mr. Steven Miller, who is currently the acting commissioner for the IRS.

Thank you both for being with us today. You will each have five minutes to present your testimony with your full written testimony submitted for the record.

Mr. George, we'll begin with you. You are recognized for five minutes.

GEORGE:
Chairman Camp, Ranking Member Levin, members of the committee, thank you very much for the opportunity to discuss our report concerning oversight by the Internal Revenue Service of groups that apply for tax-exempt status.

As you are aware, the organization that I leave, the Treasury Inspector General for Tax Administration, protects the integrity of the federal tax system. Our audit was initiated based on concerns expressed by members of Congress because of taxpayer allegations that they were subject to unfair treatment by the IRS.

Our report issued earlier this week addresses three allegations. First, that the IRS targeted specific groups applying for a tax them status. Second, that they delayed the processing of these groups applications. And third, that the IRS requested unnecessary information from groups it subjected to special scrutiny. All three allegations were substantiated.

The IRS views inappropriate criteria to target for review tea party and other organizations, based on their name and policy positions. This practice started in 2010 and continued to evolve until June of 2011. As the monitor shows, the IRS was following inappropriate criteria.

Let me read to you these criteria from a briefing held by the IRS's Exempt Organizations Function in June of 2011. The criteria included the words "tea party," "patriot," or "9-12 Project." Another listed criterion was that the groups issues included government spending, government debt, or taxes. Yet another listing criteria appeared as education of the public by advocacy or lobbying to, quote, "make America a better place to live," unquote.

Finally, the criterion consisted of any statements in the case file criticizing how the country is being run. The reasons for these criteria were inappropriate, is that they did not focus on tax-exempt laws and treasury regulations.

For example, 501(c)(3) organizations may not engage in political campaign intervention. 501(c)(4) organizations can, but it must not be their primary activity. Political campaign intervention is action taken on behalf of or against a particular candidate running for office. Although these criteria appeared in the IRS's own documentation as of June 2011, IRS employees actually began selecting tea party and other organizations for review in early 2010.

From May of 2010 through May of 2012, a team of IRS specialist in Cincinnati, Ohio, referred to as "the determinations unit" selected 298 cases for additional scrutiny. According to our findings, the first time that executives some Washington, D.C. became aware of the use of these criteria was June 2011, with some executives not becoming aware of the criteria until April or -- or May of 2012.

The IRS's inappropriate criteria remained in effect for approximately 18 months. After learning of the inappropriate criteria, the director of Exempt Organizations changed the criteria in July of 2011 to remove references to organizations names and policy positions. However, Cincinnati staff changed the criteria back to target organizations with specific policy positions, but this time, they did not include tea party or other named organizations.

GEORGE:
Finally, in May of 2012 after learning that the criteria had again been changed, the -- organization's director of rulings and agreements changed the criteria to be consistent with laws and -- regulations -- excuse me. The organizations selected for review for significant political campaign intervention, again, 298 in all, experienced substantial delays in the processing of their applications. The organizations experiencing these delays included tea party organizations, patriot organizations, 9/12 organizations, among other organizations.

As shown on the monitor, the status of December 2012 for 296 cases that we reviewed was 108 cases have been approved, 28 cases were withdrawn, and 160 cases were still open. Zero cases have been denied. SFC 004312

Of the cases still open, some had been in progress for over three years and crossed two election cycles without resolution. Of the 108 cases approved, 31 were tea party, 9/12, or patriot organizations.

My final point is that the IRS requested unnecessary information for many political cases. In fact, 98 of 170 cases that received follow-up requests for information from the IRS had unnecessary questions. All evidence indicates that staff at the Determinations Unit in Cincinnati sent these letters out with little or no supervisory review.

The IRS later determined these questions were unneeded but not until after media accounts and questions by members of Congress arose in March of 2012.

Examples of the unnecessary information requested included the names of past and future donors, listings of all issues important to the organization, and what the organization's positions were regarding such issues, and whether officers or directors have run for public office or would be running for public office in the future.

Months after receiving these questions, 12 of the 98 organizations either received a letter or a telephone call from the IRS stating that their applications were approved and they no longer needed to respond to the additional requests.

The IRS informed another 15 organizations that they did not need to respond to previous requests for information, and instead they were sent a revised request for information.

Regarding the donor information received from applicants, the IRS informed us that they destroyed that information.

In closing, our audit found clear evidence that each of the three allegations were correct.

Was the IRS using inappropriate criteria in its review of organizations applying for tax-exempt status? Yes.

Was the IRS delaying their applications? Yes.

And, finally, did the IRS ask inappropriate and unnecessary questions of applicants? Again, yes.

These findings have raised troubling questions about whether the IRS has effective management oversight and control, at least in the exempt organizations function, so that the public can be reassured that the IRS impartial in administering our nation's tax laws fairly.

Chairman Camp, Ranking Member Levin, members of the committee, thank you for the opportunity to present my views, and I look forward to your questions.

CAMP:
Thank you, Mr. George.

Mr. Miller, you are now recognized for five minutes.

MILLER:
Thank you, Mr. Chairman. Excuse me.

Thanks for the opportunity to be here today.

Unfortunately, given time considerations, we received the notice of hearing within the last two days, the IRS was unable to prepare written testimony. I would note that I've a very brief statement before I take your questions.

First and foremost, as acting commissioner I want to apologize on behalf of the Internal Revenue Service for the mistakes that we made and the poor service we provided. The affected organizations and the American public deserve better.

Partisanship or even the perception of partisanship has no place at the IRS. It cannot even appear to be a consideration in determining the tax exemption of an organization.

I do not believe that partisanship motivated the people who engaged in the practices described in the treasury inspector general's report. I have reviewed the treasury inspector general's report, and I believe its conclusions are consistent with that.

I think that what happened here was that foolish mistakes were made by people trying to be more efficient in their workload selection. The listing described in the report, while intolerable, was a mistake and not an act of partisanship.

The agency is moving forward. It has learned its lesson. We've previously worked to correct issues in the processing of the cases described in the report, and we've implemented changes to make sure that this type of thing never happens again.

Now that TIGTA has completed its fact finding and issued its report, management will take appropriate action with respect to those responsible.

SFC 004314

I'd be happy to answer your questions.

CAMP:
All right. Thank you, Mr. Miller.

Are you still acting director of the IRS?

MILLER:
I am, sir.

CAMP:
And were you appointed by the president of the United States for that position?

MILLER:
No, sir.

CAMP:
And when was that?

MILLER:
I was designated as acting in November, in November of 2012.

CAMP:
2012. And I'm not -- if I'm not mistaken you hold actually two titles, acting director of the IRS and also deputy commissioner for services and enforcement?

MILLER:
I do, sir.

CAMP:
And in your role as deputy commissioner for services and enforcement, according to the IRS Web site, in that capacity you direct and oversee all major decisions with regard to the Tax Exempt and Government Entities Division?

MILLER:
That is a division that reports through -- to me through the Tax Exempt and Government Entities office, yes.

CAMP:
So the Web site's accurate?

MILLER:

Yes.

CAMP:
And, then, who do you report to in that position -- actually in both of your positions?

MILLER:
Well, in...

CAMP:
Deputy commissioner for services and enforcement?

MILLER:
In the deputy commissioner role, I would report to the commissioner, if there was one. Without a commissioner, holding both hats, I would report to the deputy secretary.

CAMP:
Of?

MILLER:
Treasury.

CAMP:
Treasury. And is it not a violation of IRC 6103 to disclose confidential taxpayer information?

MILLER:
It is.

CAMP:
And that really applies to all taxpayer information?

MILLER:
I'm not quite sure what that means, to be honest.

CAMP:
In practice, it's basically all tax -- it's not just the return, it's all...

(CROSSTALK)

MILLER:
6103 -- 6103 obligates us not to disclose taxpayer information.

CAMP:
Were you ever made aware in August of 2010 that a White House official in a conference call with reporters disclosed the confidential tax structure of a private company?

MILLER:
I probably read it in the paper, sir.

CAMP:
OK. You were made aware through news reports?

MILLER:
I think that's probably -- that's a long time ago.

CAMP:
Did you take any steps when you learned of that?

MILLER:
I don't recall. I'm not -- I don't -- I don't recall. I'll have to go back down (inaudible).

CAMP:
All right. So you didn't inform the inspector general of that or your superiors, that you recollect?

MILLER:
I'm not sure why I would have to notify the -- the superiors. It was in -- in the papers. I don't remember whether we made a referral or I made a referral at that time.

CAMP:
All right. According to the inspector general audit, the targeting of conservative groups began in March of 2010. When were you made aware?

MILLER:
I was aware of that on May 3rd of 2012.

CAMP:
And how were you made aware?

MILLER:
I was made aware of, not the targeting, but I was made aware of the process that was described in the TIGTA report when I asked some of our people to go out and look at the cases, subsequent to the -- the public discussion of over-broad letters coming out.

CAMP:
So that would have been in your role as acting director as well as the deputy commissioner for services and...

(CROSSTALK)

MILLER:

No, I was the deputy at that time.

CAMP:
You were deputy at that time.

And when you say you asked "some of our people," who would that have been?

MILLER:
So, I asked the senior technical adviser for Tax Exempt and Government Entities to lead a team and take a look and see what was going on in terms of cases that had gotten those letters.

CAMP:
Did you inform anyone of that action that you took, of those steps?

MILLER:
So, I did that. I mean, I asked -- I asked the senior technical adviser to do that in late March, March 23rd or 26th, something like that. And she and her team came back to talk to me in May, and subsequent to that, I'm sure I -- I informed the commissioner. But the commissioner was aware of the letters as well.

CAMP:
Did you inform anyone other than the commissioner at that time?

MILLER:
You mean up the chain, sir?

MILLER:
I don't believe so.

CAMP:
Or the inspector general.

MILLER:
The inspector general was aware of it and had made it -- made it clear to us they were aware of it and were in looking at it at that time.

CAMP:
OK. Was there a time when you became aware of the IRS launching audits against conservative donors? That would've been in about May of 2010.

MILLER:
Yes. That -- that, I don't -- I don't remember the date, sir, but yes, in that time frame. Again, there were press accounts and congressionals coming in and talking about that.

CAMP:

And did you learn that from the press or did you learn that from inquiries from Congress?

MILLER:
I don't know. It could have been either. It came up in a meeting, and then it hit the press, and so, I don't know.

CAMP:
In any event, after learning of that information of the audits, did you -- what steps did you take?

MILLER:
We investigated what happened. We took a look. And ultimately I issued a -- a directive that said that the law in the area was not that clear. That was had not been enforcing in that area substantially since the period of -- I believe a 1982, or something like that, revenue ruling that talked about gift tax and (c)(4) organizations. And I said, let's not enforce right now. Let's talk about it, let's study it and we will put out guidance. And that guidance will be prospective. I felt that was the fair thing to do, Mr. Camp.

CAMP:
When you say, we investigated, who would that have been?

MILLER:
I don't -- I'm not -- I don't remember, but we took a look at the issue. We looked at how it happened, and I think you were looking at it as well. Your committee, sir.

CAMP:
I -- I mean when you say, we, what -- what does that mean? I mean who? Who are the agencies...

MILLER:
The IRS. The IRS looked at the issue.

CAMP:
I mean what departments?

MILLER:
It would have been counsel, I don't know that it was -- I'm sorry, sir, I'm not going to be able to answer with particularity there.

CAMP:
Were you ever made aware of the publication of the confidential 2008 donor list of the National Organization for Marriage, a conservative tax-exempt organization?

MILLER:
I was.

CAMP:
And when was that?

MILLER:
For that date, I'll have to get back to you on, sir. But I remember the issue.

CAMP:
And how did you find out?

MILLER:
Don't remember. Might have been press. Might have been somebody coming to us with a -- with a congressional complaint.

CAMP:
And when you learned of that publication, did you take any steps?

MILLER:
I believe we made a referral to TIGTA, yes.

CAMP:
At that time? And you're not sure when that referral was made?

MILLER:
It would have been in the same timeframe.

CAMP:
Shortly after you became aware of it?

MILLER:
It would have been.

CAMP:
Were you ever made aware of the IRS leak of confidential applications for tax-exempt status of conservative groups to ProPublica?

MILLER:
I was.

CAMP:
Again when -- when were you made aware of it?

MILLER:
Again, sir I'm not -- I'm not going to be able to give you a perfect timeline, but when it -- approximately the time that it became public, was when I became aware. So you would know that from the timeline.

CAMP:
Did you inform anyone else of that?

MILLER:
I believe the service informed TIGTA at that time, yes.

CAMP:
In each of these incidents I've asked you about, did you ever come forward and inform the Congress?

MILLER:
I don't believe so, unless it came up in -- in -- in conversation or testimony. Can I -- can I suggest something, Mr. Camp on those two? Just to let you know?

CAMP:
This would be the National Organization of Marriage, and ProPublica?

MILLER:
Those two situations, we went to TIGTA and I think Mr. George can speak to what they find -- what they found. We made the referrals, and I believe -- I believe what they found was that those disclosures were inadvertent, and that there had been discipline in -- in one of those cases for somebody not following procedures. But I will -- I will obviously let Mr. George speak to that.

CAMP:
But, you never informed the Congress of any of these things that you are aware of?

MILLER:
They were...

CAMP:
Any of the items I've asked you about this morning?

MILLER:
... they were in the press, sir.

CAMP:
All right. Well, obviously, you know the IRS mission statement says that the role of the IRS is to help America's taxpayers understand and meet their tax responsibilities, and enforce the law with integrity, and fairness to all. And I -- I think clearly the mission is not being met. Mr. George -- I guess I would just have one last question, Mr. Miller. When asked the truth, and you know the truth, and you have a legal responsibility to inform others of the truth, if you don't share that truth, what is that called?

MILLER:
I always answer questions truthfully, Mr. Camp.

CAMP:
All right. Mr. George, were you ever made aware of the alleged disclosure of the confidential tax structure of a private company?

GEORGE:
We have been alerted to...

CAMP:
You personally were made aware of it?

GEORGE:
To -- well, in specific? Or in general?

CAMP:
You specifically.

GEORGE:
To a specific company, or in general, sir?

CAMP:
It was a specific company, but there was the disclosure of taxpayer information -- the tax -- confidential tax structure. As you know, any information is considered confidential.

GEORGE:
Right.

CAMP:
It was particularly the tax -- tax structure of a private company. Were you made aware of -- made aware of that public disclosure?

GEORGE:
We are made aware of public disclosure of information that is protected by Title-26, Section 6103, yes.

CAMP:
Are you aware of the incidents I'm referring to?

GEORGE:
The one that you refer to?

CAMP:
Yes.

GEORGE:

I am aware of that, yes.

CAMP:
And when were you made aware of that?

GEORGE:
I don't have the exact date, sir.

CAMP:
OK. How were you made aware of that?

GEORGE:
I believe it came through my Office of Investigations, or it could have been put through a hotline. That I'm not completely certain of.

CAMP:
So you don't believe you were -- you learned of it from another -- from an IRS employee?

GEORGE:
I generally do not, below the commissioner or deputy commissioner levels, interact with the average IRS employee. It goes through a chain -- a chain of command.

CAMP:
Well, that would include the commissioner?

GEORGE:
Yes.

CAMP:
So, no IRS employee informed you of this information?

GEORGE:
Most likely it would have come from one of my principle deputies, and they may have received that information from someone. I don't believe at the commissioner level, but it may have been at the deputy commissioner level.

CAMP:
But, you're not aware -- you -- you can't tell us for sure?

GEORGE:
At this time I cannot, sir.

CAMP:
Were you ever made aware of the alleged publication of a confidential 2008 donor list of the National Organization for Marriage?

GEORGE:
I both read in the newspapers, allegations to that effect. But I have to make it clear, Mr. Chairman that the Internal Revenue Code has very strict rules as it relates to the way that confidential taxpayer information is revealed. And we at TIGTA are the ones who are going to enforce those rules. So, I have to be very careful as to exactly how I respond, and whether or not I can even acknowledge publicly some of these revelations that you're inquiring about.

CAMP:
Did you respond to that information?

GEORGE:
It would -- it has been -- it has been taken.

CAMP:
Is it -- is it ongoing?

GEORGE:
I will have to confer with my colleague, if you'll -- if you'll give me a moment.

CAMP:
OK.

(CROSSTALK)

GEORGE:
It is not ongoing.

CAMP:
All right. There are daily reports of new allegations of IRS misconduct, political targeting. And it's clear that more work needs to be done. Is your office continuing to investigate these allegations?

GEORGE:
Yes, we are, sir.

CAMP:
OK, thank you. Mr. Levin is recognized?

LEVIN:
Thank you very much. I wanted to go on to other things, but the -- the incidents that Mr. Camp has been talking about, disclosure, what years were those? Mr. Miller?

MILLER:
Again Sir, I apologize for not having the date at hand. They have been a couple of years now, I believe.

LEVIN:
A couple years? Who was the commissioner at that time?

MILLER:
I believe it was Mr. Shulman.

LEVIN:
Who appointed Mr. Shulman?

MILLER:
Mr. Bush.

LEVIN:
Let me start with two key issues. There's no question about the inappropriate criteria, I want to focus on that. But, let me first ask right up front if I might, Mr. Russell (sic), during the course of your audit were you allowed access to everyone you requested to interview?

GEORGE:
To my knowledge we were not denied access to anyone.

LEVIN:
Did you interview employees in both Cincinnati, and in D.C.?

GEORGE:
Correct. Yes we did, sir.

LEVIN:
On page 7, Mr. George, of the I.G. report it states, and I quote, "All of these individuals stated that the criteria were not influenced by any individual organization outside the IRS.", is that correct?

GEORGE:
That is the information that we received. Correct, sir.

LEVIN:
Did you find any evidence of political motivation in the selection of the tax exemption applications?

GEORGE:
We did not, sir.

LEVIN:
Mr. Miller, during your review of this matter, you indicated when you started it. Did you find any evidence of political motivation on the part of employees involved in processing the applications at issue?

MILLER:

We did not, sir.

LEVIN:
If we could put on the screen, the organizational chart? Is that possible -- from the report? Is someone going to do that? It's called high level organization of report. Mr. Miller, in 2010, the inappropriate criteria that singled out applications for tax- exempt status by name was developed by what office?

MILLER:
It would be developed by a -- an office that actually is not on here, but is on page two of this is, is under Lois Lerner's jurisdiction.

LEVIN:
And where are those employees located?

MILLER:
For the most part, they are located in Cincinnati. There's about 140 folks who do this sort of work in Cincinnati. There are a handful of people around the country that report into Cincinnati, as well.

LEVIN:
In 2011, the report finds that the director of Exempt Organizations, EO on this chart, and I'm afraid it's not on the screen yet -- this is Ms. Lerner's position -- became aware of the inappropriate criteria. She ordered the criteria changed, and it was changed in 2011 to no longer refer by name "tea party" or "patriot."

Mr. George, is that correct?

GEORGE:
That is correct, sir.

LEVIN:
Mr. Miller, as then-deputy, were you aware of the problem with the criteria in June and July of 2011?

GEORGE:
I was not, sir.

LEVIN:
In January 2012, the criteria were changed again to, and I quote, "organizations involved in limiting expanding government, educating on the Constitution and the Bill of Rights, and social economic reform -- movement. The I.G.'s report indicates that this change was again made in the Cincinnati Determination's Office without executive approval."

Mr. George, is that correct?

GEORGE:
That is correct, sir.

LEVIN:
It was changed without executive approval?

GEORGE:
That is our understanding.

LEVIN:
The May 2012 criteria are in place today. It states, "organizations with -- indicators of significant amounts of political campaign intervention." The I.G. report states that, in quotes, "it more clearly focuses on the activities permitted under the treasury regulations.

Mr. George, is that correct?

GEORGE:
That is correct, sir.

LEVIN:
I have no further -- my time is up.

CAMP:
All right, at this time I'll yield to the chairman of the Oversight Subcommittee, Doctor Boustany.

BOUSTANY:
Thank you, Mr. Chairman.

Mr. Miller, on March 22 of 2012, the Oversight Subcommittee held a hearing in this room, and I specifically asked then-Commissioner Shulman about reports that the IRS had been targeting tea party groups and other conservative groups. And I would like to play the video of his response. Could we have the video?

(BEGIN VIDEO CLIP)

DOUGLAS SHULMAN, COMMISSIONER, INTERNAL REVENUE SERVICE:
There's absolutely no targeting. This is the kind of back and forth that happens when people apply for 501(c)(4)s.

(END VIDEO CLIP)

BOUSTANY:
This was in March -- March 22 of 2012. Knowing what you know now, was Commissioner Shulman's response truthful?

MILLER:
It was incorrect, but whether it was untruthful or not -- look, when you talk about targeting, and -- and -- and we should really get into this, Dr. Boustany -- because when you talk about targeting, it's a pejorative term. What -- what happened here was -- and I'm not defending the list -- but what happened here -- and I would like to go through the application process -- what happened here is that someone saw some tea party cases come through. They were acknowledging that they were going to be engaged in politics.

This was the time frame in 2010 when Citizens United was out. There was a lot of discussion in the system about the use of (c)(4)s. People in Cincinnati decided, "Let's start grouping these cases. Let's centralize these cases." The way they centralized it, troublesome. The concept of -- centralized -- centralization, not. And it's not -- we're not targeting these people in that -- in that sense. What we are doing, is making sure that we bring them in and have people...

BOUSTANY:
Well, let me ask you this.

MILLER:
Yep.

BOUSTANY:
You said, "incorrect, but not untruthful."

MILLER:
Yeah, I don't...

(CROSSTALK)

BOUSTANY:
Does that mean he was not informed? Was he not informed of this process?

MILLER:
To my knowledge, I don't believe he knew at the time.

MILLER:
Because in March you sent a technical adviser to Cincinnati. There were press reports. There were letters from Chairman Camp and myself dating back to -- to 2011. And so, clearly, there was -- congressional interest in this issue, press reports, and you're saying he was not informed of this?

MILLER:
So let's divide the world (ph) into a couple of pieces here. There is the list that was used. And there was the processing of the cases. At that time, we were aware that there were issues in the processing of the cases. We were not

aware of the list. I asked in late March, actually after the hearing, I believe, for us to go in and take a look -- because I thought there were problems in processing of the cases. They came back with both pieces. Yes, there were problems with processing of the cases and there were problems with the listing.

BOUSTANY:
OK, so at this -- you were given a complete briefing on this improper selection, based on political beliefs. And this briefing was, I think, you said May 3rd of 2012. Is that correct?

MILLER:
So, I would recharacterize your question, sir. I was informed of what we had found out to date. TIGTA was in there at the time. I was told that there was a use of the list. The list seemed obnoxious to us, as it does to you.

BOUSTANY:
OK.

MILLER:
And we were going to take actions on that. And, yes, that was in -- in May.

BOUSTANY:
And you say it was not targeting. But why was only one side of the political -- spectrum singled out in this?

MILLER:
So I think what happened was, they were -- look, they get 70,000 applications in there for 150 or 200 people to do. They triage of those. People look at them, and they send them either through the system because they're OK into a mix of folks so that they can get technically fixed up. And some go for substantive questions.

Politics is an area where we always ask more questions. It is our obligation under law to do so. As -- as Mr. George indicated...

BOUSTANY:
Right, no, I understand...

MILLER:
501...

BOUSTANY:
... the process.

MILLER:

... (c)(3) organization can't do it. And a (c)(4) organization can do some of it. Our obligation...

BOUSTANY:
But, Mr. Miller, we -- we -- we've received letters describing process, but we're trying to get to the heart of this matter. And -- and at the briefing in May of 2012, you were told that tax-exempt applications were being targeted if they contained terms such as "tea party," "we the people," "patriots," and so forth, many of the terms that Chairman Camp referenced.

And -- and knowing these practices, knowing that -- you sent letters to Congress acknowledging our investigation of these allegations, but consistently omitted that such discriminatory practices that are alleged were actually, in fact, taking place. Why -- why -- did you mislead Congress and the American people on this?

MILLER:
Mr. Chairman, I did not mislead Congress nor the American people. I answered the questions as they were asked.

BOUSTANY:
Why didn't you tell us about the terms?

CAMP:
All right, time has expired.

Mr. Crowley is recognized.

CROWLEY:
Thank you, Mr. Chairman.

Mr. George, you are -- you are the inspector general of the Treasury. Is that correct?

GEORGE:
That's really -- there are three inspector generals within the there are three inspectors generals within the Department of the Treasury. I'm the inspector general exclusively focused on the IRS -- over the system of tax administration written.

CROWLEY:
Over the IRS? Very good. And you were appointed by then-President Bush. Is that correct?

GEORGE:
Yes, correct.

CROWLEY:
And state in your report that no one outside the IRS was involved in this political targeting of not-for-profit organizations. Is that correct?

GEORGE:
That is the finding of this particular audit, sir.

CROWLEY:
Your -- your audit -- your findings are that no outside groups were involved, correct?

GEORGE:
Of this particular -- yes, as of -- as of now. That's our conviction (ph).

CROWLEY:
Mr. -- Mr. George, who was the last presidentially- appointed IRS commissioner?

GEORGE:
It was Douglas Shulman.

CROWLEY:
Douglas Shulman, correct?

GEORGE:
Yes, correct.

CROWLEY:
Appointed by -- by then-President George W. Bush, is that correct?

GEORGE:
Yes, that's correct, sir.

CROWLEY:
And -- and Mr. Shulman was commissioner when these improper and outrageous activities that both sides of the aisle recognize as being outrageous and improper when they occurred, is that correct?

GEORGE:
Yes, it is.

CROWLEY:
Mr. George, prior to Commissioner Shulman, the last political head, or political appointee, of the IRS was Mr. Mark Everson. Is that correct?

GEORGE:
That's correct, sir.

CROWLEY:
He was also appointed by President George W. Bush?

GEORGE:
Yes, I believe so.

CROWLEY:
And during his tenure, it's widely believed (ph) that groups like the NAACP, progressive churches that were in opposition to the war in Iraq, and environmental groups were targeted of the IRS. Mr. Miller, while you were appointed acting -- acting commission at the IRS, you are not a career -- you -- you are, sorry, you are a career civil servant, is that not the case?

MILLER:
It is, sir.

CROWLEY:
And you were not a political appointee?

MILLER:
I am not a political appointee.

CROWLEY:
Now, what I'm trying to -- to -- to point out, and basically to debunk, is the notion or idea of -- of the political statements -- and, I believe, non-factual statements by Chairman Camp -- to link these scandals to the White House, or -- or solely the targeting of -- of conservative groups.

I was the person last week who asked the question of Ms. Lerner as to whether or not the IRS were (sic) investigating political not- for-profit organizations. And at that hearing, we were not given a proper -- we were not given an answer I think Mr. Boustany would agree, but rather the world only learned after she was asked a planted question at a president come at that sadly unacceptable.

But what I also think it's important to keep this -- at least at this point in time I would hope in a nonpartisan -- maybe a bipartisan content, because we want to find affected want to find out who knew what when, and why steps were or were not taken.

I was as outraged when I learned that when she was asked the question why she did that to Congress when she was before Congress, our responsibility was no one ever asked or. I asked her, and she didn't answer the question. So we're all outraged. Were all upset about this. I don't believe nor do any of my college believe that any organization -- political organization should be targeted solely because of their thought.

That's on both sides of the spectrum. And I would dare say doing the prior administration and Mr. Shulman and Mr. Everson, that there was targeting of political entities as well. It has to end. That has to end on both sides, and the president has been very forthright and very strongly condemning that type of action. The entire administration is the as has Mr. Lew.

So I would really ask chairman and my colleagues on the other side, let's get the answers. Ask the question can't get the facts, and then we can draw our own conclusions.

With that, I yield back the balance of my time.

CAMP:
Thank you. Mr. Brady's recognized.

BRADY:
Chairman, thank you for getting to the truth in this scandal.

Let's look at one of tea party groups in my community. The founder, a small businesswoman, who originally filed for tax exempt status in July of 2010. Fully 20 months later, in February 2012 she received a letter from the IRS with numerous follow-up questions, a lot of them intrusive, but she answered every one of them and returned it well within the two week time limit. Now almost three years to the day that she first filed, her application is still pending.

But let's look at what happened to her in the three years since she applied. Beginning in December 2010 she was visited by the FBI domestic terrorism unit. Her personal returns and her business returns were both audited by the IRS. She received four FBI inquiries, and her business received unsolicited audits, unscheduled audits by OSHA, the Commission on Environmental Quality and the ATF twice.

Now, this is a citizen and a small businesswoman who had never been audited by the IRS or any of these agencies until she applied to you for tax-exempt status for her tea party. There's a broader question here, is this still America? Is this government so drunk on power that it would turn its full force, it's full might to harass and intimidate and threaten an average American who only wants her voice and their voices heard?

Mr. Miller, who in the IRS is responsible for targeting conservative organizations?

MILLER:
So, let me first say, I cannot speak to a given case.

We have talked about 6103, but that's...

BRADY:
This is not just one case. You know what we're talking about the whole list the inspector general put up the.

Who is responsible for targeting these groups?

MILLER:
So again I'm going to take -- I'm going to take exception to the concept of targeting because it's a loaded term. The listing was done...

BRADY:
This is not a listing. You created a be on the look out list. That's not a centralized government mandated or directed listing. You had a be on the look out list that you acknowledged, to have the cases the inspector general already verified.

So the question remains, who is responsible for targeting the conservative organizations?

MILLER:
So again, and I think if you look at the TIGTA report it answers your question.

BRADY:
There are no names in the inspector general's report. So I'm asking you, not only as the acting commissioner but as the deputy commissioner over this organization who is responsible for targeting these individuals?

MILLER:
So I don't have names for you, Mr. Brady, and am willing to try to find that out. I think TIGTA is looking at that right now. I don't think targeting again is...

BRADY:
You're telling us you have no knowledge of who initiated or who approved this targeting of conservative organizations?

MILLER:
I will stand by what the TIGTA report has -- has put out there as the facts.

BRADY:
Can you assure this committee that none of the information provided the IRS by this group was shared or given to any other federal agency?

MILLER:
That would be a violation of law, and I do not believe that happens.

BRADY:

You can assure use there was absolutely no sharing of this information with another government agency?

MILLER:
TIGTA and others will look at that but I will be shocked, Congress and, if that happened. Shocked.

BRADY:
If your earlier answers or any indication we will all read about in the media, we ought to be getting the truth from you.

Mr. Chairman, I yield back.

CAMP:
Thank you.

Mr. Rangel is recognized.

RANGEL:
Thank you, Mr. Chairman. (inaudible) we are all outraged what occurred under the Bush appointees as well as the Obama appointees.

MILLER:
There were no Obama appointees, so under Mr. Shulman -- I'm not sure, I apologize, Mr. Rangel.

I'm not sure, are we talking about...

RANGEL:
The people that were -- once it was discovered that people were put under a list, a look out list, that type of thing, regardless of what you call it, worry the people responsible in Treasury Department appointed by President Bush as well as continued service under president Obama?

Basically what Mr. Crowley was talking about.

MILLER:
At the IRS the commissioner was appointed under the Bush administration. Obviously, at Treasury those would be -- at main treasury, those individuals would be Obama appointees.

RANGEL:
What I'm trying to say, this outrage is not Democrat and Republican. It involves the credibility of government as relates to American citizens.

Now, the president has indicated outrage. You have indicated outrage. So I would assume that we are on the same side in trying to determine how did this happen, who was responsible for it, how far does this cancer to? How quickly can we cut it out?

So that tens of thousands of IRS employees have this stigma of corruption taken away from them, that you, Mr. Miller, who is a career employee don't have to explain to your kids and friends that you are not involved in this scandal, that all of the people that served the government -- it's too late for the Congress -- but it's not too late for the government to try to get its reputation cleaned up for America.

So I don't want to see anger with you do, but I certainly hope before this hearing is over that you share with us how you intend to have your voices heard so that America would know that whether this was criminal activity or a mistake, I don't know, but we have to get on with it.

Now, under 501(c)(4), we are supposed to allow political activity to take place, meaning that you can make political donations without saying how much and who made the donations, right?

MILLER:
I -- if I could restructure it. Under 501(c)(4), organizations, donors and their contributions are not public information, if that was the question.

RANGEL:
So you can make political contributions.

MILLER:
You can make contributions to 501(c)(4) that are used for political purposes.

RANGEL:
Yes, and you can do this as long as this is not the primary purpose, you can do this for 49 percent of whatever the activities are, without technically violating the law.

Is that not correct?

MILLER:
That test is whether your primary activities are social welfare in nature.

RANGEL:
Primary means that technically you could to 49 percent political.

MILLER:
We've never been that precise.

RANGEL:
I know what I'm asking, you could say that.

MILLER:
Yes.

RANGEL:
And after the Supreme Court's decision in Citizens Union -- what?

United, whatever.

(LAUGHTER)

The -- the applications for this type of corporations increased dramatically, did it not?

MILLER:
They did double, yes, sir.

RANGEL:
So you don't have to be a political expert to know that there was an increase in political donations given to 501(c)(4)s.

MILLER:
And I think that if one looks at the reporting on the forms 990 of political activities and the money spent, it will show an explosion in that money as well, yes, sir.

RANGEL:
And so, again, it's almost an invitation as the law is written for abuse in terms of political activities for corporations that primarily are supposed to be doing social service work. Is that not correct?

MILLER:
It is something that we have to look at closely, yes, sir.

RANGEL:
I mean, you should have wanted to look at this earlier, before this -- what -- what my friends call a scandal. I mean, this is wrong to abuse the tax system. This screams out for tax reform, does it not?

MILLER:
I think it's an area ripe for a redefinition and reform, yes, sir.

RANGEL:
Well, regardless of whether Democrats or Republicans did something like this, the outrage should still be there. Is that not correct?

MILLER:
The outrage as to...

RANGEL:
The abuse.

MILLER:
Yes.

RANGEL:
This section of the law has been abused by government employees, not by all of them, but by some of them. And our job is to find out who they are. And all I want to get from you, Mr. Miller, and you, Mr. George, that it's your integrity that's on the line, it's the president's, it's the administration's, it is the IRS employees that work hard each and every day. And unfortunately, it's the Congress that's involved in this.

People are losing confidence in our government. And I hope that you feel the same sense to find out what caused this, how it could happen, and help us to restore the confidence that Americans should have in their government.

I yield the balance of my time.

CAMP:
All right, thank you. Thank you.

Mr. Ryan is recognized for five minutes.

RYAN:
Thank you.

Mr. Miller, we have now established and you have acknowledged that you were briefed on May 3rd that there was improper criteria used for tax exempt applications. At the briefing on May 3rd, you were told that tax exempt applications were being targeted that contained terms such as "tea party," "we the people," "patriots," "Bill of Rights," "Constitution," "government spending," "taxes," and those that criticized how the country was run.

After that, knowing of these practices, you sent letters to Congress acknowledging our investigation of these allegations, but omitted that the discriminatory practices that were alleged were in fact taking place. Then -- remember, this briefing book place May of 2012 -- then you came here to a subcommittee hearing on this issue on July 25th, where we were investigating the discriminatory filters used to hold up the 501(c)(4) applications of groups.

Specifically, you were told that these conservative groups felt that they were being harassed, and you were asked this question, quote: "What kind of letter or action is taking place at this time that you are aware of?" And then knowing full well that these filters were being used to target certain groups, you said, and I quote: "I am aware that some 200 501(c)(4) applications fell into this category, the determination letter process. We did group these organizations together to ensure consistency, to ensure quality. We continue to work those cases," close quote.

That was your answer to this committee after you had received the briefing that these (sic) targeting was occurring, which you just earlier acknowledged was outrageous. Now, the law governing how you must respond to congressional inquiries requires you to tell not only the truth, but to tell the whole truth. You, quote, "cannot conceal or cover up by any trick, scheme or device, a material fact."

How was that not misleading this committee? You knew the targeting was taking place. You knew the terms "tea party," "patriots" were being used. You just acknowledged a minute ago that they were outrageous. And then when you were asked about this after you were briefed about this, that was the answer you gave us? How can we not conclude that you misled this committee?

MILLER:
Sir, that was a lot of questions, sir.

RYAN:
It's one. How can we conclude that you did not mislead this committee?

MILLER:
I did not mislead the committee. I stand by my answer then. I stand by my answer now. Harassment, discussion that was part of that question, implies political motivation. There is a discussion going on. There is no political motivation.

RYAN:
Let me ask it again.

MILLER:
May I answer the question, sir?

RYAN:
Let me just -- I going to help you -- give you some clarity here.

Here is the question you were asked: What kind of letter or action is being taken at this time that you are aware of?

MILLER:
So the discussion of the context of that, and again we need to go back and look at the context, there was the listing. There was the treatment of the cases. My understanding of that question was the treatment of the cases, because all of the letters -- and he was talking, I think, with Mr. Marchant -- was talking about the -- I'm hearing that people are complaining about letters. My response was to that.

We found out about those letters. We dealt with them. As has been explained, we gave more time. We went and talked to them about -- about expanding the way they could answer it. And we dealt I think fairly and successfully with the donor list issue.

RYAN:
You knew of our concern of this targeting. You knew of the allegations that had been reported to this committee. We brought you here to talk about it. You had received a briefing that this targeting was taking place, but you did not divulge that to this committee when we were asking questions about this.

You said in your answer that you were aware of some 200 501(c)(4) applications fell into this, quote, "category. We did these groupings together to ensure consistency, to ensure quality. We continue to work those cases."

You didn't mention targeting based on ideology. You didn't mention targeting based on buzz words like "tea party" or "patriots" or "9/12." You knew that, but you didn't mention this to the committee. Do you not think that that's a very incomplete answer?

MILLER:
I answered the question truthfully.

RYAN:
All right. Let me ask you one more question. You just gave us a list the other day of approved tax exempt applications for advocacy organizations through 2009, May. We don't know how long these applications sat or how long it took to process them. Just from Mr. Rangel's questioning and from earlier testimony, the IRS was doing this because they were concerned about political activities by nonprofits. That's the debate that seems to be taking place here.

Some of these that were approved were Chattanooga Organized for Action, the Progressive Leadership Alliance, and the Progressive USA. If you were concerned about political activity, did you have targeting lists that contained words like "progressive" or "organizing" in their names?

MILLER:

Sir, let me -- let's step back again and let me walk you through the process. We centralized cases based on political activity evidenced in the file. We took a shortcut on some of it, but we collected, to be blunt, more than tea party cases. Mr. George's (inaudible) report said...

(CROSSTALK)

RYAN:
There were no "progressive" or "organizing" buzz words that were used for targeting. Is that correct?

MILLER:
That's correct, but we collected more people because anytime it was seen that political activity was part of the file, it went into...

CAMP:
Thank you. Time has expired.

Mr. McDermott is recognized?

MCDERMOTT:
Thank you, Mr. Chairman.

These days, Congress can't seem to agree on whether the sun is shining, but this issue has brought us together in a way unlike anything you've seen here.

We all agree these applications were poorly handled and that the IRS (inaudible) on this basically at best when we asked about it. Public servants ought to be held to a higher standard, and none more so than the agency that oversees and enforces the tax collection.

The IRS is an easy target and everybody wants to get a pitchfork when the tax man comes. But with our 24-hour media cycle passing around lighter fluid, it's getting harder and harder to get to the facts and fix what really has gone on here.

There's a difference, in my mind, between stupid mistakes and malicious mistakes. The overwhelming majority of applications for tax-free status for political activities were from far-right groups. And examiners took a shortcut, which they clearly regret, deeply regret. The report says in black and white on page seven, quote, "The determination unit employees stated that they considered the tea party criterion as a shorthand term for all potential political cases," close quote.

These applications were singled out for their names and policy positions, not for the activities, which is really what they should have been singled out for. Some of these political groups were delayed in getting their taxpayer status

and that was wrong. Much as I dislike the right, I think it's wrong to be uneven-handed in government application.

The inspector general report says that no one acted out of malice or political motivation. Mr. George, I want to know, do you still stand by that?

GEORGE:
We have no evidence at this time to contradict that assertion, sir.

MCDERMOTT:
If we really want to root out the causes of this, we need to talk about campaign finance laws and Citizens United decision in 2010, which is when this all started. It all started right after Citizens United. We could get in, we could do political advertising, and we won't have to report anybody's name.

Applications for secret money political organizations increased by fourfold after that Supreme Court. This small group of people in the Cincinnati office screwed up. Nobody's going to deny that. They simply screwed up.

But the Congress, this committee messed up by not giving any clear criteria for what a real charitable organization is.

The law is not clear, and people have to make judgments. And that means they gotta collect a lot of data to try and figure out what people are actually up to.

Mr. Miller, clearly there's a problem with our current way of determining what an organization's primary purpose is. And I want to ask you in a minute about that. I want you to think about it while I'm talking.

But as I watched this conversation shift from -- from find out what's right and wrong and fix it to the IRS is broken and let's repeal it, imagine a country without -- we could have repealed that along with the Obamacare yesterday -- I'm reminded that it's only part right, part wrong. It's also about Republican storyline in this -- in this agenda.

We need to find some truth here, and I've heard members of this committee now talk about it.

The IRS can't access your medical files. Is that true, Mr. Miller?

MILLER:
Correct, sir.

MCDERMOTT:
They cannot find out your private medical information.

MILLER:
That's correct, sir.

MCDERMOTT:
Their job in Obamacare is simply to collect paid -- financial information on which a determination is made as to whether somebody can get a subsidy for their premiums. Is that correct?

MILLER:
Were you covered and over what period is what we would be getting.

MCDERMOTT:
It is not a fascist takeover that's going on here of the health care system. And let's not forget that the IRS has one of the hardest and most hated jobs, and there are thousands and thousands of good solid hard-working Americans who work every day to run this system.

And a couple of people make a problem, that does not damage the organization in my view. You get rid of the people who made the problem.

But I would really like to hear from Mr. Miller, what do you need that would make it so that this wouldn't have happened before?

MILLER:
Sir, there are two things, sir.

And I -- and I appreciate the kind words for our people, because we are an incredibly hard working and honest group, frankly, and that seems to be forgotten in all of this.

With respect to political activity, it would be a wonderful thing to get better rules, to get more clear rules. And in terms of our ability to get to this work, it would be -- it would be good to have a little budget that would allow us to get more than the number of people we have to do 70,000 applications, and do our job in looking at whether an organization is tax exempt or not.

CAMP:
All right. Time has expired.

Mr. Nunes is recognized.

NUNES:
Thank you, Mr. Chairman.

Mr. Miller, do you know the director of the IRS's Exempt Organizations Division, Lois Lerner?

MILLER:
I do, sir.

NUNES:
Are you aware that she testified before this committee last Wednesday, on May 8th?

MILLER:
I believe I was.

NUNES:
Are you aware that she did not acknowledge this investigation at the time?

MILLER:
Actually, I do not know that, but I was engaged in other testimony that day.

NUNES:
Were you aware that the IRS was preparing a statement to put out during this time last week?

MILLER:
Yeah.

NUNES:
An apology letter?

MILLER:
I don't know whether we knew at that time or not.

NUNES:
Wouldn't Ms. Lerner have known that at the time last week when she testified before this committee?

MILLER:
I don't know that.

NUNES:
Did you know that Ms. Lerner was going to appear last Friday, May 10th, on a panel called "News from the IRS and Treasury" at the American Bar Association conference?

MILLER:
I knew she was appearing. I did not know the topic.

NUNES:
Did you or any of your subordinates direct Lois Lerner to make the public statement at the panel discussion acknowledging the targeting of tax-exempt groups?

MILLER:
It was a prepared Q&A.

NUNES:
Do you know Ms. Celia Roady, a member of IRS's Advisory Council on Tax-Exempt and Government Entities?

MILLER:
I do.

NUNES:
Was Ms. Roady's question to Ms. Lerner about targeting conservative groups planned in advance?

MILLER:
I believe that we talked about that, yes.

NUNES:
Did you ever have any contact, either by e-mail, phone or in person, with the White House regarding the targeting of tax-exempt groups from 2010 until today?

MILLER:
Absolutely not.

NUNES:
How about the Department of Treasury?

MILLER:
I certainly would have had some conversations with Treasury in my role as acting commissioner because I reported to them. On this topic it was very -- it would have been, I believe, I'll have to go back and look, but very recent that that conversation would have taken place.

NUNES:
How about President Obama's re-election campaign?

MILLER:
No.

NUNES:
Did you ever have any contact with anyone associated with Organizing for America or its nonprofit successor Organizing for Action?

MILLER:
No.

NUNES:

Did you ever have any contact with anyone associated with ProPublica?

MILLER:
I don't believe so, but there was -- when this whole thing came out, that was previously referenced, I think the IRS might have talked to them, yes.

NUNES:
Something that would probably clarify your involvement in any of this, Mr. Miller, would be if you submitted to this committee your e-mails, phone records and personal schedule from 2010 until you resigned. Would you be willing to do that?

MILLER:
I'll have to see what's legally appropriate.

NUNES:
You know we could subpoena those records.

MILLER:
I understand. And I have to talk to my lawyers and the agency. I am just saying I don't know. You're asking me and, you know, we'll talk.

NUNES:
Mr. Chairman, I would suggest that we work hard to get those records. I would also encourage you to contact Ms. Roady and Ms. Lerner to testify before this committee at our earliest possible time.

I just have one last question, Mr. Miller. You really are not taking any acknowledgment that you knew anything, that you didn't do anything wrong. You've said that numerous times on the record today, that you did nothing wrong.

So I find it hard to believe, why did you resign or why are you resigning?

MILLER:
I -- I never said I didn't do anything wrong, Mr. Nunes. What I said is contained in the questions. I resigned because as the acting commissioner what happens in the IRS whether I was personally involved or not stopped at my desk, and so I should be held accountable for what happens.

Whether I was personally involved or not, a very different question, sir.

NUNES:
Well I hope that you will be willing to submit all of your e-mails, phone records, any personal meetings that you had in the last four years. And I think that would really, I think, keep your reputation in good standing with this committee and the American people.

MILLER:
Obviously, we'll have to talk about that. But I'm not saying no. I'm not. I just don't know.

NUNES:
Thank you, Mr. Miller.

I yield back my time, Mr. Chairman.

CAMP:
Mr. Neal is recognized.

NEAL:
Thank you, Mr. Chairman.

Mr. Chairman, earlier you referenced an article from USA Today. And I would like for the purpose of this hearing to insert an article from Bloomberg News that appeared on May 14 indicating that there were Democratic-leaning organizations that were the focus of the IRS as well.

CAMP:
Without objection.

NEAL:
Thank you.

Mr. Chairman, when I woke up this morning, as I do just about every morning now, I went to my phone. And I was curious about what the word of the day would be. And the word of the day, because Merriam-Webster is located in my hometown.

And, Mr. Miller, you've rejected the term "targeted". Is that correct?

MILLER:
I think it's a -- it's a -- a term that implies something that didn't exist here.

NEAL:
OK. Let me draw you into the weeds, based upon what Merriam-Webster, by sheer irony this morning, suggested, and that is they use the term "litmus test," which they define as a single factor, as an attitude event or a fact that is decisive in choosing these organizations.

Would you say that there was a litmus test?

MILLER:
No, sir. There was -- the litmus test, if any, was political activity.

NEAL:

Political -- OK.

I have one of my constituents who contacted my office yesterday, he was outlining a pretty egregious situation. He's treasurer of a small nonprofit in Massachusetts, a volunteer organization, I should note. And their association was told by the IRS employees that they were not required to file a Form 990 because of their small size, so they didn't file one.

This past November they received a letter from the IRS saying that their tax-exempt status had been revoked for failure to file the necessary forms -- without any advance notice.

So The IRS told them they no longer needed to file the forms, but instead of notifying them first about the problem and allowing them to fix it, especially in light of the advice they were given by IRS, the IRS just went ahead and revoked their tax-exempt status.

NEAL:
They now have to reapply and pay. This is a nonprofit that's been around for 60 years.

Now, taxpayers should not be intimidated by the IRS. There's broad agreement on that today. The American people should not be afraid of the IRS. There's broad agreement on that today. But we should be able to rely on advice that they provide not be punished for it. So I hope that we're gonna have an opportunity to work on this specific constituent issue.

But I want to turn to a topic of recent focus by the IRS, and that's obviously the question today, and it's the allegation that (inaudible) their political views that have caused them to become that focus.

We all know that's outrageous and unacceptable, and a thorough review will get us to the bottom of this and ensure that it never happens again. But let's not forget something this morning: Even with the egregious actions that have been acknowledged by the IRS, there's still an underlying problem here, and that's 501(c)(4)s being engaged in politics.

After Citizens United, the IRS was flooded with applications, as you've indicated, seeking 501(c)(4) status. And why was that? In large part because super-PACs must disclose their donors while 501(c)(4)s do not.

As policymakers we have many disagreements on this committee in between the parties. However, I think that we should be able to agree on that whole notion of disclosure.

Now, the case that unleashed the torrent of money in public life was Buckley v. Valeo in 1976, which the court held that money enabled speech. But the caveat included in that opinion, which while never fully acknowledged but probably was written by Justice Brennan -- quote, "The suggestion that sunlight is said to be the best of disinfectants, electric light the most efficient policeman."

So as part of our scrutiny, I think that we all ought to be able to agree based upon this problem here today that the simple act of transparency and disclosure would alleviate much of what has happened here. There wasn't this rush because they wanted to join the Sisters of Mercy and Common Cause for the purpose of engaging politics. It wasn't many instances to hide the donors.

Now, I'm hoping that we can get to the bottom of this in fuller context. But I want to ask you specifically, Commissioner: Has anyone been disciplined directly related to this development review approval and use of inappropriate criteria? And have any actions, corrective actions, been put in place to ensure that this does not happen again?

MILLER:
So let me -- let me walk through. The answer to that is yes. What -- what happened in May when I was told this, I asked the -- the management there to reassign an individual who had been involved in these letters that were objectionable. I also asked oral counseling to be given to the person who we thought at the time was responsible for the listing.

I also was aware that TIGTA was looking at this. And as I mentioned in my statement, now that they're out with the facts we will be able to look again.

I should note, just because Mr. Campas (ph) is -- this is -- I got to be very careful here -- the oral counseling that was provided, it turned out that that person may not have been involved. So what was done in lieu of that was all the managers in the group were brought in and walked through the new processes; and explained that this was no way to behave as the IRS.

The last thing is, sir, is that in terms of the future, the listing cannot be done and cannot be changed absent a very high level of approval at the executive level.

CAMP:
All right, thank you.

Mr. Tiberi is recognized.

TIBERI:
Thank you, Mr. Chairman.

Mr. Miller, in January of 2010, an organization called Liberty Township Tea Party in Ohio applied for tax-exempt status. There's no resolution of their application to this day.

Liberty Township Tea Party received 35 questions -- I've got them in front of me -- in March of 2011, but really over 94 questions when you look at all the sub questions.

The letter directs the applicant to provide, under penalty of perjury, some of the following information: copies of all activity on Facebook and Twitter; resumes of all past and present employees; whether a past or present employee or their family members plans to run for office in the future.

Mr. Chairman, I'd like to submit a copy of a Dispatch -- Columbus Dispatch article from yesterday that -- that references this. And in fact, Mr. Chairman, in the article -- I quote a board member from Liberty Township Tea Party, who's actually in the audience today, Tim Savaglio, quote, "We're an educational group," Savaglio said. "We don't have a paid staff. We don't take stands. We don't endorse candidates. We don't man phone banks. We don't do any of those kinds of political activities."

Mr. Miller...

CAMP:
Without objection, the article will be placed in the record.

TIBERI:
Thank you, Mr. Chairman.

Mr. Miller, question 26 of the IRS questionnaire to the tea party group is as follows: "Provide details regarding your relationship with Justin Binik-Thomas, an American citizen who is in the audience today who still doesn't know why he was question number 26.

The Dispatch article goes on to say Binik-Thomas said he was shocked when he found out that the IRS was asking questions about him of a group he barely knew. He'd been involved in a Cincinnati tea party. He'd even served as a spokesman. But he said he had not worked with the Liberty Township Tea Party. Quote, "The obvious question that comes to mind are, why am I being targeted amongst all the others? Where does this information go in the end? Clearly, it's housed in the IRS, but does it get shared with other government agencies? Do I get an audit? If I do, is it against my business? All of those things go through your mind."

Now, to this day he doesn't know why his name is question number 26 for an organization who still hasn't received approval since January of 2010.

Now the article goes on to say Democratic Governor Ted Strickland, Ohio -- former governor of Ohio, his top aides -- who I know, very political -- filed for tax-exempt status as a 501(c)(3) organization in August of 2011. They were approved nine months later.

Mr. Miller, another organization in Ohio, the Ohio Liberty Coalition. This is their -- part of their document in response to IRS requests. This is only part of it. And this -- all these documents weren't enough for the IRS to approve their application.

And in fact, Tom Z, who's a former president of the organization who is here today, said that they applied in June 2010. They finally received approval -- this wasn't enough by the way -- in December of 2012, one month after the November election.

There's another lady I met in the group -- in the audience from Ohio, Fremont, Ohio, who indicated that her group had a book club, and the IRS demanded a list of all the books that they had read and a book report from the group explaining what was in the books that they read. You can't make this stuff up. This is unbelievable.

Now, Mr. Miller, I don't know how you can defend any of this, and I don't know how you can say that it's not political when the liberal group got an exempt status and three that I just mentioned didn't for over two years.

Mr. Nunes mentioned Ms. Lerner. Who was her boss and 2011 and 2012? Who did she report to?

MILLER:
I believe it would have been...

(CROSSTALK)

TIBERI:
Sarah Ingram maybe?

MILLER:
Part of that time and part of that time another gentleman.

TIBERI:
OK. And that other gentleman has since submitted his resignation?

MILLER:
Believe so.

TIBERI:
And what is Ms. Ingram doing today? What's her job title?

MILLER:
She works on implementing our -- on implementing the Affordable Care Act.

TIBERI:
OK. Who promoted her to that position?

MILLER:
I would have moved her into that position.

TIBERI:
Why would you promote somebody to that position who was in charge of the Exempt Organization Division, which certainly has had some controversy over the last couple years, under an investigation?

MILLER:
Because she is a superb civil servant, sir.

TIBERI:
So she had nothing to do with this?

MILLER:
I wouldn't imagine so.

(CROSSTALK)

MILLER:
By the way, I can't speak to individual cases. I can say generally, we provided horrible customer service here. I will admit that. We did horrible customer service.

(CROSSTALK)

MILLER:
Whether it was politically motivated or not is a very different question.

TIBERI:
You targeted an individual, an American who still doesn't know to this day why he was question number 26.

CAMP:
All right, time has expired.

Mr. Becerra is recognized.

BECERRA:
Thank you, Mr. Chairman.

Gentlemen, thank you very much for your testimony.

And let me key off of something, Mr. Miller, you said. You said foolish mistakes were made. I think the president actually said it better. He said that the handling of those tax-exempt applications and that process at the IRS was outrageous and intolerable. No excuse.

And as much, as we know that folks at the IRS have a thankless job, because they have to go and tell their fellow Americans that they may be audited, or they have to do this work understaffed, we have to maintain the confidence in the system, because it's a voluntary system of the payment of our taxes.

So you are right, it was a foolish mistake, but the president is even more correct that it was outrageous and intolerable.

Now let me also focus on something, Mr. George, you said. When you were asked was there any finding or evidence of political motivation here, you said no.

GEORGE:
That is correct, sir.

BECERRA:
And so what we find is a situation where inexcusable activities took place, because it erodes the confidence of the American people and a system where they participate voluntarily.

And if there is a place of public service where you have to have the highest level of conduct and standards, it's at the IRS. And so Mr. Miller, I think it's important for those who are in positions of authority that the buck has to stop somewhere, and I think that is exactly what we are seeing. That is not to diminish the good work that is done by anyone within the IRS over the years.

And so I hope you understand you are here today talking to us because we need to get to the bottom of this. We need to clean up and clear out so we can go back to the business of making sure that people respect the fact that we have a voluntary system of paying our taxes.

Having said that let me ask a question of Mr. George. In your report, you indicate that -- and I think I'm quoting correctly here -- there appears to be some confusion by the determinations unit specialist and applicants on what activities are allowed by the Internal Revenue Code section 501 or allowed by IRC 501(c)(4) organizations.

We believe this could be due to the lack of specific guidance on how to determine the, quote, "primary activity," end quote, of a (c)(4) organization. Treasury regulations state that (c)(4) organizations should have social welfare

as the primary activity of their mission. However, the regulations do not define how to measure whether social welfare is an organization's primary activity.

So Mr. George, a question. Could some of these delays in processing some of these applications been avoided if there were clear guidance on section 501(c)(4) organizations and what their primary activities constitute?

GEORGE:
The direct answer is yes, sir, but I should also note that, that determinations unit did seek clarity from Washington headquarters and it took months before they received a response.

BECERRA:
And that's a great way, then, to lead to Mr. Miller.

I think what we have been saying for quite some time many of us is that there is not clarity in what is social welfare. So you have many (c)(4) organizations, these nonprofit organizations -- the good guys, I will call them -- who are trying to do good work and they are being tainted by some of these organizations out there that are doing nothing more than political, because the Supreme Court gave them license now to go ahead and use a nonprofit status to go out there and do politics.

Is the law clear, Mr. Miller, in your mind on what is political campaign activity?

MILLER:
No, it's very difficult, sir.

BECERRA:
Can you distinguish between section 501(c)(4) organizations and say a section 527 political organization?

MILLER:
That is difficult, but presumably the level of political activities and expenditures needs to be less than the 501(c)(4) area.

BECERRA:
Let me then suggest to you, Mr. Miller, to go back to the opportunity with your fellow employees at the IRS. And Mr. George you in your capacity as our inspector general, thank you for your service, to please communicate that we need to get you all to give us your sense of what is the best guidance so we don't have this proliferation of organizations that are abusing their nonprofit status at the taxpayers' expense because they get all these write-offs, so we won't run into this situation again in the American people can have confidence in their system and the government.

And I thank you, Mr. Chairman. I yield back.

CAMP:
Thank you.

Mr. Reichert is recognized.

REICHERT:
Thank you Mr. Chairman.

Mr. Miller, I have about 15 minutes to question you, but I only have five.

I am disappointed at what I'm hearing. I don't remember and I don't recall and I don't believe (ph) -- I don't even know who investigated the case, but yet you say it was investigated, but you don't even know who investigated. I'm puzzled by that.

You are not instilling a lot of confidence in this panel and across this country, but I want to go back to your version to the word "target" or "targeted." And you said there was no targeting because there was no intent. Notwithstanding the intent of IRS personnel, would you not agree that certain groups were treated differently because of the name or the policy position?

MILLER:
So, I believe, sir, that...

REICHERT:
Were groups treated differently? That is the question, because of their policies position or their name? That is as a yes or no question. No one was treated differently?

MILLER:
May I answer? I would like to be broader than yes or no. I understand your view, sir.

My understanding of the cases that went into this queue is that it included elements from -- throughout the political spectrum and that of the 300 cases that were looked at by the treasury inspector general, 70 of the 300 had "tea party" in the name.

My understanding is that the organizations...

REICHERT:
Excuse me, Mr. Miller?

MILLER:
Yes, sir?

REICHERT:
It is my time and I'm going to take it back for now. I'm not going to be delayed here. So your answer was no, no one was treated differently?

But to take you back to Mr. Ryan's question, you knew that groups with the term "tea party" had been automatically subjected to extra scrutiny. You have admitted that today. You acknowledged your investigation into whether certain groups were being treated differently. Whether there was intent or not, didn't this committee have the right to know?

MILLER:
I answered all questions truthfully, sir.

REICHERT:
Didn't this committee have the right to know that groups were being treated differently -- that you have this group of 200, 300 whatever the number was, did not this committee have the right to know?

MILLER:
I answered all the questions I was asked.

REICHERT:
So your answer is a non-answer once again.

It's an easy question. Do you not think that Congress has the right to know all the information that you knew?

MILLER:
So look...

REICHERT:
Did -- did -- does this committee -- Mr. Miller, Mr. Miller, does this committee have the right to know the information that you knew? Yes or no?

MILLER:
This committee...

REICHERT:
Yes or no?

MILLER:
... is always going to get that information.

(CROSSTALK)

REICHERT:
You testified before this committee, Mr. Miller...

(CROSSTALK)

REICHERT:
Please. Mr. Miller?

MILLER:
Yes, sir.

REICHERT:
You testified before this committee and you did not provide the information. You did not share the information you knew. So my question is: Do you not believe that -- this is the United States Congress here that you're accountable to, which is accountable to the people, the American citizens across this country -- do you not believe that it's your job to provide us with the information that you knew so that, as you said, the people of this country can be properly served, honestly?

You're a law enforcement agency, for crying out loud. I was a cop for 33 years. Now, you've raised your right hand today. Did this committee have the right to know what you knew? Yes or no?

MILLER:
I answered all questions truthfully. I also will tell you that it was...

(CROSSTALK)

REICHERT:
Let me ask -- I going to go to Mr. George -- I'm going to go Mr. George because my time -- you're not going to cooperate with me, Mr. Miller, and you've been uncooperative during this hearing.

Mr. George, we've heard that an early draft of your report indicates that you were unable to determine who initially directed the IRS employees to target groups based on their political beliefs. Is that true?

GEORGE:
That we were unable to, correct.

REICHERT:
Yes.

Mr. Miller, you're the commissioner. Who was responsible? You conducted the investigation. Who was responsible?

MILLER:
I don't have that name, sir.

(CROSSTALK)

REICHERT:
But why don't you have the name?

MILLER:
... (inaudible) that I was originally...

(CROSSTALK)

REICHERT:
Have you asked anybody?

MILLER:
Yes, I asked...

(CROSSTALK)

REICHERT:
Who did you ask?

MILLER:
I asked...

(CROSSTALK)

REICHERT:
You don't have that name either.

MILLER:
I'll be glad to provide those names...

(CROSSTALK)

(UNKNOWN)
Let him answer the question.

(CROSSTALK)

CAMP:
(inaudible) the gentleman from Washington state's time.

REICHERT:
Who did you ask?

MILLER:
I asked the senior technical adviser.

REICHERT:

And what's the senior technical adviser's name?

MILLER:
Nancy Marks.

REICHERT:
And what did Nancy tell you? Who is responsible?

MILLER:
That, I don't remember, to be honest with you.

REICHERT:
You don't remember again?

CAMP:
All right, time has expired.

The committee will -- there are votes on the floor of the House of Representatives. So the committee will recess for 15 minutes.

(RECESS)

CAMP:
The committee will come to order.

If everyone could take your seats.

Mr. Doggett is recognized for five minutes.

DOGGETT:
Thank you, Mr. Chairman.

What happened here is outrageous and inexcusable, and unless those of us who strongly disagree with the tea party on many issues defend it from any impairment and allow it to be as wrong as it wants to be, we impair our democracy.

Mr. George, many charges have been made here this morning. You as inspector general under Title 5, Section 2 have a statutory responsibility as inspector general to prevent and detect fraud and abuse in the programs and operations of the IRS, do you not?

GEORGE:
That is correct, sir.

DOGGETT:
And as best I can determine, sir, you have fulfilled that responsibility faithfully and forthrightly.

Let me ask you if using the extensive audit and investigation powers you have as inspector general, you have found any evidence of corruption at the IRS?

GEORGE:
No, not at this time, sir.

DOGGETT:
Yes, sir.

And let me ask you, sir, with your extensive powers if you have found that our tax system is rotten at the core?

GEORGE:
No, definitely not rotten at the core, sir.

DOGGETT:
Yes, sir. And let me ask you, sir, if you have, using your statutory powers in fulfilling your responsibility, determined that the IRS picks who wins and who loses in America?

GEORGE:
I don't believe that is the case.

DOGGETT:
No, sir, you have not. And the statements that were made in very inflammatory charges at the beginning of this hearing, it is obvious, have no basis, in fact, at least, any fact that has yet been demonstrated this morning.

It is important that in addressing and fully correcting one wrong we not complete -- and be involved in other wrongs. Such is encouraging the proliferation of secret corporate money, not just the proliferation and pollution of our democracy by that money, but that it be tax-subsidized secret corporate money.

That we not permit those who have a fundamental disagreement with the progressive tax system using this incident as a basis for shifting even more of the burden of financing our defense and our essential government services onto working people.

That we not permit those who have an agenda that has now been voted 37 times to try to undermine the full and effective implementation of the Affordable Health Care Act so that the health care crisis is ended for families across this country.

That's what's at stake here. That's what's been discussed here. It is not based on any fact associated with this investigation to this date, as indicated by the Republican-appointed inspector general whose job it was to determine

whether any of these charges had merit.

And let me move to an area where I disagree with some of my Democratic colleagues in their comments this morning. I don't believe there's any lack of clarity in the statute here. The statute that is in effect has been in effect for decades, and it requires that before there is tax exempt status -- as Mr. Lawrence O'Donnell, as the CREW group, the Citizens for Responsibility and Ethics in Washington has pointed in a petition -- you are to be denied his status if you are not exclusively engaged in social welfare according to the statute. Is that not correct?

The statute is explicit. It uses the words "exclusively," the regulation of the IRS adopted 30 or 40 years ago uses different language.

GEORGE:
If this is addressed to me...

DOGGETT:
Yes, sir.

GEORGE:
... Mr. Doggett, I have to demure (inaudible) the secretary. That's a tax policy question, and I'm not in a position...

DOGGETT:
I'm not asking for tax policy. I'm just asking for a clear reading of the statute. And a clear reading of the statute that has been in place for decades and is in place today says that there should be a denial of tax-exempt status to any group that is not exclusively engaged in social welfare operations. And it was only after a regulation adopted long ago, long before any of you were at the IRS that changed exclusively to "primarily" that there was even any discretion for this section to be involved in this operation.

GEORGE:
Mr. Doggett, I do know that we have indicated that some clarification from those in the policy area of the Department of the Treasury might be needed in this area to help clarify again...

(CROSSTALK)

DOGGETT:
Well, in April, Citizens Responsibly and Ethics in Washington filed a petition with the Treasury Department and the IRS to address that.

If the statute, the clear wording of the statute had been followed, we would not be having to deal today with selective enforcement. We wouldn't have any problems with enforcement in this area at all. And I hope that that petition is honored and responded to promptly as I believe you have fulfilled your responsibilities, Mr. George, as inspector general.

Thank you for your testimony.

And Mr. Miller, thank you for yours, and for stepping aside.

CAMP:
Thank you. Time has expired.

Mr. Roskam is recognized.

ROSKAM:
Thank you, Mr. Chairman.

Mr. Miller, you may object to the word "targeting," but it's used in the I.G. report 16 times. So it's a common understanding of the word, and so I would just suggest that it's a well-settled doctrine and we not waste a lot of time parsing on it.

You admit that you spoke with Ms. Lerner and Celia Roady about the planted question beforehand. Can you tell us more about that conversation?

MILLER:
I did not speak to Celia Roady, and believe I did talk to -- to Lois about the possibility of now that the TIGTA report was finalized, now that we knew all the facts, now that we had responded in writing and everything was done, did it make sense for us to start talking about this in public.

ROSKAM:
Can you walk me through the logic that animated in your mind at that time where you thought it would be a good idea to make a public disclosure to the American Bar Association rather than coming and following up on your duty to disclose that to the House?

MILLER:
So we were going to do it at the same time, I believe. And our attempt was to talk to you all at the same time.

ROSKAM:
But that didn't happen, did it?

MILLER:
It did not happen, I don't believe.

ROSKAM:
What other recollection do you have or what other experience did you have when you were talking with Ms. Lerner about this scheme to have the planted question at the ABA?

MILLER:
I'm not sure what you're asking, sir.

ROSKAM:
I'm asking, what's your recollection of that conversation?

MILLER:
We talked about what would be said and -- and how we might do it.

ROSKAM:
Where did the conversation take place?

MILLER:
I believe it was over the phone.

ROSKAM:
What day did the conversation take place?

MILLER:
I'd have to look back at my notes on that, sir.

ROSKAM:
You've got notes on that?

MILLER:
I'd have to try to find them...

(CROSSTALK)

ROSKAM:
Why did you say you had notes if you don't think you have notes?

MILLER:
Sir, please.

ROSKAM:
Please?

Do you have notes or don't you have notes?

MILLER:
I don't know.

ROSKAM:

OK.

Let's shift gears. A little while ago you were -- were being -- you engaged with Mr. Reichert on the question as to whether you knew that this committee -- this whole idea of does the committee have the right to know this information. And then you sort of sheltered yourself in this idea of, 'Well, I've always told the truth.'

Let's set that aside for a moment. Now, you're a lawyer and I'm a lawyer. You know that in the process of discovery, Mr. Miller, that when you find subsequent information, counsel has a duty to disclose that to the opposite party. There is no Perry Mason moments. There is no gotcha moments. There is no litigious situation where somebody comes in and says, 'Oh, we are just showing up, Your Honor, with this information and we haven't disclosed it to the other side.'

Don't you acknowledge that you had a duty, based on your testimony before this committee, of what your actual knowledge was? Didn't have a duty, Mr. Miller, to come forward and disclose that to the committee, based on all this cascading inquiries that had happened from the Ways and Means Committee directed to you?

MILLER:
I don't believe so, sir. What was happening was, I was in possession of some facts, was not in possession of all facts. We had done an internal review to see what we needed to do to get these cases moving, because again the processing was bad, the listing was bad; those are two different pieces we were dealing with. TIGTA was in at exactly the same time. They were getting all the facts. We were gonna wait for them to get the facts so that it didn't come in and -- and either mess up their investigation or otherwise give you facts that were not correct, sir.

ROSKAM:
So you weren't concerned about the timing of the TIGTA investigation when you and Ms. Lerner made the decision to move forward and do the planted question, is that right?

MILLER:
It was done...

ROSKAM:
It was done.

(CROSSTALK)

MILLER:

We had all the facts and we had made our written response...

ROSKAM:
Right. I understand it.

So in other words, you had the actual information. The totality of the information that you're describing today, you had it all in your possession at the time at which you were under a scheme with Ms. Lerner to go and do a planted question. Is that right?

MILLER:
I sort of object to the term "scheme". We had the information, we are reaching out to the...

(CROSSTALK)

ROSKAM:
An understanding, a written or not written down contemplation...

(CROSSTALK)

MILLER:
We were reaching out...

ROSKAM:
... a manipulation, call it what you will.

You had all the information. Isn't that right?

MILLER:
We were reaching out to the committee at the same time.

ROSKAM:
Well, what form did that outreach take?

MILLER:
We called to try to get on the calendar.

ROSKAM:
You called to try and get on the calendar. Is that all you got?

MILLER:
It's the truth.

ROSKAM:
OK. You know, I find it incredibly ironic. You know, on the -- one hand, you're arguing today that the IRS is not corrupt. But the subtext of that is you're saying, "Look, we're just incompetent."

And I think it's -- it is a -- it is a perilous pathway to go down. There's a -- there's -- there's sort of this notion that -- that hasn't been satisfactorily answered, and that is, if the targeting wasn't targeting, if the targeting wasn't based on philosophy, how come only conservatives got snagged?

MILLER:
They didn't, sir. Organizations from all walks and all persuasions were pulled in. That's shown by the fact that only 70 of the 300 organizations were tea party organizations, of the ones that were looked by -- at by TIGTA.

(CROSSTALK)

ROSKAM:
... testimony is in contradiction to the I.G. testimony.

I yield back.

CAMP:
Time has expired.

Mr. Thompson's recognized.

THOMPSON:
Well, thank you, Mr. Chairman. I appreciate the fact that we're having this hearing, and want very much to be able to get to the bottom of this.

More important, I want to make sure -- or as important, I want to make sure that we are able to do all that we can to prevent it from ever happening again, for all the same reasons that many of my colleagues on both sides of the aisle mentioned today.

And I want to associate myself with the outrageous and intolerable group, as to where I think this --this ranks.

What I would like to know, General George, first, in your testimony, you had a section that is titled "Results of Review," where you say the IRS used inappropriate criteria for identifying these organizations. Is that legal?

GEORGE:
It's -- is it legal? It is not...

(CROSSTALK)

THOMPSON:
You see, I'm trying to get a sense of what inappropriate criteria...

(CROSSTALK)

GEORGE:
It is not illegal, sir. But it was...

(CROSSTALK)

THOMPSON:
And then you enumerate them, inappropriate criteria were developed and stayed in place for a total of more than 18 months. Is that illegal?

GEORGE:
It is not illegal, but it was inappropriate.

THOMPSON:
I understand that. I'm just trying to get a sense of...

(CROSSTALK)

GEORGE:
... familiar with, it's contrary to Treasury regulations and other policies then in place by the department.

THOMPSON:
Understand. The substantial delays, is that illegal or inappropriate?

GEORGE:
It's inappropriate.

THOMPSON:
And then the third, the unnecessary information, illegal or inappropriate?

GEORGE:
Inappropriate.

THOMPSON:
OK. Thank you very much.

You also outlined recommendations that you think are most critical and explain whether they are, if enacted they are enough to prevent this from happening again. Are they?

GEORGE:
The vast majority are, and the agreed -- the IRS agreed to the vast majority of them.

THOMPSON:
And do you have some mechanism, some matrix for making sure that they are put in place?

And is there a plan to go back and review these and to continue your good work of review to ensure that they -- your recommendations are being followed out?

(CROSSTALK)

GEORGE:
Excuse me.

THOMPSON:
And -- and that your recommendations are enough to protect the citizens of our great country?

GEORGE:
Mr. Thompson, you anticipated almost our entire future plan. We are both going to take a look to see whether the IRS has successfully implemented, and as I believe you indicated, or someone did, the president indicated that he was going to ensure that the IRS complies with those recommendations. And it would definitely be our intention to follow up to guarantee that that has occurred.

THOMPSON:
One of the responsibilities that we have is also an oversight responsibility. Is there something in your recommendations and in your subsequent plans that will keep us in that loop? Are we -- or are we going to have to find out about this outrageous and intolerable behavior through some other means?

GEORGE:
Mr. Thompson, we publish an audit plan each year laying out which audits that we're going to engage in. We request information or solicit -- we solicit ideas from Congress, from the administration and from anyone who has a tangible role in the system of tax administration.

And it is our intention to once again do that, and there's no doubt in my mind that we will follow up with Congress on this matter on a regular basis.

GEORGE:
Thank you.

Mr. Miller, what are your obligations in regard to reporting this type of behavior to Congress?

MILLER:
I'd have to go back and take a look. I don't believe there's an obligation. What happened here, sir, is we knew TIGTA was in. I knew TIGTA was in in May, almost immediately, when we were involved.

We had had a meeting with -- with Mr. George and company in May where there was an indication they'd be done this summer. Our understanding is they were going to get the facts, they were going to get them out there. There was never the intention or belief that these facts would not come out in full.

THOMPSON:
General George, is there a need to pass specific legislation that would make it more difficult, or hopefully impossible, for this to happen again, and to strengthen the requirements for reporting when something this outrageous and intolerable takes place?

GEORGE:
Mr. Thompson, I will answer -- I will answer your question in full, but I have to again preface that the secretary has delegated tax policy questions to the assistant secretary...

(CROSSTALK)

THOMPSON:
That's not a process question.

(CROSSTALK)

CAMP:
Time has expired, so you can supplement that answer in writing if you wish.

Mr. Gerlach is recognized for five minutes.

GERLACH:
Thank you, Mr. Chairman.

According to the inspector general's report, the IRS started its inappropriate handling of certain tax-exempt organization applications in early 2010.

And to swing back to some of your prior testimony, Mr. Miller, you indicated that you never spoke -- or, excuse me, let me -- before I ask that question let me highlight two -- two pieces of media articles that appeared also, one in 2010 as well as one more recently.

In September 2010, there was an article in the Weekly Standard concerning the concerns of the Koch Industries attorney that there had been confidential taxpayer information, potentially in the hands of senior administration officials, that were part of an August 27. 2010, on-the-record background briefing.

Subsequently, just a few days ago, there in the USA Today there was a column, an op-ed by a gentleman connected with the National Organization of Marriage who indicates in that op-ed that the release of this organization's

confidential tax return to the Human Rights Campaign is a canary in a coal mine of IRS corruption.

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Contrary to assertions that the targeting of tea party groups was an error in judgment by low-level IRS bureaucrats, the release of this confidential data to a group of this nature suggest the possibility of complicity at the highest levels of politics and government.

So, back to the questions of whether there was any information sharing of taxpayer records, taxpayer returns with anybody outside of the IRS, Mr. Miller, you indicated in testimony some moments ago that you never spoke personally or communicated personally with anyone in the White House about the sharing of confidential taxpayer information. Is that correct?

MILLER:
I believe so.

GERLACH:
Do you have any reason to believe that at some point you did from, say, January 2010, speak to somebody in the White House or communicate in another way with somebody in the White House about the sharing of confidential taxpayer information?

MILLER:
I don't think that would happen. I don't...

(CROSSTALK)

GERLACH:
So your answer is no, you did not?

MILLER:
I don't believe I did.

GERLACH:
Are you aware of any other IRS official from that time period to present that communicated with anybody in the White House concerning the sharing of confidential taxpayer information to somebody outside of the IRS?

MILLER:
So may I ask, can I ask, are you asking whether...

(CROSSTALK)

GERLACH:

I'm asking whether any -- you're aware of anybody else in the IRS that ever, from January 2010 to present, communicated or spoke with anybody in the White House about the sharing of confidential taxpayer information?

MILLER:
So, I don't believe so, but there -- what I'm confused about, sir, I apologize, but just so I'm clear of what I'm answering. Are you talking about whether I believe we shared information?

GERLACH:
Whether you have information or belief that any confidential taxpayer information -- taxpayer being individuals, being organizations, being businesses -- all of that information being shared with somebody outside of the IRS in violation of section 6103?

MILLER:
I have no knowledge of that.

GERLACH:
You have no knowledge of that.

MILLER:
That's -- that's a question I understand. Thank you, sir.

GERLACH:
You did indicate previously, however, in questioning, that you did speak yourself with Treasury Department officials regarding the sharing of information. I'm not saying the White House, now. I'm saying the Treasury Department. If I wrote that correctly, you did speak to somebody in Treasury about that at some point. Is that correct?

MILLER:
I don't think so. I mean, but again, let's -- let's be clear.

GERLACH:
Did you ever speak -- I'll ask the question more clearly and more directly.

(CROSSTALK)

GERLACH:
Did you ever speak or communicate with anybody in Treasury Department who was not within the IRS about the sharing of confidential taxpayer information, in violation of 6103?

MILLER:
Can I re-phrase it and you tell me...

(CROSSTALK)

GERLACH:
No. I phrase the questions. You phrase the answers.

MILLER:
I don't know what you're asking, sir. If you're asking me whether did I ever share 6103 information...

(CROSSTALK)

GERLACH:
I didn't ask that. Did you ever communicate or speak with anybody in the Treasury Department, not within the IRS, about the sharing of confidential information -- taxpayer information?

MILLER:
I don't believe so, but I don't know whether you're talking about the subject, which would be absolutely fine to talk to them about, or the sharing...

(CROSSTALK)

GERLACH:
That's what I'm trying to inquire about, Mr. Miller. I'm trying to find out what you did, what you knew and when you knew that, and who you spoke with. So you're saying today that at no time from January 2010 to present did you speak to somebody in the Treasury Department about the sharing of confidential taxpayer information.

MILLER:
No. What I'm saying, sir, is the following. I...

(CROSSTALK)

GERLACH:
No, I'd like you to answer my question, sir.

MILLER:
... (inaudible) taxpayer information...

(CROSSTALK)

GERLACH:
Did you ever do that?

MILLER:
Did I ever talk to them about the sharing of...

(CROSSTALK)

GERLACH:
Talk or communicate. It might have been e-mail. It might have been by fax. Might have been...

MILLER:
I don't believe so, but again...

GERLACH:
... by sign language.

MILLER:
I could tell you categorically, I never shared information. Did I ever talk to them about the rules around it, I don't think so, but that would be permissible.

GERLACH:
Well, were you aware -- I think to Chairman Camp's questions -- you were aware of news reporting about the National Organization of Marriage and the concern they had about the sharing of their confidential information. You indicated on the record that you were aware of that news story. So, did -- on that story or any other story, did you talk or communicate with anybody outside the IRS in Treasury about that issue?

MILLER:
I don't know. I don't believe so, though.

GERLACH:
OK. Will you check all of your records, all of your notes, all of your e-mails, to get back to this committee about whether your answer is different than what you're providing right now.

MILLER:
Yeah, but what I can say again is...

(CROSSTALK)

GERLACH:
I have limited time.

CAMP:
All right. Time is expiring -- has expired at this point.

So why don't we move onto Mr. Kind?

KIND:
Thank you, Mr. Chairman.

And thank you, gentlemen, for your testimony here today. I think it's been illuminating and very helpful.

Mr. Miller, let me start with you. I assume you agree with the premise that if there is an agency in the federal government that just needs to be above reproach, no hint of bias, partisanship, ill- treatment, mistreatment, unequal treatment to any individual or any organization, it is the IRS. Is that...

MILLER:
I agree, sir, and that's what's sad about this.

KIND:
And obviously, the optics of what happened there in the Cincinnati office in reviewing the applications, this is what comes from that. Is that right?

MILLER:
The perception is -- is bad.

KIND:
It's my understanding, too, that based on the inspector general's report and the recommendations that the IRS has taken that up and is trying to do their best to implement that, to ensure that this does not happen in the future again?

MILLER:
We will implement all recommendations and it will not happen again.

KIND:
Mr. Neal asked you previously in his line of questioning about the accountability -- who is being held accountable and why on that. Obviously, you've rendered your -- your resignation to the president and he's accepted that, as commissioner of IRS. Is that right?

MILLER:
I have -- I have done so to the secretary.

KIND:
OK. And any other instances of accountability as far as those at the Cincinnati office, those in charge of the Cincinnati office in the development and the use of this criteria?

MILLER:
Sir, I think I mentioned that there were two instances in which there was -- there was counseling suggested and there was a reassignment of someone. But what I should say, and what I said in my opening statement is we now have possession of the facts with respect to the TIGTA report. Now is the time we should be looking at that.

(CROSSTALK)

KIND:
Any push-back from the IRS with the inspector general's report and some of the recommendations that they're making? Any difference of opinion?

MILLER:
There is no air between us on the recommendations.

KIND:
OK. Is there a role for the Congress to be working with the IRS to ensure that something like this does not happen in the future? I'm thinking specifically of (inaudible) Citizens United and 70,000 applications that was submitted and a doubling, I understand, of (c)(4) applications, too. Do you feel there is sufficient personnel in order to expedite the review of these applications?

MILLER:
There are not sufficient personnel.

KIND:
Of course, I don't think we'll have many recommendations on the other side as far as allocating more resources to the IRS so you're sufficiently staffed in order to deal with the huge influx of applications that the IRS is experiencing right now. I think there is a role for the Congress and we've got to share some responsibility as well.

But Mr. George, let me ask you. I think part of the problem is the definition of the criteria of "primarily engaged in social welfare" seems to be an inherently subjective criteria, with no clear bright lines or clear rules. I think the IRS was trying to further define that for the division in Cincinnati. But is there further tightening of that definition which would be helpful to IRS personnel when it comes time to review the applications?

GEORGE:
The answer is yes.

KIND:
Is that something that has to be done internally with IRS? Or is there a role for Congress to intervene and try to help further define and present some more objective and bright-line rules when it comes to reviewing social welfare applications?

GEORGE:
It's my understanding that the IRS has the authority to do this on its own without legislative fixing.

KIND:
OK. I think obviously this committee will need to be working with IRS, too, to ensure that that gets done, because otherwise it's going to be an inherently flawed human process of subjectively applying this criteria, I feel, especially with the huge influx of -- of applications.

Now, some of this has been delved into. I think it's so important that it needs to be reiterated. Mr. George, I apologize if you've -- you think you've made yourself clear on it. But according to your report, you found no bias or partisanship behind the development and the use of the criteria for selecting applications in the Cincinnati office. Is that right?

GEORGE:
That is correct, sir, but we did find gross mismanagement in the overall...

KIND:
Right. And that's clear in your report, too. Did you find any evidence that anyone outside of the IRS was involved in the development and review of...

GEORGE:
Not at this time, sir.

KIND:
Not the White House or Treasury?

GEORGE:
That's correct, sir.

KIND:
Thank you.

Thank you, Mr. Chairman.

CAMP:
Thank you.

I will recognize Dr. Price for five minutes.

PRICE:
Thank you, Mr. Chairman.

I think if I'm sitting at home trying to figure out what's going on here and listening to the testimony and the remarkable revelations some of these questions -- you get some snickers after some of them -- but you have the federal government asking what books you read; you have the federal

government asking whether or not you know anybody in your organization that's going to run for political office. This is chilling stuff. This is very, very serious.

Mr. Miller, do you accept the findings of the I.G. report?

MILLER:
We do, sir.

PRICE:
One of those findings is that groups were targeted. Do you accept that finding?

MILLER:
I would not -- I would not characterize it as targeting, but...

PRICE:
You can understand why others would believe, including the inspector general would believe, that groups were targeted?

MILLER:
I think the groups that were -- were put into the centralized grouping would have gone in -- they would have gone in whether we had done the correct thing or were using...

PRICE:
You've described the list of criteria being used to identify these groups as "obnoxious." Correct?

MILLER:
Correct.

PRICE:
It's not just tea party groups, right? It's not just conservative groups. There are religious organizations, are there not?

MILLER:
I don't know that, sir.

PRICE:
Are you not aware that there are religious organizations that were -- that were identified by the list of criteria that were formulated?

MILLER:
I'm actually unaware that there were. And I say that as though I don't know. I've looked at the list, but very quickly.

PRICE:

Are you aware that there were some Baptist church organizations that were identified for greater scrutiny?

MILLER:
I was not aware of that, sir.

PRICE:
Who's Sarah Hall Ingram?

MILLER:
She is an executive at the Internal Revenue Service who does the Affordable Care Act work for us.

PRICE:
That's where she works now?

MILLER:
Yes, sir.

PRICE:
Where did she work during the period of time under question here, 2010 to 2012?

MILLER:
Someone has corrected my -- my prior comment, I think. So '11 and '12, I think she was already working on Affordable Care Act. I don't know when in '10 we made that...

PRICE:
Did she ever hold the title of director of tax exempt organizations for the IRS?

MILLER:
She held the -- the division commissioner title.

PRICE:
So she had responsibility over much of the concerns and discussion that we're having today. Is that correct?

MILLER:
At the time, she was division commissioner, yes.

PRICE:
So would she have known about this list of criteria that -- that has been formulated -- had been formulated?

MILLER:
I have no reason to believe that she would.

PRICE:
That she would?

MILLER:
Yeah. I have no reason to believe that she would. I'm sorry if I wasn't clear. I don't think so.

PRICE:
You don't think she knew about the criteria of the folks under her responsibility?

MILLER:
They were -- there are a couple of thousand folks...

PRICE:
Have you ever had that conversation with her?

MILLER:
No.

PRICE:
You've never asked her whether she knew?

MILLER:
So, I'm not sure she was in that job at the time, sir.

PRICE:
Then are you -- identified her current position as one with the IRS oversight over the ACA and regulations related to the ACA, is that correct?

MILLER:
Correct?

PRICE:
Who appointed her?

MILLER:
I moved her into that job.

PRICE:
You've also said that in the context of the criteria list in what we are talking about today that the IRS provided, quote, "Provided horrible service," unquote, correct?

MILLER:
I think that's correct.

PRICE:

That's what you said earlier today.

And the individual that was overseeing a portion of this and had responsibility for the provision of this, quote, "Horrible service," now sits over the entity at the IRS that will determine whether or not people are complying with the rules of the ACA, is that not correct?

MILLER:
No, I don't think it is, sir...

PRICE:
So Sarah Ingram is not at the IRS over control of the regulatory...

MILLER:
Was for a -- at most it was a period at the time that we would have to go back. I don't think the time line works perfectly, sir, I would have to go back and check. There may be period of time she was still in the job but...

PRICE:
Mr. McDermott in questioning, you said the IRS wouldn't have any access to medical records, is that correct?

MILLER:
I believe that's correct.

PRICE:
So it would be unnecessary to gain access to medical records, correct?

MILLER:
I can't...

PRICE:
It would be unnecessary?

MILLER:
I think so.

PRICE:
Isn't that how you described the questions and the information that the IRS folks ordaining for the list as unnecessary?

MILLER:
I think -- are you talking about the letters that...

PRICE:
I'm saying that there is a parallel here in the expansive of nature of what the IRS has done. would you care to characterize the unnecessary word, is it illegal what they have done?

MILLER:
It is absolutely not illegal.

PRICE:
It's not illegal what the IRS has done?

MILLER:
So, let me understand the question. What is your statement as to what is illegal?

PRICE:
Do you believe it is illegal for employees of the IRS to create less to target individual groups and citizens in this country?

MILLER:
I think the treasury inspector general indicated it might not be that others will be able to tell that it

PRICE:
What do you believe?

MILLER:
I don't believe it is.

I don't believe it should happen...

PRICE:
Thank you, Mr. Chairman.

MILLER:
Don't get me wrong. It should not happen.

CAMP:
Mr. Blumenauer is recognized for five minutes.

BLUMENAUER:
Thank you, Mr. Chairman.

And, I appreciate the opportunity for our being able to listen to the witnesses and try and develop the record and people putting forth their own ideas, their own questions, clarification.

I think Mr. Inspector General, that you have provided a tremendous service with of the report, straight forward, identifying mismanagement, inappropriate activities, and I hope that people will be able to actually read the report to reflect on it.

I appreciate you being here, Mr. Miller. It's not the most comfortable. I appreciate that you as a career civil servant accepted responsibility even though you hadn't done these things directly and resigned. I mean, it is an error of responsibility you don't often see in the political arena I will say. But, I am hopeful that we can continue to probe, to direct, to make sure that no political entities are subjected to inappropriate activity on behalf of the IRS.

I appreciate some of my colleagues talking about efforts that we can do to clarify laws and regulations together, to be able to make sure that there is less than devotee and that there are better standards. But I also think at some point you will be interesting to reflect on the Congress's role in what the chairman referred to as -- in pretty strong terms about a tax code -- when I came here in the 104th Congress there were 114,000 employees in the IRS. Since I've been here, Congress in its wisdom has expanded the code, made it more complex and cut dramatically the men and women on the front lines to deal with that.

Inappropriate -- their inadequate training budget we've had this testimony just across the Capitol before the Senate this last week. And I really hope that there is an opportunity to think about how support the integrity of the Internal Revenue Service, not just by making sure that there isn't inappropriate or gross mismanagement. There is accountability. There is clarification, but we rely on it to be able to be -- to function.

And Congress has slowly been starving the budget of the IRS at a time when each of those employees -- dollars spent on those employees gives the federal government about $214 in revenue and for us to not make sure that it's adequately staffed, adequately trained, adequately equipped invites shortcuts, makes it harder to have the oversight and the accountability and harder for the overall performance.

I think it's inexcusable to cross the line. I think it's important that we bear down, we understand and make sure that it doesn't happen again. But I also think that as the Congress has made the code more and more complex given the IRS fewer and fewer resources to administer it make it difficult to train, I think it's -- it undermines the ability to take a complex entity that relies on self reporting and people having confidence in it. And I'm hopeful that this isn't something that we slide past.

I appreciate, Mr. Chairman, your interest in simplifying and informing the code, but I also hope that we look at the task that they've been given, the budget that they've been given and think a little bit about maybe a rate of return that would more than pay for itself if we invested in training, in management and having more than 150 people to deal with the avalanche of these applications.

I guess that wasn't so much a question, but it is something that occurred to me, and I know, Mr. Miller, you have reference to the stress that that group is on and how hard it is to keep track and at some point if you would provide to the committee -- not putting on the spot now -- but some reflections on what it would take to do this right, I think would be a valuable part of the committee record going forward, because we all want it to have integrity, we want it done right and we want to treat our employees and the taxpayers properly.

Thank you.

CAMP:
Thank you.

Mr. Buchanan is recognized.

BUCHANAN:
Thank you, Mr. Chairman.

Mr. Miller I want to talk a little bit about the culture of the organization. As we are looking at the note -- your bio, 90,000 employees, $12 billion budget, you've been there 25 years. I am concerned -- I guess to start off, you know, we have a mission statement. I'm very concerned about the breadth and the depth of maybe what's going on. I think a lot of employees probably do a good job but I've been a person that's been in business 30 years and have run larger organizations.

So you have got a mission statement in terms of talking about working for the American people, doing what's right and playing by the rules. Is that something that is internalized at the IRS or is that just something on the web site?

MILLER:
I believe, a Congressman, it is internalized, and the vast majority of our folks are hard working and incredibly honest people.

I'm going to tell you and you should hear that as these discussions occur, as it is, you know, damaging to the morale of those people and we -- it's probably ultimately damaging the sense of the voluntary compliance which underlies the tax system.

BUCHANAN:
Well, let me just say obviously there is a lot of good people, at the same time we have a massive problem at minimum...

MILLER:
We do.

BUCHANAN:
... and this has to be dealt with. And it can't drag on for six months to a year. So I think we need to get to the bottom of it.

The other thing let me ask in terms of that size organization, who is in charge?

Who is the boss?

How does that hierarchy -- how does it work?

BUCHANAN:
You know, I ever ran a very decentralized business where I had a corporate structure, but I had managers and partners in different operations. How is the IRS, you know, in terms of being an acting commissioner -- you've been there 25 years -- who do you report to, or the commissioner ideally in the past, who do they report to and at what point when something like this comes up, who is involved at the next level up?

MILLER:
So the -- the -- the reporting chain and the organization is -- there are two deputies and -- reporting to the commissioner. And the commissioner reports to the -- the deputy secretary of -- of the Treasury.

BUCHANAN:
Who's ultimately responsible?

MILLER:
The commissioner, acting commissioner, not (ph) Treasury. It's -- it's really -- the -- the Treasury relationship is such that they would not be involved.

BUCHANAN:
So who would be responsible for you? Who basically asked you to resign or -- or fired you?

MILLER:
It would be Secretary Lew.

BUCHANAN:
Secretary of Treasury.

The other thing is -- let me ask you -- there's been two people that have been -- were you terminated or fired? What -- what happened there? Or did you -- are you getting ready to retire?

MILLER:
I was asked to resign, and I will retire...

BUCHANAN:

OK.

MILLER:
As -- under the civil service rules.

BUCHANAN:
Now, on what basis do you feel like you're getting asked and maybe one other person, I guess, got asked, but it seems like there's a lot of other people, ideally in Cincinnati and Washington and other parts, that haven't been held accountable.

MILLER:
I'm not sure what the question is, sir. I -- if I could answer it, and then tell me if I'm answering the wrong question.

BUCHANAN:
OK, go ahead.

MILLER:
We're not done yet. We're not. We -- we now have the Treasury inspector general's report. We now have the sense of the fact. Now is the time for those that remain, including the incoming acting commissioner, Mr. Werfel, to -- to take those actions.

BUCHANAN:
Let me mention this. It's been brought up with a -- a couple of the ladies that work with Lois Lerner and Sara Ingram. What -- what's being done about those two? Because they've been in the press. There's a lot of concern about that. They ran a large operation, and it seems to be at the heart of the issues today.

I think that's got to get dealt with in a very aggressive, clear way in the next week or two.

MILLER:
I don't know whether it will be or not. That would be up to the -- the -- the new acting commissioner.

BUCHANAN:
Let me just ask you, in terms of the new acting commissioner, are we looking to get a permanent commissioner, or is this going to be, you know, for a period of time?

MILLER:
I don't have that information. I would assume, however, that we ought to have a nomination. And I...

(CROSSTALK)

BUCHANAN:
I hope, because I think at the end of the day, that leadership matters and getting the right culture, the right environment within the organization, the IRS -- it needs and incredible leadership and incredible integrity. And we need to make sure that that person, not so much the acting one, but the permanent one, is the right person going forward.

I yield back.

CAMP:
Thank you very much.

(UNKNOWN)
Agree, sir.

CAMP:
Ms. Schwartz is recognized for five minutes.

SCHWARTZ:
Thank you. I appreciate the opportunity to -- to ask a question.

Let me just say a couple things and then ask a question. And I will attempt to be brief. This is not easy hearing for you or for us. We are outraged on behalf of the American people. That's number one. We -- the American people deserve to be able to trust their government to -- for fairness and lack of bias. And it was violated. And that violation is outrageous and is unacceptable to us and I hope to you.

And the fact that there -- number two, there need to be changes. It's already happening -- some changes you're making. But we need to be assured that those changes we made -- things happen. Investigations have to be done, and then changes have to be made to ensure the American people that we know that, and we will not accept bias or discrimination in any way. I think that is clear to all of us.

The second thing I will say is that this committee and Congress also has a responsibility to do this -- our own questioning and our own demand for accountability and transparency from you, from the administration, from everything that happened, to do it in a way that is not political either. And, I think, we have to be very careful about that. And I would compel all of my colleagues to make sure that we also engage in this in a way that is clear and fair and non- political. This is -- we all agree that something has to be done. We should do it.

So my question, though, is -- is really about, sort of, more broadly what's going on in the divisions that handle the applications for nonprofit status. I have heard in my own office that groups come to us that have applied for nonprofit status, mostly 501(c)(3), not (c)(4), which was the -- the issue here. But they -- the backlog of a year -- they don't understand why it takes so long. They don't understand why they are not clear about what's wrong with their application. They're not hearing back.

And given some of the cuts that we've made, nonprofit groups, in particular, the ones that are not -- 501(c)(3), in particular, but really are looking to try and make up some of the gaps that are here, you know, to be able to raise money and -- and -- and charitable contributions and to make a difference in our communities.

And, I for one, need to have better clarification about what the criteria is, why -- why don't they hear back, why those applications are taking longer than a year, if there are problems with them, what kind of questions do you legitimately can ask and ones you can't, and how we can move this process forward. And I think that we have every reason to ask those questions and to get that kind of answers on behalf of our constituents. And, again, it goes with -- all of the nonprofit organizations -- if there are reasons to review an application in greater depth, and there may well be. So then we have to understand that better and so do the people making those applications. They should not be in the dark about the criteria. They should not be in the dark about why it's sitting on somebody's desk or receiving more review.

So if you can clarify for us now, Mr. Miller, or -- or give us some more information as we go forward about what that criteria is, and what we can expect and what we can explain, and how we can help you make sure that you are doing this right, and when they mess up, Mr. George, you're in there and doing that investigation and getting those answers and correcting those. And we can ensure the American people of the right process, the fairness of that process, the criteria that's being used in a timely, appropriate response of process to American taxpayers and certainly to nonprofit -- hopeful nonprofit organizations.

So your chance to answer that would be appreciated.

MILLER:
And -- and, I think, probably it's a big enough question that -- that -- that we'll follow-up in -- in writing. But the -- the process right now, as we --, as I mentioned, we have a limited number of people, 140 to -- 200, that work on the 70,000 applications that come in for tax-exempt status.

Most of those are 501(c)(3) organizations. Now, 501(c)(3) organizations get a number of tax benefits. They get deductibility of contributions. They get the ability, in some instances, to issue bonds. They get state tax exemptions, property tax exemptions, postal rate reductions. These are -- they're significant benefits in addition to just tax exemption. And we have to look at them. We do.

And many of them are smaller organizations that should go through very quickly, and some of them are large organizations that we need to take a look at -- the largest hospital systems, the largest universities.

SCHWARTZ (?):
Mm-hmm.

MILLER:
There are some large organizations. Then you look at particular issues within them. And we will look for, is there enormate (ph)? Is there private benefit? Is there political activity going on? Because, again, (c)(3)s, no political activity is permissible, (c)(4)s, some, but not a primary amount of activities can be political in nature. Those are things that take time. We try to look. We try to move them along as fast as we can. We do not have enough people right now.

SCHWARTZ:
Yeah.

MILLER:
So do you feel like you don't have enough staff, and you don't -- but you're clear about the criteria and that criteria...

(CROSSTALK)

CAMP:
I'm afraid time has expired. So...

(CROSSTALK)

SCHWARTZ:
And we will -- this will be a continuing conversation.

Thank you.

CAMP:
Mr. Smith is recognized for five minutes.

SMITH:
Thank you, Mr. Chairman.

Mr. Miller, could you define "public activity" as it would relate to the agency and the applications?

MILLER:
Under the Internal Revenue Code, political campaign activity has some definitional limits. You need a candidate. You need a candidate for public office. And that's sort of what you need for it to be a political campaign activity under the 501(c)(3) and the 501(c)(4), a little different under 527 rules.

SMITH:
And was it the concern about political activity that led to the centralization organization of -- of reviewing the applications?

MILLER:
I believe it was. It was the fact that we were seeing more applications indicating that they might be doing political activity, and it's an area that is very difficult for us. Is it education? Is it an issue ad (ph)? Is it actual campaign intervention? Those are very for us to -- to -- to parse out. The decision was made to try to get them into one group and educate those people. How they -- how they started that process was one of the problems here.

The other problem here, as I mentioned, is the method of -- of -- of processing these cases was flawed. And I think that the -- the -- the TIGTA report and Mr. Russell's (sic) report goes into great detail on the problems that we saw in terms of the lack of communication between pieces of the service, the letters that were going out that were overly broad, and the complaints that we were getting rightfully from those who were given a remarkably little -- little amount time to explain an awful lot of stuff.

SMITH:
And how many employees at the IRS would you say would have been associated before the centralization and then after the centralization?

MILLER:
I'm not sure of the question, sir.

SMITH:
The number of employees associated with the applications were a greater in number before the centralization. Is that accurate?

MILLER:
It might be. I don't really know the answer to that. It -- it might have been the same X number of people, but they were centralized, versus spread out.

SMITH:

Now, it was mentioned earlier in -- in testimony and in questions that donor lists were requested by the IRS. Is that accurate?

MILLER:
That's accurate -- in some cases.

SMITH:
In some cases.

MILLER:
Not all -- not all these cases by any stretch of the imagination, sir.

SMITH:
And did the acquisition of those lists ever lead to additional -- did those lists trigger any further inquiries or new inquiries?

MILLER:
No, I believe what happened is when they hit the paper we discussed it. We told people to that -- that -- I'll go back for a moment. Donors can be relevant, but they certainly shouldn't be in every case. They shouldn't be asked in every case, because they can be relevant if a donor has a contract with the organization, if the donor is doing it for -- for a political purpose. But to just ask for donors without a rationale shouldn't be done.

When we saw that it happened, we asked that, you know, if they hadn't sent them in, we reached out and said, don't send them in. If they had sent them in we said, you know, we're not gonna use these, and we didn't. You will find them used in any of these cases.

There was something -- I don't know how many of these cases there were; maybe 30 or something like that, is my understanding. I could be wrong on that. More than half of those were not tea party cases that got these donor list requests, by the way.

SMITH:
OK.

MILLER:
But going back, it was -- it was overly broad. It was not necessary.

SMITH:
Thank you, Mr. Miller.

Mr. George, I'll ask you the same question. In the cases where donor lists were requested, do you -- was it your finding that those lists that perhaps triggered further inquiries?

GEORGE:
Well, I don't have an answer to that aspect of your question, Mr. Smith. I do know that 27 donor lists were requested.

SMITH:
Twenty-seven donor lists were requested.

GEORGE:
Correct.

SMITH:
OK.

Mr. Miller, on the -- you know, the safeguards against bias -- I think that an underlying concern on this entire situation is that bias was applied. And -- and can you share whether there were safeguards in place that were not honored to try to prevent the bias before this situation came about?

MILLER:
So, obviously, I don't think -- and -- and, again, whether it was bias or perception of bias will play out over time. Let me tell you that -- that we have something on the exam side of the house that has worked remarkably well, and that is before anybody gets selected for examination by reason of political activity it goes through a committee. So no one person can -- can do this. And that cuts down on the bias. We -- we do a better job of -- of precisely explaining why we're doing it.

(CROSSTALK)

MILLER:
On the determined (ph) side less so. So what we've done is elevated the -- the issuance of the criteria to a higher level in the organization.

SMITH:
Thank you.

And Mr. George?

GEORGE:
And I would just point out, sir, of the 27, 13 were from tea party groups of the donor lists.

SMITH:
OK.

CAMP:
All right, time has expired.

Mr. Davis is recognized.

DAVIS:
Thank you very much, Mr. Chairman.

And I want to thank both of you gentlemen for being here.

You know, everybody that I've heard make a statement or a comment, every reviewing body that has had an opinion have suggested that, obviously, there was some behavior on the part of senior-level IRS staff that was unwarranted, unacceptable, intolerable, and, of course, should never happen again.

It's also clear that there of been management challenges, such as who has the authority to do what relative to policy, as well as operational procedures.

Mr. George, let me ask you, when did you start the audit?

GEORGE:
Our audit, sir, began with a request from a congressional staff member. And I want to give you the exact date, sir, and I do have that here. March 1st of 2012 was when we were initially contacted by a Government Reform staff member. And our audit began in roughly May or -- or March, rather, of 2012...

(CROSSTALK)

GEORGE:
I mean we had meetings prior to that, but I would point to March of 2012.

DAVIS:
Mr. Miller, when did you first learn of the audit or know about the audit?

MILLER:
Sometime in that same time frame. It would have been in March when we certainly were aware that -- that TIGTA was taking a look at this at some juncture at that time.

DAVIS:
And so you knew that this was under way pretty much from the beginning?

MILLER:
I did.

DAVIS:
And -- and did it ever occur, perhaps, to have certain kinds of conversations, interactions with whoever would be determined as your superiors?

MILLER:

I'm sure Mr. Shulman knew. I'm not sure that anybody above Mr. Shulman knew.

DAVIS:
Let me ask you, Mr. George, during your investigation -- we've heard all kinds of allegations. As a matter of fact, some people have even been suggesting that a good thing to know is who's going to be the next person to go to jail, who's going to be indicted. During your investigation, that you -- was it reported to you by any of your investigators that there was any apparent criminal intent or activity on the part of these employees?

GEORGE:
Nothing out of the review, initial review of the audit to that effect, Mr. Davis. But there will be subsequent review on our part on this matter.

DAVIS:
You know, after listening to all of the discussion and reading all of the information that I've read, I am not convinced that this is a great big political conspiracy. I would certainly admit that there has been some ineptitude, there has been some lack of serious management procedures used and -- and -- and adhered to.

Let me ask both of you, since you've had considerable experience with the Internal Revenue Service, what would be your recommendations to the new commissioner coming in?

(inaudible) Miller?

MILLER:
There's no question that this has -- this has damaged the reputation of this organization and -- and the new commissioner needs to take steps to ensure that we've restored that -- that trust that's so essential. And that's where -- that's where he or she should -- should take action.

GEORGE:
And I would point out, sir -- and this is one of the recommendations that we've made -- training is necessary at all levels on a repeated basis of IRS staff. And especially in terms of the political season, you have a lot of turnover, especially at lower levels at the IRS. And people simply need to know and to be kept up, informed -- up-to-date, rather, of the new regulations and requirements.

DAVIS:
Thank you very much, Mr. Chairman. And I yield back.

CAMP:

Thank you.

Mr. Schock is recognized.

SCHOCK:
Thank you, Mr. Chairman.

Let me begin by saying that I'm most concerned that the IRS attempt a week ago to clean up and apologize for abusing conservative organizations seeking tax-exempt status is the proverbial tip of the iceberg. The IRS's stellar reputation of being above partisan politics has been shattered by these revelations, and these revelations now seem to be far from complete.

The IRS at first revealed that the words "tea party", "patriots" and a few other phrases triggered extra scrutiny. Since then, more and more revelations have come to night -- come to light.

Mr. Chairman, I have with me a 150-page document given to me by the Thomas More Society detailing a number of pro-life organizations throughout the country which an application of 501(c)(3) status were given horrible instances of IRS abuse of power, political and religious bias, and a repression of their constitutional rights.

I'm gonna submit these documents dealing what these organizations went through to the Treasury inspector general for the tax administration asking for a reply to this committee about the degree of abuse these organizations received during their application for tax-exempt status.

SCHOCK:
I would like to just highlight a few of those reported abuses and ask for your opinion on -- on them.

In a letter from the IRS Office of Exempt Organization specialists in El Monte, California, specifically the Pacific Coast Division -- I would note, this is not in the Cincinnati division -- to the Christian Voices for Life of Fort Bend County in Sugar Land, Texas, dated March 31st, 2011, that I have here with me today, they were asked specifically -- again, this is a pro-life group -- "In your educational program, do you do education on both sides of the issues in your programs?"

Mr. Miller, your knowledge of the 501(c)(3) application, is that an appropriate question to ask?

MILLER:

So, I'm gonna be honest and I'm not gonna be able to speak to a specific development letter in a specific case. I don't know that I can do that under 6103.

SCHOCK:
OK, let me ask you about another letter that was received by a pro-life group, this one in Iowa. Their question specifically asked from the IRS to the Coalition for Life of Iowa, quote, "Please detail the content of the members of your organization's prayers."

Would that be an appropriate question to a 501(c)(3) applicant, the content of one's prayers?

MILLER:
It pains me to say I can't speak to that one either, but that's an...

(CROSSTALK)

SCHOCK:
You don't know whether or not that would be an appropriate question to ask an applicant?

MILLER:
Speaking -- speaking outside of this case, which I don't know anything about, it would surprise me that that question was asked.

SCHOCK:
And, finally, during another applicant's conversation or -- or back and forth, they were asked specifically, quote, "Please detail certain signs that may or may not be held up outside of a Planned Parenthood facility," end of quote.

Would that be an appropriate follow-up to an applicant for 501(c)(3) application?

MILLER:
Again I don't know what the context would be, but, again, that doesn't -- it doesn't sound like the usual question.

SCHOCK:
Thank you.

Well, hopefully, Mr. George and the inspector general's office can enlighten us.

Mr. George, during your investigations, are you aware of the three letters submitted by Senators Baucus, Schumer and Durbin, written to the IRS, specifically Mr. Shulman, asking them to give extra scrutiny to the 501(c)(4) applications?

GEORGE:
I am aware of it, but I don't know the details, sir.

SCHOCK:
So in your investigation so far, in questioning employees of the IRS, did you ask them specifically whether or not these letters from sitting United States senators ought -- influenced or impacted their decisions around these cases?

GEORGE:
I do not believe that was part of the inquiry, sir.

SCHOCK:
Will you ask those questions in the future?

GEORGE:
I will ask that -- if appropriate, we will certainly do so, if appropriate.

SCHOCK:
Thank you.

Mr. Chairman, I'm particularly troubled by some on this committee who seem to want to rationalize or justify the inappropriate behavior by the IRS in these cases by their disagreement with the Citizen United (sic) ruling of our Supreme Court.

I think we all know that our nation is a nation of laws, and we either abide by those laws or not, to our peril. And whether we agree with the Citizens United ruling or not should not be justification for this agency which is charged with upholding the rule of law equitably for all people in all groups, regardless of party affiliation or motive.

Specifically, Mr. Miller, I was troubled by your comment that you found this grouping Mr. George with the Inspector General's Office calls it targeting to be inappropriate but not illegal.

I'm wondering if you can give me examples of other targeting within the IRS that you're aware of that would be inappropriate but not illegal.

MILLER:
Sir, I probably, Congressman, should -- should tell you that I don't know. It's my belief that what happened here wasn't illegal. But I suppose there are some facts that might come out that would indicate otherwise. But that's not my area. I don't know -- I don't know.

But it certainly was inappropriate, no question about that.

I'm unaware -- we have used listings elsewhere of...

(CROSSTALK)

SCHOCK:
... examples?

MILLER:
... credit counseling organization would be one of those that we used a name to pull those cases together, to work in a consistent and fair manner.

CAMP:
All right. Time is expired.

Ms. Jenkins is recognized.

JENKINS:
Thank you, Mr. Chairman.

You know, we've heard a lot of outrage, a lot of anger and disappointment, but I have to tell you after sitting here for a couple hours, I'm sad and I'm sick to my stomach that Americans can be targeted by a government agency based on their political belief.

Mr. Miller, in response to Congressman Nunes, you mentioned that you have had a discussion with Treasury, someone at Treasury, regarding the TIGTA report.

I was just wondering if you could give more details about when that that conversation occurred and with whom.

MILLER:
So, I don't -- I don't know the precise date, but it would have been very recently after the -- after the report was done. And I think -- I think Mr. George can speak to -- to when he indicated to some parts of Treasury as well. It might have been in the same time frame.

JENKINS:
So would that have been the first time you had a discussion with someone from Treasury about this situation?

MILLER:
This situation being the -- the listing and the treatment of these cases?

JENKINS:
Correct.

MILLER:
I think so.

JENKINS:
So out of all of the news reports that have come out in the last couple years, there was never a discussion at IRS with Treasury about the situation, until just recently?

MILLER:
You asked the question was the TIGTA report -- and, yeah, the TIGTA report was -- was described and discussed with them recently.

I don't believe the specifics were -- were described or discussed with them earlier, but I don't -- I don't know that. They weren't by me, I don't think.

JENKINS:
OK. Who was your conversation with?

MILLER:
I would have talked at some point to Mr. Patterson, the chief of staff, and subsequent to Mr. George's discussion with Mr. Wolin, I spoke to Mr. Wolin.

JENKINS:
You spoke with whom?

MILLER:
Mr. Wolin.

JENKINS:
Mr. Wolin?

MILLER:
Wolin.

JENKINS:
And how did that conversation go? What did Treasury have to say?

MILLER:
We just talked through the -- the troubling nature of the reports. I indicated that we had worked on fixing the problem. And that's what we talked about.

JENKINS:
They didn't give you any advice and counsel on how to move forward?

MILLER:
No.

JENKINS:
OK.

Mr. George...

GEORGE:
Yes?

JENKINS:
How often do you meet with Treasury leadership and IRS leadership regarding open audits?

GEORGE:
With the IRS leadership, we meet monthly with the commissioner or acting commissioner on a standing basis and then we'll have communications as necessary.

The secretary holds a monthly meeting with the bureau heads. And in conjunction with those meetings I met monthly with the general counsel of the Department of the Treasury, and then on an as-needed basis with the deputy secretary, Mr. Wolin.

JENKINS:
OK. When did you first alert Treasury leadership and IRS leadership about this specific audit?

GEORGE:
I alerted the commissioner, then-Commissioner Shulman, on May 30th, 2012. I subsequently alerted the general counsel of the Department of the Treasury on June 4th, and subsequently -- and I do not have the exact date -- alerted the deputy secretary, Neal Wolin about this matter. And than, upon assumption in -- into the position, I mentioned it to Secretary Lew.

JENKINS:
OK. So, May 30th would have been the first time that Mr. Shulman what have known about the troubling allegations?

GEORGE:
From my perspective, I would assume that people within the Internal Revenue Service would have gave him a heads up about this troubling mater, but I can't say that for certain.

JENKINS:
OK. In your report, you indicate that the decisions to target Americans based on political beliefs were made only within the IRS. How did you determine that?

GEORGE:
These were through interviews with IRS staffers both in Cincinnati, Ohio, as well as in Washington, D.C., at the headquarters of the Determinations Unit and their and their -- the Exempt Organizations Unit.

JENKINS:
So, did you interview Mr. Miller?

GEORGE:
We did not interview Mr. Miller.

GEORGE:
So, how would you know or did you interview anyone at Treasury?

GEORGE:
We did not. And -- and the reason for that is because at that time of our interviews, we had no indication, because this was an ongoing matter and we didn't have any indication from those initial interviews that they were implicated in this matter.

JENKINS:
So, had anyone given you any indication that you needed to visit with someone higher, you -- you would have...

GEORGE:
Most...

JENKINS:
... had the authority to?

GEORGE:
Most definitely.

CAMP:
All right. Time has expired.

Mr. Paulsen is recognized.

PAULSEN:
Thank you, Mr. Chairman.

There have been a lot of news reports this week that this has been a bad week for the president or a bad week for the administration, but I will just tell you after hearing additional testimony this morning, myself, that this is a bad -- a bad week for America. That's the bottom line.

And when supposedly neutral actors in our government choose sides, and the results end up being highly corrosive to our democracy, this is a violation clearly of the trust of the American people.

Mr. George, your report indicated, and you've testified, that the IRS improperly requested donor lists from targeted organizations. Obviously, that's a concern from the perspective of -- pattern of behavior at the IRS, based on the report

from delays of applications and targeting, and also the dissemination of confidential information.

But let me ask you this. How long did the IRS -- because you acknowledged this just earlier from 27 different organizations -- how long did the IRS have in its position these lists, these improper lists that they shouldn't have had in their position -- 27 different organizations?

GEORGE:
Congressman, they did not indicate, and we did inquire, the length of time that they -- maintained that information. But, again, the -- they did acknowledge that once they realized they should not have collected it, they destroyed it. But I do not have a direct answer to -- as to how long they held onto it.

PAULSEN:
Mr. Miller, do you know how long the improperly obtained lists were in the IRS's possession?

MILLER:
I don't know. And I -- look, they were -- the letters were bad. They were just way too broad. Should they have asked for them? Probably not. Was it -- was it bad intent or bad management? My guess and my understanding, bad management.

When we found out about it, we reached out to people who hadn't sent them yet. And we told them, "Don't send them." We went to people who had send them -- sent them and -- and told them, "We -- we're not going to use them unless we need to." And we didn't. And, at that point, my understanding is that we -- we did not use them in any of those cases, and they're not being retained. They would have been destroyed in the ordinary course of our records retention rules.

PAULSEN:
Mr. George, were you able to confirm that the lists were actually destroyed? And if so, how were you able to confirm that?

GEORGE:
It's through the testimony -- the interviews that were conducted by our auditors. Now, I have to admit that that was not done under oath. But we have to go by what we were told by the employees.

PAULSEN:
Mr. George, do you have any idea how many donors were involved as part of those lists?

GEORGE:

Again, 27 is my understanding of the list of donors requested, so within the -- the list, I'm not sure. But, as I pointed out, 13 of the 27 were from but tea party groups.

PAULSEN:
OK.

Mr. Miller, let me ask you. Is it IRS practice to ask about a group's relationship with a specific person who's not a part of an organization that is applying for nonprofit status as part of an application process?

MILLER:
So it can be, depending on the facts based on are - is there a contractual relationship that could be an issue? Is there undue influence going on in some fashion that, you know, if -- for example, we -- we would be looking at emormate (ph). We would be looking at private benefit.

Can I -- the one other thing -- I want you to know that the donor lists -- because I want to just make it clear -- 13 were tea -- were -- were -- were tea party, but I believe, and my numbers are just a little different to one way or another. But the tea party ones are -- include 9/12 patriots the -- the -- the listing folks were the minority of the people who got the donor questions. I just want to make -- clarify the record there.

PAULSEN:
Sure.

Mr. Miller, has the IRS ever asked the question, of an individual, have they ever asked, "What's your relationship with John Doe" when they ask an organization who's applying status? Is that a common practice? Have -- have you asked that question?

MILLER:
I'm sorry, can you rephrase that, sir?

PAULSEN:
Well, Mr. Tiberi was going down a line of questioning earlier about a lengthy process of a questionnaire that was filed with a simpler -- with -- with an organization. And the IRS had asked the question, on number 26 of an individual, provide details regarding your relationship with this individual. Is that a common practice? Does the IRS normally do that? Based...

MILLER:
So, I -- I don't know what we're talking about there. And it's -- on an individual case, and I really I should not and cannot speak to an individual case. Sir, I'm sorry.

PAULSEN:
Would it be safe to say that knowing that that's probably inappropriate, would there be repercussions or some sort of discipline that might be followed up, if that was determined to be inappropriate in that type of a questionnaire question?

MILLER:
It would depend on the context again. And I don't have the context and -- and why it was asked, and -- and was it -- was it a lack of controls, and -- and was it a mistake? Or was it something different than that?

PAULSEN:
Thank you, Mr. Miller.

(CROSSTALK)

CAMP:
Thank you.

Mr. Marchant is recognized.

MARCHANT:
Mr. Miller, let's go back to the IRS planned question issue. When was Celia Roady told to ask the question?

MILLER:
I don't have, you know, exact knowledge on that. I did not do that.

MARCHANT:
Who told her to ask the question?

MILLER:
I don't know, actually. I'm not sure. It might have been Lois Lerner, but I really am not sure.

MARCHANT:
What did you tell her about the background of the -- of the issue?

MILLER:
What did I tell who?

MARCHANT:
Roady.

MILLER:
I didn't have any conversations with Celia.

MARCHANT:

Did anyone give her a copy, an advanced copy of the I.G.'s report?

MILLER:
I don't believe so. But, again, I don't -- again, I did not have those conversations. But I would -- I would be shocked if that happened.

MARCHANT:
And how long did she know about the report before the committee knew?

MILLER:
Again, you -- you'd would have to ask the -- the people who had the conversation. But -- but, again, it would shock me if she knew anything before she -- she had the conversation with -- with whomever she had it with.

MARCHANT:
In -- on March 28th, I wrote the commissioner a letter that basically asked him whether local tea party groups in my district were being harassed or given lengthy questionnaires and were being discouraged from seeking tax-exempt status. That was March 28th.

On the June the 22nd, I got a letter from Mr. Grant (ph) that basically gave me a lot of assurances that nothing like that was taking place, and that nothing out of the ordinary was going on, and that they were following a -- just regular order.

Then, following a time line, shortly after my first letter, short -- before (ph) my first letter, Mr. Boustany asked in a hearing -- of oversight hearing -- if there was anything going on over at IS -- IRS about these applications. And he was told by the -- by Commissioner Shulman, "I can give you assurances there is absolutely no targeting going on."

Following that same time line, on July the 25th, we had another Oversight Committee hearing, in which the Commissioner Miller and I had a -- an extended conversation about this very subject. And that conversation is in this transcript. Anyone can get up -- get this on the Internet and can read the questions.

But the questions were very specifically about tea party groups and their difficulties in getting their tax-exempt status, of the lengthy conversations that they were having, the -- the -- the questionnaires that they were having to answer. And again, Mr. Miller, in that exchange that you and I had, I came away from that, with, I felt, the assurances by you and your office that there were no extraordinary circumstances taking place and that this was just a backlog, and there was nothing going on.

Mr. Miller is that your impression of the hearing that day?

MILLER:
No, sir. What -- what I said there, and what I understood your question to be, was, again, we divide this world in two. There's a question about the selection process. And there's a question of what was going on at the time of your question. At the time of your question, what was out in the public domain, and what I thought we were discussing, was the letters, the -- as you called, the "questionnaires." Those were the over-broad letters that had been referred to continuously here. Again, I -- I stand by my answer there. There was not -- I did talk about the fact that we had centralized, I believe. I have to take a look at it. But I was talking about the fact that we had fixed that problem. And that's...

MARCHANT:
But -- but at the time, you knew by that time, that there were lists being made. There were -- delineations. There was discrimination going on and that there were steps being taken to try to correct it. But you knew that it was going on at that time.

MILLER:
We had corrected it. TIGTA was taking a look. At that time, my assumption is TIGTA was going to be done with their report that summer. I was not going to go there, because I did no have full possession of all the facts, sir.

MARCHANT:
Well, this is a -- this is a list of questions that -- in my case, my local Northeastern County Tea Party was sent, and it's -- it's a list that most taxpayers would not answer, and most taxpayers should not have to answer. But it -- it asks some questions that should have never been asked -- "a printed copy of every page of your website, every tweet from your tweeter (sic) account, every -- personal resumes from all your board members, copies of every flier you ever made and every flier any guest speaker ever handed out. Explain your relationship with True the Vote copy, a copy of every single e-mail ever sent by our group."

This is a list that is overly burdensome.

MARCHANT:
And in my case it has led to deep discouragement on these parties in, and has limited their ability to educate the public.

Can I find out, as a member of Congress, the groups in my district that have applied for and have either been denied or their application is -- continues to be in suspension.

MILLER:

With Mr. Camp's help you could, granting the 61 of the three authorities. But -- it -- the application process until it's done is 6103 information, and if it is denied, then there is a redacted version going out and if approved then everything becomes public. So within the constraints of 6103 which Mr. Camp can grant you the ability to see, that could happen.

MARCHANT:
Yield back.

CAMP:
The time is expired.

Yes, I think would be restrictions on my sharing that with Mr. Marchant, however.

So, Ms. Black is recognized for five minutes.

BLACK:
Thank you Mr. Chairman.

And, I'm gonna go back to what Mr. Paulsen said a few minutes ago, because as I sit here and listen to this testimony, having read the report, and multiple services of information that are now coming out I'm gotta tell you that the trust -- the trust for the IRS to begin with was already shakey by the American people. And, I know whenever someone gets any piece of information from the IRS it doesn't feel very good and they are not very confident as -- even before this happened that they are going to be treated fairly.

But what has happened here in this testimony that we are getting today is very disturbing, and I want to say what Mr. Price said, if I were sitting at home watching this on C-SPAN, I would probably be questioning, again, there doesn't seem to be clarity here. How can I trust?

Let me go back to -- as I listening to the testimony-- in your opening remarks, you referred to this as, "Foolish mistakes," and then you acknowledged, in the response to Mr. Rangel, that there was abuse.

So this is more than just foolish mistakes. This was abuse.

And then, you said to Mr. Ryan's response that you felt that the applicants were dealt with fairly. Then you turned around and said, answering to Mr. Neal, that there was a litmus test that was a political activity. And you then said, "Political -- "Politics is always when we ask questions in these kinds of application."

I want to go to page number six on the report that does talk about the words that were used like a "tea party" and "patriots" and then at another point in time, issues including government spending, debt, taxes, public advocacy and lobbying to make America better.

And -- and I want to know if you say that there is a litmus test and the politics is always where we ask questions any time there is an application that seems to go there, can you give me the words that would have been used besides what appears to me to be all conservative questions?

Was there a progressive that we should look for anything in the application that then says, progressive?

Was that anywhere?

MILLER:
So I think -- and I will refer to Mr. George's statement, I believe his statement indicated what my understanding is, which is, this was not the only thing that folks were looking at as they scanned...

BLACK:
But you're not answering the question. Was there anything in any of this criteria that was outside of what I am seeing in the report that would have indicated to me that other than conservative groups who were applying for this status that you had a word in there anywhere to say, "OK, the litmus test is this seems to be political. So we always look at political," where is the word progressive?

MILLER:
I am not arguing that the list was bad and that the list was conservative based. What I'm saying is...

BLACK:
Excuse me, I'm gonna reclaim my time on this, because then I would say, it's targeted.

You can't have that both ways. That's targeting. And there are 16 times in this report that says that there was targeting. So, I believe that as you are giving this testimony that you can't have that go both ways.

Now there's also an effective management that is talked about in this report and even if you get outside of this and say, "OK, there was no targeting," I want to know how a couple of employees that are considered lower level could have done what was done here, because this says to the American people that out of thousands of employees that you have that the IRS there's ineffective management there, nobody's watching this.

If it was noted in 2010, and in 2013 we are just now finding out about this that certainly is an effective management, because there should have been somebody overlooking this that said, "This must stop and I'm going to come back in 30 days to make sure it's stopped." But, it continued and it continued, and now we have got 400 applications, some of them over three years.

This is more than a ineptitude. I mean, this is more than just mismanagement.

And, I know my time is going to run out, so Mr. George, I want to come to you because you told Ms. Jenkins that the -- the -- you told the general counsel of the Treasury on June the 4th.

GEORGE:
Correct.

BLACK:
You could not recall the exact date that you told the deputy, Secretary Neal Wolin. Do you recall if it was soon after informing the general counsel, was it like a week or month?

MILLER:
I cannot give a timeframe that I can say that it was shortly thereafter.

BLACK:
Could we get that date? Is that possible to get that date?

GEORGE:
You know, unfortunately I don't keep the date planner, but I will do my best Ms. Black, and so if I have it I will certainly supply it to the committee.

BLACK:
Thank you very much.

CAMP:
All right, Mr. Reed is recognized.

Sorry your time is expired.

BLACK:
I'm sorry, thank you Mr. Chairman.

REED:
Thank you, Mr. Chairman.

Mr. Miller, Mr. George, we have sat here for quite some time and I will tell you that this is offensive. This is offensive to hear this testimony. And what I would like to do is -- I know you are disagreeing with the word targeting, Mr. Miller. I

suggest the American people will make the determination. And I will give this whole situation a name, it's the IRS targeting-gate. I will put it right out there. And, we are going to get to the bottom of it, and we are going to get on this until we're done.

As you sit here today, you were not fired from your job, and I can tell you in my private experience you would have been fired on the spot. And all you were allowed to do is resign and of retire?

And now you come here and somehow try to say, "I did the honorable thing by falling on my sword?" I mean, nothing bad is going to happen to you. You are going to get your full benefits. You're gonna get everything that's associated with your retirement as an IRS employee...

MILLER:
Nothing bad is happening to me, Congressman?

REED:
Financially.

You're allowed to retire. That is the level of accountability in Washington, D.C. now. You -- you're still acting. You came here on the taxpayer dollar today. You're getting a paycheck for being here today, correct?

Correct?

MILLER:
Correct.

REED:
I want to know who, what, when, where and, you know when my good colleague, my good friend from Michigan, Mr. Levin started this, he said, "We need to ask the who, what, where and how." One question he didn't put in his opening comment was, why.

And we have dodged and weaved the whole time for this entire hearing as to why this happened, and I don't think we are going to get an answer today.

But, Mr. George, I want to get to the bottom of your report. And I appreciate the work you've done.

You referenced there was gross mismanagement in regards to this situation. I want to know who you identified that had the responsibility to manage the situation.

I want names. I want to know where they work, when they worked, and what they did.

GEORGE:
Do you want it right...

REED:
Right now.

GEORGE:
Lois Lerner is the primary individual located in Washington, Joseph Grant was her supervisor, he too was located in Washington. And located in Cincinnati there were a number of people, a director named Holly Paz, P-A-Z. She was the acting director for a significant period of time that this was occurring, and then there were various management technical units managers and the like.

And I can supply a full listing of those names at your request.

REED:
That is my request and I would formally request that.

GEORGE:
But, Mr. Reed may I please beg your indulgence, I need to make something clear in response to both Ms. Black and Mr. Paulsen, when I when I had my discussions with of the commissioner and with the secretary and the general counsel, it was not to inform them of the results of the audit, it was to inform them of the fact that we were conducting the audit.

And I just want to make sure...

REED:
Well, let's follow up on that.

When you had that conversation with the secretary, when exactly did that occur?

GEORGE:
That happened shortly after he took office. So it was after the policy had already been stopped, and the issues had been -- we hope -- resolved.

REED:
And, Mr. George, as a country lawyer from Western New York, you made some comments in your testimony about the partisanship determination. You kept referencing that I've seen many times in my legal career, "at this time." That implies to me that there are additional investigations coming down the -- the pipeline that potentially could uncover such information.

Isn't that correct?

GEORGE:

That is an accurate statement, sir.

REED:
And I will be eagerly awaiting those future investigations and I applaud your work and ask you to continue to do that work.

Mr. Miller, I just want to understand exactly -- as we just had identified by Mr. George, numerous people in your organization that you had oversight -- ultimate oversight for, his ability to identify those individuals. You didn't identify those individuals in any type of management oversight when you became aware of this situation in May of 2012 and reached out to those individuals?

MILLER:
I -- I certainly was aware of -- of my own management chain, yes, sir.

REED:
OK. And so who in your management chain specifically did you talk to about this situation?

MILLER:
After May, you mean, of -- of 2012?

REED:
After you became aware of it, you said you talked to (inaudible) people in your management chain, who did you talk to?

MILLER:
I talked to -- I'm sure I talked to Joseph Grant. I probably talked to Lois, as well.

REED:
Just those two, that's all you talked to?

MILLER:
Well, I talked to the folks who went out and -- and -- and worked on the case. And I mentioned Nan Marks in that regard.

REED:
OK, that was Nancy Marks...

(CROSSTALK)

REED:
... who was in Cincinnati that you orally disciplined...

(CROSSTALK)

MILLER:

No, no, no, no. Nancy Marks is a senior technical adviser who led a team to take a look at this in Cincinnati. SFC 004411

REED:
OK. And who was the employee again that you orally disciplined that you thought may had something...

(CROSSTALK)

MILLER:
I apologize, I don't remember the name. We can give it to you. I'll just have to give it to you after the hearing.

REED:
OK. And then you said there -- that that person who was orally disciplined probably wasn't involved in it, but there was a potential -- 'nother employee. Who was that other employee?

MILLER:
So let me -- let me go back. Because there were two employees, one of whom was reassigned, one of whom I asked to be orally counseled. The one that was to be orally counseled, they have informed me may not have been the right person. They pulled all the managers in to talk to them in lieu of -- of an individual that they didn't know which one was which.

REED:
And do you have those names?

MILLER:
I'll have to send them to you, sir.

REED:
Yeah, I formally request for the record those names...

(CROSSTALK)

CAMP:
All right, thank you.

Mr. Young's recognized.

YOUNG:
Mr. Miller, I want to know why all of this happened. You and Ms. Lerner have said over the past week that IRS officials started targeting Americans for their political beliefs in March of 2010. That was after observing a surge in applications for statuses 501(c)(4) (inaudible) was your rationale.

To support this claim, you both cited an increase from about 1,500 applications in 2010 to nearly 3,500 in 2012. But data contained in the I.G. audit says that targeting began in March 2010, before this uptick.

In fact, the audit also says on page 3 that the number about 501(c)(4) applications for all of 2010 was actually less than in 2009.

Mr. Miller, you said here today that you accept the I.G. report's finding of fact.

MILLER:
Umm-hmm.

YOUNG:
How do you reconcile the facts I've just laid out showing no uptick in 501(c)(4) applications with your stated motivation for targeting conservative groups?

MILLER:
Sir, I'll have to go back and look at the numbers, sir, but I think there was an uptick. And whether it was 2008...

YOUNG:
You've already indicated, here, Sir, that you agreed with the findings of fact in the I.G. report. It says there was no uptick.

(CROSSTALK)

YOUNG:
How do you reconcile the...

(CROSSTALK)

MILLER:
I've got to look at the numbers, sir. I can't speak to that.

YOUNG:
So you don't agree with the I.G. report?

MILLER:
I'd have to look at I.G. report on that.

YOUNG:
Mr. Miller, in June of 2011, Ms. Lerner learned about the practice of targeting conservative groups for compelled disclosure of donor lists and other information. She learned that it was going on for more than a year, whereupon she claims she attempted to put a stop to it. Yet, I have a letter here bearing Ms. Lerner's name, stated March 16, 2012.

In that letter she directs a conservative Indiana group to comply with a previously sent inappropriate information request, under penalty of perjury -- I have that request here. So one year after she said she stopped this practice, Ms. Lerner sent a letter demanding the group fulfill a request she had already determined to be inappropriate, a request that included a demand for donor information.

SFC 004413

This strikes me peculiar, to say the least. And it seems to contradict claims that somebody at the IRS tried to stop the harassment in 2011.

Further, this Indiana group had their 501(c)(4) status denied on February 18, 2013. But four days later, on February 22nd, 2013, their 501(c)(4) request was granted, even though they never provided the required information.

So after seeing these actions and an approval of an application that looks a lot to me like someone was covering their tracks over that four-day period, how can I assure my constituents that employees of the IRS aren't targeting conservative groups they disagree with?

MILLER:
So let me -- let me put this in, sort of, time order, because I think -- again, there's some -- some fundamental mashing of issues. There are two issues here. One is the list issue, which began about the time you say it did, I believe. And one is how we processed the cases.

The donor list letter -- and I'm not speaking, because I don't know that case -- but the donor list letter issue occurred much later in time. It actually occurred, I believe -- and I've got to go back and check this -- but I believe it occurred after Lois had stepped in and stopped the listing, the first issue.

The development of those cases was still problematic. We had not gotten to the bottom of that. And that's why that would have been the case.

I don't have -- I don't have an answer for you on the last piece of that.

YOUNG:
Wait a second here. She -- she said she'd resolve the situation. She said she had stopped the targeting of conservative groups. A year later she demands a group fulfill a request for the inappropriate information. I don't believe you've addressed that issue, sir.

(CROSSTALK)

YOUNG:
... 30 seconds left to do so.

MILLER:

I apologize.

First you should know, while her signature is on there, her signature is on 70,000 applications. So let's not personalize this one to -- to Ms. Lerner.

Secondly, and probably more importantly, I mean, I think that -- again, my understanding and what I think Mr. George has said is that in 2011 of June or July, whatever it was, she handled and -- and fixed the list issue. The cases were still in development. The cases needed to be in development. There were issues. We just did a remarkably bad...

(CROSSTALK)

YOUNG:
OK. All right, sir.

And then it's just curious, I'll reiterate, a denial on February 18, 2013, and then a granting four days later. It does look a bit fishy there. We'll have to clarify that.

CAMP:
Time has expired. You'll have to respond in writing.

Mr. Kelly?

KELLY:
Thank you, Chairman.

Mr. George you have been on the job since November of 2004, is that correct...

(CROSSTALK)

GEORGE:
Yes, 2004.

KELLY:
Anything rise to this level before?

GEORGE:
No, nothing.

KELLY:
Can I ask you, why did it take so long from the first time we knew that this was happening to the (inaudible) the report? The president said just the other day, I think it was yesterday, that he just got a look at the report and that's the first time he knew anything about it...

GEORGE:
Well...

KELLY:
... other than reading it in the papers, I guess.

GEORGE:
Are you asking how...

(CROSSTALK)

KELLY:
Yes -- have you ever seen at that magnitude before, anything...

(CROSSTALK)

GEORGE:
No...

KELLY:
... this magnitude? It's never come up before?

GEORGE:
No, it has not.

KELLY:
OK. All right. Thank you.

And Mr. Miller, now you've been on the job for quite some years, but the current job you're in is from November 9th, 2012. So -- is that right? So you just took over as acting commissioner?

MILLER:
In November of '12, yes...

KELLY:
OK.

MILLER:
... I have both jobs.

KELLY:
All right. But before that, one of your jobs -- you were the commissioner of Tax-exempt and Government Entities Division. So you actually were in the job that we're questioning now that group of what -- what would -- what was happening there?

(CROSSTALK)

KELLY:
So would have been in Cincinnati?

MILLER:
No.

KELLY:
You were never in Cincinnati?

MILLER:
No.

KELLY:
So is Cincinnati some outpost...

MILLER:
So -- so, obviously, the -- the IRS is a nationwide organization.

KELLY:
Oh, I know. I understand that. I understand that.

(CROSSTALK)

KELLY:
And I want to tell you, listen, believe me, if you think it's uncomfortable sitting over there, you ought to be a private individual when the IRS is across from you questioning. So I got to tell you, it's uncomfortable for everybody.

But my question more specifically is, so how did Cincinnati get to where they are? How did they -- how did they develop that strategy? And how did they know to go after these certain groups? How did they target those folks? That just -- a couple rookies just showed up, didn't really know what they were doing?

MILLER:
So again I would -- I would -- I would point to the -- the TIGTA report on -- on what happened.

KELLY:
No, I understand that. I understand that. But I'm hearing, these are couple -- it's always -- these are low level people that pushed the wrong button.

Now, when Cincinnati can't figure out, who do they confer with? Who's their counsel when they're looking at these entities, tax-exempt entities?

(CROSSTALK)

KELLY:

... come back here to D.C.?

MILLER:
There's two possibilities.

KELLY:
Yes or no, does it come back to D.C.?

MILLER:
Yeah.

KELLY:
OK, all right.

So D.C. and Cincinnati would be pretty well-connected in understanding what's going on? So this doesn't come as a great shock to anybody. In fact, I would say it doesn't come as a shock. You know what it does to the American people? It really establishes what they fear so often.

I have a grandson who's afraid to get out of bed at night because he thinks there's -- somebody under the bed is gonna grab him. And I think most Americans feel that way about the IRS. I mean, you get a letter from you folks or a phone call, it's with terror that you look at it.

KELLY:
And now this kind of reconfirms that, you know what, they can do almost anything they want to anybody they want, anytime they want. This is very chilling for the American people.

Now, I know that -- (inaudible) and you're gonna -- you're resigning. You're walking away from it. But this is not gonna go away. This is a Pandora's box that has been opened.

And I don't think we can get the lid back on it. And I don't believe that the White House just found out about this in the news report -- the president happened to grab a TV shot or just read Mr. George's report and said, "You know what? Anybody heard about this before?"

I'm just getting a first look at this. Shouldn't somebody be responsible? And I'm thinking maybe the executive -- maybe Treasury falls in there. I'm not sure that we understand how that organizational chart works.

But I am really concerned. Now, I've got to tell you, where you're sitting, you should be outraged, but you're not. And the American people should be outraged, and they are. And this committee -- this has nothing to do with

political parties. This has to do with highly targeted groups. This reconfirms everything that the American public believes. This is a huge blow to the faith and trust the American people have in their government.

SFC 004418

Is there any limit to the scope of where you folks can go? Is there anything at all? Is there any way that we could ask you, is there any question that you shouldn't (ph) have asked? My goodness, "How much money do you have in your wallet? Who do you get e-mails from? Whose sign do you put up in your front yard?"

This is a tax question? And you don't think that's intimidating? It's sure as hell intimidating. And I don't know that I got any answers from you today, and I don't know that -- what Mr. George has done is great work, but you know what? There's a heck of a lot more that has to come out in this. And anybody to sit here today and listen to what you have to say, I am more concerned today than I was before.

And the fact that you all can do just about anything you want to anybody. You know, you can put anybody out of business that you want anytime you want. And I've got to tell you, you talk about -- you're a horribly run organization. You're on the other side of the fence. You're not given that excuse.

And when the IRS comes in, you're not allowed to be shoddy. You're not allowed to be run horribly. You're not allowed to make mistakes. You're not allowed to do one damn thing that doesn't come in compliance. If you do, you're held responsible right then.

I just think the American people have seen what's going on right now in their government. This is absolutely an overreach and this is an outrage for all America.

I yield back.

CAMP:
All right.

(APPLAUSE)

Mr. Griffin is recognized for five minutes.

The committee will come to order. We'll have order in the committee.

Mr. Griffin is recognized for five minutes.

GRIFFIN:
Thank you, Mr. Chairman.

I want to make a couple of comments first. You know, the surge in these groups that are the subject of this hearing is not related to a Supreme Court case, if there was a surge at all. It's related to the nonsense in Washington. That's why people were getting engaged. In fact, the Supreme Court case that's been so much discussed here has no bearing on these groups ultimately. That's ridiculous.

What this hearing has demonstrated for me that our most expansive federal powers are given to our most intrusive agency. And then you add on top of that incompetence or whatever else we have, and it's a disaster. You know, my colleague here talks about asking people how much money they've got in their wallet. I got a text last night at dinner from a friend of mine who's a supporter in Arkansas, in Little Rock. He's being audited.

Yesterday morning, he had to meet with the IRS. He was outraged. He sent me a text. He said, "They asked me how much cash do you carry in your wallet? How much cash does your wife carry in her wallet? Do you use the Internet?"

You know, I don't care what rules are written down or not written down. These people ought to have enough common sense to know that this is just stupid to ask this kind of stuff. And if they don't know that on their own without something written in a regulation, they ought to quit or be fired. It's craziness.

Now, I've known you for a long time, General. And I've looked at your investigation. I appreciate the work you've done. It's really an audit. Let's be clear to the press. This is not an investigation. You did not request e-mails. You did not do what you would do in an investigation. There's a reason you don't know who came up with this. You didn't investigate that. You might be now. Are you?

GEORGE:
I'm not in a position, sir, to discuss whether or not...

GRIFFIN:
That means you are. OK. So the bottom line is -- the bottom line is for those looking, this is an audit. And it's helpful, but it's the tip of the iceberg. It's the tip of the iceberg. It's looking at metrics and interviewing some folks.

We worked together years ago up here on the Hill, right in the building next to us. And we know how important e-mails are. And I trust that you're going to get to the bottom of the e-mails.

Now, let me -- let me just mention real quickly. If you want to know where a lot of this comes from, look at Senator Levin's letter. Senator Levin specifically mentioned a bunch of the groups that you all targeted. The other senators

made the point, but they didn't mention specific groups. It was Senator Levin's letter -- to some extent, you all were doing what Democrat senators were asking. Well, the press here ought to go to the Senate when you're done and ask them some questions.

Now, with regard to Sarah Hall Ingram. You may have been confused as to when she worked there, but she was there to '09 to 2012. You said you had horrendous customer service. And what happened to her? She got $100,000 in bonuses and she was promoted. Wow. Incredible. You said the buck stops with you. Well, it stopped with her before that. She was directly in charge of these -- of these rules, of this targeting.

What did she get? Bonuses and moved to a job. And you know what her job is now? She's coordinating section 1414 of Obamacare. What is that? That's the provision that says that there is an exemption or an exception to disclosure of tax information. What is that? That means the Treasury can share your tax information with HHS for the purposes of implementing Obamacare to see whether you have got a really expensive health care plan or what have you. It's right there in section 1414.

So, she provided horrendous customer service under her watch, and now she's going to same implementing Obamacare. Swell. This is the perfect -- this is a perfect example of why we need tax reform. If you want to diminish and limit the power of the IRS, you've got to reduce the complexity of the tax code and take them out of it.

Thank you, Mr. Chairman.

CAMP:
Thank you.

Mr. Renacci is recognized for five minutes.

RENACCI:
Thank you, Mr. Chairman.

Gentlemen, as a CPA who's represented many taxpayers in the last three decades, I am really appalled. I'm really appalled that the agency was able to take these actions.

Mr. George, you made a comment. You said that these actions, even though they were contrary to the Treasury policy at the IRS, it was not illegal, but inappropriate.

Mr. Miller, if a taxpayer was in front of your agency and they did something that was contrary to Treasury policy, would that be illegal or inappropriate?

MILLER:
If they did something contrary? No, it would...

RENACCI:
Treasury policy on their tax return.

MILLER:
No. We would be auditing them.

RENACCI:
I know you'd be auditing them, but I've -- I've seen your agency bring people to tears because you say it's inappropriate. It's just amazing the way you're answering some of these questions.

You know, you answered a question of Mr. Roskam. You said "I don't know." If an American taxpayer said to you in an audit, "I don't know the answer," what would your agency do to that person?

MILLER:
We would work with them. Yeah, I...

(CROSSTALK)

RENACCI:
Well, I've seen what you've done to them when they say they don't know. That's the problem. That's what the problem here is.

Mr. Miller, you talked about your (inaudible). You know, at some point time, you said these were "serious infractions." You said you were "outraged." When did that become -- when were you outraged? When did you first learn of this? And when did you become outraged?

MILLER:
May 3rd of 2012.

RENACCI:
So May 3rd of 2012 you became outraged. When you testified in front of this committee on July of 2012, why weren't you outraged then?

MILLER:
I was answering the questions that I was asked, sir, and I knew that TIGTA had this under its -- under its viewing, and that this was going to come out.

RENACCI:
But you were outraged a couple months before. You didn't let Congress know of your outrage at that point in time.

MILLER:

At that point in time, I fixed the problem.

RENACCI:
You fixed the problem.

Mr. Chairman, I want to offer in the record a statement from one of my constituents, the Ohio Christian Alliance.

CAMP:
Without objection.

RENACCI:
The Ohio Christian Alliance is one of those organizations. Now, they -- they were applying for (c)(3), an educational trust. They were there -- they were advocating life, faith and freedom. Is there any -- what was the IRS concerned about? What were they scared about when it comes to life, faith and freedom?

MILLER:
Sir, I can't speak to an individual case. I have no knowledge of it.

RENACCI:
I'm just using an example -- life, faith and freedom? That's something that the IRS would pull and application for? And actually, it took over 13 months. The timeline on this -- the -- on February -- they filed in February of 2011. In March, they were told they'd have an answer in 90 days. In December, they got a letter that said they had two weeks to respond or their application would be -- their application would be denied. And then, they responded.

By the way, some of the questions, you know, you talk about what are -- what are some of the questions. I mean. they list here, is your organization or were the actions of the organization against anti-Christian bigotry more accurately classified as education in nature? If your organization is engaged in such activity? I mean, are some of those questions appropriate?

MILLER:
Don't know, because it's a specific case. But I will say one of our difficult areas is determining -- determining what's politics and what's education. It's a very difficult line.

RENACCI:
I don't think anything in this application leaned toward politics. It leaned toward, as I said, life, faith and freedom.

Mr. Miller, I understand that after the presidential election the IRS approved dozens of applications from conservative groups. Why was there such a large approval after the election?

MILLER:
I don't have that information. My information is that we -- in May I asked that the cases be grouped in a fashion that we move them quickly through and try to fix the process problems we had. There were a number of applications from tea parties and others that were approved at that time, and we pushed hard.

RENACCI:
Was our process changed post-election?

MILLER:
No, not that I'm aware of.

RENACCI:
OK.

Mr. Chairman, I yield back.

CAMP:
Thank you, Mr. Renacci.

That brings this hearing to an end. But I promise the American people, this investigation has just begun.

Hearing adjourned.

CQ Transcriptions, May 17, 2013

List of Panel Members and Witnesses

PANEL MEMBERS:
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WITNESSES:
ACTING IRS COMMISSIONER STEVE MILLER

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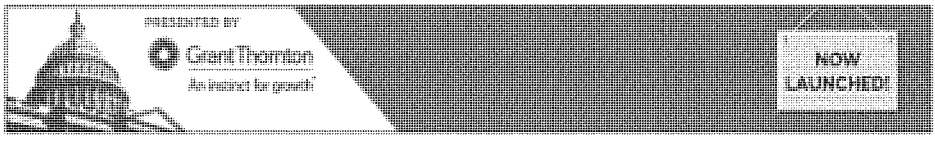

SFC 004426

S. HRG. 113–232

A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY 501(c)(4) APPLICATIONS FOR GREATER SCRUTINY

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

MAY 21, 2013

Printed for the use of the Committee on Finance

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SFC 004430

A REVIEW OF CRITERIA USED BY THE IRS TO IDENTIFY 501(c)(4) APPLICATIONS FOR GREATER SCRUTINY

TUESDAY, MAY 21, 2013

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:04 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Wyden, Stabenow, Cantwell, Nelson, Menendez, Cardin, Brown, Bennet, Casey, Hatch, Grassley, Crapo, Roberts, Enzi, Cornyn, Thune, Burr, Isakson, Portman, and Toomey.

Also present: Democratic Staff: Amber Cottle, Staff Director; Mac Campbell, General Counsel; John Angell, Senior Advisor; Lily Batchelder, Chief Tax Counsel; and Chris Law, Investigator. Republican Staff: Chris Campbell, Staff Director; and Jim Lyons, Tax Counsel.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The hearing will come to order.

Before we begin, I am confident I can speak for every member of this committee in saying our thoughts and prayers are with the people of Oklahoma. We will stand with the courageous community of Moore, with the people of Oklahoma, as they come together to face this tragedy. May we stand together as citizens of the United States of America with the people of Moore and with the people of Oklahoma. We are all together, and we all share their grief.

The statesman Adlai Stevenson once said, "The government by consent of the governed is the most difficult of all because it depends for its success and viability on the good judgments of so many of us." These words are etched in granite at the IRS headquarters, just outside Washington, DC. They speak to the need for government at all levels to exercise sound judgment in order to earn and keep the confidence of the American people.

That confidence was broken recently by the news that the IRS targeted conservative groups seeking tax-exempt status. In doing so, the IRS abandoned good judgment and lost the public's trust. The American people have every right to be outraged. Targeting groups based on their political views is not only inappropriate, it is intolerable. We need to understand how and why this targeting occurred. We need to know who was involved and who was respon-

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sible. We need to install new safeguards to ensure this targeting never happens again.

The IRS has one of the most direct relationships with Americans of any agency in our government. The IRS employees know where we live, where we work, how many children we have, and what investments we make. Because of this, IRS employees are placed in a position of great trust, and they must exercise this trust in a fair and even-handed manner.

Employees in the Tax Exempt Unit of the IRS Office in Cincinnati abused this trust. The Treasury Inspector General's report found that employees in this unit targeted groups with names containing Tea Party, Patriot, and other terms associated with conservatives.

The Inspector General's report also found that the Tax Exempt Unit was a bureaucratic mess. Employees were ignorant about tax laws, defiant of their supervisors, and blind to the appearance of impropriety. This is unacceptable.

But the Inspector General's report also raises many unanswered questions. For example, the report examined 298 applications, and the Cincinnati IRS office reportedly identified 96 of those 298 applications using "political" screening terms.

But what was the nature of the other 202 applications? Were they filed by liberal groups, moderate groups, or groups that had no political affiliation? We cannot measure the full impact of this case without knowing the nature of these additional applications.

Who is responsible? We know the IRS officials in Washington tried to stop this behavior, but who in Cincinnati perpetuated this behavior? One person? Two people? The whole office? Who? We do not know, not yet.

I intend to get to the bottom of what happened. As part of our oversight of the IRS, this committee has launched a formal bipartisan investigation. We have requested additional documents from the IRS as part of our independent inquiry. We will follow the facts and see where they take us.

The Inspector General's report also demonstrates the need for Congress and this committee to review and reform the Nation's tax laws when it comes to 501(c)(4) organizations. We have come a long way from the Tariff Act of 1894 when Congress first created exemptions for charitable, religious, and educational organizations.

Today there are countless political organizations at both ends of the spectrum masquerading as social welfare groups in order to skirt the tax code. These groups seek 501(c)(4) status. Why? Because it allows them to engage in political activity while keeping the identity of their donors secret.

According to data collected by the website OpenSecrets.org, 501(c)(4)s spent $254 million in the 2012 election. That is about equal to the combined spending of the 2012 Democratic and Republican political parties.

None of the donors behind these multi-million dollar campaigns was disclosed. This was all secret money. In 2010, I wrote a letter to the IRS asking them to look at all major tax-exempt organizations, 501(c)(4)s, (c)(5)s, and (c)(6)s. I asked this question: is the tax code being used to eliminate transparency in the funding of our

elections, elections that are a constitutional bedrock of our democracy?

This letter was part of a long line of investigations that the Senate Finance Committee has conducted into nonprofit, tax-exempt organizations. In 2006 we investigated the efforts of Jack Abramoff to use nonprofits to lobby Congress, and, in 2005 when Senator Grassley was chairman of this committee, we investigated religious organizations, nonprofit hospitals, and the Nature Conservancy.

Once the smoke of the current controversy clears, we need to examine the root of this issue and reform the Nation's vague 501(c)(4) tax laws. Neither the tax code nor the complex regulations that govern nonprofits provide clear standards for how much political activity a 501(c)(4) group can undertake.

The code does not even provide a clear definition of what qualifies as political activity. The statute provides one definition of a 501(c)(4), while IRS regulations say something different. The statute says its contributions or earnings must be "devoted exclusively to charitable, educational, or recreational purposes," the key word being "exclusively." IRS regulations, on the other hand, define a 501(c)(4) as an organization "primarily"—not "exclusively"—"engaged in promoting in some way the common good and general welfare of the people of the community."

How does the IRS justify regulations that weaken the standard from "exclusively" to "primarily"? These ambiguities may have contributed to the IRS taking the unacceptable steps we are examining here today. Americans expect the IRS to do its job without passion or prejudice. IRS cannot pick one group for closer examination and give others a free pass, but that is apparently what they did.

As Adlai Stevenson said: "The success of our government depends on the good judgments of so many." It is clear that many in the IRS exercised poor judgment in this case. Today, they will have to answer for it.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Well, thank you, Mr. Chairman. Before I begin, I would like to just take a moment to say that my thoughts and prayers are with the good people of Oklahoma who have been impacted by yesterday's devastating tornadoes. In particular, my prayers go out to those who have lost loved ones in the really catastrophic storms, and I hope they are going to be able to deal with this tragedy in every good way.

Thank you, Mr. Chairman, for convening this important hearing. You and I do not always agree on all of the issues, but on this point we agree. Despite some claims to the contrary, the IRS targeting of citizens for their political views is in fact a scandal.

It undermines Americans' trust that the government will enforce the law without regard to political beliefs or party affiliation. Make no mistake, this hearing and the investigation that will follow are absolutely critical to this country.

Over the weekend, a senior White House official said Republicans are on a "partisan fishing expedition" and that we are conducting "trumped-up hearings." I hope they are not referring to what this committee is doing or to this hearing that we are having today. This would be very disconcerting, particularly after last week when the President said he was committed to working with Congress to find out the truth.

These hearings are not some sideshow designed to distract from the President's agenda. I hope that the President and his administration are not attempting to distract us from getting to the bottom of this. This committee is going to pursue this matter wherever it leads.

The Internal Revenue Service is one of the most powerful agencies in our government. Everybody knows that. It has a broader reach than almost every other government agency or entity. Indeed, many law-abiding Americans are already afraid of the IRS.

That being the case, the American people have a right to expect that the IRS will exercise its authority in a neutral, non-biased way. We need to work together to make sure that this is precisely what it does, without any hint of political bias or partisanship, and that the IRS takes this responsibility seriously.

Sadly, as we will discuss during today's hearing, there appears to have been more than a hint of political bias in the IRS's processing of applications of groups applying for tax-exempt status. We have a report from the Treasury Inspector General for Tax Administration, or TIGTA, indicating that the use of inappropriate political criteria was all too common in the evaluation of these applications.

So far, here is what we know. We know that between 2010 and 2012, conservative groups applying for tax-exempt status were targeted by the IRS and subjected to increased levels of scrutiny. We know that these groups were targeted because they had the words "Tea Party" or "Patriots," et cetera, in their name or because they said in their applications that they wanted to do things like "make America a better place to live."

We know that these conservative groups were asked invasive and inappropriate questions about their donors, their positions on various issues, and the political affiliations of their officers and directors.

We know that some of these groups' applications were delayed for more than 3 years, even as applications for groups friendly to the President and liberal causes were promptly approved. We know that, despite some early claims to the contrary, knowledge of this operation extended beyond the processing center in Cincinnati and that IRS officials in Washington, DC were aware of the program at an early stage.

We have also seen evidence that employees at other IRS offices besides Cincinnati scrutinized conservative organizations to an unreasonable degree. In spite of what the IRS has said publicly, it has become clear that this problem was not limited to a few employees in Cincinnati. We know that by June 2012 at the latest, the number-two official at the Department of the Treasury, Deputy Secretary Neal Wolin, was aware that there was an ongoing TIGTA inquiry into these issues.

Here is what we do not know. We do not know why the targeting began. We are concerned about the extent to which senior officials at the IRS and the Department of the Treasury became aware of these practices, when they found out, and what they did or did not do to put a stop to them.

Perhaps most importantly, we want to know why the IRS purposefully misled Congress when they led us to believe that no groups were being targeted when we repeatedly raised this issue with the agency last year. This, to me, is one of the most disturbing elements of this story.

On multiple occasions in 2012, I spearheaded letters from Republican Senators to then-IRS Commissioner Shulman, asking questions about the IRS's processing of applications for tax-exempt status and the reports that the process had become politicized.

I received two separate responses from Acting Commissioner Steven Miller, who was at that time serving as the Deputy Commissioner for Services and Enforcement. Neither of these responses even hinted at the possibility that the targeting was going on, even though these officials in Washington were certainly aware that a number of conservative groups had in fact been targeted.

Indeed, despite multiple efforts during the 2012 election campaign to find out the facts about this targeting program, the IRS did not decide to come clean until the release of the TIGTA report was imminent and their hand was forced.

Even then, one of the top IRS officials, in consultation with the Department of the Treasury, chose to disclose that it had targeted innocent organizations by responding to a planted question at a press conference. A planted question! The American people deserve to know the truth about what went on here, and they deserve to know why the truth was kept from them for so long.

Were the top IRS officials willfully blind to what was going on, or were they simply holding out until after the election? While the targeting of conservative groups and the review process has received most of the attention thus far, it is not the only problem that needs to be addressed.

I am, of course, referring to the fact that in 2012 one of the IRS offices that was targeting conservative groups' applications also improperly disclosed confidential information about some of the same groups to a left-leaning media organization called ProPublica.

This revelation comes on the heels of other allegations that the IRS disclosed to activist groups and media outlets, confidential information including donor information, submitted by conservative nonprofits. We need to look closely at all these allegations as well. So, as you can see, Mr. Chairman, there are a lot of problems at the IRS. I am glad that, thus far, members of both parties have recognized the need to address these issues.

Mr. Chairman, I am pleased to be working with you on this investigation, and I hope that we will continue to work together on a bipartisan basis to get to the bottom of all this. I want to assure our colleagues and the American people that we are going to find out exactly what happened here, and we are going to do everything we can to make sure it does not happen again.

The only way to fully address these issues and to restore the credibility of the IRS is to have a full accounting of the facts. One

way or another, we are going to learn the facts about what went on here. I hope that we can do so with the full and complete cooperation of the Obama administration. Today's hearing is just the first step in this process.

I want to thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. I would now like to welcome our panel of witnesses. First is the Honorable Russell George, Treasury Inspector General for Tax Administration at the U.S. Department of the Treasury; second, Mr. Steven Miller, Acting Commissioner of the Internal Revenue Service here in Washington, DC; and third, former Commissioner of the IRS, the Honorable Douglas Shulman. Thank you all for coming.

Before we begin, I would like you all to stand so I can swear you in, please.

Raise your right hands, please.

Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

The WITNESSES. I do.

The CHAIRMAN. Thank you. You may be seated.

As is our regular practice, we will include your prepared statements for the record and ask each of you to summarize in about 5 minutes. We will start with you, Mr. George. Then after that, obviously, the committee will have a lot of questions.

Mr. George?

STATEMENT OF HON. J. RUSSELL GEORGE, TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, DEPARTMENT OF THE TREASURY, WASHINGTON, DC

Mr. GEORGE. Thank you, Chairman Baucus. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to discuss our report concerning the Internal Revenue Service's treatment of groups that applied for tax-exempt status.

Our audit was initiated based on concerns expressed that certain groups were being subjected to unfair treatment by the IRS. The report issued last week addresses three allegations: (1) that the IRS targeted specific groups applying for tax-exempt status; (2) that the IRS delayed the processing of these groups' applications; and (3) that the IRS requested unnecessary information from the groups it subjected to special scrutiny. Our review confirmed all of the allegations.

Inappropriate criteria were used by the IRS to target for review "Tea Party" and other organizations based on their names and policy positions. The practice started in 2010 and continued to evolve until June 2011. The criteria, which we obtained from a briefing held by the IRS's Exempt Organizations function in June of 2011, were: the organizations' names, including "Tea Party," "Patriots," or "9/12 Project"; whether the organizations had policy positions involving government spending, government debt, or taxes; third, the organizations intended to provide education to the public by advocacy or lobbying to "make America a better place to live"; and last-

ly, there were statements in the case file criticizing how the country is being run.

These criteria were inappropriate in that they did not focus on tax-exempt laws and Treasury regulations. For example, 501(c)(3) organizations may not engage in political campaign intervention, which is defined as action taken on behalf of or against a particular candidate running for office. 501(c)(4) organizations may engage in such activity so long as it is not their primary activity.

IRS employees began selecting "Tea Party" and other organizations for review in early 2010. From May 2010 through May of 2012, a team of IRS specialists in Cincinnati, OH, referred to as the Determinations Unit, selected 298 cases for additional scrutiny.

We found that the first time executives from Washington, DC became aware of the use of these criteria was June 2011, with some executives not becoming aware of the criteria until April or May 2012.

These inappropriate criteria remained in effect for approximately 18 months. After learning of the criteria, the Director of Exempt Organizations changed them in July of 2011 to remove references to organization names and policy positions, only to have staff in Cincinnati change the criteria back again to target organizations with specific policy positions. The difference this time is that they did not include "Tea Party" or other named organizations. It took until May 2012 before the criteria were finally changed to be consistent with laws and regulations.

The organizations selected for review for significant political campaign intervention experienced substantial delays in the processing of their applications. As of December 2012, the status for the 296 cases that we were able to review was 108 cases had been approved, 28 cases were withdrawn, and 160 cases were still open. It is noteworthy that zero cases had been denied.

Of the cases still open, some have been in process for over 3 years and crossed 2 election cycles without resolution. Of the 108 cases approved, 31 were "Tea Party," "9/12," or "Patriot" organizations.

Another troubling aspect we uncovered was the fact that the IRS requested unnecessary information for many political cases. Ninety-eight of 170 cases that received follow-up requests for information from the IRS had unnecessary questions. We found that staff at the Determinations Unit sent letters requesting this information with little or no supervisory review.

The IRS later determined these questions were unneeded, but not until after media accounts and questions by members of Congress arose in March of 2012. An example of unnecessary information requested was the names of past and future donors. The IRS informed us that they subsequently destroyed the donor information received from applications.

In closing, the IRS demonstrated gross mismanagement in its operation of this program. The allegations were substantiated and raised troubling questions about whether the IRS has effective

management, oversight, and control, at least in the Exempt Organizations function.[1]

Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to present the findings of our audit.

The CHAIRMAN. Thank you, Mr. George.

[The prepared statement of Mr. George appears in the appendix.]

The CHAIRMAN. Mr. Miller, you are next.

STATEMENT OF STEVEN MILLER, ACTING COMMISSIONER, INTERNAL REVENUE SERVICE, WASHINGTON, DC

Mr. MILLER. Thank you for the opportunity to be here today. Unfortunately, given time considerations, the IRS was unable to prepare written testimony. I would note that I have a very brief statement before I take questions.

First and foremost, as Acting Commissioner, I want to apologize on behalf of the Internal Revenue Service for the mistakes that we made and the poor service we provided. The affected organizations and the American public deserve better.

Partisanship, or even the perception of partisanship, has no place at the IRS. It cannot even appear to be a consideration in determining the tax exemption of an organization. I do not believe that partisanship motivated the people who engaged in the practices described in the Treasury Inspector General's report.

I have reviewed the Treasury Inspector General's report, and I believe its conclusions are consistent with that. I think that what happened here was that foolish mistakes were made by people trying to be more efficient in their workload selection. The listing described in the report, while intolerable, was a mistake and not an act of partisanship.

The agency is moving forward. It has learned its lesson. We have previously worked to correct issues in the processing of the cases described in the report and have implemented changes to make sure that this type of thing never happens again. Now that TIGTA has completed its fact-finding and issued its report, management will take appropriate action with respect to those responsible.

I would be happy to answer any questions that you may have.

The CHAIRMAN. Thank you, Mr. Miller.

Mr. Shulman?

STATEMENT OF HON. DOUGLAS SHULMAN, FORMER IRS COMMISSIONER, AND GUEST SCHOLAR, BROOKINGS INSTITUTION, WASHINGTON, DC

Mr. SHULMAN. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for the opportunity to appear before the committee to talk about the Inspector General's report.

I was Commissioner of the Internal Revenue Service from March 2008 till November 2012. During that time, the agency was called upon to tackle a number of challenges. The agency played a key role in stimulus and recovery efforts during the economic down-

[1] For more information, *see also,* "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review," Treasury Inspector General for Tax Administration report, May 14, 2013 (Ref. no. 2013–10–053), *http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf.*

turn, aggressively addressed offshore tax evasion, and completed a major modernization of its core technology database.

The agency also continued to deliver on its core mission of collecting the revenue to fund the government. The IRS is a major operation, with more than 90,000 employees who work on issues ranging from processing individual tax returns, to building complex technology, to ensuring compliance with businesses, to educating the public about tax law changes, to administering a very complex set of rules governing tax-exempt organizations.

I have recently read the Treasury Inspector General's report. I was dismayed and I was saddened to read the Inspector General's conclusions that actions had been taken creating the appearance that the Service was not acting as it should have, that is, as a nonpolitical, nonpartisan agency.

The IRS serves a critical function for our Nation. It collects the taxes necessary to run the government. Because of this important responsibility, the IRS must administer, and it must be perceived to administer, our tax laws fairly and impartially. Given the challenges that the agency faces, it does its job in an admirable way the great majority of the time. The men and women of the IRS are hard-working, honest public servants.

While the Inspector General's report did not indicate that there was any political motivation involved, the actions outlined in the report have justifiably led to questions about the fairness of the approach taken here. The effect has been bad for the agency and bad for the American taxpayer.

I am happy to answer any questions.

The CHAIRMAN. Thank you, all three of you. I have a couple of questions, first to Mr. Miller and Mr. Shulman. Essentially, it is my understanding that the IRS headquarters shut down the use of political terms such as Tea Party and the other terms we all learned about in June of 2011. That is when headquarters shut that down. Why were people not then fired or transferred, or more significant action taken than just to be told, do not do this, given how outrageous this conduct is? Why was more definitive action not taken?

Mr. MILLER. I do not believe that I was aware at the time that that had happened. I first became aware of this in May of 2012.

The CHAIRMAN. Mr. Shulman, you were around during this time.

Mr. SHULMAN. Yes. In June of 2011, I do not believe I was aware of this. Actually——

The CHAIRMAN. Well, who was aware? Somebody at headquarters was aware, obviously. But besides Lois Lerner.

Mr. MILLER. Well, the report indicates that Exempt Organizations knew. There is no indication, I think, from the report—and you would have to ask the Inspector General—that others knew at this time.

The CHAIRMAN. Well, you were acting head of the IRS, and you were the head of IRS, Mr. Shulman. Who did know? I mean, come on. You have read the report. You were Acting Commissioner, you were Commissioner. Come on. If you do not know, it sounds like somebody is not doing his job.

So why was more direct action not taken, first when these terms were discovered, right away, and then IRS had a second chance

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after the same activity started again in January of 2012? Incredibly, it started again. IRS stopped for a while and then went back again. Old habits. I cannot believe that, frankly.

Why was more firm action not taken by people, either the Commissioner himself or by people at the top? This is outrageous. Any person can figure out that this is unacceptable conduct. Mr. Miller?

Mr. MILLER. Again, sir, all I can say is we were unaware. I was unaware, I believe, at the time that it had happened. When I found out in May, I took action.

The CHAIRMAN. But what action did you take?

Mr. MILLER. So I was briefed, after sending a group to take a look at the cases, in May. They reported back to me in May of 2012, essentially with much of what had transpired and what is shown in the IG report: that the cases were languishing, that a list had been utilized, that letters had gone out that were much more broad than they should be.

At that point we had already taken care of the letters because those had come up, and this is how we knew something was going on, and I asked for a review. We then trained our folks; we held workshops to ensure that they were going to do the work well. We took a look at the cases.

I asked for the cases to be looked at and grouped in a fashion so that those that looked like they should be approved were approved, those that looked like they needed some work got that work, and those that needed further development got that development. So we took action on that.

I also—at that time, I was aware that TIGTA was working on this, but I took some intermediate action pending TIGTA. We transferred and reassigned an individual who had been involved in the letters. I asked that the person whom I believed at the time was responsible for the listing, that oral counseling occur. At that time the listing process had been fixed.

The CHAIRMAN. All right. I appreciate that. This committee has sent many questions to you and Mr. Shulman and others to try to get the answers to some of these questions, and we are not going to get the definitive answers at this moment, that is clear.

A deeper question to me is, what created this culture of indifference to the American people and such aggressive behavior of improperly targeting certain groups? What caused that culture to develop, and what did you do about correcting that culture, if you even were aware of it? Either one of you, Mr. Miller or Mr. Shulman. I will start with you, Mr. Shulman.

Mr. SHULMAN. Sure. During my time at the IRS, I believed and I articulated that the IRS needed to be a nonpolitical, nonpartisan agency.

The CHAIRMAN. Well, you may have articulated that, but how did this happen?

Mr. SHULMAN. I think that there is a set of rules built into the system, there are laws, there is education of people that I think the vast majority of the IRS employees understand and abide by.

The CHAIRMAN. What happened in Cincinnati? What conditions caused that? Because my time is expiring here. It already has expired, frankly. If you could just respond, very quickly, in a nutshell, bottom line, how did this happen?

Mr. SHULMAN. Mr. Chairman, I cannot say. I cannot say that I know that answer.

The CHAIRMAN. Well, you are a Commissioner.

Mr. SHULMAN. I am 6 months out of——

The CHAIRMAN. You have some sense of the outfit. You were a Commissioner for a good number of years. You have some idea. You have thought about this.

Mr. SHULMAN. I am 6 months out of office. When I left, the IG was looking into this to gather all of the facts. I have now had the benefit of reading the report, and that is, you know, the full accounting of facts that I have at this point. So I do not think I can answer that question, Mr. Chairman.

The CHAIRMAN. Well, I am kind of disappointed, frankly, because you have had time to think about this. You certainly have more thoughts than that.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

On two different occasions, my colleagues and I wrote letters to you, Mr. Shulman. In the first letter on March 14, 2012, we asked about selective enforcement by the IRS and requests for donor information. Then we wrote again on June 18, 2012 to request more information about the IRS's practice of requesting confidential donor information.

As I wrote in my March 2012 letter, "It is critical that the public have confidence that Federal tax compliance efforts are pursued in a fair, evenhanded, and transparent manner without regard to politics of any kind."

The responses that I received from the IRS were anything but transparent. The IRS responded to these two letters on April 26, 2012 and September 11, 2012, and both of these responses were signed by you, Mr. Miller. These responses did not disclose that the IRS had any reason to believe that it had improperly targeted Tea Party or other conservative organizations or improperly asked for confidential donor lists.

I ask unanimous consent to put all four letters in the record at this point.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 192.]

Senator HATCH. Recently we have learned that the IRS was in fact aware that the IRS had targeted Tea Party and other conservative organizations. We know that by June 2011 at the latest, Lois Lerner, the Director of the Exempt Organizations group in DC, was aware that IRS examiners had issued a "be on the lookout" listing regarding Tea Party and other organizations.

We also know that on May 30, 2012, TIGTA briefed you, Mr. Shulman, about its ongoing audit of these practices. Yet, when you testified before Congress on March 22, 2012, you said, "There was absolutely no targeting." To this day you have not corrected your testimony, even though you know that the IRS was inappropriately screening Tea Party organizations.

Now, Mr. Shulman, why have you not come forward before today to correct the record and acknowledge that there was in fact inappropriate screening occurring in the IRS, the organization that you headed?

Mr. SHULMAN. Let me answer a few things. One is, the full set of facts around these circumstances came out last week in the TIGTA report, which I read. Until that point I did not have a full set of facts about——

Senator HATCH. Yes, but you knew that this was going on. Why didn't you let us know? That is what we were inquiring about when we sent these letters to you.

Mr. SHULMAN. What I knew was not the full set of facts in this report. What I knew sometime in the spring of 2012 was that there was a list that was being used, knew that the word Tea Party was on the list. I did not know what other words were on the list, did not know the scope and severity of this, did not know if groups that were pulled in were groups that would have been pulled in anyway.

Senator HATCH. But you knew this——

Mr. SHULMAN. And I took what I thought at the time, and I think now, was the proper step when a concern is brought to the Commissioner of Internal Revenue Service, which is to make sure that the matter is being looked at by the Inspector General.

Senator HATCH. But we sent you letters inquiring about this with a number of Senators on those letters, and you should have corrected the record and you should have done it long before today. That is the point I am making.

Mr. Miller, your signature is on both of the responses that I received from the IRS. Nowhere in your responses did you indicate that you knew the IRS was improperly selecting Tea Party organizations for extra scrutiny. Nowhere in your responses did you indicate that you knew the IRS was asking improper questions about donor contributions. You just sat on that guilty knowledge.

Mr. George stated that he briefed you on May 3, 2012 about TIGTA's audit, so we know you were aware of it at the time that you responded to my second letter, if not both letters. But you did not mention any of this in your responses to me, to the Senate, or to any other congressional body.

Now, Mr. Miller, that is a lie by omission. There is no question about that in my mind, it is a lie by omission. You kept it from people who have the obligation to oversee this matter. On Friday, you swore under oath that you had told the truth in your prior responses. You said that the IRS had been guilty of "horrible customer service."

Mr. Miller, what we have learned about the IRS in recent days goes far beyond horrible customer service. Why did you mislead me and my colleagues, my fellow Senators, and most importantly, the American people, by failing to tell us what you knew about the exact subject we were asking about? Why didn't you tell us?

Mr. MILLER. Mr. Hatch, I did not lie.

Senator HATCH. You what?

Mr. MILLER. I did not lie, sir.

Senator HATCH. Well, you lied by omission.

Mr. MILLER. I answered those questions.

Senator HATCH. You knew what was going on, and you knew that we had asked. You should have told us.

Mr. MILLER. I answered the questions; I answered them truthfully. Did I know about the list? Yes. Not on the first letter, by the

way, because the timing—I would not have known for that. On the second letter, we answered those questions, sir.

Frankly, the concept of political motivation here, I did not agree with that in May, and I do not agree with that now. We were not politically motivated in targeting conservative groups. That is borne out by Mr. George's report, the facts.

Senator HATCH. What else can you call it? He just said he had not found that up till now. Today's statement was a little more definitive than the one he gave to the House. Now, let me just say this. You knew this was going on. You knew we were concerned. You knew we had written to you. You had our letters. Why didn't you correct the record? Why didn't you let us know? We would have solved this problem a long time ago.

Mr. MILLER. TIGTA was looking at the cases, sir, and TIGTA was doing——

Senator HATCH. So it was TIGTA's responsibility, or was it yours?

Mr. MILLER. I am sorry?

Senator HATCH. The Commissioner relied on you to answer our letters. Why didn't you answer them, and why didn't you tell us this information——

Mr. MILLER. I believe I did.

Senator HATCH [continuing]. At least on the second?

Mr. MILLER. I believe I did answer them, and I did answer them truthfully, sir.

Senator HATCH. My time is up.

The CHAIRMAN. Thank you, Senator Hatch.

Next, we are going down the list. Senator Stabenow?

Senator STABENOW. Well, thank you very much, Mr. Chairman. This is an incredibly important hearing. Let me just say, as we heard, Mr. Miller, you are saying this was a mistake? We would suggest an extremely serious mistake. Mr. George says "gross mismanagement."

What I do not understand is how, again, something could start in 2010, and it was not until June of 2011 that the Director of Exempt Organizations learned of the practice. It was not until January of 2012, 7 months later, that they set up new criteria, which were still inappropriate after they had been told to change them. It was not until 4 months after that that the Cincinnati office finally started using the right criteria.

So, both for Mr. Shulman and Mr. Miller, it took almost 2 years—almost 2 years—for the IRS to finally fix the problem, including 11 months after it came to the attention of the division head. How in the world could it take so long for senior people at the IRS to find the problem, fix the problem, and was there no ongoing oversight of the employees in Cincinnati and what they were doing?

Mr. Shulman, let me start with you.

Mr. SHULMAN. Again, I am not there to go ask a set of questions of people, what happened when, who, and how. I would——

Senator STABENOW. With all due respect, you were there, though.

Mr. SHULMAN. I was there. But since this all came to light and the full set of facts became known, I have not been able to be back

there talking with people doing things. So let me just answer, though, your question.

Senator STABENOW. But why didn't you know when you were there?

Mr. SHULMAN. I agree that this is an issue that, when someone spotted it, they should have run up the chain, and they did not. Why they did not, I do not know.

Senator STABENOW. Mr. Miller?

Mr. MILLER. So, I would agree. I am not going to disagree at all with your characterization of bad management here, because I think that that did happen. I do not want to understate concerns with the list, because we should not have done that. We simply should not have done that.

We should be looking at the file, we should be looking at the facts, we should not look at names. We should not look at the positions taken on a given topic in terms of how we pull people into full development of these cases. But we were not—it was not elevated. We do not know.

Senator STABENOW. Mr. George, could you speak more about the management, what your review has revealed about the IRS management? How was that breakdown possible, given the management structure? Has the IRS done anything to make unacceptable actions like this less likely in the future?

Mr. GEORGE. While we have not yet completed our analysis of their response to our recommendations, we do intend to do so in the future. So, Senator, I will be able to respond in full once we have completed that review.

It is worth noting that the Determinations Unit in Cincinnati did seek clarification from their headquarters unit in Washington, and it took almost a year before a response was received by them to their request on how to handle some of these issues.

The bottom line, Senator, it was just, again, a breakdown in communications, mismanagement on the part of the Internal Revenue Service.

Senator STABENOW. It does sound, though, that the first clarification they received, they took that back and then they changed again and did something inappropriately.

Mr. GEORGE. Well, there were two aspects of it. They sought clarification initially but did not receive an answer. Eventually they did get direction from Ms. Lerner to change the way they were acting, and then on their own decided to revert to a different—slightly different yet still inappropriate—way of handling these matters.

Senator STABENOW. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. I am going to direct my question, or at least the first one, to Mr. Shulman and Mr. Miller.

Now, this comes directly from Iowa. One of my constituents attempted to establish a 501(c)(3) charity called Coalition for Life of Iowa. She told my staff that an IRS agent told her "your application is ready to go; however, it will not be approved until you send a letter, signed by your entire board under penalty of perjury, saying that you will not protest at Planned Parenthood." Now, that is outrageous that that statement was even made by anybody in gov-

ernment, that somehow you have to compromise your First Amendment rights.

She also received a letter from the IRS asking several invasive questions, including the details of the group's prayer meeting. Now, stop to think about it: the government getting involved in somebody having a prayer meeting. It appears that the IRS essentially offered this group a quid pro quo: you can become a charity if you do not protest in front of Planned Parenthood. Generally speaking, so you do not have to worry about 6103, is it appropriate even for an IRS employee to offer quid pro quo in an example like this? Mr. Miller, Mr. Shulman, either one of you.

Mr. MILLER. The answer is "no." I mean, you know, we should not be trading——

Senator GRASSLEY. Okay. Then let us move on. That is a good answer, because that is the answer you ought to give. But how on earth could you let something like this happen under your leadership, and do either of you feel any responsibility or remorse for treating an American citizen this way?

Mr. MILLER. I think I started my public statement with an apology, sir, and I would continue that. I do not know what happened in your given case. As you well are aware, I cannot speak to it under the 6103 rules. But I do apologize for the treatment of folks. And look, there are two things that happened with these cases. First was that the selection and the selection criteria were bad. Second was their treatment once they were in that group. That, too, was bad, sir. It was. I do not know whether this particular organization was inside or outside of that group, but the service that folks got was not the service that we should be providing anyone. There is no question about that.

Senator GRASSLEY. Mr. Miller, on May 14th I wrote you a letter raising questions about the so-called spontaneous apology Lois Lerner made at the American Bar Association May 10th. Initially, Ms. Lerner said her response was spontaneous and denied that the question was planted. However, you admitted during your testimony last week that the IRS had in fact planted the question to be asked at the ABA conference. You said, "It was a prepared Q&A." Whose idea was it to create this prepared Q&A, and why?

Mr. MILLER. Well, I will take responsibility for that. The thought was to—now that we had the TIGTA report, we had all the facts, we had our response, we thought we should begin talking about this. We thought we would get out an apology. The way we did it—we wanted to reach out to Hill staff about the same time—did not work out. Obviously the entire thing was an incredibly bad idea.

Senator GRASSLEY. Has the IRS ever used a prepared Q&A in the past, and, if so, give us some examples if it has been done before.

Mr. MILLER. I apologize. I would have to think about it, sir. I do not know; nothing comes to mind, though.

Senator GRASSLEY. Okay.

How is it appropriate for Federal Government employees to secretly plant questions to release information in advance of an IG report?

Mr. MILLER. I think that what we tried to do was get the apology out, sir, and start the story. The report was coming, we knew that. The report was done.

Senator GRASSLEY. Mr. Miller, on May 8th this year, in a Ways and Means subcommittee hearing, Representative Crowley asked Lois Lerner if she could "comment briefly on the status of the IRS investigations into these nonprofits."

Ms. Lerner pointed Congressman Crowley to a questionnaire on the IRS website. She said nothing about TIGTA's pending report or the disclosure she made just 2 days later about political targeting. As a result, I think very understandably, Representative Crowley has said that he feels misled and has called for Ms. Lerner to resign.

Do you agree with Representative Crowley that Ms. Lerner gave misleading testimony to Congress?

Mr. MILLER. I do not now have any knowledge one way or another on that, sir. I was not—I have not watched that.

Senator GRASSLEY. Has the IRS proposed to discipline Ms. Lerner at all for all or any part she played in the underlying events or testimony before Congress?

Mr. MILLER. At this point, now that the TIGTA report is out, now that all of this is coming to light, those discussions are ongoing. And I will not be part of those discussions, obviously, but those discussions will occur.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Nelson, you are next.

Senator NELSON. Thank you, Mr. Chairman.

I want to take a different tack. I would like to go back to how we got into this mess in the first place. The statute, of course, says of these organizations, (c)(4)s, that their net earnings are to be devoted exclusively to charitable, educational, or recreational purposes.

Then the rule that came along fleshing out the statute talks about promotion of the social welfare, that the organization is operated exclusively for the promotion of social welfare. Then it further defines that term: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns."

So I want to get back to the original purpose of the statute as it was being implemented by the IRS. How could you all in the IRS allow the tax breaks, funded basically by the taxpayer, on these political campaign expenditures? Can you all shed some light, please?

Mr. MILLER. Well, I can start, sir. So there is a—let me try to restate some pieces of the questions you may be asking and see if I am getting them right, and please correct me if I am not. There is a question out there that the statute—and I believe the chair referenced it—the statute talks about "exclusively for social welfare." The regulation, which was promulgated 50-some years ago, talks about "primarily."

Senator NELSON. It uses "primarily." But then it goes on to say that promotion of social welfare—this is the rule—"does not include direct or indirect participation or intervention in political cam-

paigns on behalf of, or in opposition to, any candidate for public office."

Yet, what we have seen in the course of the last two campaign cycles is enormous money running through the 501(c)(4) organizations, which the avowed purpose of is "on behalf of or in opposition to any candidate for public office and the intervention in political campaigns." So where is the IRS, in the regulatory process, enforcing its rule to stop this in the first place, which, if it had, would have gotten to the mess that we are in right now?

Mr. MILLER. So there are a couple of places where we have to act. And again, I mean, as the—let me, if I can, set the context a little bit. As a 501(c)(4) organization, you are permitted to engage in an amount of political campaign activity. You are, as long as it is not, along with the other things that are not social welfare, your primary activity.

We have an obligation to take a look at cases, both in the audit stream—we are out there doing this sort of work—or in the determination letter process, which is why we began to centralize these cases. You asked for the genesis of this. Centralization here was warranted. We have to look—we are obligated under the law to look at what an organization does in order to grant exemption. The way we centralized was wrong, and that goes to the listing that we used.

But we are supposed to look at the amount of political campaign activity that is planned and how an organization operates as we do our work, and that is what happened in the determination letter process here.

Senator NELSON. Well, I would simply say, Mr. Chairman, since we are doing the oversight here, that the rule—I understand the King's English, and it says the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns. Now, how you interpret that to say that that does allow some intervention in political campaigns is beyond me. If that had been cut off at the pass, we would not even be getting to these interpretations. Yes, sir?

Mr. GEORGE. Senator, I just would like to note that TIGTA will be conducting a review of the IRS's oversight of the level of campaign intervention by 501(c)(4)s shortly.

Senator NELSON. Who will be doing that?

Mr. GEORGE. My organization, sir, TIGTA, the Treasury Inspector General for Tax Administration.

Senator NELSON. Well, Mr. Chairman, in conclusion, I would say that, if we could get the IRS to follow the law and the regulation that implemented it, we would not have this problem in the future.

The CHAIRMAN. Senator, I think I agree with you. But I also think this is very complicated. It is unfortunate that this issue has not been addressed in the last couple of years with any precision, any focus, any straight thinking. We are going to have to enact some changes in the statute, and also IRS has to, I think, do a better job of following the statute. My personal view is this confusion, this ambiguity, has led to part of the problem here.

Senator NELSON. I certainly agree with you.

The CHAIRMAN. And we are going to have to straighten it out.

Next, I have Senator Roberts. You are next.

Senator ROBERTS. Thank you.

Listening to the responses that both of you gentlemen have provided my colleagues on this committee, I am reminded of one of my granddaughters—age 4—when she knows she has done something wrong. She just shuts her eyes and says, "You can't see me." Well, we can all see what happened. The problem is, no one is taking responsibility, other than "horrible customer service" and apologies. There is a Kansas saying: never lie unless you have to, and if you do not have a damned good lie, stick to the truth.

It seems to me we need some real truth-tellers here. Facts are stubborn things. What we have here is targeted harassment and abuse of conservative groups. We can talk about the statute all day long, but that is what has happened, as we hear daily from others, many who simply have contributed to the candidate of their choice or stated personal views.

I think that is very significant. Nobody likes to be audited, and nobody likes to say they have been audited, especially with what has been going on. So what we have on our hands is abuse, harassment, the suppression of First Amendment rights, and nobody owning up to it.

Now, the fact of the matter is that the IRS has been operating in a highly politicized manner for at least 3 years. Three years ago, a top economic advisor to the White House divulged confidential tax information regarding a privately held company in order to make a political point. I asked the IG for Tax Administration for a response, and we never heard back. Never heard back at all. Not late, just did not hear back.

Last year, members of this committee, as Senator Hatch has indicated, hearing a growing number of complaints, asked if individuals or groups were being singled out or targeted in the application process. Here is the letter that you sent to me and other members of the committee. It is the same letter, different names. You might want to look up, you will see this. It is 10 pages long, single-spaced, about 12-point.

At any rate, it is completely silent on targeting but full of a detailed analysis of the law. But you knew that targeting was going on. I just do not think you do that. That really befuddles me, why anybody in a position like yours, or basically Mr. Shulman's, would ever do that, just not respond.

You also said that the Determinations Office was simply trying to find a more efficient way to process a huge number of exemption applications. Here we have Cincinnati IRS officials milling about, doing their best, but falling short—foolish actions, need more money, need more lawyers.

This may have been foolish, but, given what I know about how the IRS operates, I find it very hard to believe that the IRS employees were given free reign to set up a BOLO list, be on the lookout list, like law enforcement. There must have been a directive from Washington or something. We need full disclosure of how this has happened.

There was a news report quoting an anonymous Cincinnati IRS employee. Now, they have been taking a lot of grief there. Accordingly, this quote was attributed to this anonymous IRS employee: "Well, we've had all the problems with this, and we knew that it

was wrong. We knew there would be hell to pay. We also knew that when it hit the fan, nobody at the top would take the blame; it would come right down the slide right to us." Well, I would like to at least have somebody—Lois Lerner, the lady who does not do math but can, you know, plant a question——

Sarah Hall Ingram, who is now going to be working for the Affordable Healthcare Act office—and that is my next question if we go to another round, how on earth can we do that with 15,000 new employees trying to administer the Affordable Healthcare Act with a lot of specific questions? Let us move up to Joseph Grant, who is the Deputy Tax Commissioner. We are not going to hear from him; he retired.

Mr. Miller, you have apologized, and then you are leaving. Mr. Shulman, you are 6 months out, so you cannot remember. Mr. Wilkins, the Chief Counsel of IRS, he is not here, but he probably should be here. Then the Secretary of Treasury, Jacob Lew—it went right up there, then finally to Kathryn Ruemmler, who is the White House General Counsel. Do any of these folks, yourself included, ever say what was going on and take responsibility? I just have not seen that.

My follow-up question will be in regard to, how on earth can the IRS have proper oversight and management to implement the Affordable Healthcare Act, given the current situation?

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Crapo, you are next.

Senator CRAPO. Thank you, Mr. Chairman.

You know, there has been a lot of discussion about who knew what and when they knew it. One of the big questions I have—this is probably for you, Mr. George—is it seems that there is an argument being made that there was no political motivation in these actions. Is that a conclusion that you have reached?

Mr. GEORGE. In the review that we conducted thus far, Senator, that is the conclusion that we have reached.

Senator CRAPO. And how do you reach that kind of a conclusion?

Mr. GEORGE. In this instance, it was as a result of the interviews that were conducted of the people who were most directly involved in the overall matter. So, you take it one step after another, and we directly inquired as to whether or not there was direction from people in Washington beyond those who are directly related to the Determinations Unit. Their indications to us—now, I have to note this was not done under oath. This was, again, an audit and not an investigation, but they did indicate to us that they did not receive direction from people beyond the IRS.

Senator CRAPO. When you say "people beyond the IRS," that could be anyone up the chain of the IRS?

Mr. GEORGE. It in theory could be, but we have no evidence thus far that it was beyond, again, the people in the Determinations Unit.

Senator CRAPO. So, in other words, you have simply the statements of those who were engaging in the conduct saying that they were not politically motivated?

Mr. GEORGE. That is correct, sir.

Senator CRAPO. And based on that, and statements not under oath, you have reached the conclusion that there was no political motivation.

Mr. GEORGE. Yes.

Senator CRAPO. Now, have you reached the conclusion that there was none, or that you have not found it?

Mr. GEORGE. It is the latter, that we have not found any, sir.

Senator CRAPO. Because it seems to me that it is almost unbelievable to look at what is happening and then say, well, there is no political motivation here. How could an agency, with the power that the Internal Revenue Service has, engage in this kind of conduct and have it not be politically motivated? You know, I think that most people in the United States have a very quick and intuitive understanding of the reason that these revelations are so concerning to the country.

If you look at the Internal Revenue Service, more than perhaps any other agency of government, it has the capacity to be the prosecutor, the judge, the jury, and the executioner in ways that can devastate individuals, families, and businesses. Americans understand that.

To have the investigation reach the conclusion that these kinds of actions were just a statistical anomaly or that they all sort of statistically came together at the same time but that there was no finding of any kind of political motivation, I think is almost beyond belief. Is there any way that you can conduct further investigation and, perhaps by putting people under oath, identify where the direction came from?

As my colleague Senator Roberts has just indicated, we have continuous denial of responsibility for the policies. Those implementing the policies say, apparently, it was not us. We are asked as an American people to believe that, just out of the ethosphere or something, the notion to target these individuals and entities just coalesced and came together?

Mr. GEORGE. Senator, as a result—and this is standard practice—as a result of audits that we conduct, many times there are subsequent investigations. Suffice it to say that this matter is not over as far as we are concerned in terms of our next actions in this matter, Senator Crapo.

Senator CRAPO. So you believe there will be further information on this issue?

Mr. GEORGE. There will be continued review by us and, if it ultimately leads to an investigation, that may be the case.

Senator CRAPO. All right. Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Enzi?

Senator ENZI. Thank you, Mr. Chairman.

Bill from Cheyenne, WY called my office and said the fact that the Administrator was fired was not the real problem; he was just a fall guy. Now, from the testimony that we heard earlier, there was some disciplinary action taken, but the Administrator did not know about it. Doesn't disciplinary action filter up in these organizations?

I got a call from Charles of Pine Dale who had concerns that the churches were being targeted as well, noting that the IRS had re-

quested membership lists of his church. That sounds a little bit above and beyond what ought to be done.

But to follow up on what Senator Grassley was saying about Mrs. Lerner's question at the American Bar Association Tax Section, doesn't the IRS have a policy of not commenting on issues subject to an Inspector General for Tax Administration audit prior to the public release of the audit?

If so, why did the IRS feel that it was so necessary to make such statements days before the report was publicly released? Why did the IRS not shed light on the issue years ago when it became aware of the inappropriate targeting and the discipline that I referred to? Mr. Miller?

Mr. MILLER. First, if I could correct part of your question, sir, going back to the disciplinary action. I actually took that disciplinary action in May of 2012. Going forward, we do have a practice of not talking about investigations or audits. The audit was done at this point. We thought, mistakenly, that we should get out in front and apologize and reach out to the Hill in advance of it coming out, and that was wrong. We made a mistake.

Senator ENZI. I will have to look back at the testimony. I thought that you were not aware of the disciplinary action. At any rate, David of Casper, WY posted on Facebook that he would like to know why the IRS shared information from Tea Party groups with the liberal media group ProPublica. Does anybody have an answer to that?

Mr. MILLER. I would recommend—and I do not know whether Mr. George could speak to this—but there were in the media discussions of the release of some data to ProPublica. A referral was made to TIGTA on that out of our offices. At this point I think Mr. George can speak to that better than I.

Senator ENZI. And to follow up a little on what Senator Roberts said, Mr. George, when you commented at the House Ways and Means Committee hearing last week that you believed the actions were inappropriate but not illegal, would you weigh in on whether you still believe that is the case? Are any of the actions that were taken by the IRS employees illegal?

If not, would you please elaborate on why your audit findings do not suggest that there was any illegal activity? Because your group conducted an audit not an investigation, is it true there could in fact have been illegal activity that your audit did not uncover?

Mr. GEORGE. Yes, Senator. Two things. One, to address Mr. Miller's point about the matter that you mentioned, the release of taxpayer information could be a violation of title 26, section 6103, which does have criminal penalties associated with it. That is something that my organization investigates, we take quite seriously, and, if we do find evidence of such activity, we would refer it to prosecutors for criminal prosecution. But I am otherwise restricted by law from revealing any additional information beyond that.

As it relates to this matter, the Restructuring and Reform Act of 1998 certainly provides for action to be taken if IRS employees are guilty of, again, abusing, misusing, among a number of other things, taxpayer information. We are charged, again, with reviewing that. We are doing so. If we determine that something has oc-

curred, we will certainly, again, pass it on either in an administrative environment, or if—and again, it seems very unlikely—a criminal environment pursuant to the Act itself, RRA 98.

The RRA 98 has very few, if any, criminal aspects to it, but there are certainly quite a few administrative actions that can be taken as a result of its violation. But based on that, we thus far have not uncovered any actions that we would deem illegal in this matter, sir.

Senator ENZI. I guess the American public will kind of judge that, but it seems like it is very borderline if it is not illegal.

My time has expired.

The CHAIRMAN. Thank you, Senator.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

I have several questions for you, Mr. Shulman and Mr. Miller. And for me, the basic proposition is simple. Notwithstanding the troubling and unacceptable conduct of the IRS, if political organizations do not want to be scrutinized by the government, they should not seek privileges like tax-free status and anonymity for their donors. To argue otherwise is to advantage tax cheats to the detriment of law-abiding Americans. That is why my hope is that, out of this debate will come clear and enforceable rules that treat all political groups equally.

So, with respect to questions, Mr. Miller and Mr. Shulman, the lines have blurred between politically active groups that disclose their donors—those are the 527s—and those that do not—those are the 501(c)(4)s. It has become apparent that organizations that ought to be 527s are applying for 501(c)(4) status to avoid disclosure obligations. That means there is an incentive for people to choose their tax status based on whether they want to hide their donors.

My view is, that is a loophole that Congress ought to close. Given that to be exempt from Federal income tax in section 501(c)(4) of the code requires nonprofits to operate exclusively—as opposed to substantially or primarily—for the promotion of social welfare, my question to the two of you, Mr. Shulman and Mr. Miller, is, why was this problem not corrected? Mr. Shulman?

Mr. SHULMAN. Senator, could you just clarify the problem?

Senator WYDEN. Yes. The line is blurred. The lines have blurred between the 527s and the 501(c)(4)s, so there is an incentive for people to choose their tax status based on whether they want to hide their donors. I think it is really straightforward. The line is blurred, and you all do not seem to have done anything about it, and I want to know why not.

Mr. SHULMAN. Well, look. Let me state that I think the law in the tax-exempt area is very complex, like the rest of our——

Senator WYDEN. Mr. Shulman, we understand all that. Why didn't you do anything on your watch to correct it?

Mr. SHULMAN. So let me continue. The Treasury regulations that the IRS staff in Cincinnati were wrestling with in this case are long-standing regulations. I believe they are 40-plus years old.

The CHAIRMAN. Fifty. Fifty.

Mr. SHULMAN. And I did see that the Inspector General, in his report, recommended that Treasury ought to look at the regulations. I heard the chairman say he was going to look at this.

All I can say is that this is a very hard task given to the IRS. To have the IRS, which needs to process 140 million tax returns and get billions of dollars in refunds out to people every year, to also have them have this piece of the operation that, by the law, requires asking questions about political activities, is very difficult. So, from where I sit as a former IRS Commissioner, if Congress could help clarify the law, that would be a very helpful thing.

Senator WYDEN. Mr. Miller, same question. What did you do to correct this problem on your watch?

Mr. MILLER. So, we have put out some guidance, but not enough. I mean, the issues are several-fold. One is, we get 70,000 applications for exemption a year. The number of those that are (c)(4)s is much less, but even those have doubled over the last few years.

There is no doubt that since 2010 when *Citizens United* sort of released this wave of cash, that some of that cash headed towards (c)(4) organizations. That is proven out by FEC data and IRS data. That does put pressure on us to take a look. As I had mentioned earlier, 527 organizations can do all the politics they want to do. 501(c)(4) organizations have a limited ability to do politics.

When organizations choose plan B, the 501(c)(4) option, it is our obligation to go in and look hard at whether they meet those requirements or could be a 527 organization. But in fact we would have to talk, and I am sure staff will come up and work you through. There are some issues in the law now that cannot convert—we cannot convert a 501(c)(4) organization into a 527 organization at this point, I do not believe. That is a legal issue.

Senator WYDEN. What troubles me is, on your watch, when the lines are blurring on this disclosure issue, as far as I can tell you all did not do anything to correct the problem in a meaningful way. I think that is very regrettable.

Now, let me ask about one other issue for the future, going forward. The IRS and the Inspector General agree on a number of reform proposals, but the IRS does not support one of the most important, and that is developing and making public clear guidance for processing potentially political cases.

Now, even the best training does not prepare employees to fairly apply ambiguous rules. In the absence of clear guidelines, the country is in effect left to the whims of the bureaucracy. Wouldn't it make sense to have those knowledgeable about political campaigns and campaign finance work with the IRS to develop clear and enforceable guidelines that are really at the intersection of these two areas, campaign finance and tax law? Wouldn't it make sense to get two agencies, particularly the Federal Election Commission and the IRS, working together under congressional and public oversight at this point? Either one of you. Let's start with you, Mr. Shulman.

Mr. SHULMAN. Look, it sounds reasonable to me, but I do not direct what the IRS does now, so I cannot speak for what the IRS should be doing at this point.

Senator WYDEN. Mr. Miller?

Mr. MILLER. I divide the world into two pieces. Should we do guidance? Absolutely. But there is a different sort of issue that was

involved in the TIGTA report that we ought to take a look at again anyway, and that I agree on, which is whether there is some sort of guide sheet, some sort of template, that we could do to move these cases forward. I believe, there, the concern of those involved—and I was not—is that these cases are very fact-specific, and that may not be possible. But I do think, given all this, we ought to work with TIGTA and see——

Senator WYDEN. My time is up. They are fact-specific, but the Inspector General is right: we can get more expertise if we start bringing in people who are knowledgeable about election law. This was another failure, in my view, in terms of what the problems are that we are dealing with now.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I might say in response to the question asked by Senator Wyden about why you did not do something when you were on notice, frankly, I am sure Senator Wyden is not comfortable with your answer. I certainly am not, because I wrote a letter to you, Mr. Shulman, on September 28, 2010, asking you to look into this very question that Senator Wyden is raising. Clearly, a Mack truck is being driven through the 501(c)(4) loophole for the reasons that have been discussed here.

I must say, the answer we got back from you—what was the date, February, many months later—basically said, yes, we share your concern, and are kind of looking at it. That is all it said. You were on notice and you did acknowledge that you were on notice, but nobody did anything about it. I am just quite disappointed.

Next is Senator Menendez.

Senator MENENDEZ. Well, thank you, Mr. Chairman. I join you in your opening statement, in the idea that any government agency would use searches of politically charged terms to single out groups for selective review is truly offensive to our concept of democracy. And I believe it is not only unacceptable, but it is pretty appalling. It undermines the very nature of a government and its people who consent by virtue of believing that its institutions will work in a way that is fair and transparent.

Having said that, I also have real concerns that I want to follow up on. I think there are two scandals here. One is the management failures and the whole process of singling out specific groups. The other is how we take statutory authority and then extrapolate it differently than what the Congress meant. I read the statute with reference to 501(c)(4)s, and it says "civil leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare."

The IRS took that statute, the congressional vote, which says "exclusively" and turned it into "an organization that 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." I did not see a vote for "primarily," I saw a vote for "exclusively," because we wanted to limit the scope of who could avail themselves of the benefit of a 501(c)(4) under the tax code.

So do you believe—I would like to ask the Inspector General—do you believe that a more literal reading of the statutory language could have taken some of the authority of the subjective scrutiny

out of the hands of the IRS officials, thus avoiding or mitigating some of the problems that we are talking about here today?

Mr. GEORGE. Senator, I will respond directly to your question, but I just have to acknowledge that the Secretary of the Treasury has delegated all tax policy questions exclusively to the Assistant Secretary for Tax Policy. With that said, the direct issue you raised with me was beyond the scope of this audit, but it would seem as if what you are saying would be accurate, that they should have not necessarily taken the interpretation that they did. But I will have to leave it at that.

Senator MENENDEZ. Mr. Miller, Mr. Shulman, how do you jump from "exclusively" to "primarily"? How do you take the congressional action and then really subvert it to a different view?

Mr. SHULMAN. So let me say a couple of things. One is, as I mentioned, this was a regulation, a Treasury regulation, that had been in effect for many years. And so, at least speaking on behalf of myself, and I think I—you know, I know how long Mr. Miller was there. This was in place when we got there.

I do not necessarily disagree with you that this is—as I told Senator Wyden—this is a place that Congress should look, because, from where I sit, the IRS is given a very, very, very difficult task of trying to go in and figure out—you can do some political screening, but you cannot do too much. And the confusion and breakdown that you saw happen in the Cincinnati office is inexcusable, but I would also posit—this is my belief—that part of it was because of the very difficult task given to these people.

Senator MENENDEZ. Well, then it is a task that we should clearly correct if you cannot do it. I mean, I envision "exclusive" to mean "exclusively," not "primarily." I have a copy of an August 2012 op-ed by Karl Rove, which I ask unanimous consent to be included in the record.

The CHAIRMAN. Without objection.

[The op-ed appears in the appendix on p. 215.]

Senator MENENDEZ. In this, Mr. Rove writes, "Roughly $111 million of Mr. Obama's ad blitz was paid for by his campaign. Outside groups chipped in just over $2 million. The Romney campaign spent only $42 million over the same period in response, with $107.4 million more in ads attacking Mr. Obama's policies or boosting Mr. Romney coming from outside groups, with Crossroads GPS, a group"—meaning him, Mr. Rove—"I helped found, providing over half."

Now, I do not mean to single him out as the only bad actor here, because there are many represented in the entire political spectrum. But this is the nature of the abuse. There is a reason that you seek a 501(c)(4) status, because you can hide your donors and you also have a tax advantage. Otherwise, you do not need to seek the 501(c)(4) advantage.

So the reason that people come forth with this—you know, I would like to see what it costs the American taxpayers in the granting of all of these 501(c)(4)s when they are not being used for social welfare, but they are being used, in essence, for political advocacy.

A final question to the IG. Inspector General, Chairman Issa sent a letter on August of 2012 to all of the Inspector Generals, re-

minding them that, under the Inspector Generals Act, it requires IGs to report particularly flagrant problems to Congress through the agency head within 7 days via what has become known as a 7-day letter. Did you receive that letter? If so, did you respond to inform Chairman Issa of your investigation into the IRS?

Mr. GEORGE. Senator, we did receive the letter. Chairman Issa's committee was the first to actually contact us regarding this matter. So, through the course of engaging in the review, on occasion we have had communications with his staff.

Senator MENENDEZ. In 2012?

Mr. GEORGE. And since then, yes.

Senator MENENDEZ. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Cardin?

Senator CARDIN. Thank you, Mr. Chairman. I think we all will agree that we cannot allow, permit, tolerate targeting by political views, and that we need to make sure that the process is clear, to hold those accountable who violated that, but also to make sure this does not happen again.

Having said that, I just want to concur with many of my colleagues on the interpretation of the law. The regulation, Mr. George, that you were relying on was issued in 1958, if I am correct in the year. I know it was issued a long time ago. You said "not their primary activity," interpreting what is "exclusively engaged in promotion of social welfare activities," which seems to be hard to understand.

In 1958, the political parameters were totally different than they are today. I understand whose responsibility it is to change regulations, but it seems to me that this is an area that needs to be dealt with.

I want to get further clarification on page 8 of your report where you have a pie chart that lists the 298 cases that were pulled out for additional scrutiny. You identify 72 with the name "Tea Party" in them, if I am reading the chart correctly, 11 with "9/12," and 13 with "Patriots," then 202 others. Can you give us further clarification on what makes up those 202?

Mr. GEORGE. Senator, we were not in a position to do so, because we were only reviewing the names of the organizations, so certain names were so generic that we were unable to determine whether or not they had a particular point of view or what have you, or whether or not the IRS was using the policy positions that those groups held as a determinant for the special handling. But in other instances when the name "Tea Party" was used, it was quite obvious, or if the name "The Patriot" was used, or if "9/12" was used.

Senator CARDIN. What was the standard for the selection of those 202? Were you able to determine that?

Mr. GEORGE. All of the 202 were reviewed to determine whether or not significant campaign intervention was engaged in.

Senator CARDIN. But if I understand correctly, the 90-some were because of the name of the organization.

Mr. GEORGE. Correct.

Senator CARDIN. The other 202, why were they selected?

Mr. GEORGE. According to our review, it was to determine whether significant campaign intervention had occurred by those organizations.

Senator CARDIN. I understand that. But what basis was used to single out those 202?

Mr. GEORGE. I am going to defer to, actually, Mr. Miller.

Senator CARDIN. Mr. Miller, do you know what basis was used for those 202?

Mr. MILLER. I do not. What I believe, Senator, is what is in the report, which is, when the term "Tea Party" was used, more cases were being pulled in. Where folks saw evidence of political activity, they put those cases in. Those would include any case that came across their screening desks.

Senator CARDIN. But you do not know what standard they used to make a judgment that they were involved in political activities? Could it have been the name of the organization? Could it have been—I am trying to figure out how these were selected. There has to be some rational, or at least some stated reason, unless it is a random selection. Is it a random selection?

Mr. MILLER. No, sir. I believe it was there was evidence of political activity that the screener believed was there, and therefore it was put in. I will say this. It is my hope that when you all do your review, some of these things will become more clear than they are in the report.

Senator CARDIN. Well, I appreciate that. I would be very interested as to how the IRS went about selecting all of the groups for review in addition to the ones that were selected because of the use of the words "Tea Party," or "9/12," or "Patriot," which is absolutely wrong.

Mr. GEORGE. But, Senator, excuse me. If I may, sir, that is part of the problem, because in many instances there was no indication at all in the case file why these particular cases were selected. That was something that we identified as a problem in the way the IRS handled these matters.

Senator CARDIN. And, Mr. Miller, you do not know the standards that were used to determine political activity?

Mr. MILLER. I only know what has been in the report, and I believe what was in the report. What is indicated is that the screeners were looking for evidence of political activity.

Senator CARDIN. I think we need to have more information as to how these were selected. If there was an arbitrary selection of 90-some, it could well be that there was arbitrary selection of 300. I think we need to know how that was determined.

One last question, and that deals with your training dollars. One of the Inspector General's findings is that the staff was not adequately trained in order to meet the challenges. This is a complicated area. It involves some tough judgments, but it has to be done in some uniform way.

Can you just share with us whether you have adequate resources in order to pursue the training at the IRS? Senator Portman and I, a few years back, worked on IRS reform. I think both of us hoped that we would never be at a hearing like this after the reforms that were passed back then. One of our objectives was to make sure that IRS was handled in a professional, nonpartisan way and had

the resources it needed. Do you have the resources you need to have properly trained staff?

Mr. MILLER. So, first I will say we did not train, here, well enough, there is no question about that. I think that is a finding of the IG report, and we believe that is the case as well. More generally, we are down $1 billion over the last couple of years, the IRS is, and that has caused us to cut training fairly drastically.

We have in this area—we have maybe 140 of our folks who do this sort of work, both in Cincinnati and reporting to Cincinnati through some other offices, which has been somewhat of a confusion I have seen out there. But we have 70,000 applications that come through. Do we have the resources to get the job done? I do not believe that we do at this point.

The CHAIRMAN. Thank you very much.

Senator Brown, you are next.

Senator BROWN. Thank you, Mr. Chairman.

Thank you to the witnesses. I agree with everyone here who has made the statement, with some tone of anger in many cases, that IRS should never go after anyone, should never single out anyone, because of their political philosophy or their political affiliation, period. That is the most important thing.

It is, however, I believe, not worthy of public trust to maintain that current troubles are the result of—the entire fault of—freelancing low-level employees or their asleep-at-the-switch managers. It is pretty clear that it comes from a leadership vacuum that has persisted for too long, far too long in this particular area of tax law, the failure of the IRS for 5 decades to define what constitutes political activity. You know the statute. It is clear that 501(c)(4) is available to organizations that are operated "exclusively for the promotion of social welfare."

Back in 1959 and since, we have not seen any change to that. It is a gray area that exists today and was created by the Treasury when they issued regulations and defined an organization operating "exclusively" as an organization "primarily engaged in promoting social welfare."

So, explain that to me. I know you have talked about that at this hearing already, but what does the term "primarily for social welfare" mean? The IRS has not made that clear when the statute says "exclusively," and that is really at the root of so many of these problems, Mr. Miller.

Mr. MILLER. So I think, Senator, that you know—you have mentioned this, and we have talked about this—we have had 50 years of this regulation in place. Organizations are operating within this framework. It is only recently with the flow of political dollars that it has been called into question about whether this is the appropriate way to regulate these organizations.

We have not done a good job, I think, of putting out guidance on even how to figure out what "primarily" means. Yes, you look at the activities of the organization, yes, you look at the dollars of the organizations and the expenses of the organizations, but we have not been crisp on that either, and that is what our folks were faced with as well.

Senator BROWN. Well, the issue is, how long do we wait? I mean, much of that is your predecessors, but we have had 3 years since

Citizens United. We have had two Federal elections, tens of millions of dollars, State after State after State, have been spent by 501(c)(4)s. How long do we wait until the IRS responds, from Washington—not blaming it on Cincinnati, but from Washington. How long do we wait?

Mr. MILLER. That is a question that you will have to ask my successor, sir.

Senator BROWN. Mr. Shulman, let me ask you what, if any, steps were taken to define a test for "primarily promoting social welfare"? Where is that line? Were steps taken to establish a clearer definition of political activity?

Mr. SHULMAN. I think the Inspector General stated this, that the Treasury Assistant Secretary for Tax Policy has authority to make tax policy. I actually do not think it is fair to blame the IRS for not fixing that. I think the IRS can give input, but this is actually something that, if Congress decides it should be changed, Congress should either clarify, or it should be done in regulation.

Senator BROWN. All right. Thank you.

Thanks, Mr. Chairman.

Senator HATCH [presiding]. Senator Thune?

Senator THUNE. Thank you, Mr. Chairman.

I think it is clear that both—there are liberal groups and conservative groups that both follow the law, follow the regulations as they exist today. But there is only one group that was targeted. You all can sit here and say that there was not political targeting, but it just does not comport with the facts. Maybe it was not you, but somebody was.

I think one of the purposes of this hearing is to find out who was targeting conservative groups, otherwise you cannot explain the fact that you had all these conservative groups, whether it was "Patriot," "Tea Party," or "9/12" in their name, selected for extra scrutiny.

You had no evidence that there were groups with "Progressive" or names like that that were similarly targeted. I mean, I think, let us just put this issue to rest: there was political targeting here. I do not think there is any way you can deny that.

I am interested in knowing, Mr. Miller and Mr. Shulman, if either of you were aware that Ms. Lerner was going to plant that question and try to get ahead of the news cycle by disclosing this prior to the release of the IG report.

Mr. MILLER. I think I mentioned that I did know, yes.

Senator THUNE. All right.

And were there any discussions—the reporting is that the White House Counsel's Office was aware on April 24th of this information. Were there any discussions with the White House about Ms. Lerner's intention to drop this bomb at the ABA conference?

Mr. MILLER. I had no conversations with the White House, sir.

Senator THUNE. Are you aware of anybody else who did?

Mr. MILLER. I am not aware of that.

Senator THUNE. There has also been reporting that Deputy Secretary Neal Wolin and Treasury General Counsel were made aware of the IG report looking into the targeting of groups last June. Did you have any discussions with Treasury around that time?

Mr. MILLER. That is a question to me, sir?

Senator THUNE. You or Mr. Shulman. I guess you would probably be the——

Mr. MILLER. I was Deputy at that point. But no, I did not have any conversations at that time.

Senator THUNE. Mr. Shulman?

Mr. SHULMAN. I do not remember having any conversations with the Treasury Department.

Senator THUNE. All right. So there were no discussions. Are you aware of anybody who had discussions with the Treasury Department? The Treasury Department became aware of this information way back last June. None of that was—there were no discussions between the IRS and the Treasury that you are aware of?

Mr. SHULMAN. Let me clarify. I think everybody knew that it was very difficult to administer the (c)(4) laws, and so I do not have any memory of it, but there very well could have been conversations about policy, the policy matters that members of this committee have talked about: should the "primary purpose" test be changed.

At least stemming from me, there were no conversations that I had with the Treasury Department about this, the matters in the report relating to inappropriate criteria, you know, all the things that were in the news.

Mr. MILLER. And that is the answer that I was giving, sir, just to be clear.

Senator THUNE. Now, Mr. Shulman, you testified in front of the House in March of last year that there was no targeting. You became aware of that in May. Don't you think that you should have had an obligation to correct that statement that you had made in front of the House Committee?

Mr. SHULMAN. In the spring, when I found out about a list that was being used to help place these applications into the Determinations Unit, what I knew was, there was a list. I did know that "Tea Party" was on it. I did not know what else was on the list.

I had a partial set of facts, and I knew that the Inspector General was going to be looking into it, and I knew that it was being stopped. Sitting there then and sitting here today, I think I made the right decision, which is to let the Inspector General get to the bottom of it, chase down all the facts, and then make his findings public.

Senator THUNE. Let me ask, if I could, Mr. George, you mentioned earlier that disclosure of confidential information would be a violation of law.

Mr. GEORGE. It is, but whether it is administrative or criminal is the issue. But yes, it could be a violation of the law, specifically title 26, section 6103 and/or the Restructuring and Reform Act of 1998.

Senator THUNE. And so the reporting about the giving of this information to ProPublica, release of confidential information, could very well be a violation of law?

Mr. GEORGE. It could be. It could have been, rather, I should say.

Senator THUNE. And let me just ask all of you, because there was a statement made over the weekend by somebody from the White House that the law would be irrelevant, do you believe that the law is irrelevant, or is irrelevant to this?

Mr. GEORGE. I believe the law is always relevant, sir.

Senator THUNE. Right.

Gentlemen?

Mr. SHULMAN. I am not sure I understand the question.

Senator THUNE. Well, there was a statement made over the weekend that whether the laws were broken was irrelevant. I am just asking, do you believe that the laws are relevant in this case?

Mr. SHULMAN. I mean, I guess I would agree with the Inspector General——

Senator THUNE. I think the answer——

Mr. SHULMAN [continuing]. That people should not break the law.

Senator THUNE. The answer would be "yes."

Well, Mr. Chairman, I just think there are a couple of issues here. One is the targeting issue. Clearly that has, to me, a lot of political overtones. The other one is, if there is information that was disclosed, then that would be a violation of law. It is a very serious matter.

But I think the American people believe that this is a very serious matter for both those reasons. They believe that the laws ought to be followed, and I think they also believe that they ought to have an IRS that competently conducts its business in an objective, fair, and transparent way. Those are all things that are missing in the equation, so I hope that we continue to get more facts out about this and that corrective actions are taken.

Thank you, Mr. Chairman.

Senator HATCH. Senator Burr?

Senator BURR. Mr. Shulman, who briefed you?

Mr. SHULMAN. Who briefed me on what, Senator?

Senator BURR. Who briefed you on the investigation?

Mr. SHULMAN. On the investigation?

Senator BURR. Yes, sir.

Mr. SHULMAN. The first I heard, to the best of my recollection, of the investigation, was Mr. Miller telling me that there was the existence of the BOLO list and it was something that the Inspector General was going to look into.

Senator BURR. Mr. George, did you brief Mr. Miller or did any of your investigative team brief Mr. Miller in May of 2012?

Mr. GEORGE. It was on May 30th, Senator, 2012, where, at a monthly briefing which we regularly hold with both the Commissioner and his Chief Deputies, that we first raised this as an issue. Obviously, it was at the outset of the investigation.

Senator BURR. Now, Mr. Miller says he is not aware of the practice that was going on in the EO office. Did you brief him on the scope of the investigation?

Mr. GEORGE. I do not believe we went into the detail which may have laid out the scope, Senator, but we certainly alerted him to the fact that we were conducting this audit. And I want to make sure I am clear; I may have misused the word "investigation." It was an audit that we were engaging in.

Senator BURR. Now, Neal Wolin, as my colleague just pointed out, Deputy Secretary of the Treasury, was briefed in June of 2012. I have just heard two people at the table say they did not brief him. Mr. George, did you brief, or did part of your investigative team brief Neal Wolin, the Deputy Secretary of Treasury?

Mr. GEORGE. Senator, I personally brought to Deputy Secretary Wolin's attention the fact that we were engaging in this audit and——

Senator BURR. And did that briefing cover the details of the scope of your investigation?

Mr. GEORGE. It did not, sir. It was only to describe the nature of the audit and that was the extent of it, because there were other matters that we were discussing.

Senator BURR. Now, Mr. George, your investigation states that the counsel was briefed in August of 2011 of the practice at the EO. Was that the IRS counsel or was it the Treasury General Counsel?

Mr. GEORGE. Actually, sir, it was in June, June 4th of 2012, again, in terms of a regular meeting that I have with the General Counsel of the Department of the Treasury.

Senator BURR. I know you are talking about your briefing.

Mr. GEORGE. Yes.

Senator BURR. I am talking about a reference in your report that the counsel was briefed by somebody. I take for granted it was somebody within the EO. This was an exchange on the practice that was going on that the counsel at the IRS was knowledgeable about in 2011. Am I correct?

Mr. GEORGE. Sir, it was just pointed out to me that attorneys within the Office of Chief Counsel within the IRS were briefed on this matter.

Senator BURR. So the Chief Counsel of the IRS understood what the practice was that was going on within the EO with these applications, correct?

Mr. GEORGE. I was not at that said briefing, sir, so I do not know the extent to which they received information.

Senator BURR. Well, here again, this was before your investigation started. But your investigation concluded that the General Counsel of the IRS knew of the practices, they had been discussed with the attorneys of the Internal Revenue Service?

Mr. GEORGE. It was the Office of Chief Counsel, and they were provided a briefing on it.

Senator BURR. So is it normal for the Chief Counsel's Office of an agency not to have any conversations with the Commissioner or the Deputy?

Mr. GEORGE. I have no idea of the practices——

Senator BURR. Now, let me just turn to both of you. Mr. Miller, you said—are you testifying that the IRS counsel never talked to you about this?

Mr. MILLER. No, sir. I have not been asked that question, and I do not—if we could step back for a moment, sir—I do not know this for a fact, but I think that the time line that you are referring to when it talks about the Chief Counsel is talking about the Office of Chief Counsel, not necessarily the Chief Counsel. That could have been anyone in that chain.

Senator BURR. So you have attorneys who are involved in a discussion about the practice that the EO is conducting on how they process applications, 501(c)(4) applications, and that would not have been something that was raised to the level of Commissioner?

Mr. MILLER. Well, let me start by saying I did not know that until I read the report, and I do not know anything about that

meeting, sir. That is something that you guys should take a look at.

Senator BURR. Mr. Shulman, are you testifying today that the counsel never discussed this matter with you?

Mr. SHULMAN. I mean, if you are asking the question, did anyone from the Chief Counsel's Office come and tell me about meetings they were having with the Exempt Organizations function, I have no memory of anyone doing that.

Senator BURR. Mr. Chairman, let me suggest that we need to get the Chief Counsel, William Wilkins, in to testify and see if the counsel's office signed off on this practice. I think that is absolutely crucial.

Now, Mr. Miller, let me just ask you, has this practice stopped?

Mr. MILLER. What practice, sir?

Senator BURR. The practice of how they process the consideration of these applications, by key words like "conservative," "Tea Party," "Patriot"?

Mr. MILLER. I believe that that did happen. The names stopped when it last—when Lois Lerner first learned of it. The second listing, by the way, if you take a look at that in the Treasury Inspector General's report, it is still problematic because it talks about policy positions, but it actually is not particularly partisan in how it talks about policy positions unless——

Senator BURR. So it was partisan before, though?

Mr. MILLER. Yes, it absolutely was.

Senator BURR. Let me just point out for the record that the target for approval within the IRS of these applications is 120 days. There are currently some applications that are over 1,200 days without action. So let me ask you, has this practice stopped? If it has, what is the date that it stopped?

Mr. MILLER. So——

Senator BURR. If it stopped, it seems like these applications would have been processed by now.

Mr. MILLER. So, let us break this up a little bit, Senator, and let me see if I can answer your question. The process I was talking about was the selection process. That has been modified. We have also worked on getting people the technical knowledge they need to work these cases. Some of these cases are difficult cases. They should not have taken as long as they have, but they still need some development, and those cases are being worked.

Senator BURR. Is there any case, any application, that you do not think could be processed in 1,200 days?

Mr. MILLER. I would hope that they could, but there are cases that go into appeals, there are cases that go to court. There are all sorts of cases. These are difficult cases. There is no doubt that some part of that 1,200 was when they were languishing before May of 2012. There is no doubt about that.

Senator BURR. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Isakson, you are next.

Senator ISAKSON. Thank you, Mr. Chairman.

Last night I did a monthly telephone town hall meeting, which I do every month back to my State. During the course of an hour,

they had up to 2,500 people on the call. During the course of the hour, I handled 21 questions, and I always make notes when I am answering the phone so the next day I can review things I did not know the answer to, or whatever.

My 10th call last night was from a person named Sid, and his statement was very simple: given what has happened, apparently, at the IRS, I have lost confidence in the United States of America. That was a constituent comment.

That was not a reactionary comment, but he went on to further say, if the agency that collects taxes for me is able to target as they did in the qualification for tax-free status, what is to keep them from using the tax system to target me for other things?

So the reason this is an important hearing, the reason it is an important audit, and the reason we do need to have an important investigation is, if for no other reason, to restore the confidence of the United States in the Internal Revenue Service. So, I want that understood. That is my concern. That came to me from a constituent last night who said it far better than I could possibly say it.

Now, Mr. George, I want to make sure I understand what you said correctly. I believe that Ms. Lerner was in charge of the approval of this department during 2011. Is that correct?

Mr. GEORGE. Yes, sir.

Senator ISAKSON. I thought I heard you say that the Cincinnati office was ordered to change their criteria by the Director, and that, following that order to change it, they changed it back.

Mr. GEORGE. That is correct, sir.

Senator ISAKSON. Do you know who changed it back? Do you know who initiated the change back? Is there anybody, any person or trail, or did it just all of a sudden appear to be a criteria that was changed back?

Mr. GEORGE. We have not found any evidence as to the identity of the person who ordered the revision of the policy.

Senator ISAKSON. That is my point. I am following up on Senator Burr's question and your statement. You did an audit; you did not do an investigation.

Mr. GEORGE. That is correct, sir.

Senator ISAKSON. And audits are developed to find if there is a possibility of wrongdoing or if there is not. Is that not correct?

Mr. GEORGE. Among other things. It also looks at the systemic problems that may exist within a program.

Senator ISAKSON. To date, there has been no internal investigation at IRS. Is that correct?

Mr. GEORGE. That, I am not aware of, sir. I would defer to Mr. Miller.

Mr. MILLER. We took a look in the March time frame, to take a look at what was happening in the cases. That was when it was reported to me in May that there were issues. This sort of thing would be done by TIGTA, and we stood and worked with TIGTA on this.

Senator ISAKSON. All right.

Then let me ask both you and Mr. Shulman the same question. You are now past Commissioners of the IRS, correct? There is going to be a new Commissioner, correct? Let us assume that Com-

missioner is going to make a phone call before he or she accepts the appointment and asks for your advice as to what to do. Regarding this issue, what would your advice be to the next Commissioner of the IRS? Mr. Miller?

Mr. MILLER. I would agree with your opening statement, sir. We have—and it breaks my heart, because I have spent 25 years trying to protect the Service. The Service, right now, the perception is that there is an issue.

That new Commissioner needs to attack it. He needs to, or she needs to, take a hard look, make some changes, put in place some safeguards that are very obvious in terms of their transparency—what the process is, how we are going to do things—and regain the belief of the American people that the IRS is and remains nonpartisan.

Senator ISAKSON. Mr. Shulman?

Mr. SHULMAN. So the Commissioner of the Internal Revenue Service has multiple things to deal with: filing season, technology, last year it was the fiscal cliff, offshore issues. I think the challenge for the next Commissioner is, frankly, what you talked about, that this whole episode has clearly put a blemish on the agency. It has cast a shadow over all of the good work that the men and women do every day.

I think what the next Commissioner needs to do is try to rebuild the faith that people have in the impartiality and fairness of the agency without losing sight of—you know, this is a small sliver, an important one, of what the agency does, but it should not overwhelm him so problems emerge elsewhere.

Senator ISAKSON. Well, my hope was that the answer would have been that whomever the next Commissioner is, he or she should immediately request an investigation of the findings of the audit to determine if there were violations, if there were, who authorized them, and, if they were authorized, who actually carried them out.

Because to me the one thing that we have never gotten to the bottom of in this is what the chairman referred to at the beginning of the hearing, and that is who, what, where, and when. Only when we do that, only when those answers to those questions take place, can you begin the process of restoring the confidence of the American people in the Internal Revenue Service.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I think Senator Cornyn is next.

Senator CORNYN. Thank you, Mr. Chairman. Mr. Chairman, I want to thank you and Senator Hatch for convening this hearing in a strong bipartisan way and in accordance with the finest traditions of the Senate. This is a very important issue, as we all know, and without regard to party affiliation or stripe or ideology.

If we cannot trust the IRS to perform its functions impartially and in accordance with the rule of law, the confidence of the American people will be shaken to its very core. So, this is very important, and I want to say "thank you" for that.

Mr. Miller and Mr. Shulman, as you know, in 2011 and 2012 I began to receive complaints from my constituents in Houston, TX, Waco, and San Antonio, from organizations like the King Street Patriots, True the Vote, the San Antonio Tea Party, and the Waco

Tea Party, asking me to assist them to inquire why the IRS was taking a particularly aggressive posture with regard to their applications for tax-exempt status.

I share Senator Hatch's and others' comments and concerns about the denials that have occurred over the course of time that any targeting was taking place, when we now know that that targeting was in fact taking place.

Mr. Miller, you started your testimony by apologizing. Mr. Shulman, I wonder if you have any words of apology for my constituents and others who feel like the public trust has been violated by the IRS?

Mr. SHULMAN. You know, I am deeply, deeply saddened by this whole set of events. I have read the IG's report, and I very much regret that it happened and that it happened on my watch.

Senator CORNYN. Is that an apology?

Mr. SHULMAN. To your constituents? I do not know the details of your constituents. I do not know what happened to them. I did not, you know, look at particular constituent and taxpayer matters. I mean, as a general principle as the IRS Commissioner, I did not touch individual cases, and I certainly did not touch cases that involved political activity. So, if I knew the details of it, I could give you an answer.

Senator CORNYN. So it is not your responsibility.

Mr. SHULMAN. I——

Senator CORNYN. The buck does not stop with you.

Mr. SHULMAN. I certainly am not personally responsible for creating a list that had inappropriate criteria on it, and what I know, with the full facts that are out, is from the Inspector General's report, which does not say that I am responsible for that. With that said, this happened on my watch, and I very much regret that it happened on my watch.

Senator CORNYN. Well, I do not think that qualifies as an apology. It qualifies as an expression of regret, which I think is well-deserved.

But beyond just the question about the particular activities here that the Inspector General has discovered and which we are all now becoming acquainted with, I had a question, Mr. Shulman, about what you talked about earlier in your testimony as the core function of the IRS.

When I think about the core function of the IRS, it is to collect the revenue that the Federal Government needs in order to function, but it seems like, over the years, that the Congress has given the IRS additional responsibilities, for example, to police political activity and speech, and now to implement Obamacare.

I believe you mentioned there are some 90,000 employees in the IRS. Would you share my concerns that the IRS has deviated from its core function and should be reformed to focus on that core function and perhaps not be given these other additional responsibilities until it can get its house in order?

Mr. SHULMAN. I guess what I would say is, the IRS is tasked with the responsibility of administering the Nation's tax laws, and over the years the Nation's tax laws have been used for more and more things.

So I think I would defer to Congress to decide what it wants to use the tax code for and whether it wants the IRS to do all of the functions in the tax code. But as long as the IRS is given that responsibility, I think the obligation of the agency is to do it to the best of its ability.

Senator CORNYN. Mr. Chairman, I know my time is almost over. But I would just say I agree with your comments that you started out with in saying that, if we need a clarion call to Congress that we have asked the IRS to do much more than its core function, and now to get involved in things like policing political activity and speech, and now implementing Obamacare, it is not all that surprising that these kind of problems have arisen given the discretion that mid- and low-level individuals have and the lack of proper management practices.

So I think this is a great opportunity not only for us to get to the bottom of what happened here, but also to address tax reform in a way that returns the IRS to their core function and gets them out of policing political speech and other activities. Thank you.

The CHAIRMAN. Thank you, Senator.

I think you are next, Senator Thune, from my understanding. Oh, I am sorry. I was out when you spoke.

Senator Portman, you are next.

Senator PORTMAN. Thank you, Mr. Chairman.

Let me just say I also had a tele-town hall meeting last night. My colleague from Georgia talked about it. We had about 25,000 people on at any one time. The questions were coming in from Republicans, from Democrats, from Independents, all saying the same thing, which was outrage. The outrage being expressed was that, at the very least, the IRS ought to have an even-handed and a fair administration of our tax laws, given the power of the agency.

Mr. Miller, in response to concerns expressed by grassroots organizations around Ohio, as you know, Senator Hatch and I, joined by eight of our colleagues, sent a letter to the IRS on March 14, 2012. You responded to that letter.

I just want to tell you why I joined Senator Hatch on this letter. The Portage County Tea Party of Ohio was asked to print out every posting it had ever made on its Facebook page and to turn over the names of every person who had ever spoken at a meeting. I thought that was really odd.

The Ohio Liberty Township Tea Party was hit with 94 exhaustive follow-up questions and demands for information in March of 2011 in response to their January application. Demands included resumes of all past and present employees, all social media posts.

One question actually asked specifically about any connection with an individual who does not live in that county, actually lives in my home county, and was involved in another Tea Party. So they were trying to find out about an individual who had no connection with that Tea Party. Kind of scary.

The Ohio Liberty Coalition was hit with similar questions/concerns. Its application was delayed by over 2 years. The Shelby County Liberty Group sent me this letter they got from the IRS. It contains, as Mr. George has talked about earlier, inappropriate, irrelevant questions, and they were also given 3 weeks, 21 days, to respond. These are individuals who were asked to come up with

tons of information in a short period of time, much of which was difficult for them to compile. So they contacted me.

For instance, they wanted to know the names of every person in the organization, the amount of time they spent at particular events. They wanted to know detailed contents of speeches, forums, names of speakers, panels, so on and so forth. So that is why we wrote the letter. Our letter asked for the IRS to give us "assurance that this recent string of inquiries is consistent with the IRS's treatment of tax-exempt organizations across the political spectrum."

So the letter was very specific. There was no question what we were asking. The letter specifically asked "when and on what basis does the IRS require a 501(c)(4) to make disclosures beyond the standard information, and what objective criteria are used to identify applications for greater scrutiny?" These questions go to the heart of political allegations that we were hearing about.

So let me ask you, Mr. Miller. Did you receive and read that letter on March 14?

Mr. MILLER. I do not know when I—I read it at some point.

Senator PORTMAN. Did you receive that letter and read it?

Mr. MILLER. At some point, yes, sir.

Senator PORTMAN. Did you think the allegations described in the letter, what we called the "serious implications of discriminatory enforcement" were alarming?

Mr. MILLER. I was aware already of the problems that were occurring in those letters, and I was in agreement that they seemed——

Senator PORTMAN. You were aware before the March 14th letter that this was occurring?

Mr. MILLER. In the same time frame, sir.

Senator PORTMAN. I did not realize that. So you knew before the March 14th letter that these serious allegations were out there.

Mr. MILLER. Well, sir, I think——

Senator PORTMAN. And you testified on or about——

Mr. MILLER. I think it——

Senator PORTMAN [continuing]. March 23rd.

Mr. MILLER. Okay. I am sorry.

Senator PORTMAN. You have——

Mr. MILLER. I thought there were things in the newspapers as well.

Senator PORTMAN. You have testified that on or about March 23rd, 9 days after receiving our letter, that you asked Nancy Marks, who is the Senior Technical Advisor for Tax-Exempt and Government Entities, to "lead a team and take a look at what was going on based on these allegations." Is that correct?

Mr. MILLER. I did.

Senator PORTMAN. And you testified that Nancy Marks reported back to you on May 3rd with the revelation that political criteria had in fact been used to target certain 501(c)(4) applicants. In fact, you said today that that 2012 briefing included much of what is outlined in the IG report by Mr. George.

So for 6 weeks, from March 23rd when you sent your team down to Cincinnati to find out what was going on to May 3rd, you did not bother to ask for any kind of interim report or updates from

the team that you had tasked with investigating these serious allegations?

Mr. MILLER. No, sir. I do not believe I did.

Senator PORTMAN. So you sent a team off and, for 6 weeks, you did not ask them what was going on, never heard from them?

Mr. MILLER. I do not recollect that I did that one way or another, sir. I mean, you are—the implication is that this was a pretty short time frame, sir.

Senator PORTMAN. Six weeks? So you are finding out about these very serious allegations, you are sending the team out, and for 6 weeks you never hear back from them, never have the curiosity to ask them what is going on?

Mr. MILLER. Well, the allegations, sir, we had handled. We had looked at those letters. They seemed over-broad to us. We gave people more time. We pulled back the donor list requests. And by the way, the donor list requests, sir——

Senator PORTMAN. Well, no. You had not acted yet. This was still going on during this period. I am talking about between March 23rd and May 3rd.

Mr. MILLER. There are two pieces here, sir. One is what I found out on May 3rd. The letters we acted on immediately. We tried to get people more time. And I think if you talked to your folks, that is going to be what they are going to say. We pulled back the——

Senator PORTMAN. So, you did not even bother to hear back from them for 6 weeks—you responded to our letter on April 26th—and you did not bother to ask them if anything was wrong before you chose to respond to our allegations? In other words, on March 26th, with assurances that nothing was wrong to us, you did not even wait to hear back from this team that was investigating these allegations? You chose to respond without the information?

Mr. MILLER. No. I responded to the questions that were asked, and they were all about the donor list, and they were responded to correctly and truthfully.

Senator PORTMAN. No. Remember, this is the letter I talked about earlier, where we asked specifically about whether there was political targeting. It was very clear what we were asking about. You sent a team out to go investigate it. The team takes 6 weeks. You respond to us on April 26th, which is a week before you apparently heard back from them, and you did not bother to get the report from them before you responded to us. Is that accurate?

Mr. MILLER. I do not know whether I purposely did that or not. I do not think I did, sir. Bottom line is, I answered the questions I thought were being asked, and I answered them truthfully, sir.

Senator PORTMAN. So you did not bother to check with the team investigating these charges whether issues remained before assuring me, Senator Hatch, and others in your April 26th letter that the IRS applies greater scrutiny to 501(c)(4) applications based on only, you said, individualized consideration? In other words, no political criteria whatsoever.

Let me ask you this——

The CHAIRMAN. Senator——

Senator PORTMAN. We have learned today that the IG report says that the Office of Chief Counsel was aware of political targeting as early as August 2011. Did you consult the Chief Counsel

in the course of responding to Mr. Hatch's and my letter, the May 14th letter?

The CHAIRMAN. Five-second answer.

Mr. MILLER. I do not know that.

The CHAIRMAN. All right. Thank you. Thank you, Senator.

Senator PORTMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Next on the list is Senator Toomey. I might say that there is a vote going on. Senator Hatch has gone over to vote and will come right back. I plan to have another round of questions afterwards.

Senator TOOMEY. Thank you, Mr. Chairman.

First, a quick point. A number of my colleagues have seemed to be upset about the fact that some Americans choose to exercise their First Amendment rights anonymously. I would remind us all that perhaps some of the most important and influential works of political advocacy ever done in the history of the Republic were the Federalist Papers, which were written anonymously under pseudonyms.

I would also point out that, whatever one thinks of how the Treasury rule implementing the 501(c)(4) standards has been developed over the decades, how it is written, has absolutely nothing to do with the IRS decision to use ideology as a basis for imposing unnecessary, inappropriate, and extra screening on people seeking 501(c)(4) status and other matters.

Let me ask Mr. Miller—I just want to be very clear and follow up on the line of questioning from Senator Isakson. So we are sitting here in May of 2013. At this point, do you know who it is who initiated the policy of establishing these ideological criteria for creating this additional level of screening for applicants for 501(c)(4) status?

Mr. MILLER. I think—I mean, it happened twice. The second time it happened, I do not believe there is clarity on that. The first time, I think there is more clarity on that.

Senator TOOMEY. So who was it? What is the name of the person who did that?

Mr. MILLER. I can give you the name. I would be glad to respond to that, but I do not know off the top of my head.

Senator TOOMEY. I think that it is important that we understand who did that, that we know exactly who did. Who ordered that it be stopped, which I believe occurred in July of 2011?

Mr. MILLER. According to the IG report, Lois Lerner.

Senator TOOMEY. According to—so you do not have any knowledge of that, other than the IG's report?

Mr. MILLER. I believe that that is the way it happened, yes, but I am not—I believe that is the case.

Senator TOOMEY. And then who ordered that it be resumed? Although using slightly different words, the same idea was resumed in May of 2012.

Mr. MILLER. I believe I indicated, and I think the IG concurs, that that is less than clear.

Senator TOOMEY. So why is that less than clear even now? I mean, these are people who reported in a direct chain to you. You were the Deputy Commissioner for Services and Enforcement. Reporting to you, if I understand correctly, was Sarah Hall Ingram,

the Acting Commissioner for the Tax Exempt and Government Entities Division; the Director of Exempt Organizations, Lois Lerner, reported to her. Isn't there somebody in this chain of command—well, let me put it this way. Who in this chain of command ought to know who was initiating this inappropriate activity and reinitiating it?

Mr. MILLER. So, somebody should have known. There is no question about that. And now there are processes in place that have made it clear exactly who has the ability to either start this listing or modify the listing. At the time, those controls were not in place.

Senator TOOMEY. So, you said somebody should have known, but clearly there is a chain of command, there is an organizational structure here. There are people who are responsible. I mean, should it have been Lois Lerner? Should it have been Sarah Hall Ingram? Should it have been yourself? Who ought to be responsible for making sure that this important function is being carried out properly?

Mr. MILLER. So, I think that, under the current management chain, it has been determined that the Director of Rulings and Agreements, which is even below Lois, has control of that listing.

Can I clarify one thing, sir? I think, you know, Sarah Ingram's name has been used several times here already. She has been thrown into this, and I do not know that that is a fair thing. We should check the time line. I do not believe she was working in TEGE during the time that is being discussed here.

Senator TOOMEY. Okay. Well, I have not accused her of anything, although I was under the impression that she was the Acting Commissioner in this regard during this time period.

I would just say that if we believe that we still, sitting here today, do not even know who was responsible for the decision to resume a completely inappropriate activity that had been ceased, I do not know how we could come to the conclusion that this is not politically motivated. We do not even know who made the decision.

How do we know what motivated that decision? And, on the face of it, it certainly appears that it is completely politically motivated. To the best of my knowledge, there was no criteria identifying left-of-center organizations as deserving special scrutiny, like using the words "progressive" or "99 percent" or "Occupy Washington." None of that was ever part of the criteria.

So, given the obvious one-sided nature of these criteria and the fact that we still do not know—Mr. Chairman, I would just suggest that what we need to do is to bring before this committee some people who might actually know the answers to these questions about who actually decided that this was a good idea, who decided that we ought to resume this after the initial malfeasance was ended. But it is frustrating to have no answers for a hearing like this.

The CHAIRMAN. Thank you.

Frankly, I apologize. Can you come back, Senator?

Senator BENNET. I cannot.

The CHAIRMAN. You cannot?

Senator BENNET. Could I just take 2 minutes?

The CHAIRMAN. All right. Go ahead.

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Senator BENNET. I want to actually begin, in my 2 minutes, where Senator Toomey ended. The IG has said he does not know who made the decision to resume, the IRS Commissioner does not know who made the decision to resume. I mean, did you ask these questions? What did the people in Cincinnati say about who made the decision, or what did people in Washington say about who made the decision? It just seems impossible that we do not know that answer.

Mr. MILLER. So, I did ask in May. I was told a name, and it turned out that they did not think that was the correct name. So——

Senator BENNET. Was that a name of somebody in Ohio or the name of somebody——

Mr. MILLER. It was the name of a group manager in Ohio.

Senator BENNET. I do not know how we get to the bottom of it, but I think somebody needs to be able to answer that. It does not seem like it is asking too much.

Mr. MILLER. I did ask, sir.

Senator BENNET. I think we should ask again. If the IRS will not do it, I think we need to do it. This is the last thing, and I will close on this, Mr. Chairman, because I know time is short and I do not want either of us to miss the vote.

Mr. Shulman said a few times that the IRS has been given a difficult job to do. No doubt that is true. I think in this case we did not give the job. I think that the regulation that the Treasury wrote or whoever wrote it 50 years ago simply is not consistent with the law as it has been written, so I would argue that the agency has taken on the task.

Since you are all three lawyers and you have all worked in this area, I would ask you whether you think the regulation as written reflects the spirit—not even the spirit, the language of the statute as it is written with respect to (c)(4)s. Does anybody here want to defend the way the language is written?

Mr. MILLER. So let me start. I am not going to defend it or attack it. It is what the regulation is, and, as the administrator, that is what we would do.

Let me note one thing, though. If we were to modify it—and we should be open to the conversation, and obviously Treasury's policy folks would be key in this. If we were to modify it, we might still be in the same place where we have to determine, you know, how much political activity needs to be done, even under an "exclusively," because it might not be 100-percent you cannot do it, it might be X-percent. Even there we would have a hard time parsing what is politics, what is not, what is an issue ad versus education. These are very difficult tasks.

Senator BENNET. Does anybody else want to defend it?

Mr. GEORGE. I do not want to defend it, sir, no.

Senator BENNET. I think with good reason.

Thank you, Mr. Chairman.

The CHAIRMAN. All right. The committee is in recess for about, I am guessing, 10, 15 minutes.

[Whereupon, at 12:20 p.m., the hearing was recessed, reconvening at 12:28 p.m.]

Senator HATCH [presiding]. We will call on you, Senator Casey.

Senator CASEY. I want to thank the ranking member for the opportunity, and I want to thank both the ranking member and the chairman for calling this hearing. I know we had a brief break for the vote.

I start, in terms of my questions, by setting forth a predicate based upon two things. One is the IG's report, which is, right now, I would say the only, or the main, body of evidence we have about what happened here, number one.

Number two, beyond what the law requires, beyond what the IRS Code or any regulations provide, I think there is a larger question that a lot of Americans are angry about or struggling with or perplexed by, and that is sometimes the sense that people in Washington do not get it, that people in Washington do not have a sense that their work is not just important in terms of the policy, but that they are appointed or elected to office to be servants.

I would have to say, listening—and I have been here for virtually every minute of this hearing—I wish there was more of a sense of, frankly, outrage or at least more contrition being demonstrated by both you, Mr. Shulman, and you, Mr. Miller, in light of what has happened here, because, in my experience, whether it is an elected official, an appointed official, or a public agency, when something goes wrong, it is as if you had something that fell on the ground and shattered.

The one question that we all have is whether or not rebuilding substantial public confidence in the IRS is going to be putting back three or four pieces together or whether it has been so shattered that it will take many, many years to rebuild that confidence. So that is the predicate that I start with.

I also point to, in the report in Appendix V, an organizational chart, which I do not need to hold up. I think most Americans have seen these. This is page 29 of the report. It starts at the bottom, where you have Program Manager, Determinations Unit, and then you have the Program Manager, Determinations Specialist, both located in Cincinnati, OH.

At the next level you have a Director of Rules and Agreements in Washington, at the next level Director of Exempt Organizations in Washington, at the next level the Acting Commissioner for Tax Exempt and Government Entities, and then you get to the Deputy Commissioner level, which, Mr. Miller, I guess, is where you began in September of 2009, is that correct?

Mr. MILLER. Yes, sir.

Senator CASEY. And that was while, Mr. Shulman, you were in fact the Commissioner of the IRS, is that correct?

Mr. SHULMAN. Yes.

Senator CASEY. And then you turn to—or I turn to page 7 of the report. By the way, on page 6, IRS Policy Statement 1–1 talks about promoting public confidence and being impartial, which is obviously part of what the crux of the problem is here.

But I am looking at page 7 of the report. I would just note for the record, this is in the first full paragraph, maybe the second sentence: "The Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management." So that is a management failure, as clear as can be.

It says in that same paragraph, "Inappropriate criteria remained in place for more than 18 months. Determinations Unit employees also did not consider the public perception of their conduct." Then finally, "The criteria developed showed a lack of knowledge by the individuals in that unit."

Later, on the same page, it talks more about the management failures. So, when you consider that evidence of a management failure and you look at the organizational chart, which goes right up to both of you in your positions at the time, I have to ask you a couple of questions.

It is pretty clear from the report and the record that you can almost look at this problem as what happened prior to January of 2012 and what happened after, or you can move the line back and say, well, why don't you look at July of 2011? But we know that in August of 2011 is when the problem started.

These criteria were issued and used from that point forward. July of 2011, 11 months later, the criteria changed. I guess at that point management would have thought that the ship was on the right course. Then we find out in January of 2012 the criteria changed back.

I guess the basic question I have for both of you is, is it your testimony that you took no actions to rectify what happened after January of 2012 because you did not know about it? Is that your testimony, Mr. Miller?

Mr. MILLER. When I knew in May of 2012, I took action. That was the first I knew.

Senator CASEY. Mr. Shulman?

Mr. SHULMAN. Yes. The first time I remember knowing about this was in a conversation with Mr. Miller, and, at or about that same time, he told me that he was taking action. The list had been corrected, and so, yes.

Senator CASEY. Well, I would assert that the fact that you did not know it was a management failure of some kind, and I would hope that the IRS at this point, when you have nine recommendations that the administration says are going to be implemented, that those recommendations be implemented expeditiously.

I realize that you do not have a direct impact on that any longer, but I think the American people need to hear, Mr. Shulman, more of what you expressed after about 90 minutes here in answering Senator Cornyn's question about, at a minimum, a sense of disappointment and contrition as opposed to, we did not know and, I think, an attitude that only makes the problem worse. I know I am limited on time, but I will try on the second round, maybe.

The CHAIRMAN. Thank you, Senator.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. I want to make it clear at the outset I really do believe that we need clarity in our tax-exempt status on 501(c)(4) organizations, and we need that clarity, Mr. Chairman, as soon as possible. I think that is a major issue.

But I have a larger issue, which is just understanding at the IRS, Mr. Miller, what exactly exists today as a prohibition against investigating people, investigating organizations, targeting organizations based on political or religious or any other social issues.

Mr. MILLER. So we would have two different areas. One is the determinations letter area, where we had issues this time. We have elevated to an executive level either the creation of a list or the modification of a list, and the list will not have names on it. The list will have what it has today.

Senator CANTWELL. No, no, no. I am asking a larger question——

Mr. MILLER. I am sorry.

Senator CANTWELL [continuing]. Which is, what rule, what regulation, what statute is in place that prohibits an employee of the IRS from targeting people for either political, social, or any kind of personal reasons, and what are the safeguards?

Mr. George, in response to my colleague from South Dakota, mentioned the criminal code section that applies to revealing or disclosing personal information, but I am asking, where is there a bright line at the IRS?

Because what I think happened here is that somebody saw a gray area, and, instead of addressing the gray area—because it is clear Director Lois Lerner made an attempt to go back and give guidance when it was not there and then did not take action, and then more problems ensued.

So my question is, I do not think that gray areas, whether they are in our national security and this media shield issue, or in this issue with the IRS, can be seen as a green light. Gray does not mean there is a green light to go ahead and use these powers of information to go on fishing expeditions.

So what I want to know is, does the IRS, either by law, by internal process, have something on the books right now that says you cannot target people for political or religious or other social issues—within the IRS?

Mr. MILLER. So I have to—forgive me, Senator. I have to go back and check on whether there is something specific on that. There are general rules of conduct that would indicate that you should not do anything that even gives the appearance of that type of activity, but I am unsure, and we would have to come back and let you know whether there is something specific, statutory or regulatory, in that area.

Senator CANTWELL. Mr. George, do you have any idea?

Mr. GEORGE. The Restructuring and Reform Act delineates a number of, they call them the Deadly Sins, the 10 Deadly Sins. One of them is the revealing of tax information willfully to harm a taxpayer. So it is my understanding that that is one, while administrative in nature, that does not have any criminal penalties associated with it, but could result in the removal from the position of the IRS employee.

Senator CANTWELL. But that is revealing that information to some outside organization?

Mr. GEORGE. It is the misuse of that information, actually. And so, how that is——

Senator CANTWELL. In this case, could this be seen as misuse of information?

Mr. GEORGE. In theory, it could be interpreted that way, Senator.

Senator CANTWELL. Well, I think it is clear that we need a very clear statute here. If it was not the intent that these things happened, certainly the perception is that this could have been the in-

tent. I agree with my colleagues that we have to have a very clear system here, that the American people need to know that this kind of targeting for political purposes does not happen and will not be tolerated, and that people would lose their jobs over that.

Mr. Miller, the fact that you do not know whether this existed, it says to me that the bright line was not bright enough. The minute there was a gray area, the counterbalance should have been someone saying this could be perceived as targeting an organization for political purposes, it is wrong, this is a violation of our organization, and they should have gone back and should have created a different—a very, very different process. I worry, in an information age with too much information in large organizations, that people have to get this point.

So, Mr. Chairman, thank you. But I also do believe that the 501(c)(4) status issue needs to be resolved as quickly as possible as well.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Carper?

Senator CARPER. Thank you. Gentlemen, thank you for joining us today. Listening to this testimony today, Mr. Chairman, I am reminded of something I learned a long time ago as a Navy ROTC midshipman, when they tried us in leadership training. They told us about the responsibilities and expectations of the commanding officers, whether it is a ship or an aircraft carrier—a ship, submarine, aircraft carrier, or a squadron.

If a ship ran aground in the middle of the night, if it is 2 in the morning and someone else was the officer of the deck, we hold the commanding officer of the ship responsible. The captain of the ship is responsible.

The captain of the ship is expected to stand up and take responsibility and say, "This happened on my watch. I may not have been on the deck, I may have been sound asleep, but I am responsible." I think one of the things that is so frustrating here is that—just a reluctance to assume responsibility.

Mr. Shulman, my understanding is you were not nominated to serve in this role by President Obama, but you were nominated by former President Bush. Is that correct?

Mr. SHULMAN. Correct.

Senator CARPER. And when were you nominated?

Mr. SHULMAN. I was nominated in either—I think the end of November, maybe the beginning of December of 2007.

Senator CARPER. 2007.

Mr. SHULMAN. Right.

Senator CARPER. When I was elected Governor, we went off to new Governors school. Actually, one of the people who was one of my mentors there was your dad, Senator, then Governor Casey. One of the lessons I learned at new Governors school in 1992 as a new Governor was, when you make a mistake, do not drag it out for a day or a week or a month. Admit it, take responsibility, and say, "We are going to fix this problem" and move on.

I think one of the frustrations for us is your reluctance, maybe unwillingness, to say, "This happened on my watch." I think with the reporting of the chain of command, as I understand it, from

Cincinnati, it flowed up through Mr. Miller then directly to you. So I would just leave that at your feet.

That is a disappointment to me. I think it is one of the things that is going down hard with my colleagues, and I think the American people. We want somebody to take responsibility, to apologize, to say, "This happened on my watch," and then to move forward.

I would note, we do not make the job of the IRS easy, the people who serve on this committee, the people I serve with in the Senate. We make it hard, where we have a hugely complex tax code, voluminous. We make changes. We delay passing legislation right up until it is time to file for taxes. We do not make the job easy, we make it difficult.

One of the areas where I think we actually made it pretty straightforward is with respect to 501(c)(4)s, these tax-exempt organizations. As I understand it, in the actual code we say that these 501(c)(4) nonprofit organizations, their activity must be, I think, "exclusively"—exclusively—"for social welfare." "Exclusively" is a quote out of the code, and I think "for social welfare" is a quote out of the code.

It does not say anything about giving tax-exempt status for any political activity; it says "exclusively for social welfare." Now, how we ended up in this situation, where we are extending tax-exempt coverage to these entities that are clearly not exclusively for social welfare—and actually to me it looks like a lot of what they are about is affecting elections and weighing in on elections. It would be a lot easier for the IRS if we just go back to the code, and where its says they have to be exclusively for social welfare, let us make sure that they are.

Let me just ask you all to respond to that, starting with Mr. George, please.

Mr. GEORGE. Senator, I believe you were here, or may not have been here——

Senator CARPER. Yes, I have been in and out. We have another hearing going on on the tax code. The folks from Apple are before the Permanent Subcommittee on Investigations, so there is actually some overlap there.

The CHAIRMAN. Yes. This is tax day.

Senator CARPER. It really is.

Mr. GEORGE. Well, the Secretary has delegated tax policy questions to the Assistant Secretary for Tax Policy. And, as this is a tax policy question, sir, I am going to have to defer on that.

Senator CARPER. Yes. Mr. Miller, would you respond, please?

Mr. MILLER. I will. But first I—and I am sorry that Senator Casey is gone. I opened my statement with an apology, sir, and I do apologize. And, you know, what happens on my watch, whether I did it or not, is like that commanding officer. I am responsible.

Senator CARPER. Good. Thank you.

Mr. MILLER. So I just want to state that, sir.

Senator CARPER. I appreciate that.

Mr. MILLER. On this——

Senator CARPER. You know, I did not mention you when I was talking about that. But go ahead.

Mr. MILLER. We have talked a little bit about this issue today, and that is, you know, the regulations interpret "exclusively" as

"primarily." That puts us into a difficult place of figuring out what is in and outside of the (c)(4) work.

I do think it makes sense to take a look at it. I do not know that we will be in a better place after looking at it, because we will still have to figure out what falls within even the "exclusively." Is it 10 percent? Is it 15 percent? Is it 20 percent? We will still have that problem. But it is clear that the world has changed since 1958, or whenever it was that we did that regulation, and it does make sense to take a look.

Senator CARPER. Yes.

Mr. Shulman?

Mr. SHULMAN. I do not have anything to add to what I said before, that I think it is incredibly difficult for the IRS to administer the current regulations on the book and I think it is well within the purview of this committee and Congress to take a look and be very clear. If Congress is not going to act, I think it is well within the purview of the Treasury to take those actions.

Senator CARPER. Good.

Mr. Chairman, can I ask one more quick question, if I could? And you do not have to get into this, but I just want to put it before you. Do you know if the IRS has investigated whether Priorities USA or Crossroads GPS are primarily social welfare organizations or political in nature? Do you all know if that has been done?

Mr. MILLER. So I think, sir, that would be 6103 information that we would not be able to speak to publicly.

Senator CARPER. All right. Thanks very much.

Thanks, Mr. Chairman.

The CHAIRMAN. Well frankly, Senator, that is the question I was going to ask. You know, these are the two 800-pound gorillas in the room that have not been addressed, that is, Priorities USA and Crossroads GPS. They are the ones that spent a lot of money buying TV ads and influencing campaigns, apparently.

There is not a lot of evidence thus far—correct me if I am wrong—that some of the organizations that were investigated by the Cincinnati office clearly spent a lot of money for political purposes. I do not know. That has not really come out here, as near as I can tell. So what about Crossroads? What about Priorities USA?

I mean, it is obvious to you, it should be as Commissioners, that a lot of money is being spent under the rubric of 501(c)(4), a lot. I am wondering what you did about it, because that is where the abuse apparently is. That is where it seems to be in terms of dollars. I say "apparent" but I do not know if it is a fact.

But what have you done about those two organizations and similar organizations that look like they are spending a lot of money? You watch TV ads, you see these 501(c)(4)s. You know what is going on. You both know what has been going on. What do you do about it? I will start with you, Mr. Shulman, because you were there first.

Mr. SHULMAN. Yes. So let me repeat what my former colleague said, that all this is 6103 information, so, if I had any information, I could not have a discussion about this in an open forum.

Let me also say that, as Commissioner, I did not get involved in a single case with a 501(c)(4) that I can remember, and it was a

general policy that I would not. I think it is inappropriate actually for a presidential appointee, regardless of which party they are appointed by, to be getting involved in cases where the scrutiny and the decisions have to be made around political activity.

Finally, I would just say, you know, sitting there as Commissioner, you mentioned the letter to me, Mr. Chairman. There were letters coming elsewhere. I will go back to what I said before, which is, the IRS has been put in a very difficult situation when it is trying to administer the tax code, serve Americans, get refunds out, serve businesses.

The CHAIRMAN. I understand. I understand.

But back to the question. I understand 6103, and frankly there is a way you could tell me—not here in this forum—taxpayer information. That is what 6103 provides, in part.

But I am asking another question. That is, what was your policy with respect to organizations of this size? I am not asking specifically about Crossroads right now, I am not asking specifically about Priorities USA. I am asking what, if anything, did you do as Commissioners to see if the law is properly being implemented?

Mr. MILLER. So, I can start on this, sir. I mean, I think on given cases, and even on the discussion, it makes all the sense in the world for you to come forward and ask us in a 6103 context, and that is the way we could answer——

The CHAIRMAN. I am asking general policy. I am not asking for specific taxpayer——

Mr. MILLER [continuing]. And we can come back and let you know that there are examinations under way and the determination letter processes are under way.

The CHAIRMAN. Have you focused on these larger organizations? I am not asking you to name any, I am asking about a policy.

Mr. MILLER. There is no policy to aim one way or another on organizations; it is what comes through. I cannot really speak to what——

The CHAIRMAN. But it looks like the Cincinnati office was focusing on, it seems, smaller organizations that may or may not have been spending money to influence campaigns. I do not know. I do not know what the Inspector General—let me ask the Inspector General about that. To what degree have the 298 or the 96 or the remaining 202 been involved in political activities?

Mr. GEORGE. Senator, we will be engaging in a review of the IRS's handling and oversight of this very issue as to whether or not these organizations have engaged in——

The CHAIRMAN. So you do not know?

Mr. GEORGE. I do not have it at the ready sir, but we will supply that for the record.[2]

The CHAIRMAN. But have you been asking that question?

Mr. GEORGE. Yes, we are starting the audit, sir. We have not yet posed the question.

The CHAIRMAN. So again, let me ask, to what degree has the IRS exercised a little common sense here and said, holy mackerel, we

[2]TIGTA plans to initiate an audit to review the Exempt Organizations function's oversight of sections 501(c)(4)–(c)(6) organizations potentially participating in political campaign intervention. We do not know at this time how many of the 298 organizatons are actively engaging in political campaign intervention.

have to look at some of these organizations in the wake of *Citizens United* and see if there should be a change?

To what degree did the IRS ask itself that question, either at the Commissioner level, sub-Commissioner, anywhere? Anywhere? It does not take rocket science to know what is going on here. I am not targeting conservatives, not targeting liberals. I just want them enforcing the law here. So why didn't somebody in the IRS, or did somebody in the IRS, think about this and try to do something about it?

Mr. MILLER. I think, sir, that we do have an exam program under way that we would be glad to walk you through. We do have the determination letter process. You should not assume that all the cases in the determination process that we are talking about are of either one political affiliation or another.

The CHAIRMAN. All right. Let us go beyond the assumption. To what degree are there other cases that you, the IRS, are looking at in addition to those we have identified in the TIGTA report?

Mr. MILLER. I would have to come back to you on that, sir, but we have—we have examinations——

The CHAIRMAN. Is it several? Many?

Mr. MILLER. I do not know whether there—I do not have a sense, sir. I——

The CHAIRMAN. You do not have a sense?

Mr. MILLER. I believe there are 50 to 100, but I could be absolutely wrong. So, rather than throw a number out there, sir, let us come back to you.

The CHAIRMAN. All right.

Commissioner Shulman, what is your sense?

Mr. SHULMAN. I have not been at the IRS for 6 months. I do not——

The CHAIRMAN. No, no. When you were——

Mr. SHULMAN. I do not know what is in the pipeline.

The CHAIRMAN. No, no. When you were Commissioner, these got comfort letters on your watch.

Mr. SHULMAN. I mean, my sense is very similar to Mr. Miller's, that there is an examination program under way, that there is—or at least, you know, was under way—that groups were being looked at, and these cases were being worked.

The CHAIRMAN. All right.

Mr. SHULMAN. That is the sense I have.

The CHAIRMAN. Did it come to your mind that perhaps some of these organizations perhaps were abusing the intent and spirit of 501(c)(4)——

Mr. SHULMAN. I think it would have been——

The CHAIRMAN [continuing]. In the wake of *Citizens United*, with all the money that is being spent?

Mr. SHULMAN. It came to my mind that career professionals should be the ones touching these cases, thinking about, are they using the tax-exempt laws properly, and that a presidential appointee should not be touching a case.

The CHAIRMAN. That is interesting. So you should have no view about that subject, nor should you give direction to the agency. Is that correct?

Mr. SHULMAN. That is not how I would state it.

The CHAIRMAN. Oh, I am sorry.

Mr. SHULMAN. What I said is, I did not want to touch any individual cases or give direction on individual cases.

The CHAIRMAN. I am not saying that. You are misinterpreting my question. I am asking, as a policy, were you aware that perhaps, in the wake of *Citizens United*, that the exemption was being abused? Let me ask that simple question first.

Mr. SHULMAN. I was aware that, in the news and in letters that we got, there were a lot of people concerned about things in multiple different ways with views——

The CHAIRMAN. All right. You are aware of all these multiple different views.

Mr. SHULMAN. So I was aware that our Tax Exempt Government Entities group was also aware of the need to take a look at 501(c)(4) organizations and to have a number of exams under way. My understanding—which is 6 months old, the caveat—at the time was that there were a number of exams under way.

The CHAIRMAN. Where does the buck stop at the IRS?

Mr. SHULMAN. What is that?

The CHAIRMAN. Where does the buck stop at the IRS? Where?

Mr. SHULMAN. I mean, I think I have said clearly that all of this happened on my watch.

The CHAIRMAN. You have said that, but you are dodging the question whether you did anything about the obvious flow of money going, in the wake of that Supreme Court decision, to 501(c)(4)s. You basically——

Mr. SHULMAN. I mean——

The CHAIRMAN. I am sorry. Go ahead.

Mr. SHULMAN. What is that?

The CHAIRMAN. Go ahead.

Mr. SHULMAN. I mean, I think I have told you what I have to say about it. I think IRS is given a very difficult task. My understanding was, people were on the job working on that task, and I, as a matter of practice and policy, did not reach down into the Tax Exempt Government Entities world to affect the cases.

The CHAIRMAN. That is not the question I am asking. You are answering a different question. The question I am asking is not whether you affected specific cases, but whether you—let me ask a different question. I know my time is about up.

Are you aware of the Supreme Court decision in *Citizens United?*

Mr. SHULMAN. Yes, I am aware.

The CHAIRMAN. You are aware of it. And are you aware of its holding, what it held?

Mr. SHULMAN. In a general sense, I am.

The CHAIRMAN. And what was that? What is your understanding?

Mr. SHULMAN. My best understanding is that corporations and other entities can give money to political organizations.

The CHAIRMAN. And are you aware of——

Mr. SHULMAN. But I am not an expert in this law.

The CHAIRMAN. Are you aware that suddenly 501(c)(4)s were getting a lot of donations and spent a lot of money?

Mr. SHULMAN. I am definitely aware that there was an influx of 501(c)(4) applications into the IRS.

The CHAIRMAN. Did it occur to you that perhaps, in the wake of the decision, that that statute was being abused? That is, the statute was not being used exclusively for nonpolitical purposes?

Mr. SHULMAN. I mean, Senator, my belief is that Congress has given the IRS a very difficult task. I understand that you have a desire that we would have done more.

The CHAIRMAN. You are making a different statement and not responding to my question. My question, again, is, to what degree were you aware of the difficulties caused by the statute in the Supreme Court decision, and second, to what degree did you do anything about it, that is, try to make sure that the statute was not abused?

Mr. SHULMAN. I was aware, from a variety of sources, whether it was the media, letters, et cetera, discussions with Mr. Miller and other people on our team, and I was aware that the appropriate people were making sure that the exam plan was working on this issue.

The CHAIRMAN. All right. I am not going to split hairs here, but that is frankly an unresponsive answer.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

Let me just say that there are plenty of 501(c)(4)s across the political spectrum, and some of the 501(c)(4)s that were really sponsored by Democrats are extremely wealthy too. I mean, it is not just one side or the other. It seems to me we ought to be very careful.

And frankly, this targeting began before the so-called spike in 501(c)(4)s. By the way, there was a bigger spike in 501(c)(5)s, which involved the unions. Some of my friends are advocating for a Disclose Act, but they always exclude the 501(c)(5)s, the unions. In other words, disclose your donor lists, but not what is done on the other side. If you are going to do something in this area—and I agree, it is Congress's obligation to do it—we ought to do it the right way. So you can pick on Crossroads all you want, but there were plenty of liberal groups on the other side.

The CHAIRMAN. To be clear, I know you understand, my view on this whole subject is——

Senator HATCH. I am not picking on you.

The CHAIRMAN [continuing]. Yes, both sides here, not just one side.

Senator HATCH. Well, it is both sides.

The CHAIRMAN. It is both sides, right.

Senator HATCH. Yes. But some have indicated it is just one, because they hate Crossroads because it was exceptionally effective in many, many ways. I can understand that.

Now, let me just say, for those calling for a ban on 501(c)(4) political activity, I think it is beyond hypocritical not to call for a ban on 501(c)(5) labor groups' political activity as well. But we know that is never going to happen around here unless there is a sea change in the Congress of the United States.

Now, Commissioner Shulman, Mr. Shulman, what was the date that you first learned from any source that the IRS Exempt Organizations Determinations Unit in Cincinnati was using a "be on the lookout," or BOLO, listing for terms such as "The Tea Party"?

Mr. SHULMAN. To the best of my recollection, it was sometime in the spring of 2012.

Senator HATCH. All right. Right during the election year, right?

Mr. SHULMAN. It was in the spring of 2012.

Senator HATCH. All right.

Mr. Shulman, when you learned about this problem, whom did you tell and on what date did you tell them?

Mr. SHULMAN. I was told of the problem, as I had mentioned before, by Mr. Miller, and at that time I was also told that TIGTA was looking into the issue. And so I do not recall telling anyone about it, because I think this is not the kind of information, once TIGTA starts looking at it, that should leave the IRS.

Senator HATCH. All right.

Well, let me go a little bit farther here. To your knowledge, what was the first date that anyone at the Treasury Department, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny?

Mr. SHULMAN. I have no knowledge of people at the Treasury Department knowing about Tea Party groups being subject to scrutiny. Or let me say it another way: I did not have conversations with people at the Treasury Department about that matter.

Senator HATCH. One of the problems that I have with you—and we have always had a good relationship—but the one thing that bothers me there is, I wrote a letter on March 14, 2012. It was signed by a number of my colleagues, eight of my colleagues—that was on March 14, 2012—inquiring about these matters. Then I wrote another one to you on June 18, 2012. You never got back to us after having knowledge of some of these goings-on that were just wrong.

That bothers me, because I think you have an obligation—when you say one thing before the committee and then find out it is another—I think you have an obligation to let our committee know about it. We have had some criticism of the Congress because they have not passed certain laws that would make things clearer, but it is also your obligation to come back and tell us, well, when I testified before, I did not know, but now here is what happened. Is there any reason why you did not come to us and tell us?

Mr. SHULMAN. You know, I started before—I mean, first of all, Senator Hatch, I appreciate your concerns. I hear your concerns. I am not here to argue with you.

Senator HATCH. I know you are not.

Mr. SHULMAN. I will just tell you what I did. I learned——

Senator HATCH. You did not do anything, once you learned, to help us to know that you had learned that there were some pretty bad things going on.

Mr. SHULMAN. I had learned that there was a thing called the BOLO list.

Senator HATCH. Right.

Mr. SHULMAN. I learned that the Treasury Inspector General for Tax Administration was planning to look into it. My policy/procedure/practice at that time while I was at the IRS was, if I hear something that is a concern and I do not know how big a concern, how significant it is, all the details, if I get some of the facts but not all of the facts, the proper place for it to be is in the Inspec-

tor General's hands to track down all the facts. And then, once all the facts are known, that will be reported to Congress, to the Commissioner, to the Treasury, to all the appropriate parties. And I——

Senator HATCH. But you knew this was going on, and you had represented that it was not going on, and then you found out that it was going on, and you never came to us and let us know what was going on.

Mr. SHULMAN. I certainly do not believe, and I do not have any memory of representing that the BOLO list was not going on at a time that I knew it was going on.

Senator HATCH. All right.

Mr. Chairman, I would like to put these four letters, the two letters from my colleagues and myself and the responses from Mr. Miller, into the record at this point.

The CHAIRMAN. Without objection.

[The letters appear in the appendix on p. 192.]

Senator HATCH. Now, Mr. Miller, to your knowledge, what was the first date that anyone at the Treasury Department, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny? What was the first date when you heard about that?

Mr. MILLER. I do not believe I had any conversations or any knowledge in advance of my taking over as Acting Commissioner in November of 2012, and I do not believe we had any conversations until the discussion about the actual report, which was later into 2013.

Senator HATCH. Well, let me ask you this. To your knowledge, what was the first date that anyone at the White House, from whatever source, learned about any Tea Party groups that applied for tax-exempt status being subjected to extra scrutiny or improper scrutiny?

Mr. MILLER. I have no knowledge of any—

Senator HATCH. You do not have any knowledge of anybody at the White House?

Mr. MILLER. Correct.

Senator HATCH. All right.

Now, let me just see here. I am just about through, but I might want to ask just one or two more questions.

Just maybe back to you again, Mr. Shulman. I wrote these two letters to you in your capacity as IRS Commissioner in March and June 2012. Both of those letters were answered by Mr. Miller, I presume at your request, who at the time was the Deputy Commissioner for Services and Enforcement.

Now, given the importance of this issue, why didn't you answer those letters yourself?

Mr. SHULMAN. We have, you know, a process at the IRS that letters come in and they get answered by a variety of people.

Senator HATCH. So you delegate that.

Mr. SHULMAN. On 501(c)(4) issues, one is, I think the different people who answered these letters were in a better position to answer them than I, and two, again, I took great strides to run the agency in a nonpolitical, nonpartisan manner and to have the Commissioner not be the one commenting, who is the only presidential appointee besides the Chief Counsel. Not being the one having cor-

respondence with Congress seemed like a good idea, because these issues are highly charged and political.

The CHAIRMAN. Thank you. All right. Thank you very much.

Senator Crapo? Oh, I am sorry. He is not here. Senator Nelson is next. Sorry.

Senator NELSON. But a presidential appointee is there for the purpose of carrying out the law, and, when it becomes patently obvious that the law is being thwarted because the IRS's ability not to tax is being used by organizations to electioneer, then it seems to this Senator that the obligation of the leader of the organization, political appointee or not, is to step up and take responsibility that the law is not being obeyed.

Whereas, Senator Hatch has pointed out from his standpoint that this was government run amok, it also seems to me that this was government that was impotent and that did not act.

Mr. Inspector General, should we be concerned that groups are undermining the intent of the law and gaining tax-exempt status, even though electioneering is their purpose?

Mr. GEORGE. We should be concerned if any organization is not adhering to the law as it has been passed by Congress and enacted by the President, there is no question about that.

Senator NELSON. Well, the law as it is written is written, so any attempt to come back and say that we have to change or clarify the law seems to me to be the wrong question. The question is the administrative implementation of existing law when there are such obvious abuses.

Mr. GEORGE. Senator? Oh, excuse me.

Senator NELSON. Yes, sir?

Mr. GEORGE. Senator, one of our recommendations issued in this report is that the IRS seek clarification from the Department of the Treasury, and in turn the Department of the Treasury seek clarification from Congress on this very issue.

Senator NELSON. Why do you need clarification from Congress? The law is very clear: it says you cannot involve yourself in electioneering if you want this kind of tax-exempt status. I do not understand. Isn't that just, again, passing the buck? Isn't this a matter of administrative implementation of existing law?

Mr. GEORGE. As you and others have indicated here, because of the way the law has been interpreted by the IRS over the course of a number of decades—I do not, in all candor, know whether that was done as a result of court decisions or just simply internal policies—further explanation is needed in this area, sir.

Senator NELSON. As a matter of fact, now here is an exact example of how things get all contorted from the original legislative intent. The law was passed. Along comes a regulation. The regulation says exactly what the law says, which is, you cannot be engaging in election activities.

Then along comes a 1981 analysis of the regulation, and it says, under the present law, certain exempt organizations, 501(c)(4)s, may engage in political campaign activities. That, on its face, is exactly the opposite of what the law says.

So again, this was an administrative implementation and interpretation, but that was 1981. We really did not have a problem on this until what we saw in the last year or two, with it becoming

so patently obvious in 2011 and 2012 what was happening under the name of 501(c)(4)s for some public purposes.

So I would hope that the administration would take some responsibility, if that is the IRS Commissioner, if that is the Secretary of Treasury, if indeed that is the President, and we would see some implementation of the law.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Roberts, you are next.

Senator ROBERTS. Well, thank you very much.

Mr. Miller, thank you so much for saying, "I am responsible." I think that is the first time you have said that. If that is incorrect, I apologize to you. Comparing this to the military and saying, "I am responsible," I do appreciate that. I think that is very candid.

I think your advice to the next Commissioner, with the question posed by Senator Isakson, was that you have a perception problem. I would disagree with that very strongly and say we have a reality problem. You know, people knock on the door, and, if you are the IRS, that is not like when you have won the lottery. You are not too happy to open up the door.

And I think there has been a tremendous loss in faith in the American government that is not entirely on the IRS's shoulders by any means. It is a lot of things happening today. Fifty percent of the people are very apathetic, the other people are just mad. That is not good. It is not good for the country.

Mr. Shulman, you said you are not personally responsible, but then I think you have sort of backed off of that to some degree. But could you just sort of come along with Mr. Miller and say, "Yes, I was responsible"?

Mr. SHULMAN. Senator, I——

Senator ROBERTS. It is easy, three words: "I was responsible."

Mr. SHULMAN. I understand the words. What I am telling you is this happened on my watch, and I accept that.

Senator ROBERTS. All right. But you are not personally responsible?

Mr. SHULMAN. I am deeply regretful that this happened, and it happened on my watch.

Senator ROBERTS. All right. Never mind. Never mind. Let us just move on.

I am interested in all this business of the law, and what is the law. The statute came in 1913 with Woodrow Wilson and William B. McAdoo—Mr. Chairman, maybe we can get him to come before the committee—and in 1959 under Dwight David Eisenhower with Robert Anderson, the Secretary. That is the difference between "exclusively" then and not "primarily." Then we had the change that the Senator from Florida was talking about.

Then in 1998, if I can find my notes here, we had—maybe this was one of the great strides that you made, sir, but we had the IRS Restructuring Act. That really refers to the 10 Deadly Sins, Mr. George, as you were talking about. I was going to ask you who Moses was on the 10 Deadly Sins to figure out who can be the judge in this, and it turns out it is the IRS Commissioner, so it was Mr. Shulman.

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I have them right here. I am not going to read them. But sin number 1—well, I will read three, maybe four. Sin number 1 was to violate proper procedures to seize taxpayer assets. That perhaps happened. Six, no retaliation or harassing of a taxpayer. That is it. That is one.

Now, these are civil penalties, by the way. Seven, a willful violation of taxpayer privacy. That, of course, happened. I would put number 11 down here as maintaining a BOLO. I do not know what on earth we are doing with BOLOs. That is a law enforcement issue, and that really offends me.

But my question is to former Director Shulman. Did you ever activate these? I mean, did you ever hold anybody accountable to the 10 Deadly Sins?

Mr. SHULMAN. So there is actually a procedure in place at the IRS—it was there when I got there—that I think was put in immediately after that law, or sometime after that law was passed, where most people were actually held accountable before they ever got to the Commissioner's level, so, if one of these things was violated, I think some——

Senator ROBERTS. I am not talking about you. I mean, I am not saying that you violated these. I just wondered if you ever did take action on a civil action against anybody who violated the 10 Deadly Sins, ever.

Mr. SHULMAN. I believe so, that on my watch people were dismissed, fired, disciplined, around the 10 Deadly Sins.

Senator ROBERTS. Mr. George, is that your experience?

Mr. GEORGE. That is our understanding, sir, that some——

Senator ROBERTS. All right. And then you said this was being bumped up to the executive level. What do we mean by that in terms of the 10 Deadly Sins and going over them, and whether this is appropriate or not, and for that matter also, the statute and the regulations on the 501(c)(4)? You said it was being bumped up to an executive level.

Mr. GEORGE. Oh, no. No, no.

Senator ROBERTS. What?

Mr. GEORGE. Well, I wanted to clarify that we would engage in a continued review of this matter——

Senator ROBERTS. Right.

Mr. GEORGE [continuing]. To determine if there were any violations of the 10 Deadly Sins, for lack of a——

Senator ROBERTS. Well, would you agree that number 1, 6, and 7, as I have stated them, would be certainly applicable in these cases?

Mr. GEORGE. If I may, sir, please, I am going to quote it directly from the report: "It is a violation of the Restructuring and Reform Act of 1998, Section 1203(b)(3)——"

Senator ROBERTS. Right.

Mr. GEORGE [continuing]. "For IRS employees to falsify or destroy documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or a taxpayer representative, and a violation of RRA 98, section 1203(b)(6) for IRS employees to violate the Internal Revenue Code, Treasury regulations, or policies of the IRS for purposes of retaliating against or harassing a taxpayer."

Senator ROBERTS. What is the status of that with regards to this whole episode?

Mr. GEORGE. We are still in the process of reviewing this, sir, so I do not have an answer for that.

Senator ROBERTS. I see. All right.

I have just one quick question here. It is sort of a mea culpa. In the last 25 years, we have asked the IRS to move beyond its core functions, Mr. Chairman, of tax administration and enforcement to oversee all matters of other functions. We are responsible for that. All of these laudable programs have support from the Congress, but I think we are at a tipping point with regards to this whole episode, and that may be the Affordable Healthcare Act.

I would like to ask all three gentlemen, how confident are you that the IRS has the proper oversight and management structures to implement the Affordable Care Act in a manner that will give confidence to the taxpayers that they are being treated in the fairest manner possible, that their personal health information is safeguarded, and that they will not be penalized if they happen to hold views that are not in the mainstream or otherwise unpopular? Where are we?

Mr. GEORGE. If I may start, sir. The RRA——

The CHAIRMAN. Very, very briefly.

Mr. GEORGE. I am sorry.

The CHAIRMAN. Very briefly.

Mr. GEORGE. Certainly, sir. The ACA requires a number of changes in the tax code. We have issued two audits that have indicated that, thus far, the IRS is making progress in instituting changes in their software and in other procedures to effectuate that law.

Senator ROBERTS. So are you saying you are confident or not?

Mr. GEORGE. As of this stage, we have found no major problems in this area.

The CHAIRMAN. Senator Burr?

Senator ROBERTS. Mr. Miller? Could he respond?

The CHAIRMAN. Very briefly, because you are already——

Senator ROBERTS. It is a "yes" or "no" question. How confident are you? Are you confident, or are you not confident?

Mr. MILLER. I am confident.

Senator ROBERTS. Good.

The CHAIRMAN. All right. Next.

Senator ROBERTS. Next question.

Mr. SHULMAN. When I left in November I was confident that the IRS was——

The CHAIRMAN. Thank you.

Senator Burr?

Senator ROBERTS. It is not a train wreck, Mr. Chairman. [Laughter.]

Senator BURR. Mr. George?

Mr. GEORGE. Yes, Senator?

Senator BURR. In your audit—what is the difference between an audit and an investigation? It has been interchangeable throughout this hearing.

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Mr. GEORGE. Sir, to be precise, under the Inspector General Act, we at TIGTA are given the authority to conduct both audits and investigations in the oversight of IRS programs and operations.

Audits are reviews of IRS programs to identify systemic problems and recommend corrective actions. Investigations are focused on a person or persons in response to complaints that we have received of misconduct that they engaged in.

Senator BURR. So this audit could lead to an investigation?

Mr. GEORGE. Yes, it could.

Senator BURR. All right.

Now, your audit did not look at leaked documents to ProPublica, and it did not look at leaked tax returns filed by the National Organization for Marriage, and it did not look at whether personnel within the EO forwarded individual donor lists to other divisions for audits. Am I correct?

Mr. GEORGE. Senator, the Internal Revenue Code has strict confidentiality provisions within it, and I am not in a position to either confirm or deny anything as it relates to that question.

Senator BURR. Could we conclude that, if you did not look at the items that I just mentioned that would be sort of the liberal groups, one cannot conclude then that there was not political motivation in this targeting?

Mr. GEORGE. Senator, I am not in a position to respond to that question, sir.

Senator BURR. All right.

Mr. Miller, you stated that you thought the motivation was that the employees wanted to get greater efficiency. Am I remembering that correctly?

Mr. MILLER. I think that is right, sir.

Senator BURR. Did you mean that the use of key words to determine which applications would be flagged for scrutiny and deep review would speed up the process?

Mr. MILLER. I think what the situation was, and I think it is outlined well in the report, was that in 2010 we began to see some cases. Someone asked that someone take a look at it and see whether there are other cases of a similar type. A decision was made at that level to centralize cases. The question then became how to centralize, and that is when it moved from e-mail traffic to——

Senator BURR. How would you explain the fact that none of the key words applied to any liberal groups or liberal applications?

Mr. MILLER. We would have to talk to the folks who did that.

Senator BURR. Would you be suspect that there was something political about the fact that only key words that applied to conservative organizations would have been flagged?

Mr. MILLER. I would agree that the perception is there. I would also say that, once we took a look, our folks did not find that necessarily to be the case. TIGTA——

Senator BURR. When you looked, your folks—you did an investigation?

Mr. MILLER. We did less than an investigation. I had sent—I think I——

Senator BURR. Did you ask the Inspector General to look into this?

Mr. MILLER. I do not know whether I asked him, but I knew he was in already looking at this.

Senator BURR. Mr. Shulman, you stated that you were briefed by Mr. Miller. Am I correct?

Mr. SHULMAN. Yes.

Senator BURR. What did you do with the information that Mr. Miller shared with you about the audit? Nothing?

Mr. SHULMAN. So I was briefed and——

Senator BURR. Did you ask him any questions?

Mr. SHULMAN. At the time of the briefing, to the best of my memory, I learned three things: I learned there was a list, I learned that TIGTA was planning an investigation, and I learned that the activities had stopped.

Senator BURR. TIGTA was planning an investigation?

Mr. SHULMAN. I am sorry, an audit. That TIGTA was aware of it, was in, had actually been to Cincinnati, if my memory serves me right, and was in the process of opening an audit.

Senator BURR. You did not ever ask Mr. Miller what the purpose of the investigation was?

Mr. SHULMAN. Well, I think it was obvious to me when I heard it that something did not sound right about having a list. And I did not know——

Senator BURR. But you have testified you had no idea that this had anything to do with the practices that were going on in the EO in Cincinnati, haven't you?

Mr. SHULMAN. I testified, or I said earlier, that when I learned about it, I knew there was a list, I knew the word "Tea Party" was on the list, to the best of my recollection.

Senator BURR. So what did you do?

Mr. SHULMAN. I did not know at that time what else was on the list.

Senator BURR. What did you do with the information you had?

Mr. SHULMAN. What did I do with it?

Senator BURR. What did you do with it? You were the head of the IRS. What did you do with the information?

Mr. SHULMAN. I think this was brought to the head of the IRS, again, with three facts: there is a list, TIGTA is aware of it, and TIGTA is looking into it.

Senator BURR. But you took no action. You did not ask Mr. Miller to——

Mr. SHULMAN. And Mr. Miller, to the best of my memory, told me at that time that it had been stopped and TIGTA was looking into it, and so there were——

Senator BURR. And——

Mr. SHULMAN. So—so for me, the——

Senator BURR. You had knowledge of the BOLO list at this time?

Mr. SHULMAN. What is that?

Senator BURR. You had knowledge of the existence of the BOLO list at this time?

Mr. SHULMAN. Well, it was brought to me at this time.

Senator BURR. It was brought to you at that time. That was the first time you knew about it, when Mr. Miller brought it to you?

Mr. SHULMAN. That is my memory. I have been out for a long time, but I am—you know, put it this way: I believe it was, and I certainly do not remember ever hearing about it before.

Senator BURR. Mr. Miller, was that the first time you discussed with the then-Commissioner a BOLO list?

Mr. MILLER. I believe so.

Senator BURR. Did you have any additional follow-up conversations about the scope of the audit?

Mr. MILLER. So the scope of the audit would have been the Inspector General coming to us and discussing that.

Senator BURR. What action did you take as the Deputy once you learned of a BOLO list and potential practices that existed in Cincinnati?

Mr. MILLER. So, I think I outlined that for you, sir, earlier in my testimony.

The CHAIRMAN. I would have to ask you to summarize it again.

Mr. MILLER. We made sure that our folks were trained. We had workshops to ensure that they knew how to do the work they needed to do. We took a look at the cases very carefully to see which of those should be——

Senator BURR. All right. I get the gist, because I remember you going through it.

Mr. George, last question. I appreciate the chair's patience. I asked you earlier if you briefed the Deputy Secretary Neal Wolin on June of 2012, and I think you said, "Yes, I did." Did you brief or regularly update the Chief Counsel, William Wilkins, within the IRS Legal Office?

Mr. GEORGE. I did not, sir.

Senator BURR. You did not?

Mr. GEORGE. Someone on his staff was briefed, but not the Chief Counsel himself.

Senator BURR. Who was that person on his staff who was briefed?

Mr. GEORGE. We do not have a name, sir. But if we can supply it——

Senator BURR. Would you supply that for the record?

Mr. GEORGE. We will.

Senator BURR. And could I ask you to give us your best information about how many times that individual was briefed on the audit?

Mr. GEORGE. We will do our level best, yes. We will endeavor to do so, Senator.[3]

Senator BURR. And, Mr. Shulman, I think you told me earlier, but I will give you one more chance at it, you told me you had no conversations with the Chief Counsel about what went on in the EO and their practices.

[3]The TIGTA audit team did not personally meet with or brief the IRS Chief Counsel or anyone in his office. However, during TIGTA's audit, the audit team received IRS e-mails involving Don Spellmann, Senior Counsel, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For example, an e-mail dated August 3, 2011 from the Acting Director, Rulings and Agreements, and the IRS Exempt Organizations function to Mr. Spellman details plans for a meeting on August 4, 2011 to discuss the potential political cases. TIGTA also has an e-mail from Mr. Spellman on April 25, 2012 to Exempt Organizations function management regarding the Office of Chief Counsel's review of the draft guide sheet (guidance) provided to the Exempt Organizations function's Determinations Unit.

Mr. SHULMAN. I remember having conversations with the Chief Counsel about general policy matters, not the kinds of matters we are talking about: inappropriate criteria, a BOLO list, about this broader conversation the committee has been having.

Senator BURR. And the Inspector General's audit?

Mr. SHULMAN. No, just about the broader conversations of (c)(4)s, and should there be guidance, because the Chief Counsel, the Assistant Secretary, and the Commissioner get involved in the guidance plan. I do not have a memory of talking to the Chief Counsel about——

The CHAIRMAN. Thank you, Senator. Thank you, very much.

Mr. SHULMAN [continuing]. About the audit.

The CHAIRMAN. All right.

Senator Portman?

Senator PORTMAN. Thanks, Mr. Chairman. I appreciate the second round and a chance to follow up on some of our earlier questions.

Just to go back to where we were when I had to move on, we were talking about the fact that we sent a letter—Senator Hatch, myself, other members joined us—on March 14th. That letter was in response to, again, a lot of information we were getting from groups back home saying that they were being inappropriately asked questions that were irrelevant to what they thought should be relevant questions about their status, and that there were delays, and that there were very short time frames for producing significant amounts of information.

So we wrote the letter laying out these issues and, in essence, asking you guys whether you were targeting groups politically. That was March 14th. Then on March 23rd, based on your testimony, Mr. Miller, you say, having received our letter and knowing additional information from the media I assume, you asked Nancy Marks, who was your Senior Technical Advisor for Tax Exempt Organizations, to go down and see what was going on and report back to you.

You testified earlier that, for 6 weeks, you do not recall having asked her what she learned, and therefore you responded to our letter by saying everything is fine. You responded to our letter on April 26th—so March 14th we asked you these questions.

Again, this is not about the members of this committee. I was not actually on the committee at the time. This is about the American people getting the information that was needed to be able to correct the situation. You now tell us today that you received a briefing 1 week after you sent us a letter.

Now, remember, your letter says everything is fine, no targeting. We can believe or not believe the fact that, during that 5-week period, you did not bother to find out what they were finding out down in Cincinnati. But a week after you sent the letter back to us, you did get a briefing. This was a May 3rd briefing. You have testified that you were outraged when you got that briefing on the 3rd of May, so the week after you responded to us. Is that correct that you were outraged by what you heard?

Mr. MILLER. I was troubled, sir.

Senator PORTMAN. All right. You used the word "outraged" in testimony last week.

If you were so outraged, it seems to me very odd that you did not try to correct the record, because you had told us in the letter back that everything was fine. If you knew on April 26th, when you responded to us with that letter, what you learned on May 3rd, that political criteria like "Tea Party," "Patriot," "We the People" were used, would you have told us in the letter that you sent to us on April 22nd?

Mr. MILLER. I do not remember the letter clearly enough, sir. I mean, your characterization of——

Senator PORTMAN. Well, no. This is the letter that you sent back to us based on our March 14th letter.

Mr. MILLER. Yes, sir.

Senator PORTMAN. You do not know about that letter?

Mr. MILLER. I do know about the letter.

Senator PORTMAN. All right.

Mr. MILLER. I do know about the letter.

Senator PORTMAN. My question to you is——

Mr. MILLER. I know I did not know——

Senator PORTMAN. If you——

Mr. MILLER. I did not know about the list on the 26th. I will tell you that my recollection of the letter was, it was about the donor letters that were going on, which was a separate and distinct aspect that——

Senator PORTMAN. Our letter asked specifically for the assurance that the suspicious inquiries were unrelated to "politics, that they were consistent with the IRS's treatment of tax-exempt organizations across the spectrum." It asked specifically what criteria and what "bases" there were for applying greater scrutiny and requesting follow-up information for 501(c)(4) applicants. You responded with a 10-page letter.

Mr. MILLER. To this day, sir, I do not believe there were political motivations, as I have explained.

Senator PORTMAN. All right.

My question is, you responded with a 10-page letter saying it was neutral. There were only individualized, legitimate criteria used, not based on politics. There is no question that your letter was inaccurate. You learned on May 3rd that it was false, and yet you did nothing to correct the public record, even though you were outraged, based on your own testimony, by your May 3rd briefing.

So, look, I think these are serious questions for us to ask, and I think we deserve answers, not for us, again, but for the American people and those who were subject to this inappropriate targeting.

Mr. George, let me ask you a question about the audit. First, you have said that there is a difference between an audit and an investigation.

Mr. GEORGE. Correct.

Senator PORTMAN. Can you just briefly tell us what the difference is in terms of how deep you go? In other words, did you use your full investigative powers to uncover wrongdoing? Did you use your broader subpoena powers, for instance, on the audit?

Mr. GEORGE. We did not thus far in the production of this audit that we are discussing today, Senator, but there is no question that, as a result of some of the findings that we have uncovered, subsequent action will be taken by us.

Senator PORTMAN. So, on page 7 of your report, you state that Mr. Miller and subordinate employees "stated that the inappropriate criteria were not influenced by any individual or organization outside of the IRS." That is on page 7 of your report. That has been used by the administration to say that there was no influence.

Let me be clear: is that a finding of your report or is that simply a restatement of what IRS employees told you?

Mr. GEORGE. It is a restatement of the information that we received from IRS employees, Senator.

Senator PORTMAN. All right.

And that would be consistent with an audit as compared to an investigation?

Mr. GEORGE. That is correct, sir.

Senator PORTMAN. So, given that this was only an audit, I take it you did not ask anyone in the administration outside of the IRS if they ever weighed in with the IRS on the issue of monitoring and approval of 501(c)(4) organizations?

Mr. GEORGE. That is correct, sir.

Senator PORTMAN. So you have not even asked the question of anybody outside?

Mr. GEORGE. Not at this stage, sir.

Senator PORTMAN. And I take it you did not subpoena or review any relevant e-mails, call logs, schedules, notes from meetings, to verify that these statements from the IRS employees were accurate and complete, because that is beyond the scope of an audit. Is that correct?

Mr. GEORGE. Actually, though, Senator, we did review quite a few e-mails in the course of this.

Senator PORTMAN. Do you feel like it was all of the e-mails involved with this—call logs, schedules, notes, and so on—to verify those statements?

Mr. GEORGE. Of the people whom we interviewed and of people at the level whom we thought would be directly involved at that stage.

Senator PORTMAN. Is it beyond the scope of an audit to ask people outside of the IRS whether they influenced the IRS on monitoring and approval of 501(c)(4)s?

Mr. GEORGE. An audit is on a case-by-case basis, Senator. In this instance, again, we did not have indications due to the interviews that we conducted that there was any reason to go beyond that, but that was at the time that this audit was being produced, which was over the course of a year. Again, events subsequent to this have now caused us to reassess how and what we are going to look at.

Senator PORTMAN. Well, thank you.

And thank you, Mr. Chairman. I think the bottom line is, there is a need for a fuller investigation, as you and Senator Hatch are undertaking. Thank you all.

The CHAIRMAN. Thank you, Senator.

Thank you very much, all of you, for your testimony here today. There are obviously many more questions not yet answered, and

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the committee will continue to look into this matter. But thank you very much.

The hearing is adjourned.

[Whereupon, at 1:35 p.m., the hearing was concluded.]

SFC 004495

FEDERAL TAX RETURN PRIVACY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATION OF THE INTERNAL REVENUE CODE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

APRIL 21 AND 28, 1975, AND JANUARY 23, 1976

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FEDERAL TAX RETURN PRIVACY

FRIDAY, JANUARY 23, 1976

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATION
OF THE INTERNAL REVENUE CODE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 10:05 a.m., pursuant to recess, in room 2221, Dirksen Senate Office Building, Senator Floyd K. Haskell (chairman of the subcommittee) presiding.

Present: Senators Long, Haskell, and Fannin.

Senator HASKELL. The Subcommittee on Administration of the Internal Revenue Code today resumes its hearings on Federal tax return and tax return information privacy.

I am very pleased to welcome the witnesses here. I wish to thank both the American Civil Liberties Union and the representatives of the various State tax departments for coming here today to assist us in developing further information on this important issue.

Our first witness this morning is Mrs. Hope Eastman, associate director of the American Civil Liberties Union, Washington office. Mrs. Eastman?

STATEMENT OF MRS. HOPE EASTMAN, ASSOCIATE DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mrs. EASTMAN. Good morning, Senator Haskell, and Senator Fannin.

Thank you for the opportunity to appear this morning. I apologize and appreciate the subcommittee's indulgence for my not having a prepared statement, I would like to request at the outset that the record be kept open so I could supply you with some additional documents.

Senator HASKELL. Would two weeks be adequate?

Mrs. EASTMAN. Fine.

Senator HASKELL. The record will remain open for 2 weeks.

Mrs. EASTMAN. My name is Hope Eastman. I am a lawyer and associate director of the ACLU Washington office.

One of my primary tasks in the last several years has been the development of legislation and other remedies to preserve the right to privacy.

One of the things, of course, that is important to the right of privacy is the question of governmental use and access to tax return information.

tax returns. I was commenting about a ninth circuit opinion in California, where a taxpayer tried to raise the fifth amendment objection at the introduction of the tax return at the trial. The trial court agreed, but the ninth circuit said, "No, if you wish to raise that objection, you have to do it when you file the tax return," that seems to me a ridiculous ruling.

Senator FANNIN. It does.

Mrs. EASTMAN. Because everyone would raise those objections if there were the remotest chance of later criminal liability.

What I am suggesting is that the people be given an opportunity to raise that objection before the Government uses that return for other than tax collection purposes. This would protect the individual while preserving the flow of tax information to the IRS in the first instance.

Senator FANNIN. You have clarified the question. Thank you.

Senator HASKELL. Thank you, Mrs. Eastman.

We look forward to receiving the additional material you spoke of.

Mrs. EASTMAN. Thank you very much.

[The following material was subsequently supplied by Mrs. Eastman:]

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., February 19, 1976.

Hon. FLOYD K. HASKELL,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HASKELL. As promised during my appearance before your Subcommittee, I enclose several documents, for inclusion in the hearing record. They include 1) a portion of a report done by The Center for National Security Studies, "The Abuses of the Intelligence Agencies," 2) the complaint in an ACLU suit, *Teague* v. *Alexander*, and 3) an interim report done in January, 1974, by the ACLU Privacy Project on the Nixon "Enemies List."

These documents support the need for legislation to control access to tax returns and tax return information. They also highlight the need for Congress to insure that the IRS does not abuse its access to this information by improperly motivated audits and other procedures.

In further support of our proposal that any statute include civil remedies, I have also enclosed a copy of the Report of the Bar Association of the City of New York entitled "The Privacy of Federal Income Tax Returns" which shares our view on the importance of this remedy.

The ACLU hopes that you will move to speedy enactment of legislation along the lines we have suggested and we remain ready to help in any way we can.

Sincerely,

HOPE EASTMAN.

THE ABUSES OF THE INTELLIGENCE AGENCIES

BY THE CENTER FOR NATIONAL SECURITY STUDIES

EDITED BY JERRY J. BERMAN AND MORTON H. HALPERIN

Preface

This Report is an effort to inform the public about the abuses of power committed by the Intelligence Agencies of the United States Government in the name of national security. It brings together the facts about the intelligence and counterintelligence activities of the CIA, FBI, IRS, NSA, Secret Service, and Military Intelligence directed against American citizens and covert actions against foreign governments. For this report, the staff has relied primarily on official records and documents. It is a public record. Since this record is still being compiled, and much is still secret, it is, of course, incomplete. As various agencies complete their own internal reviews, as hearings are held and reports issued by the Senate and House Intelligence Committees, and as civil litigation moves through the judicial process towards judgment more facts will come out.

It is our hope that this report provides a background and a framework for public understanding of how our intelligence agencies have operated beyond the law and the Constitution and contributes to the debate about the need for fundamental reform of the intelligence agencies.

Internal Revenue Service

SUMMARY

The Internal Revenue Service is a unit of the Treasury Department charged with enforcing the tax laws. It is authorized by Congress to investigate possible violations of these laws and has broad power to examine records and other relevant data. The IRS has from time to time used its power to conduct audits of groups and individuals whose political views and activities were of concern to others. Special groups were established to conduct such audits under the Kennedy, Johnson and Nixon Administrations. On at least one occasion an audit was conducted at the request of a congressional committee. The IRS has also established files on politically active groups and individuals, and has disclosed tax information, in violation of its rules, to officials outside the IRS on groups and on individuals such as George Wallace's brother and Ronald Reagan.

The IRS, in general, relies on information from tax audits and from other agencies, but from time to time it conducts its own surveillance, including infiltration of tax protest groups. The Special Services Staff set up during the Nixon Administration was the most concentrated effort by the IRS to use all available means to investigate and harass groups and individuals because of their political beliefs and activities. The IRS has halted most of these activities.

AUTHORITY

Under Section 7601 of the Internal Revenue Code, the Secretary of the Treasury is authorized to "cause officers or employees of the Treasury Department to . . . inquire after and concerning all persons . . . who may be liable to pay any internal revenue tax . . ."[1] To establish liability, Section 7602 gives the IRS, a unit of the Treasury Department, the authority to examine "any books, papers, records or other data which may be relevant or material" in ascertaining the correctness of any return or making a return where none has been made.[2] The IRS "seeks to encourage and achieve the highest possible degree of voluntary compliance" with federal tax regulations and employs random and selective audit procedures to stimulate such compliance.[3]

The authority for the IRS to inquire into political activities of persons and groups is defined solely in terms of its authority to insure that all tax-exempt organizations comply with the provisions of Section 501(c)(3) of the Internal Revenue Code, which provides that tax-exempt charitable, educational organizations cannot participate or intervene in political campaigns for public office or devote a substantial part of their activities to "carrying on propaganda, or otherwise attempting, to influence legislation."[4]

Section 6103(a), of the Internal Revenue Code provides that income tax returns are to be "open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary of the Treasury or his delegate and approved by the President."[5]

ACTIVITIES AND PROGRAMS

Politically Motivated Audits

Either on its own initiative or at the request of the White House, other Executive Branch officials, or congressional committees, the IRS conducted audits and otherwise harassed organizations and individuals because of their political beliefs or lawful political activities.

Lenske Audit.—The IRS spent two and one half years (1955–1958) conducting a total audit of Reuben G. Lenske, including the interviewing of between 500 and 1500 witnesses, and made assessments many times the real value of Lenske's

[1] 26 U.S. Code 7601.
[2] 26 U.S. Code 7602.
[3] 39 Federal Register 11372, March 29, 1974.
[4] 26 U.S. Code 501 (c)(3).
[5] 26 U.S. Code 6103 (a).

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

SFC 004502

S. HRG. 113–301

CURRENT ISSUES IN CAMPAIGN FINANCE LAW ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

APRIL 9, 2013

Serial No. J–113–12

Printed for the use of the Committee on the Judiciary

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Mr. Smith says that this is a mission for which the IRS lacks knowledge and expertise and which is tangential to its core responsibilities, the Service has long been particularly prickly about being dragged into political wars, and the agency, "is not equipped or structured to do the job it was asked to do."

Let me ask both of you: Does it make sense to have the IRS right now get from the Department of Justice the deference that it does with respect to those two narrow particular kinds of cases—the false statement case under Question 15, or the 441(f) case in which you have a clear shell corporation manufactured for the purpose of violating a disclosure law? I do not believe—I asked Ms. Raman this question—that the Department of Justice has ever made a case or is even investigating any case in either of those areas. I do not know if the IRS is either. If you are not, is that a signal that maybe DOJ's policy of deference to the IRS in this particular set of areas, which are not tax-law specific, have nothing to do with understanding the Tax Code, and are all about false statement and shell corporation behavior, which is, as Ms. Raman pointed out, frequent in many areas of criminal behavior, whether that should be rethought and whether you are confident that the IRS is doing a good enough job on its own and making adequate referrals?

Ms. HAYNES. Well, Senator, I can say that the IRS Criminal Investigation has been involved in violations of campaign finance laws using the statutes that we have. In fact, one of the cases that we were involved in was mentioned in Ms. Raman's written testimony out of New Jersey.

Chairman WHITEHOUSE. A straw donor case.

Ms. HAYNES. Pardon me?

Chairman WHITEHOUSE. A straw donor case.

Ms. HAYNES. Yes. Yes, it was.

Chairman WHITEHOUSE. But not one of these shell corporation to super PAC cases. There has never been one of those done.

Ms. HAYNES. I do not have any information that I can share on any case like that.

Chairman WHITEHOUSE. Nor a false statement in answer to the no on Question 15 and then subsequent immense political activity.

Ms. HAYNES. I do not have any information I can share on a 501(c)(4)-related false statement case, you are correct. But IRS is still engaged in these types of investigations.

In the course of a criminal investigation, the special agents gather all the facts and circumstances and make a recommendation based on what they feel has the strongest likelihood of prosecution, whether that is a 7206 charge or a 7212(a) charge, as was in the prior case that I mentioned. That recommendation is reviewed by our criminal tax counsel and then ultimately when it is referred to the Department of Justice, the discretion lies with the prosecutor on what violations to charge.

So IRS is involved in these types of cases. It is just that we have not had one that I can speak of with that particular charge.

Chairman WHITEHOUSE. Well, I guess under the circumstance of the testimony that we have from the subsequent panel on what we have today, I would urge that the Department and the Service get together and rethink whether in these two specific areas, which I think bear little resemblance to traditional tax violations and are,

SFC 004504

in fact, very, as I think you used the words, "plain vanilla" criminal cases, whether or not that deference to the IRS is actually serving the public interest at this point, or whether the Department could not proceed to investigate, empanel grand juries, bring people before them, generate evidence, and put together a criminal case showing a fairly straightforward false statement or a fairly straightforward shell corporation disclosure violation. And I do not need you to answer that right now because I know that question is going to be answered, if it is answered at all, by people above you in both organizations. But I would ask you to take that away from this hearing.

Ms. HAYNES. Sure, Senator.

Chairman WHITEHOUSE. I had another round. Senator Cruz, you are welcome to another round.

Senator CRUZ. Thank you, Mr. Chairman.

Ms. Haynes, does the IRS have any position on whether additional campaign finance legislation should be passed by Congress?

Ms. HAYNES. Senator, I do not have an official position on that matter. I leave those decisions up to our criminal tax counsel or our tax counsel in the Department of Treasury to establish those types of regulations or improvements.

Senator CRUZ. Thank you.

Ms. Raman, I would like to go back to the conversation we were having a few minutes ago and understand, as best I can, the Department's position with regard to the constitutional protections on independent expenditures by private citizens.

As I understood our discussion, the principal basis you were pointing to additional disclosure requirements on private political activity is that that transparency would aid in discovering if there is corruption or bribery. Am I understanding you correctly?

Ms. RAMAN. Corruption and bribery, and if there are other violations of our campaign contribution limits.

Senator CRUZ. Now, you would certainly agree that there are limits—and I would think significant limits—to the theory that additional government information would be helpful for discovering crime, that that is a theory that has the potential to require government disclosure of virtually everything. And I am sure you would agree there are limits to that theory.

Ms. RAMAN. Of course, and we obviously just want a reasonable disclosure regime that balances the need for people to speak freely and have their voices heard in the political arena while still assuring us that we are able to combat both corruption and the appearance of corruption.

Senator CRUZ. Now, when I asked about a constitutional right to anonymous speech, you made reference to Supreme Court decisions. Does the Department of Justice maintain that the Supreme Court has been wrong in concluding that there is a First Amendment right to anonymous speech?

Ms. RAMAN. It is not the government's position to second-guess the Supreme Court. I am here, however, to clearly describe what some of our challenges are in light of *Citizens United*. Obviously, the government took a particular position before the Supreme Court in *Citizens United*, but now we have a law, and we intend to follow it.

U.S. DEPARTMENT OF THE TREASURY

About

Bureaus

The Treasury Bureaus make up 98% of the Treasury work force and are responsible for carrying out specific operations assigned to the Department.

The Alcohol and Tobacco Tax and Trade Bureau (TTB)

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for enforcing and administering laws covering the production, use, and distribution of alcohol and tobacco products. TTB also collects excise taxes for firearms and ammunition.

The Bureau of Engraving & Printing (BEP)

The Bureau of Engraving & Printing (BEP) designs and manufactures U.S. currency, securities, and other official certificates and awards.

The Bureau of the Fiscal Service

The Bureau of the Fiscal Service was formed from the consolidation of the Financial Management Service and the Bureau of the Public Debt. Its mission is to promote the financial integrity and operational efficiency of the U.S. government through exceptional accounting, financing, collections, payments, and shared services.

The Community Development Financial Institution (CDFI) Fund

The Community Development Financial Institution (CDFI) Fund was created to expand the availability of credit, investment capital, and financial services in distressed urban and rural communities.

The Financial Crimes Enforcement Network (FinCEN)

The Financial Crimes Enforcement Network (FinCEN) supports law enforcement investigative efforts and fosters interagency and global cooperation against domestic and international financial crimes. It also provides U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns.

The Inspector General

The Inspector General conducts independent audits, investigations and reviews to help the Treasury Department accomplish its mission; improve its programs and operations; promote economy, efficiency and effectiveness; and prevent and detect fraud and abuse.

The Treasury Inspector General for Tax Administration (TIGTA)

The Treasury Inspector General for Tax Administration (TIGTA) provides leadership and coordination and recommends policy for activities designed to promote economy, efficiency, and effectiveness in the administration of the internal revenue laws. TIGTA also recommends policies to prevent and detect fraud and abuse in the programs and operations of the IRS and related entities.

The Internal Revenue Service (IRS)

The Internal Revenue Service (IRS) is the largest of Treasury's bureaus. It is responsible for determining, assessing, and collecting internal revenue in the United States.

The Office of the Comptroller of the Currency (OCC)

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises national banks to ensure a safe, sound, and competitive banking system that supports the citizens, communities, and economy of the United States.

The U.S. Mint

The U.S. Mint designs and manufactures domestic, bullion and foreign coins as well as commemorative medals and other numismatic items. The Mint also distributes U.S. coins to the Federal Reserve banks as well as maintains physical custody and protection of our nation's silver and gold assets.

Effective in 2003, the Bureaus of Alcohol, Tobacco and Firearms (ATF), Federal Law Enforcement Training Center (FLETC), U.S. Customs, and the United States Secret Service (USSS) are no longer Bureaus of the Department of the Treasury. On July 21, 2011, the Office of Thrift Supervision became part of the Office of the Comptroller of the Currency; visit OCC Community Reinvestment Act for current information.

U.S. DEPARTMENT OF THE TREASURY

About

TREASURY ORDER 101-05

TREASURY ORDER 101-05

DATE: January 10, 2011

SUBJECT: Reporting Relationships and Supervision of Officials, Offices and Bureaus, and Delegation of Certain Authority in the Department of the Treasury

1. **SCOPE.** This Order applies to all bureaus, offices, and organizations in the Department of the Treasury, including the offices of Inspectors General within the Department. The provisions of this Order shall not be construed to interfere with or impede the authorities or independence of the Department's Inspectors General.

2. By virtue of the authority vested in the Secretary of the Treasury, it is ordered that:

a. The Deputy Secretary shall report directly to the Secretary and is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

The Deputy Secretary shall carry out the duties and powers of the Secretary when the Secretary is absent or unable to serve, or when the office of the Secretary is vacant.

b. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Deputy Chief of Staff, Executive Secretary, Director of Scheduling, and the other officials and offices within the Office of the Chief of Staff.

c. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officials within their respective organizations:

1) Under Secretary (International Affairs)
2) Under Secretary (Domestic Finance)
3) Under Secretary (Terrorism & Financial Intelligence)
4) General Counsel
5) Assistant Secretary (Economic Policy)
6) Assistant Secretary (Legislative Affairs)
7) Assistant Secretary (Management) and Chief Financial Officer
8) Assistant Secretary (Public Affairs)
9) Assistant Secretary (Tax Policy)
10) Treasurer of the United States
11) Commissioner of Internal Revenue
12) Comptroller of the Currency
13) Director, Office of Thrift Supervision

d. The following officials shall report to the Under Secretary (International Affairs):

1) Assistant Secretary (International Finance)
2) Assistant Secretary (International Markets and Development)
3) Executive Secretary & Senior Coordinator for China and the Strategic & Economic Dialogue
4) Chief Economist (International Affairs)

e. The following officials shall report to the Under Secretary (Domestic Finance):

1) Fiscal Assistant Secretary
2) Assistant Secretary (Financial Institutions)
3) Assistant Secretary (Financial Markets)
4) Assistant Secretary (Financial Stability)

f. The following officials shall report to the Under Secretary (Terrorism & Financial Intelligence):

1) Assistant Secretary (Intelligence and Analysis)
2) Assistant Secretary (Terrorist Financing)
3) Director, Financial Crimes Enforcement Network
4) Director, Office of Foreign Asset Control
5) Director, Executive Office of Asset Forfeiture

g. The following officials shall report to the Fiscal Assistant Secretary:

1) Commissioner, Bureau of Public Debt
2) Commissioner, Financial Management Service

h. The following officials shall report to the Treasurer of the United States:

1) Director, Bureau of Engraving and Printing
2) Director, United States Mint

i. The Administrator of the Alcohol and Tobacco Tax and Trade Bureau shall report to the Assistant Secretary (Tax Policy).

j. The Director of the Community Development Financial Institution Fund shall report to the Assistant Secretary (Financial Institutions).

k. The Inspector General and the Treasury Inspector General for Tax Administration shall report to and be under the general supervision of the Secretary and the Deputy Secretary.

l. The Assistant Secretary (Management) also holds the office of the Department's Chief Financial Officer established pursuant to Chapter 9, Title 31, USC, and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, "Implementing Government Reform," dated July 11, 2001. The Assistant Secretary for Management and Chief Financial Officer serves as the head of Departmental Offices for all purposes relating to administrative functions.

m. The Deputy Assistant Secretary (Information Systems), reporting to the Assistant Secretary for Management and Chief Financial Officer, is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and Executive Order (EO) 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

n. The Director, Office of Small Business Development Utilization, reports and is responsible to the Office of the Deputy Secretary, pursuant to Section 15(k) of the Small Business Act, EO 13170 dated October 6, 2000, and related statutes.

o. The Under Secretaries, the General Counsel, the Assistant Secretaries, and the Treasurer of the United States are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only those functions that arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

p. During any period when both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of the Secretary of the Treasury, those officials designated by the President pursuant to EO 13246, dated December 18, 2001, as amended by EO 13261, dated March 19, 2002, or otherwise designated pursuant to law, shall act as and perform the functions and duties of the office of the Secretary.

3. **AUTHORITIES.**

a. 31 USC 301 and 321(b).

b. Executive Order 13246, dated December 18, 2001, as amended by Executive Order 13261, dated March 19, 2002.

4. **CANCELLATION.** Treasury Order 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, and Delegation of Certain Authority in the Department of the Treasury," dated February 19, 2008, is superseded.

5. **OFFICE OF PRIMARY INTEREST.** Assistant Secretary for Management and Chief Financial Officer.

/S/
Timothy F. Geithner
Secretary of the Treasury

COMMITTEE ON
OVERSIGHT &
GOVERNMENT REFORM (/)
Rep. Elijah Cummings, Ranking Member

Cummings Asks Issa to Recall IG for Testimony at Upcoming IRS Hearing

Jul 10, 2013 | Press Release

New Documents Raise "Serious Questions" About IG's Report, Previous Testimony, and Letters to Congress

Washington, D.C. —Today, Rep. Elijah E. Cummings, Ranking Member of the House Committee on Oversight and Government Reform, sent a letter requesting that Committee Chairman Darrell Issa recall J. Russell George, the Treasury Inspector General for Tax Administration, to answer questions before Committee Members at next Thursday's hearing on the IRS's review of applications for tax-exempt status. Cummings' letter questions why the IG failed to disclose information contained in several documents that have now been obtained by the Committee and that appear to directly contradict his report, his previous testimony before Congress, and his subsequent assertions in letters to Members of Congress.
The full letter is available here (/sites/democrats.oversight.house.gov/files/migrated/images/user_images/gt/Letter.pdf) and is pasted below.

July 12, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On Wednesday, you announced that the Committee will be holding a hearing on July 18, 2013, focusing on "the development and execution of the process by which Tea Party applications were delayed and scrutinized" by the Internal Revenue Service (IRS).[1] The Committee's investigation is based on a report issued on May 14, 2013, by Russell George, the Treasury Inspector General for Tax Administration, who testified before the Committee on May 22, 2013.[2] Since that hearing, the Committee has obtained new documents that raise serious questions about the Inspector General's report, his testimony before Congress, and his subsequent assertions in letters to Members of Congress. For these reasons, I request that Mr. George be recalled to testify at Thursday's hearing. This letter sets forth information about the new documents obtained by the Committee and the serious questions they raise.

Failure to Disclose Information from Head of Investigations

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee—either in his report or during his testimony—that he met personally with his top investigator and tasked him to conduct a review of 5,500 emails of IRS employees, and that this official concluded after this review that there was "no indication that pulling these selected applications was politically motivated"—a fact this official reported was "very important."[3] New documents also indicate that all references to work conducted by this official and his team of investigators were scrubbed from an earlier draft of the Inspector General's report.

During his testimony before the Committee, Mr. George made clear on multiple occasions that his report was the result of an "audit" rather than an "investigation."[4] The Office of the Inspector General includes separate offices for these two purposes that are headed by a Deputy Inspector General for Audit and a Deputy Inspector General for Investigations, respectively.[5] This was significant, according to Mr. George, because although his auditors conducted interviews of IRS employees, these interviews were "not under oath."[6]

The Committee has now obtained an email (/sites/democrats.oversight.house.gov/files/migrated/images/user_images/gt/HeadOfInvestigationsEmail.pdf) sent from the Deputy Inspector General for Investigations on May 3, 2013, explaining that Mr. George met with him personally and tasked the Office of Investigations with reviewing the emails of multiple IRS employees to determine whether there was any evidence that IRS officials directed staff to "target" Tea Party organizations. This email sets forth the results of this review:

As a result of our meeting with Russell a couple of weeks ago, we agreed to pull e-mails from identified staff members of the EO organization in Cincinnati to find out 1). If an e-mail existed that directed the staff to "target" Tea Party and other political organizations and 2). If there was a conspiracy or effort to hide e-mails about the alleged directive.

Audit provided us with a list of employees in question, key word search terms and a timeframe for the e-mails. We pulled the available IRS e-mails, which resulted in 5,500 responsive e-mails.

Review of these e-mails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance on processing the applications so they pulled them. This is a very important nuance.[7]

The Deputy Inspector General for Investigations sent this email less than three weeks before the Committee's hearing on May 22, 2013, to multiple officials in the Inspector General's office, including the Acting Principal Deputy Inspector General, the Acting Deputy Inspector General for Audit, the Deputy Assistant Inspector General for Investigations, the Assistant Inspector General for Management Services and Exempt Organizations, and Mr. George's Chief Counsel.[8]

New documents obtained by the Committee also indicate that all references to the work conducted by the Office of Investigations were removed from an earlier draft of Mr. George's report. For example, a draft prepared on April 12, 2013, stated that "we requested assistance from our Office of Investigations in the matter."[9] That reference and others were removed from the final version of the report.

It is unclear why Mr. George failed to disclose this significant information to Congress, particularly since the investigative work requested by Mr. George was completed before he issued his final report and testified before our Committee; since Mr. George's top investigator believed these findings were

significant; and since these facts directly contradict numerous public accusations by congressional Republicans that the White House and other Administration officials targeted Tea Party organizations for partisan political reasons.[10]

New Documents Referring to "Progressive" Groups

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee, or was completely unaware of, documents directing IRS employees how to review and process applications for tax exempt status from "Progressive" groups alongside "Tea Party" and "9/12 Project" groups.

On July 3, 2013, Mr. George wrote a letter to Committee Member Gerald Connolly asserting that there was "no indication" that the IRS used the term "Progressives" to flag applicants for tax exempt status for review. He wrote:

While we have multiple sources of information corroborating the use of "Tea Party" and other related criteria we described in our report, including employee interviews, e-mails, and other documents, we found no indication in any of these materials that "Progressives" was a term used to refer cases for scrutiny for political campaign intervention.[11]

Similarly, in a letter to Rep. Sander Levin, Ranking Member of the House Committee on Ways and Means, Mr. George wrote:

From our audit work, we did not find evidence that the criteria you identified, labeled "Progressives," were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited.[12]

The Committee has now obtained new documents from a meeting held on July 28, 2010—within the timeframe of Mr. George's review—that appear to directly contradict his statements. According to the documents obtained by the Committee, this "Screening Workshop" was led by the IRS Screening Group Manager in Cincinnati who, during his interview with Committee staff, referred to himself as a "conservative Republican." Participants included a wide array of IRS employees from across the country, including "members of the screening group, embedded screeners from Cincinnati, west coast screeners, selected secondary screeners, TE/GE EO Quality Assurance Staff and Area 1 & 2 Managers."[13]

One of the documents obtained by the Committee is the PowerPoint presentation (/sites/democrats.oversight.house.gov/files/migrated/images/user_images/gt/PowerPoint.pdf) for this meeting describing how to handle applications for tax exempt status from groups that may be engaged in political activities. The first page of this PowerPoint in the section on "Current Activities" has a picture of both an elephant and a donkey. The second and third pages in this section include references to "Tea Party," "Patriots," and "9/12 Project." The fourth page in this section includes a reference to "Progressive." The PowerPoint then explains that "Most will file as IRC 501(c)(4)" and lists as a specific concern that they "May be more than 50% political, possible PAC (Political Action Committee)."[14]

The minutes from this meeting (/sites/democrats.oversight.house.gov/files/migrated/images/user_images/gt/MeetingMinutes.pdf) also explain that applications from "Progressive" groups should be sent to Group 7822, the same group in the IRS office in Cincinnati that was designated to handle Tea Party applicants. The minutes state:

Current/Political Activities: [Name redacted]

- ·Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- ·If in doubt Err on the Side of Caution and transfer to 7822.
- ·Indicated the following names and/or titles were of interest and should be flagged for review:

SFC 004512

- 9/12 Project,
- [Redacted for 6103]
- Progressive
- [Redacted for 6103]
- [Redacted for 6103]
- Pink-Slip Program.[15]

Mr. George's office suggested recently that the office may not have been aware of these documents when they prepared the report, provided testimony before Congress, and sent letters to Members of Congress. The documents appear to directly contradict statements the Inspector General provided in testimony before the Committee and assertions he made in letters to Representatives Levin and Connolly.

Failure to Disclose Information on "Occupy" Groups in BOLO

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee that the IRS office in Cincinnati added a new entry to its "Be On The Lookout" (BOLO) document—on January 25, 2012—directing staff to forward applications from groups associated with the Occupy Wall Street movement to Group 7822, the same group in the Cincinnati office that was designated to handle Tea Party applicants.

On June 24, 2013, Ranking Member Levin sent a letter asking Mr. George why he failed to disclose that several previous BOLOs included entries for "Progressive" groups. On June 26, 2013, Mr. George sent a letter responding to Mr. Levin, stating that all of these references were included in the "Historical" sections of the BOLOs and "did not include instructions on how to refer cases that met the criteria." He wrote:

TIGTA's audit report focused on criteria being used by the Internal Revenue Service (IRS) during the period of May 2010 through May 2012 regarding allegations that certain groups applying for tax-exempt status were being targeted. We reviewed all cases that the IRS identified as potential political cases and did not limit our audit to allegations related to the Tea Party. TIGTA concluded that inappropriate criteria were used to identify potential political cases for extra scrutiny—specifically, the criteria listed in our audit report. From our audit work, we did not find evidence that the criteria you identified, labeled "Progressives," were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited. The "Progressives" criteria appeared on a section of the "Be On the Look Out" (BOLO) spreadsheet labeled "Historical," and, unlike other BOLO entries, did not include instructions on how to refer cases that met the criteria.[16]

The Committee has now obtained a BOLO dated February 8, 2012 (/sites/democrats.oversight.house.gov/files/migrated/images/user_images/gt/BOLOWithOccupy.pdf), that includes an entry for "'Occupy' Organizations" that was opened on January 25, 2012. This BOLO describes the criteria for these groups as follows:

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 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.[17]

This entry is not listed in the "Historical" section of the BOLO, but rather in the "Watch List" section, and it explicitly directs IRS staff to "Forward cases to Group 7822," which also had been designated to handle Tea Party applicants.[18]

SEC 004513

Another new document obtained by the Committee is an email sent from the Director of Rulings and Agreements in Washington, D.C. to Lois Lerner and several other IRS officials on May 17, 2012, proposing to replace multiple entries on the BOLO—including the Occupy entry, the general advocacy organization entry, and one other entry—with the following single entry for all applicants engaging in political activities:

501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention or excess private benefit to organizations or individuals. Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria.[19]

It is unclear why Mr. George did not disclose that IRS employees added a new BOLO entry for Occupy groups in 2012, but instead asserted that all references to "Progressive" groups were strictly "Historical." It is also unclear why Mr. George did not mention that this 2012 BOLO directed IRS staff to take specific action to forward Occupy applications to the same IRS group in Cincinnati that handled Tea Party applicants.

Personal Intervention to Conceal References to Additional Categories of Groups

Although new documents obtained by the Committee indicate that other categories of organizations are specifically named in the BOLOs, I understand that Mr. George recently intervened personally to prevent additional relevant information from being disclosed to the Committee.

In response to the Committee's request for documents on March 27, 2013, the IRS has been producing a significant number of responsive documents.[20] As part of this process, the IRS has been redacting personally-identifiable taxpayer information that is protected from public disclosure under 26 U.S.C. § 6103. In a bipartisan briefing before Mr. George issued his report in May, his staff explained that they generally rely on the Section 6103 determinations of the career IRS employees who perform this function on a daily basis.

It is my understanding that the IRS was prepared to produce documents to the Committee this week that include references to additional categories of groups that IRS career staff determined would comply with Section 6103. It is also my understanding that Mr. George personally intervened in that production, objecting to the disclosure of that information. The Inspector General's office has criminal enforcement authority for violations of Section 6103.

If this is accurate, it appears that Mr. George may be attempting to overrule the legal determinations of career IRS staff in order to prevent the disclosure of relevant information that could raise further questions about the reliability of his report and testimony.

Conclusion

The Inspector General's mission is to provide "quality professional audit, investigative, and inspections and evaluations services that promote integrity, economy, and efficiency in the administration of the Nation's tax system." This includes "open, honest, and respectful communication" between the Inspector General "and its external stakeholders."[21]

This investigation, however, has been characterized by one-sided and partial information leading to unsubstantiated accusations with no basis in fact. You did not consult with me before asking Mr. George to undertake his review, and Mr. George did not provide me with copies of his subsequent correspondence with you. In addition, Democratic staff were not invited to meetings your staff had with Mr. George's staff to discuss the scope of his work.

Given the new documents obtained by the Committee—and the serious questions they raise about the Inspector General's report, his testimony before Congress, and his subsequent assertions in letters to Members of Congress—I believe it is necessary to call him back before the Committee to explain why he

failed to disclose this critical information. Without this explanation, the entire premise of next Thursday's hearing will be called into question. SEC 004514

I would appreciate a response to my request on Monday, July 15, 2013. Thank you for your consideration of this request.

113th Congress

SFC 004515

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

Debunking the Myth that the IRS Targeted Progressives: How the IRS and Congressional Democrats Misled America about Disparate Treatment

Staff Report
113th Congress

April 7, 2014

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Executive Summary

In the immediate aftermath of Lois Lerner's public apology for the targeting of conservative tax-exempt applicants, President Obama and congressional Democrats quickly denounced the IRS misconduct.[1] But later, some of the same voices that initially decried the targeting changed their tune. Less than a month after the wrongdoing was exposed, prominent Democrats declared the "case is solved" and, later, the whole incident to be a "phony scandal."[2] As recently as February 2014, the President explained away the targeting as the result of "bone-headed" decisions by employees of an IRS "local office" without "even a smidgeon of corruption."[3]

To support this false narrative, the Administration and congressional Democrats have seized upon the notion that the IRS's targeting was not just limited to conservative applicants. Time and again, they have claimed that the IRS targeted liberal- and progressive-oriented groups as well – and that, therefore, there was no political animus to the IRS's actions.[4] These Democratic claims are flat-out wrong and have no basis in any thorough examination of the facts. Yet, the Administration's chief defenders continue to make these assertions in a concerted effort to deflect and distract from the truth about the IRS's targeting of tax-exempt applicants.

The Committee's investigation demonstrates that the IRS engaged in disparate treatment of conservative-oriented tax-exempt applicants. Documents produced to the Committee show that initial applications transferred from Cincinnati to Washington were filed by Tea Party groups. Other documents and testimony show that the initial criteria used to identify and hold Tea Party applications captured conservative organizations. After the criteria were broadened in July 2012 to be cosmetically neutral, material provided to the Committee indicates that the IRS still intended to target only conservative applications.

A central plank in the Democratic argument is the claim that liberal-leaning groups were identified on versions of the IRS's "Be on the Look Out" (BOLO) lists.[5] This claim ignores significant differences in the placement of the conservative and liberal entries on the BOLO lists

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[1] *See, e.g.*, The White House, Statement by the President (May 15, 2013) (calling the IRS targeting "inexcusable"); *"The IRS: Targeting Americans for their Political Beliefs": Hearing before the H. Comm. on Oversight & Gov't*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) ("The inspector general has called the action by IRS employees in Cincinnati, quote, "inappropriate," unquote, but after reading the IG's report, I think it goes well beyond that. I believe that there was gross incompetence and mismanagement in how the IRS determined which organizations qualified for tax-exempt status."); Press Release, Rep. Nancy Pelosi, Pelosi Statement on Reports of Inappropriate Activities at the IRS (May 13, 2013) ("While we look forward to reviewing the Inspector General's report this week, it is clear that the actions taken by some at the IRS must be condemned. Those who engaged in this behavior were wrong and must be held accountable for their actions.").

[2] *State of the Union with Candy Crowley* (CNN television broadcast June 9, 2013) (interview with Rep. Elijah E. Cummings); *Fox News Sunday* (Fox News television broadcast July 28, 2013) (interview with Treasury Secretary Jacob Lew).

[3] *"Not even a smidgeon of corruption": Obama downplays IRS, other scandals*, FOX NEWS, Feb. 3, 2014.

[4] *See, e.g.*, Lauren French & Rachael Bade, *Democratic Memo: IRS Targeting Was Not Political*, POLITICO, July 17, 2013.

[5] *See Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013).

and how the IRS used the BOLO lists in practice. The Democratic claims are further undercut by testimony from IRS employees who told the Committee that liberal groups were not subject to the same systematic scrutiny and delay as conservative organizations.[6]

The IRS's independent watchdog, the Treasury Inspector General for Tax Administration (TIGTA), confirms that the IRS treated conservative applicants differently from liberal groups. The inspector general, J. Russell George, wrote that while TIGTA found indications that the IRS had improperly identified Tea Party groups, it "did not find evidence that the criteria [Democrats] identified, labeled 'Progressives,' were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited."[7] He concluded that TIGTA "found no indication in any of these other materials that 'Progressives' was a term used to refer cases for scrutiny for political campaign intervention."[8]

An analysis performed by the House Committee on Ways and Means buttresses the Committee's findings of disparate treatment. The Ways and Means Committee's review of the confidential tax-exempt applications proves that the IRS systematically targeted conservative organizations. Although a small number of progressive and liberal groups were caught up in the application backlog, the Ways and Means Committee's review shows that the backlog was 83 percent conservative and only 10 percent were liberal-oriented.[9] Moreover, the IRS approved 70 percent of the liberal-leaning groups and only 45 percent of the conservative groups.[10] The IRS approved every group with the word "progressive" in its name.[11]

In addition, other publicly available information supports the analysis of the Ways and Means Committee. In September 2013, *USA Today* published an independent analysis of a list of about 160 applications in the IRS backlog.[12] This analysis showed that 80 percent of the applications in the backlog were filed by conservative groups while less than seven percent were filed by liberal groups.[13] A separate assessment from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve a single tax-exempt application filed by a Tea Party group.[14] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[15]

The IRS, over many years, has undoubtedly scrutinized organizations that embrace different political views for varying reasons – in many cases, a just and neutral criteria may have

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[6] *See, e.g.*, Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013); Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013); Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

[7] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).

[8] *Id.*

[9] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Charles Boustany) [hereinafter "Ways and Means Committee September 18th Hearing"].

[10] *Id.*

[11] *Id.*

[12] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

[13] *Id.*

[14] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.

[15] *Id.*

been fairly utilized. This includes the time period when Tea Party organizations were systematically screened for enhanced and inappropriate scrutiny. But the concept of *targeting*, when defined as a systematic effort to select applicants for scrutiny simply because their applications reflected the organizations' political views, only applied to Tea Party and similar conservative organizations. While use of term "targeting" in the IRS scandal may not always follow this definition, the reality remains that there is simply no evidence that any liberal or progressive group received enhanced scrutiny because its application reflected the organization's political views.

For months, the Administration and congressional Democrats have attempted to downplay the IRS's misconduct. First, the Administration sought to minimize the fallout by preemptively acknowledging the misconduct in response to a planted question at an obscure Friday morning tax-law conference. When that strategy failed, the Administration shifted to blaming "rogue agents" and "line-level" employees for the targeting. When those assertions proved false, congressional Democrats baselessly attacked the character and integrity of the inspector general. Their attempt to allege bipartisan targeting is just another effort to distract from the fact that the Obama IRS systematically targeted and delayed conservative tax-exempt applicants.

Findings

- The IRS treated Tea Party applications distinctly different from other tax-exempt applications.

- The IRS selectively prioritized and produced documents to the Committee to support misleading claims about bipartisan targeting.

- Democratic Members of Congress, including Ranking Member Elijah Cummings, Ranking Member Sander Levin, and Representative Gerry Connolly, made misleading claims that the IRS targeted liberal-oriented groups based on documents selectively produced by the IRS.

- The IRS's "test" cases transferred from Cincinnati to Washington were exclusively filed by Tea Party applicants: the Prescott Tea Party, the American Junto, and the Albuquerque Tea Party.

- The IRS's initial screening criteria captured exclusively Tea Party applications.

- Even after Lois Lerner broadened the screening criteria to maintain a veneer of objectivity, the IRS still sought to target and scrutinize Tea Party applications.

- The IRS targeting captured predominantly conservative-oriented applications for tax-exempt status.

- Myth: IRS "Be on the Lookout" (BOLO) entries for liberal groups meant that the IRS targeted liberal and progressive groups. Fact: Only Tea Party groups on the BOLO list experienced systematic scrutiny and delay.

- Myth: The IRS targeted "progressive" groups in a similar manner to Tea Party applicants. Fact: The IRS treated "progressive" groups differently than Tea Party applicants. Only seven applications in the IRS backlog contained the word "progressive," all of which were approved by the IRS. The IRS processed progressive applications like any other tax-exempt application.

- Myth: The IRS targeted ACORN successor groups in a similar manner to Tea Party applicants. Fact: The IRS treated ACORN successor groups differently than Tea Party applicants. ACORN successor groups were not subject to a "sensitive case report" or reviewed by the IRS Chief Counsel's office. The central issue for the ACORN successor groups was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.

- Myth: The IRS targeted Emerge affiliate groups in a similar manner to Tea Party applicants. Fact: The IRS treated Emerge affiliate groups differently than Tea Party

applicants. Emerge applications were not subjected to secondary screening like the Tea Party cases. The central issue in the Emerge applications was private benefit, not political speech.

- Myth: The IRS targeted Occupy groups in a similar manner to Tea Party applicants. Fact: The IRS treated Occupy groups differently than Tea Party applicants. No applications in the IRS backlog contained the words "Occupy." IRS employees testified that they were not even aware of an Occupy entry on the BOLO list.

Coordinated and misleading Democratic claims of bipartisan IRS targeting

As the IRS targeting scandal grew, the Administration and congressional Democrats began peddling the allegation that the IRS targeting was not just limited to conservative tax-exempt application, but that the IRS had targeted liberal-leaning groups as well. These assertions kick-started when Acting IRS Commissioner Daniel Werfel told reporters that IRS "Be on the Look Out" lists included entries for liberal-oriented groups. Congressional Democrats seized upon his announcement and immediately began feeding the false narrative that liberal groups received the same systematic scrutiny and delay as conservative applicants. In the ensuing months, the IRS even reconsidered its previous redactions to provide congressional Democrats with additional fodder to support their assertions. Although TIGTA and others have rebuffed the Democratic argument, senior members of the Administration and in Congress continue this coordinated narrative that the IRS targeting was broader than conservative applicants.

The IRS acknowledges that portions of its BOLO lists included liberal-oriented entries

On June 24, 2013, Acting IRS Commissioner Daniel Werfel asserted during a conference call with reporters that the IRS's misconduct was broader than just conservative applicants.[16] Werfel told reporters that "[t]here was a wide-ranging set of categories and cases that spanned a broad spectrum."[17] Although Mr. Werfel refused to discuss details about the "inappropriate criteria that was [*sic*] in use," the IRS produced to Congress hundreds of pages of self-selected documents that supported his assertion.[18] The IRS prioritized producing these documents over other material, producing them when the Committee had received less than 2,000 total pages of IRS material. Congressional Democrats had no qualms in putting these self-selected documents to use.

Virtually simultaneous with Mr. Werfel's conference call, Democrats on the House Ways and Means Committee trumpeted the assertion that the IRS targeted liberal groups similarly to conservative organizations.[19] Ranking Member Sander Levin (D-MI) released several versions of the IRS BOLO list.[20] Because these versions included an entry labeled "progressives," Ranking Member Levin alleged that "[t]he [TIGTA] audit served as the basis and impetus for a wide range of Congressional investigations and **this new information shows that the**

[16] *See* Alan Fram, *Documents show IRS also screened liberal groups*, ASSOC. PRESS, June 24, 2013.
[17] *Id.*
[18] *See* Letter from Leonard Oursler, Internal Revenue Serv., to Darrell Edward Issa, H. Comm. on Oversight & Gov't Reform (June 24, 2013).
[19] Press Release, H. Comm. on Ways & Means Democrats, New IRS Information Shows "Progressives" Included on BOLO Screening List (June 24, 2013).
[20] *Id.*

foundation of those investigations is flawed in a fundamental way."[21] (emphasis added). These documents would initiate a sustained campaign designed to falsely allege that the IRS engaged in bipartisan targeting.

Ways and Means Committee Democrats allege bipartisan IRS targeting

During a hearing of the Ways and Means Committee on June 27, 2013, Democrats continued to spin this false narrative, arguing that liberal groups were mistreated similarly to conservative groups. Ranking Member Levin proclaimed during his opening statement:

> This week we learned for the first time the three key items, one, the screening list used by the IRS included the term "progressives." Two, progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny. And, three, the inspector general did not research how the term "progressives" was added to the screening list or how those cases were handled by a different group of specialists in the IRS. The failure of the I.G.'s audit to acknowledge these facts is a fundamental flaw in the foundation of the investigation and the public's perception of this issue.[22]

Other Democratic Members picked up this thread. While questioning the hearing's only witness, Acting IRS Commissioner Werfel, Representative Charlie Rangel (D-NY) raised the specter of bipartisan targeting. He stated:

> Mr. RANGEL: You said there's diversity in the BOLO lists. And you admit that conservative groups were on the BOLO list. Why is it that we don't know whether or not there were progressive groups on the BOLO list?
>
> Mr. WERFEL: Well, we do know that – that the word "progressive" did appear on a set of BOLO lists. We do know that. When I was articulating the point about diversity, I was trying to capture that the types of political organizations that are on these BOLO lists are wide ranging. But they do include progressives.[23]

Similarly, Representative Joseph Crowley (D-NY) alleged that the IRS mistreated progressive groups identically to Tea Party groups. He said:

> As the weeks have gone on, we have seen that there is a culture of intimidation, but not from the White House, but rather from my Republican colleagues. **We know for a fact that there has been targeting of both tea party and**

[21] *Id.*

[22] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).

[23] *Id.* (question and answer with Representative Charlie Rangel).

progressive groups by the IRS. . . . Then, as we see, the progressive groups were targeted side by side with their tea party counterpart groups.[24] (emphasis added).

Acting IRS Commissioner volunteers to testify at the Oversight Committee's July 17, 2013 subcommittee hearing

On July 17, 2013, the Oversight Committee convened a joint subcommittee hearing on ObamaCare security concerns, featuring witnesses from the federal agencies involved in the law's implementation.[25] The Chairmen invited Sarah Hall Ingram, the Director of the IRS ObamaCare office, to testify.[26] Prior to the hearing, however, Acting IRS Commissioner Werfel personally intervened and volunteered himself to testify as the IRS witness in Ms. Ingram's place. Committee Democrats used Mr. Werfel's appearance as an opportunity to continue pushing their false narrative of bipartisan IRS targeting.

During the hearing, Ranking Member Elijah Cummings (D-MD) used the majority of his five-minute period to question Mr. Werfel not on the subject matter of the hearing, but rather on the IRS's treatment of liberal tax-exempt applicants. They engaged in the following exchange:

Mr. CUMMINGS. I would like to ask you about the ongoing investigation into the treatment of Tea Party applicants for tax exempt status. During our interviews, we have been told by more than one IRS employee that there were progressive or left-leaning groups that received treatment similar to the Tea Party applicants. As part of your internal review, have you identified non-Tea Party groups that received similar treatment?

Mr. WERFEL. Yes.

Mr. CUMMINGS. We were told that one category of applicants had their applications denied by the IRS after a 3-year review; is that right?

Mr. WERFEL. Yes, that's my understanding that there is a group or seven groups that had that experience, yes.[27]

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[24] *Id.* (question and answer with Representative Joseph Crowley).

[25] *"Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus": J. Hearing before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform and the Subcomm. on Cybersecurity, Infrastructure Protection, and Security Technologies of the H. Comm. on Homeland Security*, 113th Cong. (2013) [hereinafter "July 17th Hearing"].

[26] *See* Letter from James Lankford, H. Comm. on Oversight & Gov't Reform, & Patrick Meehan, H. Comm. on Homeland Security, to Sarah Hall Ingram, Internal Revenue Serv. (July 10, 2013).

[27] July 17th Hearing, *supra* note 25.

It is certain that Ranking Member Cummings would not have had the opportunity to ask these questions had Ms. Ingram testified as originally requested.

The circumstances of Mr. Werfel's statements are striking. He volunteered to replace the undisputed IRS expert on ObamaCare at a hearing focusing on ObamaCare security, after being at the IRS for less than two months. He volunteered to testify at a subcommittee the day before the Committee convened a hearing that would feature testimony about the IRS's targeting of conservative applicants. By all indications, Mr. Werfel's testimony allowed congressional Democrats to continue to perpetuate the myth of bipartisan IRS targeting.

Democrats attack the Inspector General during the Oversight Committee's July 18, 2013 hearing

Unsurprisingly, Democrats on the Oversight Committee highlighted Mr. Werfel's assertions as their main narrative during a Committee hearing on the IRS targeting the following day. During his opening statement, Ranking Member Cummings criticized Treasury Inspector General for Tax Administration J. Russell George, accusing him of ignoring liberal groups targeted by the IRS.[28] Ranking Member Cummings stated:

> I also want to ask the Inspector General why he was unaware of documents we have now obtained showing that the IRS employees were also instructed to screen for progressive applicants and why his office did not look into the treatment of left-leaning organizations, such as Occupy groups. I want to know how he plans to address these new documents. Again, we represent conservative groups on both sides of the aisle, and progressives and others, and so all of them must be treated fairly.[29]

Representative Danny Davis (D-IL) utilized Mr. Werfel's testimony from the day before to also criticize the inspector general. Representative Davis said:

> **Yesterday, the principal deputy commissioner of the Internal Revenue Service, Danny Werfel, testified before this committee that progressive groups received treatment from the IRS that was similar to Tea Party groups when they applied for tax exempt status**. In fact, Congressman Sandy Levin, who is the ranking member of the Ways and Means Committee, explained these similarities in more detail. He said the IRS took years to resolve these cases, just like the Tea Party cases. And he said the IRS, one, screened for these groups, transferred them to the Exempt Organizations Technical Unit, made them the subject of a sensitive case report, and had them reviewed by the Office of Chief Counsel. According to the information provided to the Committee on Ways and Means, some of these progressive groups actually had their applications denied

[28] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Ranking Member Elijah E. Cummings) [hereinafter "July 18th Hearing"].
[29] *Id.*

> after a 3-year wait, and the resolution of these cases happened during the time period that the inspector general reviewed for its audit.[30] (emphasis added).

Inspector General George testified at the hearing to defend his work and debunk Democratic myths of bipartisan targeting. Committee Democrats took the opportunity to harshly interrogate Mr. George, using Mr. Werfel's testimony. Representative Gerry Connolly (D-VA) said to him:

> Well, so I want to make sure—you're under oath, again—it is your testimony today, as it was in May, but let's limit it to today, that at the time you testified here in May you had absolutely no knowledge of the fact that in any screening, BOLOs or otherwise, the words "Progressive," "Democrat," "MoveOn," never came up. You were only looking at "Tea Party" and conservative-related labels. You were unaware of any flag that could be seen as a progressive—the progressive side of things.[31]

Similarly, Representative Jackie Speier (D-CA) told Mr. George:

> Now, that seems completely skewed, Mr. George, if you are indeed an unbiased, impartial watch dog. It's as if you only want to find emails about Tea Party cases. These search terms do not include any progressive or liberal or left-leaning terms at all. Why didn't you search for the term "progressive"? It was specifically mentioned in the same BOLO that listed Tea Party groups.[32]

Representative Carolyn Maloney (D-NY) said:

> How in the world did you get to the point that you only looked at Tea Party when liberals and progressives and Occupy Wall Street and conservatives are just as active, if not more active, and would certainly be under consideration. That is just common plain sense. And I think that some of your statements have not been—it defies—it defies logic, it defies belief that you would so limit your statements and write to Mr. Levin and write to Mr. Connolly that of course no one was looking at any other area.[33]

Armed with self-selected IRS documents and Mr. Werfel's testimony, congressional Democrats vehemently attacked TIGTA in an attempt to undercut its findings that the IRS had targeted conservative tax-exempt applicants. Their *ad hominen* attacks on an independent inspector general sought to distract and deflect from the real misconduct perpetrated by the IRS.

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[30] *Id.* (question and answer with Representative Danny Davis).
[31] *Id.* (question and answer with Representative Gerry Connolly).
[32] *Id.* (question and answer with Representative Jackie Speier).
[33] *Id.* (question and answer with Representative Carolyn Maloney).

The IRS reinterprets legal protections for taxpayer information to bolster Democratic allegations

The IRS was not an unwilling participant in spinning this false narrative. Section 6103 of federal tax law protects confidential taxpayer information from public dissemination.[34] Under the tax code, however, the IRS may release confidential taxpayer information to the House Ways and Means Committee and the Senate Finance Committee.[35] The IRS cited this provision of law to withhold vital details about the targeting scandal from the American public. The prohibition did not stop the IRS from releasing information helpful to its cause.

In August 2013, the IRS suddenly reversed its interpretation of the law. In a letter to Ways and Means Ranking Member Levin – who already had access to confidential taxpayer information – Acting IRS Commissioner Werfel wrote: "Consistent with our continuing efforts to provide your Committee and the public with as much information as possible regarding the Service's treatment of tax exempt advocacy organizations, we are re-releasing certain redacted documents that had been previously provided to your Committee."[36] Mr. Werfel explained the reversal as the result of "our continuing review of the documents" and "a thorough section 6103 analysis."[37] The reinterpretation allowed the IRS to release information related to "ACORN Successors" and "Emerge" groups.[38]

Congressional Democrats embraced the IRS's sudden reversal. Releasing new IRS documents, Ranking Member Levin and Ranking Member Cummings issued a joint press release announcing that "**new information from the IRS that provides further evidence that progressive groups were singled out for scrutiny in the same manner as conservative groups**."[39] (emphasis added). Ranking Member Levin proclaimed: "These new documents make it clear the IRS scrutiny of the political activity of 501(c)(4) organizations covered a broad spectrum of political ideology and was not politically motivated."[40] Ranking Member Cummings similarly intoned: "This new information should put a nail in the coffin of the Republican claims that the IRS's actions were politically motivated or were targeted at only one side of the political spectrum."[41]

The IRS's sudden reinterpretation of section 6103 allowed congressional Democrats to continue their assault on the truth. Again using documents self-selected by the IRS, these defenders of the Administration carried on their rhetorical campaign to convince Americans that the IRS treated liberal applicants identically to Tea Party applicants.

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[34] I.R.C. § 6103.
[35] *Id.* § 6103(f).
[36] Letter from Daniel I. Werfel, Internal Revenue Serv., to Sander Levin, H. Comm. on Ways & Means (Aug. 19, 2013), *available at* http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/IRS%20Letter%20to%20Levin%20August%2019%2C%202013.pdf.
[37] *Id.*
[38] *Id.*
[39] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[40] *Id.*
[41] *Id.*

Recent Democratic efforts to perpetuate the myth of bipartisan IRS targeting

Democratic efforts to spin the IRS targeting continue through the present. On January 29, 2014, Senator Chris Coons raised the allegation while questioning Attorney General Eric Holder about the Administration's investigation into the IRS's targeting. Senator Coons stated:

> Well, thank you, Mr. Attorney General. I -- I join a number of colleagues in urging and hoping that the investigation into IRS actions is done in a balanced and professional and appropriate way. And I assume it is, unless demonstrated otherwise. **And what I've heard is that there were progressive groups, as well as tea party groups, that were perhaps allegedly on the receiving end of reviews of the 501(c)(3) applications**. And it's my expectation that we'll hear more in an appropriate and timely way about the conduct of this investigation.[42] (emphasis added).

On February 3, 2014, during his daily briefing, White House Press Secretary Jay Carney echoed the Democratic line that the IRS targeted liberal groups in the same manner in which it targeted conservative groups. In defending the President's comments about "not even a smidgeon of corruption," Mr. Carney said:

> Q Jay, in the President's interview with Bill O'Reilly last night, he said that there was "not even a smidgen of corruption," regarding the IRS targeting conservative groups. Did the President misspeak?
>
> A No, he didn't. But I can cite – I think have about 20 different news organizations that cite the variety of ways that that was established, including by the independent IG, who testified in May and, as his report said, that **he found no evidence that anyone outside of the IRS had any involvement in the inappropriate targeting of conservative – or progressive, for that matter – groups in their applications for tax-exempt status**. So, again, I think that this is something –[43] (emphasis added).

During debate on the House floor on H.R. 3865, the Stop Targeting of Political Beliefs by the IRS Act of 2014, Ways and Means Committee Ranking Member Levin spoke in opposition to the bill. He said:

> On a day when the Chairman of the Ways and Means Committee, Mr. Camp, is unveiling a tax measure that requires serious bipartisanship to be successful, we are here on the floor considering a totally political bill in an attempt to resurrect an alleged scandal that never existed. . . . **And what have we learned? That**

[42] *"Oversight of the U.S. Department of Justice": Hearing before the S. Comm. on the Judiciary*, 113th Cong. (2014) (question and answer with Senator Chris Coons).

[43] The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.

> **both progressive and conservative groups were inappropriately screened out by name and not by activity.**[44] (emphasis added).

As recently as early March 2014, Democrats have been spreading the myth that liberal-oriented groups were targeted in the same manner as conservative organizations. Appearing on *The Last Word with Lawrence O'Donnell*, Representative Gerry Connolly continued the Democratic allegations of bipartisan targeting. Representative Connolly said:

> You know, that's true, but I think we need to back up. This is not an honest inquiry. This is a Star Chamber operation. **This is cherry picking information, deliberately colluding with a Republican idea in the IRS to make sure the investigation is solely about tea party and conservative groups even though we know that the tilt is included progressive titles as well as conservative titles and that they were equally stringent.** It was a foolish thing to do. And it's wrong, but it was not just targeted at conservatives. But Darrell Issa wants to make sure that information does not get out.[45] (emphasis added).

The Democratic myth of bipartisan IRS targeting simply will not die. Working hand in hand with the Obama Administration's IRS, congressional Democrats vigorously asserted that the IRS mistreated liberal tax-exempt applicants in a manner identical to Tea Party groups. The IRS – the very same agency under fire for its actions – assisted these efforts by producing self-selected documents and volunteering helpful information. The result has been a fundamental misunderstanding of the truth about the IRS's targeting of conservative tax-exempt applicants.

The Truth: The IRS engaged in disparate treatment of conservative applicants

Contrary to Democratic claims, substantial documentary and testimonial evidence shows that the IRS systematically engaged in disparate treatment of conservative tax-exempt applicants. The Committee's investigation shows that the initial applications sent to the Washington as "test" cases were all filed by Tea Party-affiliated groups. The IRS screening criteria used to identify and separate additional applications also initially captured exclusively Tea Party organizations. Even after the criteria were changed, documents show the IRS intended to identify and separate Tea Party applications for review.

No matter how hard the Administration and congressional Democrats try to spin the facts about the IRS targeting, it remains clear that the IRS treated conservative tax-exempt applicants differently. As detailed below, the IRS treated Tea Party and other conservative tax-exempt applicants unlike liberal or progressive applicants.

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[44] Press Release, H. Comm. on Ways & Means Democrats, Levin Floor Statement on H.R. 3865 (Feb. 26, 2014).
[45] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).

The Committee's evidence shows the IRS sought to identify and scrutinize Tea Party applications

To date, the Committee has reviewed over 400,000 pages of documents produced by the IRS, TIGTA, the IRS Oversight Board, and others. The Committee has conducted transcribed interviews of 33 IRS employees, totaling over 217 hours. From this exhaustive undertaking, one fundamental finding is certain: the IRS sought to identify and scrutinize Tea Party applications separate and apart from any other tax-exempt applications, including liberal or progressive applications.

The initial "test" cases were exclusively Tea Party applications

From documents produced by the IRS, the Committee is aware that the initial test cases transferred to Washington in spring 2010 to be developed as templates were applications filed by Tea Party-affiliated organizations. According to one document entitled "Timeline for the 3 exemption applications that were referred to [EO Technical] from [EO Determinations]," the Washington office received the 501(c)(3) application filed by the Prescott Tea Party, LLC on April 2, 2010.[46] The same day, the Washington office received the 501(c)(4) application filed by the Albuquerque Tea Party, Inc.[47] After Prescott Tea Party did not respond to an IRS information request, the IRS closed the application "FTE" or "failure to establish." The Washington office asked for a new 501(c)(3) application, and it received the application filed by American Junto, Inc., on June 30, 2010.[48]

Testimony provided by veteran IRS tax law specialist Carter Hull, who was assigned to work the test cases in Washington, confirms that they were exclusively Tea Party applications. He testified:

> Q Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases?
>
> A Yes.
>
> ***
>
> Q Do you recall when precisely you were told that you would be assigned two Tea Party cases?
>
> A When precisely, no.
>
> Q Sometime in –

[46] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]
[47] *Id.*
[48] *Id.*

A Sometime in the area, but I did get, they were assigned to me in April.

***

Q Okay, and just to be clear, April of 2010?

A Yes.

***

Q And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A One was a 501(c)(3), and one was a 501(c)(4).

Q So one of each?

A One of each.

Q What, to your knowledge, was it intentional that you were sent one of each?

A Yes.

Q Why was that?

A I'm not sure exactly why. I can only make assumptions, but those are the two areas that usually had political possibilities.

***

Q The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

***

A All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

***

Q Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

***

Q And when you say these organizations, you mean Tea Party organizations?

A The two organizations that I had.[49]

Hull's testimony also confirms that the Washington IRS office requested a similar 501(c)(3) application to replace the Prescott Tea Party's application. He testified:

Q Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A I did.

Q Did you get responses from both organizations?

A I got response from only one organization.

Q Which one?

A The (c)(4).

Q (C)(4). What did you do with the case that did not respond?

A I tried to contact them to find out whether they were going to submit anything.

Q By telephone?

A By telephone. And I never got a reply.

Q Then what did you do with the case?

A I closed it, failure to establish.

***

Q So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

[49] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

A I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

***

Q How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?

A I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.

Q And the first (c)(3), it was a Tea Party application?

A Yes, it was.[50]

[50] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

Fig. 1: IRS Timeline of Tea Party "test" cases[51]

A. Timeline for the 3 exemption applications that were referred to EOT from EOD

1. Prescott Tea Party, LLC	2. American Junto, Inc.	3. Albuquerque Tea Party, Inc.
The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.	The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.	The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization's primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.
Timeline: **2009** • **11/09/2009** → Application received by EOD. • **12/18/2009** → Case assigned to EOD specialist. **2010** • **3/08/2010** → **Date the case was referred to EOT.** Case pulled from	**Timeline:** **2010** • **2/11/2010** → Application was received by EOD.	**Timeline:** **2010** • **1/4/2010** → Application was received by EOD.
EOD files to send to EOT for review. • **3/11/2010** → EOD prepared a memo to transfer the case to EOT as part of EOT's review of some of the "advocacy organization" cases being received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/14/2010** → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • **5/26/2010** → Case closed FTE (90-day suspense date ended on 8/26/2010).	• **4/11/2010** → Case assigned to a specialist in EOD. • **4/25/2010** → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on "advocacy organization" cases being held in screening. • **5/25/2010** → EOT requested a §501(c)(3) "advocacy organization" case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • **6/25/2010** → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • **6/30/2010** → **Date the case was referred to EOT.** • **7/7/2010** → 1st development letter sent (Response due by 7/28/2010). • **7/28/2010** → EOT received Taxpayer's response to 1st development letter.	• **2/22/2010** → Case assigned to EOD specialist. • **3/11/2010** → EOD prepared memo to transfer the case to EOT as part of EOT's help reviewing the "advocacy organization" cases received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/21/2010** → 1st development letter sent (Response due by 5/12/2010). • **4/29/2010** → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • **6/8/2010** → EOT received the Taxpayer's response to 1st development letter.

[51] Internal Revenue Serv., Timeline from the 3 exemption applications that were referred to EOT from EOD. [IRSR 58346-49]

The initial screening criteria captured exclusively Tea Party applications

Documents and testimony provided to the Committee show that the IRS's initial screening criteria captured only conservative organizations. According to a briefing paper prepared for Exempt Organizations Director Lois Lerner in July 2011, the IRS identified applications and held them if they met 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.[52]

Based on these criteria, which skew toward conservative ideologies, the IRS sent applications to a specific group in Cincinnati.

Fig. 2: IRS Briefing Document Prepared for Lois Lerner[53]

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

Testimony presented by the two Cincinnati employees shows that the initial applications in the growing IRS backlog were exclusive Tea Party applications. Elizabeth Hofacre, who oversaw the cases from April 2010 to October 2010, testified during her transcribed interview that "we were looking at Tea Parties." She testified:

> Q And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?
>
> A That was the group of political cases.
>
> Q So why do you call them Tea Parties if it includes more than –

[52] Justin Lowe, Internal Revenue Serv., Increase in (c)(3)/(c)(4) Advocacy Org. Applications (2011). [IRSR 2735]
[53] *Id.*

A Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q In 2010, you were classifying any organization that had political activity as a Tea Party?

A No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q What do you mean when you say political is too broad?

A No, because when -- what do you mean by "political"?

Q Political activity -- if an application has an indication of political activity in it.

A I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q Was there somebody who was tasked with political in general?

A Not that I'm aware of.[54] (emphasis added).

During the Committee's July 2013 hearing about the IRS's systematic scrutiny of Tea Party applications, Hofacre specifically rejected claims that liberal-oriented groups were part of the IRS backlog. She testified:

Mr. MICA. Okay, the beginning of 2010. And you—this wasn't a targeting by a group of your colleagues in Cincinnati that decided we're going to go after folks. And most of the cases you got, were they "Tea Party" or "Patriot" cases?

Ms. HOFACRE. Sir, they were all "Tea Party" or "Patriot" cases.

Mr. MICA. Were there progressive cases? How were they handled?

Ms. HOFACRE. **Sir, I was on this project until October of 2010, and I was only instructed to work "Tea Party"/ "Patriot"/"9/12" organizations.**[55] (emphasis added)

Ron Bell, who replaced Hofacre in overseeing the growing backlog of applications in Cincinnati, similarly testified during a transcribed interview that he only received Tea Party applications from October 2010 until July 2011. He testified:

[54] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).
[55] July 18th Hearing, *supra* note 28.

Q Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A Correct.

Q And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

***

A Does that include 9/12 and Patriot?

Q Yes, yes.

A Yes.

Q Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A Correct.

***

Q Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A Yes.

Q And what was that criteria?

A It was solicited on the Emerging Issues tab of the BOLO report.

Q And what did that say? What did that Emerging Issue tab on the BOLO say?

A In July 20 --

Q In October 2010 we'll start.

A I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.

Q And do you recall how many cases you inherited from Ms. Hofacre?

A 50 to 100.

Q And were those only Tea Party-type cases as well?

A To the best of my knowledge.[56]

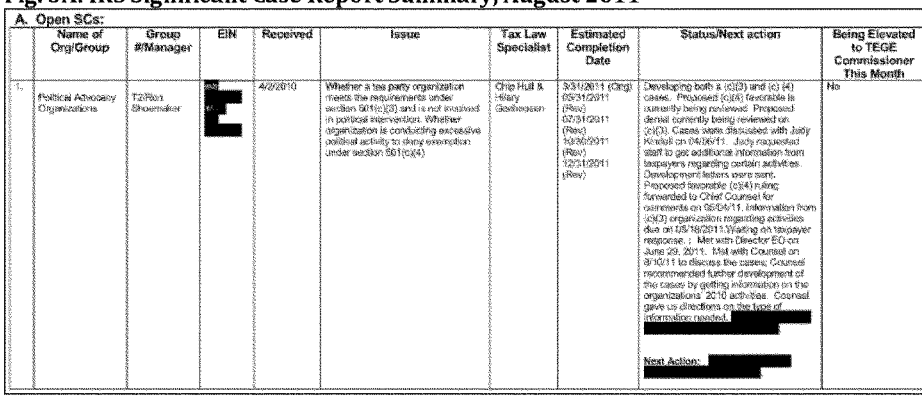
The IRS continued to target Tea Party groups after the BOLO criteria were broadened

From material produced to the Committee, it is apparent that Exempt Organizations Director Lois Lerner began orchestrating in late 2010 a "c4 project that will look at levels of lobbying and pol[itical] activity" of nonprofits, careful that the effort was not a "*per se* political project."[57] Consistent with this goal, Lerner ordered the implementation of new screening criteria for the Tea Party cases in summer 2011, broadening the BOLO language to "advocacy organizations." According to testimony received by the Committee, Lerner ordered the language changed from "Tea Party" because she viewed the term to be "too pejorative."[58] While avoiding *per se* political scrutiny, other documents obtained by the Committee suggest that Lerner's change was merely cosmetic. These documents show that the IRS still intended to target and scrutinize Tea Party applications, despite the facial changes to the BOLO criteria.

An internal "Significant Case Report" summary chart prepared in August 2011 illustrates that Lerner's change was merely cosmetic (figures 3A and 3B). While the name of entry was changed "political advocacy organizations," the description of the issue continued to reference the Tea Party movement.[59] The issue description read: "Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)."[60]

[56] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).
[57] E-mail from Lois Lerner, Internal Revenue Serv., to Cheryl Chasin et al., Internal Revenue Serv. (Sept. 16, 2010). [IRSR 191030]
[58] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[59] Internal Revenue Serv., Significant Case Report (Aug. 31, 2011). [IRSR 151653]
[60] *Id.*

Fig. 3A: IRS Significant Case Report Summary, August 2011[61]



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	[redacted]	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 excessive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goldberg	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 04/26/11. 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 10/18/2011.Waiting on taxpayer response. ; Met with Director EO on June 29, 2011. Mtg 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. [redacted] Next Action: [redacted]	No

Fig. 3B: IRS Significant Case Report Summary, August 2011 (enlarged)[62]

	Name of Org/Group	Group #/Manager	EIN	Received	Issue
1.	Political Advocacy Organizations	T2/Ron Shoemaker	[redacted]	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 excessive political activity to deny exemption under section 501(c)(4)

Likewise, in comparing the individual sensitive case report prepared for the Tea Party cases in June 2011 with the report prepared in September 2012, it is apparent that the BOLO criteria changed was superficial. The reports' issue summaries are nearly identical, except for replacing "Tea Party" with "advocacy organizations."[63] The June 2011 sensitive case report (figure 4A) identified the issue as: "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."[64]

[61] *Id.*
[62] *Id.*
[63] *Compare* Internal Revenue Serv., Sensitive Case Report (June 17, 2011) [IRSR 151687-88], *with* Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[64] Internal Revenue Serv., Sensitive Case Report (June 17, 2011). [IRSR 151687-88]

Fig. 4A: IRS Sensitive Case Report for Tea Party cases, June 17, 2011[65]

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 approximately twenty-two applications from organizations which have applied for recognition of exemption 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 intervention or, alternatively, in nonexempt political activity.

The September 2012 sensitive case report (figure 4B) identified the issue as: "These organizations are 'advocacy organizations,' and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis."[66]

Fig. 4B: IRS Sensitive Case Report for "Advocacy Organizations," Sept. 18, 2012[67]

CASE OR ISSUE SUMMARY:
These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.

Reading these items together, it is clear that although the BOLO language was changed to broader "political advocacy organizations," the IRS still intended to identify and single out Tea Party applications for scrutiny. Ron Bell testified that after the BOLO change in July 2011, he received more applications than just Tea Party cases. He testified:

> Q And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?
>
> A July.
>
> Q Of 2011?
>
> A Yes, sir.

[65] *Id.*
[66] Internal Revenue Serv., Sensitive Case Report (Sept. 18, 2012). [IRSR 150608-09]
[67] *Id.*

Q And you were going to say the BOLO became more, and then you were cut off. What were you going to say?

A It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that's advocating for let's not kill the cats that get picked up by the local government in whatever cities.[68]

Bell also stated that while he could not process the Tea Party applications because he was awaiting guidance from Washington, he could process the non-Tea Party applications. He testified:

Q Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?

A You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?

Q Other type, yes.

A No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.

Q Okay.

A They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.

Q And so they were like the . . . cat type cases you were discussing earlier?

A Yes.

***

Q After the July 2011 change to the BOLO, how long did you perform the secondary screening?

A Up until July 2012.

Q So, for a whole year?

A Yeah.

[68] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

Q And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?

A Yeah, and then the BOLO changed about midway through that timeframe.

Q Okay.

A To make it where we put the note on there that we don't need the general advocacy.

Q And after the BOLO changed in January 2012, did that affect your secondary screening process?

A There was less cases to be reviewed.

Q Okay. **So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?**

A Correct.[69] (emphasis added).

The IRS's own retrospective review shows the targeted applications were predominantly conservative-oriented

In July 2012, Lerner asked her senior technical advisor, Judith Kindell, to conduct an assessment of the political affiliation of the applications in the IRS backlog. On July 18, Kindell reported back to Lerner that of all the 501(c)(4) applications, having been flagged for additional scrutiny, at least 75 percent were conservative, "while fewer than 10 [applications, or 5 percent] appear to be liberal/progressive leaning groups based solely on the name."[70] Of the 501(c)(3) applications, Kindell informed Lerner that "slightly over half appear to be conservative leaning groups based solely on the name."[71] Unlike Tea Party cases, the Oversight Committee's review has received no testimony from IRS employees that any progressive groups were scrutinized because of their organization's expressed political beliefs.

[69] *Id.*
[70] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[71] *Id.*

Fig. 5: E-mail from Judith Kindell to Lois Lerner, July 18, 2012[72]

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.

Documents and testimony obtained by the Committee demonstrate that the IRS sought to identify and scrutinize Tea Party applications. For fifteen months beginning in February 2010, the IRS systematically identified, separated, and delayed Tea Party applications – and only Tea Party applications. Even after the IRS broadened the screening criteria in the summer of 2011, internal documents confirm that that agency continued to target Tea Party groups.

The IRS treated Tea Party applications differently from other applications

Evidence obtained by the Committee in the course of its investigation proves that the IRS handled conservative applications distinctly from other tax-exempt applications. In February 2011, Lerner directed Michael Seto, the manager of Exempt Organizations Technical Unit, to put the Tea Party test cases through a "multi-tier" review.[73] Lerner wrote to Seto: "This could be the vehicle to go to court on the issue of whether Citizen's [*sic*] United overturning ban on corporate

[72] *Id.*

[73] Transcribed interview of Michael Seto, Internal Revenue Serv., in Wash., D.C. (July 11, 2013).

spending applies to tax exempt rule. Counsel and Judy Kindell need to be in on this one please."[74]

Carter Hull, an IRS specialist with almost 50 years of experience, testified that this multi-tier level of review was unusual. He testified:

> Q Have you ever sent a case to Ms. Kindell before?
>
> A Not to my knowledge.
>
> Q This is the only case you remember?
>
> A Uh-huh.
>
> Q Correct?
>
> A This is the only case I remember sending directly to Judy.
>
> ***
>
> Q Had you ever sent a case to the Chief Counsel's office before?
>
> A I can't recall offhand.
>
> Q You can't recall. So in your 48 years of experience with the IRS, you don't recall sending a case to Ms. Kindell or a case to IRS Chief Counsel's office?
>
> A To Ms. Kindell, I don't recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can't give you those.
>
> Q Sitting here today you don't remember?
>
> A I don't remember.[75]

Similarly, Elizabeth Hofacre, the Cincinnati-based revenue agent initially assigned to develop cases, told the Committee during a July 2013 hearing that the involvement of Washington was "unusual."[76] She testified:

> I never before had to send development letters that I had drafted to EO

[74] E-mail from Lois Lerner, Internal Revenue Serv., to Michael Seto, Internal Revenue Serv. (Feb. 1, 2011). [IRSR 161810]

[75] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).

[76] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of Elizabeth Hofacre).

Technical for review, and I never before had to send copies of applications and responses that were assigned to me to EO Technical for review. I was frustrated because of what I perceived as micromanagement with respect to these applications.[77]

Hofacre's successor on the cases, Ron Bell, also told the Committee that it was "unusual" to have to wait on Washington to move forward with an application.[78] He testified:

Q So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?

A I'm not sure if I understand that.

Q I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?

A No.

Q So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?

A No.

***

Q In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?

A Yes.

Q And what was different?

A Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.

Q You had not?

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[77] *Id.*

[78] Transcribed interview of Ronald Bell, Internal Revenue Serv., in Wash., D.C. (June 13, 2013).

A Well, not a whole group of cases.[79]

Another Cincinnati employee, Stephen Seok, testified that the type of activities that the conservative applicants conducted made them different from other similar applications he had worked in the past. He testified:

Q And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

***

A **Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4)**.

***

Q **So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?**

A **Yeah, I think that's a fair statement**. But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.

Q **So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?**

A **Right**. Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.[80] (emphases added).

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[79] *Id.*

[80] Transcribed interview of Stephen Daejin Seok, Internal Revenue Serv., in Wash., D.C. (June 19, 2013).

This evidence shows that the IRS treated conservative-oriented Tea Party applications differently from other tax-exempt applications, including those filed by liberal-oriented organizations. Testimony indicates that the IRS instituted new procedures and different hurdles for the review of Tea Party applications. What would otherwise be a routine review of an application became unprecedented scrutiny and delays for these Tea Party groups.

Myth versus fact: How Democrats' claims of bipartisan targeting are not supported by the evidence

In light of the evidence available to the Committee and under close examination, each Democratic argument fails. Despite their claims that liberal-leaning groups were targeted in the same manner as conservative applicants, the facts do not bear out their assertions. Instead, the Committee's investigation and public information shows the following:

- IRS BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny;
- Some liberal-oriented organizations were identified for scrutiny because of objective, non-political concerns, but not because of their political beliefs;
- Substantially more conservative-leaning applicants than liberal-oriented applicants were caught in the IRS's backlog;
- The IRS treated Tea Party applicants differently from "progressive" groups;
- The IRS treated Tea Party applicants differently from ACORN successor groups;
- The IRS treated Tea Party applicants differently from Emerge affiliate groups; and
- The IRS treated Tea Party applicants differently from Occupy groups.

When carefully examined, these facts refute the myths perpetrated by congressional Democrats and the Administration that the IRS engaged in bipartisan targeting. The facts show, instead, that the IRS targeted Tea Party groups for systematic scrutiny and delay.

Perhaps most telling is the IRS's own actions. When Lois Lerner publicly apologized for the IRS's targeting of Tea Party applicants, she offered no such apology for its targeting of any liberal groups. When asked if the IRS had treated liberal groups inappropriately, Lerner responded: "I don't have any information on that."[81] This admission severely undercuts Democratic *ex post* allegations of bipartisan targeting.

BOLO entries for liberal groups and terms only appear on lists used for awareness and were never used as a litmus test for enhanced scrutiny

Congressional Democrats and some in the Administration claim that the IRS targeted liberal groups because some liberal-oriented organizations appeared on entries of the IRS BOLO

[81] Aaron Blake, *'I'm not good at math': The IRS's public relations disaster*, WASH. POST, May 10, 2013.

lists.[82] This claim is not supported by the facts. The presence of an organization or a group of organizations on the IRS BOLO list did not necessarily mean that the IRS targeted those groups. As the Ways and Means Committee phrased it, "being on a BOLO is different from being targeted and abused by the IRS."[83] A careful examination of the evidence demonstrates that only conservative groups on the IRS BOLO lists experienced systematic scrutiny and delay.

The Democratic falsehood rests on a fundamental misunderstanding of the structure of the BOLO list. The BOLO list was a comprehensive spreadsheet document with separate tabs designed for information intended for different uses. For example, the "Watch List" tab on the BOLO document was designed to notify screeners of potential applications that the IRS has not yet received.[84] The "TAG Issues" tab listed groups with potentially fraudulent applications. The "Emerging Issues" tab, contrarily, was designed to alert screeners to groups of applications that the IRS has *already received* and that presented special problems.[85] Therefore, whereas the Watch List tab noted hypothetical applications that could be received and TAG Issues tab noted fraudulent applications, the Emerging Issues tab highlighted non-fraudulent applications that the IRS was actively processing.

The Tea Party entry on the IRS BOLO appears on the "Emerging Issues" tab, meaning that the IRS had already received Tea Party applications. The liberal-oriented groups on the BOLO list appear on either the Watch List tab, meaning that the IRS was merely notifying its screeners of the potential for those groups to apply, or the TAG Issues tab, indicating a concern for fraud. In effect, then, whereas the appearance of Tea Party groups on the BOLO signifies the *actuality* of review and subsequent delay, the appearance of the liberal groups on the BOLO signifies either the *possibility* that some group may apply in the future or the potential for fraud in a group's application.

The differences in where the entries appear on the BOLO document manifests in the IRS's differential treatment of the groups. According to evidence known to the Committee, only Tea Party applications appearing on the Emerging Issues tab resulted in systematic scrutiny and delay. Although some liberal groups appeared on versions of the BOLO, their mere presence on the document did not result in systematic scrutiny and delay – contrary to Democratic claims of bipartisan IRS targeting.

The IRS identified some liberal-oriented groups due to objective, non-political concerns, but not because of their political beliefs

Where the IRS identified liberal-oriented groups for scrutiny, evidence shows that it did so for objective, non-political reasons and not because of the groups' political beliefs. For

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[82] *See, e.g., Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013); The White House, Press Briefing by Press Secretary Jay Carney, 2/3/14, http://www.whitehouse.gov/photos-and-video/video/2014/02/03/press-briefing#transcript.

[83] H. Comm. on Ways & Means, Being on a BOLO is Different from Being Targeted and Abused by the IRS (June 24, 2013), http://waysandmeans house.gov/news/documentsingle.aspx?DocumentID=340314.

[84] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]

[85] *Id.*

instance, the IRS scrutinized Emerge America applications for conveying impermissible benefits to a private entity, which is prohibited for nonprofit groups.[86] The IRS scrutinized ACORN successor groups due to concerns that the organizations were engaged in an abusive scheme to rebrand themselves under a new name.[87] Likewise, the IRS included an entry for "progressive" on its BOLO list out of concern that the groups' partisan campaign activity "may not be appropriate" for 501(c)(3) status, under which there is an absolute prohibition on campaign intervention.[88] Unlike the Tea Party applications, which the IRS scrutinized for their social-welfare activities, the Committee has received no indication that the IRS systematically scrutinized liberal-oriented groups because of their political beliefs.

Substantially more conservative groups were caught in the IRS application backlog

Another familiar refrain from the Administration and congressional Democrats is that the IRS targeted liberal groups because left-wing groups were included in the IRS backlog along with conservative groups. Ways and Means Ranking Member Sander Levin (D-MI) alleged that the IRS engaged in bipartisan targeting because some "progressive groups were among the 298 applications that TIGTA reviewed in their audit and received heightened scrutiny."[89] Similarly, Representative Gerry Connolly (D-VA) said that "the tilt . . . included progressive titles as well as conservative titles and that they were equally stringent."[90] These allegations are misleading. Several separate assessments of the IRS backlog prove that substantially more conservative groups than liberal groups were caught in the IRS backlog.

An internal IRS analysis conducted for Lois Lerner in July 2012 found that 75 percent of the 501(c)(4) applications in the backlog were conservative, "while fewer than 10 [applications] appear to be liberal/progressive leaning groups based solely on the name."[91] The same analysis found that "slightly over half [of the 501(c)(3) applications] appear to be conservative leaning groups based solely on the name."[92] A Ways and Means examination conducted in 2013 similar found that the backlog was overwhelmingly conservative: 83 percent conservative and only 10 percent liberal.[93]

In September 2013, *USA Today* independently analyzed a list of about 160 applications in the IRS backlog.[94] This review showed that conservative groups filed 80 percent of the

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[86] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[87] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[88] *See, e .g.*, Internal Revenue Serv., Be on the Look Out List (Nov. 9, 2010). [IRS 1349-64]
[89] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (statement of Ranking Member Sander Levin).
[90] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[91] E-mail from Judith Kindell, Internal Revenue Serv., to Lois Lerner, Internal Revenue Serv. (July 18, 2012). [IRSR 179406]
[92] *Id.*
[93] Ways and Means Committee September 18th Hearing, *supra* note 9.
[94] *See* Gregory Korte, *IRS List Reveals Concerns over Tea Party 'Propaganda,'* USA TODAY, Sept. 18, 2013.

applications in the backlog while liberal groups filed less than seven percent.[95] An earlier analysis from *USA Today* in May 2013 showed that for 27 months beginning in February 2010, the IRS did not approve any tax-exempt applications filed by Tea Party groups.[96] During that same period, the IRS approved "perhaps dozens of applications from similar liberal and progressive groups."[97]

Testimony received by the Committee supports this conclusion. During a hearing of the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, Jay Sekulow – a lawyer representing 41 groups targeted by the IRS – testified that substantially more conservative groups were targeted and that all liberal groups targeted eventually received approval.[98] In an exchange with Representative Matt Cartwright (D-PA), Sekulow testified:

> Mr. CARTWRIGHT. And Mr. Sekulow, you were helpful with some statistics this morning, and I wanted to ask you about that. **You mentioned 104 conservative groups targeted. Was that the number?**
>
> Mr. SEKULOW. This is from the report of the IRS dated through July 29th of 2013 – **104 conservative organizations in that report were targeted**.
>
> Mr. CARTWRIGHT. Thank you. **And then seven progressive targeted groups**?
>
> Mr. SEKULOW. **Seven progressive targeted groups, all of which received their tax exemption**.
>
> Mr. CARTWRIGHT. Does it give the total number of applications? In other words, 104 conservative groups targeted. How many – how many applied? How many conservative groups applied?
>
> Mr. SEKULOW. In the TIGTA report there was – I think the number was 283 that they had become part of the target. But actually, applications, a lot of the IRS justification for this, at least purportedly, was an increase in applications, and there was actually a decrease in the number.
>
> Mr. CARTWRIGHT. Right. And does it give the number of progressive groups that applied for tax-exempt status?

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[95] *Id.*

[96] Gregory Korte, *IRS Approved Liberal Groups while Tea Party in Limbo*, USA TODAY, May 15, 2013.

[97] *Id.*

[98] *"The IRS Targeting Investigation: What Is the Administration Doing?": Hearing before the Subcomm. on Economic Growth, Job Creation, and Regulatory Affairs of the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) (question and answer with Rep. Matt Cartwright).

Mr. SEKULOW. No, the only report that has the progressive –

Mr. CARTWRIGHT. No, no?

Mr. SEKULOW. The one that I have just is the – the report I have in front of me is the one through the – which just has the seven.

Mr. CARTWRIGHT. OK. All right, thank you.

MR. SEKULOW. None of those have been denied, though.[99] (emphases added).

Contrary to the Democratic claim that the IRS targeting of liberal groups was "equally stringent" to conservative groups,[100] the overwhelming majority of applications in the IRS backlog were filed by conservative-leaning organizations. This evidence further demonstrates that the IRS did not engage in bipartisan targeting.

The IRS treated Tea Party applicants differently than "progressive" groups

Democrats in Congress and the Administration argue that the IRS treated "progressive" groups in a manner similar to Tea Party applicants. Because the IRS BOLO list had an entry for "progressives," Democrats allege that "progressive groups were singled out for scrutiny in the same manner as conservative groups,"[101] and that "the progressive groups were targeted side by side with their tea party counterpart groups."[102] Again, the evidence available to the Committee does not support these Democratic assertions. Rather, the evidence clearly shows that the IRS did not subject "progressive" groups to the same type of systematic scrutiny and delay as conservative applicants.

Perhaps the most significant difference between the IRS's treatment of Tea Party applicants and "progressive" groups is reflected in the IRS BOLO lists. The Tea Party entry was located on the tab labeled, "Emerging Issues," meaning that the IRS was actively screening for similar cases.[103] The "progressive" entry, however, was located on a tab labeled "TAG historical," meaning that the IRS interest in those cases was dormant.[104] Cindy Thomas, the manager of the IRS Cincinnati office, explained this difference during a transcribed interview with Committee staff.[105] She told the Committee that unlike the systematic scrutiny given to the

[99] *Id.*
[100] *The Last Word with Lawrence O'Donnell* (MSNBC television broadcast Mar. 5, 2014) (interview with Representative Gerry Connolly).
[101] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[102] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Joseph Crowley).
[103] *See* Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[104] *Id.*
[105] Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C. (June 28, 2013).

conservative-oriented applications as a result of the BOLO, "progressive" cases were never automatically elevated to the Washington office as a whole. She testified:

Q Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A I don't know if it was from November of 2010, but –

Q This is an example of the BOLO, though?

A Yes.

Q Okay. And, ma'am, under what has been labeled as tab 2, TAG Historical?

A Yes.

***

Q Let's turn to page 1354.

A Okay.

Q Do you see that, it says -- the entry says progressive?

A Yes.

Q This is under TAG Historical, is that right?

A Yes.

Q So this is an issue that hadn't come up for a while, is that right?

A Right.

Q And it doesn't note that these were referred anywhere, is that correct? What happened with these cases?

A This would have been on our group as – because of – remember I was saying it was consistency-type cases, so it's not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.

Q **Okay. And were they worked any different from any other cases that EO Determinations had?**

A **No. They would have just been worked consistently by one group of agents**.

Q Okay. And were they cases sent to Washington?

A I'm not – I don't know.

Q Not that you are aware?

A I'm not aware of that.

Q As the head of the Cincinnati office you were never aware that these cases were sent to Washington?

A There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.

Q Sure. But these cases identified as progressive as a whole were never sent to Washington?

A Not as a whole.[106]

The difference in where the entries appeared in the BOLO list resulted in disparate treatment of Tea Party and "progressive" groups. Unlike the systematic scrutiny given to Tea Party applicants, "progressive" cases were never similarly scrutinized.

The House Ways and Means Committee, with statutory authority to review confidential taxpayer information, concluded that the IRS treated conservative tax-exempt applicants differently than "progressive" groups. The Ways and Means Committee's review found that while the IRS approved only 45 percent of conservative applicants, it approved 100 percent of groups with "progressive" in their name.[107] Likewise, Acting IRS Commissioner Daniel Werfel testified before the Way and Means Committee:

Mr. REICHERT. Mr. Werfel, isn't it true that 100 percent of tea party applications were flagged for extra scrutiny?

Mr. WERFEL. I think that – yes. The framework from the BOLO. It's my understanding, the way the process worked is if there's "tea party" in the application it was automatically moved into -- into this area of further review, yes.

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[106] *Id.*

[107] *Hearing on the Internal Revenue Service's Exempt Organizations Division Post-TIGTA Audit: Hearing before the Subcomm. on Oversight of the H. Comm. on Ways & Means*, 113th Con. (2013) (opening statement of Chairman Boustany).

Mr. REICHERT. OK, and you – you know how many progressive groups were flagged?

Mr. WERFEL. I do not have that number.

Mr. REICHERT. I do.

Mr. WERFEL. OK.

Mr. REICHERT. Our investigation shows that there were seven flagged. Do you know how many were approved?

Mr. WERFEL. I do not have that number at my fingertips.

Mr. REICHERT. All of those applications were approved.[108]

The IRS's independent inspector general has repeatedly confirmed the Ways and Means Committee's assessment. During the Oversight Committee's July 2013 hearing, TIGTA J. Russell George told Members that "progressive" groups were not subjected to the same systematic treatment as Tea Party applicants. He testified:

> With respect to the 298 cases that the IRS selected for political review, as of the end of May 2012, three have the word "progressive" in the organization's name; another four were used—are used, "progress," none of the 298 cases selected by the IRS, as of May 2012, used the name "Occupy."[109]

Mr. George also informed Congress that at least 14 organizations with "progressive" in their name were not held up and scrutinized by the IRS.[110] "In total," Mr. George wrote, "**30 percent of the organizations we identified with the words 'progress' or 'progressive' in their names were process as potential political cases. In comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases** during the timeframe of our audit."[111] (emphasis added).

Documents produced by the IRS support the finding of disparate treatment toward Tea Party groups. Notes from one training session in July 2010 reflect that the IRS ordered screeners to transfer Tea Party applications to a special group for "secondary screening."[112] The same notes show that the screeners were asked to "flag" progressive groups.[113] But multiple

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[108] *Hearing on the Status of IRS Review of Taxpayer Targeting Practices: Hearing before the H. Comm. on Ways & Means*, 113th Cong. (2013) (question and answer with Representative Dave Reichert).
[109] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).
[110] Letter from J. Russell George, Treasury Inspector Gen. for Tax Admin., to Sander M. Levin, H. Comm. on Ways & Means (June 26, 2013).
[111] *Id.*
[112] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[113] *Id.*

interviews with IRS employees who worked individual cases have yielded no evidence that these "flags" or frontline reviews for political activity led to enhanced scrutiny – except for Tea Party organizations. One sentence on the notes explicitly reminds screeners that "progressive' applications are not considered "Tea Parties.'"[114] These notes confirm testimony from Elizabeth Hofacre, the "Tea Party Coordinator/Reviewer," who told the Committee that she only worked Tea Party cases.[115]

Fig. 6: IRS Screening Workshop Notes, July 28, 2010[116]

Screening Workshop Notes - July 28, 2010 2

- The emailed attachment outlines the overall process.
- Glenn deferred additional statements and/or questions to John Shafer on yesterday's developments; how they affect the screening process and timeline.
- Concerns can be directed to Glenn for additional research if necessary.

Current/Political Activities: Gary Muthert

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
  - 9/12 Project,
  - Emerge,
  - Progressive
  - We The People,
  - Rally Patriots, and
  - Pink-Slip Program.

- Elizabeth Hofacre, Tea Party Coordinator/Reviewer
  - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
  - "Progressive" applications are not considered "Tea Parties"

Despite creative interpretations of this individual document, the full evidence rebuts the Democratic claim that the IRS targeted "progressive" groups alongside Tea Party applicants. Although "progressive" groups were referenced in the IRS BOLO lists and internal training documents, Democrats in Congress and the Administration have repeatedly ignored critical distinctions that qualify their meaning. A careful evaluation of facts in context reveals one conclusion: the IRS treated Tea Party groups differently than "progressive" groups.

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[114] *Id.*

[115] Transcribed interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. (May 31, 2013).

[116] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

The IRS treated Tea Party applicants differently than ACORN successor groups

Democratic defenders of the IRS misconduct also argue that the IRS treated Tea Party applicants similar to ACORN successor groups. ACORN endorsed President Barack Obama in his election campaign and had established deep political ties before its network of affiliates delinked and rebranded themselves following scandalous revelations about the organization in 2009.[117] To support allegations about ACORN being targeted, Democrats have pointed to BOLO lists and training documents that "instructed [IRS] screeners to single out for heightened scrutiny . . . ACORN successors."[118]

But allegations of targeting fall flat. First, ACORN successor groups appear on the "Watch List" tab of the BOLO list, unlike Tea Party groups, which appear on the "Emerging Issues" tab.[119] According to IRS documents, the Watch List tab was intended to include applications "not yet received," or "issues [that] are the result of significant world events," or "organizations formed as a result of controversy."[120] The Emerging Issue tab was created to spot groups of applications *already* received by the IRS. An internal IRS training document specifically cites "Tea Party cases" as an example of an emerging issue; it does not similarly cite ACORN successor groups.

Second, Robert Choi, the director of EO Rulings and Agreements until December 2010, testified to several differences between how the IRS treated ACORN successors and how the IRS treated Tea Party applicants. He told the Committee that unlike the Tea Party "test" cases, he did not recall the ACORN successor applications being subject to a "sensitive case report" or worked by the IRS Chief Counsel's office.[121] Most importantly, he explained that the IRS had objective concerns about rebranded ACORN affiliates that had nothing to do with the organization's political views. The primary concern about the ACORN successor groups, according to Choi, was whether the groups were legitimate new entities or part of an "abusive" scheme to continue an old entity under a new name.[122] Mr. Choi testified:

> Q You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?
>
> A That's correct, yes.
>
> Q But the ACORN successor groups were not subject to a sensitive case report; is that right?

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[117] Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008; Stanley Kurtz, *Inside Obama's Acorn*, NAT'L REVIEW ONLINE, May 29, 2008.
[118] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[119] *See* Internal Revenue Serv., Be on the Look Out list, "Filed 112310 Tab 5 – Watch List." [IRSR 2562-63]
[120] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[121] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).
[122] *Id.*

A I don't recall if they were listed in there, in the sensitive case report.

Q So you don't recall them being part of a sensitive case report?

A I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.

Q But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.

A Yes.

Q To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?

A I am not aware of it.

Q Are you aware of any ACORN successor groups facing application delays?

A I do not know if – well, when you say "delays," how do you –

Q Well –

A I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.

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Q And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?

A Not that they were denied previously. **These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers. And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name**; whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive

scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

Q And that's the reason they were held up?

A Yes.[123] (emphasis added).

Choi's testimony shows that the inclusion of ACRON successor groups on the BOLO list centered on a concern for whether the new groups were improperly standing in the shoes of the old groups. As the Committee has documented previously, ACORN groups received substantial attention in 2009 and 2010 for misuse of taxpayer funds and other fraudulent endeavors.[124] In fact, Congress even cut off funding for ACORN groups given widespread concerns about the groups' activities.[125] Six Democratic current members of the Oversight Committee and seven Democratic current members of the Ways and Means Committee voted to stop ACORN funding.[126] The IRS included ACORN successor groups on a special watch list, according to Choi, due to concern "as to whether or not these were, in fact, the same organizations just coming in under a new name."[127]

This information undercuts allegations by congressional Democrats that the IRS's placement of ACORN successor groups on the BOLO list signified that those groups were targeted by the IRS in the same manner as Tea Party cases. Unlike the Tea Party applicants, ACORN successor groups were placed on the IRS BOLO out of specific and unique concern for potentially fraudulent or abusive schemes and not because of their political beliefs. Once identified, even ACORN successor groups were apparently not subjected to the same systematic scrutiny and delay as Tea Party applicants.

The IRS treated Tea Party applicants differently than Emerge affiliate groups

Congressional Democrats attempt to minimize the IRS's targeting of Tea Party applicants by alleging a false analogy to the IRS's treatment of Emerge affiliate groups. Emerge touts itself as the "premier training program for Democratic women" and states as a goal, "to increase the number of Democratic women in public office."[128] In particular, citing IRS training documents, Ranking Member Sander Levin and Ranking Member Elijah Cummings argued that "the IRS

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[123] *Id.*

[124] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, IS ACORN INTENTIONALLY STRUCTURED AS A CRIMINAL ENTERPRISE? (July 23, 2009).

[125] *See* H. COMM. ON OVERSIGHT & GOV'T REFORM MINORITY STAFF, FOLLOW THE MONEY: ACORN, SEIU AND THEIR POLITICAL ALLIES (Feb. 18, 2010).

[126] *See* 155 Cong. Rec. H9700-01 (Sept. 17, 2009). The Democratic Members who opposed ACORN funding were Representatives Maloney (D-NY); Tierney (D-MA); Clay (D-MO); Cooper (D-TN); Speier (D-CA); Welch (D-VT); Levin (D-MI); Doggett (D-TX); Thompson (D-CA); Larson (D-CT); Blumenauer (D-OR); Kind (D-WI); and Schwartz (D-PA). *Id.*

[127] Transcribed interview of Robert Choi, Internal Revenue Serv., in Wash., D.C. (Aug. 21, 2013).

[128] Emerge America, www.emergeamerica.org (last visited Apr. 2, 2014).

instructed its screeners to single out for heightened scrutiny 'Emerge' organizations."[129] The evidence, once more, fails to support their contention. The IRS did not target Emerge affiliate groups in any similar manner to Tea Party applicants.

The same training documents cited by congressional Democrats as proof of bipartisan IRS targeting clearly show differences between the treatment of Tea Party applications and those filed by Emerge affiliate. The IRS ordered its screeners to transfer Tea Party applications to a special group for "secondary screening," but it asked the screeners to merely "flag" Emerge groups.[130] While another training document specifically offers the Tea Party as an example of an emerging issue, the Emerge affiliate groups were not referenced on the document.[131]

Democrats cite testimony from IRS employee Steven Grodnitzky to support their argument that the IRS engaged in bipartisan targeting. Ranking Member Cummings referenced this testimony when questioning Acting IRS Commissioner Daniel Werfel during his unsolicited testimony before the Committee on July 17, 2013.[132] Although Grodnitzky did testify that some liberal applications experienced a three-year delay,[133] he also gave testimony that contradicts the Democrats' manufactured narrative. Grodnitzky testified that unlike the Tea Party cases, which were filed by unaffiliated groups with similar ideologies, the Emerge cases were affiliated entities with different "posts" in each state.[134] He also testified that unlike the Tea Party applications, where the IRS was focused on political speech, the central issue in the Emerge applications was that the groups were conveying an impermissible private benefit upon the Democratic Party.[135] Finally, Grodnitzky testified that there were far fewer Emerge cases than Tea Party applications.[136] While Grodnitzky's testimony supports a conclusion that specific and objective concerns at the IRS led to scrutiny and delayed applications from Emerge affiliates, it does not support a parallel between these organizations and what the IRS did to Tea Party applicants.

Emerge existed as a series of affiliated organizations. One IRS employee testified that whereas the Tea Party applicants waited years for IRS action, some of the Emerge applications were approved by Cincinnati IRS employees in a "matter of hours."[137] But the IRS eventually reversed course, out of concern about impermissible private benefit. Because Emerge affiliates were seen as essentially the same organization, the IRS wanted to flag new affiliates to ensure that these new applications were considered in a consistent manner. Testimony from IRS employee, Amy Franklin Giuliano, explains why the Emerge applicants "were essentially the same organization."[138] She testified:

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[129] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).
[130] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]
[131] Internal Revenue Serv., Heightened Awareness Issues. [IRSR 6655-72]
[132] *See* July 17th Hearing, *supra* note 25.
[133] Transcribed interview of Steven Grodnitzky, Internal Revenue Serv., in Wash., D.C. (July 16, 2013).
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).
[138] Transcribed interview of Amy Franklin Giuliano, Internal Revenue Serv., in Wash., D.C. (Aug. 9, 2013).

Q The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q And the groups themselves were affiliated.

A And the groups themselves were affiliated, yes.[139]

Giuliano also told the Committee that the central issue in these cases was not impermissible political speech activity – as it was with the Tea Party applications – but instead private benefit. She testified:

Q The issue in the case you reviewed in May of 2010 was private benefit.

A Yes.

Q As opposed to campaign intervention.

A We considered whether political campaign intervention would apply, and we decided it did not.[140]

Most striking, Giuliano told the Committee that the career IRS experts recommended *denying* an Emerge application, whereas the experts recommended *approving* the Tea Party application.[141] Even then, despite the recommended approval, the Tea Party applications still sat unprocessed in the IRS backlog.

Documents and testimony received by the Committee demonstrate that the IRS never engaged in systematic targeting of Emerge applicants as it did with Tea Party groups. IRS scrutiny of Emerge affiliates appears to have been based on objective and non-controversial concerns about impermissible private benefit. Taken together, this evidence strongly rebuts any Democratic claims that the IRS treated Emerge affiliates similarly to Tea Party applicants.

The IRS treated Tea Party applicants differently than Occupy groups

Finally, congressional Democrats defend the IRS targeting of Tea Party organization by arguing that liberal-oriented Occupy groups were similarly targeted.[142] Contrary to these claims, evidence available to the Committee indicates that the IRS did not target Occupy groups.

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[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] July 18th Hearing, *supra* note 28

TIGTA found that none of the applications in the IRS backlog were filed by groups with "Occupy" in their names.[143] Several IRS employees interviewed by the Committee testified that they were not even aware of any Occupy entry on the BOLO list until after congressional Democrats released the information in June 2013.[144] Further, there is no indication that the IRS systematically scrutinized and delay Occupy applications, or that the IRS subjected Occupy applicants to burdensome and intrusive information requests. To date, the Committee has not received evidence that "Occupy Wall Street" or an affiliate organization even applied to the IRS for non-profit status.

Conclusion

Democrats in Congress and the Administration have perpetrated a myth that the IRS targeted both conservative and liberal tax-exempt applicants. The targeting is a "phony scandal," they say, because the IRS did not just target Tea Party groups, but it targeted liberal and progressive groups as well. Month after month, in public hearings and televised interviews, Democrats have repeatedly claimed that progressive groups were scrutinized in the same manner as conservative groups.[145] Because of this bipartisan targeting, they conclude, there is not a "smidgeon of corruption" at the IRS.

The problem with these assertions is that they are simply not accurate. The Committee's investigation shows that the IRS sought to identify and single out Tea Party applications. The facts bear this out. The initial "test" applications were filed by Tea Party groups. The initial screening criteria identified only Tea Party applications. The revised criteria still intended to identify Tea Party activities. The IRS's internal review revealed that a substantial majority of applications were conservative. In short, the IRS treated conservative tax-exempt applications in a manner distinct from other applications, including those filed by liberal groups.

Evidence available to the Committee contradicts Democrats' claims about bipartisan targeting. Although the IRS's BOLO list included entries for liberal-oriented groups, only Tea Party applicants received systematic scrutiny because of their political beliefs. Public and nonpublic analyses of IRS data show that the IRS routinely approved liberal applications while holding and scrutinizing conservative applications. Even training documents produced by the IRS indicate stark differences between liberal and conservative applications: "'progressive' applications are not considered "Tea Parties."'[146] These facts show one unyielding truth: Tea Party groups were target because of their political beliefs, liberal groups were not.

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[143] *"The IRS's Systematic Delay and Scrutiny of Tea Party Applications": Hearing before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2013) (statement of J. Russell George).

[144] *See, e.g.*, Transcribed interview of Elizabeth Kastenberg, Internal Revenue Serv., in Wash., D.C. (July 31, 2013); Transcribed interview of Sharon Light, Internal Revenue Serv., in Wash., D.C. (Sept. 5, 2013); Transcribed interview of Joseph Grant, Internal Revenue Serv., in Wash., D.C. (Sept. 25, 2013); Transcribed interview of Nancy Marks, Internal Revenue Serv., in Wash., D.C. (Oct. 8, 2013); Transcribed interview of Justin Lowe, Internal Revenue Serv., in Wash., D.C. (July 23, 2013).

[145] Press Release, H. Comm. on Ways and Means Democrats & H. Comm. on Oversight & Gov't Reform Democrats, New Documents Highlight IRS Scrutiny of Progressive Groups (Aug. 20, 2013).

[146] Internal Revenue Serv., Screening Workshop Notes (July 28, 2010). [IRSR 6703-04]

A. Timeline for the 3 exemption applications that were referred to EOT from EOD

1. Prescott Tea Party, LLC	**2. American Junto, Inc.**	**3. Albuquerque Tea Party, Inc.**
The Applicant sought exemption under §501(c)(3) formed to educate the public on current political issues, constitutional rights, fiscal responsibility, and support for a limited government. It planned to undertake this educational activity through rallies, protests, educational videos and through its website. The organization also intended to engage in legislative activities. The case was closed FTE on May 26, 2010.	The organization applied for exemption under §501(c)(3), stating it was formed to educate voters on current social and political issues, the political process, limited government, and free enterprise. It also indicated it would be involved in political campaign intervention and legislative activities. The case was closed FTE on January 4, 2012.	The organization applied for exemption under §501(c)(4) as a social welfare organization for purposes of issue advocacy and education. A proposed adverse is being prepared on the basis that the organization's primary activity is political campaign intervention supporting candidates associated with a certain political faction, its educational activities are partisan in nature, and its activities are intended to benefit candidates associated with a specific political faction as opposed to benefiting the community as a whole.
Timeline: **2009** • **11/09/2009** → Application received by EOD. • **12/18/2009** → Case assigned to EOD specialist. **2010** • **3/08/2010** → **Date the case was referred to EOT.** Case pulled from	**Timeline:** **2010** • **2/11/2010** → Application was received by EOD.	**Timeline:** **2010** • **1/4/2010** → Application was received by EOD.

EOD files to send to EOT for review. • **3/11/2010** → EOD prepared a memo to transfer the case to EOT as part of EOT's review of some of the "advocacy organization" cases being received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/14/2010** → 1st development letter mailed to Taxpayer (Response due by 5/06/2010). • **5/26/2010** → Case closed FTE (90-day suspense date ended on 8/26/2010).	• **4/11/2010** → Case assigned to a specialist in EOD. • **4/25/2010** → EOD emailed EOT (Manager Steve Grodnitzky) regarding who EOD should contact for help on "advocacy organization" cases being held in screening. • **5/25/2010** → EOT requested a §501(c)(3) "advocacy organization" case be transferred from EOD to replace Prescott Tea Party, LLC, a §501(c)(3) advocacy organization applicant that had been closed FTE. • **6/25/2010** → Memo proposing to transfer the case to EOT was prepared by EOD specialist. • **6/30/2010** → **Date the case was referred to EOT.** • **7/7/2010** → 1st development letter sent (Response due by 7/28/2010). • **7/28/2010** → EOT received Taxpayer's response to 1st development letter.	• **2/22/2010** → Case assigned to EOD specialist. • **3/11/2010** → EOD prepared memo to transfer the case to EOT as part of EOT's help reviewing the "advocacy organization" cases received in EOD. • **4/02/2010** → Case assigned to EOT. • **4/21/2010** → 1st development letter sent (Response due by 5/12/2010). • **4/29/2010** → Taxpayer requested extension for time to respond to 1st development letter. TLS granted extension until 6/11/2010. • **6/8/2010** → EOT received the Taxpayer's response to 1st development letter.

	2011 • **4/27/2011** → 2nd development letter sent (Response due by 5/18/2011). • **5/18/2011** → EOT received Taxpayer's response to 2nd development letter. • **8/10/2011** → EOT met with Chief Counsel to discuss the "advocacy organization" cases pending in EOT, including American Junto (and Albuquerque Tea Party, discussed next). EOT and Counsel determined that additional development should be conducted on both. • **11/18/2011** → 3rd development letter sent (Response due by 12/9/2011). • **12/16/2011** → TLS left voicemail with Taxpayer to determine if the organization had responded or planned to respond to 3rd development letter. • **12/22/2011** → TLS again contacted the Taxpayer to determine if the organization was going to respond to 3rd development letter. The Taxpayer indicated it was not going to respond and that the organization had	**2011** • **5/13/2011** → File memo forwarded to Guidance for review. • **6/27/2011** → The case file and file memo were forwarded to Chief Counsel for review and comments regarding EOT's proposed recognition of exemption. • **8/10/2011** → EOT met with Chief Counsel to discuss the "advocacy organization" cases pending in EOT including Albuquerque Tea Party (and American Junto, discussed previously). EOT and Counsel determined additional development should be conducted on both. • **11/16/2011** → 2nd development letter sent to the Taxpayer (Response due by 12/7/2011). • **11/30/2011** → TLS spoke with Taxpayer and granted a 30-day extension to respond to the 2nd development letter. Extension was granted until 1/6/2012.

	dissolved. An FTE letter was prepared. **2012** • **1/4/2012** → FTE letter mailed to the Taxpayer (90-day suspense date ends 4/4/2012).	**2012** • **1/11/2012** → EOT received Taxpayer's response to 2nd development letter. • **1/24/2012** → After review of file, TLS recommended a proposed denial. The TLS is currently drafting a proposed denial.

B. Timeline for informal technical assistance which was provided by EOT Personnel to EOD between May 2010 to October 2010

- 5/17/2010 → EOD personnel (Liz Hofacre) contacted and referred 2 proposed development letters to an EOT personnel (Chip Hull) for informal review.
- Between May, 2010 to October 2010, EOT personnel (Chip Hull) informally reviewed approximately 26 case exemption applications and development letters on behalf of EOD. Mr. Hull provided feedback on most of the 26 exemption applications.

C. Timeline for preparation of the Advocacy Organization Guide sheet

- Late July 2011 - started drafting the guide sheet to help EOD personnel working advocacy organization cases in differentiating between the different types of advocacy and explaining the advocacy rules pertaining to various exempt organizations.
- Early November 2011 - forwarded to EOD for comments. No comments were received.

SFC 004566

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.

SFC 004567

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	[redacted]	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 excessive 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. [redacted] **Next Action:** [redacted]	No

SFC 004568

CASE NAME: (1) [redacted] (501(c)(3) applicant), (2) [redacted] (501(c)(4) applicant), (3) [redacted] (501(c)(3) applicant) **TIN/EIN:** [redacted] and [redacted] **POA:** None	**TAX PERIODS:** [redacted] **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:
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 approximately twenty-two applications from organizations which have applied for recognition of exemption 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 intervention or, alternatively, in nonexempt political activity.

CURRENT SIGNIFICANT ACTIONS ON CASE:
Met with J. Kindell to discuss organizations (2) and (3) and Service position. Ms. Kindell recommended additional development re: activities, then forward to Chief Council.

Organization (1) – closed FTE for failure to respond to a development letter.
Organization (2) – proposed favorable 501(c)(4) ruling forwarded to Chief Council for comment on 06/16/2011.
Organization (3) – additional information was received. Proposed denial was revised and forwarded 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 (2) – Wait on comments from Counsel. Organization (3) Await the results of review on the revised proposed denial. .Continue coordinated review of applications in EO Determinations.	**ESTIMATED CLOSURE DATE:** July 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: June **17, 2011**	

SFC 004570

CASE NAME: (1) [redacted] (501(c)(3) applicant), Closed FTE. (2) [redacted]. (501)(c)(4) applicant) Open. (3) [redacted] (501(c)(3) applicant) Closed FTE **TIN/EIN:** [redacted] and [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:

These organizations are "advocacy organizations," and although are separately organized, they appear to be part of a larger national political movement that may be involved in political activities. These types of advocacy organizations are followed closely in national newspapers (such as The Washington Post) almost on a regular basis. Cincinnati has in its inventory a number of applications from these types of organizations that applied for recognition of exemption under section 501(c)(3) of the Code as educational organizations and from organizations that applied for recognition of exemption under section 501(c)(4) as social welfare organizations.

CURRENT SIGNIFICANT ACTIONS ON CASE:

Organization (1) – [redacted]

Organization (2) – [redacted]. 501(c)(4) [redacted]

SFC 004571

[redacted]

SIGNIFICANT NEXT STEPS, IF ANY: Organization (2): [redacted] 6103 – 501(c)(4) - [redacted]	**ESTIMATED CLOSURE DATE:** December 31, 2012
BARRIERS TO RESOLUTION, IF ANY: Concerns are whether the organizations are primarily involved in political activities and whether substantial private benefit exists.	
SUBMITTED BY: Hilary Goehausen, SE:T:EO:RA:T:1	**MANAGER:** LIZ KASTENBERG, SE:T:EO:RA:T:2
DATE: September 18, 2012	

SFC 004572

From: Kall Jason C
Sent: Tuesday, January 10, 2012 9:09 PM
To: Lerner Lois G
Cc: Ghougasian Laurice A; Fish David L; Paz Holly O; Downing Nanette M
Subject: Workplan and background on how we started the self declarer project

Lois,

I found the string of e-mails that started us down the path of what has become the c-4, 5, 6 self declarer project. Our curiosity was not from looking at the 990 but rather data on c-4 self declarers.

Jason Kall
Manager, EO Compliance Strategies and Critical Initiatives
[redacted]

From: Chasin Cheryl D
Sent: Thursday, September 16, 2010 8:59 AM
To: Lerner Lois G; Kindell Judith E; Ghougasian Laurice A
Cc: Lehman Sue; Kall Jason C; Downing Nanette M
Subject: RE: EO Tax Journal 2010-130

That's correct. These are all status 36 organizations, which means no application was filed.

Cheryl Chasin
[redacted] (phone)
(fax)

From: Lerner Lois G
Sent: Thursday, September 16, 2010 9:58 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:

SFC 004573

[redacted]

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
[redacted](phone)
(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 that 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

SFC 004574

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 [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)
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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 that 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 political organizations accomplish little, if anything, other than perhaps a bit of *in 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, and 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 impunity, and I doubt that potential revocation of tax exemption enters into 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 name. I feel for the IRS's dilemma, especially in this wildly 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 understanding is that (c)(4)s need not file a Form 1024, but generally the IRS won't accept a Form 990 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 existence) 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 Bruce 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 to 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 application, 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.

SFC 004575

move things along. the 'clean" sheet doesn't give me any sense unless I go back to previous SCRs.

I've added Sharon so she can see what kinds of things I'm interested in.

Lois G. Lerner
Director, Exempt Organizations

From: Paz Holly O
Sent: Wednesday, February 02, 2011 11:02 AM
To: Lerner Lois G; Seto Michael C
Cc: Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

Tea Party - Cases in Determs are being supervised by Chip Hull at each step - he reviews info from TPs, correspondence to TPs, etc. No decisions are going out of Cincy until we go all the way through the process with the c3 and c4 cases here. I believe the c4 will be ready to go over to Judy soon.

HMO case ([redacted]) - When you say to push for the next Counsel meeting, with whom in Counsel are you referring? The plan had been for Sarah to meet with Wilkins and Nan on this. We think this has not happened but have not heard directly (unless Sarah has responded to your recent email on this case). I don't know that we at this level can drive that meeting.

[redacted]I will reach out to Phil to see if Nan has seen it. She was involved in the past but I don't know about recently.

On [redacted] (religious order), proposed denials typically do not go to Counsel. Proposed denial goes out, we have conference, then final adverse goes to Counsel before that goes out. We can alter that in this case and brief you after we have Counsel's thoughts.

[redacted] was not elevated at Mike Daly's direction. He had us elevate it twice after the litigation commenced but said not to continue after that unless we are changing course on the application front and going forward with processing it.

[redacted] - Our general criteria as to whether or not to elevate an SCR to Sarah/Joseph and on up is to only elevate when there has been action. [redacted] was elevated this month because it was just received. We will now begin to review the 1023 but won't have anything to report for sometime. We will elevate again once we have staked out a position and are seeking executive concurrence.

We (Mike and I) keep track of whether estimated completion dates are being moved by means of a track changes version of the spread sheet. When next steps are not reflected as met by the estimated time, we follow up with the appropriate managers or Counsel to determine the cause for the delay and agree on a due date.

From: Lerner Lois G
Sent: Tuesday, February 01, 2011 6:28 PM
To: Seto Michael C
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L; Kindell Judith E
Subject: RE: SCR Table for Jan. 2011

SFC 004576

Thanks--a couple comments

1. Tea Party Matter very dangerous. This could be the vehicle to go to court on the issue of whether Citizen's United overturning the ban on corporate spending applies to tax exempt rules. Counsel and Judy Kindell need to be in on this one please needs to be in this. Cincy should probably NOT have these cases--Holly please see what exactly they have please.

2. We need to push for the next Counsel meeting re: the HMO case Justin has. Reach out and see if we can set it up.

3. [redacted]--has that gone to Nan Marks? It says Counsel, but we'll need her on board. In all cases where it says Counsel, I need to know at what level please.

4. I assume the proposed denial of the religious or will go to Counsel before it goes out and I will be briefed?

5. I think no should be yes on the elevated to TEGE Commissioner slot for the Jon Waddel case that's in litigation--she is well aware.

6. Case involving healthcare reconciliation Act needs to be briefed up to my level please.
7. SAME WITH THE NEWSPAPER CASES--NO GOING OUT WITHOUT BRIEFING UP PLEASE.

8. The 3 cases involving [redacted] should be briefed up also.

9. [redacted] case--why "yes-for this month only" in TEGE Commissioner block?

Also, please make sure estimated due dates and next step dates are after the date you send these. On a couple of these I can't tell whether stuff happened recently or not.

Question--if you have an estimated due date and the person doesn't make it, how is that reflected? My concern is that when Exam first did these, they just changed the date so we always looked current, rather than providing a history of what occurred. perhaps it would help to sit down with me and Sue Lehman--she helped develop the report they now use.

From: Seto Michael C
Sent: Tuesday, February 01, 2011 5:33 PM
To: Lerner Lois G
Cc: Paz Holly O; Trilli Darla J; Douglas Akaisha; Letourneau Diane L
Subject: SCR Table for Jan. 2011

Here is the Jan. SCR summary.

SFC 004577

Heightened Awareness Issues

IRSR0000006655

SFC 004578

OBJECTIVES

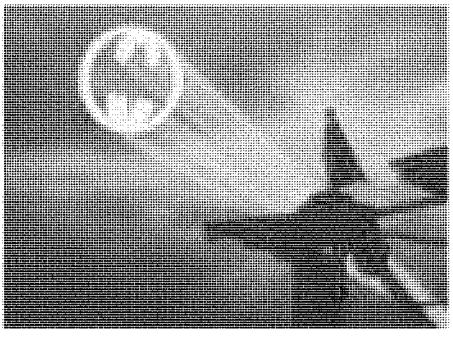
- What Are The Heightened Awareness Issues
- Definition and Examples of Each
- Issue Tracking and Notification
- What Happens When You See One?

IRSR0000006656

SFC 004579

What are Heightened Awareness Issues?

- TAG
- Emerging Issues
- Coordinated Issues
- Watch For Issues



IRSR0000006657

SFC 004580

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

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

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

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

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

What Are Coordinated Processing Issues?

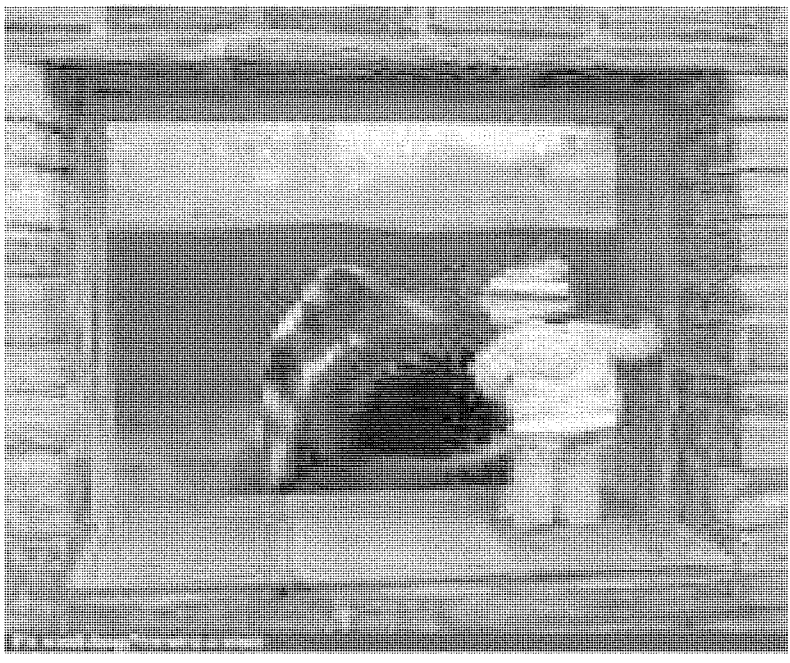
- Cases with Issues Organized for Uniform Handling
- Involves Multiple Cases
- Existing Precedent or Guidance Does Exist

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

SFC 004588

What is a Watch For Issue?

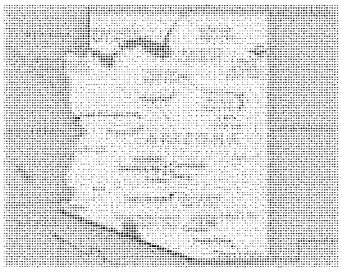


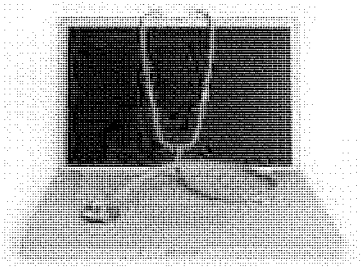
Watch For Issues:

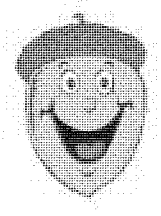
- Typically Applications Not Yet Received
- Issues are the Result of Significant Changes in Tax Law
- Issues are the Result of Significant World Events
- Special Handling is Required when Applications are Received

SFC 004590

Watch For Examples



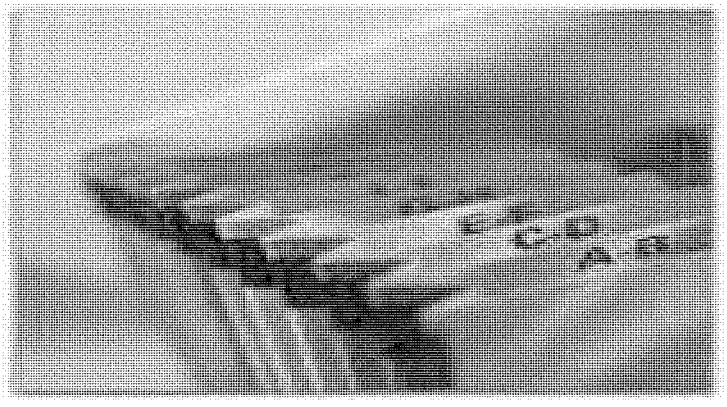




Watch For Examples Continued

- 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

Tracking and Notification



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

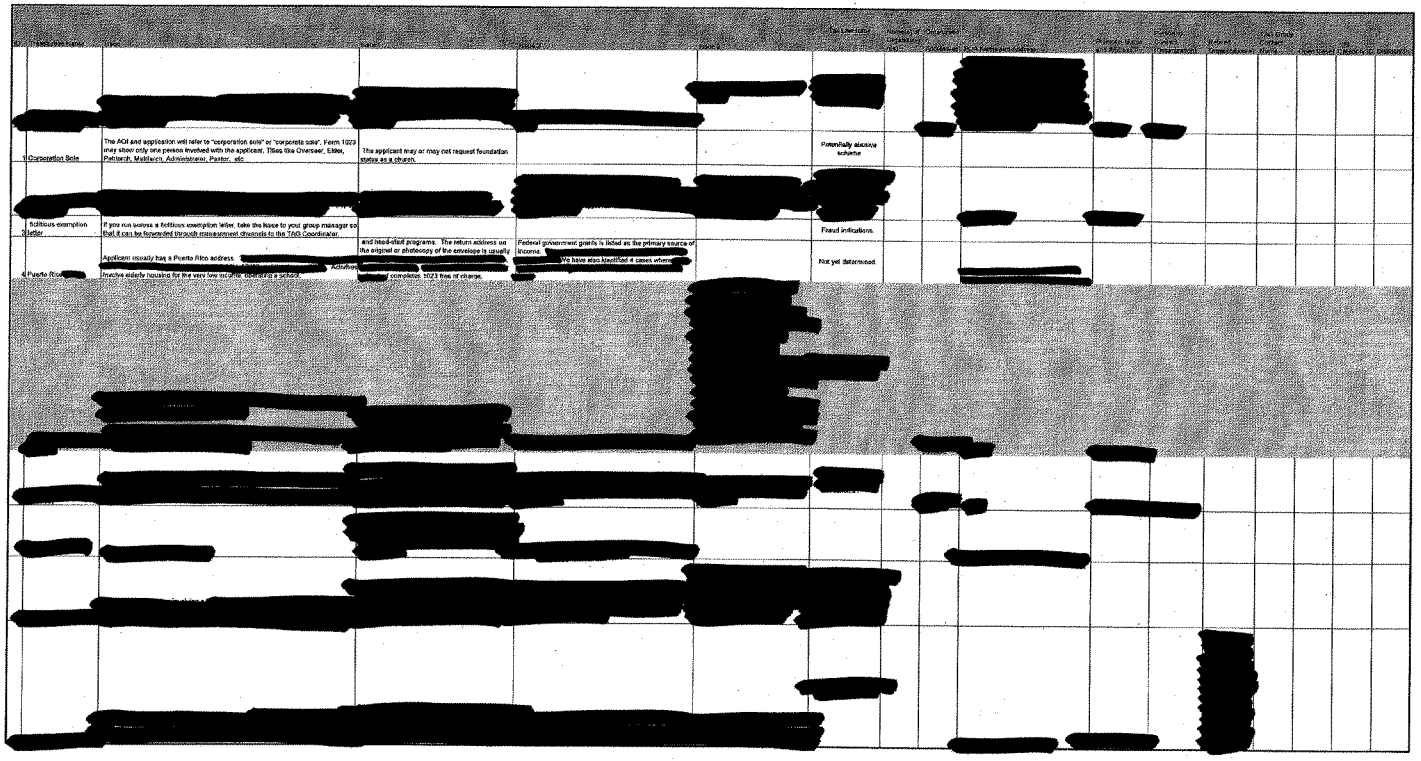
When You Spot Heightened Awareness Issues

- 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

File 11 9 10

Tab 1 - TAG

6059



[redacted]																
1	Corporation Sole	The AOI and application will refer to "corporation sole" or "corporate sole". Form 1023 may show only one person involved with the applicant. Titles like Overseer, Elder, Patriarch, Matriarch, Administrator, Pastor, etc.	The applicant may or may not request foundation status as a church.			Potentially abusive scheme										
[redacted]																
3	fictitious exemption letter	If you run across a fictitious exemption letter, take the issue to your group manager so that it can be forwarded through management channels to the TAG Coordinator.				Fraud indications.										
4	Puerto Rico [redacted]	Applicant usually has a Puerto Rico address. [redacted] Activities involve elderly housing for the very low income, [redacted] a school.	and need-start programs. The return address on the original or photocopy of the envelope is usually [redacted] completes 1023 free of charge.	Federal government grants is listed as the primary source of income. [redacted] We have also identified 4 cases where [redacted]		Not yet determined.										
[redacted]																
[redacted]																
[redacted]																
[redacted]																
[redacted]																
[redacted]																
[redacted]																
[redacted]																

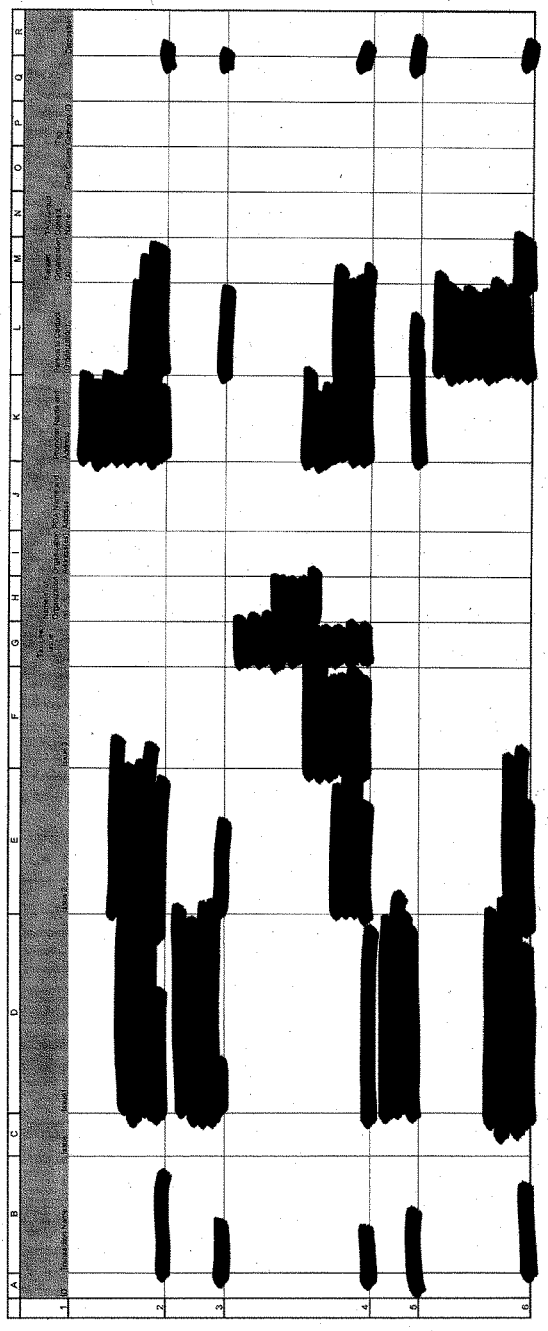
5060

File 11 9 10

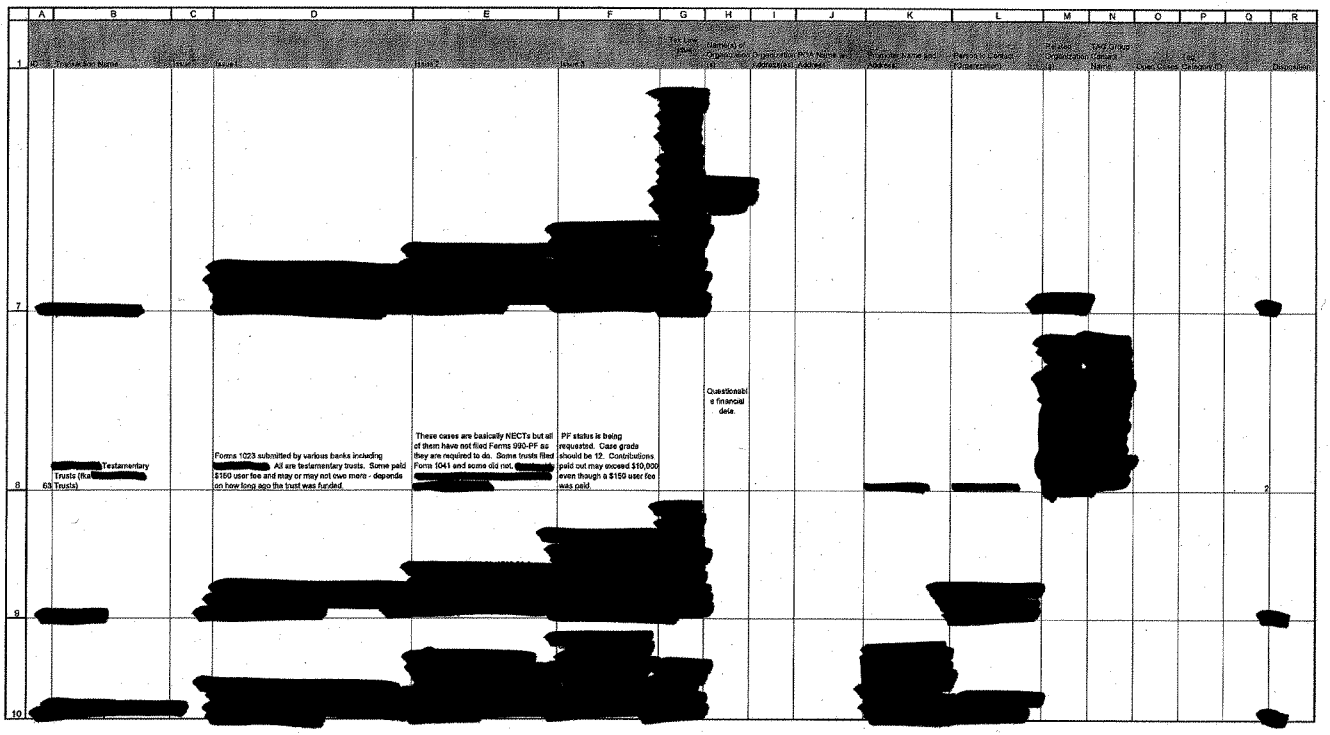
Tab 2 – TAG Historical

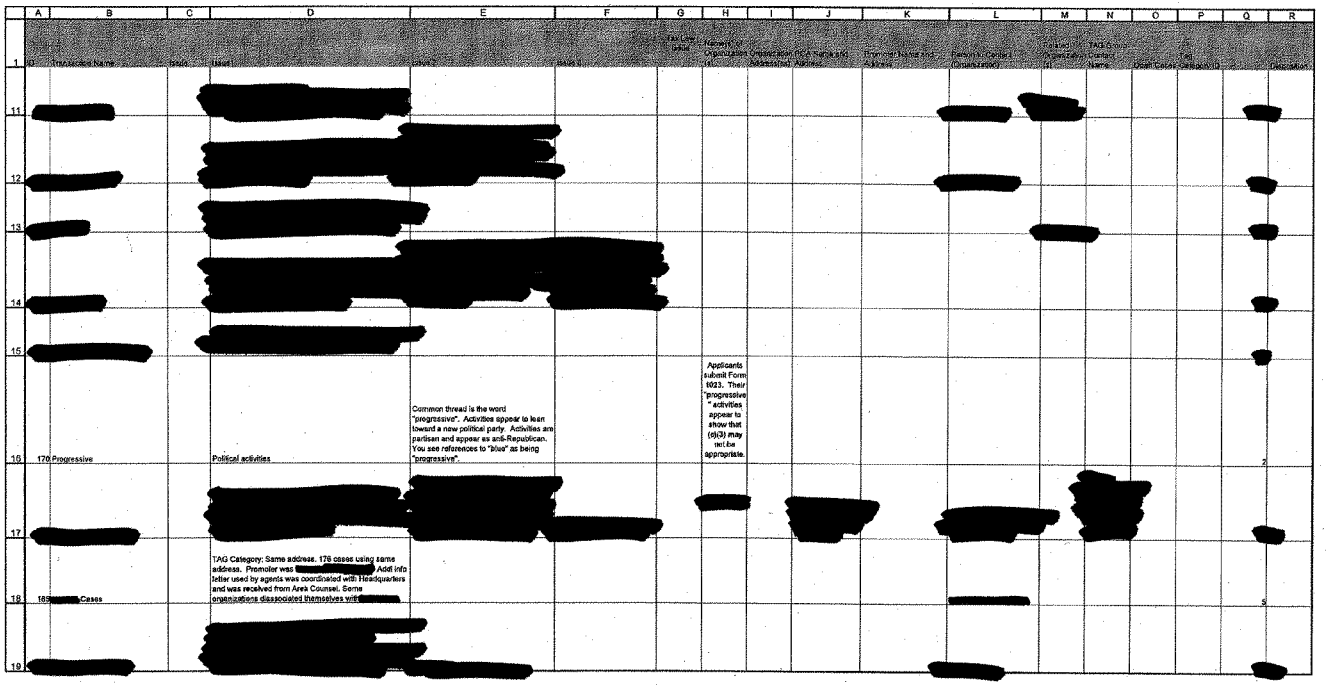
5061

SFC 004598

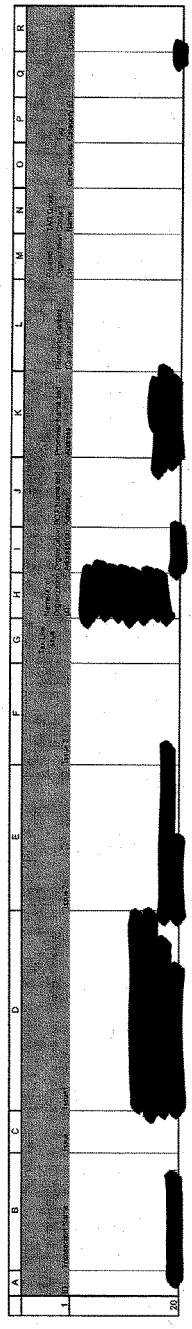


IRS0000001352


Testamentary
Trusts (Ra
63 Trusts)
Forms 1023 submitted by various banks including
All are testamentary trusts. Some paid $150 user fee and may or may not owe more - depends on how long ago the trust was funded.
These cases are basically NECTs but all of them have not filed Forms 990-PF as they are required to do. Some trusts filed Form 1041 and some did not.
PF status is being requested. Case grade should be 12. Contributions paid out may exceed $10,000 even though a $150 user fee was paid.
Questionable financial data.


Applicants submit Form 1023. Their "progressive" activities appear to show that (c)(3) may not be appropriate.
Common thread is the word "progressive". Activities appear to lean toward a new political party. Activities are partisan and appear as anti-Republican. You see references to "blue" as being "progressive".
170 Progressive
Political activities
TAG Category: Same address. 176 cases using same address. Promoter was [redacted] Add info letter used by agents was coordinated with Headquarters and was received from Area Counsel. Some organizations disassociated themselves with [redacted]
Cases

SFC 004601



IRS0000001355

File 11 9 10

Tab 3 – Emerging Issues

5066

	A	B	C	D	E	F	G	H
1	Issue Name	Issue Description		Issue Number	Alerts (Year and Number)	Disposition of Emerging Issue	Current Status (Opened or Closed)	
2	501(c)(2)	These cases involve a commingled pension trust holding title to a high dollar note receivable secured by real estate. The application appear to be prepared from a template. The fund manager is usually [redacted]		x	x	Any future cases may be closed on merit if applicable. EOT determined these applications qualify under 501(c)(2). A referral was completed to address any EP concerns.	Closed	
3	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	

5067

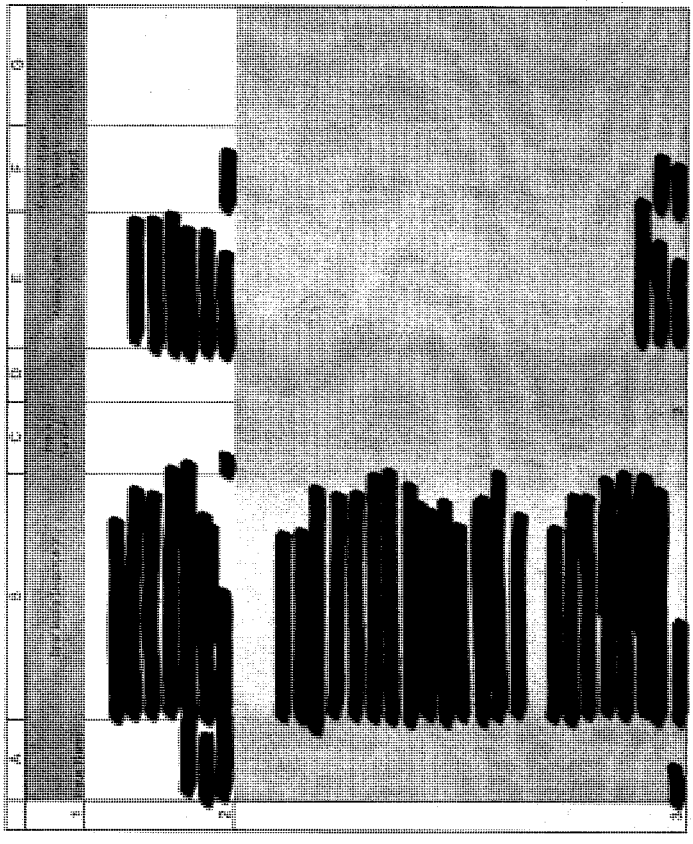
File 11 9 10

Tab 4 – Coordinated Processing

5068

SFC 004605

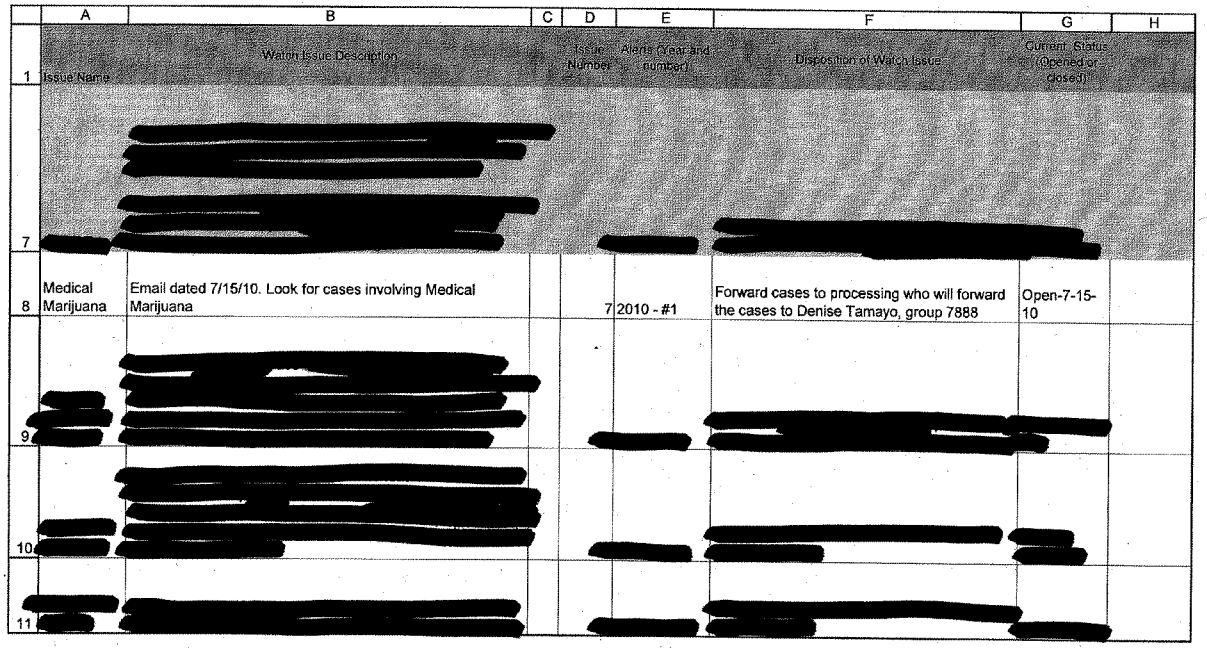
IRS0000001359



File 11 9 10

Tab 5 – Watch List

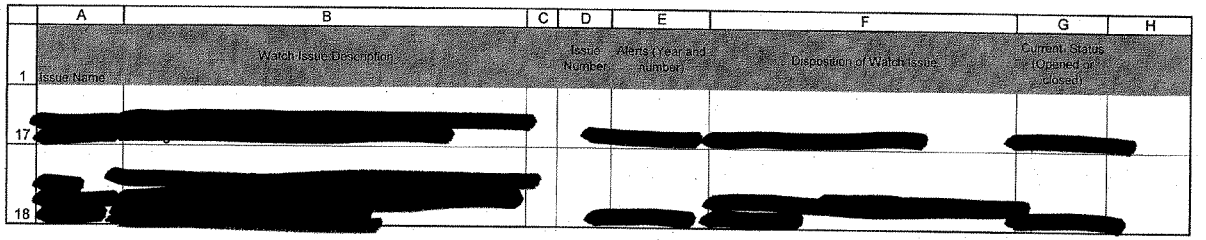
	A	B	C	D	E	F	G	H
1	Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or closed)	
2	Open Source Software	These organizations are requesting either 501(c)(3) or 501(c)(6) exemption in order to collaboratively develop new software. The members of these organizations are usually the for-profit business or for-profit support technicians of the software.		1	x	The is no specific guidance at this point. If you see a case, elevate it to your manager.	Open	
3	RHIO's	Organization's setup to electronically exchange healthcare data, called Regional Health Information Organizations (RHIOs), are requesting exemption under 501(c)(3).		2	x	These cases should be transferred to EOT.	Open	
4	[redacted]	[redacted]		[redacted]		[redacted]	[redacted]	
5	Healthcare legislation	Per Rob Choi email dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with EOT.		4	2010 - #1	New applications are subject to secondary screening in Group 7821. Wayne Bothe is the coordinator.	Open-4/20/10	
6	[redacted]	[redacted]		[redacted]		[redacted]	[redacted]	



	A	B	C	D	E	F	G	H
1	Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or Closed)	
7	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	
8	Medical Marijuana	Email dated 7/15/10. Look for cases involving Medical Marijuana		7	2010 - #1	Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open-7-15-10	
9	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	
10	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	
11	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	

	A	B	C	D	E	F	G	H
1	Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or Closed)	
12	Occupied Territory Advocacy	Email dated 8/6/10. Applications deal with disputed territories in the Middle East. Examples may be organizations named or connected with [redacted]XXXX (XXXX = a particular city), [redacted]Applications may be inflammatory, advocate a one sided point of view and promotional materials may signify propaganda.		11	2010 - #1	If you see these cases, please forward to the TAG Group, 7830.	Open- 8/6/10	
13	[redacted]	[redacted]		[redacted]		[redacted]	[redacted]	
14	Accountable Care Organization (ACO)	Email dated 8/12/10. An ACO is a an entity created by the Affordable Care Act. These consist of groups of healthcare providers (hospitals and doctors) who have entered into an agreement with Medicare to have Medicare patients assigned to them. The amounts charged to Medicare for the ACO's patients are compared to certain benchmark levels set by Medicare. Medicare pays the ACO a percentage difference of the difference as incentive to cost savings. ACO's are not required to be tax exempt.		13	2010 - #1	These cases should be forwarded to Group 7821	Open- 8/12/10	
15	[redacted]	[redacted]		[redacted]		[redacted]	[redacted]	
16	[redacted]	[redacted]		[redacted]		[redacted]	[redacted]	

5073



	A	B	C	D	E	F	G	H
1	Issue Name	Watch Issue Description		Issue Number	Aliens (Year and Number	Disposition of Watch Issue	Current Status (Opened or Closed)	
17	[redacted]							
18	[redacted]							

SFC 004611

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.

File 112310
Tab 5 – Watch List

SFC 004613

20101123

	A	B	C	D	E	F	G	H
1	Issue Name	Watch Issue Description		Issue Number	Alerts (Year and number)	Disposition of Watch Issue	Current Status (Opened or closed)	
2	Open Source Software	These organizations are requesting either 501(c)(3) or 501(c)(6) exemption in order to collaboratively develop new software. The members of these organizations are usually the for-profit business or for-profit support technicians of the software.		1	x	The is no specific guidance at this point. If you see a case, elevate it to your manager.	Open	
3	RHIO's	Organization's setup to electronically exchange healthcare data, called Regional Health Information Organizations (RHIOs), are requesting exemption under 501(c)(3).		2	x	These cases should be transferred to EOT.	Open	
4	[redacted]			[redacted]		[redacted]		
5	Healthcare legislation	Per Rob Choi email dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with EOT.		4	2010 - #1	New applications are subject to secondary screening in Group 7821. Wayne Bothe is the coordinator.	Open-4/20/10	
6	[redacted]			[redacted]		[redacted]		
7	[redacted]			[redacted]		[redacted]		
8	Medical Marijuana	Email dated 7/15/10. Look for cases involving Medical Marijuana		7	2010 - #1	Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open-7-15-10	

- The emailed attachment outlines the overall process.
- Glenn deferred additional statements and/or questions to John Shafer on yesterday's developments; how they affect the screening process and timeline.
- Concerns can be directed to Glenn for additional research if necessary.

Current/Political Activities: Gary Muthert

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
  - 9/12 Project,
  - 6103
  - Progressive
  - 6103
  - Pink-Slip Program.

- Elizabeth Hofacre, Tea Party Coordinator/Reviewer
  - Re-empathize that applications with Key Names and/or Subjects should be transferred to 7822 for Secondary Screening. Activities must be primary.
  - "Progressive" applications are not considered "Tea Parties"

Disaster Relief: Renee Norton/Joan Kiser

- Advise audience that buzz words or phrases include:
  - "X" Rescue
  - References to the Gulf Coast, Oil Spills,
- Reminded screeners that Disaster Relief is controlled by 7838, and then forwarded to Group 7827, for Secondary Screening.
- Denied Expedites worked by initial screener:
  - Complete Expedite Denial CCR, place on left side of file.
  - Email Renee or Joan with specific reason why expedite was denied and disposition (i.e. AP, IP, 51).
  - Place Post-It on Orange Folder advising Karl
    - "Denied Expedite / Fwd to M Flammer."

Power of Attorneys: Nancy Heagney

- Form 2848 that references 990, 941 or the like should be
  - Printed and annotate on the bottom per procedures
  - Documentation on TEDS should be made.
    - See Interim Guidance located on Public Folders.

Closing Sheets: Gary Muthert

- Closing Sheets should not cover pertinent info on the AIS sheet or EDS' 8327.
- Case Grade and Data (e.g. NTEEs) must be correctly presented and accurately depict the case's complexity and purpose.
    - Inaccurate presentations create processing delays.
    - Steve Bowling, Mgr 7822 "Volumes of cases are graded incorrectly."
    - EDS and TEDS must Agree to achieve desire business results

Credit Counseling (CC)

Stephen Seok

- Re-stressed impact that section 501(q) had on purely educational cases.
    - Cases are fully developed as 501(q) Credit Counseling Cases.
    - Key analysis is whether financial education and/or counseling activities are "substantial".
    - Cases with financial education and/or financial counseling- substantial or insubstantial are still subject to Secondary Screening until further notice.
    - Continue to document the analysis as "Substantial" or "Insubstantial" on the CC Check-sheet.
    - Feedback on cases received is in process.

TAG

Jon Waddell

- The New List will be completed and issued this week- approximately 7/30/10.
- Sharing a Drive on the Server has created the delay/dilemma.
- Monthly Emails will restart shortly after the List's distribution.
- Listing will include the following:
    - Touch and Go, Emerging Issues and Issues to Watch For.
    - 6103 Cases* (Puerto Rico based low-income housing) are considered "Potential Abusive Cases".
    - 6103 Cases (Las Vegas, NV) should continue to be sent to TAG Group for re-screening

*LCD referrals are in process since both have questionable practices.

SFC 004616

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

June 26, 2013

The Honorable Sander M. Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515-6348

Dear Representative Levin:

This letter is in response to letters dated June 24, 2013 and June 26, 2013 regarding our recent audit report entitled "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review." We appreciate the opportunity to clarify our recent report in response to your questions.

TIGTA's audit report focused on criteria being used by the Internal Revenue Service (IRS) during the period of May 2010 through May 2012 regarding allegations that certain groups applying for tax-exempt status were being targeted. We reviewed all cases that the IRS identified as potential political cases and did not limit our audit to allegations related to the Tea Party. TIGTA concluded that inappropriate criteria were used to identify potential political cases for extra scrutiny – specifically, the criteria listed in our audit report. From our audit work, we did not find evidence that the criteria you identified, labeled "Progressives," were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited. The "Progressives" criteria appeared on a section of the "Be On the Look Out" (BOLO) spreadsheet labeled "Historical," and, unlike other BOLO entries, did not include instructions on how to refer cases that met the criteria. While we have multiple sources of information corroborating the use of Tea Party and other related criteria we described in our report, including employee interviews, e-mails, and other documents, we found no indication in any of these other materials that "Progressives" was a term used to refer cases for scrutiny for political campaign intervention.

Based on the information you flagged regarding the existence of a "Progressives" entry on BOLO lists, TIGTA performed additional research which determined that six tax-exempt applications filed between May 2010 and May 2012 having the words "progress" or "progressive" in their names were included in the 298 cases the IRS identified as potential political cases. We also determined that 14 tax-exempt applications filed between May 2010 and May 2012 using the words "progress" or "progressive" in their names were not referred for added scrutiny as potential political cases. In total, 30 percent of the organizations we identified with the words "progress" or "progressive" in their names were processed as potential political cases. In

comparison, our audit found that 100 percent of the tax-exempt applications with Tea Party, Patriots, or 9/12 in their names were processed as potential political cases during the timeframe of our audit.

The following addresses the specific questions presented in your June 24, 2013 letter:

- Please describe in detail why your report dated May 14, 2013 omitted the fact that "Progressives" was used.

  Our audit did not find evidence that the IRS used the "Progressives" identifier as selection criteria for potential political cases between May 2010 and May 2012. The focus of our audit was on whether the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing of targeted groups' applications, and 3) requested unnecessary information from targeted groups. We determined the IRS developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. In addition, we found other inappropriate criteria that were used (e.g., 9/12, Patriots) to select potential political cases that were not included in any BOLO listings. The inappropriate criteria used to select potential political cases for review did not include the term "Progressives." The term "Progressives" appears, beginning in August 2010, in a separate section of the BOLO listings that was labeled "TAG [Touch and Go] Historical" or "Potential Abusive Historical." The Touch and Go group within the Exempt Organizations function Determinations Unit is a different group of specialists than the team of specialists that was processing potential political cases related to the allegations we audited.

- Did you investigate whether the criteria "Progressives" in the BOLO lists was developed in the same manner as you did for "Tea Party"? If not, why?

  TIGTA did not audit how the criteria for the "Progressives" identifier were developed in the BOLO listings. We did not audit these criteria because it appeared in a separate section of the BOLO listings labeled as "Historical" (as described above) and we did not have indications or other evidence that it was in use for selecting potential political cases from May 2010 to May 2012.

- Please also explain why footnote 16 on page 6 was included in the audit report.

  Footnote 16 was included in our report because TIGTA was aware of other named organizations being on BOLO listings that were not used for selecting cases related to political campaign intervention. TIGTA added this footnote to disclose that we did not audit whether the use of the other named organizations was appropriate. Following the publication of our audit report, we communicated information

regarding other names on the BOLO listings to Acting Commissioner Daniel Werfel, and, to the extent authorized by Title 26 U.S.C. § 6103, the Senate Committee on Finance and the House Committee on Ways and Means.

- If your organization overlooked the existence of the "Progressives" identifier, please describe in detail the process by which your organization investigated the BOLO lists created and circulated by the EO Determinations Unit.

  As part of our audit, we reviewed the section of the BOLO listings that related to the specific criteria that the IRS stated were used to identify potential political cases for additional scrutiny. TIGTA also found that certain criteria (e.g., Patriots, 9/12, education of the public by advocacy/lobbying to "make America a better place to live," etc.) used to select potential political cases were not in any BOLO listings.

- Your report states that TIGTA "reviewed all 298 applications that had been identified as potential political cases as of May 31, 2012." (See page 10 of your report.) Your report includes the following breakdown of the potential political cases by organization name: (1) 96 were "Tea Party," "9/12," or "Patriots" organizations; and (2) 202 were "Other." Why did your report not identify that liberal organizations were also included among the 298 applications you reviewed?

  TIGTA did not make any characterizations of any organizations in its audit report as conservative or liberal and believes it would be inappropriate for a nonpartisan Inspector General to make such judgments. Instead, our audit focused on the testing of 296 of the 298 potential political cases (two case files were incomplete) to determine if they were selected using the actual criteria that should have been used by the IRS from the beginning to screen potential political cases. Those criteria were whether the specific applications had indications of significant amounts of political campaign intervention (a term used in Treasury's Regulations). For 69 percent of the 296 cases, TIGTA found that there were indications of significant political campaign intervention, while 31 percent of the cases did not have that evidence. We also reviewed samples of 501 (c)(4) cases that were not identified as potential political cases to determine if they should have been. We estimate that more than 175 applications were not appropriately identified as potential political cases.

  TIGTA's audit report determined that certain cases were referred for potential political review because their names used terms in the IRS selection criteria. We could not tell why other organizations were selected for additional scrutiny because the IRS did not document specifically why the cases were forwarded to a team of specialists. TIGTA recommended that the IRS do so in the future.

- Why did your testimony before the Committee on Ways and Means, the Oversight and Government Reform Committee, and the Senate Finance Committee not include a discussion of this aspect of the 298 applications?

  When I testified, I attempted to convey that our report did not characterize organizations as conservative or liberal and I believe it would be inappropriate for a nonpartisan Inspector General to make such judgments.

- In the course of your audit, what did you discover about the processing of cases with the "Progressives" identifier? Were the cases processed in the same manner as the cases with the "Tea Party" and associated terms identifiers? Or were they processed differently?

  TIGTA's audit did not review how TAG Historical cases (including the "Progressives" identifier) were processed because we did not find evidence that the IRS used the TAG Historical section of the BOLO listings as selection criteria for potential political cases between May 2010 and May 2012.

- If you are now auditing or investigating the processing of tax-exemption applications with the "Progressives" identifier, please provide the date that you started the audit or investigation and documentation to support this assertion. We also would like to know if you have briefed and alerted anyone at the IRS or Department of Treasury of such audit or investigation.

  TIGTA's Office of Audit made a referral to our Office of Investigations on May 28, 2013 stating that our recently issued audit report noted the use of other named organizations on the BOLO listings that were not related to potential political cases reviewed as part of our audit. TIGTA's Office of Audit requested the Office of Investigations investigate to determine: 1) whether cases meeting the criteria on the "watch list" [a particular section of the BOLO listings] were routed for any additional or specialized review, or were simply referred to the same group for coordinated processing; 2) how many (if any) applications were affected by use of these criteria; 3) who was responsible for the inclusion of these criteria on the BOLO lists; and 4) whether these criteria were added to the BOLO for an improper purpose.

  TIGTA also discussed the BOLO listings with the Acting Commissioner of the IRS on May 28, 2013, and expressed our concerns and the importance of the IRS following up on this matter. We notified the Acting Commissioner of our review of this matter on that date. In addition, I informed the Department of the Treasury's Chief of Staff and General Counsel about this matter.

Pursuant to authorization under Title 26 U.S.C. § 6103, we also provided these BOLO listings to House Ways and Means Committee Majority staff and the Senate Finance Committee Majority and Minority staff on June 7, 2013. We spoke to staff from House Ways and Means Committee Majority staff on the BOLOs on June 6 and June 11, 2013, and Senate Finance Committee Majority and Minority staff on June 10, 2013. We informed the staff we met with of our ongoing review of this matter.

Because of Privacy Act and Title 26 U.S.C. § 6103 restrictions, TIGTA cannot comment specifically on the status of any ongoing investigation. TIGTA will continue its efforts to provide independent oversight of IRS activities and accomplish its statutory mission through audits, inspections and evaluations, and investigations of criminal and administrative misconduct.

In your June 26, 2013 letter, you raised concerns about statements attributed to TIGTA sources by members of the media. Many of the press reports are not accurate. Please rely on our statements in this letter, my testimony, and our published materials for an accurate portrayal of our position.

We hope this information is helpful. If you or your staff has any questions, please contact me at 202-[redacted] or Acting Deputy Inspector General for Audit Michael E. McKenney at 202-[redacted].

Sincerely,

J. Russell George
Inspector General

SFC 004621

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

JUN 24 2013

June 24, 2013

The Honorable Darrell Edward Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am responding to your request for documents relating to the screening and review process for applicants for tax-exempt status. I am providing copies of "Be on the Lookout" (BOLO) spreadsheets from which IRC section 6103 information has been redacted.

We are committed to providing you with as full a response as possible and to full cooperation with you and your staff to address this matter.

Our efforts to gather documents related to the TIGTA report 2013-10-053, dated May 14, 2013, are ongoing. These documents are being produced from the set that been reviewed to date. To the extent our continuing searches reveal additional BOLO lists responsive to your request, we will provide them.

The attached documents are indexed by Bates stamped numbers IRS0000001349 to IRS0000001537 and numbers IRS0000002479-IRS0000002591 and numbers IRS0000002705 to IRS0000002717.

I hope this information is helpful. If you have questions, please contact me or have your staff contact me at 202-[redacted].

Sincerely,

Leonard Oursler
Area Director

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Okay. Now, sir, in this period, roughly March of 2010, was there a time when someone in the IRS told you that you would be assigned to work on two Tea Party cases? 23

A. Yes.

***

Q. Do you recall when precisely you were told that you would be assigned two Tea Party cases?

A. When precisely, no.

Q. Sometime in –

A. Sometime in the area, but I did get, they were assigned to me in April.

***

Q. Okay, and just to be clear, April of 2010?

A. Yes.

***

Q. And sir, were they cases 501(c)(3)s, or 501(c)(4)s?

A. One was a 501(c)(3), and one was a 501(c)(4).

Q. So one of each?

A. One of each.

Q. What, to your knowledge, was it intentional that you were sent one of each?

A. Yes.

Q. Why was that?

A. I'm not sure exactly why. I can only make assumptions, but those are the two areas that
usually had political possibilities.

***

Q. The point of my question was, no one ever explained to you that you were to understand and work these cases for the purpose of working similar cases in the future?

***

A. All right, I -- I was given -- they were going to be test cases to find out how we approached (c)(4), and (c)(3) with regards to political activities.

***

Q. Mr. Hull, before we broke, you were talking about these two cases being test cases, is that right? Do you recall that?

A. I realized that there were other cases. I had no idea how many, but there were other cases. And they were trying to find out how we should approach these organizations, and how we should handle them.

***

Q. And when you say these organizations, you mean Tea Party organizations?

A. The two organizations that I had.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Did you send out letters to both organizations the 501(c)(3) and 501(c)(4)?

A. I did.

Q. Did you get responses from both organizations?

A. I got response from only one organization.

Q. Which one?

A. The (c)(4).

Q. (C)(4). What did you do with the case that did not respond?

A. I tried to contact them to find out whether they were going to submit anything.

Q. By telephone?

A. By telephone. And I never got a reply.

Q. Then what did you do with the case?

A. I closed it, failure to establish.

***

Q. So at this time, when the (c)(3) became the FTE, did you begin to work only on the (c)(4)?

A. I notified my supervisor that I would need another (c)(3) if they wanted me to work one of each.

***

Q. How did you phrase the request to Ms. Hofacre? Was it -- were you asking for another (c)(3) Tea Party application?

A. I was asking for another (c)(3) application in the lines of the first one that she had sent up. I'm not sure if I asked her for a particular organization or a particular type of organization. I needed a (c)(3) that was maybe involved in political activities.

Q. And the first (c)(3), it was a Tea Party application?

A . Yes, it was.

Testimony of Elizabeth Hofacre
Revenue Agent in Determinations Unit
May 31, 2013

Q. And you mentioned the Tea Party cases. Do you have an understanding of whether the Tea Party cases were part of that grouping of organizations with political activity, or were they separate?

A. That was the group of political cases.

Q. So why do you call them Tea Parties if it includes more than –

A. Well, at that time that's all they were. That's all that we were -- that's how we were classifying them.

Q. In 2010, you were classifying any organization that had political activity as a Tea Party?

A. No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q. What do you mean when you say political is too broad?

A. No, because when -- what do you mean by "political"?

Q. Political activity -- if an application has an indication of political activity in it.

A. I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q. Was there somebody who was tasked with political in general?

A. Not that I'm aware of.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. Okay. So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A. Correct.

Q. And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

***

A. Does that include 9/12 and Patriot?

Q. Yes, yes.

A. Yes.

Q. Okay. So it was just those type of cases, not other type of advocacy cases that maybe had a different -- a different political -- a liberal or progressive case?

A. Correct.

***

Q. Okay. And to your knowledge, when you were first assigned these cases in October 2010 and through July 2011, do you know what criteria the screening unit was using to identify the cases to send to you?

A. Yes.

Q. And what was that criteria?

A. It was solicited on the Emerging Issues tab of the BOLO report.

Q. And what did that say? What did that Emerging Issue tab on the BOLO say?

A. In July 20 –

Q. In October 2010 we'll start.

A. I don't know exactly what it said, but it just -- Tea Party cases, 9/12, Patriot.

Q. And do you recall how many cases you inherited from Ms. Hofacre?

A. 50 to 100.

Q. And were those only Tea Party-type cases as well?

A. To the best of my knowledge.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

A. I'm not sure who mentioned Tea Party, but at that point Lois I remember breaking in and saying no, no, we don't refer to those as Tea Parties anymore. They are advocacy organizations.

Q. And what was her tone when saying that?

A. Very firm.

Q. Did she explain why she wanted to change the reference?

A. She said that the Tea Party was just too pejorative.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. And do you recall when that – when the BOLO was changed after – you said it was after the meeting [with Lerner], they changed the BOLO after the meeting, do you recall when?

A. July.

Q. Of 2011?

A. Yes, sir.

Q. And you were going to say the BOLO became more, and then you were cut off. What were you going to say?

A. It became more – they had more the advocacy, more organizations to the advocacy, like I mentioned about maybe a cat rescue that's advocating for let's not kill the cats that get picked up by the local government in whatever cities.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. Mr. Bell, in July 2011, when the BOLO was changed where they chose broad language, after that point, did you conduct secondary screening on any of the cases that were being held by you?

A. You mean the cases that I inherited from Liz are the ones that had already been put into the whatever timeframe, Tea Party advocacy, slash advocacy?

Q. Other type, yes.

A. No, these were new ones coming in that someone thought that they perhaps should be in the advocacy, slash, Tea Party inventory.

Q. Okay.

A. They were assigned to Group 7822, and I reviewed them, and you know, maybe some were, but a vast majority was like outside the realm we were looking for.

Q. And so they were like the . . . cat type cases you were discussing earlier?

A. Yes.

***

Q. After the July 2011 change to the BOLO, how long did you perform the secondary screening?

A. Up until July 2012.

Q. So, for a whole year?

A. Yeah.

Q. And you would look at the cases and see if they were not a Tea Party case, you would move that either to closing or to further development?

A. Yeah, and then the BOLO changed about midway through that timeframe.

Q. Okay.

A. To make it where we put the note on there that we don't need the general advocacy.

Q. And after the BOLO changed in January 2012, did that affect your secondary screening process?

A. There was less cases to be reviewed.

Q. Okay. So during this whole year, the Tea Party cases remained on hold pending guidance from Washington while the other cases that you identified as non-Tea Party cases were moved to either closure or further development; is that right?

A. Correct.

Testimony of Michael Seto
Manager of EO Technical Unit
July 11, 2013

Q. -- about the cases? What about Miss Lerner, did you ever talk to Miss Lois Lerner about the cases at this point in time, January-February 2011?

A. No, I have not talked to her verbally about it.

Q. But did you talk to her nonverbally about these cases in that period of time?

A. She sent me email saying that when these cases need to go through multi-tier review and they will eventually have to go to Miss Kindell and the chief counsel's office.

Q. Miss Lerner told you this in an email?

A. That's my recollection.

Testimony of Carter Hull
Tax Law Specialist in EO Technical Unit
June 14, 2013

Q. Have you ever sent a case to Ms. Kindell before?

A. Not to my knowledge.

Q. This is the only case you remember?

A. Uh-huh.

Q. Correct?

A. This is the only case I remember sending directly to Judy.

***

Q. Had you ever sent a case to the Chief Counsel's office before?

A. I can't recall offhand.

Q. You can't recall. So in your 48 years of experience with the IRS, you don't recall sending a case to Ms. Kindell or a case to IRS Chief Counsel's office?

A. To Ms. Kindell, I don't recall ever sending a case before. To Chief Counsel, I am sure some cases went up there, but I can't give you those.

Q. Sitting here today you don't remember?

A. I don't remember.

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. So did you see something different in these Tea Party cases applying for 501(c)(4) status that was different from other organizations that had political activity, political engagement applying for 501(c)(4) status in the past?

A. I'm not sure if I understand that.

Q. I guess what I'm getting at is you said you had seen previous applications from an organization applying for 501(c)(4) status that had some level of political engagement, and these Tea Party groups are also applying for 501(c)(4) status and they have some level of political engagement. Was there any difference in your mind between the Tea Party groups and the other groups that you'd seen in your experience at the IRS?

A. No.

Q. So, do you think that Tea Party groups are treated the same as these other groups from your previous experience?

A. No.

***

Q. In your experience, was there anything different about the way that the Tea Party 501(c)(4) cases were treated that was as opposed to the previous 501(c)(4) applications that had some level of political engagement?

A. Yes.

Q. And what was different?

A. Well, they were segregated. They seemed to have been more scrutinized. I hadn't interacted with EO technical [in] Washington on cases really before.

Q. You had not?

A. Well, not a whole group of cases.

Testimony of Stephen Seok
Group Manager of EO Determinations Unit
June 19, 2013

Q. And to your knowledge, the cases that you worked on, was there anything different or novel about the activities of the Tea Party cases compared to other (c)(4) cases you had seen before?

***

A. Normal (c)(4) cases we must develop the concept of social welfare, such as the community newspapers, or the poor, that types. These organizations mostly concentrate on their activities on the limiting government, limiting government role, or reducing government size, or paying less tax. I think it[']s different from the other social welfare organizations which are (c)(4).

***

Q. So the difference between the applications that you just described, the applications for folks that wanted to limit government, limit the role of government, the difference between those applications and the (c)(4) applications with political activity that you had worked in the past, was the nature of their ideology, or perspective, is that right?

A. Yeah, I think that's a fair statement. But still, previously, I could work, I could work this type of organization, applied as a (c)(4), that's possible, though. Not exactly Tea Party, or 9-12, but dealing with the political ideology, that's possible, yes.

Q. So you may have in the past worked on applications from (c)(4), applicants seeking (c)(4) status that expressed a concern in ideology, but those applications were not treated or processed the same way that the Tea Party cases that we have been talking about today were processed, is that right?

A. Right. Because that [was] way before these – these organizations were put together. So that's way before. If I worked those cases, way before this list is on.

Testimony of Robert Choi
Former Director of IRS Rulings and Agreements
August 21, 2013

Q. You said earlier in the last hour there was email traffic about the ACORN successor groups in 2010; is that right?

A. That's correct, yes.

Q. But the ACORN successor groups were not subject to a sensitive case report; is that right?

A. I don't recall if they were listed in there, in the sensitive case report.

Q. So you don't recall them being part of a sensitive case report?

A. I think what I'm saying is they may be part of a sensitive case report. I do not have a specific recollection that they were listed in a sensitive case report.

Q. But you do have a specific recollection that the Tea Party cases were on sensitive case reports in 2010.

A. Yes.

Q. To your knowledge, did any ACORN successor application go to the Chief Counsel's Office?

A. I am not aware of it.

Q. Are you aware of any ACORN successor groups facing application delays?

A. I do not know if – well, when you say "delays," how do you –

Q. Well –

A. I mean, I'm aware of successor ACORN applications coming in, and I am aware of email traffic that talked about my concern of delays on those cases and, you know, that there was discussion about seeing an influx of these applications which appear to be related to the previous organization.

***

Q. And the concern behind the reason that they weren't being processed was that they were potentially the same organization that had been denied previously?

A. Not that they were denied previously. These appeared to be successor organizations, meaning these were newly formed organizations with a new EIN, employer identification number, located at the same address as the previous organization and, in some instances, with the same officers.

And it was an issue of concern as to whether or not these were, in fact, the same organizations just coming in under a new name; whether, in fact, the previous organizations, if they were, for example, 501(c)(3) organizations, properly disposed of their assets. Did they transfer it to this new organization? Was this perhaps an abusive scheme by these organizations to say that they went out of business and then not really but they just carried on under a different name?

Q. And that's the reason they were held up?

A. Yes.

Testimony of Lucinda Thomas
Program Manager of EO Determinations Unit
June 28, 2013

Q. Ms. Thomas, is this an example of the BOLO from looks like November 2010?

A. I don't know if it was from November of 2010, but –

Q. This is an example of the BOLO, though?

A. Yes.

Q. Okay. And, ma'am, under what has been labeled as tab 2, TAG Historical?

A. Yes.

***

Q. Let's turn to page 1354.

A. Okay.

Q. Do you see that, it says -- the entry says progressive?

A. Yes.

Q. This is under TAG Historical, is that right?

A. Yes.

Q. So this is an issue that hadn't come up for a while, is that right?

A. Right.

Q. And it doesn't note that these were referred anywhere, is that correct? What happened with these cases?

A. This would have been on our group as – because of – remember I was saying it was consistency-type cases, so it's not necessarily a potential fraud or abuse or terrorist issue, but any cases that were dealing with these types of issues would have been worked by our TAG group.

Q. Okay. And were they worked any different from any other cases that EO Determinations had?

A. No. They would have just been worked consistently by one group of agents.

Q. Okay. And were they cases sent to Washington?

A. I'm not – I don't know.

Q. Not that you are aware?

A. I'm not aware of that.

Q. As the head of the Cincinnati office you were never aware that these cases were sent to Washington?

A. There could be cases that are transferred to the Washington office according to, like, our [Internal Revenue Manual] section. I mean, there's a lot of cases that are processed, and I don't know what happens to every one of them.

Q. Sure. But these cases identified as progressive as a whole were never sent to Washington?

A. Not as a whole.

Testimony of Elizabeth Hofacre
Revenue Agent in EO Determinations Unit
May 31, 2013

Q. In 2010, you were classifying any organization that had political activity as a Tea Party?

A. No, it's the latter. I mean, we were looking at Tea Parties. I mean, political is too broad.

Q. What do you mean when you say political is too broad?

A. No, because when -- what do you mean by "political"?

Q. Political activity -- if an application has an indication of political activity in it.

A. I mean, I was tasked with Tea Party, so that's all I'm aware of. So I wasn't tasked with political in general.

Q. Was there somebody who was tasked with political in general?

A. Not that I'm aware of.

Testimony of Steven Grodnitzky
Manager in EO Technical Unit
July 16, 2013

Q. So these Democratic-leaning organizations, their applications took approximately 3 years to process?

A. On or around. I mean, if they came in at the end of 2008, for example, and were resolved in the beginning of 2011, it may be a little over 2 years. But I mean, on or around that time period.

***

Q. Did those 2008 Democratic-leaning applications involve potential political campaign activity as well?

A. Yes, we had -- the organizations were related in the sense that they were -- how can I say this? -- sort of like an -- I am going to call it, for lack of a better term, like when you have in a veterans-type organization, you have posts, and there is one in each State. And that is sort of what it was like. So they were very similar in the sense that the main difference that I recall was that they were just from one State to the next. And we found in those particular cases that the organization was benefiting the Democratic Party, and there was too much private benefit to that particular party. And the organization was denied.

Testimony of Amy Franklin Giuliano
Attorney Advisor in IRS Chief Counsel's Office
August 9, 2013

Q. And you said that some of those five progressive applications were approved in a matter of hours; is that right?

A. Yes.

***

Q. The reason that the other five cases would be revoked if that case the Counsel's Office had was denied, was that because they were affiliated entities?

A. It is because they were essentially the same organization. I mean, every – the applications all presented basically identical facts and basically identical activities.

Q. And the groups themselves were affiliated.

A. And the groups themselves were affiliated, yes.

***

Q. The issue in the case you reviewed in May of 2010 was private benefit.

A. Yes.

Q. As opposed to campaign intervention.

A. We considered whether political campaign intervention would apply, and we decided it did not.

Testimony of Sharon Light
Senior Technical Advisor
September 5, 2013

Q Were you aware that there was an entry for Occupy organizations in the BOLO by the May 2012 time frame?

A I don't think I was. My understanding of Determinations at that point was if you saw an organization or issue that you thought Determinations should be on the watch for, you would -- I would send an email to Cindy and say, hey, can you tell your screeners to keep an eye out for this, so it didn't slip through and get approved without someone looking at it.

Q Did you become aware of the entry on the BOLO for Occupy organizations at a later date?

A Yes, I did at some point.

Q And why did you become aware of the entry on the BOLO for the Occupy organizations -- or, rather, how?

A I believe I became aware of it the summer after it hit the news that groups were -- well, I became aware of it after it was reported that only conservative groups were being singled out by the IRS.

Testimony of Joseph Grant
Commissioner, Tax Exempt and Government Entities
September 25, 2013

Q Were you aware that for a period of time the IRS also specifically referenced "Occupy" on a BOLO?

A I subsequently became aware of that. I was not aware of that at the time.

Testimony of Nancy Marks
Senior Technical Advisor to the Commissioner, Tax Exempt and Government Entities
October 8, 2013

Q Were you aware in the spring 2012 timeframe that there was a "Be on the Look Out" list entry specifically identifying Occupy groups by name?

A I don't think I knew that in the spring of 2012. At some point, I became aware that that was one of the things on the "Be on the Look Out" list.

Testimony of Elizabeth Kastenburg
Tax Law Specialist in EO Technical Unit
July 31, 2013

Q. Do you recall if progressive or Occupy groups were among those listed on the BOLO?

A. No, I don't know.

Q. Do you know how Occupy groups, as in Occupy Wall Street groups, were processed by the IRS?

A. No, I do not know.

SFC 004650

Testimony of Justin Lowe
Technical Advisor, Tax Exempt and Government Entities
July 23, 2013

Q. ...Do you recall whether as a tax law specialist in EO Guidance you referred cases related to Occupy organizations?

A. It's a pretty broad descriptor, so I don't know exactly. I don't think so, but I couldn't tell you definitively one way or the other...

Testimony of Ron Bell
Exempt Organizations Specialist in Determinations Unit
June 13, 2013

Q. Okay. And is it normal procedure for EO Technical to have to -- for you -- for you to have to wait for approval from EO Technical to move these cases?

A. Not in my personal experience.

Q. Okay. So this was something that was unusual that you were having to wait on Washington?

A. In -- from -- in my experience.

Q. In your experience. Okay.

Testimony of Steven Grodnitzky
Manager in EO Technical Unit
July 16, 2013

Q. Is it fair to say that those Democratic organizations that were grouped together in the 2008 time frame were treated similarly to the Tea Party cases that you saw in the 2010 time frame?

A. Sure. I mean, it is fair to say that they were treated similarly. It is -- there were fewer of them. Unlike the Tea Party, my understanding is that there are more -- as far as quantity there is more of them.

Testimony of Amy Franklin Giuliano
Attorney Advisor in IRS Chief Counsel's Office
August 9, 2013

Q. Did you ever speak to Mr. Griffin about these cases around the time they were assigned to you, or the one assigned to you?

A. Yes. He handed the case that was assigned to me to me directly.

Q. And what did he say to you?

A. He said, "This is a (c)(4) case that presents the question of political advocacy. It seems to be conservative-leaning."

***

Q. Prior to you receiving this case in June of 2011, do you know if it was worked by IRS officials in Washington?

A. Yes. On top of the case file were three memos, all by D.C. employees.

Q. Who were the memos from?

A. Janet Gitterman, Siri Buller, and Justin Lowe.

Q. And what was the substance of these memos?

A. The memo from Janet was first because I believe she was, sort of, their docket attorney. I don't know what they call it. And she explained that she had looked through the file, that some of the ads seemed to verge on political campaign intervention, and it wasn't an election year. She raised that the group leased space from a Republican group. But she said that it seemed that the amount of political activity did not preclude exemption.

There was a memo from Siri Buller as sort of a concurring -- I think she was kind of asked to review what Janet had done. And Siri's

memo is much longer and listed about 15 instances of what could be considered political campaign intervention and said that there is political campaign intervention here but maybe not enough to preclude exemption.

And then Justin Lowe had about a one-page memo that sort of said, you know, the ads seem to be propaganda, they don't seem to be informative, but not sure that that's a reason to deny, so I concur.

Q. So all three of them, Ms. Gitterman, Ms. Buller, and Mr. Lowe, all concurred in the recommendation to approve exemption?

A. Yes.

Q. And Ms. Gitterman and Ms. Buller, are they in EO Technical, do you know?

A. I don't know. It's either Technical or Guidance, and I don't really understand the difference.

***

Q. So, you're aware of some coordination between EO Technical or EO Guidance and Cincinnati regarding the treatment of this group of progressive cases?

A. Yes. I mean, I was aware of it because I knew that enough communication had happened to get three like cases to one person in D.C.

Q. And it sounded like there was concern about the way the cases had been developed in Cincinnati; is that fair?

A. I think there was concern that -- that a -- yeah. That it looked like maybe they should be denials, yet already the five favorables had gone out. There was a concern that we were going to be treating the taxpayers inconsistently.

***

Q. In this case, the -- did you state that the ultimate outcome was a recommendation for denial?

A. Yes, that was our recommendation.

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

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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/dcjord 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 States 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).

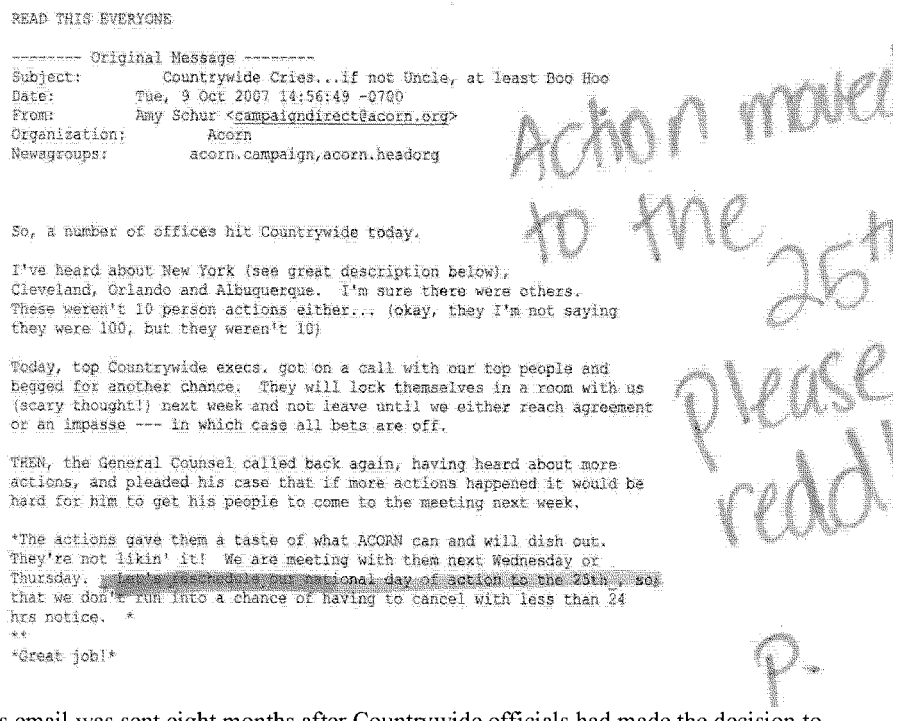
[61] Interview, Committee staff with Insider 1, Insider 2, Jan. 14, 2010 (on file with author).

[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] your national day of action to the 25th, so that we don't run into a chance of having to cancel with less than 24 hrs notice. *
**
Great job!

Action moved 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.

[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_wusceiu_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__6467.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

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[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.*

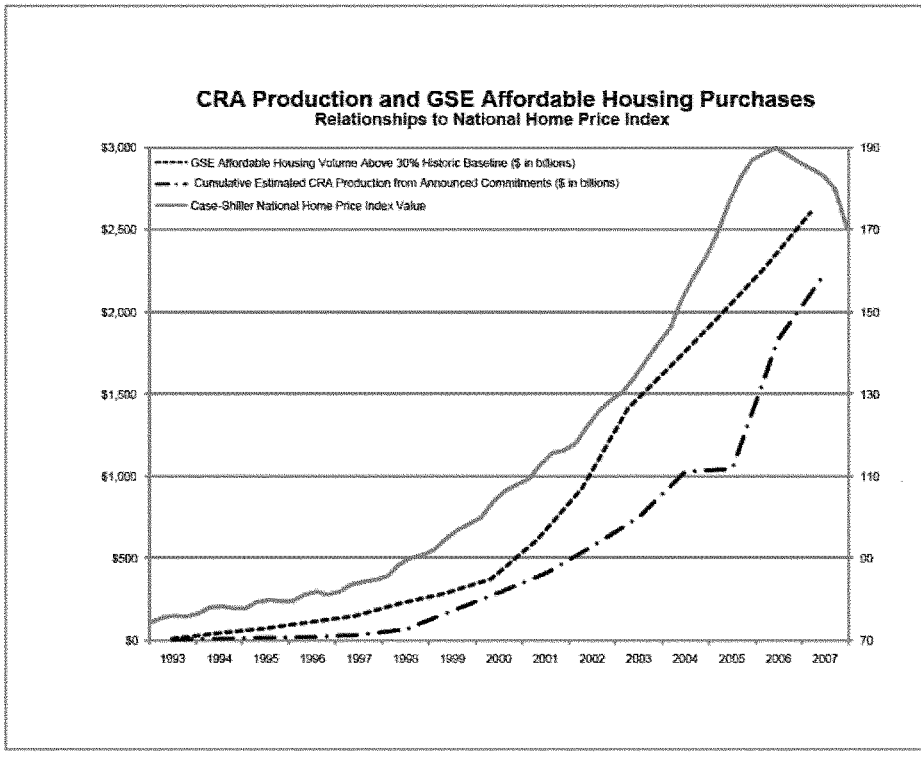
was over one year old, and otherwise loosen their lending guidelines.[174]

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).

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 Euforcement 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 about 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	• Four 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 reqnested 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 informatiou • 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

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U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Ranking Member

Is ACORN Intentionally Structured As a Criminal Enterprise?

Staff Report
U.S. House of Representatives
111th Congress
Committee on Oversight and Government Reform
July 23, 2009

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#

I. Executive Summary

We should be unfaithful to ourselves if we should ever lose sight of the danger to our liberties if anything partial or extraneous should infect the purity of our free, fair, virtuous, and independent elections.

President John Adams, Inaugural Address, 1797

The Association of Community Organizations for Reform Now (ACORN) has repeatedly and deliberately engaged in systemic fraud. Both structurally and operationally, ACORN hides behind a paper wall of nonprofit corporate protections to conceal a criminal conspiracy on the part of its directors, to launder federal money in order to pursue a partisan political agenda and to manipulate the American electorate.

Emerging accounts of widespread deceit and corruption raise the need for a criminal investigation of ACORN. By intentionally blurring the legal distinctions between 361 tax-exempt and non-exempt entities, ACORN diverts taxpayer and tax-exempt monies into partisan political activities. Since 1994, more than $53 million in federal funds have been pumped into ACORN, and under the Obama administration, ACORN stands to receive a whopping $8.5 billion in available stimulus funds.

Operationally, ACORN is a shell game played in 120 cities, 43 states and the District of Columbia through a complex structure designed to conceal illegal activities, to use taxpayer and tax-exempt dollars for partisan political purposes, and to distract investigators. Structurally, ACORN is a chess game in which senior management is shielded from accountability by multiple layers of volunteers and compensated employees who serve as pawns to take the fall for every bad act.

The report that follows presents evidence obtained from former ACORN insiders that completes the picture of a criminal enterprise.

First, ACORN has evaded taxes, obstructed justice, engaged in self dealing, and aided and abetted a cover-up of embezzlement by Dale Rathke, the brother of ACORN founder Wade Rathke.

Committee investigators have established that a violation of corporate duties led to gross abuses of tax laws and other federal regulations. According to documents obtained from insiders, ACORN was made aware of its lax management structure but chose to ignore the problems and continue a cover-up of criminal activity. By refusing to report Dale Rathke's embezzlement of $948,607.50 as an excess benefit transaction, ACORN appears to have violated the Internal Revenue Code. ACORN's cover-up of the embezzlement for more than eight years would also constitute obstruction of justice.

Second, ACORN has committed investment fraud, deprived the public of its right to honest services, and engaged in a racketeering enterprise affectiug interstate commerce.

Committee investigators have documented ACORN's use of charitable contributions against donor intent, typified by ACORN's secret transfer of donor funds to recover losses due to embezzlement. Moreover, ACORN comingles the accounts of federally-funded affiliates with politically-active affiliates and lacks sufficient oversight to safeguard taxpayer and donor interests, even though it receives millions of federal dollars.

ACORN's purposeful lack of quality control translates into the employment of convicted felons and other suspect persons. Through a strategy of providing financial incentives to employees who meet voter registration quotas, ACORN conducts voter drives that routinely produce fraudulent registrations. In fact, ACORN's employment practices have the intentional effect of encouraging voter registration fraud while linking criminal culpability to the lowest-level employees rather than the directors who contrive the illegal schemes.

To date, nearly 70 ACORN employees have been convicted in 12 states for voter registration fraud, though no federal charges have been filed against ACORN's directors. In fact, Pennsylvania judge Richard Zoller – after holding a low-level ACORN employee liable for election law violations – noted that "somebody has to go after ACORN."

Third, ACORN has committed a conspiracy to defraud the United States by using taxpayer funds for partisan political activities.

Committee investigators have unearthed documentation that ACORN and its affiliates conducted meticulous research that fed aggressive campaign initiatives designed to elect Democratic candidates in targeted races. ACORN forged both formal and informal connections with former Illinois Governor Rod Blagojevich, Ohio Senator Sherrod Brown and President Barack Obama, among others. Each of these campaigns received financial and personnel resource contributions from ACORN and its affiliates as part of a scheme to use taxpayer monies to support a partisan political agenda. These actions are a clear violation of numerous tax and election laws.

Documents contained in this report reveal ACORN's political agenda. ACORN's 2005-2007 Strategic Plan states that "just as important as . . . mobilizing existing progressive voters, ACORN and similar groups actually create new progressive voters." In the same document, ACORN acknowledges that its "issue campaigns play the dual role . . . of attracting new members, and educating or politicizing existing members." One particular issue where ACORN claims success is "fighting key elements of the national Republican program."

In other documents, ACORN affiliates take credit for the election of former-Illinois Governor Rod Blagojevich. In the 2006 year-end report of ACORN affiliate Service Employees International Union (SEIU) Local 880, efforts to elect Blagojevich and advance partisan political agendas are called "flawless."

Labor organizations, unions, and other tax-exempt entities stretched Chicago-style political manipulation and back room schemes beyond Illinois to other state-wide and national campaign efforts. In the State of Ohio, where ACORN directors drafted a political plan contained in this report, overt partisan goals are enumerated. The ACORN Ohio Political Plan states:

> *ACORN will target three competitive Ohio congressional districts as well as a half dozen state rep seats nested within the districts. Our electoral work will mobilize and educate voters [and] our paid professional canvass will execute tightly managed Voter ID and GOTV canvasses moving our core constituency of base and swing voters to the polls to vote for the candidates who most closely align with a progressive Working Families Agenda.*

Moreover, documents provided by former ACORN employees and contained in this report demonstrate the degree to which ACORN and ACORN affiliates organized to elect President Barack Obama in 2008.

Fourth, ACORN has submitted false filings to the Internal Revenue Service (IRS) and the Department of Labor, in addition to violating the Fair Labor Standards Act (FLSA).

Committee investigators have tracked ACORN's numerous failures to comply with federal laws that required the payment of excise taxes on excess benefits to Dale Rathke. SEIU Local 100 – under the direction of ACORN founder Wade Rathke – filed bogus reports with the Labor Department in order to conceal embezzlement. ACORN violated the overtime and record-keeping provisions of FLSA. All of these fraudulent acts would constitute a violation of 18 U.S.C. § 1001 by presenting false documents to the United States government.

Fifth, ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 (ERISA).

Committee investigators have concluded that ACORN plundered employee benefits and violated fiduciary responsibilities under ERISA by relieving corporate debts through prohibited loans to a related party. Moreover, ACORN affiliates lack independent control of their own assets and maintain shoddy accounting practices that serve to hide ACORN's secret and illegal use of monies.

ACORN conspired to conceal information concerning prohibited transactions from its board in violation of its corporate charter. ACORN's termination of board members who sought to uncover its illegal activities perpetuates a cover-up at the expense of adherence to its own bylaws.

The evidence contained in this report proves that ACORN's stated purpose to promote grassroots civic participation has been perverted through fraudulent and illegal acts. The weight of evidence against ACORN and its affiliates is astounding. This syndicate of tax-exempt organizations has coordinated and implemented a nation-wide strategy of tax fraud, racketeering, money-laundering and manipulating the American electorate.

Scrutiny is essential to lift a dark cloud of suspicion from nonprofit community organizations; to bring to justice the responsible parties who have heretofore been shielded from prosecution by ACORN's obscure organizational structure; to protect the American system of democratic self-government from manipulation and disruption; and to free our political climate from the choke of corruption that threatens to strangle free and fair elections.

II. Findings

- Piercing ACORN's corporate veil in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.

- When ACORN commits bad acts, the individuals who are harmed are the low to moderate income workers whom ACORN was founded to protect.

- Dale Rathke's embezzlement and ACORN's subsequent cover-up are violations of ACORN's corporate duties and constitute fraud. The identities and roles of those involved must be disclosed.

- ACORN failed to observe its corporate articles by loaning money without proper legal documentation, by ignoring its duties under the corporate bylaws, by misusing corporate funds, and by terminating its members without honoring the process setup in its Articles of Incorporation. ACORN has not complied with IRS filing requirements or ERISA.

- ACORN's inadequate management structure nurtured a breakdown of corporate integrity, encouraged improper political walls, fostered violations of the tax code, cultivated the illegal use of federal funds and supported an inadequate response to corporate embezzlement. ACORN accepts federal grant funds yet lacks any whistleblower policy, fails to comply with IRS laws and lacks an ongoing relationship with duly qualified legal counsel. Project Vote lacks hiring standards and routinely employs convicted felons. The executive directors of several ACORN affiliates lack sufficient control of their own funds, ACORN affiliates lack independent boards that they can report to, and directors wear hats that jeopardize their ability to act solely in the interests of their organizations. ACORN is responsible for Project Vote's fraudulent registrations because ACORN authorizes the selection of members engaged in voter registration.

- An essential aspect of Project Vote, CCI, Citizens Services Inc. ("CSI"), Communities Voting Together ("CVT"), and other ACORN affiliated 501(c)(3)s is to promote desirable governmental policies consistent with its objectives through legislation.

- ACORN and its affiliates cannot delineate their 501(c)(3) work from their non-501(c)(3) work. Ignoring ACORN's nonprofit protections reveals the same individuals made strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter registration work.

- Lobbying is a substantial part of what ACORN does. It has endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD), and Representative Donna Edwards (D-MD). ACORN keeps donor records from the Clinton, Kerry and Obama campaigns with the intent to engage in prohibited communications. ACORN receives federal funding yet engages in improper lobbying. ACORN and its nonprofit affiliates do not have separate accounts. Neither ACORN nor any of its affiliates have properly reported their political activities to the IRS. These harms fly under the legal radar because the IRS rarely checks for compliance. The "no substantial part" test is rarely enforced and the accounts of ACORN and its affiliates are illegally commingled.

III. The ACORN Hangs from Many Branches

The Association of Community Organizations for Reform Now ("ACORN") was founded by Wade Rathke in 1970 in Little Rock, Arkansas.[1] Since that time, ACORN has grown large. It now has hundreds of affiliates in 41 states and registered 1.3 million people to vote in the 2008 election.[2]

ACORN has gained a reputation in the news because of assertions that it committed voter registration fraud, embezzled funds, mismanaged its operations and engaged in political activity.

A. Voter Registration Fraud

One-third of the 1.3 million voter registration cards turned in by ACORN in 2008 were invalid.[3] ACORN has been investigated for voter registration fraud in Nevada, Connecticut, Missouri, Ohio and North Carolina.[4] ACORN has faced a series of alleged inadequacies and indictable offenses: In 1998, an Arkansas ACORN employee was arrested for falsifying voter registration forms.[5] In 1999, Philadelphia authorities found

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[1] Claire Suddath, *A Brief History of ACORN*, TIME, Oct. 14, 2008, *available at* http://www.time.com/time/politics/article/0,8599,1849867,00.html (last visited May 11, 2009).
[2] *Id.*
[3] John Fund, *An Acorn Whistleblower Testifies in Court*, WALL STREET J., Oct. 30, 2008, *available at* http://online.wsj.com/article/SB122533169940482893.html (last visited May 11, 2009).
[4] Lara Jakes Jordan, *Officials: FBI investigates ACORN for voter fraud*, AP, Oct. 16, 2008, *available at* http://www.breitbart.com/article.php?id=D93RNJOG2&show_article=1 (last visited May 7, 2009).
[5] Suddath, *supra* note 1.

hundreds of fraudulent registration forms by ACORN.[6] In October 2008, ACORN's Nevada offices were raided by federal agents.[7] In May 2009, Nevada officials charged ACORN, its regional director, and its Las Vegas field director with voter registration fraud.[8] Several days later, seven ACORN employees were charged in Pittsburgh for voter registration fraud.[9]

The *Wall Street Journal*, quoting Nevada Attorney General Catherine Cortez Masto, reported "Acorn's [sic] training manuals 'clearly detail, condone and . . . require illegal acts,' such as requiring its workers to meet strict voter-registration targets to keep their jobs."[10] Fred Voigt, Philadelphia's deputy election commissioner, claimed ACORN "submitted at least 1,500 fraudulent registrations last fall."[11] According to Lake County Elections Board administrator Ruthann Hoagland, ACORN submitted at least 2,100 fraudulent registrations in Indiana.[12] According to the *Wall Street Journal*, prosecutors fined ACORN and entered into a deal requiring ACORN to either increase its oversight or risk criminal prosecution after several Washington state-based ACORN employees were convicted of voter registration fraud in 2007.[13] During the 2008 election, ACORN was investigated in fourteen other states.[14] In June 2009, judge Richard Zoller, after holding an ACORN employee liable for election law violations, stated, "[s]omebody has to go after ACORN[.]"[15]

B. Embezzlement

According to a July 9, 2008 article in the *New York Times*, Dale Rathke, the brother of ACORN's founder, Wade Rathke, "embezzled nearly $1 million from Acorn [sic] and affiliated charitable organizations in 1999 and 2000."[16] The *Times* reported Dale Rathke embezzled $948,607.50, "carried as a loan on the books of Citizens Consulting Inc. ["CCI"], which provides bookkeeping, accounting and other financial

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[6] *Id.*
[7] *Id.*
[8] John Fund, *More Acorn Voter Fraud Comes to Light: Congressional Democrats still want the group to be eligible for federal money*, WALL STREET J. May 9, 2009, *available at* http://online.wsj.com/article/SB124182750646102435.html (last visited May 11, 2009).
[9] *Id. See also* Joe Mandak, *7 Pa. ACORN workers facing voter-form charges*, AP, May 7, 2009, *available at*: http://www.breitbart.com/article.php?id=D981H0JG3&show_article=1 (last visited July 7, 2009).
[10] *Id.*
[11] Fred Voigt, *Economic Hard Times; Voter Registration Scandal; Global Economy Rescue; Campaign Trail Update; Water Charity; Resale Shop Comeback*, CNN NEWS TRANSCRIPT, Oct. 15, 2008, *available at* http://transcripts.cnn.com/TRANSCRIPTS/0810/15/cnr.01.html (last visited May 11, 2009).
[12] Ruthann Hoagland, *Economic Hard Times; Voter Registration Scandal; Global Economy Rescue; Campaign Trail Update; Water Charity; Resale Shop Comeback*, CNN NEWS TRANSCRIPT, October 12, 2008, *available at* http://edition.cnn.com/TRANSCRIPTS/0810/12/sm.02.html (last visited May 11, 2009).
[13] John Fund, *Whose Ox Is Gored*, WALL STREET J., July 30, 2007, *available at* http://www.opinionjournal.com/diary/?id=110010400 (last visited July 8, 2009).
[14] *Id.*
[15] Walter F. Roche Jr., *'Go after ACORN,' judge says* , PITT TRIBUNE-REVIEW, June 30, 2009, *available at* http://www.pittsburghlive.com/x/pittsburghtrib/news/s_631577.html (last visited July 1, 2009).
[16] Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, *available at* http://www.nytimes.com/2008/07/09/us/09embezzle.html (last visited May 7, 2009).

management services to Acorn [sic] and many of its affiliated entities."[17] ACORN "chose to treat the embezzlement of nearly $1 million eight years ago as an internal matter and did not even notify its board."[18] According to an October 10, 2008 *New York Times* report, ACORN "had failed to disclose the theft for eight years."[19] Dale Rathke remained on ACORN's payroll until June 2008, when news broke of his wrongdoing.[20]

C. Organizational Mismanagement

National Public Radio ("NPR") stated "ACORN has dozens of subsidiaries" and "[s]ome get federal funds."[21] NPR reported "ACORN moves money around among the subsidiaries" and ACORN's mismanagement "essentially gives them a cloak that prevents people from seeing really how they're spending money that comes, in some cases, from the taxpayers, in other cases, comes from members of their organization who pay dues."[22] In response to Dale Rathke's embezzlement, ACORN's "executives decided to keep the information from almost all of the group's board members and not to alert law enforcement."[23] According to the *New York Times*, Maude Hurd, the president of ACORN, thought concealing the embezzlement and "deal[ing] with it in-house" was "best at the time."[24] The "in-house" remedy included firing two ACORN board members for investigating Dale Rathke's embezzlement and its concealment.[25]

According to the *New York Times*, former board members Marcel Reid and Karen Inman sought "a court order to force [ACORN] to hand over financial documents" in addition to "seeking to sever . . . continuing ties between Acorn [sic] and its founder, Wade Rathke" who they contend "continues to direct the staff and expenditures" even though he resigned.[26] The paper reported ACORN is being sued for preventing Reid and Inman from fulfilling their fiduciary responsibilities as board members. In the complaint, the plaintiffs stated, "money is being spent improperly and that important documents are being destroyed."[27] According to the complaint, Wade Rathke's continued relationship

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[17] *Id.*

[18] *Id.*

[19] Stephanie Strom, *On Obama, Acorn and Voter Registration*, N.Y. TIMES, Oct. 10, 2008, *available at* http://www.nytimes.com/2008/10/11/us/politics/11acorn.html (last visited May 7, 2009).

[20] Suddath, *supra* note 1.

[21] Peter Overby, *ACORN Has Long Been In Republicans' Cross Hairs*, NAT'L PUB. RADIO, Oct. 15, 2008, *available at* http://www.npr.org/templates/story/story.php?storyId=95696267 (last visited May 8, 2009).

[22] *Id.* (*quoting* Tim Miller, director of the Employment Policies Institute).

[23] Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, *available at* http://www.nytimes.com/2008/07/09/us/09embezzle.html (last visited May 7, 2009).

[24] *Id. See* Nicholas Confessore, *Perspectives on the Atlantic Yards Development Through the Prism of Race*, Nov. 12, 2006, *available at* http://www.nytimes.com/2006/11/12/nyregion/12yards.html (last visited May 8, 2009); *But see* Stephanie Strom, *Head of Foundation Bailed Out Nonprofit Group After Its Funds Were Embezzled*, N.Y. TIMES, Aug. 17, 2008, *available at* http://www.nytimes.com/2008/08/17/us/17acorn.html (last visited May 11, 2009).

[25] Drew Griffin and Kathleen Johnston, *ACORN fires two who were probing embezzlement allegations*, CNN, Nov. 13, 2008, http://www.cnn.com/2008/POLITICS/11/13/acorn.investigation/index.html (last visited July 7, 2009).

[26] Stephanie Strom, *Lawsuit Adds to Turmoil for Community Group*, N.Y. TIMES, Sept. 10, 2008, *available at* http://www.nytimes.com/2008/09/10/us/10acorn.html (last visited May 11, 2009).

[27] *Id.*

with ACORN, despite his being fired, "impede[d] the ability of the interim management committee to perform its function."[28]

ACORN passed a resolution in 2008, after the embezzlement was revealed, creating a special investigative board, led by Marcel Reid and Karen Inman, whose purpose was to determine how ACORN could be improved so embezzlement-like situations could be avoided in the future.[29] Reid and Inman sued ACORN to protect the integrity of this board.[30]

According to the *Wall Street Journal*, ACORN's "quality-control efforts were 'minimal or nonexistent' and largely window dressing."[31] According to ACORN organizers quoted in the *Journal*, ACORN lacks quality control "on purpose" and it has a "longstanding practice to blame bogus registrations on lower-level employees who then often face criminal charges."[32] The *Journal* reported ACORN employees are told "to engage in deceptive fund-raising tactics."[33]

D. Political Activity

It is undisputed that ACORN engages in politically partisan activity.[34] The *Wall Street Journal* reported ACORN had direct involvement with the Obama campaign.[35] According to John Fund of the *Journal*, Citizens Consulting, Inc., which controls ACORN's finances, was paid $832,000 by the Obama campaign for get-out-the-vote efforts.[36] Nonprofits participating in partisan activity are barred from receiving federal funds, yet ACORN has received $53 million in federal funds since 1994 and could receive up to $8.5 billion more.[37] In March 2009, ACORN became a national partner with the U.S. Census Bureau to assist with the recruitment of 1.4 million workers needed to go door-to-door to count every person in the United States.[38] The *Wall Street Journal* reported ACORN was selected to assist the U.S. Census Bureau in "reaching out to minority communities and recruiting census enumerators for the count next year."[39]

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] John Fund, *supra* note 3.
[32] *Id.*
[33] *Id.*
[34] *See e.g.* Glenn Beck, *Investigating ACORN*, FOX NEWS, May 8, 2009, *available at* http://www.foxnews.com/story/0,2933,519520,00.html (last visited May 8, 2009).
[35] Fund, *supra* note 3.
[36] *Id.*
[37] Kevin Mooney, *ACORN got $53 million in federal funds since 94, now eligible for up to $8 billion more*, WASH EXAMINER, May 6, 2009, *available at* http://www.washingtonexaminer.com/opinion/columns/special-editorial-reports/ACORN-got-53-million-in-federal-funds-since-94-now-eligible-for-up-to-8-billion-more-44406217.html (last visited May 8, 2009).
[38] Cristina Corbin, *ACORN to Play Role in 2010 Census*, FOXNEWS.COM, Mar. 18, 2009, *available at* http://www.foxnews.com/politics/2009/03/17/lawmakers-concerned-role-acorn-census/ (last visited May 15, 2009).
[39] Fund, *supra* note 8.

In a March 19, 2009 hearing, House Judiciary Committee Chairman John Conyers called for an investigation of ACORN:

> Well since we are at a hearing on ACORN is there anybody to hear from ACORN that can testify? May I ask respectfully that the Chairman consider such a hearing so we can get to the bottom of this. . . . [T]his is a member of the bar here who got a successful partial injunction against ACORN and we have our distinguished colleague on the committee here, he's asserted that people, they fraudulently vote in every county in the state – that's a pretty serious matter, I would just like the Chairman who is a fierce supporter of constitutional rights, civil rights and human rights to take this matter up. I think this would be something that would be worth our time.[40]

Three months later, Representative Conyers "backed off his plan to investigate purported wrongdoing by . . . ACORN" because "[t]he powers that be decided against it."[41] A provision inserted by Representative Michele Bachmann (R-MN) into the proposed Mortgage Reform and Anti-Predatory Lending Act blocked organizations indicted for voter registration fraud from receiving housing counseling grants and legal assistance grants and was unanimously approved by a voice vote in the House.[42] But soon after the Financial Services Committee, led by Representative Barney Frank (D-MA), approved the stipulation, Frank claimed he made a mistake and planned to take out the "anti-ACORN provision" from the Act.[43]

IV. ACORN Uses Its Complex Organizational Structure to Facilitate Fraudulent and Illegal Acts.

FINDING: *Piercing ACORN's corporate veil in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.*

FINDING: *When ACORN commits bad acts, the individuals who are harmed are the low to moderate income workers whom ACORN was founded to protect.*

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[40] *Lessons Learned From the 2008 Election, Hearing Before the H. Comm. on the Judiciary*, 111th Cong. (2009) (statement of Representative John Conyers, Chairman).

[41] S.A. Miller, *Conyers Backs Off Probe of ACORN*, WASH. TIMES, June 26, 2009, *available at*: http://washingtontimes.com/news/2009/jun/26/conyers-backs-off-probe-of-acorn-practices/?feat=home_headlines&page=2 (last visited June 22, 2009); *see also* Kevin Mooney, *Rep. Conyers Reverses Stance on ACORN Investigation*, WASH EXAMINER, May 6, 2009, *available at* http://www.washingtonexaminer.com/opinion/blogs/Examiner-Opinion-Zone/Rep-Conyers-Reverses-Stance-on-ACORN-Investigation--44485482.html (last visited May 11, 2009).

[42] *Id.*

[43] *Id.*

The Association of Community Organizations for Reform Now ("ACORN") is a Louisiana incorporated 501(c)(4) nonprofit corporation for organizing a constituency of low- to moderate-income people across the United States.[44] ACORN is registered to do business in 43 states and the District of Columbia.[45] ACORN has over 1200 neighborhood chapters in 104 cities.[46] ACORN's nonprofit corporate status grants it the privilege of limited liability by creating a distinction between the corporate entity of ACORN and the individuals who control its acts.

ACORN loses its tax-exempt privileges if it abuses its corporate privileges and disregards corporate formalities.[47] By ignoring ACORN's legal distinctions ("piercing the corporate veil") investigative bodies may ignore the corporate form of a nonprofit corporation for purposes of preventing fraudulent behavior.[48] Under Louisiana law, officers or directors, the organization, compensated employees and volunteers accused of acting willfully or wantonly are not protected against lawsuits.[49]

Piercing the veil of a nonprofit corporation in order to determine which individuals own or control the organization is a necessary step for preventing waste, fraud and abuse of federal funds in the hands of corporate control.[50] The Eighth Circuit is instructive in these matters and in *HOK Sport, Inc. v. FC Des Moines, L.C.*, the court held, "[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.'"[51] Once the corporate veil is pierced, officers and directors can be found liable as alter egos of the nonprofit corporation.[52]

Piercing the corporate veil is a tool for knocking down the corporate walls used to shield those responsible for bad acts. By ignoring ACORN's otherwise opaque corporate structure and nonprofit legal protections, it is possible to determine how ACORN's leadership committed bad acts.[53] Some ACORN affiliates lobby, yet they are required to

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[44] ACORN WEBSITE, *available at* http://www.acorn.org/index.php?id=12378 (last visited May 4, 2009).
[45] Ralph McCloud CCHD (Nov. 11, 2008) (ACORN 004785) at 5.
[46] ACORN Grant Request to the Democracy Alliance at 2 (Mar. 24, 2006) (ACORN_004338).
[47] HOK Sport, Inc. v. FC Des Moines, L.C., 495 F.3d 927 (8th Cir. 2007). In *HOK Sport, Inc.*, the defendant's finances were not kept separate from the finances of other entities, which were controlled by the defendant. The Court held that "Although The Menace and Kum & Go are corporate entities that are nominally separate from Krause, this factor still weighs in favor of piercing TSF's veil because a reasonable jury could conclude Krause treated each entity as his own slush fund. TSF's finances were not kept separate from The Menace's and Kum & Go's finances, and by extension, Krause's finances." *Id.* at 942.
[48] *Id. See also* WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 41.75 (2006).
[49] *See Matlock v. Hankel*, 707 So. 2d 1016 (La. Ct. App. 1998)
[50] HOK Sport, Inc. v. FC Des Moines, L.C., at 935-36; *See also United States v. Bestfoods*, 524 U.S. 51, 62 (1998).
[51] *Id.*
[52] §8.30 Revised Model Non-profit Corporation Act
[53] Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes,

be walled off from the affiliates receiving federal funds. Likewise, ACORN's 501(c)(3) affiliates, which receive tax-deductible contributions, are presumably walled off from ACORN's political functions. As shown in this Report, there is evidence which questions whether taxpayer money and tax-deductible contributions are being kept separate from those resources used to endorse legislation or fund participation in the campaigns of candidates for public office. The public interest is best served if the opacity behind ACORN's corporate structure and legal protections is removed.

"Piercing" through ACORN's legal protections would remove the distinctions between ACORN and its affiliates. This Report will show how ACORN walls off its bad acts by creating nominal affiliates both through a separate tax structure (Project Vote is a 501(c)(3)) or a separate name and state of incorporation (e.g. ACORN Fair Housing Corporation Orlando, FL).[54]

ACORN's walls are artificial. It fails to maintain the necessary legal formalities required for many of its affiliated and subsidiary entities. ACORN's opacity has allowed it to avoid responsibility, which is why during a debate Senator Barbara Mikulski (D-MD) stated, "ACORN has never, to my knowledge, been convicted of a Federal crime."[55] Yet Senator Mikulski ignores how ACORN's opacity makes the organization too byzantine to be legally controlled. Many ACORN affiliates lack real boards or executive directors, making the legal channel of holding individuals or organizations liable practically un-navigable.[56] Sadly, when ACORN's leaders commit bad acts, the individuals who get caught tend to be low or moderate income workers – the types of individuals ACORN was founded to protect.[57]

This reality is illustrated by recent events. In June 2009, seven ACORN workers in Pennsylvania were charged with forging 51 signatures and violating election laws in advance of the 2008 presidential election.[58] In May 2009, two ACORN staff members were prosecuted in Clark County, Nevada for paying bonuses to workers who registered over 21 individuals per day.[59] In July 2008, three ACORN workers were convicted of voter fraud in Kansas City because they flooded voter registration rolls with over 35,000 false or questionable registration forms.[60] In March 2008, an ACORN employee in West Reading, Pennsylvania, was sentenced to up to 23 months in prison for identity theft and

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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) [hereinafter HCSE Memo] at 1 (ACORN_004927).

[54] *See* Appendix 1, *infra.*

[55] 155 CONG. REC. S3822-41 (Mar. 26, 2009) (statement of Sen. Mikulski).

[56] HCSE Memo (June 19, 2008) at 1 (ACORN_004927).

[57] *See* notes 3-15, *supra.*

[58] Walter F. Roche Jr., *Another Allegheny ex-ACORN worker will stand trial*, PITT. TRIBUNE-REVIEW, June 5, 2009, *available at* http://www.pittsburghlive.com/x/pittsburghtrib/news/pittsburgh/s_628302.html (last visited June 11, 2009).

[59] *See* ATTORNEY GENERAL'S COMPLAINT, *available at* http://sos.state.nv.us/information/news/press/2009/pdf/complaint-acorn (last visited June 22, 2009).

[60] Department of Justice Press Release, *available at* http://kansascity.fbi.gov/dojpressrel/pressrel07/identitytheft010507.htm (last visited May 4, 2009)

tampering with records,[61] and forging 29 voter registration forms in order to collect a cash bonus.[62] In 2007, three ACORN employees pled guilty, and four more were charged, in the worst case of voter registration fraud in Washington state history.[63] In 2007, a man in Reynoldsburg, Ohio was indicated on two felony courts of illegal voting and false registration, after being registered by ACORN to vote in two separate counties.[64] In 2006, eight ACORN employees in St. Louis, Missouri were indicted on federal election fraud charges.[65] In 2005, two ex-ACORN employees were convicted in Denver, CO of perjury for submitting false voter registrations.[66] In 2004, a grand jury indicted a Columbus, Ohio ACORN worker for submitting a false signature and false voter registration form.[67] In 1998, a contractor with ACORN-affiliated Project Vote was arrested in Arkansas for falsifying 400 voter registration cards.[68] In addition to Nevada, Missouri, Pennsylvania, Washington, Arkansas, Colorado, Kansas, and Ohio, there have been prosecutions against ACORN workers in Connecticut, Texas, Wisconsin, and Michigan.[69]

By ignoring ACORN's nonprofit walls, information about those members of its Board and the board of its affiliates who had knowledge and control over its corporate actions can be revealed. ACORN has ignored its corporate duties and has perpetuated fraud. As a result, ACORN's legal protections must be ignored and, as a matter of law, federal funds must be denied to a partisan lobbying organization.

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[61] News Staff, *West Reading man gets jail for phony forms*, READING EAGLE (Mar. 1, 2008), *available at* http://www.readingeagle.com/article.aspx?id=82467 (last visited July 8, 2009).
[62] Editorial, *RNC: Obama & Acorn Fact Sheet*, FOX. BUS. NEWS, Oct. 4, 2008, *available at*: http://www.foxbusiness.com/story/rnc-obama--acorn-fact-sheet/ (last visited June 1, 2009).
[63] Keith Ervin, *Three plead guilty in fake voter scheme*, SEATTLE TIMES, Oct. 30, 2007, at B5; *See also* Shaila Dewan, *A Vote Drive By Democrats In Louisiana Stirs Concern*, N.Y. TIMES. Jun. 15, 2008, *available at*: http://www.nytimes.com/2008/06/15/us/politics/15vote.html (last visited June 10, 2009).
[64] Bruce Cadwallader, *Man voted in 2 counties in 1 election*, COLUMBUS DISPATCH, May 9, 2007, at 04B.
[65] *Guilty pleas in election fraud*, AP, Apr. 3, 2008, *available at*: http://query.nytimes.com/gst/fullpage.html?res=9D00E7DB153DF930A35757C0A96E9C8B63&partner=rssnyt&emc=rss (last visited June 22, 2009).
[66] *Briefing*, ROCKY MTN NEWS, Jan. 4, 2005 at 21A.
[67] Terrence Scanlon, *Democratic Deception*, WASH. TIMES. Oct. 18, 2004, *available at* http://washingtontimes.com/news/2004/oct/18/20041018-093522-3974r/ (last visited June 2, 2009).
[68] Claire Suddath, *A Brief History of ACORN*, TIME, Oct. 14, 2008, *available at* http://www.time.com/time/politics/article/0,8599,1849867,00.html (last visited May 11, 2009).
[69] *See generally* Reggie Sheffield, *Former temp worker accused of bogus voter registrations*, THE PATRIOT-NEWS, Jul. 24, 2008 at B02; Ken Dixon, *ACORN voter signups questioned*, CONNECTICUT POST, Aug 16, 2008, *available at*: http://www.connpost.com/news/ci_10219729 (last visited March 10, 2009); Alan Bernstein, *ACORN planting voter registrars in certain areas*, HOUSTON CHRONICLE, Aug. 17, 2008 at B1; Molly Ball, *Election fraud task force formed; Investigators already looking into voter registration issues*, LAS VEGAS REVIEW-JOURNAL, Aug. 1, 2008 at 2B; Larry Sandler, *Vote workers investigated*, MILWAUKEE JOURNAL-SENTINEL, Aug. 29, 2008 at B3; Larry Sandler, *More voter registration workers under scrutiny*, MILWAUKEE JOURNAL-SENTINEL, Aug. 20, 2008 at B1; L.L Brasier, *Bad voter applications found*, DETROIT FREE PRESS, Sept. 14, 2008 at 1.

A. ACORN Fails to Fulfill Its Corporate Duties

Once a nonprofit organization is incorporated under the law of a state, it becomes a corporation and is subject to state corporation laws.[70] The Uniform Management of Institutional Funds Act, which provides guidance to the governing boards of charitable organizations, directs, "members of a governing board of an institution shall exercise ordinary business care and prudence."[71] Courts apply the same standards to directors of nonprofit corporations as those applicable to directors of for-profit corporations.[72]

The Revised Model Nonprofit Corporation Act requires a director to "discharge his or her duties as a director in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation."[73]

Officers and directors of a nonprofit corporation owe a fiduciary duty to members of the association, and their failure to assume this duty can result in liability to both the association and the individual directors and officers.[74] As fiduciaries, board members bear a duty of loyalty to the corporation and cannot improperly profit at the expense of the corporation.[75] Nonprofits can breach duties of diligence[76] and duties of loyalty,[77] as well as duties to uphold the organizational mission and bylaws.[78] In Louisiana, where ACORN is incorporated, "[o]fficers and directors of nonprofit corporations are required to discharge their duties in good faith, with the diligence, care, judgment and skill of an ordinarily prudent person."[79]

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[70] *Id.*

[71] *Id. See also* §6 of UMIFA, codified, e.g. at Ohio Rev. Code § 1715.56.

[72] *See* Colin T. Moran, *Why Revlon Applies to Nonprofit Corporations*, 53 BUS. LAW. 373, 373-95 (2008).

[73] Revised Model Nonprofit Corporation Act Section §8.30(a).

[74] Schweickart v. Powers, 613 N.E.2d 403 (Ill. App. 1993).

[75] Martha Graham Sch. & Dance Found., Inc. v. Martha Graham Ctr. of Contemporary Dance, Inc., 153 F. Supp. 2d 512, 522 (S.D.N.Y. 2001).

[76] *See Davis v. Black*, 591 N.E.2d 11 (Oh. 1991); *see also Blankenship v. Boyle*, 329 F. Supp. 1089 (D.D.C. 1971).

[77] *See California v. Larkin*, 413 F. Supp. 978 (N.D. Cal. 1976) (Trustee was sued for hypothecation of the assets of a charitable trust as security for a $320,000 loan to the trustee's closely held for-profit corporation to be used by it to earn profits for the trust); *see also Spitzer v. Schussel*, 792 N.Y.S. 2d 798 (2005) (Dance group director sued by New York Attorney General for self-dealing and using the organization to facilitate a tax-avoidance scheme. Co-directors sued for failing to prevent alleged misconduct).

[78] *See Monroe v. Brown*, 381 N.E.2d 1151 (Ohio App. 1978) (The owners of a casino-type gambling facility, allegedly operated on behalf of charitable entities, were sued by Ohio's Attorney General to open their books and disclose whether the operations were conducted for the benefit of the charities or for the private gain of the operators); *see also In re Manhattan Eye, Ear & Throat Hosp.*, 715 N.Y.S.2d 575 (Sup. Ct. 1999) (The board of directors of a charitable corporation was sued for violation of its duty to ensure the mission of the corporation was carried out).

[79] *See* La. R.S. 12:226.

1. ACORN Breached Its Fiduciary Duties by Covering up Dale Rathke's Embezzlement

FINDING: *Dale Rathke's embezzlement and ACORN's subsequent cover-up are violations of ACORN's corporate duties and constitute fraud. The identities and roles of those involved must be disclosed.*

According to the notes from an ACORN meeting held on August 15, 2008 in Los Angeles, Dale Rathke, ACORN Chief Organizer Wade Rathke's brother, embezzled at least $948,000 between 1999 and 2000.[80] The money was alleged to have been spent on a Concorde flight, credit cards, meals and trips.[81]

This Committee obtained an internal report prepared for numerous ACORN-entities by the Washington, D.C. law firm of Harmon, Curran, Spielberg & Eisenberg, LLP (hereinafter "HCSE"). The firm was retained as outside legal counsel for eleven separate ACORN affiliates to "conduct a review of the operations and inter-relationships of the set of . . . corporations addressed on this memo."[82] The firm was retained to provide advice about the "legally appropriate ways of structuring their relationships."[83]

The Memo identifies numerous problems with ACORN's management structure, in addition to problems involving a lack of corporate integrity, improper political walls, tax code non-compliance, concerns about the legal use of federal funds, lack of administrative capabilities and ACORN's inadequate response to the embezzlement by Dale Rathke.[84]

The HCSE Memo raises questions about the degree to which ACORN affiliates that received federal funds improperly comingled those funds with other ACORN affiliated entities.

Concerning the embezzlement, HCSE stated:

> [T]here was contradictory information about who at the board level had been told about the embezzlement and proposed handling of it in 2000. The management council may have been told that the information was shared with the entire executive committee when in fact only the President had been informed. There should be further investigation to determine who was told, and what representations the management council relied on in taking action.[85]

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[80] Notes from West Regional Meeting at 1 (Aug. 15, 2008) (ACORN_000314); *see also* Strom, *supra note* 16.
[81] *Id.*
[82] HCSE Memo (June 19, 2008) at 1 (ACORN_004927).
[83] *Id.*
[84] HCSE Memo (June 19, 2008) at 1-2 (ACORN_004927-004928).
[85] *Id.* at 12 (ACORN_004938).

According to a memorandum from Wade Rathke on February 11, 2008, Louis Robein was hired as special counsel to assist ACORN's in-house legal department and to audit "everything from reporting to record retention and compliance along with handling a series of issues with the IRS."[86] However, the HCSE Memo alleged "that there is also contradictory information about the role played by legal counsel in vetting the settlement of the Dale [Rathke] matter."[87] The HCSE Memo stated:

> In December 2000, **Wade Rathke told Steve Bachmann as attorney and the management council** (as upper level management) **that the legal problems of solving Dale's embezzlements would be turned over to Louis Robein, longtime counsel for Local 100, and regionally reputable labor lawyer** who could reasonably be expected to provide reliable advice in managing this sort of situation. On June 10, 2008, [HCSE] met with Louis Robein who informed [us] that his role was far more limited. He related how around December 2000, Wade had a conversation with Louis to the effect that Dale had been caught in some embezzlement. No amount was mentioned. The discussion was mainly over what liabilities Wade might have to worry about, and Louis provided [some] general and preliminary advice. **Neither Louis Robein nor his firm was retained to structure or review any sort of resolution to the Rathke embezzlement**. . . . . **It appears that this settlement was never reviewed by ACORN's general counsel nor the attorney supposedly retained to do so. A hostile investigator might conclude that Wade deliberately told Steve Bachmann that he had retained different counsel on the matter in order to exclude legal counsel from meaningful participation in review of the proposed plan. And unfortunately, this is an organization that has to be prepared to be scrutinized by a hostile investigator**.[88]

The Service Employees International Union ("SEIU") Local 100 Form LM-2 filed with the Labor Department shows that SEIU made payments to Citizens Consulting Inc. ("CCI") and the Elysian Fields Corporation.[89] According to the HCSE Memo, Wade Rathke disclosed his brother Dale's embezzlement to Louis Robein of Local 100. Local 100's Form LM-2 identifies Wade Rathke as the administrator of SEIU Local 100.[90] Yet in filing its LM-2, Local 100, with Wade Rathke as its agent, claimed the labor organization did not "discover any loss or shortage of funds or other assets . . . even if

[86] Wade Rathke Memo (Feb. 11, 2008) at 3 (ACORN_004861).
[87] HCSE Memo (June 19, 2008) at 12 (ACORN_004938).
[88] *Id.* at 12-13. (ACORN_004938-004939) (emphasis added).
[89] *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).
[90] *Id.* at 1 (ACORN_004902-004926).

there has been repayment or recovery."[91] In a July 22, 2008 email, Steve Bachmann stated:

> **To 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?***[92]

An internal ACORN press release authored by the Interim Management Committee ("IMC"), a board-designated committee temporarily charged with managing ACORN in Wade Rathke's absence,[93] discussed the role played by legal counsel:

> [Marcel] Reid elaborates, saying 'the Rathkes so dominated ACORN, that in approximately 2000, the organization's general counsel admittedly deferred to Wade Rathke in addressing his brother's alleged embezzlement.' Indiana attorney Steve Bachmann identifies himself as ACORN's general counsel. He essentially admits to washing his hands of the Dale Rathke matter once Wade claimed to bring alternative legal counsel in on it. On the day of Wade's termination, he confessed to actually working with certain ACORN staffers to conceal the embezzlement. Maude Hurd admitted to knowing of the arrangement which a whistleblower apparently revealed nearly one decade later.[94]

A memorandum written by former members of the IMC, who were subsequently terminated, alleged:

> ACORN staff members Steven Kest, Jon Kest, Mike Shea, Zach Pollett (sic), Helene O'Brien, Amy Schur, Liz Wolf, Beth Butler, Mildred Brown and Bertha Lewis knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement. Additionally, ACORN executive committee members Maude Hurd (President) and Alton Bennett (Treasurer) knew but conspired to conceal the embezzlement and decided to keep the information from the full Association Board and not to alert law enforcement.[95]

In a letter from James Gray, the IMC's legal counsel, to the ACORN Association Board (hereinafter "Board"), Gray wrote:

> Unfortunately, our preliminary investigation has uncovered evidence which indicates Senior Staff and Executive Committee involvement in the commission and/or concealment of a variety of

[91] *Id.* at 2, question 13 (ACORN_004903).
[92] Email from Steve Bachmann (July 22, 2008) at 4 (ACORN_004328) (emphasis added and in original).
[93] IMC Allegations (Jan. 7, 2009) at 10, 14, 16, 23 (ACORN_004866-004890).
[94] IMC Transparency (Jan. 7, 2009) at 1 (ACORN_004864).
[95] IMC Allegations (Jan. 7, 2009) at 8 (ACORN_004873).

> unlawful and criminal acts, which could result in a duty for the Association Board members to report these acts to local or federal law enforcement agencies. Consequently, the IMC desires to identify and preserve all ACORN assets, and protect them from dissipation and concealment for the benefit of the Association Board. To that end, a Temporary Restraining Order has been granted (a copy is attached), which prohibits Dale Rathke, Wade Rathke Citizen's Consulting Inc. and their agents from signing contracts or destroying documents, and has scheduled a preliminary hearing on August 21, 2008. The Rathkes, Senior Staff and Executive Committee members, who knew but did not divulge the embezzlement of funds to the full Association Board, have placed the entire association board in legal and financial jeopardy.[96]

Gray's memorandum informed the Board members of their liability for failing to disclose Dale Rathke's embezzlement to the entire Board:

> Thus, the acts of Dale Rathke and the subsequent failure to divulge this embezzlement to the entire Association Board have created individual liability for all Association Board members. Actual ignorance of the fraud is not an excuse. Because Executive Committee members knew of the incident and cover-up, the entire Association Board is legally presumed to have known about the embezzlement in 1999 – 2000.[97]

Gray recommended the Board complete individual financial audits and a forensic examination.[98] On October 18, 2008, Gray wrote a letter to the ACORN Association Board agreeing to withdraw a complaint against the ACORN Board, filed in a New Orleans court, as long as ACORN conducted an internal investigation including:

[96] Letter to the Board [James Gray] (Aug. 15, 2008) at 1-2 (ACORN_004896-ACORN_004897).
[97] *Id.* at 3 (ACORN_004898).
[98] *Id.* at 4 (ACORN_004899).

2. Forensic Examination of the known embezzlement followed by an –

3. Independent Audit of ACORN and related organizations performed by a licensed CPA firm hired by, supervised by and reporting directly to an –

4. Audit Committee composed exclusive of executive committee members and senior staff officials.[99]

The letter further stated:

> **The Interim Management Committee members must be given full and complete access to all corporate records**. And all board members and staff should be directed to cooperate in any subsequent audit or investigation. These actions are part of the fiduciary function of the Board of Directors and are necessary to preserve the organizational integrity of ACORN and to prevent the commission or concealment of any other illegal acts.[100]

In an email sent from Ralph McCloud of the Catholic Campaign for Human Development (an ACORN funder) to Steven Kest, Executive Director of ACORN, McCloud asked "[w]ho are the people who did not disclose the fraud over [ ] eight years ago? Do they have roles with ACORN now?"[101] Kest stated, "[t]he following people were on the management council eight years ago, and were made aware of the embezzlement:"[102]

> Steve Kest
> Jon Kest
> Madeline Talbott
> Keith Kelleher
> Mike Shea
> Zach Polett
> Helene O'Brien
> Amy Schur
> Liz Wolff
> Beth Butler[103]

Kest stated, "[t]he following people are still working for ACORN:"[104]

> Steve Kest: National Executive Director

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[99] Letter to the Board [Withdraw Mandamus] at 1 (Oct. 18, 2008) (ACORN_004900).
[100] *Id.* at 2 (ACORN_004901) (emphasis added).
[101] Email from Marcel Reid to Michael McCray (Mar. 24, 2009) (forwarding email from Steven Kest to Ralph McCloud) at 5 (ACORN_004785) [hereinafter "Ralph McCloud CCHD"].
[102] *Id.* at 5-6 (ACORN_004785-004786).
[103] *Id.*
[104] *Id.*

> Jon Kest: NY ACORN Head Organizer
> Helene O'Brien: National Field Director
> Beth Butler, Southern Regional Director[105]

Kest further stated, "the following people are working for affiliated organizations:[106]

> Mike Shea: Executive Director, ACORN Housing Corporation
> Liz Wolff: Special Projects, CCI[107]

Ralph McCloud asked Steve Kest to "explain Wade Rathke's current role at ACORN? He stepped down as ACORN's chief organizer but remains chief organizer for Acorn International LLC? Please explain the difference"[108] Kest responded:

> By action of the ACORN Board on June 3 and then on June 20, **Wade Rathke has no current role with ACORN. He is no longer Chief Organizer, and he is no longer employed in any capacity by ACORN**. ACORN International (actually Inc, not LLC) is a separate corporation that works solely with ACORN affiliates outside the US, in Peru, Argentina, Mexico, the Dominican Republic, Canada, and India. Its board is made up of representatives from those non-US organizations. (ACORN US is represented on the board by Maude Hurd.) As of today, the Board of **ACORN International continues to employ Wade as its chief organizer. However, representatives from the ACORN Board will be meeting with Wade later this month and will be asking him to step down from this role**. As well, Wade Rathke has (and never had) any role with [the American Institute for Social Justice ("AISJ")].[109]

According to the August 15, 2008 notes of the ACORN East Regional meeting in Washington, D.C., Wade Rathke had not yet been removed from his role with ACORN:[110]

> COUNCIL CORPORATIONS
> Tricky question of how acorn board relates to all of the other boards on the COUNCIL (i.e. ACORN & ACORN International)
> CCI Board had one board mbr and now has 4-5 board mbrs.
>
> Over 146 corporations in COUNCIL (ACORN family)
> Dale & Wade affiliated with over 100 of them
> Legally removing Wade & Dale from this stuff is complicated & will take time to sort out

[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.* at 3 (ACORN_004783).
[109] *Id.* at 3-4 (ACORN_004783-004784) (emphasis added).
[110] Notes from East Regional Meeting (Aug. 15, 2008) at 3 (ACORN_00323).

The internal report on ACORN by Harmon, Curran, Spielberg & Eisenberg, LLP ("HCSE Memo") stated, "[the embezzlement] raises major concerns about transparency and accountability."[111] It claimed:

> [I]nvestigation is needed into questions about [Wade Rathke's] failure to inform the board, or possibly even the full executive committee; the degree to which legal counsel and upper management may have been affirmatively misled; the identities and roles of those involved creating and implementing the response to the embezzlement; and the inter-corporate transfers made out of certain funds in response to the loss. These key questions must be investigated, confronted, and disclosed to appropriate parties.[112]

The *New York Times* reported that "[the] embezzlement of nearly $1 million eight years ago" was treated "as an internal matter" and ACORN "did not even notify its board."[113] According to the *Times*, ACORN's President, Maude Hurd, refused to disclose the embezzlement to the IRS:

> '**We thought it best at the time to protect the organization, as well as to get the funds back into the organization, to deal with it in-house**,' **said Maude Hurd, president of Acorn** [sic]. 'It was a judgment call at the time, and looking back, people can agree or disagree with it, but we did what we thought was right.'[114]

The IRS requires exempt organizations to report embezzlements on its federal tax information return (Form 990, Form W-2, or Form 1099) or on an amended federal tax information return.[115] Section 4958 of the Internal Revenue Code imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization.[116] A disqualified person is liable for a twenty-five percent ("25%") tax on the excess benefit.[117] An organization manager may also be liable for a ten percent ("10%") excise tax on the excess benefit transaction, if he or she "knowingly, willfully, and without reasonable cause" participated in the excess benefit transaction.[118]

According to the Congressional Research Service, tax-exempt "[o]rganizations that owe the penalty and excise taxes . . . must file an excise tax return (e.g., Form 4720

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[111] HCSE Memo (June 19, 2008) at 2 (ACORN_004928).
[112] *Id.* at 1 (ACORN_004927).
[113] Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, July 9, 2008, *available at* http://www.nytimes.com/2008/07/09/us/09embezzle.html (last visited May 7, 2009).
[114] *Id.* (emphasis added).
[115] Economic Benefit Transactions, INTERNAL REVENUE SERVICE, *available at*: http://www.irs.gov/pub/irs-tege/eotopice04.
[116] Intermediate Sanctions, *Tax Information for Charitable Organizations*, INTERNAL REVENUE SERVICE, *available at* http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html.
[117] 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, *available at* http://www.irs.gov/pub/irs-pdf/i990-ez.
[118] *Id.*

or Form 1120-POL)."[119] The excise tax return includes the aggregate totals of the taxable expenditures and taxes owed and the names of managers who approved the activities.[120] The filings identify inter-corporate transfers made out of certain funds in response to the loss (embezzlement).[121]

The IRS allows for a disqualified person to correct an excess benefit by making a payment directly to the applicable tax-exempt organization.[122] If a disqualified person fails to correct an excess benefit by a certain date, the tax on the excess benefit increases to 200%.[123]

Based upon the documents cited above, ACORN's failure to report Dale Rathke's embezzlement to the IRS constitutes fraud. Tax fraud is intentional wrongdoing on the part of a taxpayer with the specific intent to evade a tax known to be owed.[124] Fraud may be inferred from conduct intended to conceal, mislead, or otherwise prevent the collection of such taxes.[125] According to the Supreme Court, because direct proof of the taxpayer's intent is rarely available, fraud may be proven by circumstantial evidence and reasonable inferences drawn from the facts.[126] In *Bradford v. Commissioner*,[127] the Ninth Circuit Court of Appeals held that fraudulent intent can be inferred from various kinds of circumstantial evidence, setting forth the "badges of fraud" demonstrating fraudulent intent. Fraud may be presumed by: understatement of income; inadequate records; failure to file tax returns; implausible or inconsistent explanations of behavior; concealment of assets; and failure to cooperate with tax authorities.[128]

a) ACORN Violated ERISA

ACORN violated its fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 ("ERISA"), which protects the benefit rights of employees.[129] Stephanie Strom, in an October 22, 2008 report in the *New York Times*, stated ACORN Fund, a health care benefits fund, "had advanced 'a large amount of

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[119] Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 24; *see also* IRC § 6104(b) and (d).
[120] *Id.*
[121] *Id. See also* Developments Editor, *Developments in the Law – Nonprofit Corporations*, 105 HARV. L. REV. 1578, at 1599 (1992) (The Internal Revenue Code "imposes an absolute prohibition on almost every conceivable transaction between a private foundation" and an officer or director).
[122] Economic Benefit Transactions, INTERNAL REVENUE SERVICE, *available at*: http://www.irs.gov/pub/irs-tege/eotopice04.
[123] 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, *available at* http://www.irs.gov/pub/irs-pdf/i990-ez.
[124] *See Bradford v. Commissioner*, 796 F.2d 303, 307 (9th Cir. 1986).
[125] *See Graves v. Commissioner*, T.C. Memo 1994-616 (T.C. 1994).
[126] Spies v. United States, 317 U.S. 492 (1943).
[127] 796 F.2d 303 (9th Cir. 1986).
[128] *Id.* at 307-308.
[129] 29 U.S.C. §1105.

money'" to ACORN and "it appeared that the money was used to cover 'the cash shortfall caused by the embezzlement.'"[130]

The June 19, 2008 HCSE Memo identified ACORN's current pension fund as "Council Beneficial Association, or CBA" and its health plan as "Council Health Plan, or CHP."[131] The memo stated:

> Two other revelations need to be further investigated. These pertain to ACORN Beneficial Association, or ABA, a discretionary plan in place before the creation of CBA that was intended not to be a true pension fund covered by the ERISA law, and to ACORN Fund, a similar discretionary health care fund that was in place before the creation [of] CHP. **A large part of the embezzled funds ($215,000) were charged through ACORN's AmEx account to ABA. When the theft was discovered, this meant that Dale owed ACORN this amount, and ACORN in turn owed ABA for the overpayment. [We are] told that ABA decided to write this debt off as a gift to ACORN** (though the debt from Dale naturally was not forgiven). Although it is the organizations' legal position that this fund was not covered by ERISA and therefore not subject to its rules that would prohibit this sort of gift, **it is nonetheless the case that a number of organizations, possibly including unions and charities, paid funds into ABA for entirely different purposes. They did not make those contributions in order to make a gift to ACORN.** [We] have not gotten information about who authorized this decision, but those questions need to be asked. Either the board was involved in the decision and can explain the rationale, or they were not, and there are serious questions to ask as to who authorized this expenditure.
>
> As for **ACORN fund**, it apparently had advanced a large amount of money to ACORN. If the Fund was not covered by ERISA, it may have had the discretion to do this. **If it were covered by ERISA . . . this would be a prohibited loan to a related party**. In any case, after resolution of the embezzlement and **execution of the note between Dale Rathke and CCI, the situation was that Dale owed CCI, CCI owed ACORN, and ACORN owed ACORN Fund.** It was agreed to take ACORN out of this picture, so that now it is **CCI that owes this money to ACORN Fund**. [We] have not gotten information to determine how this decision was made or approved, but **it certainly creates concern**. **There is the appearance, at least, that money was taken out of (or not**

[130] Stephanie Strom, *Acorn Report Raises Issues of Legality*, N.Y. TIMES, Oct. 22, 2008, *available at* http://www.nytimes.com/2008/10/22/us/22acorn.html (last visited May 7, 2009).
[131] HCSE Memo (June 19, 2008) at 12 (ACORN_004938).

> **paid back to) a fund established to cover employee health care costs in order to cover the cash shortfall caused by the embezzlement. This decision, combined with the apparent failure to notify the governing boards of affected organizations or obtain adequate legal counsel, could generate significant liabilities for the Fund and its directors.** Again, there must be inquiry into the decisions about moving these funds, the advice if any that was relied on, and the best response now to minimize legal concern. As with ABA, if the board of directors does not have answers to questions about this organization, we need to ask why not.[132]

One month later, on July 22, 2008, Steve Bachmann, ACORN's General Counsel, confirmed HCSE's concerns in an email suggesting:

> **[Wade Rathke] might be sued as a trustee under ERISA, given his record of behavior with the ERISA funds that has been uncovered**. For better or worse this is a trigger that should not be pulled until November or December . . . **[Wade Rathke] might be sued for his abuse of ABA and AFund, two charitable funds, both quasi-ERISA funds.** . . . ***The point here is that corporate law generally says that corporate formalities and protections are ignored when they are being abused for purposes of fraud. So to the degree that [Wade Rathke] wants to play that game and we show that he's a crook, the courts will ignore his games***[.][133]

Bachmann suggested a number of legal positions could be used to induce Wade Rathke, ACORN's historic Chief Organizer, into a limited role in ACORN.[134] Bachmann discussed the liabilities involved with ACORN's opaque corporate structure:

> Beyond [HCSE's] research into whether or not the [Dale Rathke] note can be sold at a better price is the fundamental question of whether the **Rathkes got any releases signed when they signed their promises and pledges**. In other words, the theory is that **they signed them in exchange for a release for all liabilities. There is a LOT of liability here, the money owed, the interest owed, damages to reputation, cost of recovery, etc., etc.** But it appears that ACORN, CCI, and all the other organizations signed nothing when they got the papers from the Rathkes. So presumably they may still be able to sue them for losses for which they have not yet been compensated.[135]

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[132] HCSE Memo (June 19, 2008) at 13 (ACORN_004939) (emphasis added).
[133] Email from Steve Bachmann (July 22, 2008) at 3-4 (ACORN_004327-004328) (emphasis in original and added).
[134] *Id.*
[135] *Id.* (emphasis added).

According to Bachmann, ACORN board members could have sued Wade Rathke as a trustee under ERISA for his abuse of the ACORN Beneficial Fund ("ABA") and ACORN Fund ("AFund"), "two quasi-ERISA, charitable funds," and can sue under common law theories of negligence for Rathke's ignoring corporate formalities and protections, the lack thereof being abused for purposes of fraud.[136] A December 15, 2006 year end report by SEIU Local 880, an affiliate of ACORN, discusses the millions of dollars in health care funding it received:

> Childcare Health Fund - Contained within our most recent contract covering the 40,000 childcare providers, there is a provision guaranteeing $27 million paid out over 18 months (beginning in July, 2007) to local 880 to set up a health benefit for the childcare providers. We had wanted $150 million over three years, but "only" won $27 million. We believe that we can cover thousands of providers, depending on the plan and schedule of benefits. Preliminary numbers show that about 8000 providers would qualify and about 4000 would use this comprehensive benefit we are putting together now. Toward that end, we are in the negotiating process with United Healthcare, the largest insurer in the world to fashion a plan like this for our members. It is scary and hopeful at the same time, that we could fashion a health benefit for thousands and bring much-needed health care to a population that has been denied health care for so long.[137]

According to the Local 880 report, CCI performs Local 880's legal services and ex-ACORN head organizer Robert Bloch has helped Local 880's political activities:

> Legal Representation - **In the past we have used Steve Bachmann and the CCI legal team; SEIU counsel, Craig Becker; Art Martin in Southern Illinois; and most recently, ex-ACORN head organizer, Robert Bloch's law firm**. We plan to continue using these legal resources in the future. But we have been increasingly using Robert Bloch[']s law firm for a lot of legal needs in 2006. **Robert[']s firm has been a key help in FLSA and neutrality wins**. We are moving more business their way and will continue to do so.[138]

Notes from the August 15, 2008 ACORN East Regional Meeting in Washington, D.C., show the embezzled money was paid back through ACORN's health fund:[139]

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[136] *Id.* Negligence under 26 U.S.C. § 6653 is defined as the lack of due care or the failure to do what a reasonable and prudent person would do under similar circumstances. 26 U.S.C. § 6653 (a)(1)(A) and (B); *see also Allen v. Commissioner*, 925 F.2d 348, 353 (9th Cir. 1991).

[137] Local 880 at 9-10 (Dec. 15, 2006) (ACORN_004358-004359).

[138] *Id.* at 13-14 (ACORN_004362-004363) (emphasis added).

[139] Notes from East Regional Meeting (Aug. 15, 2008) at 1 (ACORN_00321).

REPORT ON THE STATUS OF THE ORGANIZATION – what happened, board response
943k embezzlement thru credit card and false reimbursements
Agreed to repay 30k a year in order to not be prosecuted
Decision by wade along with management council
Understanding that wade would inform EC of theft & decision to keep dale
Came out that mbrs of AB not informed of this
Was revealed after a nat'l funder found out
AB met at convention
At convention asked wade to step down from acorn & all affiliates
Dale asked to leave
Formed IMC & AB voted to have 3 AB mbrs on IMC – finance (carol hemingway from PA) legal (Karen Inman from MN) organizational development (marcel Reid from DC)
AB trusting IMC to assess organization & make recommendations for going forward

After dale's theft there were procedures put in place to prevent that kind of theft from happening again.
The laxity and loophole that enabled dale to steal that much money has been closed
There are other ways people could steal money and others have stolen much smaller amounts locally
As far as we know all have been caught
IMC is reviewing credentials of a firm that can do an outside accounting review to make sure money can't be stolen and to assess cci overall and make recommendations
Looking into hiring a company named Mesirot to help assess cci and make recommendations for moving forward

The $943k has been paid back in full now and is in a protected bank acct. It will go back to the corporations that it came from. A range of different entitities.
i.e. a precursor to the current health fund (that will benefit the health fund)

Leadership has no faith in staff. Wade betrayed them

HCSE's June 2008 concerns about ACORN's health fund appear to be confirmed in the August 2008 meeting notes:[140]

ACORN owes health fund roughly $500k to bail out health fund
If we don't do this then we'll have to pay more when the health fund runs out of money
Big ny ally forest city ratner agreed to loan us $1M at 2% and grant us $500k to pay back health fund and to use for other transition costs. Board will decide how much to allocate to IRS payment and how much to allocate to lawyers
Also trying to get money from Bloomberg and other NY and other wealthy allies for this
Also asking cabal of 30 funders for transition funds

We've started going out aggressively to a bunch of wealthy allies and some are excited to fund building a new acorn

Pension fund is in fairly good shape
Issues are more with Health fund. It is short of money and it needs to be bidded out to commercial insurance companies

According to the East Regional meeting notes, Forest City Ratner provided the loan alleged in the HCSE Memo to have been used to pay back ACORN's health fund, not from the accounts directly embezzled.[141] The agreement was as follows:[142]

[140] *Id.* at 2 (ACORN_00322).
[141] *Id.*
[142] Executed FCR (Aug. 19, 2008) at 1-2 (ACORN_000094-000095).

FOREST CITY RATNER COMPANIES, LLC
1 MetroTech Center North
Brooklyn, New York 11201

August 19, 2008

Association of Community Organizations
for Reform Now (ACORN)
2609 Canal Street
New Orleans, LA 70119
Attn.: Bertha Lewis

ACORN Institute
2609 Canal Street
New Orleans, LA 70119
Attn: Bertha Lewis

Dear Ms. Lewis,

This is to memorialize our agreement for a loan to ACORN and grant to the Acorn Institute to be made by Forest City Ratner Companies, LLC (FCRC) as follows:

1. FCRC shall, simultaneously herewith: (i) loan to ACORN the sum of $1,000,000 upon the terms and conditions set forth in the Note signed by ACORN, a copy of which is attached hereto as Exhibit A, and (ii) grant to the Acorn Institute the sum of $300,000;

2. In each of August 2009 and August 2010, FCRC shall make an additional grant of $100,000 to the Acorn Institute.

Please acknowledge that the foregoing complies with your understanding of our agreement by executing this letter.

Very truly yours,

Forest City Ratner Companies, LLC
By: Forest City East Coast, Inc.

By: _____
David Berliner
Sr. Vice President

Acknowledged on behalf of Association of
Community Organizations for Reform
Now and ACORN Institute:

By: _____
Bertha Lewis, Interim Chief Organizer

As stated in the HCSE Memo, this transaction – where a charity grants money to a 501(c)(3) in order to pay off a debt for a health fund – is a prohibited loan to a related party, violating the fiduciary responsibilities directors have under ERISA.[143] As stated in the HCSE Memo, ACORN and its directors covered up the embezzlement loss by taking money out of and failing to pay back a fund established to cover employee health care costs, failing to notify the governing boards of the affected organizations and failing to obtain adequate legal counsel.[144]

b) ACORN Breached Its Duty of Care

Dale Rathke's embezzlement violated ACORN's duty of care to its members because Rathke did not "act in good faith" nor was his transaction "inherently fair from the corporation's point of view."[145] A nonprofit corporation's duty of loyalty requires directors to act in good faith and in a manner they reasonably believe is in the best interests of the organization.[146]

Dale Rathke was secretary-treasurer and director of internal operations of Citizens Consulting, Inc. (CCI), a non-profit entity handling ACORN and all of its affiliates accounting, and "actively manage[d], supervise[d] and direct[ed] the business affairs and operations of CCI."[147] According to an affidavit by ACORN legal counsel Brian Mellor, ACORN and its affiliates still use CCI:

> **MELLOR stated that ACORN use an online payroll system identified as CCI OMS**. . . . The information from the timesheets is then entered into the online system by the political organizers supervising the canvassers. When a bonus is paid, there is a comments section in the payroll system that should be used to explain the reason for the bonus. **MELLOR stated that he caused payroll reports to be generated from the data in the CCI payroll system.** He provided me with an electronic copy of four such reports. MELLOR opened one of the reports on his laptop and showed the columns titled "Incentive" and 'Comments'. MELLOR pointed out that some of the entries reflect the payment of 'Blackjack' or '21+'.[148]

In an email between ACORN National Executive Director Steven Kest and Ralph McCloud, of the Catholic Campaign for Human Development ("CCHD"), Kest described CCI as follows:

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[143] *See ERISA Fiduciary Prohibited Transaction Rules*, K&L GATES ALERT, *available at* http://www.klgates.com/files/Publication/7e40b6c6-2c73-4243-b353-ae156790b296/Presentation/PublicationAttachment/af13fd44-86ef-4b2a-8a04-b49f5e613a4c/IM-ERISA_0806_Fiduciary_Prohibited_Transaction_Rules (last visited June 22, 2009).

[144] HCSE Memo (June 19, 2008) at 13 (ACORN_004939).

[145] Boston Children's Heart Found., Inc. v. Nadal-Ginard, 73 F.3d 429, 433 (1st Cir. 1996).

[146] §8.30 Revised Model Non-profit Corporation Act.

[147] Herman v. Citizens' Consulting, 1997 U.S. Dist. LEXIS 7376 at *1, 8 (D. La. 1997)

[148] ACORN AFFIDAVIT, *available at*: http://sos.state.nv.us/information/news/press/2009/pdf/AFFIDAVIT-ACORN.pdf, at 9, lines 14-25 (last visited June 22, 2009) (emphasis added).

> **Citizens Consulting, Inc. is an independent organization. It is a non-profit corporation with no special tax status run by a self-perpetuating board**. Both AISJ and ACORN have contracts with **CCI to do their accounting work and corporate record keeping**. . . . CCI has two staff members who are assistant officers of ACORN with authority to act on behalf of ACORN solely on administrative matters. (For example: opening up bank accounts at the direction of ACORN management.) This is standard corporate practice. Paul Satriano, the national Treasurer for ACORN, is a new board member of CCI.[149]

Seven years prior to Dale Rathke's embezzlement, Dale Rathke and CCI were sued by the Secretary of Labor in the federal district court in New Orleans for violating overtime and record-keeping provisions of the Fair Labor Standards Act.[150] Federal agents from the Department of Labor were concerned about the recent suit filed against ACORN in New Orleans, and in an October 13, 2008 letter, James Gray, writing to Maude Hurd, ACORN's President, and Steve Kest, ACORN's Executive Director, stated:

> You have been previously advised that due to the admission that a felony has been committed, that other federal offenses may have also been committed including but not limited to; Title 18 U.S.C. 1341, Mail Fraud, 18 U.S.C. (sic) 1001, Presenting a False Document to the (sic) an Agent of the United States Government; 18 U.S.C. § 1027 False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974 and other possible offenses. Due to which federal Agents from the Department of Labor attended the October 2, 2008 preliminary hearing.[151]

According to an October 16, 2008 Legal Report by the Interim Management Committee, ACORN's ERISA concerns had not been addressed.[152]

c) The Embezzlement Is An "Excess Benefit" Transaction Prohibited By The IRS

Since 1996, the Internal Revenue Service ("IRS") has been empowered to fine and otherwise penalize executives of nonprofit corporations who receive excessive compensation for services and benefits, as well as officers, directors or trustees who approve such arrangements.[153] The Internal Revenue Code imposes initial taxes, additional taxes and excise taxes on the executives who receive excess benefits, as well

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[149] Ralph McCloud CCHD at 3 (Nov. 11, 2008) (ACORN_004783) (emphasis added).
[150] Herman v. Citizens' Consulting, 1997 U.S. Dist. LEXIS 7376 at *1 (D. La. 1997). The Department of Labor alleged that "since November 1992, CCI and Rathke . . . have violated Sections 7, 11 (c) and 15 (a) (2) and 15 (a) (5) of the Act, 29 U.S.C. §§ 207, 211 (c), 215 (a) (2) and (5)." *Id.* at *8.
[151] Letter to Board (Oct. 13, 2008) at 2 (ACORN_004492) (emphasis in original).
[152] IMC Legal Report [Karen Inman] (Oct. 16. 2008) at 3 (ACORN_004497).
[153] 1-12 Liability of Corporate Officers and Directors §12.01.

as upon organization managers who participate in excess benefit transactions.[154] Under the Code, the sale, transfer or use for the benefit of "a disqualified person" of income or assets of the foundation are prohibited transactions.[155]

According to the ACORN internal report by the law firm of Harmon, Curran, Spielberg & Eisenberg, LLP ("HCSE Memo"), the embezzlement occurred in 1999 to 2000 and was not reported until 2008, yet the statute of limitations for an excess benefit transaction is generally three or six years, depending upon whether the transaction was reported.[156]

Under 2 U.S.C. § 1606, whoever knowingly fails to remedy a defective filing is subject to a civil fine, and depending on the extent and gravity of the violation, can be imprisoned or fined, or both, under title 18 of the United States Code.[157] The ACORN Board, which had knowledge of and control over ACORN's IRS reporting, did not properly report Dale Rathke's excess benefit transaction, i.e. the embezzlement.

2. ACORN Breached Its Corporate Duties by Failing to Abide by its Bylaws

FINDING: *ACORN failed to observe its corporate articles by loaning money without proper legal documentation, by ignoring its duties under the corporate bylaws, by misusing corporate funds, and by terminating its members without honoring the process setup in its Articles of Incorporation. ACORN has not complied with IRS filing requirements or ERISA.*

A nonprofit's articles of incorporation or "articles . . . includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created."[158] A nonprofit fails to observe corporate formalities when it "loans[] money back and forth without any legal documentation[,]" when "the 'officers ignored their obligations under the corporate articles and bylaws' and 'the officers personally controlled the business and misused corporate funds.'"[159]

The unreported Rathke embezzlement meets the first criterion for failing to heed corporate formalities. ACORN insiders produced a presentation from the ACORN Board outlining the ACORN Board's fiduciary duties and documenting the ACORN Board's knowledge of its fiduciary responsibilities.[160] Article 6 of the ACORN Bylaws requires

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[154] 26 U.S.C. §4958(c)(1)(A) and (f)(1)(A)-(B). Self-dealing transactions that would benefit an officer, director or employee are prohibited by this statute.
[155] *See* 26 U.S.C. §§ 4941-4946.
[156] I.R.C. 6501(a), (e)(3), (l). *See also* IRS Internal Revenue Manual § 7.27.30.9 (Period of Limitations), paragraphs 3 and 4, http://www.irs.gov/irm/part7/irm_07-027-030.html (last visited June 22, 2009).
[157] 2 U.S.C. §1606.
[158] 26 CFR 1.501(c)(3)-1.
[159] *Supra* note 47 at 942.
[160] Board of Directors Fiduciary Responsibilities (undated) at 1-16 (ACORN_004517-004532).

all checks drawn on the bank accounts of the corporation to be authorized by the Board.[161]

Documents produced by former ACORN employees illustrate how ACORN's officers ignored their duties under their corporate articles and bylaws. ACORN's Bylaws describe ACORN's national operations as an outgrowth of local community organizations affiliating on a district and statewide basis.[162] Under the Bylaws, the ACORN board "can remove officers with . . . a vote equal in number to three-fourths of the members sitting on the Board."[163] After the embezzlement was disclosed, the ACORN Board established an Interim Staff Management Committee ("ISM" Committee) to elect three members (the Interim Management Committee "IMC") to serve on the Committee and report to the Board every month.[164] Karen Inman, Carol Hemingway, and Marcel Reid were selected to the IMC.[165] The Bylaws require, "[e]ach state Executive Board [have] a system for settling grievances within local groups in the state, to the end that ACORN's organizational democracy, harmony and unity might be maintained."[166] According to the ACORN Bylaws, the Chief Organizer serves at the pleasure of the Board of Directors.[167] The Bylaws also require local chapters to be placed under administratorships when necessary to ensure against corruption.[168]

In a July 13, 2008 teleconference of the ACORN Association Board, the Board approved for funds to be directed to the investigation and auditing activities of the IMC:[169]

> Karen Inman (MN) gave a report on legal matters and indicated that the IMC was met with delays in getting all the information it needed and actions that were to have been taken were delayed. She also reported that board may or may not have directors' insurance. Zach stated that he and Bertha would check on this with the Legal Department and get a report back to the board.
>
> Carol Hemingway (PA) gave a report on fiscal matters and indicated that the board members on the IMC need authorization to contact and employ on behalf of the organization independent consultants.
>
> Gloria Swearingen (MD) moved that funds be granted to allow that the board members appointed by the board to sit on the Interim Management Committee have access to professional consultants needed to carry on the work so that the will of the Association Board be carried out. The motion was seconded by Coya Mobley and passed unanimously.

The IMC filed a complaint on August 12, 2008 against Wade Rathke and members of the ACORN board. Although the IMC withdrew its complaint, eight ACORN board members continued the lawsuit. An August 24, 2008 letter sent to the ACORN Board from the eight former ACORN employees ("ACORN 8") of the Interim Management Committee ("IMC") stated, "(1) staff is not being paid, (2) payroll taxes are

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[161] IMC Transparency (Jan. 7, 2009) at 6; ACORN Bylaws, Art. 9, at 8-9 (on file with author); IMC Transparency (Jan. 7, 2009) at 4 (ACORN_004869).
[162] *Id.* Art.1,3-5, 6, cl. 15, at 7.
[163] *Id.* Art. 7, cl. 2, at 7-8.
[164] *Id.* at 2.
[165] *Id.* at 3.
[166] *Id.* Art 11: Grievances.
[167] *Id.*
[168] *Id.* at 11.
[169] ACORN Association Board Meeting (July 13, 2008) at 1 (ACORN_00391).

not being paid, (3) member checking accounts have been overdrawn, and (4) ACORN operational accounts have been depleted."[170] According to an October 16, 2008 legal report prepared by IMC member Karen Inman, the ACORN Board failed to provide an insurer with audited financial statements and there are ongoing issues with IRS compliance and with state taxing authorities.[171]

Although the Bylaws require three-fourths vote for removal, because members of the IMC ("ACORN 8") filed an action against ACORN's Board, Maude Hurd, President of ACORN, wrote to ACORN 8:

> On November 9, 2008 the ACORN Executive Committee met and considered the resolutions of the majority of state boards. The feedback from the states was clear, and the Executive Committee acted upon it by voting that **any member participating in the mandamus action, now or in the future, shall not be eligible to hold office or serve on any Association Board committee. Accordingly, you are hereby removed from any office or committee position you may have held.**[172]

According to Maude Hurd, no member participating in the suit against ACORN, including Karen Inman and Marcel Reid, was permitted to attend the scheduled Bylaws Committee meeting:

> [T]he membership of Karen Inman and Marcel Reid in ACORN is cancelled, and they are removed from the Association Board, and that any other members participating in the mandamus action shall not be eligible to hold office or serve on any committee of the Association Board. [173]

Hurd further stated:

> These actions were taken in order to protect the Association against the harm caused by the unauthorized and reckless lawsuit, the insistence on airing internal disputes in the press, and the failure to abide by the democratically-made decisions of the full organization. Any state, region, or local group that seeks to undermine these decisions may be subject to administratorship according to Article 13 of the Bylaws.[174]

The purported firings of Karen Inman, Marcel Reid and Carol Hemingway were executive decisions made without following the three-fourths voting requirement specified in the ACORN Bylaws.

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[170] TRO Summary for Association Board (Aug. 24, 2008) at 2 (ACORN_004472).
[171] IMC Legal Report [Karen Inman] (Oct. 16, 2008) at 2 (ACORN_004496).
[172] IMC Allegations at 13 (Jan. 7, 2009) (ACORN_004878) (emphasis added).
[173] Acorn Termination Notices (Nov. 11, 2008) at 1 (on file with author).
[174] *Id.* at 2.

ACORN 8 claimed the ACORN executive committee lacked the authority it exercised because the board ignored the bylaws:[175]

> According to Stephanie Strom of the New York Times, ACORN's Interim Chief Organizer contends that "the board's executive committee . . . is charged with making decisions between the board's two annual meetings." (Stephanie Strom, *"Acorn Working on Deal to Sever Ties With Founder"*, New York Times – October 16, 2008). On July 13, 2008, ACORN's General Counsel represented that "the Exec Comm's power are *(sic)* Not in the bylaws and are determined from meeting to meeting – ". *(See, July 13, 2008 - 7:15 PM - Bachmann Email to nyeadirector@acorn.org and Karen Inman).* Arguably without a "meeting" at which there is a "quorum", no such determination can be made by ACORN's board of directors. *(AB – Article Six: Association Board of Directors, 11).*
>
> A quorum is unlikely to spontaneously convene; vote, on a totally impromptu basis, in adequate numbers to empower ACORN's Executive Committee as the organization's Interim Chief Organizer reportedly envisions; while simultaneously waiving prior notice. So, as a practical matter, there would have to be some kind of advance notice of any board vote purportedly empowering ACORN's Executive Committee to expel fellow members from the organization and/or its offices. *(AB – Article Six: Association Board of Directors, 9 & 10).* The complainants hereby attest that they have never been provided any such notice.

According to a letter from ACORN 8 attorney James Gray, Liz Wolf, an ACORN staff member, continued to receive and spend corporation money even after being told to stop by the IMC.[176] ACORN 8's temporary restraining order enjoined and prohibited the defendants from continuing "to enter into contracts and waste money of the Corporation and [make] any payments on behalf of the Corporation other than for wages already earned until further orders of the Court."[177] A Louisiana court required ACORN to "disclose the location of all banking accounts, deposits of money and contracts belonging to ACORN."[178] According to ACORN 8, these disclosures have not been made. ACORN 8 claimed the Board ignored their attorney James Gray's October 13, 2008 letter to the ACORN Executive Board, including Maude Hurd and Steven Kest, requesting ACORN to cease entering into any agreements or negotiating any contracts intended to divest ACORN assets or property to Wade Rathke without the full Association Board's approval.[179]

3. ACORN's Financial and Structural Mismanagement Has Led to Its Failure to Uphold Its Corporate Duties

[175] IMC Allegations (January 7, 2009) at 14 (ACORN_004879).
[176] 6-Amended TRO Petition [James Gray] at 3 (ACORN_000024).
[177] *Id.* at 4 (ACORN_000025); *See also* Writ of Mandamus (Sept. 19, 2008) at 3-4 (ACORN_000040-000041).
[178] *Id.* at 6-7 (ACORN_000027-000028).
[179] Letter to Board (Oct. 13, 2008) at 1-2 (ACORN_004491-004492).

FINDING: *ACORN's inadequate management structure nurtured a breakdown of corporate integrity, encouraged improper political walls, fostered violations of the tax code, cultivated the illegal use of federal funds and supported an inadequate response to corporate embezzlement. ACORN accepts federal grant funds yet lacks any whistleblower policy, fails to comply with IRS laws and lacks an ongoing relationship with duly qualified legal counsel. Project Vote lacks hiring standards and routinely employs convicted felons. The executive directors of several ACORN affiliates lack sufficient control of their own funds, ACORN affiliates lack independent boards that they can report to, and directors wear hats that jeopardize their ability to act solely in the interests of their organizations. ACORN is responsible for Project Vote's fraudulent registrations because ACORN authorizes the selection of members engaged in voter registration.*

ACORN exercises control over housing corporations,[180] media entities,[181] labor organizations,[182] building corporations,[183] service providers,[184] 501(c)(3)'s,[185] political action committees,[186] and health funds,[187] among others.[188] According to the Louisiana Secretary of State database, Wade Rathke is on the board of 30 ACORN-affiliated corporations, many of which are defunct.[189] The ACORN COUNCIL is composed of ACORN and ACORN International.[190] Over 361 corporations compose the COUNCIL and Dale and Wade Rathke are affiliated with over 100 of them.[191] The law firm of Harmon, Curran, Spielberg & Eisenberg LLP ("HCSE"), ACORN's outside counsel, identified numerous problems with ACORN's management structure, including a lack of corporate integrity, the existence of improper political walls, a failure to comply with the tax code, concerns about the legal use of federal funds, a lack of administrative capabilities, and an inadequate response to the embezzlement.[192] According to the HCSE

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[180] ACORN Corporate Structure (undated) at 2-3 (ACORN Center for Housing, Inc., Desert Rose Homes, L.L.C.) (on file with author).
[181] *Id.* at 4 (ACORN Television in Action for Communities, Inc.).
[182] *Id.* at 5 (Local 100, Local 880, American Home Day Care Workers Association, Inc., United Security Workers of America).
[183] *Id.* at 6 (Broad Street Corporation, Elysian Fields Corporation, New York Organizing and Support Center, Inc.).
[184] *Id.* at 7 (ACORN Associates, Inc., ACORN Campaign Services, Inc., Citizens Consulting, Inc., Citizen Services, Inc.).
[185] *Id.* at 8 (ACORN Institute, Inc.; American Institute for Social Justice, Inc.; Project Vote/Voting for America, Inc.; ACORN Law for Education Representation & Training, Inc.).
[186] *Id.* at 9 (ACORN Political Action Committee, Inc.).
[187] *Id.* (ACORN Beneficial Association, Inc., McLellan Multi-Family Corporation).
[188] *Id.*
[189] Email from Steve Bachmann (July 22, 2008) at 1 (ACORN_004325).
[190] ACORN Grant Request to the Democracy Alliance at 12-13 (Mar. 24, 2006) (ACORN_004348-004349).
[191] *Id. See also* Appendix 1, *infra*.
[192] HCSE Memo (June 19, 2008) at 1-2 (ACORN_004927-004928).

Memo, ACORN accepts federal grant funds yet lacks a whistleblower policy, fails to meet federal audit requirements, and lacks an ongoing relationship with legal counsel.[193]

Private foundations, like Citizens Consulting Inc. ("CCI") and Project Vote (ACORN's get-out-the-vote organization) must pay an excise tax on any lobbying expenditures they make, yet, according to their Form 990's, they never reported their expenditures to the IRS.[194] On the basis of their joint representation before the United States District Court in Louisiana, ACORN Fair Housing, CCI, and SEIU Local 100 all share lawyers.[195] According to testimony made before the House Judiciary Committee, all donations to ACORN or any of its approximately 361 affiliates are deposited into bank accounts held by CCI; thereafter, CCI transfers money into various affiliate accounts:

> **Project Vote in 2007 had a $28 million dollar budget which was funded by CCI, an affiliate of ACORN. CCI is an acronym for Citizens Consulting Incorporated. Ms. Moncrief** [sic] **testified: 'CCI is basically the accounting arm for all of the money, the payments, who gets what, the – how the organization operates and flows and makes sure its bills are paid. All of that goes through CCI**. . . . CCI makes disbursements to them either directly into their account or does transfers between I guess the different organizations.' **All 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, one being Project Vote**.[196]

HCSE stated it was difficult to determine whether ACORN's 501(c)(3) funds were always disbursed for 501(c)(3)-appropriate purposes:

> All 501(c)(3)s must also ensure that their funds are spent only with appropriate corporate approval. This does not mean that the board should approve [each] expenditure. Authority may be delegated to an appropriate staff person, and may be further delegated by that person. Such delegation must be explicit and in writing. **[Citizens Consulting Inc., ("CCI")], which controls the bank accounts, must be iustructed not to disburse funds without appropriate approval. It must be given copies of the written expenditure authority delegation, and maintain lists of authorized**

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[193] *Id.* at 10 (ACORN_004936).

[194] *See* 2000-2008 Form 990s (Project Vote, ACORN International, AISJ, ACORN Institute, ACORN Housing Corporation), *available at* http://www.guidestar.org/ (*see id.* at 11, 15 and 16 where ACORN does not disclose excess benefit transactions or political activity) (hereinafter "Form 990"); *See also* IRC §4945 and Tax Reform Act of 1969 (P.L. 91-172).

[195] *Compare Local 100, Serv. Emples. Int'l Union v. Assumption Parish Sch. Bd.*, 1996 U.S. Dist. LEXIS 5577 (D. La. 1996) *with Louisiana Acorn Fair Hous. v. Quarter House*, 952 F. Supp. 352 (D. La. 1997).

[196] *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 5 (2009) (statement of Heather Heidelbaugh) (emphasis added).

> **individuals. The organizations must also inform CCI when a staff person leaves, moves, or otherwise should no longer be on the authorized list. They should have explicit written revocation of expenditure authority in their files. All staff must understand that CCI cannot disburse any funds without proper approval.**
>
> An example where this comes up is when organizations have agreements to work jointly on a project, or for one to provide grant funding to the other. A contract or grant letter is necessary to establish that relationship, but not sufficient to authorize a payment. **Just as with outside parties, only a person with legal authority for a payor should disburse its funds. I have seen at least one instance where that did not happen, although the payment was for a 501(c)(3)-permissible project, and one that apparently the 501(c)(3) in question was participating in. The point is that general agreement to provide funding to a project is not the same as making payments, and the other organization seeking funds should not be the one to control the making of payments. Otherwise, there is danger that we cannot demonstrate that 501(c)(3) funds are always disbursed for 501(c)(3)-appropriate purposes.**[197]

HCSE stated "[r]ecent administrative problems relating to ERISA and IRS filings and payments further indicate the need to call in outside vendors, expand capacity, or rethink CCI's role."[198]

Based upon this Committee's review of the Form 990s of several ACORN-affiliates, Project Vote paid ACORN $10,861,825 from 2000 through 2006.[199] Project Vote also paid ACORN affiliate CSI $1,206,942 in 2005 and 2006, and paid $1,266,967 to ACORN affiliate CCI from 2000 through 2004.[200] Since 2000, AISJ paid ACORN $1,926,831.[201] In 2000, AISJ paid CCI $362,464 and ACORN Associates, Inc.[202] $258,593.[203] As reported in *The Washington Examiner*:

> Federal tax records also show the ACORN Institute paid CCI $61,443 in 2006 and $50,134 in 2007. . . ACORN Housing tax records showed a 2006 payment of $238,953 to CCI for 'administrative services.'[204]

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[197] HCSE Memo at 8-9 (ACORN_004934-004935) (emphasis added).
[198] *Id.* at 11 (ACORN_004937).
[199] Form 990, *supra* note 194.
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] Kevin Mooney, *Tax documents show ACORN link to affiliates*, May 19, 2009, *available at* http://www.washingtonexaminer.com/opinion/columns/special-editorial-reports/Tax-documents-show-ACORN-link-to-affiliates-45443062.html (last visited June 19, 2009).

ACORN insider Anita MonCrief said the accounts were commingled:

> The money goes into accounts at CCI. CCI has dozens – dozens and dozens of accounts. Some of them are Project Vote. Some of them are ACORN . . . Those checks were usually copied, and [Ms. MonCrief] would have PDF access to them. The checks that [Ms. MonCrief] received [she] would copy and send them over to Little Rock for processing.[205]

According to documents ACORN insiders Anita MonCrief and Marcel Reid produced to this Committee, ACORN engaged in unreported transactions between its affiliates. According to an email by Steve Bachmann, SEIU Local 100, ACORN Institute (a 501(c)(3)), ACORN Community Labor Organizing Center ("ACLOC"),[206] ACORN International,[207] Affiliated Media Foundation Movement ("AMFM"), the Association for the Rights of Citizens, Inc. ("ARC"),[208] the Elysian Fields Corporation, and Citizens Consulting Inc. ("CCI"), are interchangeably controlled by ACORN:

> **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)**. . . . **Acorn Institute. I think this is clearly an ACORN corporation**, but I have to observe that it seems to me that [Wade Rathke] has been trying to fill it with shills. **I think it is one of ACORN's major 501c3s, and control of it needs to be monitored** . . . . **ACLOC. I think control of this organization is up for grabs, but the more critical question is who gets business from SEIU and ACORN**. . . . **AINT. This is ACORN International**. [Wade Rathke] should probably start his own darn international org. If he wants this one, he has to use it without the ACORN name. . . . **AMFM. This was founded as a media resource corporation. I thought there was nothing to this corporation until I found out that it is, in theory, owed some $45,000 once the $750,000 [Dale Rathke] moneys are distributed**. WR has no moral right to this money—or the corporation, for that matter. In any case, he has been scrambling to make this corporation "real" and had some Board meeting on July 2. . . . **ARC. This used to be a key 501c3 feeder for labor projects**. Right now the Board supposedly consists of Steve Bachmann and Mildred Edmond. And Dale Rathke and Cornelia have supposedly left this Board. **ACORN should advise Wade Rathke that this corporation is going to be cleaned up, and should probably be closed down**. . . . **CCI. The point here is**

[205] *Id.*
[206] A-CLOC, *available at*: http://www.acloc.org/ (last visited June 13, 2009).
[207] Acorn International, *available at*: http://www.acorninternational.org/ (last visited June 13, 2009).
[208] ARC WEBSITE, *available at*: http://www.arc.org/ (last visited June 13, 2009).

> **that if ACORN wants nothing to do with [Wade Rathke], then presumably CCI needs to terminate its contracts with any WR tainted organization. These conflict of interest issues are about to come to a head with CCI attorneys**. . . . In the present crisis the CCI lawyers may have to face these issues shortly. As an ethical if not a legal matter, the whole of CCI will have to face these issues also. . . . **COUNCIL**. If ACORN wants to have nothing to do with [Wade Rathke], then any [Wade Rathke] organization is going to have to be ejected from the COUNCIL, in particular, **Local 100 and its subsidiaries**. . . . **EFC. There may be problems with other building corporations, but this is the Big Mama because there is so much property held by EFC. [Elizabeth Kingsley] is working hard to get on top of this situation which is a byzantine empire until itself**. However, it does appear that it has been misused and abused by the Rathke brothers, and ACORN may have some self-help options available to it.[209]

According to a petition for a temporary restraining order, preliminary injunction and permanent injunction filed against ACORN's board, CCI, which functions as a management center for ACORN, facilitated ACORN's mismanagement:

> Defendant CCI is either an affiliate of or a contractor for ACORN and provides paycheck and cash management services for ACORN. Defendant Mike Jones is a principal of CCI. On information and belief, all assets belonging to ACORN or its affiliates are administered in some way by CCI. CCI knew or should have known that it was obligated to disclose to Acorn's full Board of Directors Dale Rathke's embezzlement and the Rathke family's subsequent assumption of the debt. Further, CCI breached its duties and its trust to ACORN, ACORN's affiliates, and ACORN's contributors by deceptively carrying the agreement with [the] Rathke family as a loan to an officer on its books when no such loan occurred without knowledge or authority of ACORN's full Board of Directors. Such clandestine and deceptive practices were continued when CCI, through its principal, Mike Jones, informed a disinterested ACORN Board member that she was prohibited from reviewing the financial records of ACORN or its affiliates because CCI was an independent payroll service with no connection to ACORN or its affiliates (despite the fact that all of ACORN's assets were administered by CCI). CCI and ACORN's respective brochures and marketing materials refer to each other as interrelated entities. Moreover, the records of the Louisiana Secretary of State show that at least seventy-five

[209] Email from Steve Bachmann (July 22, 2008), at 2-3 (ACORN_004326-004327) (emphasis added).

> corporations have boards of directors interlocking with ACORN, many of which list a principal place of business identical to that of ACORN.[210]

A 2008 CCI organizational chart provided to Committee staff identifies Michael Jones, CPA as the Chief Financial Officer,[211] and Steve Bachmann as the General Counsel of the CCI Legal Department.[212] According to HCSE's analysis, "CCI has no chief organizer, nor any agreement with any other entity with such a person that would allow them to exercise such authority."[213]

A July 22, 2008 memorandum prepared by Bachmann reflected CCI's control of 400 bank accounts for 170 ACORN affiliates, many of them defunct.[214] CCI provides consulting services, including administrative, financial, bookkeeping, and legal support, primarily to nonprofit organizations.[215] CCI controls ACORN and its affiliates' bank accounts.[216] CCI controls the account of CVT, whose funds are readily available to ACORN.[217]

This Committee obtained internal ACORN financial documents reflecting cross-over financial transfers between ACORN and its affiliates. These documents reflect transactions between ACORN local chapters, the American Institute for Social Justice ("AISJ"), and Citizens Consulting Inc. ("CCI"), in addition to a number of corporate and governmental vendors:[218]

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[210] Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction, *Acorn v. Rathke*, 08-8342 (La. Dist. Ct. 24 Dist. 8/21/08); __ So. 2d. __, at 2 (ACORN_00375).
[211] CCI-ACORN Entities (July 29, 2008) at 2 (ACORN_004506).
[212] *Id.* at 11 (ACORN_004515).
[213] HCSE Memo (June 19, 2008) at 3 (ACORN_004929).
[214] Email from Steve Bachmann (July 22, 2008) at 1 (ACORN_004325); *See also* Notes from West Regional Meeting (August 15, 2008) at 1 (ACORN_000314).
[215] HCSE Memo (June 19, 2008) at 8-9 (ACORN_004934-004935).
[216] HCSE Memo (June 19, 2008) at 8 (ACORN_004934).
[217] *Id.*
[218] AISJ-LA-03.21.01 – Political ops at 1-11 (Mar. 21, 2001) (ACORN_00106).

ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D	
AISJ	Washington DC	Carolyn Carr	CA AISJ	03/21/97		
ACCT BALANCE	TRANSFER	CKOFF	ALLOC TOT	BAL FRWD	DEPT. CODE	
3,500.00			3,500.00	0.00		
AUDIT		1010	This is a transfer			
CCI		1020	from one account	Total Allocations	3,500.00	
CCI GENERAL		1025	to another so no	Total Shared	0.00	
CCI CORPORATE/LEGAL		4220	shared costs are	Grand Total	3,500.00	
ASSOCIATION		2860	incurred.			
COF		2830				
BACK SHARED COSTS						
(1)				(2)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
CA ACORN-Los Angeles		Los Angeles				Los Angeles
Amount	Receipts			Amount	Receipts	
3,500.00						
Coding	Acct	Ck#		Coding	Acct	Ck#
(3)				(4)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
		Los Angeles				Los Angeles
Amount	Receipts			Amount	Receipts	
Coding	Acct	Ck#		Coding	Acct	Ck#
(5)				(6)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
		Los Angeles				Los Angeles
Amount	Receipts			Amount	Receipts	
Coding	Acct	Ck#		Coding	Acct	Ck#

ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D
ACORN	Los Angeles	Amy Schur	CA ACORN	05/24/99	
ACCT BALANCE	TRANSFER	CKOFF	ALLOC TOT	BAL FRWD	DEPT. CODE
8,790.92			4,246.14	4,544.78	52
AUDIT	156.74	1010			
CCI	145.94	1020		Total Allocations	3,657.63
CCI GENERAL	52.57	1025		Total Shared	588.51
CCI CORPORATE/LE	103.88	4220		Grand Total	4,246.14
ASSOCIATION	82.66	2860			
COF	8.05	2830			
BACK SHARED COST	36.68				

(1)

Vendor	Acct/Invoice #	Send To
LA Unified School District		Los Angeles
Amount	Receipts	
614.48	Attached	
Coding	Acct	Ck#
062-9800		

(2)

Vendor	Acct/Invoice #	Send To
Printco Printers		Los Angeles
Amount	Receipts	
1,970.16	Attached	
Coding	Acct	Ck#
062-5440		

(3)

Vendor	Acct/Invoice #	Send To
1st United Methodist C	Lease	Los Angeles
Amount	Receipts	
912.50	On File	
Coding	Acct	Ck#
062-5200		

(4)

Vendor	Acct/Invoice #	Send To
Capital Messenger Srv.		Los Angeles
Amount	Receipts	
153.00	Attached	
Coding	Acct	Ck#
062-5200		

(5)

Vendor	Acct/Invoice #	Send To
Nathan Henderson-Jar	reimbursement	Los Angeles
Amount	Receipts	
7.49	Attached	
Coding	Acct	Ck#
062-5420		

(6)

Vendor	Acct/Invoice #	Send To
		Los Angeles
Amount	Receipts	
Coding	Acct	Ck#

ORGANIZATION	OFFICE	REC'Q BY	ACCOUNT	DATE SENT	DATE REC'D	
ACORN	Oakland	Amy Schur	CA ACORN-Oak	05/24/99		
ACCT BALANCE	TRANSFER	CKOFF	ALLOC TOT	BAL FRWD	DEPT. CODE	
30,137.17			1,268.92	28,648.25	31	
AUDIT	47.44	1010				
CCI	43.61	1020		Total Allocations	1,093.05	
CCI GENERAL	15.74	1025		Total Shared	175.87	
CCI CORPORATE/LE	31.04	4220		Grand Total	1,268.92	
ASSOCIATION	24.70	2860				
CDF	2.40	2830				
BACK SHARED COST	10.93					
(1)				(2)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
Pacific Bell	5104365690	Oakland		UC Regents, Career Ctr		Oakland
Amount	Receipts			Amount	Receipts	
549.05	Attached			35.00	Attached	
Coding	Acct	Ck#		Coding	Acct	Ck#
031-5600				052-5600		
(3)				(4)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
Nathan Henderson-Ja	reimbursement	Oakland		Brian Kettenring	reimbursement	Oakland
Amount	Receipts			Amount	Receipts	
433.00	attached			75.00	attached	
Coding	Acct	Ck#		Coding	Acct	Ck#
031-5610				031-5010		
(5)				(6)		
Vendor	Acct/Invoice #	Send To		Vendor	Acct/Invoice #	Send To
		Oakland				Oakland
Amount	Receipts			Amount	Receipts	
Coding	Acct	Ck#		Coding	Acct	Ck#

The HCSE Memo described one of ACORN's affiliates, Communities Voting Together ("CVT"), a political organization, as lacking independent control:

> CVT may have been treated like a pot of money available to ACORN to carry out state-level political work. Funds were committed and activities undertaken in its name without the knowledge of the CVT officers or key staff person.[219]

According to the HCSE Memo, CVT, if not operated as a "properly 'nonconnected' organization," can not legally make communications about federal candidates, "which it continues to do."[220] HCSE then warned: "[i]f it does so anyways, it will create tremendous liability for itself, and likely for both ACORN and ACORN Votes."[221] According to the memo, CCI "must not allow any CVT funds to be disbursed without proper authorization."[222] According to HCSE's analysis, ACORN affiliates lack independent control because CCI has actual authority over them.[223] According to HCSE, CCI cannot simultaneously authorize decisions over federally-funded organizations and lobbying organizations: "If [CCI allows CVT funds to be disbursed without authorization], CVT should be moved out of CCI."[224]

According to ACORN insiders, the Service Employees International Union ("SEIU") has given ACORN $4 million.[225] A December 10, 2006 report from Wade

[219] HCSE Memo (June 19, 2008) at 8 (ACORN_004934).
[220] *Id.*
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] IMC Transparency (January 7, 2009) at 4 (ACORN_004869).

Rathke describes a building services partnership between ACORN and SEIU.[226] Rathke stated ACORN's incentive in using CCI to control accounts:

> [M]y inability to convince SEIU 880 not to leave the shared collective of our family of organizations around the **shared services of CCI** was my major disappointment of the year and represents . . . the largest internal threat to our family of organizations.[227]

According to HCSE, CCI lacks a legitimate board and yet it is the "nerve center" of ACORN's administrative functions.[228] CCI has no in-house or third-party capabilities for monitoring its own problems.[229] HCSE presented concerns about CCI's capacity and performance, citing "administrative problems relating to ERISA and IRS filings:"[230]

> Recent administrative problems relating to ERISA and IRS filings and payments further indicate the need to call in outside vendors, expand capacity, or rethink CCI's role . . . CCI itself needs to put a real Board in place ASAP.[231]

State-based ACORN chapters share funds with ACORN COUNCIL and CCI.[232] The American Institute for Social Justice ("AISJ") has wired money to ACORN, which then transferred the money to CCI accounts, without making any disclosures to the IRS.[233] Additionally, American Express has a $125,000 garnishment action against Dale Rathke.[234] Any sort of fraud committed by a nonprofit is subject to federal and state securities laws.[235]

A March 11, 2003 memo from Nathan Henderson-James, Development Director of ACORN-California to Amy Schur, Management Council member of ACORN, discuses the political issues involved with CCI and its ACORN accounts, as well as the charitable donation account for the Catholic Campaign for Human Development ("CCHD"):

> If part of the problem is that **CCI doesn't get accurate reporting from the field on income**, then why don't we create a system that ensures accuracy? . . . **Many cities have more than one account.** For example, **Sacramento has the ACORN account, the CCHD account, and the Sacramento Living Wage Campaign account.**

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[226] Chief Organizer Report 2006 (Dec. 10, 2006) at 7 (ACORN_004824).
[227] *Id.* (emphasis added).
[228] HCSE Memo (June 19, 2008) at 2 (ACORN_004928).
[229] *Id.*
[230] *Id.* at 10, n.7. *See e.g. id.* at 11.
[231] *Id.* at 11.
[232] AISJ-LA-03.21.01 – Political ops at 1-11 (Mar. 21, 2001) (ACORN_00106).
[233] *Id.*
[234] Email from Steve Bachmann (July 22, 2008) at 1 (ACORN_004325).
[235] Timothy L. Horner & Hugh. H. Makens, *Nonprofit Symposium: Securities Regulation of Fundraising Activities of Religious and Other Nonprofit Organizations*, 27 STETSON L. REV. 473, 474 (1997).

> **We need accurate accounting for each account**, independently of the other. **Not having this causes some measure of political trouble with allies in Sacramento (though this has now been more or less resolved)**.[236]

On June 20, 2008, at an ACORN Association Board meeting in Detroit, HCSE told ACORN President Maude Hurd, "there are at least 100 separate corporations within ACORN and . . . corporate relationships should be re-examined and regularized."[237] In a July 22, 2008 memorandum, ACORN General Counsel Steve Bachmann stated, "[t]he fact that [Wade Rathke] and his brother [Dale Rathke] used their positions as ACORN agents to insinuate themselves into positions of power in [affiliate] corporations suggest[s] the degree to which fiduciary duty requires them to leave."[238] Bachmann identified the ACORN Institute as a 501(c)(3) but claimed, "control of it needs to be monitored."[239]

Despite the apparent abuses of federal funds by CCI, HCSE claimed these abuses persisted because ACORN lacked a whistleblower policy:

> First and foremost, any entity receiving government funding should have in place a serious and enforced whistleblower policy. Any employee, or an employee of another organization, or a member of the public, who has any information about the misuse of grant funds or related conduct should have a clear avenue to report the concern without fear of reprisal.[240]

a) ACORN Lacks Quality Control in Hiring and Supervision of Employees

Nonprofit 501(c)(3)'s, like Project Vote – an ACORN affiliate – have fiduciary duties.[241] According to the *Wall Street Journal*, Project Vote purposefully lacks hiring standards so allegations of wrongdoing ensnare low-level employees, not directors.[242] According to a former Justice Department attorney involved in ACORN investigations, ACORN hired ex-convicts to conduct voting registrations and ACORN volunteers had a history of not turning in Republican registrations.[243] According to the Eighth Circuit Court of Appeals, ACORN not only has a history of hiring those with arrest records, but hiring embezzlers as well:

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[236] CCI Memo (Mar. 11, 2003) at 2-3 (ACORN_004308-004309) (emphasis added).
[237] ACORN Association Board Meeting (July 13, 2008) at 1 (ACORN_00391).
[238] Email from Steve Bachmann (July 22, 2008) at 1 (ACORN_004325).
[239] *Id.*
[240] HCSE Memo (June 19, 2008) at 10 (ACORN_ 004936).
[241] 1-12 Liability of Corporate Officers and Directors §12.01.
[242] John Fund, *An Acorn Whistleblower Testifies in Court*, WALL STREET J., Oct. 30, 2008, *available at* http://online.wsj.com/article/SB122533169940482893.html (last visited May 11, 2009).
[243] Interview with Asheesh Agarwal, former Deputy Assistant Attorney General, Department of Justice, in Wash., D.C. (Mar. 30, 2009) [hereinafter Agarwal Interview].

> **Pending sentencing in federal court**, Hipenbecker was released on bond. While free on bond, **Hipenbecker became employed by the Minnesota Association of Community Organizations for Reform Now (ACORN). Soon after being hired, Hipenbecker embezzled approximately $ 1500 from ACORN**. Upon learning of Hipenbecker's latest crime, the district court revoked Hipenbecker's bond and informed her that the district court was contemplating an upward sentencing departure.[244]

In response to voter registration fraud during the 2004 General Election, the Special Investigations Unit of the Milwaukee Police Department reported:

> **[T]wo persons who had entered guilty pleas to misdemeanor charges of Election Fraud within one year of the November General Election also were employed as Election Inspectors for the Election Commission on November 2, 2004**. . . . These reviews lead the Task Force to find that **18 persons were sworn in as Deputy Registrars in 2004 that were convicted felons** and under Department of Correction supervision. **Of the 15 felons that listed a sponsoring organization, eight named ACORN as their sponsoring agency**."[245]

ACORN disregarded the risks of hiring those with criminal records to register voters. ACORN attorney Brian Mellor, writing to King County, Washington prosecutor Norm Maleng concerning a voter registration fraud case, wrote "my review of the [voter registration] applications has led me to decide to refer these three employees to your office to investigate them for possible voter-registration fraud[.]"[246]

According to testimony before the House Judiciary Committee:

> [ACORN] knew there was a problem with "the quality of the people they were getting. Some of the people didn't know how to use basic office . . . systems, which made it very hard for copying

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[244] United States v. Hipenbecker, 115 F.3d 581, 583 (8th Cir. 1997) (emphasis added).

[245] Milwaukee Police Dep't, Special Investigations Unit, *Report of the Investigation into the November 2, 2004 General Election in the City of Milwaukee*, *available at*: http://graphics2.jsonline.com/graphics/news/MPD_2004voterfraudprobe_22608.pdf (emphasis added).

[246] Mike Carter, *King County investigates apparent forgery of hundreds of voter cards*, SEATTLE TIMES, Mar. 16, 2007, *available at*: http://seattletimes.nwsource.com/html/localnews/2003621500_webfraud17m.html (last visited June 16, 2009); *See also* Settlement Agreement from Sam Reed, Washington Secretary of State and Daniel Satterberg, King County Prosecuting Attorney, to Brian Mellor, ACORN Senior Counsel and Steve Bachmann, ACORN General Counsel (July 25, 2007), *available at*: http://www.secstate.wa.gov/office/pdf/Settlement%20and%20Compliance%20Agreement.pdf.

> the registration card and making sure that they were turning in accurate counts and work ethic issues."[247]

On February 24, 2009 Project Vote General Counsel Brian Mellor told a Nevada state criminal investigator the following concerning bonuses for voter registrations:

> In regard to "Blackjack," MELLOR stated that it was not ACORN policy to pay performance related bonuses to their staff. MELLOR stated that back in 2003, ACORN engaged in a voter registration drive during which they compensated their canvassers through bonuses linked to the number of voter registration forms collected by each canvasser. This policy turned out to be a bad policy and since then, ACORN has not compensated canvassers based on performance.[248]

According to notes produced from former ACORN insider Anita MonCrief, the federally-funded Project Vote actively maintained registration quotas and provided monetary incentives based on registrations:

> Standards for canvassers – 20 cards/day – is this a realistic number? In Cincinnati, canvassers tended to stop at the number instead of go on; problems with duplicates (voters registering with ACORN multiple times), Missouri (KC and St. Louis) had lots of people who did this; saturation leads to duplicates; not because standard is unrealistic but because not enough people working on developing new sites; 20 standard can create practical equivalent of pay-per-card, legal concern . . . .[249]

A 2004 ACORN voter registration manual stated, "[a]nyone who performs at less than three voter registrations per hour should not be on the staff [sic]."[250]

Heather Heidelbaugh testified before the House Judiciary Committee that ACORN's voter registration programs lacked on-going training of canvassers[251] as well as other problems such as a practice ACORN encouraged of its canvassers turning in duplicate registrations.[252] Regarding voter registration, Anita MonCrief testified,

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[247] *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 1-17 (2009) (statement of Heather Heidelbaugh).

[248] ACORN AFFIDAVIT, *available at*: http://sos.state.nv.us/information/news/press/2009/pdf/AFFIDAVIT-ACORN.pdf, at 8, lines 17-22 (last visited June 22, 2009).

[249] POLOPS VR NOTES (undated) at 1-2 (ACORN_000372-000373).

[250] Brad Bumsted & Walter F. Roche Jr., *Reform association's manual suggests use of quota system*, PITT. TRIBUNE REVIEW, June 14, 2009, *available at*: http://www.pittsburghlive.com/x/pittsburghtrib/news/regional/s_629482.html (last visited July 6, 2009).

[251] *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 7 (2009) (statement of Heather Heidelbaugh).

[252] *Id.* at 8. *See also* Lara Lakes Jordan, *Officials: FBI Investigates ACORN for voter fraud*, ABC NEWS, Oct. 17, 2008, available at http://abcnews.go.com/Politics/wireStory?id=6054185 (last visited Apr. 29, 2009).

"ACORN was more interested in the total number of submitted registrations than the total number of valid registrations."[253]

While ACORN aspires to institute quality control mechanisms for its voting efforts, these guidelines failed on a regular basis.[254] Documents obtained by the Committee show ACORN authorizing the selection of members charged with voter registration. Accordingly, ACORN can be held responsible for any fraudulent conduct having arisen from Project Vote's registration efforts.[255]

A nonprofit corporation's legal protections are disregarded if "its finances are not kept separate from individual finances . . . the corporation is used to promote fraud or illegality," or "corporate formalities are not followed."[256] If just one of these factors is proven, then the tax-exempt privileges of ACORN and its affiliates are dissolved and what remains is the absolute uncertainty about ACORN's having complied with election and tax laws, among others.[257] In a settlement agreement between ACORN and the King County prosecutor in Seattle, Washington, ACORN acknowledged its liability "as a corporate entity" for the submission of "fraudulently collected" voter registrations "not reviewed pursuant to the quality control procedures" and "willfully turning in fraudulent cards."[258]

B. ACORN and Its Affiliates Are Not in Compliance With The IRS

Nonprofits are exempt from taxation because corporations organized and operated exclusively for charitable or educational purposes benefit the public.[259] Based upon the legislative history behind 501(c)(3), tax-exempt status was designed to serve an economic benefit: "the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds."[260] Compliance with tax laws was assumed to ensure the effective management of nonprofit corporations.[261]

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[253] *Id.* (Page 51, line 1-4).
[254] Quality Control (Jan. 2004) (ACORN_000397-000405); *See also* PV Voter Registration Organizing Manual (Jan. 2004) (ACORN_004310-004319).
[255] *See e.g. New York Central R. Co. v. U.S.*, 212 U.S. 481 at 493-494 (1909).
[256] HOK Sport, *supra note* 47 at 936. (quoting *Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc.,* 519 F.2d 634, 638 (8th Cir. 1975).
[257] *Id.*
[258] Settlement Agreement from Sam Reed, Washington Secretary of State and Daniel Satterberg, King County Prosecuting Attorney, to Brian Mellor, ACORN Senior Counsel and Steve Bachmann, ACORN General Counsel (July 27, 2007), *available at*: http://www.secstate.wa.gov/office/pdf/Settlement%20and%20Compliance%20Agreement.pdf.
[259] Christian Echoes Nat'l Ministry v. United States, 470 F.2d 849, 853-854 (10th Cir. 1972).
[260] H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1939).
[261] United Cancer Council, Inc. v. Comm'r, 165 F.3d 1173, 1179 (7th Cir. 1999).

1. Congress, In Regulating Nonprofits, Intended Nonprofits As Not-For-Politics

FINDING: *An essential aspect of Project Vote, CCI, Citizens Services Inc. ("CSI"), Communities Voting Together ("CVT"), and other ACORN affiliated 501(c)(3)s is to promote desirable governmental policies consistent with its objectives through legislation.*

Section 501(c)(3) is limited to activities whose purpose is to neither influence legislation nor support participation or intervention in political campaigns on behalf of candidates for public office.[262] This limitation in Section 501(c)(3) originated from the Revenue Act of 1934, which allowed organizations tax exempt status if "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."[263] The legislation was drafted after the decision in *Slee v. Commissions of Internal Revenue*, where the Second Circuit upheld the IRS's denial of an exemption to a group whose purposes were not exclusively charitable, educational or scientific.[264] Section 501(c)(3) was further limited when, in 1954, Congress barred participation or intervention in political campaigns on behalf of candidates for public office.[265]

Based upon the legislative history of Section 501(c), when a corporate activity has a political purpose, the corporation is no longer "exclusively" charitable or educational. Congress intended nonprofit political activity to be interpreted broadly.[266] According to this interpretation, a nonprofit influences legislation whenever it makes "appeals to the public to react to certain issues."[267] If an "essential part of the program" is "to promote desirable governmental policies consistent with its objectives through legislation" then a substantial part of the corporation's activities are "influencing or attempting to influence legislation."[268] "[A]ttempts to elect or defeat certain political leaders" reflect an "objective to change the composition of the federal government."[269]

2. ACORN And Its Affiliates Violate Their Restrictions as Nonprofits

FINDING: *ACORN and its affiliates cannot delineate their 501(c)(3) work from their non-501(c)(3) work. Ignoring ACORN's nonprofit protections reveals the same individuals made strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter registration work.*

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[262] *See Dickinson v. United States*, 346 U.S. 389 (1953).
[263] 26 U.S.C. §501(c)(3).
[264] 42 F.2d 184 (2nd Cir. 1930).
[265] *See Christian Echoes, supra note* 259 at 854.
[266] *Id.* at 856.
[267] *Id.*
[268] *Id.*
[269] *Id.*

According to a March 24, 2006 funding request prepared by ACORN's Executive Director Steve Kest and Political Director Zach Polett, ACORN receives funding from membership dues, fundraising initiatives and contributions, foundation support, corporate contributions, and individual high donor contributions.[270] In 2007, ACORN raised $4,171,000 in small-dollar unrestricted non-(c)3 dues and other income from their membership.[271] By the end of 2008, ACORN increased this annual amount to over $7 million."[272]

According to the internal report on ACORN by the law firm of Harmon, Curran, Spielberg & Eisenberg, LLP ("HCSE Memo"), it is absolutely uncertain whether ACORN and its affiliates, including CCI and Project Vote, have "done things right:"

> **[L]ack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work** . . . However, **[we] cannot confirm that strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter engagement work are not being made by the same person or people**. At a minimum, **there is not adequate demonstrable separation between these functions**. As a result, **we may not be able to prove that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations. Remember, it is the IRS that enforces the rules for 501(c)(3)s. In general the government has the burden of proving you have done something wrong, but when it comes to tax compliance, the burden is on the organization to maintain records to document it has done things right**.[273]

If ACORN is improperly managing its inter-corporate relations, it is difficult to determine whether ACORN has complied with federal tax laws.

HCSE's analysis shows ACORN failed to properly account for its disbursements:

> **Just as with outside parties, only a person with legal authority for a payor should disburse its funds. [We] have seen at least one instance where that did not happen**, although the payment was for a 501(c)(3)-permissible project, and one that apparently the 501(c)(3) in question was participating in. . . . Otherwise, **there is danger that we caunot demonstrate that 501(c)(3) funds are always disbursed for 501(c)(3)-appropriate purposes**.[274]

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[270] ACORN Grant Request to the Democracy Alliance at 12 (Mar. 24, 2006) (ACORN_004348); Note that "membership dues" refers to the service fees ACORN charges its low and moderate income constituents.
[271] *Id.* at 5 (Mar. 24, 2006) (ACORN_004341).
[272] *Id.*
[273] HCSE Memo (June 19, 2008) at 7 (ACORN_004933) (emphasis added).
[274] *Id.* at 9 (emphasis added).

According to HCSE, ACORN, a 501(c)(4), has actual control over the decisions of Project Vote, a 501(c)(3):

> **Project Vote has on paper a procedure to select regions where it will do voter registration, but [we] have heard reports in the past that in practice those decisions may be communicated to [Project Vote] from ACORN**. . . . Project Vote (and PICA, the other voter registration corporation) needs to really be in charge of deciding where 501(c)(3) resources will be focused. The [Project Vote] and PICA Executive Director(s) must be charged with implementing the procedures (or supervising that work) to set strategic priorities for the organization without answering to any other entity or person. These corporations and their chief staff people must control their own funds; the ED must report only to her/his own board, unless a formal, legally vetted written agreement appropriately delegates that authority elsewhere. **And the ED must not be wearing other 'hats' that jeopardize her ability to act solely in the interest of these 501(c)(3)s**.[275]

Project Vote is a 501(c)(3) organization.[276] Project Vote's revenue in 2008 was $28,676,637.[277] Project Vote does business with ACORN Voter Registration, Citizens Consulting Inc. ("CCI"), CCI Legal, and Citizens Servicing Inc. ("CSI").[278] In 2005, there were over a thousand transactions, amounting to nearly $12 million between ACORN and its affiliates.[279] In a March 11, 2003 memorandum from Nathan Henderson-James of the California ACORN chapter to Amy Schur, ACORN Management Council member, Henderson-James summarized the financial difficulties at CA ACORN and recommended CCI change its budgetary practices with respect to local ACORN chapters.[280] Henderson-James has held simultaneous titles at ACORN and CSI.[281]

According to the HCSE Memo, ACORN and one of its affiliates, American Institute of Social Justice ("AISJ") failed to meet the IRS reporting back requirements necessary for grantors to demonstrate how their money was spent by the grantees.[282] HCSE found problems with ACORN's compliance with § 501(c)(3) of the tax code, suggesting:

> [We] have recently provided documents for [American Institute for Social Justice (hereinafter "AISJ")] to use governing its

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[275] *Id.* at 7; IMC Allegations (Jan. 7, 2009) at 5 (Project Vote is a 501(c)(3) that hires ACORN to perform voter registration drives) (ACORN_004870) (emphasis added).
[276] Project Vote 501(c)(3) IRS letter (Nov. 8, 2004) (ACORN_00103).
[277] Project Vote Revenues 07-08 (undated) (ACORN_000356).
[278] Project Vote 2004-2005 (undated) (ACORN_005063-005105).
[279] *Id.*
[280] CCI Memo (Mar. 11, 2003) at 2-3 (ACORN_004308-004309) (emphasis added).
[281] Email from Nathan Henderson-James to Anita MonCrief (Dec. 8, 2006) (on file with author).
[282] HCSE Memo (June 19, 2008) at 8 (ACORN_ 004934).

> relationship with ACORN. There is an overall agreement, and two transmittal letters that can be used for specific types of funding. Similar documents should be used by [ACORN International (hereinafter "AI")], and any other 501(c)(3) that makes grants to ACORN.
>
> We believe those documents have been or will be implemented. However, merely papering the transfer of money is not sufficient. **The c3s must be able to demonstrate that their funds were actually used as intended, for c3 purposes. Any grant to a non-501(c)(3) requires reporting back to the grantor can prove how its money was spent by the grantee. Historically, this has not happened. The new grant documents require this reporting, and if it does not happen, [We] would advise the [ACORN International] and [American Institute for Social Justice] boards and key staff that no further grants should be made to any office that has outstanding reports on previous grants.**[283]

HCSE advised ACORN concerning the importance of protecting corporate formalities in its financial transactions amongst affiliates, finding:

> **Many of the corporate entities in the COUNCIL would have not operated with sufficient formalities. Staff roles have not been clearly delineated, and in various instances funds have been raised and spent by people with no official relationship to a given corporation.** Boards have not always been maintained, much less met and exercised their governance role. Board meetings are not held, or if they are, minutes are not kept, or if minutes are kept, they never make it into the files at CCI. There is no point in having these different corporations in place if they are not respected. If not properly operated, they create difficulties (e.g., potential conflicts of interest for lawyers, non-trivial administrative burden of state filings, and the appearance that someone is trying to hide something under a byzantine corporate structure) without generating the desired benefits, whatever those may be. [284]

ACORN's insufficient screening off of separate entities from one another makes it difficult to ensure compliance. For instance, Local 100 made a $15,941 loan to SEIU Local 880.[285] Local 100 paid $122,346 to ACORN and Project Vote's accounting firm of Duplantier, Hrapman, Hogan, and Maher LLP, $73,984 to Elysian Fields Corporation, and $48,188 to Citizens Consulting Inc.[286] Local 100 received $14,214 in loans from

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[283] *Id.* (emphasis added).
[284] *Id.* at 2-3 (ACORN_004928-004929) (emphasis added).
[285] *See Form LM-2 Labor Organization Annual Report*, SEIU Local 100, DEP'T OF LABOR, (2007), SEIU LM2 2007 at 6 (March 30, 2007) (ACORN_004907).
[286] *Id.* at 11 (ACORN_004912).

CCI.[287] Local 100 provided $71,899 in gifts to the Service Workers Action Team and $5,000 to the SEIU Local 1991.[288] Local 100 paid legal counsel Karim Shabazz $5,184.[289] An additional $5,670 was paid to CCI.[290] The Local 100 Political Action Committee files Form 8872 with the IRS, reflecting its status as a 527 political organization.[291]

According to the Congressional Research Service ("CRS"), the IRS lacks the resources and administrative diligence necessary to investigate illicit activities.[292] Because the IRS assumes 501(c)(3) funds are not used by affiliated 501(c)(4)'s for lobbying purposes, the IRS is unlikely to detect a violation of the Lobbying Disclosure Act by a 501(c)(4) such as ACORN.[293] Because the IRS chooses which organizations it audits, a scheme used in which private foundation money goes into a social welfare organization's lobbying expenditures could be promulgated without detection under the IRS's legal radar.[294] According to CRS, Internal Revenue Code ("IRC") 501(c)(3) organizations are required to report "their aggregate political expenditures and any excise taxes imposed during the year on their lobbying and political expenditures."[295]

3. ACORN And Its Affiliates Engage In Substantial Lobbying Activities

FINDING: *Lobbying is a substantial part of what ACORN does. It has endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD), and Representative Donna Edwards (D-MD). ACORN keeps donor records from the Clinton, Kerry and Obama campaigns with the intent to engage in prohibited communications. ACORN receives federal funding yet engages in improper lobbying. ACORN and its nonprofit affiliates do not have separate accounts. Neither ACORN nor any of its affiliates have properly reported their political activities to the IRS. These harms fly under the legal radar because the IRS rarely checks for compliance. The "no substantial part" test is rarely enforced and the accounts of ACORN and its affiliates are illegally commingled.*

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[287] *Id.* at 12 (ACORN_004913).
[288] *Id.* at 20 (ACORN_004921).
[289] *Id.* at 21 (ACORN_004922).
[290] *Id.* at 22 (ACORN_004923).
[291] *Id.* at 25(ACORN_004926).
[292] Interview with Erika Lunder, Attorney, Congressional Research Service, in Wash., D.C. (May 14, 2009); *See also* Email from Erika Lunder, CRS attorney, to Oversight and Government Reform minority staff (Mar. 17, 2009, 12:06 PM EST) (on file with author).
[293] *Id.*
[294] *Id.* Donald Tobin, *The Law of Politics: The Role of Law in Advancing Democracy: Political Campaigning by Churches and Charities: Hazardous for 501(c)(3)s, Dangerous for Democracy*, 95 GEO. L.J. 1313, 1318-19.
[295] Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 28.

The tax code permits 501(c)(4)s and 501(c)(3)s to lobby, although lobbying may not be a "substantial part" of a 501(c)(3)'s (Project Vote, ACORN Institute, American Institute for Social Justice ("AISJ")) activities.[296] Internal Revenue Code ("IRC") §501(c)(3) organizations may conduct nonpartisan voter registration and get-out-the-vote drives.[297] The activities may not indicate a preference for any candidate or party.[298] The communication must not identify any candidates for a given public office.[299] Candidates must be named or depicted on an equal basis.[300] The activity is limited to urging acts such as voting and registering and to describing the hours and places of registration and voting, and all registration and get-out-the-vote drive services are made available without regard to the voter's political preference.[301] 501(c)(4) organizations such as ACORN may participate in an unrestricted amount of lobbying so long as the lobbying is related to the organization's exempt purpose.[302] Section 18 of the Lobbying Disclosure Act of 1995[303] prohibits organizations described in IRC §501(c)(4) from receiving "federal grants, loans, or other awards if they engage in lobbying activities"[304] Participating in political campaigns cannot be the organization's primary activity.[305]

A 501(c)(4) can participate in lobbying activities, but under the U.S. Code, a 501(c)(4), such as ACORN Housing, cannot lobby if it receives federal funding.[306] A 501(c)(4) must have separate accounts from 501(c)(3)'s under Section 18 of the Lobbying Disclosure Act, which placed restrictions on "lobbying activities" by certain nonprofit groups, as a condition to receiving federal grants and loans.[307] In other words, CCI cannot control the accounts of both ACORN Housing Corporation and Project Vote, which the HCSE Memo alleges to be the case. Section 18 of the Lobbying Disclosure Act of 1995 places statutory restrictions upon the lobbying activities of nonprofit civic and social welfare organizations, such as ACORN, which are tax-exempt under section 501(c)(4) of the Internal Revenue Code.[308] Section 501(c)(4) civic leagues and social welfare organizations are prevented from engaging in any "lobbying activities," if the organization receives any federal grant, loan, or award even with their *own* private

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[296] *See* Rev. Rul. 2007-41, 2007-25 I.R.B. 1421

[297] *Id.*

[298] *Id*; *See also* Judith E. Kindell and John Francis Reilly, *Election Year Issues*, IRS 2002 EO CPE Text, 448-451 (2002).

[299] Rev. Rul. 2007-41, 20087-25 I.R.B. 1421; 20082 EO CPE Text, at 376-77.

[300] IRS 2002 EO CPE Text, 448-451 (2002); Judith E. Kindell and John Francis Reilly, *Election Year Issues*, FY 2002 IRS EXEMPT ORGANIZATIONS TECHNICAL INSTRUCTION PROGRAM, at 379, *available at* http://www.irs.gov/pub/irs-tege/eotopici02.pdf (last visited June 22, 2009).

[301] *Id.*

[302] Erika Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws,* CRS RPT. FOR CONG., Mar. 30, 2009, at 5.

[303] P.L. 104-65.

[304] Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007, at 14.

[305] *See also* Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii); Gen. Couns. Mem. 34233 (December 30, 1969).

[306] Email from Erika Lunder, CRS attorney, to Oversight and Government Reform minority staff (Mar. 17, 2009, 12:06 PM EST) (on file with author).

[307] *Id.*

[308] P.L. 104-65, 109 Stat. 691, 703-704, as amended by P.L. 104-99, Section 129, 110 Stat. 34; *see also* H.Rept. 104-339, 104TH CONG. 24 (1995).

funds.[309] There is a presumption that ACORN used federal funds for lobbying because the HCSE Memo stated it is undeterminable whether federal funds were commingled with lobbying accounts and was addressed to ACORN Housing, which received federal funds.

Under section 501(c)(3) of the Internal Revenue Code, organizations may not make statements endorsing or opposing a candidate, publish or distribute campaign literature, or make any type of contribution, monetary or otherwise, to a political campaign.[310] Section 501(c)(3) prohibits charitable organizations from "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."[311]

While 501(c)(4) social welfare organizations are not barred from engaging in campaign activity,[312] "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[313] Because under the tax code, a 501(c)(4) organization's primary activity must be promoting social welfare, campaign activity (and any other activities not in furtherance of an exempt purpose) cannot be the organization's primary activity.[314] So long as ACORN's primary activity is promoting social welfare, their lawful participation in campaign activity does not affect their 501(c)(4) status.[315] However, according to ACORN's 2005-2007 Strategic Plan, ACORN might be in every respect a political organization:

> But just as important as our organizations' role in mobilizing existing progressive voters, **ACORN and similar groups actually *create* new progressive voters.** We reach out to people who are perhaps apolitical, or whose connection to politics is mediated through right-wing media, and their **experiences in organizations like ACORN turn them into politically engaged citizens who cast their votes based on what they learn through their work with the organization. They join a campaign to increase the minimum wage, or to win more affordable housing, or to end predatory financial practices – and they find out which political leaders are on their side on these issues, and which ones aren't. Candidates who purport to stand with low and moderate income voters by promoting tax cuts and so-called "family values" are then measured against a different yardstick – and are caught short when voters realize they are**

[309] *See* 2 U.S.C. § 1611; *See also* Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 7.
[310] Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 11.
[311] *Id.*
[312] *Id.*
[313] Treas. Reg. § 1.501(c)(4)-1(a)(2).
[314] Erika K. Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Mar. 30, 2009 at 8.
[315] *See* Rev. Rul. 81-95, 1981-1 C.B. 332.

really standing with the corporate interests. In summary, **groups like ACORN are *creating an expanded progressive electorate*.**[316]

While section 501(c)(4) organizations are permitted to engage in campaign activity, they are subject to tax if they make an expenditure for a section 527 "exempt function" defined under the Code as "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors."[317] Both the tax and campaign finance laws are relevant for determining whether 501(c)(3)s and 501(c)(4)s may engage in campaign activity.[318]

Under the Code, 501(c)(4) organizations are required to file an annual information return (Form 990) with the IRS.[319] The IRS has revised the form in order to encourage tax compliance, accountability, and transparency.[320] Filing organizations are now required to report information regarding their political activities on the new Schedule C.[321] According to the IRS, section 501(c)(4) organizations filing the Form 990 must:

(1) Describe their direct and indirect political campaign activities;
(2) Report the amount spent conducting campaign activities and the number of volunteer hours used to conduct those activities;
(3) Report the amount directly spent for § 527 exempt function activities;
(4) Report the amount of funds contributed to other organizations for § 527 exempt function activities;
(5) Report whether a Form 1120-POL (the tax return filed by organizations owing the section 527 tax) was filed for the year; and
(6) Report the name, address, and employer identification number of every section 527 political organization to which a payment was made and the amount of such payments, and indicate whether the amounts were paid from internal funds or were contributions received and directly transferred to a separate political organization.[322]

Section 501(c)(4) organizations must also report the names and addresses of donors who contributed at least $5,000 during the year on the Schedule B of the Form 990.[323] Because ACORN has delayed its reporting to the IRS, as evidenced by the HCSE

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[316] ACORN Strategic Plan at (Apr. 2005) at 1 (ACORN-00278) (emphasis added and in original).
[317] I.R.C. § 527(f); I.R.C. § 527(e)(2); Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, Sept. 11, 2007, at 19.
[318] See Erika K. Lunder and L. Paige Whitaker, *501(c)(4) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Mar. 30, 2009 at 8.
[319] *See* I.R.C. § 6033.
[320] IRS Form 990, *available at* http://www.irs.gov/charities/article/0,,id=185561,00.html (last visited May 4, 2009).
[321] IRS SCHEDULE C, *available at* http://www.irs.gov/pub/irs-pdf/f990sc.pdf (last visited June 22, 2009).
[322] *See* I.R.C. § 6033(e).
[323] I.R.C. § 6104(b) and (d).

Memo and the email from Steve Kest to Ralph McCloud, ACORN used its funds for impermissible political purposes. According to an article in the *Quarterly Journal of Economics*, not all those entities whose noncompliance has been discovered will be subject to enforcement action because the IRS does not have the resources to proceed against every known transgressor.[324] According to the notes from ACORN's August 15, 2008 East Regional meeting, ACORN owes over $800,000 to the IRS.[325] According to CRS, the IRS does not actively investigate violations of its reporting rules and does not enforce the "no substantial part" test, giving ACORN a free pass to violate these regulations.[326]

Under the Lobbying Disclosure Act, ACORN, a 501(c)(4), 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.[327] According to 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."[328]

Under the Lobbying Disclosure Act, lobbying activities include direct "lobbying contacts and efforts in support of such contacts" such as preparation, planning, research and other background work intended for use in such direct contacts.[329] A "lobbying contact" under the Lobbying Disclosure Act is an "oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official" which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the federal government.[330]

According to the *Wall Street Journal*, ACORN and its affiliates operate as a political organization:

> Acorn [sic] – made up of several legally distinct groups under that name – has become an important player in the Democrats' effort to win the White House. Its voter mobilization arm is co-managing a $15.9 million campaign with the group Project Vote to register 1.2 million low-income Hispanics and African-Americans, who are among those most likely to vote Democratic. Technically nonpartisan, the effort is one of the largest such voter-registration drives on record. The organization's main advocacy group lobbied

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[324] Jennifer F. Reinganum and Louis L. Wilde, *A Note on Enforcement Uncertainty and Taxpayer Compliance*, Q. J. OF ECON (1998).
[325] Notes from East Regional Meeting (Aug. 15, 2008) at 1 (ACORN_000321).
[326] Erika Lunder, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements*, CRS RPT. FOR CONG., Sept. 11, 2007 at 7; *See also* Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 7.
[327] Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS RPT. FOR CONG., May 7, 2008 at 6.
[328] *Id.*
[329] Lobbying Disclosure Act, 2 U.S.C. § 1602(7), P.L. 104-65, §3(7).
[330] 2 U.S.C. § 1602(8), P.L. 104-65, § 3(8).

> hard for passage of the housing bill, which provides nearly $5 billion for affordable housing, financial counseling and mortgage restructuring for people and neighborhoods affected by the housing meltdown. A third Acorn [sic] arm, its housing corporation, does a large share of that work on the ground.[331]

According to the finance plan of the Friends of Sherrod Brown,[332] ACORN sought to:

> Raise $1.5 million out of Cleveland over the next 10 months. This is based on what past US Senate races raised as well as the target populations that exist in Cleveland and who is capable of giving and raising.[333]

In its year end report dated on December 15, 2006, the Local 880 chapter of the Service Employees International Union ("SEIU") stated:

> Because 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.[334]

In discussing SEIU's joint campaigns with ACORN, the document stated:

> This year, thanks to a **flawless campaign led by Illinois ACORN, Local 880, and the SEIU Illinois Council and our allies**, on July 1st, 2007 the Illinois minimum wage will rise to $7.50 per hour and then rise in three other steps to $8.25 by 2010. This is a $1.75 increase over the present state minimum wage of $6.50 and $3.10 over the present federal minimum wage of $5.15. This increase will do more than raise over 600,000 Illinoisans over the current minimum wage. It will also force the state to raise reimbursement rates for thousands of homecare and other workers and trigger increases in all of our contracts. **If not for the work of our sister organization, ACORN, this would never have happened**.[335]

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[331] Elizabeth Williamson and Brody Mullins, *Democratic Ally Mobilizes In Housing Crunch*, WALL STREET J, July 31, 2008, at A1.

[332] "Friends of Sherrod Brown" is a fundraising committee for U.S. Senator Sherrod Brown (D-OH). *See* http://www.sherrodbrown.com/ (last visited July 7, 2009).

[333] SB Finance Plan at 1 (undated) (ACORN_00294).

[334] 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).

[335] *Id. See also id.* at 7-8, discussing several joint SEIU-ACORN campaigns (emphasis added).

According to the year end report, SEIU shares lawyers with CCI, an ACORN affiliate which, as alleged previously, manages the accounts of 501(c)(3) nonprofits which must be separated from political activities:

> **Legal Representation - In the past we have used Steve Bachmann and the CCI legal team**; SEIU counsel, Craig Becker; Art Martin in Southern Illinois; **and most recently, ex-ACORN head organizer, Robert Bloch's law firm. We plan to continue using these legal resources in the future**.[336]

It further states, "[h]igh level Blagojevich staff credited us later with helping move the vote that allowed him to win"[337]

The Local 880 document also lists Keith Kelleher as the Head Organizer.[338] In the email ACORN Executive Director Steven Kest wrote to CCHD director Ralph McCloud, he stated "[t]he following people were on the management council eight years ago, and were made aware of the [Dale Rathke] embezzlement:" and lists Keith Kelleher.[339]

HCSE stated, "[it] cannot confirm that strategic decisions about which regions do 501(c)(3) versus non-501(c)(3) voter engagement work are not being made by the same person or people."[340] HCSE also stated, "[f]ences need to be erected to wall off types of election-related activity that must be kept completely separate."[341] ACORN does not have strict walls of separation between its 501(c)(3) activities and its 501(c)(4) activities. HCSE stated, "ACORN lacks the protective 'walls' needed to ensure that various types of activity are kept sufficiently separate."'[342] In a November 22, 2006 memorandum, Zach Polett, ACORN's political director, stated his organizational plans for Project Vote, a 501(c)(3):

> Develop and promote a Project Youth Vote, as a branded project of Project Vote/Voting for America, Inc., thus taking advantage of the fact that Project Vote and its work with ACORN were, by far, the largest Youth voter registration program in the country in 2004 . . . Expand Project Vote's 2005 – 2006 anti-voter suppression work by raising the funds to enable Project Vote to serve as the national clearinghouse for voter suppression state legislation (stopping the bad bills) and begin the work of expanding the franchise by introducing Voter Bill of Rights legislation in a targeted set of states.[343]

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[336] *Id.* at 13-14. (emphasis added).
[337] *Id.* at 18.
[338] *Id.* at 1.
[339] Ralph McCloud CCHD at 5-6 (Nov. 11, 2008) (ACORN 004785-004786).
[340] HCSE Memo (June 19, 2008) at 7 (ACORN_004933).
[341] HCSE Memo (June 19, 2008) at 1 (ACORN_004927).
[342] *Id.* at 6 (ACORN_004932).
[343] PolOps 2007-2008 Projects (Nov. 22, 2006) at 3 (ACORN_004322).

As stated in a 2006 ACORN National Political Operations report (hereinafter "ACORN Political Report"), ACORN controls the accounts of Project Vote:

> [T]hrough a joint effort with ACORN National Operations, Political Operations migrated our database functions to DonorPerfect. [ACORN National Political Operations Strategic Writing and Research Department ("SWORD")] has provided the administrative support to this project and provides the on-going development associate-level of support for tracking our grant-based fundraising for our various 501c3 voter participation efforts.[344]

Another instance of the lack of separation between activities involves CCI. In an email between ACORN National Executive Director Steven Kest and Ralph McCloud, of the Catholic Campaign for Human Development ("CCHD"), Kest described CCI as follows:

> Citizens Consulting, Inc. is an independent organization. It is a non-profit corporation with no special tax status run by a self-perpetuating board. Both [American Institute for Social Justice ("AISJ")] and ACORN have contracts with CCI to do their accounting work and corporate record keeping . . . CCI has two staff members who are assistant officers of ACORN with authority to act on behalf of ACORN solely on administrative matters. (For example: opening up bank accounts at the direction of ACORN management.) This is standard corporate practice. Paul Satriano, the national Treasurer for ACORN, is a new board member of CCI.[345]

As stated in the IRS Form 990 filed by Project Vote, CCI performs Project Vote's accounting services as well.[346] HCSE found ACORN's lack of clearly delineated staff roles created "the appearance that someone is trying to hide something under a byzantine corporate structure," further noting, "funds have been raised and spent by people with no official relationship to a given corporation."[347] The lack of separation is problematic, for, according to HCSE, 501(c)(3) funds are being used for ACORN's political activities.

According to the *Associated Press*, ACORN and its affiliates have received over $31 million of taxpayer dollars from 1998 to 2007.[348] ACORN affiliates received nearly

[344] ACORN Political Operations Report at 2 (2006) (ACORN_4788).
[345] Ralph McCloud CCHD at 3 (Nov. 11, 2008) (ACORN 004783).
[346] Project Vote 2007 990, *supra* note 194 at 10.
[347] HCSE Memo (June 19, 2008) at 2-3 (ACORN_004928-004929).
[348] Jim Abrams, *House GOP leader asks Bush to cut off ACORN funds*, AP, Oct. 23, 2008, *available at* LEXIS.

$10 million in federal taxpayer funding in 2008 alone.[349] ACORN's 2008 budget was estimated at $110 million.[350]

ACORN Executive Director Steven Kest and Political Director Zach Polett, writing in a 2006 grant request to the Democracy Alliance, stated:

> ACORN's core organizational budget for 2006 – not including our voter participation work – is just over $38 million. (Note: this total includes budgets of c3 organizations that share ACORN's mission.) Income sources are a mix of small-dollar self-financing through membership dues and other membership fundraising and contributions; foundation support; contributions from corporations with whom we have entered into partnerships; and individual high donor contributions. We have concrete plans for growing each of these sources over the next three years; in particular, we are significantly expanding our development department, and are working with allies in the foundation and individual donor communities on these strategies.[351]

The ACORN Housing Corporation (AHC), an ACORN affiliate, received $7.8 million in federal grant funding in 2008.[352] AHC received $687,000 from the Fannie Mae Foundation in 2007 alone.[353] AHC received over forty percent of its funding from taxpayers.[354] As stated in documents produced to the Committee by former ACORN insiders, government grants constituted forty percent of ACORN's operational funding.[355] The Department of Housing and Urban Development ("HUD") gave $8.2 million to ACORN from 2003 to 2006 and $1.6 million to ACORN affiliates.[356]

The ACORN Political Report describes ACORN's federal funding as follows:

> In 2006, we helped win grant awards for $912,378 in federal funding from HUD. Overall, we helped write and submit 13 federal grants to HUD for FY2006, four of which are still outstanding. With Valerie Coffin, Fair Housing Director, we helped raise $450,000 in FY2006 FHIP funding for fair housing education and outreach. This year New Orleans also received an additional $100,000 in new funding from reallocated FY2005

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[349] *Id.*

[350] James Terry, *Ensuring the Integrity of the U.S. Electoral System*, Testimony, JUDICIARY SUBCOMM. ON THE CONST., CIVIL RIGHTS AND CIVIL LIBERTIES AND H. ADM. SUBCOMM. ON ELECTIONS, *Joint Hearing on Federal, State and Local efforts to Prepare for the General 2008 Election*, Sep. 24, 2008, at 4.

[351] ACORN Grant Request to the Democracy Alliance at 12 (Mar. 24, 2006) (ACORN_004348).

[352] Kim Horner, *ACORN helping many keep homes: Nonprofit group provides counseling, assists with mortgage payment plans*, DALLAS MORNING NEWS, May 2, 2008, at 12B.

[353] 2007 FANNIE MAE GRANTS & SPONSORED EVENTS/CONFERENCES, ACORN HOUSING CORPORATION INC 1 (2007), http://www.fanniemae.com/aboutfnm/pdf/2007giving_report.pdf.

[354] Peter J. Parisi, *ACORN, meet RICO: Let the prosecution begin*, WASH. TIMES, Dec. 9, 2008, at A04.

[355] IMC Allegations (January 7, 2009) at 3 (ACORN_004868).

[356] *Id.* at 4 (ACORN_004869).

> FHIP funding. In Dallas, the ACORN Institute received a ROSS grant for $362,378 over three years from reallocated FY2005 funds to provide services and training to public housing residents in that city. We have also continued to provide support on reporting and other requirements for approximately $4 million in LEAP grant funds (FY2004 and FY2005).

In a June 4, 2007 email from Nathan Henderson-James, Director, Strategic Writing and Research Department, Project Vote wrote the following to Apryl Walker, Head Organizer, Delaware ACORN:

> Apryl,
>
> **I[n] an effort to ensure that we are in compliance with government regs about these [Election Assistance Commission ("EAC")] grants and whatnot, I'm going to ask you to take the report you did back in December about the DE poll worker project (which I am attaching) on ACORN letterhead** with a cover letter saying something like "Here's the report of our activities for the Poll Worker Project." [. . .] Actually here's some suggested language:
>
> 'Please find enclosed a summary of the work undertaken by DE ACORN for the Young Poll Worker Recruitment Project. As you can see we met or exceeded our numeric goals for numbers of workers recruited. We consider this project a success. It was great to partner with Project Vote on this project and we look forward to working with you again when circumstances warrant it. If you have any comments or questions do not hesitate to contact me at (number) or (e-mail).
>
> Regards,
>
> Apryl Walker
> Head Organizer
> Delaware ACORN.'[357]

ACORN staff have used federal Election Assistance Commission ("EAC") grants interchangeably between the 501(c)(4) and 501(c)(3) affiliates.[358] According to an internal Project Vote report, "Project Vote's Poll Worker Recruitment Project in Delaware, part of the EAC's Help America Vote College Program, was a success."[359] The email above reflects ACORN's attempt to create the impression ACORN was

[357] Email from Nathan Henderson James (June 4, 2007) (on file with author) (emphasis added).
[358] DE ACORN Stud. Pollworker Proj. 12-22-06 Report (Dec. 22, 2006) at 1-2 (ACORN_004377-004378).
[359] PV-Pollworkers Report (May 7, 2007) at 1 (ACORN_004828).

separating its federal funds from Project Vote's activities, when, in essence, ACORN staff used federal EAC grants interchangeably between the 501(c)(4) and 501(c)(3) affiliates. Project Vote won grants of $912,378 in federal funding from HUD.[360]

ACORN's 2005-2007 Strategic Plan stated:

> **Issue campaigns** play the dual role **within ACORN** of attracting new members, and educating or politicizing existing members (in addition to their obvious value in winning concrete improvements in the lives of our members and our broader constituency). Over the next three years we plan to continue our work on a set of **issues where we have a proven track record: increasing state and local minimum wages; combating predatory financial practices, ranging from predatory mortgage lending to rip-off tax-prep services to abusive credit card scams; working to improve public schools; promoting the development of affordable housing; protecting the franchise/making every vote count; and fighting key elements of the national Republican program, including social security privatization, cuts to Medicaid and other critical programs, and additional tax breaks for the rich.**[361]

A January 2009 complaint by several ACORN insiders stated ACORN receives millions in federal funding:

> **Grants have been issued to ACORN by the Department of Housing and Urban Development, which gave $8.2 million to ACORN in the years between 2003 and 2006, as well as $1.6 million to ACORN affiliates. The Environmental Protection Agency gave a $100,000 grant to ACORN** in 2004 for a Louisiana Justice Project, which removed lead from the homes of low income families. **The Justice Department also gave a grant to ACORN in 2005 for a juvenile delinquency program.**[362]

ACORN has a national political operations capability called Strategic Writing and Research Department that, according to the complaint, directs "demographic and elections research, development of major fundraising proposals and supporting materials, policy analysis support for the Election Administration program, and . . . telling the story of the COUNCIL's involvement in the electoral process."[363] According to Nathan Henderson-James, ACORN National Political Operation's director:

> In 2006 SWORD had five main priorities: **fundraising, developing local political plans, eligible voter demographic**

[360] ACORN Political Operations Report at 2 (2006) (ACORN_4788).
[361] ACORN Strategic Plan (Apr. 2005) at 2 (ACORN-00279) (emphasis added).
[362] IMC Allegations (Jan. 7, 2009) at 3 (ACORN_004866-004890) (emphasis added).
[363] ACORN Political Operations Report at 4 (2006) (ACORN_004790).

> **research, presentations, and reports and other forms of telling the story of electoral participation by ACORN members and staff**. . . . **Almost all of the work supported the election administration and voter participation programs of varions COUNCIL organizations**.[364]

In the same document where Henderson-James reported on Project Vote's research activities in relation to its Election Assistance Commission ("EAC") grants, ACORN's partisan activities:

> As 2006 draws to a close, we are completing the **compilation of a docnment that will give us a list of all the upcoming elections in every county with an ACORN office or that is on the official Expansion List. This list includes elections at all levels and covers both primaries, generals, and run-offs. The information on this list will be made available generally as soon as it is completed and by request until that point**.[365]

According to USASpending.gov, a federal government website for tracking government grants, ACORN Housing Corporation received $1,623,570 in Fiscal Year 2009.[366] According to the ACORN political report, ACORN Housing and several affiliates have a history of receiving federal grants:

> **Federal Fnnding:** In 2006, we helped win grant awards for $912,378 in federal funding from HUD. Overall, we helped write and submit 13 federal grants to HUD for FY2006, four of which are still outstanding. With Valerie Coffin, Fair Housing Director, we helped raise $450,000 in FY2006 FHIP funding for fair housing education and outreach. This year New Orleans also received an additional $100,000 in new funding from reallocated FY2005 FHIP funding. In Dallas, the ACORN Institute received a ROSS grant for $362,378 over three years from reallocated FY2005 funds to provide services and training to public housing residents in that city. We have also continued to provide support on reporting and other requirements for approximately $4 million in LEAP grant funds (FY2004 and FY2005).[367]

According to a 1995 Report from the Office of the Inspector General of the Corporation for National and Community Service, the federal government audited and investigated the ACORN Housing Corporation's activities and stated:

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[364] ACORN Political Operations Report at 1 (2006) (ACORN_004787) (emphasis added).
[365] *Id.* at 2 (ACORN_004788) (emphasis added).
[366] *Grants to ACORN Housing*, USA SPENDING.GOV, *available at*: http://www.usaspending.gov/faads/faads.php?reptype=r&detail=-1&datype=T&sortby=t&database=faads&recip_id=5920&fiscal_year=2009&record_num=f500 (last visited June 17, 2009).
[367] ACORN Political Operations Report at 6 (2006) (004792) (emphasis in original).

> We determined that **AHC and ACORN are separate corporate entities, but** that **they do not always operate at 'arms length.'** Finally, **we questioned approximately $95 thousand of costs charged to the grant because the documentation and information to support the costs was inadequate to establish that they were allowable under the grant and applicable regulations**. **CNS terminated the grant because evidence obtained in a separate OIG investigation . . . indicated that AHC violated the National and Community Service Act,** as amended, **CNS Regulations and policies as well as the grant agreement**.[368]

Allegations that ACORN has been inappropriately involved in partisan politics have dogged the nonprofit for years. As far back as 1997, the former House Committee on Economic and Educational Opportunities identified numerous problems with ACORN-affiliated entities involving improper participation in partisan political activities. The Report stated:

> Most notable in this regard is . . . the **apparent cross-over funding between ACORN, a political advocacy group and ACORN Housing Corp. (AHC), a non profit, AmeriCorps grantee . . . .** [I]t was learned that AHC and ACORN shared office space and equipment and failed to assure that activities and funds were wholly separate . . . . **[I]t was revealed that AmeriCorps members of AHC raised funds for ACORN, performed voter registration activities, and gave partisan speeches.** In one instance, an AmeriCorps member was directed by ACORN staff to assist the White House in preparing a press conference in support of legislation. AmeriCorps members were also directed to encourage their clients to lobby on behalf of legislation.[369]

These problems still exist. Anita MonCrief's cited testimony before the House Judiciary Committee suggested that the federally-funded 501(c)(3) Project Vote and the politically partisan, active lobbyer ACORN were practically inseparable. She testified:

> Project Vote is basically considered ACORN political operations." Ms. MonCrief testified: [page 44, line 1-25] "There was active cooperation between ACORN's political wing and Project Vote...[They] basically had the same staff. Nathan Henderson James was the strategic writing and research department...director of ACORN and he was the research director of Project Vote. Zach

[368] OFFICE OF THE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, SEMIANNUAL REP. TO THE CONGRESS, at 3-4 (1995) (emphasis added).
[369] SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, 104TH CONG., "Report on the Activities of the Committee on Economic and Educational Opportunities," H. REP. NO. 104-875, at 69-70 (Comm. Print 1997) (emphasis added).

> [Polett] was the executive director of Project Vote and the executive director of ACORN political. All of the organizations and the entities worked together. We shared the same space." Further, Ms. MonCrief testified: "...there's no real separation between the organizations for real. So when you have the same people that are working, that are—like, I was getting paid through Project Vote's checkbook, but I was working on ACORN stuff. I even did PowerPoints during the midterm elections for Jeffrey Robinson where they were like, okay, don't vote for Albert Win [sic] (ph) or vote for this person. And they had doorknob – door hangers that they would go and put on people's doors, and we turned this into a PowerPoint presentation. So there was never any division between the staff where you would say, okay, this is (2)(3) stuff and this (c)(4) stuff. It was just—I don't want to say business as usual, but it was a lot of collaboration between the organizations." [page 89, lines 21-25, page 90 1-25, page 91, lines 1-3].[370]

More factually, former Oklahoma Congresswoman Cleta Mitchell was concerned about ACORN violating the Federal Election Campaign Act of 1971:

> A not-for-profit corporation is treated *no* differently from a for-profit corporation for purposes of the federal campaign finance laws, which absolutely prohibit corporate contributions to campaigns of federal candidates and / or corporate expenditures to support or oppose a federal candidate. The FECA further prohibit expenditures by non-profit corporations such as ACORN and Project Vote which are made in coordination with, at the request, behest, suggestion or with the material involvement of a federal campaign (such as the Obama presidential campaign). The solicitation of funds by an organization for purposes of engaging in partisan campaign activities or to support or assist a federal campaign and/or candidate convert the organization into a Section 527 political organization and further [instantiate] a federal political committee required to register with the Federal Election Commission ("FEC"). Contributions to such an organization are limited to $5,000 per calendar year and may not be received / accepted from corporations. Further, expenditures made by an organization in coordination with a candidate or political committee are considered contributions to that committee and are subject to the $5,000 per election limit.[371]

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[370] *What went wrong with the 2008 election?: Hearing Before the H. Judiciary Comm.*, 111TH CONG. 1-17 (2009) (statement of Heather Heidelbaugh).

[371] *Id.* at 15-16.

With over 360 ACORN-affiliated organizations,[372] ACORN's counsel, the law firm of Harmon, Curran, Spielberg & Eisenberg LLP ("HCSE"), advised:

> Corporate forms must be maintained and respected . . . This includes having real boards and a real principal staff person/Executive Director for each."[373]

HCSE stated ACORN's lack of clearly delineated staff roles created "the appearance that someone is trying to hide something under a byzantine corporate structure," further noting, "funds have been raised and spent by people with no official relationship to a given corporation."[374] The American Institute for Social Justice, Inc.'s ("AISJ") 2006 990 shows AISJ paid ACORN $566,136[375] and $4,952,288.[376] According to HCSE:

> ACORN's communications director is on the payroll of AISJ, and another AISJ employee manages the building on Canal Street where many different corporations reside. This is not appropriate.[377]

HCSE stated, "[f]ences need to be erected to wall off types of election-related activity that must be kept completely separate."[378] HCSE stated, "ACORN lacks the protective 'walls' needed to ensure that various types of activity are kept sufficiently separate.'"[379]

In a March 24, 2006 grant request from ACORN director Steven Kest and political director Zach Polett to The Democracy Alliance, both Kest and Polett write about ACORN's political activities in the same context in which they discuss ACORN Housing and get out the vote initiatives – both of which receive federal funding:

> **Each ACORN office carries out multiple issue campaigns at all times. Among our current priorities: campaigns to raise the minimum wage or enact living wage policies, through state or local legislation or ballot initiatives (see below); campaigns to eliminate predatory financial practices by mortgage lenders, payday lenders, and tax preparation companies; campaigns to win the development of affordable housing through inclusionary zoning policies and community benefits agreements; campaigns to improve the quality of and funding for urban public schools; and a campaign that has organized displaced New Orleans residents and is fighting for the equitable rebuilding of that city. . . . ACORN and its affiliated organizations provide extensive services to our members and**

[372] ACORN Universe of Corporations (undated) (ACORN_00001-000012).
[373] HCSE Memo (June 19, 2008) at 1 (ACORN_004927).
[374] *Id.* at 2-3.
[375] AISJ 2006 990 at 10, *supra* note 194.
[376] *Id.* at 20.
[377] HCSE Memo (June 19, 2008) at 5 (ACORN_004931).
[378] *Id.* at 1.
[379] *Id.* at 6.

> **constituency**, as a vehicle for building and strengthening our local chapters. These include: free tax preparation focusing on the Earned Income Tax Credit; **screening for eligibility for federal and state benefit programs; and, through the ACORN Housing Corporation, first time homeowner mortgage counseling and foreclosure prevention assistance, and low income housing development**. . . . **Building on our success with a statewide ballot initiative to raise the minimum wage in Florida in 2004, we have initiated similar campaigns to place minimum wage increases on the November 2006 ballot in OH, MI, AZ, MO and CO**. . . . **Finally, ACORN runs one of the most extensive voter participation projects in the country, as a fully integrated component of our overall community organizing program**.[380]

In the grant request, Kest and Polett describe ACORN's political wins:

> Among the hundreds of victories over the past 4 years, here are a few of the most significant . . . . Won increases in the state minimum wage, through legislation or ballot initiative, in FL, IL, NJ, NY. . . . Won huge reforms in the subprime/predatory mortgage industry, including a $500 million-plus settlement with Household Finance, significant reforms by Citigroup, Wells, and many others; and the passage of anti-predatory lending legislation in CA, NM, NJ, NY, and additional states. . . . Forced the nation's largest tax preparation companies (H&R Block, Jackson-Hewitt, and Liberty) to reform their pricing and practices for low income consumers. . . . Expanded access to prime credit for low income home-buyers, and helped over 25,000 families directly get first-time mortgages. . . . Over the last two election cycles (2001-02 through 2003-04), we registered 1,353,473 low- and moderate-income and minority voters and in 2004 we targeted a GOTV universe of 2.3 million low- and moderate-income and minority voters with over 8.7 million contact attempts.[381]

According to a SEIU Local 880 report dated December 15, 2006, ACORN maintains Political Action Committees ("APACs") and has volunteer committees of members who raise funds for to participate in partisan electoral work and communicate messages in support of candidates to the ACORN membership and constituency.[382]

According to internal ACORN documents produced to the Committee, ACORN has performed political work for former Illinois Governor Rod Blagojevich and several Senate Democrats:

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[380] ACORN Grant Request to the Democracy Alliance at 2-3 (Mar. 24, 2006) (ACORN_004338-004339) (emphasis added).
[381] *Id.* at 7 (ACORN_004343).
[382] ACORN Grant Request to the Democracy Alliance at 12-13 (Mar. 24, 2006) (ACORN_004348-004349).

> Local 880 2006 Legislative/Political Analysis - **We have had a great year on the legislative front - which is directly related to our past political work with Blagojevich and the Senate Dems**. . . . With the elections in 2007 (Aldermen and Mayor) just around the corner, we will need to build and maintain a much bigger political infrastructure statewide in '07. And we need to get ready for the big one in '08 – **OBAMA FOR PRESIDENT!** . . . Although **Governor Blagojevich** did not have a serious challenger, Cook County Board President Stroger, who had a massive stroke right before the election, did. It was a very tight race and turnout was key. **Local 880 moved between 50-100 members and staff to work the precincts for Blago and Stroger in March**, and while Blago blew out his challenger, Stroger, in the hospital and close to death, barely squeaked by with 52% of the vote and 880's and SEIU's and APAC's volunteers in the high turnout precincts on the south side, brought it home. **High level Blagojevich staff credited us later with helping move the vote that allowed him to win**. Later, in the general election, we had even more success. . . . Local 880 Political Director, Rochelle Prather, in coordination with Local 880 organizing staff statewide, trained and turned out hundreds of our members and staff for the final push – not only in the Governor's race, but in five targeted races in southern and western Illinois the Dems needed to defend or pick up. **We won all of the races we worked in and received a lot of credit for our work.** [383]

The document continues with:

> Because 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**.[384]

In the 2006 Democracy Alliance request, Kest and Polett explicitly discuss the cross-over of funding between ACORN's 501(c)(4), 501(c)(3), and 527 affiliates:

> ACORN's voter participation budget varies with the election cycle, from a high of $24 million in the 2004 cycle to expenditures of $4 million in 2005 and a projected $12 million in 2006. (Note: these totals include support for ACORN and c3 and 527 organizations that share ACORN's mission) Funding comes largely from foundation and high-donor sources. As with ACORN's core

[383] Local 880 at 17-18 (Dec. 15, 2006) (ACORN_004366-004367) (emphasis added).
[384] Local 880 at 5 (Dec. 15, 2006) (ACORN_04354) (emphasis added).

> organizational budget, we have recently expanded our development department working on voter participation fundraising, and are aggressively seeking to diversify the number of funders who support our work.[385]

According to a press release from the Department of Justice, ACORN's labor affiliate, the Service Employees International Union ("SEIU"), was involved in a discussion with Blagojevich concerning his potential Senate appointment.[386]

ACORN directly lobbied political officers, and there is a credible presumption that ACORN induced its constituent members to subscribe to partisan ideological preferences.[387] Such circumstances might have contributed to numerous incidences of illegal political activity in the 2008 election. According to the Campaign Finance Institute, section 501(c) organizations, including section 501(c)(4) groups, spent approximately $400 million attempting to influence federal elections in 2008, which the Institute described as "a big step up from the last two elections."[388] During the 2008 election cycle, a nonprofit tax law specialist at the IRS claimed the agency planned to take a closer look at the campaign activities of § 501(c)(4) organizations.[389] Public concern about violations of the campaign intervention prohibition by § 501(c) organizations prompted the IRS to develop the Political Activity Compliance Initiative (PACI).[390]

ACORN's political plan for Ohio (hereinafter "Ohio Political Plan"), authored by Katy Gall, Ohio ACORN Head Organizer, Mark Engelhardt, ACORN Political Director, Midwest, and Jeremy Mitchell, Ohio ACORN Legislative Director, stated that ACORN's voter education efforts have overtly partisan goals:

> ACORN will target three competitive Ohio congressional districts as well as a half dozen state rep seats nested within the districts. Our electoral work will mobilize and educate voters about candidates who support issues important to working families. Our paid professional canvass will execute tightly managed Voter ID and GOTV canvasses moving our core constituency of base and

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[385] ACORN Grant Request to the Democracy Alliance at 13 (Mar. 24, 2006) (ACORN_004349).
[386] DOJ Press Release, *available at* http://chicago.fbi.gov/dojpressrel/pressrel08/dec09_08.htm (last visited May 3, 2009).
[387] *See* Erika Lunder and L. Paige Whitaker, *501(c)(3) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, CRS RPT. FOR CONG., Jan. 14, 2009, at 6.
[388] Campaign Finance Institute, *Outside Soft Money Groups Approaching $400 Million in Targeted Spending in 2008 Election*, Oct. 31, 2008, *available at* http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=214 (last visited June 22, 2009).
[389] *See* Diane Freda, *IRS Considering Project to Examine Political Activity of 501(c)(4) Groups*, BNA DAILY TAX REPORT, May 13, 2008.
[390] The 2004 report is *available at* http://www.irs.gov/pub/irs-tege/final_paci_report.pdf (last visited June 22, 2009). The 2006 report, which includes updated 2004 statistics, is *available at* http://www.irs.gov/pub/irs-tege/2006paci_report_5-30-07.pdf.

> swing voters to the polls to vote for the candidates who most closely align with a progressive Working Families Agenda.[391]

According to the Ohio Political Plan, ACORN paid for poll research in Ohio's congressional districts:[392]

Targets

Congressional District	State Leg. District	2004/06 Margin of Victory # Votes	Winning %	Winning Party	2002 %	2004 %
CD-1		105,680	52.25%	R	64.8	59.8
CD-1	**HD-28**	21,104	51.96%	R	58.9	53.6
CD-1	**HD-31**	15,557	67.33%	D	65.2	69.36
CD-2		120,112	50.45%	R	74	71.7
CD-2	**HD-34**	23,191	53.88%	R	63.1	60.04
CD-2	**HD-35**	30,884	64.79%	R	100	72.64
CD-10/11	*HD-16*	*25,521*	*50.95*	*D*	*40.9*	*38.26*
CD-15		109,659	50.19%	R	66.6	60.02
CD-15	**HD-22**	26,156	53.9%	R	65.3	60.8
CD-15	**HD-24**	23,633	54.96%	D	39.9	43.65
CD-18		129,646	62.06%	D	100 (R)	66.16 (R)
CD-18	**SD-22**	116,588	100%	R	[64.4]	[53.71]
CD-18	**SD-30**	100,824	66.9%	D	[100]	[66.9]
CD-18	**HD-69**	26,302	55.47%	R	60.2	55.33

A spreadsheet provided to this Committee by former ACORN employee Anita MonCrief shows ACORN's analysis of 14 nationwide congressional districts where the 2006 winning margin of Republican members were less than the amount of voters produced by ACORN voter registration drives.[393] Documents produced to this Committee reflect ACORN's meticulous research into Project Vote's new registration numbers,[394] analyses of campaign spending by Republicans,[395] an internal memorandum from Sanford Newman, one of Project Vote's founders, on voter registration drives,[396] donor lists from the Democratic National Committee (DNC), the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC),[397] donor lists of unions, lists of contributors to Senator John Kerry (D-MA),[398] documents

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[391] 2007-08 OHIO Pol Plan-Draft2b – Copy at 10 (Apr. 2007) (ACORN_000368).
[392] *Id.* at 10.
[393] Project Vote Registration Projections, Appendix 2, 14 CD (Apr. 11, 2007) at 1-2 (ACORN_000357-00358).
[394] 2005 PV new registration summary-2 (ACORN_004452-004453).
[395] Campaign spending at 1 (ACORN_000107).
[396] Project Vote Registration Projections (Apr. 14, 2007) at 1-14 (ACORN_000298-000311).
[397] DSCC DNC SCCC 10k and up (2004) (ACORN_004084-004293) (listing 5,054 donations of above $10,000 to the DSCC, DNC, and SCCC).
[398] JFK List (ACORN_000406-000489).

reflecting over 37,000 campaign contributions to former President Bill Clinton, as well as information about 347 donations to Clinton campaign coffers from 61 different unions.[399]

ACORN maintains a list of 59,995 campaign contributors to President Barack Obama's election efforts.[400] The Obama campaign made a substantial contribution to Citizens Services Inc. ("CSI"), a nonprofit corporation. However, in notes dated April 6, 2006 about ACORN affiliate America Votes, the document stated:

> We prefer that political money go to us in the form of a vendor, which would be CSI, our for-profit business, which doesn't have to report the cash because it's a business, like the phone company.[401]

In a memorandum from Zach Polett to the ACORN Political Operations Senior Staff, Polett wrote, "[h]ave CSI play a major field role in the general election and, possibly, in the primaries."[402] In the memo, Polett discussed ACORN's congressional district strategy, coordination with Project Vote, and lobbying strategies:

> Working with **ACORN Research Dept, Campaign Department** and others, **identify a set of potential "asks" for gubernatorial and mayoral candidates** that directly impact ACORN's membership growth goals . . . . Work with a targeted set of ACORN Head Organizers and their Regional Field Directors to **develop long-term political power-building plans** for those cities and states, including development and training of full-time state political directors in those states. . . . **Register 1,000,000 voters in the 2007 – 2008 election cycle** . . . . **Develop and promote** a Project Youth Vote, as a branded project of **Project Vote/Voting for America, Inc.,** thus taking advantage of the fact that **Project Vote and its work with ACORN** were, by far, the largest Youth voter registration program in the country in 2004. . . . **Establish and fund a "Voter Participation Research Institute" for doing voter engagement experiments and then writing plans and methodologies based on the results of that research**. . . . Expand **Project Vote's** 2005 – 2006 anti-voter suppression work by raising the funds to enable Project Vote to serve as the national clearinghouse for voter suppression state legislation (stopping the bad bills) and begin the work of expanding the franchise by introducing Voter Bill of Rights legislation in a targeted set of states. . . . **Define a national ACORN-identified values and policy issue** that defines **ACORN's policy and political work** this election cycle. . . . **Get candidates from the presidency on down to identify themselves as supporters of the issue**[.] Use the issue to increase turnout among base voters and to **get independent and**

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[399] Clinton 2nd Q (ACORN_000490-004059) and union donors (ACORN_004060-004083).
[400] Obama 2nd Q (on file with author).
[401] America Votes Overview Notes (Apr. 6, 2006) at 1 (ACORN_000312).
[402] PolOps 2007-2008 Projects (Nov. 22, 2006) at 2 (ACORN_004321).

> **swing voters to support candidates who actively support the issue and campaign on it**. . . . **Congressional District Strategy:** Develop a plan, for 2007 implementation and funding, that targets organizing, communications and **political work in a set of marginal CDs that changed party in the 2006 election.** [Also develop list of seats in which current party holds a seat that went the opposite way in the last presidential election – these will contain a number of seats likely to be closely contested in 08.] . . . Identify issues (generally federal) around which to conduct earned media grasstips [sic] issue advocacy campaigns with a **goal of providing support for the new Congressperson when they take stands on popular progressive issues**. . . . **Build a political operation**, perhaps using 2007 elections when they exist, **that puts in place electoral field capacity and lists that can be used in 2008**. . . . **Establish a federal PAC and a funding plan for it** . . . **Expand our CSI campaign consulting business** . . . **Develop CSI as a profit center for the work of Political Operations**. . . . Expand ACORN's power and reach by creating the in-house capacity to deliver political capacity when it's needed: **managing ballot measure campaigns; collecting signatures; running large electoral field campaigns; running campaigns of local candidates for office; conducting grasstips** [sic] **lobbying campaigns; etc.** . . . **Write a business plan for CSI**, including marketing plan and pricing plan. . . . Identify or hire a Managing Director for CSI's external business. . . . **Identify a list of potential funded ballot measure campaigns that CSI should pursue for full-service and/or signature collection management contracts**. . . . **Identify a list of 2007 and 2008 candidate campaigns that CSI should pursue for contracts and relationships**. . . . **Secretaries of State**: **Identify 2007 and 2008 Secretary of State races in which we should play, with the goal of getting responsible, pro-voter, competent people in these offices**.[403]

An internal document shows ACORN Political Director Zach Polett controlling the activities of ACORN, Communities Voting Together ("CVT") and Citizens Services Inc. ("CSI"):

> Story for Election Day will be makeup of the House. Places where voter mob can be a factor in these races is where we should think pushing a strong program. **CVT (527) is one of the ways that this could be done smartly and legally. Did work in Corzine 2005 and in Wynn 2006. CSI ran Edwards field under contract.**

[403] PolOps 2007-2008 Projects (Nov. 22, 2006) at 3-5 (ACORN_004321-004323) (emphasis added).

CVT could do something similar to its 2005/06 work in other CD's where it makes sense.[404]

According to a document provided by former ACORN employees, the ACORN Community Labor Organizing Center ("ACLOC") led important campaigns including the Texas for Obama Campaign.[405] According to the document, ACLOC raised 1.3 million dollars from political campaigns and delivered the funds directly to ACORN offices.[406] The document noted, "[d]oes the ACORN association board want Wade to be this intimately involved in coordinating campaigns this close to ACORN?"[407] ACORN readily acknowledged its partisan behavior.

V. Conclusion

American nonprofits generate $1.3 trillion in revenues, have assets over $2 trillion, and employ 15 million people.[408] Nonprofits represent a substantial portion of the activities directed toward public service, a mission obstructed by the fraud of groups like ACORN. On the basis of this Report, the legal protections distinguishing ACORN and its affiliates must be ignored because the ability to ascertain whether federal moneys are being walled off from ACORN's political activities is impracticable. As a result, ACORN and its Council of affiliates represent a politically partisan lobbying organization. ACORN and its affiliates' nonprofit exemptions and receipt of federal grants must therefore bear greater scrutiny.

[404] Notes-Pol Ops Mgt Mtg (Sept. 15, 2006) at 1 (ACORN_004371) (emphasis added).
[405] 02-04-2009 (Feb. 4, 2009) at 1-4 (ACORN_000018-000021).
[406] *Id.*
[407] *Id.* at 2.
[408] INTERNAL REVENUE SERVICE, CHARITIES & OTHER TAX-EXEMPT ORGANIZATIONS STATISTICS, *available at* http://www.irs.gov/taxstats/charitablestats (follow Charities & Other Tax-Exempt Organizations link) (last visited June 22, 2009).

VI. Appendix 1: ACORN Council

The following 361 entities compose the **ACORN COUNCIL**

1. Association of Community Organizations for Reform Now ("ACORN")
2. ACORN National Office: Brooklyn, NY
3. ACORN Bronx, NY
4. ACORN Brooklyn, NY
5. ACORN Buffalo, NY
6. ACORN Hempstead, NY
7. ACORN HOUSING CORPORATION Brooklyn, NY
8. PROJECT VOTE Brooklyn, NY
9. MHANY Brooklyn, NY
10. ACORN National Office: Washington, D.C.
11. ACORN Washington, DC
12. ACORN HOUSING CORPORATION Washington, DC
13. ACORN Political 1334 G St, NW Suite B Washington, DC 20005
14. AISJ Washington, DC
15. ACORN National Office: Little Rock, AR
16. ACORN Pine Bluff, AR
17. ACORN Housing Corporation Little Rock, AR
18. ACHC Little Rock, AR
19. ANP Little Rock, AR
20. PROJECT VOTE Little Rock, AR
21. KABF Little Rock, AR
22. SEIU LOCAL 100 Little Rock, AR 72206
23. ACORN National Office: Phoenix, AZ
24. ACORN Glendale, AZ
25. ACORN Mesa, AZ
26. ACORN Tucson, AZ
27. ACORN Housing Corporation Phoenix, AZ
28. ACORN National Office: Dallas, TX
29. ACORN Arlington, TX
30. ACORN Dallas, TX
31. ACORN El Paso, TX
32. ACORN Ft. Worth, TX
33. ACORN Houston, TX
34. ACORN Irving, TX
35. ACORN San Antonio, TX
36. ACORN Research Dallas, TX
37. ACORN HOUSING CORPORATION Dallas, TX
38. ACORN HOUSING CORPORATION Houston, TX
39. ACORN HOUSING CORPORATION San Antonio, TX
40. AGAPE Dallas, TX
41. SEIU LOCAL 100 Corpus Christi, TX
42. SEIU LOCAL 100 Dallas, TX

43. SEIU LOCAL 100 Houston, TX
44. SEIU LOCAL 100 San Antonio, TX
45. ACORN National Office: Boston, MA
46. ACORN Boston, MA
47. ACORN Brockton, MA
48. ACORN Springfield, MA
49. ACORN HOUSING CORPORATION Boston, MA
50. ACORN HOUSING CORPORATION Springfield, MA
51. ACORN National Office: New Orleans, LA
52. ACORN Baton Rouge, LA
53. ACORN Lake Charles, LA
54. ACORN New Orleans, LA
55. ACORN HOUSING CORPORATION New Orleans, LA
56. Louisiana ACORN Fair Housing Organization New Orleans, LA
57. ALERT New Orleans, LA
58. AISJ New Orleans, LA
59. SEIU LOCAL 100 Baton Rouge, LA
60. SEIU LOCAL 100 Lake Charles, LA
61. SEIU LOCAL 100 New Orleans, LA
62. SEIU LOCAL 100 Shreveport, LA
63. HOTROC New Orleans, LA
64. ACORN Bay Point, CA
65. ACORN Fresno, CA
66. ACORN Los Angeles, CA
67. ACORN Oakland, CA
68. ACORN Sacramento, CA
69. ACORN San Bernardino, CA
70. ACORN San Diego, CA
71. ACORN San Francisco, CA
72. ACORN San Jose, CA
73. ACORN Santa Ana, CA
74. ACORN HOUSING CORPORATION Fresno, CA
75. ACORN HOUSING CORPORATION Los Angeles, CA
76. ACORN HOUSING CORPORATION Oakland, CA
77. ACORN HOUSING CORPORATION Sacramento, CA
78. ACORN HOUSING CORPORATION San Diego, CA
79. ACORN HOUSING CORPORATION San Jose, CA
80. ACORN HOUSING CORPORATION Santa Ana, CA
81. ACORN Aurora, CO
82. ACORN Denver, CO
83. ACORN HOUSING CORPORATION Denver, CO
84. ACORN Bridgeport, CT
85. ACORN Hartford, CT
86. ACORN Waterbury, CT
87. ACORN HOUSING CORPORATION Bridgeport, CT
88. ACORN HOUSING CORPORATION New Haven, CT

89. ACORN 408 East 8th St. Wilmington, DE
90. ACORN Ft. Lauderdale, FL
91. ACORN Hialeah, FL
92. ACORN Jacksonville, FL
93. ACORN Lake Worth, FL
94. ACORN Miami, FL
95. ACORN Orlando, FL
96. ACORN St. Petersburg, FL
97. ACORN c/o the Progressive Center Tallahassee, FL
98. ACORN Tampa, FL
99. ACORN HOUSING CORPORATION Miami, FL
100. ACORN HOUSING CORPORATION Orlando, FL
101. Floridians For All Miami, FL
102. ACORN Atlanta, GA
103. ACORN HOUSING CORPORATION Atlanta, GA
104. ACORN Honolulu, HI
105. ACORN Chicago, IL
106. ACORN Springfield, IL
107. ACORN HOUSING CORPORATION Chicago, IL
108. ACORN HOUSING CORPORATION of IL
109. SEIU LOCAL 880 Chicago, IL
110. SEIU LOCAL 880 East St. Louis, IL
111. SEIU LOCAL 880 Harvey, IL
112. SEIU LOCAL 880 Peoria, IL
113. SEIU LOCAL 880 Rock Island, IL
114. SEIU LOCAL 880 Springfield, IL
115. ACORN Indianapolis, IN
116. ACORN IA
117. Peace and Social Justice Center of South Central Kansas Wichita, KS
118. ACORN Louisville, KY
119. ACORN Baltimore, MD
120. ACORN Hyattsville, MD
121. ACORN HOUSING CORPORATION Baltimore, MD
122. ACORN Detroit, MI
123. ACORN HOUSING CORPORATION Detroit, MI
124. Edison Neighborhood Center Kalamazoo, MI
125. ACORN St. Paul, MN
126. ACORN HOUSING CORPORATION St. Paul, MN
127. ACORN Financial Justice Center St. Paul, MN
128. ACORN Kansas City, MO
129. ACORN St. Louis, MO
130. ACORN HOUSING CORPORATION Kansas City, MO
131. ACORN HOUSING CORPORATION St. Louis, MO
132. SEIU LOCAL 880 East St. Louis, MO
133. SEIU LOCAL 880 St. Louis, MO
134. ACORN Jersey City, NJ

135. ACORN Newark, NJ
136. ACORN Paterson, NJ
137. ACORN HOUSING CORPORATION Jersey City, NJ
138. ACORN Albuquerque, NM
139. ACORN Las Cruces, NM
140. ACORN HOUSING CORPORATION Albuquerque, NM
141. ACORN Charlotte, NC
142. ACORN Cincinnati, OH
143. ACORN Cleveland, OH
144. ACORN Columbus, OH
145. ACORN Toledo, OH
146. Lagrange Village Council Toledo, OH
147. ACORN Portland, OR
148. ACORN HOUSING CORPORATION Portland, OR
149. ACORN Allentown, PA
150. ACORN Harrisburg, PA
151. ACORN Philadelphia, PA
152. ACORN Pittsburgh, PA
153. ACORN HOUSING CORPORATION Philadelphia, PA
154. ACORN HOUSING CORPORATION Philadelphia, PA
155. ACORN HOUSING CORPORATION Pittsburgh, PA
156. ACORN Providence, RI
157. ACORN HOUSING CORPORATION Providence, RI
158. ACORN Memphis, TN 38104
159. ACORN Norfolk, VA
160. ACORN Richmond, VA
161. ACORN Burien, WA
162. ACORN Milwaukee, WI
163. ACORN HOUSING CORPORATION Milwaukee, WI
164. ACORN Beverly, L.L.C.
165. ACORN Center for Housing, Inc.
166. Arkansas Community Housing Corporation
167. ACORN Community Land Association, Inc.
168. ACORN Community Land Association Albuquerque NM
169. ACORN Community Land Association of Louisiana Baltimore MD
170. ACORN Community Land Association of Louisiana New Orleans LA
171. ACORN Community Land Association of Pennsylvania, Inc.
172. ACORN Community Land Association of IL.
173. ACORN Community Labor Organizing Center, Inc.
174. ACORN Fair Housing, A Project Of American Institute Washington DC
175. Arkansas ACORN Fair Housing, Inc.
176. New Mexico ACORN Fair Housing Albuquerque NM
177. ACORN Fair Housing Washington DC
178. ACORN Housing 1 Associates, LP (limited partnership)
179. ACORN Housing 2 Associates, LP (limited partnership)
180. ACORN Housing 2, Inc.

181. ACORN Housing Affordable Loans, LLC
182. ACORN Housing Corporation, Inc.
183. Desert Rose Homes, L.L.C.
184. Franklin ACORN Housing, Inc.
185. Mott Haven ACORN Housing Development Fund
186. Mutual Housing Association of New York, Inc.
187. New Orleans Community Housing Organization, Inc.
188. ACORN Community Land Association of Illinois
189. Massachusetts ACORN Housing Corporation
190. Broad Street Corporation
191. Elysian Fields Corporation
192. ACORN 2004 Housing Development Fund Corporation
193. ACORN 2005 Housing Development FUND CORPORATION
194. ACORN Dumont-Snediker Housing Development Fund Corporation
195. Dumont Avenue Housing Development Fund
196. Elysian Fields Partnership
197. Fifteenth Street Corporation
198. New York ACORN Housing Company Inc
199. Development Fund Corporation
200. New York Organizing and Support Center, Inc
201. Baltimore Organizing and Support Center, Inc.
202. Chicago Organizing and Support Center, Inc.
203. Houston Organizing and Support Center, Inc.
204. 5301 McDougall Corporation
205. New Mexico Organizing and Support Center, Inc.
206. New York Organizing and Support Center, Inc.
207. Phoenix Organizing and Support Center, Inc.
208. 385 Palmetto Street Housing Development Fund Corporation
209. Sixth Avenue Corporation
210. 4415 San Jacinto Street Corporation
211. St. Louis Organizing and Support Center, Inc.
212. St. Louis Tax Reform Group, Inc.
213. Greenwell Springs Corporation
214. Austin Organizing and Support Center, Inc.
215. Boston Organizing and Support Center, Inc.
216. American Home Day Care Workers Association, Inc.
217. American Workers Association
218. Baton Rouge Association of School Employees, Inc.
219. Hospitality Hotel and Restaurant Organizing Council
220. Illinois Home Child Care Workers Association, Inc.
221. Labor Link, Inc.
222. Labor Neighbor Research and Training Center, Inc.
223. Missouri Home Child Care Workers Association, Inc.
224. Middle South Home Day Care Workers Association, Inc.
225. Wal-Mart Alliance for Reform Now, Inc.
226. Wal-Mart Association for Reform Now

227. Working Families Association, Inc.
228. Wal-Mart Workers Association, Inc.
229. People Organizing Workfare Workers/ACORN/CWA, Inc.
Workers/ACORN/CWA, Inc.
230. Texas United City-County Employees, Inc.
231. Texas United School Employees, Inc.
232. United Labor Foundation of Greater New Orleans, Inc.
233. United Security Workers of America
234. Orleans Criminal Sheriffs
235. SEIU Local 100
236. SEIU Local 880
237. Arkansas Broadcasting Foundation, Inc.
238. Agape Broadcasting Foundation, Inc.
239. Affiliated Media Foundation Movement, Inc.
240. Allied Media Projects, Inc.
241. ACORN National Broadcasting Network, Inc.
242. Alabama Radio Movement, Inc. (Dissolved)
243. ACORN Television in Action for Communities, Inc.
244. California Community Television Network
245. Flagstaff Broadcasting Foundation, Inc.
246. Iowa ACORN Broadcasting Corporation
247. Maricopa Community Television Project, Inc.
248. Montana Radio Network, Inc.
249. Radio New Mexico, Inc.
250. Shreveport Community Television, Inc.
251. Crescent City Broadcasting Corporation
252. KABF Radio
253. KNON Radio
254. ACORN Institute, Inc.
255. ACORN Institute Inc. Washington DC
256. ACORN Institute Dallas TX
257. ACORN Institute Inc. New Orleans LA
258. American Institute for Social Justice, Inc.
259. Association for Rights of Citizens, Inc.
260. New York Agency for Community Affairs, Inc.
261. Pennsylvania Institute for Community Affairs, Inc.
262. Project Vote/Voting for America, Inc.
263. ACORN Tenant Union Training & Organizing Project, Inc.
264. ACORN Law for Education Representation & Training, Inc.
265. American Environmental Justice Project, Inc.
266. ACORN International, Inc.
267. Environmental Justice Training Project, Inc.
268. Movement for Economic Justice, Education & Training Center, Inc.
269. Missouri Tax Justice Research Project, Inc.
270. ACORN Beneficial Association, Inc.
271. ACORN Canada

272. ACORN Children's Beneficial Association, Inc.
273. ACORN Campaign to Raise the Minimum Wage, Inc.
274. ACORN Cultural Trust, Inc.
275. ACORN Dual Language Community Academy
276. ACORN Fund, Inc.
277. ACORN Foster Parents, Inc.
278. ACORN Institute Canada
279. ACORN Political Action Committee, Inc.
280. ACORN Tenants' Union, Inc.
281. Community Training for Environmental Justice, Inc.
282. Connecticut Working Families
283. Democracy for America
284. Hammurabi Fund, Inc.
285. McLellan Multi-Family Corporation
286. Metro Technical Institute, Inc.
287. New Party National Committee, Inc.
288. Volunteers for America, Inc.
289. Volunteers for California, Inc.
290. Volunteers for Missouri, Inc.
291. ACORN Management Corporation
292. Associated Regional Maintenance Systems
293. ACORN Associates, Inc.
294. ACORN Associates Inc. Albuquerque NM
295. ACORN Campaign Services, Inc.
296. ACORN Services, Inc.
297. Citizens Consulting, Inc.
298. Chief Organizer Fund, Inc.
299. Citizens Services, Inc.
300. People's Equipment Resource Corporation, Inc.
301. National Center for Jobs & Justice
302. Service Workers Action Team
303. Living Wage Resource Center
304. American Home Childcare Providers Association
305. Association for the Rights of Citizens Inc
306. California Community Network
307. Child Care Providers for Action Franklin
308. Citizens Action Research Project
309. Citizens Campaign for Work, Living Wage & Labor Peace
310. Citizens for Future Progress
311. Citizens Campaign for Finance Reform
312. Floridians for All PAC
313. Greenville Community Charter School Inc
314. Student Minimum Wage Action Campaign
315. Site Fighters
316. Social Policy
317. Southern Training Center

318. ACORN Votes
319. Communities Voting Together
320. Arkansas ACORN Political Action Committee
321. Arkansas New Party
322. California APAC
323. Citizens for April Troope
324. Colorado Organizing and Support Center, Inc.
325. Citizens Campaign for Fair Work
326. Citizens Services Society, Inc.
327. Clean Government APAC
328. Community Voices Together
329. Community Real Estate Processing, Inc.
330. Council Beneficial Association
331. Council Health Plan
332. Desert Rose Homeowners' Association
333. District of Columbia APAC
334. Friends of Wendy Foy
335. Illinois APAC
336. Illinois New Party
337. Institute for Worker Education
338. Jefferson Area Public Employees
339. Jefferson Area School Employees
340. Local 100 Health & Welfare Fund
341. Local 100 Political Action Committee
342. Local 100 Retirement Fund
343. Local 880 PAC
344. Local 880 Political PAC
345. Louisiana APAC
346. Maryland APAC
347. Massachusetts APAC
348. Missouri APAC
349. Mutual Housing Association of New York Neighborhood Restore
350. Neighbors for Arthelia Ray
351. Neighbors for Maria Torres
352. Neighbors for Ted Thomas
353. New Mexico APAC
354. New Orleans Campaign for Living Wage Committee
355. New York APAC
356. Oregon APAC
357. Orleans Criminal Sheriffs Workers Organization, Inc.
358. Pennsylvania APAC
359. Progressive Houston
360. Progressive St. Louis
361. Rhode Island APAC

VII. Appendix 2: RICO Analysis

ACORN 8 alleged RICO violations under 18 U.S.C. §1962(c):

> (1) the defendant persons (2) were employed by or associated with an enterprise (3) that engaged in or affected interstate commerce and that (4) the defendant persons operated or managed the enterprise (5) through a pattern (6) of racketeering activity, and (7) the complaints [sic] were injured in its business or property by reason of the pattern of racketeering activity. Thus, the complainants feel that a formal RICO investigation is also warranted.[409]

Asheesh Agarwal, a former Justice Department attorney, produced to the Committee a memorandum ("Memo") analyzing whether Project Vote could be sued under the civil provisions of the Racketeer Influenced Corrupt Organization Act ("RICO").[410] The Memo concluded, "such a claim would face a very high hurdle in satisfying the 'business or property' element of a [civil] RICO claim. We could probably get by a Rule 11 motion, but probably not a motion to dismiss."[411]

The Memo analyzed the predicate offenses of mail and wire fraud, stating "[a]lthough the federal mail and wire fraud statutes do not themselves establish a private right of action, such a claim is permitted under the [criminal] RICO statute itself."[412]

The federal civil RICO provision provides, "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court..."[413] While the Memo analyzed whether "voters [had] been 'injured in... business or property[,]' it did not analyze whether Project Vote, or its affiliate, ACORN, caused taxpayers or donors to be injured in their business or property.[414] The Memo characterized the "right to vote or to a fair election process" as "property".[415]

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[409] IMC Allegations (Jan. 7, 2009) at 2 (ACORN_004867).

[410] The Committee staff believed that the memorandum was the work product of the Department of Justice. Asheesh Agarwal has informed the Committee that the Department of Justice's Civil Rights Division did not author the memorandum that analyzed a possible civil RICO suit against ACORN. Mr. Agarwal has informed the Committee that he, as former Deputy Assistant Attorney General, did not author the memorandum.

[411] Memo (received March 30, 2009) at 1 (ACORN_004776). Asheesh Agarwal sent the memorandum to the Committee staff on March 30, 2009. The staff was under the impression that the memo was authored by Mr. Agarwal during his time at the Department of Justice ("DOJ"). As of August 3, 2009, Mr. Agarwal claims the memo was not authored by him and was not the work product of the Department of Justice.

[412] *Id.* (emphasis added).

[413] 18 U.S.C § 1964.

[414] Memo (received March 30, 2009) at 2 (ACORN_004777).

[415] *Id.* (ACORN_004777).

The Memo analyzed "property" under the Supreme Court's decision in *McNally v. United States*[416] and the Sixth Circuit decision, *United States v. Debs*.[417] In *McNally*, decided five years before *Debs*, the Court limited the definition of "property" under the mail and wire fraud statutes. The *McNally* Court considered whether a patronage scheme by a Kentucky public official had deprived the citizens of Kentucky of the property right to have the state government's affairs conducted honestly. Under *McNally*, "property" under the mail and wire fraud acts did not include intangible rights such as "the right of the citizenry to good government."[418] However, the *Debs* Court interpreted the Hobbs Act to hold the loss of the opportunity to vote as a loss of property not a "deprivation of *rights*."[419] The Memo analyzed the distinction as follows:

> After discussing the implications of *McNally*'s holding in some detail, the *Debs* court nonetheless concluded that 'property' under the Hobbs Act included the right to elect union officials. The *Debs* court argued that the *McNally* decision could be explained by the fact that there, the Court had been motivated by concerns of federalism and had not wanted to interfere with 'setting standards of disclosure and good government for local and state officials.' *See Debs* at 202 (quoting *McNally* at 360). The *Debs* Court found these same federalism concerns were not implicated in union elections.[420]

According to the Memo, the *McNally* case was later explicitly overturned by 18 U.S.C. §1346, which held that a "scheme or artifice to defraud" under the mail and wire fraud statutes included the deprivation of the "intangible right of honest services."[421]

The Memo addressed the criminal provisions of RICO under 18 U.S.C. §1962. The criminal RICO statute instructs:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.[422]

According to the Memo, ACORN can be easily established as an "enterprise" under the RICO statute "as that term is defined to include 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity[.]'"[423] The Memo also held, "we should be able to

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[416] McNally v. United States, 483 US 350 (1987).
[417] 949 F. 2d 199 (6th Cir. 1992).
[418] McNally at 356.
[419] *Id.* at 201 (emphasis in original).
[420] Memo (received March 30, 2009) at 2 (ACORN_004777).
[421] *See United States v. Ames Sintering Co.*, 927 F.2d 232 (6th Cir 1990) (recognizing that section 1346 overturned or superseded *McNally*).
[422] 18 U.S.C. § 1962(c).
[423] Memo (received March 30, 2009) at 3 (ACORN_004778), *citing* 18 U.S.C. §1961.

demonstrate that [ACORN's] racketeering constitutes a 'pattern' which, under the statute, is 'at least two acts of racketeering activity,'"[424] The Memo claimed ACORN's activities constituted "racketeering" under §1341 (mail fraud) and §1343 (wire fraud) of the code.[425]

18 U.S.C. §1341's requirements are met if the mail is used to execute a scheme involving money or property. 18 U.S.C. §1341 specifies:

> Whoever, having devised or intending to devise **any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses**, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of **executing such scheme** or artifice or attempting so to do, **places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service**, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.[426]

18 U.S.C. §1343 is analogous to the mail fraud language but refers to the use of wire transmission:

> Whoever, having devised or intending to devise **any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses**, representations, or promises, **transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice**, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the

[424] *Id.*
[425] 18 U.S.C. §§ 1341, 1343.
[426] Memo at 3-4 (ACORN_004778-004779), citing 18 U.S.C. § 1341 (emphasis in original).

> Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.[427]

The Memo claimed "[ACORN] engaged in a scheme to defraud voters of their intangible right to honest government services."[428]

The federal criminal RICO statute defines property as real property "including things growing on, affixed to, and found in land" and tangible and intangible personal property "including rights, privileges, interests, claims, and securities."[429] In discussing "money or property" the Memo stated, "Congress specifically accepted *McNally*'s invitation to clarify the definition of 'property' when it passed section 1346."[430] §1346 states:

> For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services.[431]

"[I]ntangible personal property" under §1964 is thus defined to include "a scheme or artifice to deprive another of the intangible right of honest services." The Memo concluded, "[t]hus, the property requirement under section 1346 is explicitly an easier hurdle than the property requirement under the civil provision of RICO more broadly."[432] The Memo stated, "If [Americans Coming Together]/ACORN used the mails in any way to facilitate the scheme, their conduct should fall under these provisions."[433] ACORN would therefore be liable under RICO if it used mail or wire transmissions which deprived others of their money or rights.

While the Memo focused on the use of the mail to further Project Vote's alleged fraudulent voter registrations, the Memo did not discuss whether ACORN or any of its affiliates used mail or wire transmissions to further other forms of fraud depriving individuals of their money or "intangible right of honest services." Dale Rathke's embezzlement violated RICO because, according to the Harmon, Curran, Spielberg & Eisenberg, LLP ("HCSE") Memo, it involved a fraudulent wire-based transfer of funds violating first, ACORN's fiduciary duties to its donors, second, ERISA, third, the Internal Revenue Code, and potentially fourth, FEC regulations.

This report cites evidence showing ACORN to have committed two forms of misconduct, organizational and purposeful, which have triggered fraudulent and

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[427] 18 U.S.C. §1343 (emphasis added).
[428] Memo at 4 (ACORN_004779).
[429] 18 U.S.C. § 1963.
[430] *Id.*
[431] 18 U.S.C. § 1346.
[432] Memo at 4 (ACORN_004779).
[433] *Id.*

potentially illegal acts.[434] According to this report, ACORN's organizational misconduct involved:

1. Failed to regard corporate formalities and fiduciary duties, failed to report Dale Rathke's embezzlement to the Board;
2. Wade Rathke lied to the Board about ACORN's legal counsel (Louis Robein);
3. Wade Rathke filed a fraudulent LM-2 form;
4. Failed to comply with its own board-created Interim Management Committee;
5. Violated ERISA because Citizens Consulting Inc.'s (CCI) removal of money from a charity-sponsored health fund (ACORN Fund) is a prohibited loan to a related party under ERISA and a large part of the embezzled funds ($215,000) were charged through ACORN's American Express account to the ACORN Beneficial Association;
6. Breached its duty of care to its donors because CCI approved the use of donor funds to cover the debt caused by embezzlement;
7. Violated the Internal Revenue Code by failing to report the embezzlement to the IRS;
8. Ignored its bylaws;
9. Terminated members of its Interim Management Committee without cause;
10. Mismanaged the organization because CCI controls the accounts of federally funded ACORN affiliates as well as politically active affiliates;
11. Organized the ACORN Council as a web of affiliates with no real boards or oversight; and
12. Lacked quality control because ACORN lacks hiring standards, negligently supervised its employees and lacked a whistleblower policy.

According to this report, ACORN's purposeful misconduct involved:

1. Ignored its responsibilities under the Internal Revenue Code;
2. Engaged in illegal partisan activity because Project Vote, ACORN Housing Corporation, the American Institute for Social Justice, the ACORN Institute, and the Pennsylvania Institute for Community Affairs, Inc. received federal funds, yet ACORN lobbied in support of legislation and candidates for public office by having endorsed Senator Sherrod Brown (D-OH), Representative Albert Wynn (D-MD) and Representative Donna Edwards (D-MD) and by using donor

[434] *Id.*

records from the Clinton, Kerry and Obama presidential campaigns;
3. Failed to supervise those ACORN employees prosecuted for filing fraudulent voter registrations; and
4. Failed to wall off its political activities from the organizations receiving federal funds or tax-deductible charitable contributions, thus potentially violating FEC rules.

If these allegations are true, ACORN financially deprived its donors by wiring their funds to cover the debt caused by Dale Rathke's embezzlement, it deprived federal taxpayers and the government of money and the right to honest services by wiring federal grant money to political accounts and mailing fraudulent forms to the Labor Department and the IRS, and it deprived its former employees of money by mailing them notice of their termination in violation of ACORN's bylaws.

ACORN acknowledged these violations and their connection to the RICO statute. In an email from Steve Bachmann to Steven Kest of ACORN, Karen Inman, formerly of ACORN, and Elizabeth Kingsley, of the law firm Harmon, Curran, Spielberg & Eisenberg ("HCSE"), Bachmann quoted a *New York Times* article released about ACORN and responded to its claims:

The *New York Times* stated:

> The brother, Dale Rathke, embezzled nearly $1 million from Acorn and affiliated charitable organizations in 1999 and 2000, Acorn officials said, but a small group of executives decided to keep the information from almost all of the group's board members and not to alert law enforcement.[435]

Bachmann commented:

> **As I say, check [Wade Rathke]'s blog, and we need to get tight on what happened precisely on this matter--WR says he recused himself and put it to the management council. I dont'** [sic] **know about the politics of the board, but as to the solution to the embezzelement** [sic] **he told me that Louis Robein was going to solve it. Isn't that what he told the management council when he supposedly recused himself? I THINK THIS THIS** [sic] **A CRITICAL ISSUE AND WILL HAVE TO COME OUT AT SOME POINT...Sidley Austin needs to read that WR blog, because--at the risk of repeating myself--if I were a rightwing prosecutor I would think "RICO, coverup," blah blah blah--and WR is fingering the management council,**

[435] Stephanie Strom, *Funds Misappropriated at 2 Nonprofit Groups*, N.Y. TIMES, Jul. 9, 2008, *available at* http://www nytimes.com/2008/07/09/us/09embezzle html (last visited May 7, 2009).

claiming he had nothing to do with it, and not mentioning his promises regarding Robein[436]

Moreover, minutes from a July 2008 ACORN Board meeting reflect the degree to which the ACORN's donors felt their fiduciary duties were violated:[437]

> ** Bertha Lewis, Steve Kest and Zach Polett have been working with funders. Bertha reported that a group of approximately 30 funders have gotten together and talked about how to deal with ACORN. She added that we are working with them and hope that they don't try to dictate ACORN's courses of action. An effort was made to defund ACORN from the national Health Care Action Now (HCAN) plan, but that defunding was unsuccessful and ACORN's participation and funding continues. Zach reported that We Are America Alliance funding for ACORN has also been threatened, but that funding was now secure.

[436] Email from Steve Bachmann to Steve Kest, Karen Inman, and Elizabeth Kingsley (July 9, 2008) at 1-4 (on file with author) (emphasis in original).
[437] ACORN Association Board Meeting (July 13, 2008) at 2 (ACORN_00392).

VIII. Appendix 3: Updated and New Information (11/18/09)

This Appendix updates the July 23, 2009 staff report ("ACORN Report"). The Committee's investigation of the Association of Community Organizations for Reform Now ("ACORN") is ongoing and this Appendix focuses on recent findings concerning ACORN's tax status and clarifies questions that have arisen concerning ACORN whistleblowers and the Racketeer Influenced Corrupt Organization Act ("RICO") analysis from the ACORN Report's original appendices.

A. ACORN's tax status and political activities

In its first release, the ACORN Report claimed, on the basis of congressional testimony, whistleblower and employee accounts, and the media, that ACORN was a tax-exempt 501(c)(4) nonprofit corporation. The overwhelming majority of policy makers, media sources, and legal and political analysts have identified ACORN as a tax-exempt nonprofit corporation. The Committee staff has now been presented with information that serves to clarify ACORN's tax-exempt status. Upon further investigation, the Committee staff has learned that ACORN, the parent company, is not a 501(c)(4), but rather a taxable nonprofit corporation. ACORN is apparently registered in every state where it hosts a chapter.

This is where ACORN's tentacles become even more complex. The Committee staff contacted the American Law Division of the Congressional Research Service ("CRS") to ascertain why a nonprofit would elect to pay corporate income taxes. The CRS stated they were aware of only one corporation in the United States structured that way: ACORN. But CRS could not explain why ACORN would structure itself this way.

CRS recommended that the Committee staff call a preeminent nonprofit tax lawyer to get answers – which it did. This attorney explained that the **ONLY** reason a nonprofit would want a non-exempt status would be to conduct political activities without reporting them to the Internal Revenue Service ("IRS").[438]

1. ACORN and its web of affiliates have slipped under the legal radars of the FEC and the IRS

The ACORN Report found that ACORN conspires to defraud the United States by using taxpayer funds for partisan political activities.[439] The Committee staff is concerned that ACORN has failed to comply with § 501(c) and § 527(f) of the Internal Revenue Code ("IRC") and the accompanying Internal Revenue Service ("IRS") regulations. It appears that ACORN, a taxable non-exempt corporation, has intentionally used gaps in the IRC and the Federal Election Campaign Act ("FECA") to engage in

[438] Interview with Bruce Hopkins, Director, Nonprofit Law Center (July 28, 2009).
[439] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 3-6, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.

activities that would be subject to either prohibition or taxation under any reasonable application of FECA and the IRC.

ACORN files Form 1120 corporate income tax with the IRS, has no tax-exempt status with the IRS, and is registered in multiple states as a nonprofit corporation.

FECA[440] generally prohibits corporations from making a contribution or expenditure in connection with any election to any political office[441] and from using Treasury funds to pay for electioneering communications.[442] However, there are several exceptions to FECA's general prohibition on corporations making contributions or expenditures. Under 2 U.S.C. § 441b(b)(2), corporations may make expenditures: (1) to communicate with stockholders and executive or administrative personnel and their families; (2) to engage in nonpartisan voter registration or get-out-the-vote campaigns aimed at stockholders and executive or administrative personnel and their families; and (3) to establish, administer, and solicit contributions to a separate segregated fund for political purposes.

FECA's exceptions, however, would not apply to ACORN, or any state-registered taxable nonprofit corporation. It appears that these exceptions apply only to nonprofits classified as "qualified nonprofit corporations ("QNCs")."[443] The FEC defines a QNC as a tax-exempt § 501(c)(4) corporation whose (1) only express purpose is the promotion of political ideas, which (2) does not engage in business activities, (3) has no shareholders or other persons with an ownership interest or claim on the organization's assets, and (4) was not established by and does not accept donations from business corporations.[444]

The Committee's Ranking Member, Darrell Issa (R, Calif.), has requested that the FEC identify how it classifies ACORN or any of its affiliates, especially whether ACORN or any of ACORN's affiliates are qualified nonprofit corporations ("QNCs") under FECA.

While questions remain about ACORN's legal status, it is also important that the activities of ACORN's 501(c) affiliates like Project Vote, the American Institute for Social Justice ("AISJ"), ACORN Housing Corporation ("AHC"), ACORN Institute, Service Employees International Union ("SEIU") Local 100 and Local 880, Communities Voting Together ("CVT," also known as "Community Voices Together"), ACORN Votes, Elysian Fields Corporation ("EFC"), the Association for the Rights of Citizens ("ARC"), and the Working Families Party ("WFP") do not escape the regulatory attention of the IRS and the FEC.

In enacting § 501(c), Congress intended nonprofit political activity to be interpreted broadly.[445] According to this interpretation, a nonprofit influences legislation

[440] 2 U.S.C. § 431 *et seq.*
[441] 2 U.S.C. § 441(a).
[442] 2 U.S.C. § 441b(b)(2).
[443] 11 C.F.R. § 114.10(d)(2).
[444] 11 C.F.R. § 114.10(c).
[445] Christian Echoes Nat'l Ministry v. United States, 470 F.2d 849, 856 (10th Cir. 1972).

whenever it makes "appeals to the public to react to certain issues."[446] If an "essential part of the program" is "to promote desirable governmental policies consistent with its objectives through legislation" then a substantial part of the corporation's activities are "influencing or attempting to influence legislation."[447] "[A]ttempts to elect or defeat certain political leaders" reflect an "objective to change the composition of the federal government."[448]

Section 527(f) of the IRC subjects § 501(c) organizations to taxation if they make an expenditure for a § 527 "exempt function." Lobbying, or the "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 . . . " would constitute a § 527 "exempt function" under the IRC.[449]

According to the IRC, if a § 501(c) organization sets up a separate segregated fund, the fund will be treated as a separate § 527 political organization for tax purposes.[450] However, a § 501(c) organization cannot set up a fund to conduct activities it cannot do – e.g. a §501(c)(3) organization, which is prohibited from engaging in campaign activity under the tax laws, cannot set up a fund to engage in those types of activities.[451]

Treasury Regulation § 1.527-6(b)(1) states that FECA-permitted expenditures are taxable only to the extent provided by regulation. The Treasury Department has not yet promulgated a regulation stating what that extent is.[452]

For purposes of applying FECA, the FEC does not distinguish between tax-exempt nonprofit corporations, like Project Vote, and taxable nonprofit corporations, like ACORN. However, the American Law Division of CRS has informed Committee staff that "for the purposes of determining whether a corporation is exempt from certain FECA prohibitions, the tax-exempt status of a corporation is relevant."[453] These ambiguities increase the concern that ACORN is exploiting the situation to improperly claim IRC exemptions to engage in improper lobbying activities.

The IRC, FECA, IRS and FEC regulations require political funds to be separate and segregated from tax-exempt accounts. The ACORN Report disclosed an audit by ACORN's outside counsel, finding ACORN and its affiliates lack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work,[454] ACORN cannot prove

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[446] *Id.*
[447] *Id.*
[448] *Id.*
[449] IRC § 527(e)(2).
[450] IRC § 527(f)(3); Treas. Reg. § 1.527-6(f).
[451] Treas. Reg. §1.527-6(g).
[452] Treas. Reg. § 1.527-6(b)(3).
[453] *Id.*
[454] 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

that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations,[455] ACORN and its affiliates lack protective walls separating their various activities[456] and Communities Voting Together ("CVT"), a § 527 organization, is "treated like a pot of money available to ACORN to carry out state-level political work."[457]

The ACORN Report alleged that Citizens Consulting Inc. ("CCI"), a taxable nonprofit ACORN-affiliate, simultaneously managed the accounts of political and private donor-funded organizations. If accurate, CCI's co-management of various tax-exempt and non-exempt affiliate accounts, many of which receive federal funds and some of which are 527s, would violate § 527(f) of the IRC as well as FECA. CCI co-manages ACORN affiliate accounts that are legally required to be separate and segregated. The IRC requires the transfer of political contributions and dues meet the three requirements that the § 501(c) use procedures that satisfy federal and state campaign laws; the § 501(c) organization maintain adequate records to show the transferred monies and political contributions and dues; and the transferred monies were not used to earn investment income for the § 501(c) organization.[458]

Ranking Member Issa has requested that the IRS provide information concerning any criminal investigation ("CI"), civil audit, or examination, review of whistleblower-informant claims, published alerts or abusive tax scheme investor lists concerning ACORN or its affiliates. Mr. Issa has also requested that the FEC provide information concerning any formal investigation or Commission audit, issued committee report, response to complaints, referrals from other government agencies, or issued enforcement decision or matter under review ("MUR") concerning ACORN or its affiliates.

2. Senior ACORN employees lobby the Federal Government on ACORN's behalf yet ACORN has failed to register as a lobbying organization under the Lobbying Disclosure Act

The ACORN Report traced the way ACORN erected a complex corporate structure of overlapping nonprofit community initiatives and political lobbying activities. Moreover, the ACORN Report revealed the shell-game of corporate financing that enables ACORN to commingle funds and potentially divert federal monies into partisan activities in violation of federal law.

Since the release of the ACORN Report, Committee staff has continued to pursue evidence of ACORN's corporate deceit. It now seems that in addition to blurred corporate structures and commingled funds, ACORN has attempted to evade federal law governing lobbyist disclosures.

Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) at 7 (ACORN_004933).

[455] *Id.*

[456] *Id.* at 6.

[457] *Id.* at 8.

[458] Treas. Reg. § 1.527-6(e).

The Lobbying Disclosure Act of 1995 ("Lobbying Disclosure Act") states, "[a] person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees."[459] Steve Kest is the executive director of ACORN.[460] According to ACORN-affiliate Citizens Consulting Inc.'s ("CCI") 2007 lobbying report for ACORN, Steve Kest is also CCI's executive director.[461] Even a broad interpretation of the Lobbying Disclosure Act would mandate ACORN, with Steve Kest as its director and principal lobbyist, to register with Congress. ACORN has failed to do so.

Steve Kest is an employee of CCI, which is a wholly owned subsidiary of ACORN, and Steve Kest's lobbying activities advance the interests of both ACORN and CCI.[462] Because ACORN contributes $5,000 or more to Steve Kest's lobbying activities during a quarterly period and actively participates in the planning, supervision, or control of his lobbying activities, ACORN must be listed on CCI's Form LD 1, Line 13.[463] Unfortunately, ACORN is listed nowhere in the Congressional registration database.[464]

Congress has both civil and criminal penalties for failing to comply with the Lobbying Disclosure Act:

> Whoever knowingly fails . . . to comply with any other provision of the Act, may be subject to a civil fine of not more than $200,000, and whoever knowingly and corruptly fails to comply with any provision of this Act may be imprisoned for not more than 5 years or fined under title 18, United States Code, or both.[465]

ACORN, an organization that routinely files forms, pays fees, and writes grants to several federal and state agencies, would not have been burdened by the prospect of registering Steve Kest as its lobbyist and employee. Registering with both the House and the Senate under the Lobbying Disclosure Act is free[466] and can be completed in a few minutes online.[467] But what seems like an easy fix would have enormous ramifications for ACORN. Our first report demonstrated that ACORN is prohibited by law from managing and controlling the accounts of its tax-exempt affiliates. Moreover, ACORN is prohibited from using taxpayer dollars to fund lobbying or electioneering activities. It is obvious why ACORN registered CCI as its lobbyist while failing to register itself: the

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[459] LOBBYING DISCLOSURE ACT, *available at*: http://lobbyingdisclosure.house.gov/index.html.
[460] ACORN WEBSITE, *available at*: http://www.acorn.org/contactus/national.html.
[461] *See* Citizen Consulting, Inc. (CCI), 2007 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-10, *available at*: http://lobbyingdisclosure.house.gov.
[462] LOBBYING DISCLOSURE ACT GUIDE, *available at*: http://lobbyingdisclosure.house.gov/amended_lda_guide.html.
[463] *Id.*
[464] QUERY THE LOBBYING DISCLOSURE DATABASE, *available at*: http://soprweb.senate.gov/index.cfm?event=chooseFields (hyperlink "Search Filings" ACORN, Association of Community Organizations for Reform Now).
[465] LOBBYING DISCLOSURE ACT GUIDE, *available at*: http://lobbyingdisclosure.house.gov/amended_lda_guide.html.
[466] Interview with HOUSE LEGISLATIVE RESOURCE CENTER, (Sept. 7, 2009).
[467] SENATE PUBLIC DISCLOSURE INDEX, *available at*: http://www.senate.gov/legislative/Public_Disclosure/new_filers.htm.

negligible cost of disclosing its affairs to the government is too high a price to pay for an organization that has covered-up illegal activities. If ACORN was to register under the Lobbying Disclosure Act, ACORN's ability to access public funds would be limited, or meet higher scrutiny, and more public disclosure of their activities would be required.

ACORN's state and federal lobbying disclosures depict the organization as practically indistinguishable from its various affiliates. For example, Citizens Consulting, Inc.'s ("CCI") 2008 lobbying disclosure with Congress identifies its address as 1024 Elysian Fields Avenue New Orleans, LA 70117.[468] ACORN is listed as CCI's client. In ACORN's 2005 lobbying disclosure with the New York City government, ACORN lists an identical address as CCI: 1024 Elysian Fields Avenue, New Orleans, LA 70117.[469] According to the New York Secretary of State database, ACORN is incorporated in New York State under the name "Association of Community Organizations for Reform Now."[470] ACORN is currently a client of the Advance Group, led by ACORN national spokesman Scott Levenson, which lobbies for ACORN both on the federal and city level.[471]

ACORN's commingling of funds, detailed in the ACORN Report,[472] reflects a complex, systemic effort to escape detection. For instance, in its 2006 report, Citizens Consulting, Inc. ("CCI") listed Ronald Sykes as one of its lobbyists.[473] In an email dated August 13, 2009 from Sykes to the Lobbying Disclosure Act clerk, Sykes stated, "I would like this memorandum to serve as record that I have not registered myself as an active [l]obbyist nor was I informed that ACORN's National Legislative Office had registered for me. . . . [t]his is a form of [i]dentity theft and I would like to know who from [Citizen Consulting, Inc] registered me so that I can proceed with further action."[474]

CCI's 2009 lobbying issues for ACORN includes foreclosure related legislation, predatory lending, housing counseling funding, loan modifications, mandatory mediation, credit card issues, securitization, TARP, financial re-regulation, voter registration, election reform/administration issues, health issues, paid sick days, "Green" jobs, the

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[468] Citizen Consulting, Inc. (CCI), 2008 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-9, *available at*: http://disclosures.house.gov/ld/pdfform.aspx?id=300081580.

[469] Office of the City Clerk, City of New York, LOBBYING DISCLOSURE SEARCH, *available at*: http://www.nyc.gov/lobbyistsearch/ (follow "Search" hyperlink).

[470] Secretary of State, State of New York, CORPORATION DISCLOSURE SEARCH, *available at*: http://appsext8.dos.state.ny.us/ (follow "Corporation Search" hyperlink).

[471] The Advance Group, 2008 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 1, *available at*: http://disclosures.house.gov/ld/pdfform.aspx?id=300043479.

[472] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 38, 54, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.

[473] *See* Citizen Consulting, Inc. (CCI), 2006 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-9, *available at*: http://lobbyingdisclosure.house.gov.

[474] Email from Ronald Sykes (ros8967@me.com) to lobbyinfo@mail.house.gov, Aug. 13, 2009 6:18 PM E.S.T. (on file with author).

Employee Free Choice Act ("EFCA"), the stimulus, budget, fair housing, and immigration issues.[475]

Because ACORN receives no tax-exempt privileges, it is not required to report its political activities to the IRS. The Committee staff has found that ACORN's abuses on the federal level, as described in the ACORN Report, are also occurring within the states where it hosts chapters as well.[476]

Recent reports claim that ACORN has abused its non-profit status by failing to properly separate and segregate lobbying funds from funds used to promote its nonprofit purpose. For example, in New York City, city council candidate Mark Winston Griffith is one of many candidates who claimed Citizens Services, Inc., a for-profit incorporated in New York,[477] commingled its finances with ACORN.[478] ACORN, through its § 527 political action committee, allegedly finances the endorsements of these same candidates with commingled funds.[479]

The reports above portray ACORN as a full-time lobbying organization. Several members of Congress have expressed their concern that ACORN is nothing more than a for-profit lobbying firm.[480]

The ACORN Report exposed many instances of lobbying by ACORN and its affiliates, including support for specific legislation as well as support for the candidacies for several members of Congress and one former Governor.[481] The Lobbying Disclosure Act requires organizations which engage in a certain amount of lobbying activities through personnel compensated to lobby on the organization's behalf to register and to file disclosure reports.[482] Lobbying firms or individual lobbyists who are retained and compensated over a threshold amount to lobby for ACORN or its affiliates, and who engage in the requisite lobbying contacts, are required to file as lobbyists and to identify their client organizations.[483] There is no general exclusion or exception from the disclosure and registration requirements for nonprofit organizations that otherwise meet

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[475] *See* Citizen Consulting, Inc. (CCI), 2009 LOBBYING REPORT, LOBBYING DISCLOSURE ACT OF 1995 (SECTION 5), at 2-10, *available at*: http://lobbyingdisclosure.house.gov.

[476] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at *passim*, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.

[477] Secretary of State, State of New York, CORPORATION DISCLOSURE SEARCH, *available at*: http://appsext8.dos.state.ny.us/ (follow "Corporation Search" hyperlink).

[478] Edward-Isaac Dovere, *Four Candidates Pour Cash Into Company with Apparent ACORN Ties*, CITY HALL NEWS, Aug. 26, 2009, at 1-2, *available at*: http://www.cityhallnews.com/news/132/ARTICLE/2105/2009-08-26.html.

[479] *Id.*

[480] Letter from Representatives Tom Feeney, Jeb Hensarling and Ed Royce to House Financial Services Committee Chairman Barney Frank, June 20, 2008 (on file with author).

[481] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 3-6, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.

[482] 2 U.S.C. § 1603(a)(2), note definitions in §§ 1602(10) and 1602(2).

[483] 2 U.S.C. § 1603(a)(1).

the threshold requirements on lobbying contacts.[484] Moreover, because ACORN and several of its affiliates received federal funds, the Byrd Amendment requires these recipients to declare and certify when they use their own funds to compensate a registered lobbyist to influence covered federal actions.[485]

An employee engages in lobbying if he or she makes more than one "lobbying contact," and spends at least 20% of his or her time for that employer on "lobbying activities" over a three-month reporting period.[486] Under the Lobbying Disclosure Act, lobbying activities include direct "lobbying contacts and efforts in support of such contacts" such as preparation, planning, research and other background work intended for use in such direct contacts.[487] A "lobbying contact" under the Lobbying Disclosure Act is an "oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official" which concerns the formulation, modification or adoption of legislation, rules, regulations, policies or programs of the federal government.[488] The term "lobbying activities" includes "lobbying contacts" as well as background activities and other efforts in support of such lobbying contacts.[489] The Lobbying Disclosure Act requires the organization, rather than the individual employee or lobbyist, to register when the organization engages in covered "lobbying contacts" through its own staff.[490] The organization must file its lobbying registrations and reports electronically with the Secretary of the Senate's Office and the Office of the Clerk of the House.[491]

The Lobbying Disclosure Act was intended to reach "professional lobbyists," who are *compensated* to engage in lobbying activities on behalf of an employer or a client.[492] The ACORN Report produced credible evidence that ACORN and its affiliates have one or more compensated employees who engage in covered "lobbying,"[493] and spend $10,000 or more in a quarterly reporting period for lobbying activities.[494] If the Report's findings are accurate, ACORN and its affiliates would be required to register under the Lobbying Disclosure Act.[495] ACORN has not provided the United States Congress with accurate information concerning its lobbying activities.

ACORN's substantial lobbying portfolio, together with its receipt of federal funds, presents a significant risk of fraud, waste and abuse. Because ACORN and several of its affiliates are recipients of federal grants, they must use the federal funds for the

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[484] Jack Maskell, *"Political" Activities of Private Recipients of Federal Grants or Contracts*, CRS REPORT RL34725, Oct. 21, 2008 at 12.
[485] *Id.*
[486] 2 U.S.C. § 1602(10).
[487] Lobbying Disclosure Act, 2 U.S.C. § 1602(7), P.L. 104-65, §3(7).
[488] 2 U.S.C. § 1602(8), P.L. 104-65, § 3(8).
[489] 2 U.S.C. § 1602(7).
[490] 2 U.S.C. §1603(a)(2).
[491] LOBBYING DISCLOSURE ACT, *available at*: http://lobbyingdisclosure.house.gov/index.html.
[492] Jack Maskell, *Lobbying Regulations on Non-Profit Organizations*, CRS Report 96-809, May 7, 2008 at 7-10.
[493] H.Rept. 104-339, 104th Cong., 1st Sess. at 2 (1995).
[494] 2 U.S.C. § 1603(a)(3)(A)(i).
[495] *Id.*

purposes and programs that were intended to be supported within the statutory scheme that authorized the grant.[496] As shown in the ACORN Report, ACORN had previously used federal funds for partisan purposes.[497] Additionally, the ACORN Report produced evidence that Project Vote employee Nathan Henderson-James directed an ACORN employee to report to the Election Assistance Commission ("EAC") on ACORN letterhead for activities that were carried out by Project Vote, not ACORN – the purported grant recipient.[498] Concerted activities by individuals that cause federal funds from a federal program to be disbursed or used in contravention of the purposes of that program, in violation of established regulations of laws, and to be used instead for partisan or improper advocacy purposes, could constitute a scheme to "impair[ ], obstruct[ ], or defeat[ ] the lawful function of any Department of the Government," such as to constitute a conspiracy to "defraud the United States" in violation of 18 U.S.C. §371.[499]

The Committee's first report, together with our new findings, reflects (1) ACORN commingles its funds, (2) ACORN blurs corporate distinctions, and now (3) ACORN shares personnel with its affiliates. These findings render ACORN indistinguishable from affiliated organizations that are legally required to be separate. If two organizations cannot be distinguished through personnel, finances, or corporate structure, then no distinction exists. The missing piece of the ACORN puzzle is the reality that actual persons are impermissibly serving dual functions. These findings place another layer of transparency upon ACORN's illegal activities and its complex network of deceit.

B. Clarifications concerning ACORN's insiders

After the ACORN Report was released, former members of ACORN's board and current members of a reform group called "ACORN 8" asked the Committee to clarify to the public the distinction between ACORN 8 and the Interim Management Committee ("IMC").

The ACORN Board established an Interim Staff Management Committee ("ISM" Committee) to elect three members (the Interim Management Committee "IMC") to serve on the Committee and report to the Board every month.[500] The IMC was a board-designated committee temporarily charged with managing ACORN in Wade Rathke's absence. Karen Inman, Carol Hemingway, and Marcel Reid were selected to the IMC.[501] Karen Inman and Marcel Reid were terminated from the ACORN Board. Several members of the IMC joined with former ACORN employees and board members to form the ACORN 8, a tax-exempt organization whose purpose is to reform ACORN. The

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[496] United States Government Accountability Office, Office of the General Counsel, 2 PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, at 10-71 (2006).
[497] *See* Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 63-64, *available at*: http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf.
[498] *Id.* at 61.
[499] *See Dennis v. United States*, 384 U.S. 855, 861 (1966).
[500] IMC Allegations (Jan. 7, 2009) at 10, 14, 16, 23 (ACORN_004866-004890).
[501] *Id.*

ACORN 8, former IMC board members, and former employees of any of ACORN's affiliates are separate sources.

C. Clarifications concerning the RICO analysis

In February 2009, the Republican National Lawyers Association ("RNLA") released a report by Asheesh Agarwal concerning ACORN and voter registration fraud.[502] In March 2009, after the House Committee on the Judiciary held hearings on voter registration fraud, the RNLA issued a press release linking to Asheesh Agarwal's report. On March 30, 2009, the Committee staff contacted Mr. Agarwal to discuss his RNLA report, and, because Mr. Agarwal had formerly been an attorney with the Department of Justice ("DOJ"), inquired whether the DOJ had investigated voter fraud during his time there. On the basis of this conversation, Mr. Agarwal sent the Committee a memorandum analyzing whether Project Vote could be sued under the civil provisions of the Racketeer Influenced Corrupt Organization Act ("RICO"). Mr. Agarwal sent the memo to the Committee staff from his personal email account. The memo was untitled and without an identifying letterhead. These documents and the Committee's conversation with Mr. Agarwal constituted the basis of the information presented in the report. After the release of the ACORN Report, Mr. Agarwal contacted Committee staff stating he did not identify the memo to the Committee as the work product of the DOJ's Civil Rights Division. Mr. Agarwal stated he received the memo from a McCain-Palin campaign special counsel. Mr. Agarwal would not name this individual or identify the date or circumstances of the memo's creation. On November 5, 2009, Mr. Agarwal provided the Committee staff with the original memorandum. The memorandum was authored neither by Asheesh Agarwal nor the Department of Justice. The Committee staff contacted Beth Stewart, whose name appeared as the author of the memorandum. Because of her obligation of confidentiality and the protection of attorney-client privilege, she could not comment on the memorandum.

[502] REPORT, *available at*: http://www.rnla.org/ACORNw-pfinal.pdf.

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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U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress

Staff Report
113th Congress

December 23, 2014

the two test cases he worked in the Washington office were both applications filed by Tea Party-related organizations.[317]

Despite efforts to confuse extraordinary scrutiny on Tea Party applications with routine examination of liberal groups, the facts tell a different story. The IRS treated conservative tax-exempt applications in a manner different from other groups. There is evidence that the President's rhetoric affected the IRS's treatment of conservative-leaning tax-exempt applicants. Testimony shows the manner in which the IRS selected, processed, and evaluated these applications was distinct from other groups. This treatment made it more difficult for conservative-oriented groups, most of which were formed in opposition to the President's policies, to engage in lawful political speech.

Senior IRS officials covered up and misled Congress about the existence and nature of the IRS's targeting

The Committee has found that senior IRS officials – including former Commissioner Doug Shulman and Exempt Organizations Director Lois Lerner – covered up the existence and nature of the IRS's targeting of conservative-oriented tax-exempt applicants and knowingly misled Congress about the misconduct. Lerner falsely justified the IRS's actions in two separate letters to the Oversight Committee and in two informal settings with Committee staff in spring 2012. Shulman, likewise, erroneously gave the Ways and Means Committee "assurances" that targeting was not occurring in March 2012. He did so despite knowing at the time about the backlog of applications, delays in processing, and the use of inappropriate development questions. In addition, Deputy Commissioner Steven Miller withheld relevant and material information from Congress during congressional testimony.

Lerner made false statements to the Committee

Beginning in June 2010, the IRS began receiving dozens of inquiries from Members of Congress asking about the handling of applications for tax-exempt status.[318] One such inquiry came from Congressman Jim Jordan, Chairman of the Oversight Committee's Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending, in February 2012.[319] Later, Chairman Issa and Chairman Jordan formally requested information from the IRS on March 27, 2012.[320] Over this period, Lerner participated in two briefings with Committee staff and wrote two letters to Chairman Issa and Chairman Jordan. In the course of these interactions, Lerner made several false statements.

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[317] Transcribed interview of Carter Hull, Internal Revenue Serv., in Wash., D.C. (June 14, 2013).
[318] *See* Letter from Kirsten Wielobob, Internal Revenue Serv., to Darrell Issa, H. Comm. on Oversight & Gov't Reform (May 21, 2013).
[319] *See* E-mail from Floyd Williams, Internal Revenue Serv., to Steven Miller et al., Internal Revenue Serv. (Feb. 17, 2012) [IRSR 1981-82].
[320] Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Lois Lerner, Internal Revenue Serv. (Mar. 27, 2012).

During a February 24, 2012, briefing, Committee staff asked Lerner whether the criteria for evaluating tax-exempt applications had changed at any point. Lerner responded that the criteria had not changed. In fact, they had. According to TIGTA and the Committee's own fact-finding, in summer 2011, Lerner directed that the criteria used to identify applications be changed.[321] This was the first time Lerner made a false or misleading statement during the Committee's investigation.

During another telephonic briefing on April 4, 2012, Lerner told Committee staff that the information the IRS was requesting in follow-up letters to conservative-leaning groups – which, in some cases, included a complete list of donors and their respective contributions – was not out of the ordinary. Similarly, on April 26, 2012, in Lerner's first written response to the Committee's request for information, Lerner wrote that the follow-up letters to conservative applicants were "in the ordinary course of the application process to obtain the information as the IRS deems it necessary to make a determination whether the organization meets the legal requirements for tax-exempt status."[322] Lerner's Executive Assistant, Dawn Marx, confirmed that Lerner prepared and signed this letter.[323]

In fact, the scope of the information that EO requested from conservative groups was extraordinary. At a briefing on May 13, 2013, IRS officials, including Nikole Flax, the IRS Acting Commissioner's Chief of Staff, could not identify any other instance in the agency's history in which the IRS asked groups for a complete list of donors with corresponding amounts.[324] These marked the second and third times Lerner made a false or misleading statement during the Committee's investigation.

Next, on May 4, 2012, in her second written response to the Committee, Lerner justified the extraordinary requests for additional information from conservative applicants for tax-exempt status.[325] Among other things, Lerner stated that IRS's "requests for information . . . are not beyond the scope of Form 1024 [the application for recognition under section 501(c)(4)]."[326] Lerner provided justification for 16 questions asked by the IRS of tax-exempt applicants, including requests for donor information, policy positions on important issues, and communications with elected representatives.[327] Lerner's Executive Assistant, Dawn Marx, testified that Lerner prepared and signed this letter as well.[328]

However, by April 25, 2012, the IRS had already identified seven types of information, including requests for donor information and policy positions, which it had inappropriately

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[321] Briefing by Internal Revenue Serv. staff to Committee staff (May 13, 2013); TIGTA Audit Rpt., *supra* note 20.
[322] Letter from Lois G. Lerner, Internal Revenue Serv., to Darrell Issa, H. Comm. on Oversight & Gov't Reform (Apr. 26, 2012).
[323] *See* Transcribed interview of Dawn Marx, Internal Revenue Serv., in Wash., D.C. (Sept. 30, 2014).
[324] Briefing by Internal Revenue Serv. staff to Committee staff (May 13, 2013).
[325] Letter from Lois G. Lerner, Internal Revenue Serv., to Darrell Issa, H. Comm. on Oversight & Gov't Reform (May 4, 2012).
[326] *Id.* at 1.
[327] *Id.* at 23-25, 30-32, 42-44.
[328] *See* Transcribed interview of Dawn Marx, Internal Revenue Serv., in Wash., D.C. (Sept. 30, 2014).

SFC 004826

COMMITTEE on WAYS and MEANS

Press Releases

Brendan Buck (202) 226-4774

Ways and Means Action on "Lost" Lerner Emails

IRS Commissioner to Testify Before Committee Next Week, New Demands on Administration to Produce Lerner Emails, Interviews with IRS IT Personnel

Washington, Jun 16, 2014 | 0 comments

Washington, DC – Today, Ways and Means Committee Chairman Dave Camp (R-MI) and Oversight Subcommittee Chairman Charles Boustany Jr., M.D. (R-LA) announced the first three steps the Committee is taking in reaction to the late Friday announcement that the Internal Revenue Service (IRS) claims to have lost key emails in the investigation into the IRS targeting American citizens. Those actions include:

- Today, the Committee interviewed IRS information technology personnel; and,
- Sent requests for all communications between Lois Lerner and any persons working at the White House, Treasury Department, Department of Justice, the Environmental Protection Agency, Federal Election Commission, and Occupational Safety & Health Administration.
- Tuesday, June 24, IRS Commissioner John Koskinen has agreed to testify before the Committee. He will be directly questioned about what, if any, IRS rules were broken with regard to the failure to preserve documents, when he and IRS staff knew that the documents were lost, and if the IRS exhausted all efforts to recover the documents – including consultation with outside experts.

Chairmen Camp and Boustany stated, "We are simply not going to accept the IRS claim that these documents are not recoverable. We will demand the President live up to his promise to work 'hand in hand' with Congress to get the facts. He can do so by quickly ordering his White House and key agencies to immediately conduct an exhaustive search for all Lois Lerner emails. There needs to be an immediate investigation and forensic audit by an independent special investigator."

The letter sent to the White House reads as follows:

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

SEC 004827

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

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Tags: Oversight, Full Committee

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SFC 004828

SFC

Exclusive: Woman Who Asked IRS's Lois Lerner Scandal-Breaking Question Details Plant

Lawyer says she was called directly by IRS official and given question.

Lois Lerner and Celia Roady.

By Rebekah Metzler | May 17, 2013 | 4:19 p.m. EDT | + More

The woman whose question prompted a top Internal Revenue Service official to admit the agency was inappropriately targeting conservative groups says she was contacted prior to the event that elicited the admission and was directed to ask the question.

[READ: Ousted IRS Director Miller: 'I Never Said I Didn't Do Anything Wrong']

Celia Roady, a prominent tax lawyer in the firm of Morgan Lewis, said she was called personally by Lois Lerner, the IRS head of the tax exempt division, on May 9.

"I received a call from Lois Lerner, who told me that she wanted to address an issue after her prepared remarks at the [American Bar Association] Tax Section's Exempt Organizations Committee Meeting, and asked if I would pose a question to her after her remarks," Roady said in a statement to U.S. News and World Report. "I agreed to do so, and she then gave me the question that I asked at the meeting the next day. We had no discussion thereafter on the topic of the question, nor had we spoken about any of this before I received her call. She did not tell me, and I did not know, how she would answer the question."

Acting IRS commissioner Steven Miller admitted to House lawmakers Friday during an oversight hearing

of the controversy that the question was a plant. The IRS was aware of a forthcoming Treasury Department Inspector General Report that would condemn the targeting of groups applying for 501(c)(4) status if they contained the words "tea party," "patriot" or "9/12."

Some groups had been complaining of extraordinary and burdensome questioning from the IRS for their applications, but when lawmakers initially questioned IRS officials last year they denied anything inappropriate.

[DEBATE CLUB: Do the Obama Scandals Rise to the Level of Watergate?]

Following the revelations of the IG report, President Barack Obama condemned the action and fired Miller. Attorney General Eric Holder has said the FBI is investigating whether or not any laws were broken and Congress has vowed to hold numerous hearings into the matter.

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- *The House Tea Party Blossoms Over Obama IRS Scandal*
- *Opinion: The IRS Scandal Is About Budget Cuts, Not the Tea Party*
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Rebekah Metzler is a political writer for U.S. News & World Report. You can follow her on Twitter or reach her at rmetzler@usnews.com.

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SFC 004830

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

OSC Enforces Hatch Act in a Series of IRS Cases

FOR IMMEDIATE RELEASE **CONTACT: Nick Schwellenbach, (202) 254-3631; nschwellenbach@osc.gov**

WASHINGTON, D.C./April 9, 2014 –

The U.S. Office of Special Counsel, which enforces the Hatch Act, recently investigated several cases where Internal Revenue Service (IRS) employees were alleged to have engaged in partisan political activity on duty and in the federal workplace:

- Yesterday, OSC filed a complaint with the Merit Systems Protection Board (MSPB) seeking disciplinary action against an IRS customer service representative who engaged in activity prohibited by the Hatch Act. OSC's investigation found evidence that the IRS employee used his authority and influence as a customer service representative for a political purpose and engaged in prohibited political activity while in the IRS workplace. Specifically, OSC's complaint charges that, when fielding taxpayers' questions from an IRS customer service help line, the employee urged taxpayers to reelect President Obama in 2012 by repeatedly reciting a chant based on the spelling of his last name. Given the seriousness of the allegations and the employee's Hatch Act knowledge, OSC is seeking significant disciplinary action.

- A tax advisory specialist in Kentucky will serve a 14-day suspension for promoting her partisan political views to a taxpayer she was assisting during the 2012 Presidential election season. OSC received a recorded conversation in which the employee told a taxpayer she was "for" the Democrats because "Republicans already [sic] trying to cap my pension and . . . they're going to take women back 40 years." She continued to explain that her mom always said, "'If you vote for a Republican, the rich are going to get richer and the poor are going to get poorer.' And I went, 'You're right.' I found that out." The employee's supervisor had advised her about the Hatch Act's restrictions just weeks before the conversation. The employee told the taxpayer, "I'm not supposed to voice my opinion, so you didn't hear me saying that." Following OSC's investigation, the employee entered into a settlement agreement with OSC in April 2014. In the agreement, she admitted to violating the Hatch Act's restrictions against engaging in political activity while on duty and in the workplace and using her official authority or influence to affect the result of an election.

- OSC received allegations that employees working in the IRS Taxpayer Assistance Center in Dallas, Texas, violated the Hatch Act by wearing pro-Obama political stickers, buttons, and clothing to work and displaying pro-Obama screensavers on their IRS computers. It could not be determined whether these materials were displayed prior to the November 2012 election or only afterwards. However, since the information OSC received alleged that these items were commonplace throughout the office, OSC issued cautionary guidance to all IRS employees in the Dallas Taxpayer Assistance Center that they cannot wear or display any items advocating for or against a political party, partisan political group, or partisan candidate in the workplace.

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The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.

SFC 004831

U.S. Office of Special Counsel
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OSC Obtains Disciplinary Action in Two Hatch Act Cases

FOR IMMEDIATE RELEASE **CONTACT: Nick Schwellenbach, (202) 254-3631; nschwellenbach@osc.gov**

WASHINGTON, D.C./July 10, 2014 –

The U.S. Office of Special Counsel (OSC) recently resolved two Hatch Act complaints resulting in significant disciplinary action against federal employees for violating the Act. In both cases, the federal agencies involved referred the matters to OSC and cooperated with the investigations.

The Hatch Act prohibits federal employees from running as candidates in partisan elections, and from soliciting contributions and promoting candidates for political office while on duty and in the federal workplace (for more info on the Hatch Act, click here). OSC is authorized to investigate allegations of Hatch Act violations. When OSC finds that a violation has occurred, it may attempt to resolve the matter informally with the federal employee and the agency. If that effort fails, OSC may file a formal Hatch Act complaint before the Merit Systems Protection Board (Board).

Board Orders Postal Service Employee Removed for Violating the Hatch Act

In May 2014, the Board granted OSC's request to remove a U.S. Postal Service (USPS) employee from federal service for violating the Hatch Act. Specifically, OSC's complaint alleged that the employee twice ran in partisan elections for a seat in the U.S. House of Representatives. In addition, he solicited political contributions for his campaigns. OSC and USPS repeatedly warned the worker that his actions violated the Hatch Act and requested that he comply with the law either by withdrawing from the elections or ending his federal employment. Despite these repeated warnings, the employee refused to comply with the law.

This was the first Board decision under the Hatch Act Modernization Act, which took effect in early 2013. The Board's decision can be found online here.

IRS Employee Agrees to 100-day Suspension for Hatch Act Violations

In June 2014, OSC entered into a settlement agreement with an Internal Revenue Service (IRS) employee who agreed to a 100-day unpaid suspension for violating the Hatch Act. The agreement resolves a formal Hatch Act complaint that OSC filed with the Board in April 2014. OSC's complaint alleged that, when fielding taxpayers' questions on an IRS customer service help line, the employee repeatedly urged taxpayers to reelect President Obama in 2012 by delivering a chant based on the spelling of the employee's last name. In the settlement agreement resolving the complaint, the IRS employee acknowledged that he had used his authority and influence as an IRS customer service representative for a political purpose and did so while at work.

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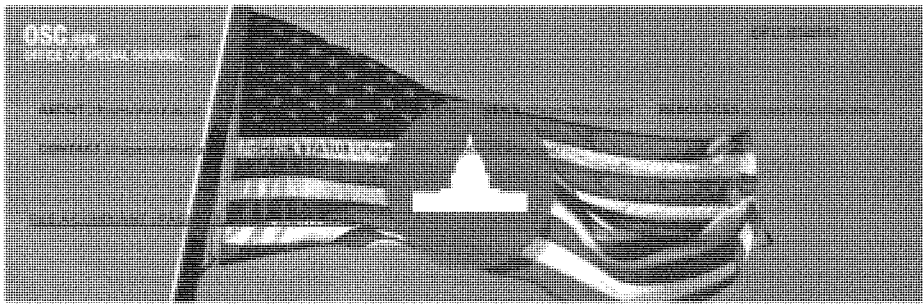
The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.



Hatch Act

Overview (/pages/hatchact.aspx)

How Does the Hatch Act Affect Me (/pages/hatchact-affectsme.aspx)

How to File a Complaint (/Pages/HatchAct-HowToFile.aspx)

Advisory Opinions (/pages/advisory-opinions.aspx)

Request an Advisory Opinion (/Pages/HatchAct-AdvisoryAction.aspx)

Policies and Procedures (/Pages/HatchAct-PoliciesProcedures.aspx)

Overview of Outreach (/Pages/HatchAct-Outreach.aspx)

FAQs (/Pages/HatchAct-FAQs.aspx)

Additional Resources (/Pages/HatchAct-AdditionalResouces.aspx)

Request an Advisory Opinion

The U.S. Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue advisory opinions under the Hatch Act. OSC issues advisory opinions to persons seeking advice about their political activity under the Hatch Act. Individuals or their legal representatives may request an opinion about their own political activity. In addition, employers may request an opinion about the political activity of their employees. Such requests may be made by phone, fax, mail or e-mail.

However, any other person seeking advice about the political activity of another should instead file a complaint (/Pages/file-complaint.aspx) online or manually using Form OSC-13 (/Pages/Resources-OSCForms.aspx)

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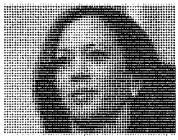
SFC 004833

'Dark money' of non-profit political groups targeted

By Fredreka Schouten, USA TODAY 12:13 a.m. EDT June 11, 2013

Advocacy groups have the ability to move millions in political money across the country with little transparency about their donors.



(Photo: Kevork Djansezian, Getty Images)

WASHINGTON – Just weeks before last November's election, a little-known Arizona non-profit made a big splash in California politics – donating $11 million to a political group that opposed a tax-h ke initiative from Democratic Gov. Jerry Brown and backed another measure to make it harder for labor unions to collect dues for political activity.

State regulators, however, did not know where the group, Americans for Responsible Leadership, got its money.

California's campaign-finance agency went to court, forcing the out-of-state organization to reveal that the money came from another Arizona non-profit, the Center to Protect Patient Rights, which in turn said its money came from a third non-profit, Americans for Job Security, a "pro-business" issue advocacy group in Alexandria, Va. Since its inception in the late 1990s, Americans for Job Security has spent tens of millions of dollars targeting Democratic politicians.

More than seven months after Election Day, however, the individual donors to Americans for Job Security are still unknown to the public.

Long before the Internal Revenue Service scandal erupted over the agency's extra scrutiny of tax-exempt Tea Party groups, campaign-finance watchdog groups had implored the agency to rein in non-profit advocacy groups like these who have the ability to move millions in political money across country with little transparency about their donors.

A month after the IRS controversy broke, some watchdog groups and Democrats in Congress are trying to shift the focus to the deep-pocketed groups that pumped increasing amounts of what they call "dark money" into politics.

In a recent letter to the House Ways and Means Committee, one of the panels investigating the IRS, two watchdog groups asked lawmakers to "pay equal heed to the other IRS scandal," which they descr bed as the agency's failure to regulate non-profit groups they charge have improperly concealed the identities of moneyed interests trying to shape federal elections.

"We've seen no indication from the IRS that it is doing anything about these big players," said Paul Ryan, senior counsel at the Campaign Legal Center, one of the groups that wrote to the Ways and Means Committee. "Instead, we hear about Mom-and-Pop Tea Party groups being scrutinized."

However, some leading Republicans, including Senate Minority Leader Mitch McConnell of Kentucky, say the IRS scandal makes the strongest case yet that political speech should be anonymous.

Efforts to revive bills in Congress to require further disclosure of non-profits' political activity are "a backdoor effort to discourage those who disagree with the Obama administration from participating in the political process," McConnell said in a recent *Washington Post* op-ed.

"If this scandal has taught us anything," McConnell added, "it is that Washington's ability to target individuals and groups is already too expansive."

At a recent hearing on the IRS scandal, Sen. Patrick Toomey, R-Pa., defended anonymous political speech.

"I would remind us all that perhaps one of the most important and influential works of political advocacy ever done in the history of the republic were *The Federalist Papers*, which were written anonymously, under pseudonyms," he said during a Senate Finance Committee hearing.

Political spending by groups that don't disclose their donors has exploded after a recent series of court rulings relaxing longstanding spending and advertising restrictions.

In federal races alone, "last-minute" political spending by labor unions, trade associations and other non-profit advocacy groups topped $335 million last year, up from $37.9 million in 2004, according to Center for Responsive Politics, which has tracked the reports non-profits have filed with the Federal Election Commission. More than 60% of the money reported in 2012 came from conservative groups.

Many groups only have to report expenditures occurring within 30 days of a primary election or 60 days of a general election.

Amid a tangled a web of federal tax and campaign-finance laws and rules, none of the non-profits was required to disclose do[illegible] SEC 004834

In California, regulators invoked a state disclosure law to seek the source of the $11 million donation by Americans for Responsible Leadership, which says on its website that it operates under the section of the U.S. tax code that governs so-called 501(c)(4) social-welfare organizations.

"We had interests from outside California who were willing to spend a huge sum of money, but who were not willing to be identified," said Ann Ravel, chairwoman of the California Fair Political Practices Commission. "I think voters were offended by that."

The state's campaign regulators and Attorney General Kamala Harris, a Democrat, are continuing to investigate the sources of Americans for Job Security's money. The group operates as a non-profit trade association with the goal of permitting "businesses to work together to promote a strong job-creating economy," according to its IRS filings.

Stephen DeMaura, president of Americans for Job Security, did not return telephone calls. .

Barrett Marson, a spokesman for Americans for Respons ble Leadership, declined to comment Friday, citing the ongoing investigation in California.

Several other states are moving forward with their own disclosure efforts.

On Wednesday, New York Attorney General Eric Schneiderman, a Democrat, formally adopted rules that require non-profits that spend at least $10,000 to influence state and local elections to publicly disclose their contributions and expenses.

In Montana, meanwhile, a Republican-led group of lawmakers last week launched a campaign to put an initiative on the 2014 ballot that would require any group that targets candidates by name within 90 days of an election to detail their spending and identify their financial backers.

As a candidate, "I have to report every contribution I get over $35 and I have to report every cent I spend," said state Sen. Jim Peterson, a Republican pushing the initiative. "But these 501(c)(4)s are getting very involved in electioneering and doing it behind this curtain of secrecy. People are sick of it."

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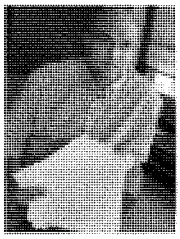
SFC 004835

Short-lived Ohio group was early test case for IRS

James Pilcher, The Cincinnati Enquirer *1:19 p.m. EDT September 23, 2013*

Agency delayed action on American Junto's application for almost 2 years.



(Photo: Liz Dufour, The Cincinnati Enquirer)

WEST CHESTER, Ohio — A now-defunct political group called American Junto apparently was one of the IRS' first test cases (http://news.cincinnati.com/article/20130923/NEWS01/309230025/WATCHDOG-Short-lived-local-group-early-test-case-IRS) as the agency tried to determine whether such groups deserved tax-exempt status.

Chris Littleton, 34, started American Junto in 2008 with grand dreams of turning it into a nonprofit education agency around what he calls "citizenship and freedom issues." Littleton, a self-proclaimed conservative from this Cincinnati suburb said he and his friends officially applied for tax-exempt status in late 2009 or early 2010, and after being ignored for months, they started receiving a lot of questions from the IRS.

STORY: IRS tracked groups after OKing exemptions (/story/news/nation/2013/09/18/irs-tea-party-audits/2833027/)
STORY: IRS list reveals concerns over tea party (/story/news/politics/2013/09/17/irs-tea-party-target-list-propaganda/2825003/)

Littleton eventually gave up trying to get tax-exempt status and shut the organization down because of the hassle. But he went on to start two more groups listed among 162 organizations contained on a list that *USA TODAY* obtained recently. The list gives the most insightful look to date about the procedures used and reasons why individual groups were held up during the process.

In e-mail that included that list, a top Washington supervisor referred to American Junto, named after the meetings Benjamin Franklin had in his living room to discuss politics and other topics, as one of two test cases nationally. Supervisors ordered other IRS agents to back off examining Littleton's other two groups until Junto's status could be determined. American Junto was not included on the list.

"We have indicated ... the names of the 2 organizations ... that are related to American Junto, one of the 2 political advocacy cases pending here," wrote Mike Seto, who at the time was in charge of the Exempt Organizations — Technical group in Washington. The division gave legal guidance to IRS agents in the exempt-organization determination offices in Cincinnati.

Seto then asked Cincinnati agents to lay off investigating Ohioans for Health Care Freedom and the Ohio Liberty Coalition, two other groups that Littleton was helping to start at the time.

"Please suspend action on these two cases while EOT is working on American Junto," Seto wrote in the e-mail to supervisors in Cincinnati. Seto reported to Lois Lerner, who oversaw the Exempt Organizations division and is a key figure in the ongoing controversy.

Littleton said he and others associated with American Junto laughed at the scrutiny at the time. Although his case apparently reached Washington supervisors, they were dealing directly with Carter Hull, who worked in the Washington office that oversaw Cincinnati's exempt organizations operation.

Hull also worked for Lerner, who earlier this year refused to testify in front of Congress on her role in the scandal by exercising her right against self-incrimination.

"We just thought we were doing something wrong in the application process, ... but we also jokingly said that if there was a government list for the IRS, the NSA and the TSA, we were probably on it," Littleton said. "At the time, it was funny. It isn't so funny anymore.

"To me, this just proves our point even more that our government has gotten too big, especially if they can get away with stuff like this," he said.

Littleton said he is "the lone human being connected to all three groups" — American Junto and the other two groups mentioned in the email, Ohioans for Healthcare Freedom, recently renamed to Ohio Rising, and the Ohio Liberty Council, renamed the Ohio Liberty Coalition.

In the e-mail, obtained by *The Cincinnati Enquirer* and dated Nov. 22, 2011, Seto gave Cincinnati agents clearance to start processing the other groups on the list.

IRS officials did not respond to questions directly about the e-mail, saying the agency was "troubled by the apparent section 6103 disclosure," referring to the regulations that forbid the release of private materials that may identify individual citizens or taxpayers.

"We have referred the matter to the Treasury Inspector General for Tax Administration, which is our standard practice for potential disclosure violations. ... We cannot comment further," the agency said in a statement.

Littleton said he end his friends eventually gave up on the American Junto idea and stopped pursuing the tax-exempt status after going through three rounds of questioning and several delays because of the IRS.

He had originally applied for 501(c)(3) status, which would have precluded the group from any political activity but would have allowed American Junto to accept tax-deductible donations. The original vision was to create a charitable education organization much like the Heritage Foundation or the Cato Institute, other conservative-leaning 501(c)(3) educational groups or think tanks.

An interview with Chris Littleton, who founded the now-defunct conservative group American Junto. It was one of the first groups that the IRS targeted and tested for political activity. The Cincinnati Enquirer

"We kept asking ourselves, 'Has the IRS called yet?' as a joke, knowing it wouldn't happen," Littleton said. "And then they did call letting us know that the deadline for submitting all the materials was a week or two away. But by then, we had given up. We weren't going to pay the additional $850 it would have taken to refile our application."

He said the plan was to create individual accounts within the American Junto group for area tea party/conservative organizations that would take in tax-deductible donations, but that never panned out.

"We never got it off the ground, ... and the IRS is a large reason for that," Littleton said. "Do I think it was an intentional move on their part to shut us down? I don't know at this point, and I don't think that the rank and file people in Cincinnati had any axes to grind. But I do know that our movement that has come up and threatened the status quo, and we are rattling some cages. So yes, I believe there was some aspect of this that was politically motivated."

Littleton said he notified the IRS in late 2011 that he had halted the Junto effort, but in the meantime, he had applied for 501(c)(4) status for the two other groups. A 501(c)(4) organization can conduct some political activities, as long as they are not the majority of the group's activity, and donations to such groups are not tax deductible.

Approvals for the other two groups came in 2012, he said. Both the Ohioans for Healthcare Freedom and the Ohio Liberty Council were listed on the list of 182 disclosed this week.

DOCUMENT: IRS 'political advocacy cases' list (/story/news/politics/2013/09/17/irs-tea-party-target-list-document/2827925/)
STORY: IRS assailed from all sides for lack of transparency (/story/news/politics/2013/08/18/irs-transparency-tea-party/2668193/)

Overall, at least 10 groups from Ohio were on that list, something that doesn't surprise tea party activists throughout the state.

"The liberty and tea party groups in Ohio were much better organized and had more media coverage than others," said President Tom Zawistowski of the Portage County Tea Party in Kent, Ohio, who also helped create the Ohio Liberty Coaliton. "Chris was effective and they went after him first."

Congressional Democrats countered last week that the list and e-mails show only that IRS officials were trying to better understand and process the applications by groups that may have exceeded guidelines on political behavior. They pointed to the fact that the list of 162 groups was created by IRS official Hilary Goehausen, who also made several of the comments on the sheet and acknowledged being a registered Republican during interviews with congressional investigators.

SFC 004837

Littleton is now director of sales for Voter Gravity, a Virginia-based voter targeting and database firm, but he remains active in southwest Ohio politics. He has helped create several other tea party groups. He also is the paid campaign manager for Cincinnati For Pension Reform, a group that has placed a charter amendment on the Cincinnati city ballot that would essentially eliminate city workers' existing pension plan and replace it with a 401(k)-style plan.

"A person in power, whether elected or through bureaucracy, should never be able to abuse that office to gain more or retain their power. ... That's just tyranny," Littleton said. "My whole life has been devoted to grassroots organizing, and I am going to keep up that fight."

Employer Identification Number: 27-3120489
Person to Contact and ID Number: Carter C. Hull / ID # 1000[illegible]
Contact Telephone Number: 202-283-[illegible]
FAX Number: 202-283-[illegible]
Response Registered By: May 18, 2011

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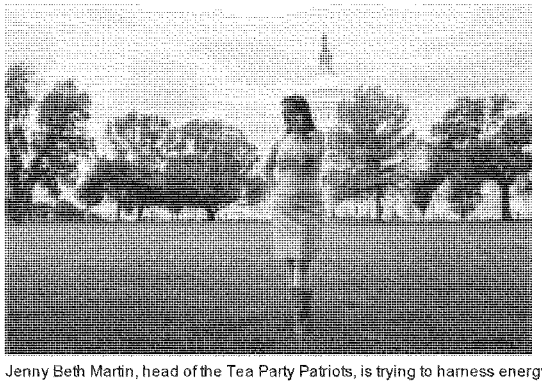
POLITICS

Anger at IRS Powers Tea-Party Comeback

Controversy Over Targeting Reinvigorates Group



Jenny Beth Martin, head of the Tea Party Patriots, is trying to harness energy generated by the IRS controversy to make tea-party voices heard when lawmakers are home in August. *MELISSA GOLDEN FOR THE WALL STREET JOURNAL*

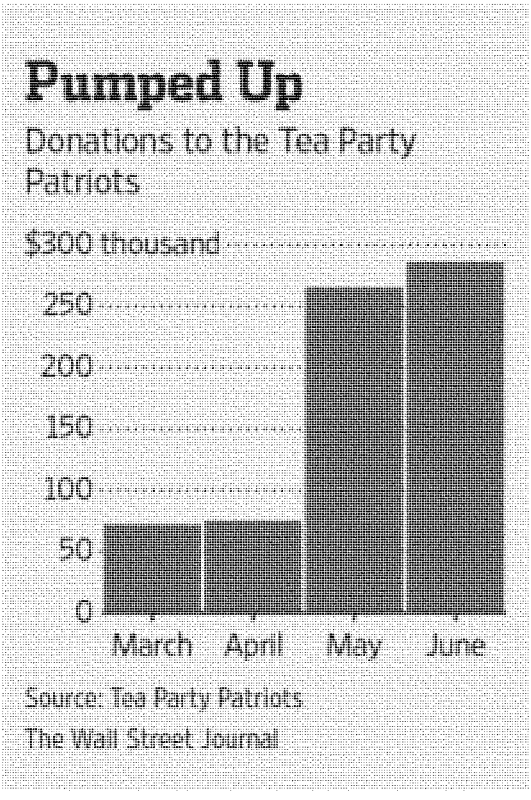
By **MONICA LANGLEY**

Updated Aug. 28, 2013 1:36 a.m. ET

With clipboard in hand and "don't tread on me" rattlesnake earrings dangling, Jenny Beth Martin, the woman sometimes described as the tea party's den mother, stood

guard over the microphone at a Capitol Hill protest of the Internal Revenue Service's targeting of conservative groups.

Lawmakers sweltered in a long line waiting to take the stage earlier this summer before a crowd of roughly 10,000 and a live Web audience. It was up to Mrs. Martin to decide who would get a turn.



Sen. Rand Paul of Kentucky, a tea-party favorite, got two minutes. Louisiana Rep. John Fleming, after shedding his dark suit jacket and waiting half an hour, told Mrs. Martin he needed to vote on the House floor soon. "I'm doing the best I can," she replied. Rep. Steve Stockman of Texas showed up without an invitation—and didn't make the cut.

After a tough 2012 election season, the tea-party movement is on the rebound. Mrs. Martin, head of the Tea Party Patriots, is riding a revival of interest sparked by controversy over the IRS's much-publicized targeting of conservative groups. She says the Patriots, the tea party's largest umbrella group, suffered because of the IRS's refusal to grant it tax-exempt status but now is benefiting from the backlash. Her group's monthly donations, she says, have tripled recently, and its staff has doubled.

The uproar has revived media attention and renewed the intensity of many tea-party supporters. Just last week, Mrs. Martin says, the Patriots received a new letter from the

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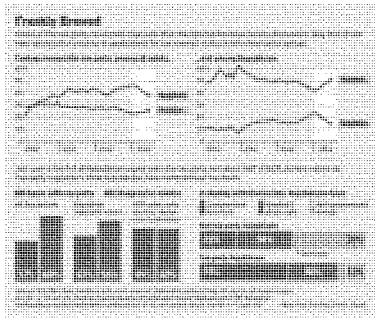
IRS asking for additional information about the group's activities, including copies of all direct-mail solicitations and telemarketing scripts before the 2012 election and any advertising materials in 2013. "This is beyond anger and frustration," she says.

Public-opinion polls suggest the controversy has helped the movement's image. In a June 15 Wall Street Journal/NBC News poll, 51% of Republicans said they had a positive view of the tea party, up from 42% in January, but still below the 63% recorded in December 2010. Among all adults, 26% had a positive view, up from 23% in January.

Mrs. Martin is trying to harness that energy to make tea-party voices heard when lawmakers are back home during the congressional recess this month. At the Atlanta airport recently at the start of a nine-day swing through seven states, she reviewed a map on the Patriots website of the weekend's scheduled appearances by lawmakers in their home districts and typed a message to her legions of Facebook and Twitter followers. She urged them to show up at those events and "remember the heated town halls of 2009," a reference to confrontations four years ago between conservative voters and lawmakers that put the tea party on the map.

That summer was when the movement took shape amid protests over President Barack Obama's proposed health-care overhaul. Today, health care has returned to the forefront as activists urge lawmakers to strip funds needed to implement the new health law, while also protesting a proposed overhaul of the immigration system.



"Jenny Beth personifies the conservative movement, re-energized by the administration's scandals this summer," says Republican Sen. Mike Lee of Utah, who is pushing to defund the health overhaul, even if that risks prompting a government shutdown. "She plays a leading role with the grass roots getting our message out to the mainstream" during the August recess and beyond.

Political operatives on both sides of the aisle acknowledge that the IRS scandal has reinvigorated the tea party. What remains open to debate, however, is whether the movement can sustain the momentum, and what it will mean for the Republican Party heading in to the 2014 midterm elections.

The tea-party faction already is gearing up for primary challenges against at least two

Republican heavyweights, South Carolina Sen. Lindsey Graham and Tennessee Sen. Lamar Alexander, conservative activists say.

"Many traditional conservatives want the tea-party label—again—to distance themselves from the establishment," notes John Feehery, who advised several Republicans when they held leadership positions in Congress. He predicts the movement "will impact some Republican primaries in the midterm elections."

Brad Woodhouse, president of the liberal Americans United for Change and former communications director at the Democratic National Committee, says the tea party's renewed fervor won't translate to broader gains for the Republican Party. "The Republicans are already losing August, because they are fighting with each other... whipsawed between establishment and extreme factions," he says.

The Patriots aim to do two things for the movement: advise and train local groups, and support lawmakers and legislation consistent with its goal of "constitutionally limited, fiscally responsible government where free markets thrive."

At the dawn of the movement, Mrs. Martin was a suburban mother of twins who blogged about clipping coupons and planning meals after giving up her technology job at a national retailer to stay home outside Atlanta. She and her husband, Lee, filed for bankruptcy and lost their home when his business failed. Mrs. Martin says she cleaned neighbors' houses, refusing to apply for government assistance.

Like many conservatives, Mrs. Martin was caught up in a wave of populist anger over federal spending and the health-care overhaul. She was one of about 20 people who took part in an early conference call, convened via Twitter, that launched grass-roots gatherings that blossomed into the tea-party movement.

She and two others launched Tea Party Patriots. Her blogging, technology and local-advocacy skills suited her well for the work. She began traveling the country providing hands-on training for activists on expanding their local groups, speaking to the media and pressuring elected officials.

Tea-party activists helped the GOP gain control of the House of Representatives and install more conservative senators in the 2010 election. Mrs. Martin was named one of Time magazine's "100 Most Influential People in the World" that year, joining such luminaries as Bill Clinton and Taylor Swift. In her first-ever trip to New York City for the gala, she recalls telling the Time advertisers seated at her table, "I'm sorry you got stuck with me."

Patriots board member Ernest Istook, a former Republican congressman from Oklahoma, says Mrs. Martin's national visibility and 400,000-person donor base impressed the board, which made her the group's sole leader. "Jenny Beth understood that even a grass-roots movement needed organizational structure," Mr. Istook says. She took control of a $24 million budget, and earns nearly $250,000 a year.

At the behest of a wealthy donor, Mrs. Martin undertook a personal makeover, losing 70 pounds, changing her hairstyle and overhauling her wardrobe. She began traveling with an assistant.

One problem dogged the group: The Patriots didn't have tax-exempt status, a disincentive to some potential donors. The group had applied for such status in late 2010 but says it had heard nothing from the IRS during all of 2011.

To qualify for tax-exempt status, organizations are supposed to conduct "social welfare" activities, and can't be primarily engaged in partisan politics or electioneering.

Other tea-party groups were experiencing similar problems. Their leaders have said that they received letters demanding additional information, including names of donors, books read, every contact ever made with any politician and all materials ever distributed. "It was harassment, pure and simple, to weaken us going into the 2012 election," Mrs. Martin says.

Mrs. Martin says many local groups couldn't afford legal fees, so her lawyers and accountants answered questions for them. She also urged members to complain to congressional representatives. Members of some small tea-party groups, including their leaders, simply dropped out, says Darcy Kahrhoff, former president of the Katy Tea Party, in Texas.

"I kept telling everyone—including the big donors who wouldn't give to us without our nonprofit status—that the IRS appeared to be targeting tea-party groups," Mrs. Martin says. "But no one believed us."

An IRS spokesman says federal law "prohibits the IRS from discussing specific taxpayers or situations." Documents released in June confirmed that the IRS flagged liberal as well as conservative groups, but left unclear whether left-leaning groups were subject to the same lengthy delays and intrusive questioning.

By the 2012 election, the tea-party movement was in decline. Its members failed to show up to the polls in sufficient numbers, and many Senate challengers with tea-party

SEC 004843

backing were defeated. Rep. Michele Bachmann, chairwoman of the House Tea Party Caucus, barely retained her seat.

When Mrs. Martin toured chapters in California earlier this year, they told her they wanted to drop "tea party" from their names because its brand was tarnished. Mrs. Martin was presiding over a national office full of empty desks and dwindling volunteers and donations—a period she refers to as "frightening" and "disheartening."

Everything changed in May, she says, when the IRS disclosed that it indeed had been giving extra scrutiny to conservative groups' requests for tax-exempt status, focusing in particular on those with such words as "tea party" and "patriots" in their names.

Mr. Obama denounced the practice, and the resulting controversy eventually led to the resignation of the acting head of the IRS. (In August, the agency said it had taken "decisive action to eliminate the use of inappropriate political labels" in screening.)

"From that moment, the tea party has roared back to life," says Mrs. Martin, who says she has been getting by on as little as three hours of sleep a night. "It's been nonstop interest from the media, politicians and our grass roots."

On the weekend after the news hit, Mrs. Martin appeared on four television networks and released an urgent email fundraising appeal titled: "Project Phoenix: It's time to rise again."

Mrs. Bachmann called Mrs. Martin at home to brainstorm about holding a news conference on Capitol Hill later that week. Mrs. Martin wound up speaking alongside Mrs. Bachmann and other lawmakers calling for an investigation.

When Republican representatives scheduled hearings, Mrs. Martin located what she said were a dozen tea-party victims, prepped them and delivered them within 48 hours to congressional investigators, paying their airfares and hotels, according to several people involved in the process.

It came in handy that Mrs. Martin is on a first-name and cellphone basis with nearly all lawmakers with tea-party credentials. Rep. Louie Gohmert (R., Texas) says he and Mrs. Martin "text, email and talk" regularly. One evening this summer, Mrs. Martin changed into jeans and went out for Mexican food with Rep. Steve King (R., Iowa), who showed up in shorts and flip-flops. After hearing her at a meeting of conservatives on Capitol Hill, Sen. Ron Johnson (R., Wis.) asked her to come by his office to discuss strategy.

Recently, she has organized protests at IRS offices around the country. The Patriots funded a $20,000 event in Cincinnati, featuring Sen. Rob Portman (R., Ohio) and fried chicken. She fired up the several hundred attendees by reciting the First Amendment and detailing what she said were IRS intimidation tactics. "Are you next?" she asked.

The focus now is on the town-hall meetings that lawmakers hold in their home districts. The Patriots distributed an "August Tool Kit" to members with instructions for attending, including suggested themes of "the IRS scandal, immigration reform, or Obamacare." At a recent news conference, Mrs. Martin said the group is "targeting both parties to hold them accountable."

Some lawmakers aren't scheduling town halls, or are announcing them at the last minute, to avoid large or unruly turnouts. Mrs. Martin has volunteers in the suburban Atlanta office monitoring social media and Google and using other tools to find lawmakers' events, which are then mapped on the Patriots' website.

Mrs. Martin says her group plans to spend $750,000 on the town-hall effort, and $1 million on TV and radio spots in districts where lawmakers haven't agreed to fight the health law. Together with several other conservative groups, it is planning a Sept. 10 rally on Capitol Hill to "welcome back" Congress and call for it to delay implementation of the new health-care law by refusing to spend money on it.

"We're not high-powered. We don't have bucket loads of money," she says. But the political establishment is "scared to death of us."

Write to Monica Langley at monica.langley@wsj.com

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POTOMAC WATCH

Strassel: Obama's Enemies List—Part II

First an Obama campaign website called out Romney donor Frank Vandersloot. Next the IRS moved to audit him—and so did the Labor Department.

By KIMBERLEY A. STRASSEL

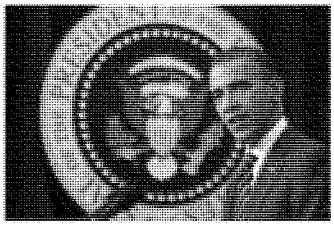
July 19, 2012 7:20 p.m. ET

This column has already told the story of Frank VanderSloot, an Idaho businessman who last year contributed to a group supporting Mitt Romney. An Obama campaign website in April sent a message to those who'd donate to the president's opponent. It called out Mr. VanderSloot and seven other private donors by name and occupation and slurred them as having "less-than-reputable" records.

Mr. VanderSloot has since been learning what it means to be on a presidential enemies list. Just 12 days after the attack, the Idahoan found an investigator digging to unearth his divorce records. This bloodhound —a recent employee of Senate Democrats—worked for a for-hire opposition research firm.

Now Mr. VanderSloot has been targeted by the federal government. In a letter dated June 21, he was informed that his tax records had been "selected for examination" by the Internal Revenue Service. The audit also encompasses Mr. VanderSloot's wife, and not one, but two years of past filings (2008 and 2009).

Mr. VanderSloot, who is 63 and has been working since his teens, says neither he nor his accountants recall his being subject to a federal tax audit before. He was once required to send documents on a line item inquiry into his charitable donations, which resulted in no changes to his taxes. But nothing more—that is until now, shortly after he wrote a big check to a Romney-supporting Super PAC.



Zhang Jun/Xinhua/ZUMAPRESS.com

Two weeks after receiving the IRS letter, Mr. VanderSloot received another—this one from the Department of Labor. He was informed it would be doing an audit of workers he employs on his Idaho-based cattle ranch under the federal visa program for temporary agriculture workers.

The H-2A program allows tens of thousands of temporary workers in the U.S.; Mr. VanderSloot employs precisely three. All are from Mexico and have worked on the VanderSloot ranch—which employs about 20 people—for five years. Two are brothers. Mr. VanderSloot has never been audited for this, though two years ago his workers' ranch homes were inspected. (The ranch was fined $8,400, mainly for too many "flies" and for "grease build-up" on the stove. God forbid a cattle ranch

home has flies.)

This letter requests an array of documents to ascertain whether Mr. VanderSloot's "foreign workers are provided the full scope of protections" under the visa program: information on the hours they've worked each day and their rate of pay, an explanation of their deductions, copies of contracts. And on and on.

Perhaps all this is coincidence. Perhaps something in Mr. VanderSloot's finances or on his ranch raised a flag. Americans want to believe the federal government performs its duties without fear or favor.

Only in this case, Americans can have no such confidence. Did Mr. Obama pick up the phone and order the screws put to Mr. VanderSloot? Or—more likely—did a pro-Obama appointee or political hire or career staffer see that the boss had an issue with this donor, and decide to do the president an unasked-for election favor? Or did he or she simply think this was a duty, given that the president had declared Mr. VanderSloot and fellow donors "less than reputable"?

Mr. VanderSloot says he "expected the public beatings" from the left after the naming, but he "also wondered whether government agencies, anxious to please their boss, would take notice of the target he had apparently placed on me. Now that I'm being singled out for audits, I can't help but wonder whether there is a connection."

As for other Romney donors: "It is un-American and irresponsible for a president to target individual, law-abiding citizens for political retribution, and it is inconceivable that any U.S. agency would stoop to do the bidding for this campaign's silliness," says Louis Bacon, an investor and conservationist who also made the Obama list.

We don't know what happened, and that's the problem. Entrusted with extraordinary powers, Mr. Obama has the duty to protect and defend all Americans—regardless of political ideology. By having his campaign target a private citizen for his politics, the president forswore those obligations. He both undermined public faith in federal institutions and put his employees in an impossible situation.

Every thinking American must henceforth wonder if Mr. VanderSloot has been targeted for inquiry because of his political leanings. And every federal servant must wonder if his inquiries into an Obama enemy will bring suspicion or disgrace on the agency—even if the inquiry is legitimate.

As for Mr. VanderSloot, to what authority should he appeal if he believes this to be politically motivated—given the Justice Department on down is also controlled by the man who targeted him? (The White House did not return an email requesting comment.)

If this isn't a chilling glimpse of a society Americans reject, it is hard to know what is. It's why presidents are held to different rules, and should not keep lists. And it's why Mr. Obama has some explaining to do.

Write to kim@wsj.com.

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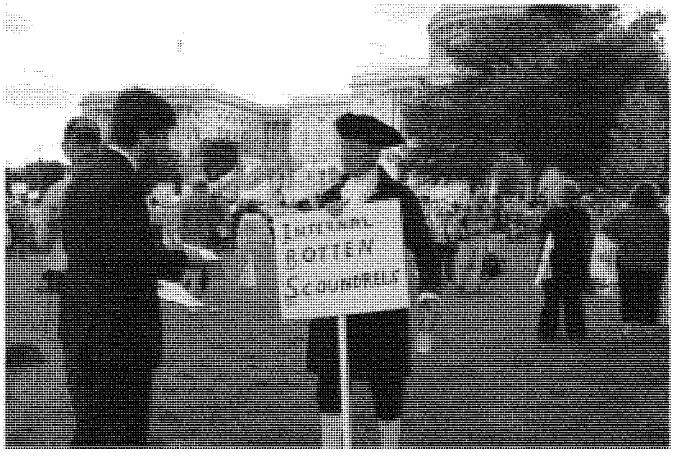
THE WALL STREET JOURNAL.
WSJ.com

June 19, 2013, 5:24 PM ET

Tea Party Protesters Rally Against IRS, Government

By Rebecca Ballhaus



Rebecca Ballhaus/WSJ

Protesters on the West Lawn of the Capitol on Wednesday.

Several thousand protesters poured onto the West Lawn of the Capitol Wednesday afternoon to join a tea party rally called "Audit the IRS." The rally featured a host of prominent conservative officials, including Sens. **Ted Cruz** (R., Texas) and **Rand Paul** (R., Ky.), Reps. **Dave Camp** (R., Mich.) and Michele Bachmann (R., Minn.), and radio commentator Glenn Beck.

Many of the protesters came from a press conference on immigration on the other side of the Capitol, carrying signs that railed against immigration reform on one side and against the IRS on the other. Among the slogans were "1984 was not supposed to be an instruction manual," "IRS is our KGB," and "Waterboard the IRS."

Though the rally's stated target was the **Internal Revenue Service** – currently under investigation for having targeted conservative groups applications for tax-exempt status – the speakers touched on many of the controversies that have plagued the Obama administration in the last months. These included recently leaked information about National Security Agency surveillance methods and the administration's handling of the attacks in Benghazi, Libya. Some also criticized last week's decision to arm Syrian rebels.

Speakers urged the audience to "take back America" and expressed fear and disgust at the expanded role of government. "Thank you for being concerned about a government that has grown too big," Mr. Camp said to a large round of applause. Mr. Camp, who is the chairman of the Ways and Means committee and is currently involved in the investigation of the IRS, kept his appearance brief. He promised the audience to "get the facts" and "follow them wherever they lead."

Rep. **Louie Gohmert** (R., Texas) told protesters that "a majority of people are saying, 'We don't trust the government now,'" and declared it "time for a change." Though the rally's title recommended an audit of the IRS, protesters largely called for the agency's dismantling – or, in the words of Rep. **Tom Graves** (R., Ga.), "Let's throw it overboard like a box of British tea."

Mr. Gohmert also advocated tax reform, to hearty cheers from the crowd, many of whom carried signs urging an end to income taxes or the establishment of a flat tax rate.

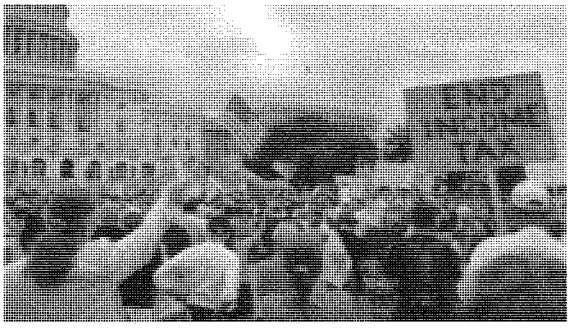
Mr. Beck was by far the lengthiest speaker, and judging from the audience's reaction, the most eagerly anticipated one. He spoke broadly and focused more on his vision of God and of the country than at the issues at hand. He compared the tea party's struggle against the government's reach to Martin Luther King Jr.'s championing of civil rights. "I demand to be treated as an equal member of society," he declared. "I am a man, and I demand to be treated like a man." Cheers of "I am a man" rang throughout the audience.

Mr. Beck condemned the culture of Washington as dishonest and corrupt. "I actually like Vegas more than this city," he quipped. "At least Vegas has the decency to admit it's full of crooks and hookers."

Protesters – many of whom traveled from around the country to attend the rally – praised the speakers' enthusiasm and their cause.

Tony Foster, of Port Tobacco, Md., said he fears America is on its way to becoming a dictatorship. "Obama turned the heat up so fast, so high," he said. "People are starting to realize they're being cooked."

Bob Jeckel, of Lincoln, Ill., said money plays too large a role in politics. "Truth has to come back into the way we do things," he said. "It's always about the spin."



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http://www.wsj.com/articles/wisconsin-targets-the-media-1419206363

REVIEW & OUTLOOK

Wisconsin Targets the Media

A secret political speech probe looked into radio talk-show hosts.

Updated Dec. 21, 2014 9:54 p.m. ET

The Wisconsin assault on political speech has been in a lull, but it reappeared with a bang on Friday with a fresh document release by a state court. The disclosures include evidence that Wisconsin's Government Accountability Board wanted to go after Milwaukee radio host Charlie Sykes and Sean Hannity of Fox News.

The information was unsealed as part of a complaint in *Eric O'Keefe and Wisconsin Club for Growth v. Wisconsin Government Accountability Board.* The case is a complaint against the GAB, a state body that has made enforcing campaign-finance laws its mission in ways that trash the First Amendment.

As we've been reporting for more than a year, Mr. O'Keefe has been the target of a secret John Doe probe investigating alleged "coordination" between Gov. Scott Walker's 2012 recall campaign and independent conservative groups. He was subpoenaed and others had their homes raided by prosecutors in October 2013. Mr. O'Keefe has fought back in court, and his complaint refers to GAB documents that were obtained during discovery in the case.

The documents support the charge that the GAB was working with Democratic prosecutors to smash the political operation of anyone defending Mr. Walker's collective-bargaining reforms. And in the fevered ambitions of investigators, the supposed conspirators included Messrs. Sykes and Hannity.

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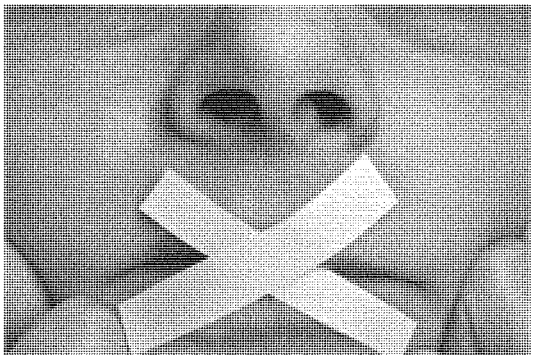

GETTY IMAGES

The unsealed complaint notes that prosecutors and investigators contemplated including the two conservative talk-show hosts as targets of subpoenas or warrants. "Many more warrants and subpoenas were planned for other targets throughout the country, including media figures such as Charlie Sykes and Sean Hannity," the complaint says. The full meeting notes are not included.

Consider the printed notes from a September 2013 conference call. The notes refer to a discussion and legal research to assist the John Doe. One section notes a "Discussion raised by David regarding media exemption and identifying what the standards are before Sykes/Hannity coordinate with FOSW and Walker as well as potential equal time violations." The "Charlie Sykes and Sean Hannity connection to investigations" was also listed on the agenda for an August 15, 2013 meeting.

The September call's participants aren't listed, but the notes include "to-do" assignments for Milwaukee Assistant District Attorneys Bruce Landgraf and David Robles, investigator Bob Stelter, Special Prosecutor Fran Schmitz, and GAB staff counsels Shane Falk and Nathan Judnic. Mr. Falk has since left GAB.

Another suggested research subject was the possibility of "freezing subject bank accounts," also suggested by "David," who is likely a reference to Milwaukee County Assistant District Attorney David Robles, whose full name appears elsewhere on the documents. These documents remain under seal but we obtained a copy.

Defenders of the GAB board tout its bipartisan credentials because it is made up of retired judges. But the unsealed complaint notes that by the time the judges voted to investigate the campaign coordination of conservative groups, the agency had already been up to its elbows in the issue for 10 months.

Wisconsin attorney Paul Schwarzenbart, who is representing the GAB, said in a

SEC 004851

statement over the weekend that the judges knew about the GAB staff's participation in the probe, but we've seen no evidence to document that claim. Mr. Robles and GAB Director and General Counsel Kevin Kennedy didn't respond to requests for comment.

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All of this matters far beyond Wisconsin because it shows how far from the Constitution the campaign-finance police have wandered. Their theories of supposedly unlawful "coordination" with candidates include even media figures who clearly are protected by the First Amendment.

The media liberals who have been cheerleaders for these prosecutions may not worry if the targets are conservatives like Messrs. Sykes or Hannity. But they should wake up. Such coordination theories could as easily extend to a Milwaukee Journal Sentinel reporter or MSNBC host. And what constitutes illegal coordination would be based on the subjective judgment of prosecutors and GAB bureaucrats.

The documents show that Wisconsin's speech police are abusing their power with little regard for the First Amendment. The state legislature should shut them down.

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http://www.wsj.com/articles/wisconsins-friend-at-the-irs-1436482521

OPINION | REVIEW & OUTLOOK

Wisconsin's Friend at the IRS

Emails show a common cause in restricting political speech.

Former Internal Revenue Service official Lois Lerner during a House Oversight Committee hearing on Capitol Hill in Washington in 2013. *PHOTO: J. SCOTT APPLEWHITE/ASSOCIATED PRESS*

July 9, 2015 6:55 p.m. ET

Wisconsin's campaign to investigate conservative tax-exempt groups has always seemed like an echo of the IRS's scrutiny of conservative groups applying for tax-exempt status. It turns out that may be more than a coincidence.

Former IRS tax-exempt director Lois Lerner ran the agency's policy on conservative groups. Kevin Kennedy runs the Wisconsin Government Accountability Board (GAB)

SFC 004853

that helped prosecutors with their secret John Doe investigation of conservative groups after the 2011 and 2012 recall elections of Governor Scott Walker and state senators.

Emails we've seen show that between 2011 and 2013 the two were in contact on multiple occasions, sharing articles on topics including greater donor disclosure and Wisconsin's recall elections. The emails indicate the two were also personal friends who met for dinner and kept in professional touch. "Are you available for the 25th?" Ms. Lerner wrote in January 2012. "If so, perhaps we could work two nights in a row."

This timing is significant because those were the years when the IRS increased its harassment of conservative groups and Wisconsin prosecutors gathered information that would lead to the John Doe probe that officially opened in September 2012. Ms. Lerner's lawyer declined comment. Mr. Kennedy said via email that "Ms. Lerner is a professional friend who I have known for more than 20 years" but declined further comment.

In an email exchange in July 2011, Mr. Kennedy sent Ms. Lerner an article in the Racine Journal-Times on the declining relevance of public campaign financing amid more private and "special interest" money. "Note the last paragraph where the paper supports more transparency," Mr. Kennedy writes to Ms. Lerner. "The Legislature has killed our corporate disclosure rules."

Mr. Kennedy's GAB work also became ammunition for other investigators pursuing high-profile conservative nonprofits, including Texas-based True the Vote. In an October 2012 letter to True the Vote founder Catherine Engelbrecht, Maryland Democratic Rep. Elijah Cummings cited the Wisconsin GAB's criticism of True the Vote's methods reviewing petitions to recall Mr. Walker and said the results "would not have survived legal challenges."

In a memo to "Interested Parties" in 2012, Obama for America General Counsel Bob Bauer praised Mr. Kennedy's GAB for having taken "swift action in the aftermath of [True the Vote's] involvement in the June recall elections." Mr. Bauer described the GAB's response as evidence that "Elected officials in many swing states are not waiting and taking their chances that True the Vote acts to disrupt the electoral process on November 6th or during the early voting period."

After filing for tax-exempt status for True the Vote, Ms. Englebrecht says she was subjected to two IRS business audits, two personal audits, and was contacted several times by the FBI and inspected by the Bureau of Alcohol, Tobacco, Firearms and Explosives and Occupational Safety and Health Administration.

SEC 004854

The IRS-GAB nexus also ran the other direction, as the state agency sought to enlist the IRS in its burgeoning theory of improper campaign coordination by conservative 501(c) groups in Wisconsin. We know Mr. Kennedy was communicating with Ms. Lerner at the time and that he was also keeping his Doe team apprised of his communications with the IRS.

Sources tell us that in 2012 and 2013 John Doe investigators asked the IRS to look into a conservative group that was among the primary targets of the Wisconsin Doe investigation. The IRS doesn't appear to have followed up, but the request shows Wisconsin prosecutors saw their pursuit of independent groups as part of a common agenda with national Democrats.

Did GAB pitch the IRS on the theory that conservative groups were criminally violating tax law? In October 2014 the Madison-based leftist group Center for Media and Democracy filed a complaint with the IRS accusing the Wisconsin Club for Growth of violating its tax-exempt status by engaging in political activity. To support its complaint, the group referred to Doe-related documents that had already been reviewed in court and rejected as evidence of improper political activity.

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These interconnections matter because they reveal that the use of tax and campaign laws to limit political speech was part of a larger and systematic Democratic campaign. Speaking at the University of Wisconsin in 2010, President Obama sent his own political message to investigators.

"Thanks to a recent Supreme Court decision, [Republicans] are being helped along this year, as I said, by special interest groups that are allowed to spend unlimited amounts of money on attack ads. They don't even have to disclose who's behind the ads," he said. "You've all seen the ads. Every one of these groups is run by Republican operatives. Every single one of them—even though they're posing as nonprofit groups with names like Americans for Prosperity, or the Committee for Truth in Politics."

Conservative nonprofits like the Wisconsin Club for Growth and Wisconsin Manufacturers and Commerce were later subpoenaed and bound by secrecy orders as their fundraising all but ceased. Liberals worked together to turn the IRS and the GAB into partisan political weapons.

SFC 004855

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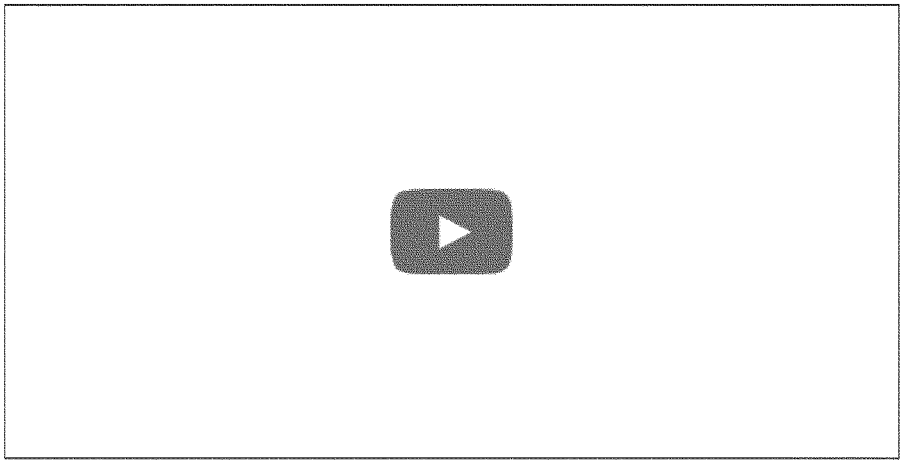
IRS went after 83-year-old Tea Party granny

ROB NIKOLEWSKI • | MAY 20, 2013 | 12:00 AM



Internal Revenue Service officials not only wanted a wide variety of information from the Albuquerque Tea Party's application for non-profit status, it also wanted to know what contacts it had with people from other political organizations too.

That included an 83-year-old great-grandmother who was once held in a World War II internment camp, New Mexico Watchdog has discovered.

"I've always paid my taxes and everything," Marianne Chiffelle told New Mexico Watchdog. "What I do think is, it doesn't surprise me...because of this government we have at the moment."

According to a review of documents conducted by the online news organization Politico, (in a story headlined "The IRS wants YOU -- to share everything"), the IRS asked the Albuquerque Tea Party about connections to other groups, including "Marianne Chiffelle's Breakfasts."

That prompted us to do some digging.

It took New Mexico Watchdog less than an hour to learn that "Marianne Chiffelle's Breakfasts" is not some restaurant chain, but a reference to the volunteer work of Chiffelle, a retiree who helps organize informal 9 a.m. meetings for members of the Bernalillo County Republican Party.

The group meets on Fridays at a Golden Corral restaurant. "We've had these meetings for a long time," Chiffelle said. "It's not a business."

Chiffelle is a naturalized American citizen who was born in what was then called the Dutch East Indies, now known as Indonesia. Her father was an executive for Shell Oil and when World War II broke out Chiffelle was sent to a Japanese internment camp where she spent four years, from age 12 to 16.

SFC 004857

After the war, she moved to the Netherlands and in 1960 she and her late husband immigrated to the United States.

Since living in Albuquerque, Chiffelle has been active in GOP politics and conservative causes. She helped establish the Children's Freedom Scholarship Fund, which hands out patriotic coloring books to youngsters in the Albuquerque area.

"The kids don't have any idea, they think freedom is just there for the taking," Chiffelle said.

The book includes pictures of U.S. presidents and puzzles for kids to learn about U.S. history, as well as essays such as "What Does Freedom Mean to You?"

New Mexico Watchdog reviewed the coloring book and found nothing advocating for political parties or organizations.

Recent entries on Chiffelle's Facebook page include a link to a call for cuts in salaries to members of Congress, the vice president and president, as well as a petition to send a sympathy card to those affected by the killings at Sandy Hook Elementary School.

While no fan of the Obama administration, Chiffelle says she is no pitchfork-wielding, anti-government type.

"The fact itself that you have to pay tax(es) to the government is okay," she said. "But the way they interpret it and how many rules there are, that's wrong."

The IRS is embroiled in a national scandal after revealing that it has targeted tea party and conservative groups for extra scrutiny when they applied for non-profit, 501(c)4 status between 2010 and the 2012 presidential election. The Albuquerque Tea Party is one of the organizations that's been wrangling with the IRS since 2009.

"They (the IRS) have a job to do, I understand that," Albuquerque Tea Party President Rick Harbaugh told New Mexico Watchdog. "I think they overstepped that a lot."

The Politico story mentioned the IRS also wanted the Albuquerque Tea Party to supply more information about a group called Conspiracy Brews.

An Internet search revealed that Conspiracy Brews is a weekly meeting of Albuquerque political types that was founded by Janice Arnold-Jones -- a former Republican nominee for Congress, member of the state legislature and current Albuquerque City Council member.

SEC 004858

"It's just a discussion group," Arnold-Jones said. "When the group named itself, it was done in the interests of a conspiracy for good government...it leans conservative but it's an interesting mix of people. Our only rule is, when people speak you have to listen."

"I attended just one meeting," Harbaugh said.

The website design for Conspiracy Brews is simple and New Mexico Watchdog found no anti-government rhetoric on the site.

Arnold-Jones said she does not lead the group and it's "not a taxable entity of any sort."

New Mexico Watchdog counted 25 attendees at the group's weekly Saturday meeting, including Chiffelle, who is a regular.

The Politico story mentioning Conspiracy Brews and Chiffelle prompted some jokes but also some serious discussion.

"The part I'm not delighted about," Arnold-Jones said, "is the fact that the IRS is picking and choosing (whom to investigate) ... I think this is an incredible erosion of trust."

As for Chiffelle, having her name mentioned as part of the IRS investigation has drawn more attention than she's accustomed to but she seemed genuinely unperturbed.

"Don't cut me short," Chiffelle said. "I was a prisoner of war in the Second World War. If the Japanese couldn't kill me, no one else can. That's my philosophy. If something is unfair, I will fight to the death...Nothing upsets me. But I'll do something about it."

Go here for more on this story.

Rob Nikolewski is a reporter with New Mexico Watchdog, which is affiliated with the Franklin Center for Government and Public Integrity.

Tim Carney: The IRS is deeply political - and very Democratic

BY TIMOTHY P. CARNEY | MAY 15, 2013 | 12:00 AM

Federal officials used the power of the state to intimidate and harass critics of President Obama and the federal government. When the higher levels of the Internal Revenue Service learned that one office was inappropriately targeting Tea Party groups, these officials nevertheless denied it -- until they were forced to fess up.

If you needed another reason to distrust your government and oppose its expansion, the IRS just gave it to you.

Judging by available evidence and an inspector general's report released this week, the story here is not a Nixonian White House using all of government's tools to punish critics.

The story is instead one of government power so great that, even in the hands of nonpolitical career civil servants, politically motivated abuse is inevitable. And the ultimate problem is that our tax code and campaign finance laws put the IRS in the business of policing political speech. Politics inevitably comes into play.

The basic facts are these:

The Cincinnati office of the IRS, which covers tax-exempt groups for the whole country, created inappropriate standards to determine which nonprofits it would target for added scrutiny.

If your group set off one of Cincinnati's red flags -- say, by having the words "Tea Party" in your name -- the IRS would pummel you with probing questions, including asking about your donors' political intentions and your book club's reading lists, and threaten you with taxes and penalties if the agency deemed you to be overly political.

After Tea Party groups complained, IRS officials in Washington repeatedly insisted that there was no political targeting. The IG report suggests these officials knew otherwise and thus were lying.

White House spokesman Jay Carney dismissed the idea that singling out Tea Party groups was politically motivated. "The IRS is an independent enforcement agency with only two political appointees," Carney said at a news conference.

The Wall Street Journal set the record straight: "The IRS is many things, but 'independent' isn't one of them. It is formally part of the Treasury Department and is headed by the Commissioner of Internal Revenue, who is appointed by the President. The Commissioner is accountable to the President reporting through the Treasury Secretary." SFC 004860

And while it's true that the IRS is populated almost entirely by career civil servants, that doesn't preclude it being stacked with political partisans.

To see how meaningless the career-vs.-political distinction can be at the IRS, consider the case of Mark Ernst. He was H&R Block's CEO as recently as 2007, but when Obama took office in January 2009, Ernst joined the IRS as a deputy commissioner and helped craft new regulations governing tax preparers -- H&R Block and its competitors. How did this not violate Obama's revolving-door rules? "Mark Ernst is a civil servant at the IRS," an IRS spokesman explained to me. "He is not a political appointee."

But Ernst had spent decades in the private sector. He came in with the new administration. His stint at the IRS lasted less than two years. And he certainly was political: Federal Election Commission records show he contributed more than $49,000 to federal candidates and political action committees. His donations favor Democrats.

So, being a "career civil servant" doesn't mean you're making a career out of the job, or that you're not political.

In the past three election cycles, the Center for Responsive Politics' database shows about $474,000 in political donations by individuals listing "IRS" or "Internal Revenue Service" as their employer.

This money heavily favors Democrats: $247,000 to $145,000, with the rest going to political action committees. (Oddly, half of those GOP donations come from only two IRS employees, one in Houston and one in Annandale, Va.)

IRS employees also gave $67,000 to the PAC of the National Treasury Employees Union, which in turn gave more than 96 percent of its contributions to Democrats. Add the PAC cash to the individual donations and IRS employees favor Democrats 2-to-1.

The Cincinnati office where the political targeting took place is much more partisan, judging by FEC filings. More than 75 percent of the campaign contributions from that office in the past three elections went to Democrats. In 2012, every donation traceable to employees at that office went to either President Obama or liberal Democratic Sen. Sherrod Brown of Ohio.

The IRS officials whose names appear in the IG report are also Democrats with partisan histories. William Wilkins, IRS general counsel and one of the agency's two explicitly political appointees, is a former Democratic congressional aide, lobbyist (clients included the Swiss Bankers Association), and Democratic donor.

Joseph H. Grant, who ran the Tax Exempt and Government Entities Division that includes the Cincinnati office, is a former Democratic staffer on the House Ways & Means Committee. SFC 004861

Many dedicated and professional civil servants serve the IRS. But the recent revelations still aren't surprising. If you give people the terrifying power to tax and the right to police political speech, some partisans will abuse that power.

Timothy P. Carney, The Washington Examiner's senior political columnist, can be contacted at tcarney@washingtonexaminer.com. His column appears Monday and Thursday, and his stories and blog posts appear on washingtonexaminer.com.

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Politics

IRS officials in Washington were involved in targeting of conservative groups

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Obama on e
got no patience with it.
I will not tolerate it.'

In a press conference Monday, President Obama addressed the Internal Revenue Service's targeting of groups critical of government, and said, "I've got no patience with it. I will not tolerate it." (The Washington Post)

By Juliet Eilperin and Zachary A. Goldfarb May 13, 2013
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Internal Revenue Service officials in Washington and at least two other offices were involved with investigating conservative groups seeking tax-exempt status, making clear that the effort reached well beyond the branch in Cincinnati that was initially blamed, according to documents obtained by The Washington Post.

IRS officials at the agency's Washington headquarters sent queries to conservative groups asking about their donors and other aspects of their operations, while officials in the El Monte and Laguna Niguel offices in California sent similar questionnaires to tea-party-affiliated groups, the documents show.

IRS employees in Cincinnati told conservatives seeking the status of "social welfare" groups that a task force in Washington was overseeing their applications, according to interviews with the activists.

Lois G. Lerner, who oversees tax-exempt groups for the IRS, told reporters Friday that the "absolutely inappropriate" actions were undertaken by "front-line people" working in Cincinnati to target groups with "tea party," "patriot" or "9/12" in their names.

In one instance, however, Ron Bell, an IRS employee, informed a lawyer representing a

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conservative group focused on voter fraud that the application was under review in Washington. On several other occasions, IRS officials in Washington and California sent conservative groups detailed questionnaires about their voter outreach and other activities, according to the documents.

VIEW GRAPHIC

A report due this week says the IRS targeted groups with names containing "tea party" and "patriot."

"For the IRS to say it was some low-level group in Cincinnati is simply false," said Cleta Mitchell, a partner in the law firm Foley & Lardner who sought to communicate with IRS headquarters about the delay in granting tax-exempt status to True the Vote.

Moreover, details of the IRS's efforts to target conservative groups reached the highest levels of the agency in May 2012, far earlier than has been disclosed, according to Republican congressional aides briefed by the IRS and the Treasury Inspector General for Tax Administration (TIGTA) on the details of their reviews.

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Then-Commissioner Douglas Shulman, a George W. Bush appointee who stepped down in November, received a briefing from the TIGTA about what was happening in the Cincinnati office in May 2012, the

aides said. His deputy and the agency's current acting commissioner, Steven T. Miller, also learned about the matter that month, the aides said.

The officials did not share details with Republican lawmakers who had been demanding to know whether the IRS was targeting conservative groups, Republicans said.

"I wrote to the IRS three times last year after hearing concerns that conservative groups were being targeted," Sen. Orrin G. Hatch (Utah), the ranking Republican on the Senate Finance Committee, said in a statement Monday. "In response to the first letter I sent with some of my colleagues, Steven Miller, the current Acting IRS Commissioner, responded that these groups weren't being targeted."

"Knowing what we know now," he added, "the IRS was at best being far from forth coming, or at worst, being deliberately dishonest with Congress."

As new details emerged Monday, Democrats and Republicans alike decried the agency's actions as an unacceptable abuse of power.

In a news conference Monday, President Obama said he learned of the investigating in media reports on Friday and has "no patience with it."

"If in fact IRS personnel engaged in the kind of

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practices that have been reported on, and were intentionally targeting conservative groups, then that's outrageous," Obama said. "And there's no place for it. And they have to be held fully accountable."

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White House spokesman Jay Carney told reporters Monday that the White House counsel's office learned of an upcoming IRS inspector general's report on April 22 as part of a routine notification but had not received access to the report.

On Capitol Hill, two Senate panels — the Finance Committee and the Permanent Subcommittee on Investigations — announced Monday that they will investigate. The House Oversight and Government Reform Committee and the Ways and Means Committee have been looking into reports of IRS attempts to single out organizations on the right for heightened scrutiny. Ways and Means has called IRS officials to testify Friday.

"These actions by the IRS are an outrageous abuse of power and a breach of the public's trust," said Senate Finance Committee Chairman Max Baucus (D-Mont.). "The IRS will now be the ones put under additional scrutiny."

Separately, Sen. Marco Rubio (R-Fla.) and Rep.

Mike Turner (R-Ohio) introduced companion bills Monday that would require the IRS to fire any employee found "willfully" violating "the constitutional rights of a taxpayer," according to statements by both lawmakers. The bills also would make them criminally liable for their actions.

Even as Obama vowed that his administration "will make sure that we find out exactly what happened on this," however, the IRS offered no new information on how it selected which groups to single out for scrutiny.

The White House is legally barred from contacting the IRS about a tax matter, under a prohibition adopted after the Watergate scandal. And although it can contact the Treasury Department about tax issues, neither Treasury nor the IRS can disclose specific taxpayer information. The IRS can release information about a petition for tax-exempt status only after it has been approved.

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Obama is not in a position to remove Lerner, a career official who can be terminated for cause only under normal civil service proceedings. The IRS has two political appointees: the commissioner, who serves a five-year term, and the chief counsel.

As the IRS came under broader political attack

SFC 004868

Monday, more details surfaced on how the exempt-organizations division struggled to determine which nonprofits should receive "social welfare" status after the 2010 *Citizens United v. Federal Election Commission* ruling. That decision, which allowed corporations and unions to raise and spend unlimited amounts of money on elections, opened the door for groups to accept undisclosed contributions as long as their "primary purpose" was not politics.

In a Jan. 9, 2012, letter to the Richmond Tea Party, IRS specialist Stephen Seok asked questions including "the names of the donors, contributors and grantors," as well as the size of the contributions and grants, and when they were given.

Richmond Tea Party President Larry Nordvig, whose group applied for tax-exempt status in December 2009 and received it in July 2012, said the extended inquiry had "a very chilling effect" on how much money the group could raise because its donors preferred anonymity.

The Wetumpka Tea Party of Alabama experienced a two-year delay after submitting its initial application.

Becky Gerritson, a 44-year-old stay-at-home mother and the group's president, said the IRS sent a questionnaire asking for the names of all volunteers,

donor identification and contribution amounts, the names of any legislators its members had communicated with directly or indirectly, and the contents of all speeches its members had made, among a long list of other details.

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"I was outraged," Gerritson said. "Being an election year, I felt like it was intimidation."

The group did not provide the information. Approval came only after the group sought help from the American Center for Law and Justice, which threatened a lawsuit against the IRS, Gerritson said.

Although some of the groups were explicitly labeled "tea party" or "patriot," others that came under intense scrutiny were focused on challenging the Affordable Care Act — known by many as Obamacare — or the integrity of federal elections.

In a June 3, 2011, letter to the IRS, Mitchell questioned the agency's motivations for delaying recognition of one of her clients who had filed nearly two years earlier, writing, "Is the [group's] opposition to Obamacare and the takeover of America's healthcare system by the government the reason that this application has been held up and not approved?"

Catherine Engelbrecht, president of the Houston-based True the Vote, first filed for tax-exempt status in July 2010. At one point, Engelbrecht — who is still awaiting a determination from the IRS regarding her voting rights organization and a separate tea party group, King Street Patriots — said an IRS employee informed her: "I'm just doing what Washington is telling me to do. I'm just asking what they want me to ask."

The IRS did not respond to requests for comment Monday.

Josh Hicks and Julie Tate contributed to this report.

Discuss this topic and other political issues in the politics discussion forums.

Zachary A. Goldfarb is a staff writer covering the White House, focusing on President Obama's economic, financial and fiscal policy.

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Post Politics

Lois Lerner put on administrative leave by IRS

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By Ed O'Keefe May 23, 2013 Follow @edatpost

Lois Lerner on Capitol Hill (J. Scott Applewhite /AP)

Lois Lerner, the director of the tax-exempt organizations division at the Internal Revenue Service, has been placed on administrative leave, sources in Congress and the administration confirm.

Federal workers are given pay and benefits when put on administrative leave.

"My understanding is the new acting IRS commissioner asked for Ms. Lerner's resignation, and she refused to resign," Sen. Chuck Grassley (R-Iowa) said in a statement. "The IRS owes it to taxpayers to resolve her situation quickly."

Acting IRS Commissioner Daniel Werfel has selected Ken Corbin as the acting director, of the exempt organizations

division. Corbin is currently the deputy director of the submission processing, wage and investment division.

Lerner was the official who revealed during a May 10 American Bar Association conference in Washington that employees in the IRS's tax-exempt unit in Cincinnati had improperly scrutinized applications from dozens of organizations. On Wednesday, she invoked her Fifth Amendment right against self-incrimination to avoid testifying before the House Oversight and Government Reform Committee.

"I have not done anything wrong," she said. "I have not broken any laws. I have not violated any IRS rules or regulations. And I have not provided false information to this or any other congressional committee."

Lerner's account of how the IRS began scrutinizing tea party groups, when she learned about it and why she disclosed it when she did have all been deemed inaccurate by the Post's Factchecker.

Lerner has been a federal employee for 34 years, holding positions at the Justice Department, the Federal Elections Commission and the IRS. She became director of the IRS's tax-exempt unit in 2006.

The move was first reported by the website of the National Review, a conservative magazine.

Juliet Eilperin, Josh Hicks and Rachel Weiner contributed to this report.

Ed O'Keefe is a congressional reporter with The

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Opinions

George F. Will: Lois Lerner, the scowling face of the state

A 1803

By George F. Will Opinion writer June 12, 2013

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As soon as the Constitution permitted him to run for Congress, Al Salvi did. In 1986, just 26 and fresh from the University of Illinois law school, he sank $1,000 of his own money, which was most of his money, into his campaign to unseat an incumbent Democratic congressman. Salvi studied for the bar exam during meals at campaign dinners.

He lost his campaign. Today, however, he should be invited to Congress to testify about what happened 10 years later, when he was a prosperous lawyer and won the Republican Senate nomination to run against a Democratic congressman named Dick Durbin.

George F. Will writes a twice-weekly

In the fall of 1996, at the campaign's climax, Democrats filed with the Federal

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column on politics and domestic and foreign affairs. He began his column with The Post in 1974, and he received the Pulitzer Prize for Commentary in 1977. He is also a contributor to FOX News' daytime and primetime programming. View Archive

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Election Commission charges against Salvi's campaign alleging campaign finance violations. These charges dominated the campaign's closing days. Salvi spoke by telephone with the head of the FEC's Enforcement Division, who he remembers saying: "Promise me you will never run for office again, and we'll drop this case." He was speaking to Lois Lerner.

After losing to Durbin, Salvi spent four years and $100,000 fighting the FEC, on whose behalf FBI agents visited his elderly mother demanding to know, concerning her $2,000 contribution to her son's campaign, where she got "that kind of money." When the second of two federal courts held that the charges against Salvi were spurious, the lawyer arguing for the FEC was Lois Lerner.

More recently, she has been head of the IRS Exempt Organizations Division, which has used its powers of delay, harassment and extortion to suppress political participation. For example, it has told an Iowa right-to-life group that it would get tax-exempt status if it would promise not to picket Planned Parenthood clinics.

Last week, in a televised House Ways and Means Committee hearing, Rep. Peter Roskam (R-Ill.), Salvi's former law partner, told the riveting story of the partisan enforcement of campaign laws to suppress political competition by distracting Salvi and entangling him in bureaucratic snares. The next day, the number of inches of newsprint in The Post and the New York Times devoted

SFC 004876

to Roskam's revelation was the number of minutes that had been devoted to it on the three broadcast networks' evening news programs the night before: Zero.

House Republicans should use their committee chairmanships to let Lerner exercise her right to confront Salvi and her many other accusers. If she were invited back to Congress to respond concerning Salvi, would she again refuse to testify by invoking her Fifth Amendment protection against self-incrimination? There is one way to find out.

Durbin, the second-ranking Senate Democrat, defeated Salvi by 15 points. He probably would have won without the assistance of Lerner and the campaign "reforms" that have produced the FEC's mare's-nest of regulations and speech police that lend themselves to abuses like those Salvi experienced. In 2010, Durbin, who will seek a fourth term next year, wrote a letter urging Lerner's IRS division to pay special attention to a political advocacy group supporting conservatives.

Lerner, it is prudent to assume, is one among thousands like her who infest the regulatory state. She is not just a bureaucratic bully and a slithering partisan. Now she also is a national security problem because she is contributing to a comprehensive distrust of government.

The case for the National Security Agency's gathering of metadata is: America is threatened not by a nation but by a network, dispersed and largely invisible until made visible by connecting dots. The network cannot help but leave, as we all do daily, a digital trail of cellphone, credit card and Internet uses. The dots are in such data; algorithms connect them. The technological gathering of

300 billion bits of data is less menacing than the gathering of 300 by bureaucrats. Mass gatherings by the executive branch twice receive judicial scrutiny, once concerning phone and Internet usages, another concerning the content of messages.

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The case against the NSA is: Lois Lerner and others of her ilk.

Government requires trust. Government by progressives, however, demands such inordinate amounts of trust that the demand itself should provoke distrust. Progressivism can be distilled into two words: "Trust us." The antecedent of the pronoun is: The wise, disinterested experts through whom the vast powers of the regulatory state's executive branch will deliver progress for our own good, as the executive branch understands this, whether we understand it or not. Lois Lerner is the scowling face of this state, which has earned Americans' distrust.

Read more from George F. Will's archive or follow him on Facebook.

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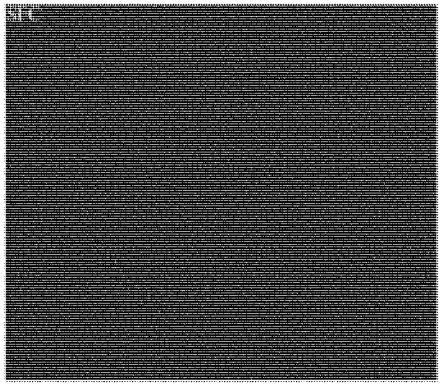

By Dan Eggen
Washington Post Staff Writer
Wednesday, February 17, 2010; 4:38 PM

Americans of both parties overwhelmingly oppose a Supreme Court ruling that allows corporations and unions to spend as much as they want on political campaigns, and most favor new limits on such spending, according to a new Washington Post-ABC News poll.

Eight in 10 poll respondents say they oppose the high court's Jan. 21 decision to allow unfettered corporate political spending, with 65 percent "strongly" opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits.

The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent) and independents (81 percent).

The results suggest a strong reservoir of bipartisan support on the issue for President Obama and congressional Democrats, who are in the midst of crafting legislation aimed at limiting the impact of the high court's decision.

"If there's one thing that Americans from the left, right and center can all agree on, it's that they don't want more special interests in our politics," Sen. Charles Schumer (D-N.Y.), who is spearheading the legislative effort, said in a statement after the poll was released Wednesday.

"We hope we can get strong and quick bipartisan support for our legislation, which passes constitutional muster but will still effectively limit the influence of special interests."

Under legislation being drafted by Schumer and Rep. Chris Van Hollen (D-Md.), companies with foreign ownership or federal contracting ties would be limited in their ability to spend corporate money on elections.

The lawmakers also want to require companies to inform shareholders about political spending; to mandate special "political activities" accounts for corporations, unions and advocacy groups; and to require that corporate executives appear in political advertising funded by their companies.

Other likely proposals include banning participation in U.S. elections by bank bailout recipients.

Senate Minority Leader Mitch McConnell (Ky.) and other Republican lawmakers have praised the high court ruling as a victory for free speech, however, and have signaled their intent to oppose any legislation intended to blunt the impact of the court's decision.

In *Citizens United v. Federal Election Commission*, the high court ruled 5-4 that corporations have the

same rights as individuals when it comes to political speech and can therefore use their profits to support or oppose individual candidates. The decision appears to open the door to unlimited spending by corporations, trade groups and unions in the weeks leading up to an election, which has been explicitly banned for decades.

Democrats have seized on the ruling as an example of judicial overreach and vowed to enact new limits on political spending by corporations, which have traditionally favored Republicans in their contribution patterns. Obama said in his State of the Union address that the ruling will "open the floodgates for special interests, including foreign corporations, to spend without limit in our elections."

Republicans and business groups have rallied around the ruling, arguing that the decision merely levels the playing field with free-spending unions and other liberal interest groups.

Jeff Patch, communications director for the Center for Competitive Politics, which supports the court's decision, said the ruling's potential impact has been distorted by Obama and other Democratic critics.

"Campaign finance is an incredibly complex legal framework, and most Americans have an incentive to remain rationally ignorant about the laws and regulations at issue," Patch wrote in a news release.

The poll, however, suggests there may be political risks for the GOP in opposing limits that appear to be favored by the party's base.

Nearly three-quarters of self-identified conservative Republicans say they oppose the Supreme Court ruling, with most of them strongly opposed. Some two-thirds of conservative Republicans favor congressional efforts to limit corporate and union spending, though with less enthusiasm than liberal Democrats.

Indeed, the poll shows remarkably strong agreement about the ruling across all demographic groups, and big majorities of those with household incomes above and below $50,000 alike oppose the decision. Age, race and education levels also appeared to have little relative bearing on the answers.

The questions on corporate political spending were included as part of a poll conducted Feb. 4 to 8 by conventional and cellular telephone. The margin of sampling error for the for the full poll of 1,004 randomly selected adults is plus or minus three percentage points.

Polling director Jon Cohen contributed to this report.

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The Washington Post

Senators Question Conservancy's Practices

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End to 'Insider' and 'Side' Deals by Nonprofit Organizations Is Urged

By Joe Stephens and David B. Ottaway
Washington Post Staff Writers
Wednesday, June 8, 2005

The Senate Finance Committee issued a report yesterday raising questions about a range of financial practices at the Arlington-based Nature Conservancy and recommending regulatory changes that would affect many of the nation's nonprofit organizations.

The report, the result of a two-year investigation into the world's largest environmental organization, questions whether the charity's actions at times may have been "inconsistent" with the policy underlying federal tax laws. The committee raises concerns about the size of tax breaks claimed by the Conservancy's supporters, about the group's shortcomings in monitoring development restrictions on some land under its supervision, and about private "side deals" with Conservancy "insiders."

The report refrains from making factual and legal conclusions, stressing a desire to avoid influencing an audit of the Conservancy begun by the Internal Revenue Service in December 2003. But the report spotlights the Conservancy's financial dealings and highlights the organization's failure to fully disclose transactions with Conservancy officials and corporations whose officers sat on the charity's board.

Changes sought by the committee include creation of an accreditation system for conservation groups, limits on tax deductions associated with conservation easements and increased public disclosure for charities.

Committee Chairman Charles E. Grassley (R-Iowa) praised the Nature Conservancy for enacting some reforms on its own.

"This report makes it clear that such reforms were necessary, and I commend the Nature Conservancy for making them," he said yesterday. "Yet, in several areas, such as related party transactions, public disclosure, conservation buyer transactions, and the reporting and payment of taxes, my hope is that this report will encourage the Nature Conservancy to consider additional reforms."

Grassley also called for sweeping changes in tax laws affecting charities. "There are real shortcomings in current law in many areas," he said.

In a statement yesterday, the Conservancy said that the committee's concerns largely focused on past practices.

"The Conservancy remains confident that all of our work is, and has been, in compliance with the law and in furtherance of our mission," it said. "Not everything we tried succeeded, and on occasion we made

SEC 004881

mistakes, but all of our work was done in good faith and was undertaken to accomplish significant conservation goals."

Conservancy officials are to testify today at a committee hearing.

The panel began investigating the Conservancy in May 2003, in response to a series in The Washington Post. The articles detailed the organization's rapid growth -- its assets last year reached $4 billion -- and described financial transactions that benefited Conservancy supporters, including corporations that had paid pollution-related fines. The articles revealed that the Conservancy had logged forests and drilled for oil under the breeding ground of an endangered bird species, and bought land and services from corporations whose executives sat on the nonprofit's governing board.

The series also revealed that the Conservancy had repeatedly sold land to its own trustees, in transactions that allowed the buyers to claim significant tax breaks.

After the series, the Conservancy restructured its board and banned some practices, including lending money to insiders, selling land to trustees and drilling on preserves.

The Finance Committee report recounts many of the transactions described in the series and explores their tax implications. Documents relating to the transactions are contained in a 1,700-page appendix to the 200-page report.

The investigation looked extensively at conservation easements -- development restrictions placed on land to preserve wildlife habitat and open space. The Conservancy holds easements on 1,600 tracts of land.

In some cases, the committee found, years passed without the Conservancy formally documenting that the easement restrictions had been honored. Documents collected by the committee "indicate a level of monitoring that may be considered inadequate for the small conservation easements and minimally adequate for the larger easements," the report said.

In many cases, landowners donated the easements to the Conservancy and claimed substantial tax breaks for the charitable contributions. The Conservancy acknowledged that it had allowed a number of donors or subsequent property owners to alter the terms of the "perpetual" easements, presumably after donors had already cashed in on their tax breaks.

Sometimes, the report said, the Conservancy allowed property owners to expand a home on the sites, construct additional buildings or cut timber. Such changes could harm conservation efforts and violate the law, the report said. In the document, the Conservancy defended its actions, saying it required landowners who sought to change easement restrictions to agree to other concessions.

Without naming the Conservancy, the report recommended that the IRS "consider revoking the tax-exempt status of a conservation organization that regularly and continuously fails to monitor and enforce conservation easements." The committee also called for a law that would allow the IRS to fine officers and directors of charities that fail to monitor and enforce easement restrictions.

The report questioned whether the Conservancy's conservation buyer program allowed participants to claim inflated tax deductions, and whether they used the transactions to circumvent tax laws. It recommended that the IRS look into the transactions, which often benefited Conservancy insiders.

Under the program, the Conservancy purchases land, attaches conservation easement restrictions, and then resells the property at a lesser amount designed to reflect the decrease in land value caused by the

SEC 004882

restrictions on development. The buyers, in turn, make charitable contributions to cover the difference between the Conservancy's original purchase price and the lower resale price. That cash gift allows the buyers to claim substantial tax breaks.

Such transactions, the report said, "test the limits" of the law, because in most of the deals examined by the Finance Committee it appeared as though the Conservancy would not have sold the property if the buyer had not simultaneously made the cash contribution. The panel questioned whether the buyers could legitimately claim the cash payments as tax-deductible charitable donations.

The Conservancy appeared to have failed to consider the effect such transactions "could have on its tax-exempt status," the report said.

Until recently, the Conservancy generally did not market the properties to the public, but instead sold many of the tracts to its trustees, staff members and other supporters, the report said. The report questioned whether the buyers, who often helped craft the terms of the land deals, paid less than full price for the tracts.

The committee expressed concern that, although the Conservancy had entered business transactions with board members and their corporations, it provided only limited details about the transactions in its annual return to the IRS. In many cases, the report added, "it appears that TNC did not confirm that the transactions were done at terms that were fair and reasonable to TNC."

The organization's public disclosure of the deals "was oftentimes ambiguous or incomplete, and in a few instances, misleading," the Finance Committee said. It recommended that the IRS require fuller disclosure of conflicts of interest for all charities.

The Senate panel also looked into the Conservancy's innovative emissions trading program, under which U.S. companies that produce air pollution gave the Conservancy $34 million over a period of years to help preserve Latin American forests. In return, General Motors Corp., American Electric Power Inc. and other large businesses received "emissions credits." The companies hope the transactions will one day allow them to avoid spending millions of dollars for emissions controls on their U.S. plants.

The report questioned whether the deals would truly benefit the environment, and whether the companies had "obtained an impermissible private benefit as a result of the arrangements."

The report noted that during a period in which the Conservancy sealed a $10 million emission credit deal with General Motors, former GM chairman John F. Smith Jr. sat on the boards of the Conservancy and GM. The Conservancy reported to the IRS in its annual return that Smith had not taken part in the deal, to avoid a conflict of interest.

"TNC's statement that Mr. Smith 'did not participate or vote' . . . is misleading and inaccurate," the report said. "TNC records provided to the Committee show that Mr. Smith voted on the transaction as a member of TNC's Conservation Committee, and executed the agreement on behalf of General Motors Corporation and GM's Brazilian affiliate . . .

"Mr. Smith's role in the transaction should have been more accurately described by TNC."

A Conservancy spokesman said Smith mistakenly signed a ballot for a board vote on the issue.

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Lois Lerner, IRS official in tea party scandal, forced out for 'neglect of duties'

By Stephen Dinan - *The Washington Times - Monday, September 23, 2013*

Lois G. Lerner, the woman at the center of the IRS tea party targeting scandal, retired from the agency Monday morning after an internal investigation found she was guilty of "neglect of duties" and was going to call for her ouster, according to congressional staff.

Her departure marks the first government official to pay a significant price in the scandal, though Republicans were quick to say her decision doesn't put the matter to rest and pointed out that she still can be called before Congress to testify.

The Internal Revenue Service confirmed Ms. Lerner's retirement in a statement but said it couldn't release any more information because of privacy concerns.

Rep. Sander M. Levin of Michigan, the ranking Democrat on the House Ways and Means Committee, said an accountability review board set up to investigate the people at the agency involved with the scandal completed their review and were set to recommend Ms. Lerner's ouster. The review board, though, found no evidence of political bias, he said.

Ms. Lerner was head of the exempt organizations division of the IRS, which oversaw applications for tax-exempt status, including those from political groups.

Several congressional committees were examining her behavior and emails that seemed to suggest that she was looking for reasons to deny political groups approval for tax-exempt status.

Last week, acting IRS Commissioner Daniel Werfel said he had asked a review board and the agency's inspector general to look at the emails.

Republicans said Ms. Lerner's resignation, while a first step, isn't the end of the scandal.

"We still don't know why Lois Lerner, as a senior IRS official, had such a personal interest in directing scrutiny and why she denied improper conduct to Congress," said Rep. Darrell E. Issa, California Republican and chairman of the House Oversight and Government Reform Committee. "Her departure does not answer these questions or diminish the committee's interest in hearing her testimony."

But Mr. Levin, who called for Ms. Lerner to resign early on, said there is still no evidence of political motivation in Ms. Lerner's actions or those of others at the IRS. He said Republicans are stretching to create a political scandal.

"The basic overreaching premise of the Republicans that the IRS had an 'enemies list' and was being influenced from the outside has been proven wrong again, as it has again and again," Mr. Levin said. "Just as the IRS has to move with all deliberate speed to restore the public trust, so too must the Republicans by not distorting the investigation and by acknowledging the improvements."

Also Monday, one marquee tea party group announced that it had reached a deal with the Obama administration to approve its application for tax-exempt status, ending a three-year ordeal in which it faced the same intrusive scrutiny that characterized the IRS efforts with regard to conservative organizations.

True the Vote, the Texas-based voters' rights group, said the Justice Department and IRS agreed late Friday to approve the application for 501(c)(3) status as a charitable organization.

The group found out earlier this year that it was part of a batch of hundreds of applications that the IRS was delaying, and it sued to force the agency to approve its application.

The approval of the group's application does not end the matter, said Cleta Mitchell, lead attorney in the lawsuit.

She said the IRS still needs to answer for the costs and damages that resulted from the three-year delay, and for probing for information that the internal auditor for the IRS says wasn't necessary to make a determination.

Ms. Mitchell also said Ms. Lerner's resignation doesn't resolve the IRS situation.

"From everything that we've seen, the emails, the things that drip, drip, drip out of the IRS, clearly she was involved in it, she knew about it, she has an agenda, as do others in the IRS," Ms. Mitchell said.

"I'd say good riddance, but the question is how much are we still going to be paying her," she said.

SEC 004885

Ms. Lerner has amassed more than three decades in government service, including 20 years at the Federal Election Commission before moving to the IRS in 2001.

She was appointed to be director of the exempt organizations division in 2006. She was also a previous president of the Council on Governmental Ethics Laws.

Her attorney didn't return a message seeking comment.

Ms. Lerner previously refused to testify to Congress, citing her Fifth Amendment right against self-incrimination. But when she appeared before Congress, she also delivered a brief statement claiming innocence, which some members of the House oversight committee said means she waived her right to silence.

Jay Sekulow, chief counsel at the American Center for Law and Justice, which is representing 41 conservative groups battling the IRS, said her retirement is "just another troubling move" by the IRS and means she will be receiving taxpayer-funded retirement benefits.

"Her retirement — along with her continued compensation — is deeply disturbing and sends the wrong message about accountability," Mr. Sekulow said.

• *Seth McLaughlin contributed to this report.*

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Koch Industries Lawyer to White House: How Did You Get Our Tax Information?

John McCormack

September 20, 2010 1:31 PM

Lately, the White House and its allies have been drawing attention to the political activities of libertarian billionaires Charles and David Koch. In an August 9 speech, President Obama singled out Americans for Prosperity, a free-market political group founded by David Koch in 2004. In the wake of the *Citizens United* Supreme Court decision, Obama said:

> Right now all around this country there are groups with harmless-sounding names like Americans for Prosperity, who are running millions of dollars of ads against Democratic candidates all across the country. And they don't have to say who exactly the Americans for Prosperity are. You don't know if it's a foreign-controlled corporation. You don't know if it's a big oil company, or a big bank. You don't know if it's a insurance company that wants to see some of the provisions in health reform repealed because it's good for their bottom line, even if it's not good for the American people.

"Using a great deal" of research by the left-wing Center for American Progress, the *New Yorker*'s Jane Mayer reported in the magazine's August 30 issue that the Kochs are "waging a war against Obama." *Reason*'s Nick Gillespie argued that Mayer's report was nothing more than "sly innuendo and revelations as lame as they are breathless," but that hasn't stopped top Democrats from blasting the Kochs for funding the Democrats' political opposition.

Democratic Congressional Campaign Committee chairman Chris Van Hollen said in a September 10 TV appearance that "Americans for Prosperity which are the Koch Industries ... did well under the Bush administration economic policies," which is why AFP is opposing the Democrats. In a September 16 speech, President Obama again singled out Americans for Prosperity. Even Jimmy Carter took a whack at the Kochs last week.

While the attention is unwanted for the Kochs, if somewhat expected, a lawyer for Koch Industries now tells THE WEEKLY STANDARD that the administration may have crossed a line by revealing tax information about Koch Industries. According to Mark Holden, senior vice president and general counsel of Koch Industries, a senior Obama administration official told reporters at an August 27 on-the-record background briefing on corporate taxes:

> So in this country we have partnerships, we have S corps, we have LLCs, **we have a series of entities that do not pay corporate income tax. Some of which are really giant firms, you know Koch Industries is a multibillion dollar businesses.** So that creates a narrower base because we've literally got something like 50 percent of the business income in the U.S. is going to businesses that don't pay any corporate income tax. They point out [in the report] you could review the boundary between corporate and non-corporate taxation as a way to broaden the base.

Holden tells THE WEEKLY STANDARD that this quotation from a senior administration official "came to our attention from different avenues. We are very concerned about why this would be said about us, particularly in this setting.

We are concerned where this information would have been obtained from. We also are concerned in light of recent events that we have been singled out by the government and others as a campaign against us because of our political views."

THE WEEKLY STANDARD asked White House press office officials in an email on Friday to verify the quotation's accuracy, but 72 hours later they have not replied. A White House press aide reached this morning on the phone said she would look into whether a transcript of the call exists. The aide has not yet responded. (*Correction*: The press aide replied just prior to publication of this report to say, "I haven't been able to track a transcript down.")

But an independent source who participated in the briefing confirms to THE WEEKLY STANDARD that the quotation matches the source's careful notes from the briefing.

Holden claims that the revelation of tax information could have been improper, depending on how the information was obtained by the White House:

> "I'm not accusing any one of any illegal conduct. But it's my understanding that under federal law, tax information, is confidential and it's not to be disclosed or obtained by individuals except under limited circumstances. ... I don't know what [the senior administration official] was referring to. I'm not sure what he's saying. I'm not sure what information he has. But if he got this information–confidential tax information–under the internal revenue code ... if he obtained it in a way that was inappropriate, that would be unlawful. But I don't know that that's the case."

Holden says that to his knowledge the tax status of Koch Industries has not been previously reported in the press.

So, questions remain: Why won't White House officials say if the quotation about Koch Industries is accurate–or even if a transcript of the briefing exists?

And, if the quotation is accurate, why won't they say how the White House obtained tax information on Koch Industries?

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The White House

Office of the Press Secretary

For Immediate Release May 10, 2013

Press Briefing by Press Secretary Jay Carney, 05/10/2013

James S. Brady Press Briefing Room

3:39 P.M. EDT

MR. CARNEY: Good Friday afternoon, ladies and gentlemen. Thank you for being here. I appreciate your patience. Before I take your questions, I just wanted to note, because it's been reported, we did, as many of you know, have a background briefing here at the White House earlier. I think 14 news organizations were represented, ranging from online to broadcast TV, print and the like. And we do those periodically. We hope that participants find them helpful. I will say that no one here believes that briefings like that are substitute for this briefing, which is why I'm here today to take questions on whatever issues you want to ask me about.

And with that, I will go to the Associated Press.

Q Thanks, Jay. Two subjects, starting out with the IRS issue. The IRS says it's flagged conservative groups with names like "patriots" or "tea parties" for review, and says that in some instances that its workers inappropriately asked for the identities of donors, and it has apologized. When did the White House become aware that the IRS engaged in this? And in a tax collection system that relies on trust, isn't the IRS's credibility at stake here? And will the White House, as called on by Senator McConnell, call for an investigation?

MR. CARNEY: Well, two things, Jim. I appreciate the question, and we've certainly see in those reports. My understanding is this matter is under investigation by the IG at the IRS. The IRS, as you know, is an independent enforcement agency with only two political appointees. The fact of the matter is what we know about this is of concern, and we certainly find the actions taken, as reported, to be inappropriate. And we would fully expect the investigation to be thorough and for corrections to be made in a case like this. And I believe the IRS has addressed that and has taken some action, and there is an investigation ongoing.

But it certainly does seem to be, based on what we've seen, to be inappropriate action that we would want to see thoroughly investigated.

Q Given that the President was so critical of some of these groups, both in 2010 and in 2012, isn't it natural for the public to think that these things are politically motivated? What assurances can you --

MR. CARNEY: Well, I think that, first of all, two things need to be noted, which is IRS is an independent enforcement agency, which I believe, as I understand it, contains only two political appointees within it. The individual who was running the IRS at the time was actually an appointee from the previous administration. But separate from that, there is no question that if this activity took place, it's inappropriate and there needs to be action taken and the President would expect that it be thoroughly investigated and action would be taken.

Q On Benghazi, and with all due credit to my colleague on the right, we have had emails showing that the State Department pushed back against talking-point language from the CIA and expressed concern about how some of the information would be used politically in Congress. You have said the White House only made a stylistic change here, but these were not stylistic changes. These were content changes. So again, what role did the White House play, not just in making but in directing changes that took place to these?

MR. CARNEY: Well, thank you for that question. The way to look at this, I think, is to start from that weak and understand that in the wake of the attacks in Benghazi, an effort was underway to find out what happened, who was responsible. In response to a request from the House Permanent Select Committee on Intelligence to the CIA, the CIA began a process of developing points that could be used in public by members of Congress, by members of that committee. And that process, as is always the case -- again, led by the CIA -- involved input from a variety of agencies with an interest in or a stake in the process, and that would include, obviously, the State Department since it was a State Department facility that was attacked and an Ambassador who was killed, as well as three others; the NSS, the FBI, which is the lead investigating authority, and other entities.

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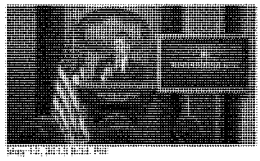

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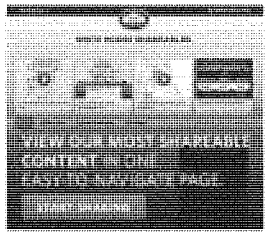

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The CIA -- in this case, deputy director of the CIA -- took that process and issued a set of talking points on that Saturday morning, and those talking points were disseminated. Again, this was all in response to a request from Congress. And the only edit made by the White House or the State Department to those talking points generated by the CIA was a change from -- referring to the facility that was attacked in Benghazi, from "consulate," because it was not a consulate, to "diplomatic post." I think I had referred to it as "diplomatic facility." I think it may have been "diplomatic post."

But the point being, it was a matter of non-substantive/factual correction. But there was a process leading up to that that involved inputs from a lot of agencies, as is always the case in a situation like this, and is always appropriate. And the effort is always to, in that circumstance, with an ongoing investigation and a lot of information -- some of it accurate, some of it not, about what had happened and who was responsible -- to provide information for members of Congress and others in the administration, for example, who might speak publicly about it that was based on only what the intelligence community could say for sure it thought it knew. And that is what was generated by the intelligence community, by the CIA.

Q But this information that -- was information that the CIA obviously knows about prior attacks and warnings about those. Does the President think that it was appropriate to keep that information away simply because of how Congress might use it?

MR. CARNEY: Well, first of all, the CIA was the agency that made changes to the edits -- I mean, to the talking points and then produced the talking points, first of all. Second of all, I think the overriding concern of everyone involved in that circumstance is always to make sure that we're not giving, to those who speak in public about these issues, information that cannot be confirmed, speculation about who was responsible, other things like warnings that may or may not be relevant to what we ultimately learn about what happened and why.

All of that information, by the way, was and remains part of the investigation. It's information that was provided to Congress and to others looking into this matter last fall and throughout the winter and into this year. And that investigation continues.

But on the substantive issues of what happened in Benghazi, and at that time, what the intelligence community thought it knew, that was reflected in the talking points that were used, again, that weekend by Ambassador Rice and by others, including members of Congress. And I think if you look at the information that's been reported, you can see that evolution and that it was -- the talking points were focused on what we know and not speculation about what may or may not have been responsible or related.

I would also say that all of this information was provided months ago to members of Congress, a fact that we made clear to all of you at the time. During the confirmation process for John Brennan as Director of the CIA, there was a request for more information, including emails around the deliberating process involved in producing these talking points, and this administration took the rather extraordinary measure of providing those emails to members of the relevant committees, as well as the leadership members and staff in Congress. And that information was available, again, in late February to members of Congress, and through March. And once that information was reviewed, in the case of the Senate, Senate Republicans, a number of whom went on record saying, well, now I feel like I know what I need to know, then allowed the process for the confirmation of John Brennan to go forward and he was confirmed in early March.

Q Since you bring it up, why were those emails provided in a read-only fashion?

MR. CARNEY: It is, I think, a standard procedure for administrations of both parties, going back decades, that internal deliberations are generally protected -- is generally protected information that is not something that is regularly shared with Congress, and then that's -- to allow for a deliberative process in the executive branch. In this case, to answer just these concerns that members of Congress had, particularly Republican members of Congress, that step was taken and provided. And they were able to review all of these emails, which they have, of course, now leaked to reporters, but they were able to review all of these emails for as long as they wanted, take extensive notes if they chose to.

And again, once that process was completed, the confirmation of John Brennan went forward. A number of Republicans came forward and said that they felt like they had the information they needed about that aspect of the Benghazi incident.

And it's only now for what I think is, again, reflective of ongoing attempts to politicize a tragedy that took four American lives, we're now seeing it resurface together with sort of political assertions by Republicans that ignore the basic facts here: There was an attack on our facility in Benghazi. The intelligence community provided the information that it felt comfortable providing for public dissemination to members of government, Congress and the administration.

As we learned more about what happened, we provided it. That's why everybody has received the information that it has throughout this process, from the -- I mean, one of the things that I think is interesting about the points is that from the very beginning there was included in the points the statement about demonstrations taking place outside of the building, of the facility in Benghazi. That is what the assessment -- the consensus or collective assessment of the intelligence community was that, from that, there were spontaneous attacks launched against

the facility. And when we found out that that was not true, when the assessment changed, we made that clear. And that was -- going back, if you remember, when we had this discussion back in the fall, that was the point that Republicans were focusing on.

And yet, it's clear from what you see in these documents that that was the assessment made by the intelligence community. And it's also clear from the evolution of what public officials said about what we knew that as we got more concrete information and information that we felt confident about, we provided it to the press, to Congress and to the public.

Q Jay, the substance of these emails, though, suggests -- or have very specific exchanges between State Department officials and officials here at the White House, which Jonathan uncovered, in which a State Department official raises concerns about providing talking points that would include a mention of al Qaeda because of a concern that Congress would use that against the State Department and the White House.

MR. CARNEY: Well, I think that's actually not -- I think you need to -- the State Department has said that the spokesman's office raised two primary concerns about the talking points. The points went further in assigning responsibility than preliminary assessments suggested, and there was concern about preserving the integrity of the investigation. That concern was expressed in other quarters, not just at the State Department.

Q The email said specifically concern about giving members of Congress something to use against the State Department.

MR. CARNEY: Well, again, this was a process where there was an effort underway, an interagency process, to develop information that could be delivered by government officials -- both congressional and administration officials -- about what we knew and not going beyond what we knew.

Q The language of that email is pretty clear, and the response is pretty clear in terms of saying we want to address Victoria Nuland's concerns. No matter who ended up providing the talking points in the end, it certainly seems clear that there was an influence by the White House and the State Department on the CIA talking points for that reason.

MR. CARNEY: But again, I think you're conflating a couple of things here. The White House, as I said, made one minor change to the talking points drafted by and produced by the CIA, and even prior to that made very few --

Q But is that just parsing words, Jay? I mean, does that --

MR. CARNEY: -- had very few inputs on it. The other discussions that went on prior to this in an interagency process reflected the concerns of a variety of agencies who had a stake in this issue, both the FBI because it was investigating; the CIA, obviously, and other intelligence agencies; and the State Department, because an ambassador had been killed and a diplomatic facility had been attacked. And what I think the concern was is that these points not provide information that was speculative in terms of whether it was relevant to what happened.

And what could not be known at that time was the relevance of issues about warnings. There's the discussion about -- the Republicans -- again, in this ongoing effort that began hours after the attacks when Mitt Romney put out a press release to try to take political advantage out of these deaths, or out of the attack in Benghazi, in a move that was maligned even by members of his own party. And from that day forward, there has been this effort to politicize it.

And if you look at the issue here -- the efforts to politicize it were always about were we trying to play down the fact that there was an act of terror and an attack on the embassy. And the problem has always been with that assertion is that it's completely hollow, because the President himself in the Rose Garden said this was an act of terror. And he talked about it within the context of September 11th, 2001. And then we had other officials of the administration refer to this as a terrorist act.

Susan Rice, when she went out on the Sunday shows using the very talking points that we're discussing now, talked about the possibility that we knew that -- or believed based on the intelligence assessment that extremists were involved, and there were suspicions about what affiliations those extremists might have, but there were not -- there was not hard, concrete evidence. And so Ambassador Rice, in those shows, talked about the possibility that al Qaeda might be involved, or other al Qaeda affiliates might be involved, or non-al Qaeda Libyan extremists -- which I think demonstrates that there was no effort to play that down, it was simply a reflection of we did not, and the intelligence community did not, and others within the administration did not jump to conclusions about who was responsible before we had an investigation to find out the facts.

Q But was concern about how Congress would react a factor in what went into those talking points, as that email suggests?

MR. CARNEY: Again, I think if you look at the development of the talking points, the answer to that is no, because the talking points reflect the intelligence community's assessment of what happened. And all the other issues about who was responsible, what specific organizations may have participated, what information was available or threats were known about the situation in Libya or in Benghazi specifically -- I mean, all of that was part of an

investigation, and was provided to Congress, and, as we learned more, to the public by the administration.

April.

Q Jay, since you say this is a minor change -- a minor change in venue, with the wording changed in venue -- why such a big deal today with this deep background, deep, deep background, off-the-record briefing? It makes it seem like --

MR. CARNEY: Well, let's be clear, it wasn't off the record. And that was an erroneous report. But the -- I mean, it's a big deal because Republicans have chosen, in the latest iteration of their efforts, to politicize this, to provide -- leak this information to reporters -- information that we provided months ago to Republican lawmakers from the relevant committees and Republican leadership, as well as Democratic. And there's an ongoing effort to make something political out of this.

But the problem with that effort is that it's never been clear what it is they think they're accusing the administration of doing, because when it comes to who is responsible, we were very open about what we knew, what we thought we knew, what we did for a fact know, and the fact that this was an ongoing investigation, and we would certainly learn more that would change our view of what had had happened in Benghazi.

Q I'm understanding that, but it seems like there has been fuel added to the fire. If this was such a minor issue, why not just tell the press like you did from the podium just a few minutes ago, instead of having this background briefing with a select few, and not the whole group right now if it's such a minor issue?

MR. CARNEY: Well, again, I think I talked -- I'm here right now to take your questions about this issue. And we have background briefings periodically, and 14 news organizations were represented, and that's something that administrations do regularly of both parties. And as I said at the top, it's not a replacement for this briefing, and that's why I'm here taking your questions.

Yes.

Q Jay, how do you go from a conversation that was apparently happening between various administration officials, various officials of this government on September 14th, and in those emails -- in that email exchange there is a discussion about a group, Ansar al-Sharia, and then, after Victoria Nuland raises concerns on the part of the State Department, that references to that group are then removed from the conversation and don't make their way into the talking points? That is a not a stylistic edit. That is not a single adjustment, as you said, back in November. That is a major, dramatic change in the information.

MR. CARNEY: No, I appreciate the question and the opportunity, again, to make clear that the CIA produced talking points that was a result of an interagency process on the morning of -- that Saturday morning. And to that --

Q But when you say the CIA produced talking points --

MR. CARNEY: Jim, let me just finish this and then you can follow up.

Q But they were produced with the involvement and from pressure from other parties that were involved -- the White House, the State Department.

MR. CARNEY: I would point you to the numerous statements by the top officials at the CIA making clear that they wrote the talking points, that they believed that those talking points represented what they knew to the best of their knowledge at that time and did not include things that they could not be concretely sure of. Ansar al-Sharia is a good example.

If you remember, in the wake of these attacks, there was an initial claim of responsibility by that group, and a lot of people rushed out and said, well, this is the group that's responsible. Then that group withdrew the claim of responsibility. Now neither is dispositive -- that's why it needs to be investigated.

So what we knew was not concretely for sure that that group was responsible at that time, but we knew that extremists were participants. And that's what the talking points said. And again, there's the idea -- Jim, if I could -- the idea that saying "extremists" is somehow hiding the ball, I mean, does anybody in this room not understand that extremists in Libya means the kind of people who would attack a U.S. diplomatic facility?

Q But if you go back to what Susan Rice was talking about during those talk shows, she may have left open the possibility of extremists, but this is an altogether different thing. When you --

MR. CARNEY: Well actually, Jim, as I just said, she went on the Sunday shows and she talked Ansar al-Sharia. She talked about the fact that they may be responsible. She talked about the fact that al Qaeda could be responsible or other al Qaeda-linked affiliates. So what she did not say is that we know for a fact that they're responsible.

And that's why in the basic talking points -- again, this is all about talking points. This is not about the facts of the investigation or all of the information that has been provided to Congress in countless hearings, countless pieces of information in documents that have been provided -- I think 20,000 or 25,000 pages of documents. This was just the talking points that were the baseline for what public officials, beginning with members of Congress -- that's what they were developed for, but also provided to Ambassador Rice. And then she spoke beyond that based on what could be true, as opposed to what we knew to be true.

Q But just to follow up on this, once and for all -- you are comfortable, you are still comfortable --

MR. CARNEY: You promise -- once and for all? (Laughter.)

Q Well, maybe not. (Laughter.) But you are comfortable with the way you characterized this back in November, that this was a single adjustment? Yes, it may have been the White House that made a single adjustment, and perhaps it was the CIA that drafted these talking points. But that's sort of glossing over the fact that you had all of these other parties involved. These were not stylistic edits, Jay. This is very much a content-driven change in the talking points.

MR. CARNEY: Well, let me just make clear, I do stand by that when we were talking about the talking points that were produced by the CIA and provided to members of Congress on the Intelligence Committee in the House who would ask for it and others, as well as folks in the administration, that that document was -- there was a suggested edit that was accepted by the White House, and that was a change from, to make it factual, the calling of the building in Benghazi a "consulate," because it was not a consulate, to "diplomatic post" or "facility." I can't remember which.

Prior to that, there had been a lot of discussion and iteration, iterative process where the various issues were discussed about what could be or should be said publicly -- what we know, what we're just speculating about. And that process involved a whole bunch of agencies. And it's also the case that in that process, the White House involvement in the talking points was very limited and non-substantive. But the issues that you mentioned had to do with limiting the talking points to what we knew, as opposed to speculation about what may or may not have been in the end relevant to what happened in Benghazi.

Jon.

Q Jay, you told us that the only changes that were made were stylistic. Is it a stylistic change to take out all references to previous terror threats in Benghazi?

MR. CARNEY: Well, I appreciate the question again. And I think that what I was referring to was the talking points that the CIA drafted and sent around, to which one change was made. And I accept that "stylistic" may not precisely describe a change of one word to another.

Q Jay, this was not a change of one word to another. Jay, these underwent extensive changes after they were written by the CIA; that these were concerns that were raised by the State Department that the White House directed the interagency process to use in making these talking points. The CIA original version included references to al Qaeda, references to Ansar al-Islam. The original CIA version included extensive discussion of the previous threats of terrorist attacks in Benghazi. Those were taken out after the CIA wrote its initial draft.

MR. CARNEY: And then the CIA wrote another draft.

Q Based on input from the State Department. Do you deny that?

MR. CARNEY: No, Jon. What I'm saying is -- and I've answered this question several times now, but I'm happy to answer again if you let me answer it, and that is that there was an interagency process, which is always the case, because a lot of agencies have a stake in the matter like this -- the investigative agency, the intelligence agencies, the State Department in this case, the national security staff. And everybody provided information and comment.

And then on Saturday morning the CIA said, we're going to take a crack at drafting these points based on what we know. And the things that you're talking about don't go to the fundamental issue here, which was what would -- could be said concretely about what the intelligence community knew to be true, not that some people thought it was Ansar al-Sharia, some people thought it was other al Qaeda affiliates or Libyan extremists, so we knew it was extremists or we believed we knew that extremists had participated.

There was also the belief from the beginning by the intelligence community in these points that there had been protests out of which the attack occurred, protests in response to the demonstrations that were in Cairo at our embassy that were in response to that video. That turned out not to be the case, but it demonstrates the fluidity of the information, the fact that it was hard and continues to be hard -- in an investigation -- to know concretely, especially in the first days afterwards, what happened.

And that's why we were so careful to say here's what we know or we believe we know. And every time we've said that, we fully expect this information to change as we learn more. And it did, and we've provided it.

And the whole effort here by Republicans to find some hidden mystery comes to nothing because the President called it an act of terror. The Ambassador to the United Nations that very Sunday that has caused Republicans so much concern talked about the possible involvement of al Qaeda and Ansar al-Sharia. All of this is a distraction from the key issues: A diplomatic post was attacked by individuals in Libya, in Benghazi. Four Americans lost their lives. From the beginning, the President has committed all the resources of this administration, of this government, to finding out who was responsible and to bringing them to justice.

He also, very clearly, together with the Secretary of State, said we need to make sure that we find out what went wrong, what problems there were with security that allowed this to happen, to hold people accountable and to make the necessary changes so that it doesn't happen again. And that process happened -- was stood up by the Secretary of State. It was a process led by two of the most experienced and widely regarded figures in national security in Washington, former Chairman of the Joint Chiefs Admiral Mullen, and Ambassador Tom Pickering -- nonpartisan, serving both parties for different administrations. They conducted an extensive review of this. They've said they had access to all the information they needed. They had access to all the people they needed to talk to. And they produced an unsparing report with a series of very critical observations and very serious recommendations, every single one of which the State Department has adopted.

So that's the way the system should work, and it worked that way because the President and the Secretary of State insisted that it work that way.

Q But, Jay, can we come back on what you said? You said that the only changes that were made by either the White House or the State Department were stylistic and a single word. What we see here is that the State Department raised objections about the references to Ansar al-Sharia. They raised objections to the fact that the CIA had warned about terror threats in Benghazi prior to the attack. Those subjects were taken out of the CIA talking points at the direction of the White House based on the objections from the State Department.

MR. CARNEY: No, they weren't. First of all, they weren't at the direction of the White House. The only -- this process, as everybody is an equal player in this process says, everybody's concerns have to be listened to and taken into account. But ultimately these were intelligence community talking points that the intelligence community, led by the CIA, had --

Q Changed because of objections from the State Department.

MR. CARNEY: Jon, could I finish? You've had a long time there -- that the intelligence community has to sign off on and believe represents the intelligence community's view of what they knew at that time about what happened. And again, this would be more significant if we didn't acknowledge from the beginning that extremists were likely involved, that we didn't acknowledge from the beginning that it could very well have been Ansar al-Sharia that was involved or al Qaeda itself or other al Qaeda affiliates.

This is an effort to accuse the administration of hiding something that we did not hide. In fact, we spoke publicly about it. The Secretary -- I mean, the Ambassador to the United Nations, who was the lead administration official talking about this that weekend, spoke openly about that possibility. And every bit of information that's come out about what we know happened in Benghazi has been a result of information provided by various agencies of the administration.

This investigation, in fact, continues to this day. Just last week, the FBI released photographs of individuals that they believe might be connected to the attack on Benghazi in their effort to bring those people accountable. That's the important business that remains to be done when it comes to Benghazi.

Q Just a clarification --

MR. CARNEY: Let me let some others. Last one.

Q When you said what you said, did you know that this had gone through 12 versions and that there had been extensive changes made? Were you aware of that at the time?

MR. CARNEY: Jon, there is always a deliberative process. There is always input by agencies, and I knew that. And what I also knew was that the CIA, on Saturday morning, said, we're going to draft these points. They drafted those points and those points were delivered virtually unchanged, with the exception of the one change I mentioned, to members of Congress and to the administration for use.

Kristen.

Q Jay, to ask it in a slightly different way, do you acknowledge that your initial characterization of the White House's involvement was to some extent a mischaracterization of the extent to which the White House was involved in the evolution of those talking points?

MR. CARNEY: I think it's really important to examine now the information that we provided Congress months ago, which they have chosen for political reasons to leak today, which is their prerogative, I suppose. But the fact is the White House's involvement to the talking points that were generated by the CIA that Saturday was to make

the single change, suggest the single change. By the way, we suggest -- the White House suggests a change; everybody signs off, or doesn't -- because, as a matter of fact, I think people were fine with it. And even prior, in the deliberative process that I was referring to that Jon was talking about, the White House involvement in the actual -- in any changes that were made to the so-called talking points was extremely minimal and non-substantive.

Q But why not come forward initially and say, Friday night, White House officials were involved in the interagency process that you've been describing? Why not offer that information at the start?

MR. CARNEY: Again, look, there was no intent here to do anything but answer the question. The questions were related to -- this was the Republican accusation that everybody was very excited about at the time -- that did the White House change the intelligence community's assessment of what happened? Did the White House tell the intelligence community to say that there were demonstrations? And the underreported fact of all the revelations today is that these documents bear out what we said all along, and the answer is no. The answer is no.

Q So Speaker Boehner -- I have a few more questions, Jay. Speaker Boehner has asked that you release the emails, and according to our sources, House officials are also asking that they get more documentation about the Saturday, September 5th meeting at the White House. Will you release those additional emails and documents?

MR. CARNEY: Well, I think they're asking for emails that they've already seen, that they were able to review and take extensive notes on, apparently provide verbatim information to folks. So I think -- including the Speaker's House, and maybe he's unaware of that.

Q Just one more, on the IRS. Is the President --

MR. CARNEY: The Speaker's office, sorry.

Q -- concerned about the allegations? And will he make sure that those who are involved are held accountable?

MR. CARNEY: Allegations of what, sorry? On the --

Q The IRS story, targeting --

MR. CARNEY: Well, I think I made clear I haven't spoken to the President about that, but you can be sure that if there was inappropriate conduct here, that he would want it thoroughly investigated and we would not tolerate that.

Bill.

Q When did the White House become aware that the IRS was looking into the tax-exempt applications of conservative --

MR. CARNEY: I don't have an answer to that specifically. I know that when the IG began investigating it, that it's been investigating it for however long the IRS has said, but I don't have a specific answer to that. It was -- but what I can tell you is, based on what we've learned today, two things: One, the IRS has clearly taken action to correct this, clearly stated from the leadership of the IRS that this is inappropriate and unacceptable behavior. And we concur with that, and we would expect a thorough investigation and for all the necessary corrections to be made.

Q Conservative groups were complaining about this all through the period between 2010 and 2012. Was the White House aware of that then?

MR. CARNEY: Of what, the complaints?

Q Yes, the complaints that they were being targeted by the IRS.

MR. CARNEY: I don't have any information on that. I think there were public reports, but I don't -- I would refer you to the IRS. I don't have information about that.

Q And there's no call on -- by some reporters on the Hill for a congressional investigation.

MR. CARNEY: Again, I think -- the IRS is an independent agency. The inspector general is an independent investigator, and that office is investigating this, and that's entirely appropriate.

Jared.

Q To follow up on Kristen's question -- I think Speaker Boehner's office, they know -- they have seen the emails,

but they wanted them to be released to the public, at least the unclassified ones. Is that something the White House will do?

MR. CARNEY: Again, as I mentioned at the top, there is a long precedent here for protecting internal deliberations. This is across administrations of both parties. And we took the extraordinary step, which is unusual -- and in fact, I think especially unusual with regard to our predecessor -- of providing these emails in-camera so that the relevant committee members and their staffers, as well as leadership members and their staffers could review them, take notes, spend as much time with them as they like. And that was an extraordinary step because it was demanded by Republicans as part of what they were asking for during the confirmation process for John Brennan.

And I would remind you that in response to that, a number of Republicans said they felt they had gotten the information they needed. The Brennan nomination moved forward and he was confirmed.

Q But wouldn't it just help clear up, I guess for people who still have a lot of questions about what exactly --

MR. CARNEY: But here's the thing -- we've provided this information to the committees. The fact that the very people who have reviewed this and probably leaked it -- generally speaking, not specifically -- are asking for something they've already had access to I think demonstrates that this is what it was from the beginning in terms of the Republican handling of it, which was a highly political matter.

From the hours after the attack -- beginning with the Republican nominee's unfortunate press release, and then his statements the day after -- there has been an effort to politicize a tragedy here, the deaths of four Americans, to try to suggest that even though the President called it an act of terror, even though the Ambassador to the United Nations referred to possible responsibility not just by extremists but possibly by al Qaeda or al Qaeda affiliates, that we were somehow not talking about that when the publicly available evidence proves the opposite.

Q Jay, on a different subject.

MR. CARNEY: Yes, Wendell.

Q The House will vote again next week to repeal the Affordable Care Act. Speaker Boehner says it's for the benefit of 70 new members who haven't had a chance to vote on the Affordable Care Act. What's your response?

MR. CARNEY: Well, I appreciate that, Wendell. I think that what I've said in the past holds true today, which is the now 40th attempt, I think, or 40th vote by the House of Representatives -- that's a rough estimate -- to repeal the Affordable Care Act will achieve nothing beyond what it has achieved in the past, which is nothing but, I suppose, a waste of time.

The Congress passed the Affordable Care Act. The Supreme Court upheld the Affordable Care Act. And we are implementing the Affordable Care Act. And it just seems to me if -- whether it's the vote this week by the House of Representatives to pass on a measure that would prioritize debt payments -- in other words, default by any other name; to basically accept a situation where they would tank the world economy if they didn't get the tax cuts for the wealthy that they wanted, to make that -- to pass that law -- that doesn't seem like a great use of time, a representation of what the American people want their members of Congress to be doing.

And then, next week, to go through the charade again of voting to repeal a law that has been upheld by the Supreme Court and that was passed into law and signed into law just seems misguided.

And what would be great I think for members of Congress to do would be to focus on the things that the American people want them to focus on -- like measures to help the economy grow; to focus on some of the things the President was focused on yesterday in Austin, Texas, where he highlighted remarkable advancements being made in high-tech manufacturing, advancements that are helping build the economy of the future, where he announced an initiative to fund another innovation institute so that we can develop these jobs for the middle class that are the jobs of the future, and then to assist middle-class Americans in obtaining the skills they need to fill those jobs, and to ensure that those jobs pay the kind of wages that can sustain a middle-class life. That's what the American people are focused on and what they want.

I think efforts to refight the political battles of the past are not looked upon kindly by a majority of Americans.

Jon-Christopher, then Julianna, and then Peter.

Q As the British invasion continues, Monday, Prime Minister David Cameron will be here meeting with the President. David Cameron met with Mr. Putin today in Russia. Aside from the discussions about the G8 Summit in Northern Ireland in June, how much of this discussion will be on the crisis in Syria? And can you give us any more detail about the meeting and the topics that might be discussed?

MR. CARNEY: Well, as is always the case when the President meets with Prime Minister Cameron, they will speak about a range of subjects. The relationship between our two nations is extraordinarily close, and we work and cooperate on matters across the international spectrum.

The upcoming G8 will of course be a topic of conversation. The United Kingdom is hosting that important meeting on the international economy. They will also clearly discuss Syria. They will probably discuss Iran. They will probably discuss the Middle East peace process and a whole host of other issues. That is always the case when these two leaders get together.

Julianna.

Q I just want to follow up on some of the questions about the IRS and conservative political groups. Did anybody at the White House know that this was going on during the campaign?

MR. CARNEY: I have to take that question. I just learned about it today. I think that the IRS has addressed when it learned about -- at the headquarters level -- when it learned about it, and what actions that were taken in the IG investigation. And so I would just refer you to the IRS.

Q But any sort of White House involvement or knowledge that you can't say at this time?

MR. CARNEY: Again, I learned about it today, and I'll have to take the question.

Peter.

Q Jay, you said that the Republicans were being political about it. Is it not also political to say we want to keep something out of the talking points because we might be criticized by members of Congress? Is that not a political motivation there?

MR. CARNEY: Again, I think the State Department has addressed what the concerns of the spokesperson's office were when that office engaged with a number of other agencies in discussions about what they knew and what the various agencies knew and what was appropriate to include in public talking points. And I think one of the concerns, as I said, was that we don't put information in that would suggest by its inclusion was relevant to or determinative about who was responsible when, in fact, we didn't know that.

As we learn more information, we provided it. And officials of the administration, including Ambassador Rice, openly engaged in conversations that allowed that it was possible that groups like Ansar al-Sharia might have been responsible, or other extremist groups. And remember that the issue at the time was were we somehow by including in the talking points the assessment by the intelligence community that there had been protests that led to this attack outside of the facility in Benghazi, were we trying to play down the fact that it was an act of terror -- again, a hollow claim when the President himself called it an act of terror when the talking points referred to the participation of extremists. And I think everybody understands what "extremist" means.

So I think the effort underway was simply to provide in those talking points the information that the intelligence community felt confident it knew for sure, as opposed to information it could not be confident of. And I think that was what the CIA has said produced the points that they drafted.

Q But the phrase doesn't say let's not put this out because we're not sure it's true; the phrase is, let's not put this out because we don't want to be criticize by our political opponents. Is that not political in itself?

MR. CARNEY: Well, again, I think the State Department has addressed the spokesperson's office's concerns about this. But they focused on not assigning responsibility prematurely before -- based on preliminary assessments by experience and definition were likely to change, and that we not use language that was inconsistent with what -- that members of Congress not be deploying information about this that, again, wasn't based on what we knew or believed to be true, or that other administration officials had been using.

There was an effort to focus everyone who was talking about this publicly on what the lead agencies here were, the information they had as opposed to speculating about who was responsible or what -- what relevance there might be to the fact that there had been threats and warnings in Libya in general and in Benghazi specifically.

Q I hear what you're saying. Sorry, on the backgrounder you had earlier you said, well, everybody does it basically; Republicans and Democrats, everybody has backgrounders. You all came to town, though, saying you were going to be different, change the rules, be more transparent. Don't you think it encourages the idea that you had something or your colleagues or whoever did the backgrounder -- I wasn't there -- had something to say they didn't want to say it out here?

MR. CARNEY: Not at all. There's nothing that -- that was an effort to, as we do periodically, to walk people through what we knew with granularity, which I'm happy to do for as long as you want here.

Q You might have done that on the record then. Why did it have to be on background?

MR. CARNEY: Well, I think we -- look, again, Peter, we provide information on background, but it is not a substitute for on-the-record, on-camera briefings where I will take any question you have and attempt to answer

it. And that's what I'm doing.

Q But what purpose is there for doing it on background?

MR. CARNEY: Again, to provide reporters with information that we then follow up with the public briefing.

Q Did you provide that information from the background in this briefing do you believe today?

MR. CARNEY: I can go into -- this is mostly -- people ask questions, I can answer the questions. I was able to listen to the briefing as well, and I think it helps me answer the questions that everybody here has.

Q But do you think that you gave much of that information from the briefing, that background briefing today, in your briefing today on the record?

MR. CARNEY: The answer is yes, but my familiarity with the subject predates today significantly.

Q Jay?

MR. CARNEY: Alexis.

Q Jay, just overarching -- looking back at -- because a lot of were in the Briefing Room with you that day that day after the attacks. Is the President satisfied with the way the administration handled this? Would you do anything differently? Would he want the administration to do something differently looking backward?

MR. CARNEY: No, I think that the administration has focused on what's important here: Investigating what happened, working to bring those who killed four Americans to justice on the one hand, investigating what went wrong with security, and taking steps to ensure that it never happens again. And those two tracks have been pursued from the beginning at the President's direction.

And our effort has been to be -- to provide as much information as we have when it's available and when we feel confident that it's accurate. And even then -- and I think is reflective of major incidents like this all the time -- that the initial information may not turn out to be wholly accurate. And we made clear from the very beginning that the investigation was just beginning; that as more information became available we would make you aware of that. And that's exactly what we did.

Q So to follow up on that -- because some of us were here that day talking to you -- you talked right away about the video. And I'm wondering, when you are saying now that you didn't want to be speculative, some of us then were wondering why you didn't just wait and say there was an investigation. So why are you saying the video discussion was not speculative to reassert --

MR. CARNEY: Well, I was -- well, I was using -- what I was saying was based on the points that the CIA had provided, just as Susan Rice had.

Q Right, but now --

MR. CARNEY: And that's what the -- that's the CIA had -- and I think it's instructive because at that time -- and obviously there different people thought different things -- but the leading intelligence agency in this process decided that that's what it believed it knew at the time, and that is what it provided to us, as well as to members of Congress. And as that changed we made clear that it --

Q But don't the --

MR. CARNEY: What's that?

Q Don't this series of emails now suggest that your discussion of the video was speculative, you were cherry-picking?

MR. CARNEY: Well, I think again, you're -- no, because -- I mean I would ask the CIA. The CIA -- one thing that's consistent throughout the material that was provided to Jon and others is that from the beginning that was in the talking points, that the CIA was prepared to disseminate. And it was based on what they thought they knew at the time.

And I think the fact that parts of that -- and really the only part of that that turned out not to be the case, which was that there were protests over the video that preceded the attack on the embassy reflects how fluid information is and how risky it is to make declarations about what we know to be true in the immediate aftermath of an incident like this.

But it is very important actually to stand back and look at that. The talking points that have gotten so much attention -- and let's remember that these are talking points -- it's not policy, it's talking points -- to this day have

been shown to be wrong in only one instance, and that was the existence of demonstrations preceding the attack. Everything else about them was true, including the assertion that extremists might have been involved, and the assertion that as we got more information we would -- that this account would likely evolve and change, and we would provide that information as we got it.

And so all of this from the beginning, the Republican attempts to politicize this, has been based on that single thing, which we corrected once we knew that it was no longer a correct description of what happened.

Q But today the President had a health care event that gets wiped off because this has continued because that information was not put out.

MR. CARNEY: I don't understand. What do you mean "that information?" Are you saying we should have overruled the intelligence community? I mean that -- we relied on what they thought they knew. So did the members of the House Select Intelligence Committee, so did other members of Congress. But we also made clear that it was preliminary information that was subject to change as more information became available.

Q Jay, on the point you just made, it seems like you're saying contradictory things. You're saying that the first iteration of the talking points that the CIA drafted was what they thought happened, and the last version was what they knew happened.

MR. CARNEY: No, in both cases I think I said what they thought they knew happened.

Q Okay.

MR. CARNEY: And based on their assessment that's what they thought they knew. But even then it was couched. In all iterations it was couched, and there was a caveat that as more information became available, the picture would likely change.

Q But by nature of the CIA signing off on each iteration of the talking points, they were perfectly fine with members of Congress or officials discussing anything they included in any of those versions that they signed off on. So why was it necessary -- why was it deemed necessary to then refer them back to not including certain information in the final draft version if they were perfectly fine with that being --

MR. CARNEY: Well, when you say they were -- the process began because the CIA got the request from the House Select -- the House Permanent Select Intelligence Committee. And they began the process of drawing up points.

And again, as I've said, as that process evolved, there was clearly inputs from other agencies who had a direct stake in this, including the FBI, the State Department, the national security staff and others, the ODNI. And when the CIA then redrafted the points on Saturday morning, it kept those points to what they believed they knew at the time --

Q But why --

MR. CARNEY: -- based on the information. I think I've addressed that. Again, there was no concrete determination. There were some people who believed it, some people who didn't -- concrete determination that Ansar al-Sharia was responsible. There was no concrete determination that warnings about the threats that existed in Libya were or were not directly related to what happened in Benghazi.

All of those matters have been openly discussed and matters of investigation, but they weren't what we knew or what the intelligence community knew to be true at the time.

And again, Ambassador Rice, who is -- has been the focus of this and the use of these talking points, and the very partisan focus of Republican complaints on this, openly discussed the possibility that and even the likelihood that the extremists that we felt were involved might have some al Qaeda affiliation or some other affiliation to an extremist group, as opposed to just unaffiliated violent actors.

Q But if it was a problem for the CIA to speculate about those things, why would they sign off on the first version for others to review?

MR. CARNEY: Again, you're talking about a draft process that involves a bunch of agencies offering their views.

Q But the CIA is not going to spill secrets they're not comfortable putting out there. I mean -- or is that an assumption?

MR. CARNEY: I would simply say that the -- here's a good point. I think there was in one of the stories I read -- and again, these are documents that somebody, I don't know who on the Hill, provided to reporters -- but one of the things that has been noted that was removed was an assertion about a warning from social media about potential demonstrations in Cairo.

Well, you don't hear a lot of Republicans citing that because that would have, if it had been included, reinforced the assertion that demonstrations preceded an attack in Benghazi, that those demonstrations were the result of reaction to the violent demonstrations in Cairo. And I think the focus of these things was to write just what we knew or what we thought we knew based on the intelligence community's best assessments. And that's what was produced.

Steve.

Q It's coming up on eight months to the day since the Benghazi attack. The FBI just got around two and a half weeks ago to releasing three images of people they were looking for information for about perpetrators of the attack. Is the President confident that the FBI is capable of solving and finding the perpetrators, something that you just said a few minutes ago is a priority of the President? And is the President doing everything in his power to do that as well?

MR. CARNEY: Absolutely. And I think that "just getting around to" is probably not a characterization that reflects the very hard work that the FBI is engaged in, in investigating this, working with other agencies of government as well as obviously authorities in Libya. And that process continues.

And you can believe -- and I think this President has a record to prove it -- that he will keep focused on this until those who are responsible are brought to justice. And again, I think this President has a record that backs that up.

Q Thanks, Jay.

MR. CARNEY: Steve and then George. I already gave them more time. Sorry, Steve and George.

Q Yes, you talked about the talking points being about what we knew or what the CIA believed it knew. The first few drafts, it says, "we do know that Islamic extremists with ties to al Qaeda participated in the attack." This is not couched. It says "we do know."

MR. CARNEY: I believe the CIA -- the CIA --

Q That this appears --

MR. CARNEY: The CIA -- again, these are --

Q -- from the drafts and four and five --

MR. CARNEY: Right, and that's -- and you should direct those questions to the intelligence community where obviously there were different inputs within the IC about what they thought they knew and what different people who provided information within the intelligence community thought they knew. And it was the assessment of the leadership at the CIA and those who were --

Q In their first -- when they said they knew in their first draft that they were wrong?

MR. CARNEY: I think it's reflected that we -- that there was not concrete enough information. And the head -- the then director of the CIA, or after he left the directorship, has testified on this, as has -- as did the acting director -- and made clear that the points as they emerged and were disseminated on that Saturday reflected what they felt they knew, what they could say concretely based on their assessments.

And that's what -- the intelligence community doesn't deal in facts just picked off a shelf. They have to assess a wide variety of information. In a situation like what happened in Benghazi that was so chaotic, they had to base it on a variety of streams of information, and they made the assessment they did. And even then when being very cautious not to go beyond what they knew, they -- one of the points they made turned out not to be true. And when that became clear, they corrected it and we corrected it. And that's -- in real time, and that's how the public and the press became aware of it.

George.

Q Back on the IRS, I want to get your reaction to two things Speaker Boehner just -- he said that this "echoes some of the most shameful abuses of government power in 20th century American history. And then he asked if other federal agencies use government powers to attack Americans for partisan reasons. He seems to be likening this White House to the Nixon White House.

MR. CARNEY: Well, there's so much I could say about that.

Q Please.

MR. CARNEY: But all I will say is that this is a matter of concern and needs to be thoroughly investigated. As I

understand it, it is being investigated by the Inspector General that is responsible for the IRS, which is an independent enforcement agency. And the activity, as described, is inappropriate. And that's the view of this White House, and it should be thoroughly investigated and acted on.

Q Jay?

MR. CARNEY: I'll do one more. Voice of America, because -- yes.

Q Back to Syria. In this interview with NBC, with Ann Curry, Prime Minister Erdogan said -- just came right out and said chemical weapons were used, mentioned the number of shells used -- I think it was 200 shells -- that it was based on intelligence and interviews with people who have come across the border. I mean, do they have different intelligence than --

MR. CARNEY: Well, we work cooperatively with a number of allies and partners in assessing the situation in Syria on the ground, and specifically with -- in relation to this very important matter, the use of chemical weapons in Syria.

What the President has said and what we have said is that we have information that chemical weapons were used, but we do not have a complete picture about how that was used, who was responsible, what the chain of custody was. And we need to build a case, if you will, about that use before we make policy decisions based on it. And I think that's something that the American people would expect us to do -- to be very deliberate about this, and to rely not just on an intelligence assessment -- interestingly we've been talking about intelligence assessments and the fact that they evolve and sometimes in the first instance aren't accurate -- and we need to build on that.

In this case, we believe very strongly that the intelligence work done here has been very solid, but it is not the end of the process; it's closer to the beginning. And we're continuing to work with our partners. We're continuing to press for a United Nations investigation. But we're not leaving it only to the United Nations. As I've said on several occasions, we're working with our allies and partners, and, importantly, with the Syrian opposition to gather more information and evidence about chemical weapons use in Syria.

Q Thanks.

MR. CARNEY: Thank you.

Q Week ahead?

MR. CARNEY: I think we'll have to provide it. Do I have it here? Oh, yes I do. Okay. Thank you all very much for reminding me -- Jim, as ever.

The schedule for the week of May 13th, 2013: On Monday, the President will hold a bilateral meeting with Prime Minister Cameron of the United Kingdom at the White House. The Prime Minister's visit will highlight the fundamental importance of the U.S.-U.K relationship through which, together, we address a broad range of shared global and regional security concerns. Later on Monday, the President will travel to New York City for DNC events and a joint DCCC/DSCC event before returning to the White House in the evening.

On Tuesday, the President --

Q Are any of those open?

MR. CARNEY: I'll have to get that information. Yes, I believe one of them -- my trusted deputy says one is open.

On Tuesday, the President will attend meetings at the White House.

On Wednesday, the President will deliver remarks at the National Peace Officers Memorial Service, an annual ceremony honoring law enforcement who were killed in the line of duty in the previous year.

On Thursday, the President will welcome Prime Minister Erdogan of Turkey to the White House for meetings and a working dinner. The Prime Minister's visit underscores the close friendship between the United States and Turkey and the strategic importance we place on broadening and deepening our relationship moving forward.

On Friday, the President will travel to Baltimore, Maryland in his second Middle-Class Jobs and Opportunity tour event. More details regarding the President's travel to Baltimore will be forthcoming.

Q Do you expect two-by-twos or one-by-ones either with Cameron or with --

MR. CARNEY: I don't have the answer to that. We'll get back to you when we have more details. Thank you all very much.

Q Have a nice weekend.

MR. CARNEY: You, too.

END
4:39 P.M. EDT

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The White House

Office of the Press Secretary

For Immediate Release May 13, 2013

Remarks by President Obama and Prime Minister Cameron of the United Kingdom in Joint Press Conference

East Room

11:41 A.M. EDT

PRESIDENT OBAMA: Good morning, everybody. Please have a seat. And to all our moms out there, I hope you had a wonderful Mother's Day.

It's always a great pleasure to welcome my friend and partner, Prime Minister David Cameron. Michelle and I have wonderful memories from when David and Samantha visited us last year. There was a lot of attention about how I took David to March Madness -- we went to Ohio. And a year later, we have to confess that David still does not understand basketball -- I still do not understand cricket.

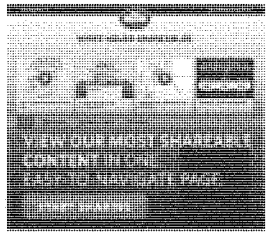
As we've said before, the great alliance between the United States and the United Kingdom is rooted in shared interests and shared values, and it's indispensable to global security and prosperity. But as we've seen again recently, it's also a partnership of the heart. Here in the United States, we joined our British friends in mourning the passing of Baroness Margaret Thatcher, a great champion of freedom and liberty and of the alliance that we carry on today. And after the bombings in Boston, we Americans were grateful for the support of friends from around the world, particularly those across the Atlantic. At the London Marathon, runners paused in a moment of silence and dedicated their race to Boston. And David will be visiting Boston to pay tribute to the victims and first responders.

So, David, I want to thank you and the British people for reminding us that in good times and in bad, our two peoples stand as one.

David is here, first and foremost, as he prepares to host the G8 next month. I appreciate him updating me on the agenda as it takes shape, and we discussed how the summit will be another opportunity to sustain the global economic recovery with a focus on growth and creating jobs for our people. Michelle and I are looking forward to visiting Northern Ireland, and I know that the summit is going to be a great success under David's fine leadership.

We discussed the importance of moving ahead with the EU towards negotiations on the Transatlantic Trade and Investment Partnership. Our extensive trade with the U.K. is central to our broader transatlantic economic relationship, which supports more than 13 million jobs. And I want to thank David for his strong support for building on those ties, and I look forward to launching negotiations with the EU in the coming months. I believe we've got a real opportunity to cut tariffs, open markets, create jobs, and make all of our economies even more competitive. With regard to global security, we reviewed progress in Afghanistan, where our troops continue to serve with extraordinary courage alongside each other. And I want to commend David for his efforts to encourage greater dialogue between Afghanistan and Pakistan, which is critical to regional security.

As planned, Afghan forces will take the lead for security across the country soon -- this spring. U.S., British and coalition forces will move into a support role. Our troops will continue to come home, and the war will end by the end of next year, even as we work with our Afghan partners to make sure that Afghanistan is never again a haven for terrorists who would attack our nations.



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Given our shared commitment to Middle East peace, I updated David on Secretary Kerry's efforts with Israelis and Palestinians and the importance of moving towards negotiations. And we reaffirmed our support for democratic transitions in the Middle East and North Africa, including the economic reforms that have to go along with political reforms.

Of course, we discussed Syria and the appalling violence being inflicted on the Syrian people. Together, we're going to continue our efforts to increase pressure on the Assad regime, to provide humanitarian aid to the long-suffering Syrian people, to strengthen the moderate opposition, and to prepare for a democratic Syria without Bashar Assad.

And that includes bringing together representatives of the regime and the opposition in Geneva in the coming weeks to agree on a transitional body which would allow a transfer of power from Assad to this governing body. Meanwhile, we'll continue to work to establish the facts around the use of chemical weapons in Syria, and those facts will help guide our next steps.

We discussed Iran, where we agreed to keep up the pressure on Tehran for its continued failure to abide by its nuclear obligations. The burden is on Iran to engage constructively with us and our P5-plus-1 partners in order to resolve the world's concerns about its nuclear program.

And, finally, today we're reaffirming our commitment to global development. Specifically, we're encouraged by the ambitious reforms underway at the Global Fund to fight AIDS, TB and Malaria, where both of our nations are stepping up our efforts. And David has made it clear that the G8 Summit will be another opportunity to make progress on nutrition and food security.

So, David, thank you very much, as always, for your leadership and your partnership. As we prepare for our work in Northern Ireland, as we consider the challenges we face around the world, it's clear we face a demanding agenda. But if the history of our people show anything, it is that we persevere. As one of those London runners said at the marathon -- we're going to keep running, and we're going to keep on doing this. And that's the spirit of confidence and resolve that we will continue to draw upon as we work together to meet these challenges.

So, David, thank you very much. And welcome.

PRIME MINISTER CAMERON: Thank you very much, Barack. And thank you for the warm welcome. It's great to be back here with you in the White House. Thank you for what you said about Margaret Thatcher. It was a pleasure to welcome so many Americans to her remarkable funeral in the U.K.

I absolutely echo what you said about the appalling outrage in Boston. I look forward to going there to pay my tribute to the people of that remarkable city and their courage, and we will always stand with you in the fight against terrorism.

Thank you for the remarks about the cricket and the basketball. I haven't made much progress -- I made a bit of progress on baseball; I actually read a book about it this year, so maybe next time we'll get to work on that one.

It's good to be back for the first time since the American people returned you to office. And as you said, the relationship between Britain and the United States is a partnership without parallel. Day in, day out across the world, our diplomats and intelligence agencies work together, our soldiers serve together, and our businesses trade with each other.

In Afghanistan, our armed forces are together defending the stability that will make us all safer. And in the global economic race, our businesses are doing more than $17 billion of trade across the Atlantic every month of every year. And in a changing world, our nations share a resolve to stand up for democracy, for enterprise and for freedom.

We've discussed many issues today, as the President has said. Let me highlight three: the economy, the G8, and Syria.

Our greatest challenge is to secure a sustainable economic recovery. Each of us has to find the right solutions at home. For all of us, it means dealing with debt, it means restoring stability, getting our economy growing, and together seizing new opportunities to grow our economies.

President Obama and I have both championed a free trade deal between the European Union and the United States. And there is a real chance now to get the process launched in time for the G8. So the next five weeks are crucial. To realize the huge benefits this deal could bring will take ambition and political will -- that means everything on the table, even the difficult issues, and no

exceptions. It's worth the effort. For Britain alone, an ambitious deal could be worth up to 10 billion pounds a year, boosting industries from car manufacturing to financial services. We discussed the G8 Summit in some detail. When we meet on the shores of Loch Erne in Northern Ireland five weeks from today, I want us to agree ambitious action for economic growth. Open trade is at the heart of this, but we have a broader agenda, too -- to make sure everyone shares in the benefits of this greater openness, not just in our advanced economies but in the developing world, too. I'm an unashamedly pro-business politician, but as we open up our economies to get business growing, we need to make sure that all companies pay their taxes properly and enable citizens to hold their governments and businesses to account.

Today we've agreed to tackle the scourge of tax evasion. We need to know who really owns a company, who profits from it, whether taxes are paid. And we need a new mechanism to track where multinationals make their money and where they pay their taxes so we can stop those that are manipulating the system unfairly.

Finally, we discussed the brutal conflict in Syria -- 80,000 dead; 5 million people forced from their homes. Syria's history is being written in the blood of her people, and it is happening on our watch. The world urgently needs to come together to bring the killing to an end. None of us have any interest in seeing more lives lost, in seeing chemical weapons used, or extremist violence spreading even further.

So we welcome President Putin's agreement to join an effort to achieve a political solution. The challenges remain formidable, but we have an urgent window of opportunity before the worst fears are realized. There is no more urgent international task than this. We need to get Syrians to the table to agree a transitional government that can win the consent of all of the Syrian people. But there will be no political progress unless the opposition is able to withstand the onslaught, and put pressure on Assad so he knows there is no military victory. So we will also increase our efforts to support and to shape the moderate opposition.

Britain is pushing for more flexibility in the EU arms embargo and we will double nonlethal support to the Syrian opposition in the coming year. Armored vehicles, body armor, and power generators are route to be shipped. We're helping local councils govern the areas that they liberate, and we're supporting Lebanon and Jordan to deal with the influx of refugees. We'll also do more for those in desperate humanitarian need -- care for trauma injuries; helping torture victims to recover; getting Syrian families drinking clean water; having access to food, to shelter.

There is now, I believe, common ground between the U.S., U.K., Russia, and many others that whatever our differences, we have the same aim -- a stable, inclusive, and peaceful Syria, free from the scourge of extremism. There is real political will behind this. We now need to get on and do everything we can to make it happen.

Barack, thank you once again for your warm welcome and for our talks today.

PRESIDENT OBAMA: Thank you. All right, we've got time for a couple of questions. We're going to start with Julie Pace.

Q Thank you, Mr. President. I wanted to ask about the IRS and Benghazi. When did you first learn that the IRS was targeting conservative political groups? Do you feel that the IRS has betrayed the public's trust? And what do you think the repercussions for these actions should be? And on Benghazi, newly public emails show that the White House and the State Department appear to have been more closely involved with the crafting of the talking points on the attack than first acknowledged. Do you think the White House misled the public about its role in shaping the talking points? And do you stand by your administration's assertions that the talking points were not purposely changed to downplay the prospects of terrorism? And, Prime Minister Cameron, on Syria, if the EU arms embargo that you mentioned is amended or lapses, is it your intention to send the Syrian opposition forces weapons? And are you encouraging President Obama to take the same step? Thank you.

PRESIDENT OBAMA: Well, let me take the IRS situation first. I first learned about it from the same news reports that I think most people learned about this. I think it was on Friday. And this is pretty straightforward.

If, in fact, IRS personnel engaged in the kind of practices that had been reported on and were intentionally targeting conservative groups, then that's outrageous and there's no place for it. And they have to be held fully accountable, because the IRS as an independent agency requires absolute integrity, and people have to have confidence that they're applying it in a non-partisan way -- applying the laws in a non-partisan way.

And you should feel that way regardless of party. I don't care whether you're a Democrat, independent or a Republican. At some point, there are going to be Republican administrations. At some point, there are going to be Democratic ones. Either way, you don't want the IRS ever being perceived to be biased and anything less than neutral in terms of how they operate. So this is something that I think people are properly concerned about.

The IG is conducting its investigation. And I am not going to comment on their specific findings prematurely, but I can tell you that if you've got the IRS operating in anything less than a neutral and non-partisan way, then that is outrageous, it is contrary to our traditions. And people have to be held accountable, and it's got to be fixed. So we'll wait and see what exactly all the details and the facts are. But I've got no patience with it. I will not tolerate it. And we will make sure that we find out exactly what happened on this.

With respect to Benghazi, we've now seen this argument that's been made by some folks primarily up on Capitol Hill for months now. And I've just got to say -- here's what we know. Americans died in Benghazi. What we also know is clearly they were not in a position where they were adequately protected. The day after it happened, I acknowledged that this was an act of terrorism. And what I pledged to the American people was that we would find out what happened, we would make sure that it did not happen again, and we would make sure that we held accountable those who had perpetrated this terrible crime.

And that's exactly what we've been trying to do. And over the last several months, there was a review board headed by two distinguished Americans -- Mike Mullen and Tom Pickering -- who investigated every element of this. And what they discovered was some pretty harsh judgments in terms of how we had worked to protect consulates and embassies around the world. They gave us a whole series of recommendations. Those recommendations are being implemented as we speak.

The whole issue of talking points, frankly, throughout this process has been a sideshow. What we have been very clear about throughout was that immediately after this event happened we were not clear who exactly had carried it out, how it had occurred, what the motivations were. It happened at the same time as we had seen attacks on U.S. embassies in Cairo as a consequence of this film. And nobody understood exactly what was taking place during the course of those first few days.

And the emails that you allude to were provided by us to congressional committees. They reviewed them several months ago, concluded that, in fact, there was nothing afoul in terms of the process that we had used. And suddenly, three days ago, this gets spun up as if there's something new to the story. There's no "there" there.

Keep in mind, by the way, these so-called talking points that were prepared for Susan Rice five, six days after the event occurred pretty much matched the assessments that I was receiving at that time in my presidential daily briefing. And keep in mind that two to three days after Susan Rice appeared on the Sunday shows, using these talking points, which have been the source of all this controversy, I sent up the head of our National Counterterrorism Center, Matt Olsen, up to Capitol Hill and specifically said it was an act of terrorism and that extremist elements inside of Libya had been involved in it.

So if this was some effort on our part to try to downplay what had happened or tamp it down, that would be a pretty odd thing that three days later we end up putting out all the information that, in fact, has now served as the basis for everybody recognizing that this was a terrorist attack and that it may have included elements that were planned by extremists inside of Libya.

Who executes some sort of cover-up or effort to tamp things down for three days? So the whole thing defies logic. And the fact that this keeps on getting churned out, frankly, has a lot to do with political motivations. We've had folks who have challenged Hillary Clinton's integrity, Susan Rice's integrity, Mike Mullen and Tom Pickering's integrity. It's a given that mine gets challenged by these same folks. They've used it for fundraising.

And frankly, if anybody out there wants to actually focus on how we make sure something like this does not happen again, I am happy to get their advice and information and counsel. But the fact of the matter is these four Americans, as I said right when it happened, were people I sent into the field, and I've been very clear about taking responsibility for the fact that we were not able to prevent their deaths. And we are doing everything we can to make sure we prevent it, in part because there are still diplomats around the world who are in very dangerous, difficult situations. And we don't have time to be playing these kinds of political games here in Washington. We should be focused on what are we doing to protect them.

And that's not easy, by the way. And it's going to require resources and tough judgments and tough calls. And there are a whole bunch of diplomats out there who know that they're in harm's way. And there are threat streams that come through every so often, with respect to our embassies and our consulates -- and that's not just us, by the way; the British have to deal with the same thing.

And we've got a whole bunch of people in the State Department who consistently say, you know what, I'm willing to step up, I'm willing to put myself in harm's way because I think that this mission is important in terms of serving the United States and advancing our interests around the globe.

And so we dishonor them when we turn things like this into a political circus. What happened was tragic. It was carried out by extremists inside of Libya. We are out there trying to hunt down the folks who carried this out, and we are trying to make sure that we fix the system so that it doesn't happen again.

PRIME MINISTER CAMERON: Thank you. On the issue of the opposition in Syria, we have not made the decision to arm opposition groups in Syria. What we've done is we have amended the EU arms embargo in order that we can give technical assistance and technical advice. And as I said in my statement, that's exactly what we're doing.

We're continuing to examine and look at the EU arms embargo and see whether we need to make further changes to it in order to facilitate our work with the opposition. I do believe that there's more we can do, alongside technical advice, assistance, help, in order to shape them, in order to work with them. And to those who doubt that approach, I would just argue that, look, if we don't help the Syrian opposition -- who we do recognize as being legitimate, who have signed up to a statement about a future for Syria that is democratic, that respects the rights of minorities -- if we don't work with that part of the opposition, then we shouldn't be surprised if the extremist elements grow.

So I think being engaged with the Syrian opposition is the right approach, and that is an approach I know I share with the President and with other colleagues in the European Union.

James Landale from the BBC.

Q James Landale, BBC. Prime Minister, you're talking here today about a new EU-U.S. trade deal, and yet members of your party are now talking about leaving the European Union. What is your message to them and to those pushing for an early referendum? And if there were a referendum tomorrow, how would you vote?

And, Mr. President, earlier this year you told David Cameron that you wanted a strong U.K. in a strong EU. How concerned are you that members of David Cameron's Cabinet are now openly contemplating withdrawal?

And on Syria, if I may, a question to both of you: What gives you any confidence that the Russians are going to help you on this?

PRIME MINISTER CAMERON: Well, first of all, on the issue of a referendum, look, there's not going to be a referendum tomorrow. And there's a very good reason why there's not going to be a referendum tomorrow -- is because it would give the British public I think an entirely false choice between the status quo -- which I don't think is acceptable. I want to see the European Union change. I want to see Britain's relationship with the European [Union] change and improve. So it would be a false choice between the status quo and leaving. And I don't think that is the choice the British public want or the British public deserve.

Everything I do in this area is guided by a very simple principle, which is what is in the national interest of Britain. Is it in the national interest of Britain to have a transatlantic trade deal that will make our countries more prosperous; that will get people to work; that will help our businesses? Yes, it is. And so we will push for this transatlantic trade deal.

Is it in our interests to reform the European Union to make it more open, more competitive, more flexible, and to improve Britain's place within the European Union? Yes, it is in our national interest. And it's not only in our national interest, it is achievable, because Europe has to change because the single currency is driving change for that part of the European Union that is in the single currency. And just as they want changes, so I believe Britain is quite entitled to ask for and to get changes in response.

And then finally, is it in Britain's national interest, once we have achieved those changes but before the end of 2017, to consult the British public in a proper, full-on, in/out referendum? Yes, I believe it is. So that's the approach that we take -- everything driven by what is in the British national interest.

That is what I'm going to deliver. It's absolutely right for our country. It has very strong support throughout the country and in the Conservative Party, and that's exactly what I'm going to do.

On the Syrian issue, you asked the question -- what are the signs of Russian engagement. Well, I had very good talks with President Putin in Sochi on Friday. And, look, we had a very frank conversation in that we have approached this -- and in some extent, still do approach this -- in a different way. I have been very vocal in supporting the Syrian opposition and saying that Assad has to go, that he is not legitimate, and I continue to say that. And President Putin has taken a different point of view.

But where there is a common interest is that it is in both our interests that at the end of this there is a stable, democratic Syria, that there is a stable neighborhood, and that we don't encourage the growth of violent extremism. And I think both the Russian President, the American President, and myself -- I think we can all see that the current trajectory of how things are going is not actually in anybody's interest and so it is worth this major diplomatic effort, which we are all together leading this major diplomatic effort to bring the parties to the table to achieve a transition at the top in Syria so that we can make the change that country needs.

PRESIDENT OBAMA: With respect to the relationship between the U.K. and the EU, we have a special relationship with the United Kingdom. And we believe that our capacity to partner with a United Kingdom that is active, robust, outward-looking and engaged with the world is hugely important to our own interests as well as the world. And I think the U.K.'s participation in the EU is an expression of its influence and its role in the world, as well as obviously a very important economic partnership.

Now, ultimately, the people of the U.K. have to make decisions for themselves. I will say this -- that David's basic point that you probably want to see if you can fix what's broken in a very important relationship before you break it off makes some sense to me. And I know that David has been very active in seeking some reforms internal to the EU. Those are tough negotiations. You've got a lot of countries involved, I recognize that. But so long as we haven't yet evaluated how successful those reforms will be, I at least would be interested in seeing whether or not those are successful before rendering a final judgment. Again, I want to emphasize these are issues for the people of the United Kingdom to make a decision about, not ours.

With respect to Syria, I think David said it very well. If you look objectively, the entire world community has an interest in seeing a Syria that is not engaged in sectarian war, in which the Syrian people are not being slaughtered, that is an island of peace as opposed to potentially an outpost for extremists. That's not just true for the United States. That's not just true for Great Britain. That's not just true for countries like Jordan and Turkey that border Syria, but that's also true for Russia.

And I'm pleased to hear that David had a very constructive conversation with President Putin shortly after the conversation that had taken place between John Kerry and President Putin. I've spoken to President Putin several times on this topic. And our basic argument is that as a leader on the world stage, Russia has an interest, as well as an obligation, to try to resolve this issue in a way that can lead to the kind of outcome that we'd all like to see over the long term.

And, look, I don't think it's any secret that there remains lingering suspicions between Russia and other members of the G8 or the West. It's been several decades now since Russia transformed itself and the Eastern Bloc transformed itself. But some of those suspicions still exist.

And part of what my goal has been, John Kerry's goal has been -- and I know that David's goal has been -- to try to break down some of those suspicions and look objectively at the situation.

If, in fact, we can broker a peaceful political transition that leads to Assad's departure but a state in Syria that is still intact; that accommodates the interests of all the ethnic groups, all the religious groups inside of Syria; and that ends the bloodshed, stabilizes the situation -- that's not just going to be good for us; that will be good for everybody. And we're going to be very persistent in trying to make that happen.

I'm not promising that it's going to be successful. Frankly, sometimes once sort of the Furies have been unleashed in a situation like we're seeing in Syria, it's very hard to put things back

together. And there are going to be enormous challenges in getting a credible process going even if Russia is involved, because we still have other countries like Iran and we have non-state actors like Hezbollah that have been actively involved. And frankly, on the other side we've got organizations like al Nusra that are essentially affiliated to al Qaeda that have another agenda beyond just getting rid of Assad.

So all that makes a combustible mix and it's going to be challenging, but it's worth the effort. And what we can tell you is that we're always more successful in any global effort when we've got a strong friend and partner like Great Britain by our side and strong leadership by Prime Minister David Cameron.

Thank you very much, everybody.

END
12:11 P.M. EDT

The White House
Office of the Press Secretary

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For Immediate Release January 27, 2010

Remarks by the President in State of the Union Address

U.S. Capitol

9:11 P.M. EST

THE PRESIDENT: Madam Speaker, Vice President Biden, members of Congress, distinguished guests, and fellow Americans:

Our Constitution declares that from time to time, the President shall give to Congress information about the state of our union. For 220 years, our leaders have fulfilled this duty. They've done so during periods of prosperity and tranquility. And they've done so in the midst of war and depression; at moments of great strife and great struggle.

It's tempting to look back on these moments and assume that our progress was inevitable — that America was always destined to succeed. But when the Union was turned back at Bull Run, and the Allies first landed at Omaha Beach, victory was very much in doubt. When the market crashed on Black Tuesday, and civil rights marchers were beaten on Bloody Sunday, the future was anything but certain. These were the times that tested the courage of our convictions, and the strength of our union. And despite all our divisions and disagreements, our hesitations and our fears, America prevailed because we chose to move forward as one nation, as one people.

Again, we are tested. And again, we must answer history's call.

One year ago, I took office amid two wars, an economy rocked by a severe recession, a financial system on the verge of collapse, and a government deeply in debt. Experts from across the political spectrum warned that if we did not act, we might face a second depression. So we acted — immediately and aggressively. And one year later, the worst of the storm has passed.

But the devastation remains. One in 10 Americans still cannot find work. Many businesses have shuttered. Home values have declined. Small towns and rural communities have been hit especially hard. And for those who'd already known poverty, life has become that much harder.

This recession has also compounded the burdens that America's families have been dealing with for decades — the burden of working harder and longer for less; of being unable to save enough to retire or help kids with college.

So I know the anxieties that are out there right now. They're not new. These struggles are the reason I ran for President. These struggles are what I've witnessed for years in places like Elkhart, Indiana; Galesburg, Illinois. I hear about them in the letters that I read each night. The toughest to read are those written by children — asking why they have to move from their home, asking when their mom or dad will be able to go back to work.

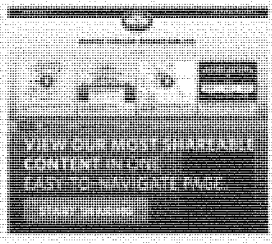
For these Americans and so many others, change has not come fast enough. Some are frustrated; some are angry. They don't understand why it seems like bad behavior on Wall Street is rewarded, but hard work on Main Street isn't; or why Washington has been unable or unwilling to solve any of our problems. They're tired of the partisanship and the shouting and the pettiness. They know we can't afford it. Not now.

So we face big and difficult challenges. And what the American people hope — what they deserve — is for all of us, Democrats and Republicans, to work through our differences; to overcome the numbing weight of our politics. For while the people who sent us here have different backgrounds, different stories, different beliefs, the anxieties they face are the same. The aspirations they hold are shared: a job that pays the bills; a chance to get ahead; most of all, the ability to give their children a better life.

You know what else they share? They share a stubborn resilience in the face of adversity. After one of the most difficult years in our history, they remain busy building cars and teaching kids, starting businesses and going back to school. They're coaching Little League and helping their neighbors. One woman wrote to me and said, "We are strained but hopeful, struggling but encouraged."

WATCH THE VIDEO

January 20, 2010 12:00 AM
The 2010 State of the Union Address



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It's because of this spirit — this great decency and great strength — that I have never been more hopeful about America's future than I am tonight. (Applause.) Despite our hardships, our union is strong. We do not give up. We do not quit. We do not allow fear or division to break our spirit. In this new decade, it's time the American people get a government that matches their decency, that embodies their strength. (Applause.)
And tonight, tonight I'd like to talk about how together we can deliver on that promise.

It begins with our economy.

Our most urgent task upon taking office was to shore up the same banks that helped cause this crisis. It was not easy to do. And if there's one thing that has united Democrats and Republicans, and everybody in between, it's that we all hated the bank bailout. I hated it -- (applause.) I hated it. You hated it. It was about as popular as a root canal. (Laughter.)

But when I ran for President, I promised I wouldn't just do what was popular — I would do what was necessary. And if we had allowed the meltdown of the financial system, unemployment might be double what it is today. More businesses would certainly have closed. More homes would have surely been lost.

So I supported the last administration's efforts to create the financial rescue program. And when we took that program over, we made it more transparent and more accountable. And as a result, the markets are now stabilized, and we've recovered most of the money we spent on the banks. (Applause.) Most but not all.

To recover the rest, I've proposed a fee on the biggest banks. (Applause.) Now, I know Wall Street isn't keen on this idea. But if these firms can afford to hand out big bonuses again, they can afford a modest fee to pay back the taxpayers who rescued them in their time of need. (Applause.)

Now, as we stabilized the financial system, we also took steps to get our economy growing again, save as many jobs as possible, and help Americans who had become unemployed.

That's why we extended or increased unemployment benefits for more than 18 million Americans; made health insurance 65 percent cheaper for families who get their coverage through COBRA; and passed 26 different tax cuts.

Now, let me repeat. We cut taxes. We cut taxes for 95 percent of working families. (Applause.) We cut taxes for small businesses. We cut taxes for first-time homebuyers. We cut taxes for parents trying to care for their children. We cut taxes for 8 million Americans paying for college. (Applause.)

I thought I'd get some applause on that one. (Laughter and applause.)

As a result, millions of Americans had more to spend on gas and food and other necessities, all of which helped businesses keep more workers. And we haven't raised income taxes by a single dime on a single person. Not a single dime. (Applause.)

Because of the steps we took, there are about two million Americans working right now who would otherwise be unemployed. (Applause.) Two hundred thousand work in construction and clean energy; 300,000 are teachers and other education workers. Tens of thousands are cops, firefighters, correctional officers, first responders. (Applause.) And we're on track to add another one and a half million jobs to this total by the end of the year.

The plan that has made all of this possible, from the tax cuts to the jobs, is the Recovery Act. (Applause.) That's right — the Recovery Act, also known as the stimulus bill. (Applause.) Economists on the left and the right say this bill has helped save jobs and avert disaster. But you don't have to take their word for it. Talk to the small business in Phoenix that will triple its workforce because of the Recovery Act. Talk to the window manufacturer in Philadelphia who said he used to be skeptical about the Recovery Act, until he had to add two more work shifts just because of the business it created. Talk to the single teacher raising two kids who was told by her principal in the last week of school that because of the Recovery Act, she wouldn't be laid off after all.

There are stories like this all across America. And after two years of recession, the economy is growing again. Retirement funds have started to gain back some of their value. Businesses are beginning to invest again, and slowly some are starting to hire again.

But I realize that for every success story, there are other stories, of men and women who wake up with the anguish of not knowing where their next paycheck will come from; who send out resumes week after week and hear nothing in response. That is why jobs must be our number-one focus in 2010, and that's why I'm calling for a new jobs bill tonight. (Applause.)

Now, the true engine of job creation in this country will always be America's businesses. (Applause.) But government can create the conditions necessary for businesses to expand and hire more workers.

We should start where most new jobs do — in small businesses, companies that begin when -- (applause) -- companies that begin when an entrepreneur -- when an entrepreneur takes a chance on a dream, or a worker decides it's time she became her own boss. Through sheer grit and determination, these companies have weathered the recession and they're ready to grow. But when you talk to small businessowners in places like

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Allentown, Pennsylvania, or Elyria, Ohio, you find out that even though banks on Wall Street are lending again, they're mostly lending to bigger companies. Financing remains difficult for small businessowners across the country, even those that are making a profit.

So tonight, I'm proposing that we take $30 billion of the money Wall Street banks have repaid and use it to help community banks give small businesses the credit they need to stay afloat. (Applause.) I'm also proposing a new small business tax credit
— one that will go to over one million small businesses who hire new workers or raise wages. (Applause.) While we're at it, let's also eliminate all capital gains taxes on small business investment, and provide a tax incentive for all large businesses and all small businesses to invest in new plants and equipment. (Applause.)

Next, we can put Americans to work today building the infrastructure of tomorrow. (Applause.) From the first railroads to the Interstate Highway System, our nation has always been built to compete. There's no reason Europe or China should have the fastest trains, or the new factories that manufacture clean energy products.

Tomorrow, I'll visit Tampa, Florida, where workers will soon break ground on a new high-speed railroad funded by the Recovery Act. (Applause.) There are projects like that all across this country that will create jobs and help move our nation's goods, services, and information. (Applause.)

We should put more Americans to work building clean energy facilities -- (applause) -- and give rebates to Americans who make their homes more energy-efficient, which supports clean energy jobs. (Applause.) And to encourage these and other businesses to stay within our borders, it is time to finally slash the tax breaks for companies that ship our jobs overseas, and give those tax breaks to companies that create jobs right here in the United States of America. (Applause.)

Now, the House has passed a jobs bill that includes some of these steps. (Applause.) As the first order of business this year, I urge the Senate to do the same, and I know they will. (Applause.) They will. (Applause.) People are out of work. They're hurting. They need our help. And I want a jobs bill on my desk without delay. (Applause.)

But the truth is, these steps won't make up for the seven million jobs that we've lost over the last two years. The only way to move to full employment is to lay a new foundation for long-term economic growth, and finally address the problems that America's families have confronted for years.

We can't afford another so-called economic "expansion" like the one from the last decade -- what some call the "lost decade" -- where jobs grew more slowly than during any prior expansion; where the income of the average American household declined while the cost of health care and tuition reached record highs; where prosperity was built on a housing bubble and financial speculation.

From the day I took office, I've been told that addressing our larger challenges is too ambitious; such an effort would be too contentious. I've been told that our political system is too gridlocked, and that we should just put things on hold for a while.

For those who make these claims, I have one simple question: How long should we wait? How long should America put its future on hold? (Applause.)

You see, Washington has been telling us to wait for decades, even as the problems have grown worse. Meanwhile, China is not waiting to revamp its economy. Germany is not waiting. India is not waiting. These nations -- they're not standing still. These nations aren't playing for second place. They're putting more emphasis on math and science. They're rebuilding their infrastructure. They're making serious investments in clean energy because they want those jobs. Well, I do not accept second place for the United States of America. (Applause.)

As hard as it may be, as uncomfortable and contentious as the debates may become, it's time to get serious about fixing the problems that are hampering our growth.

Now, one place to start is serious financial reform. Look, I am not interested in punishing banks. I'm interested in protecting our economy. A strong, healthy financial market makes it possible for businesses to access credit and create new jobs. It channels the savings of families into investments that raise incomes. But that can only happen if we guard against the same recklessness that nearly brought down our entire economy.

We need to make sure consumers and middle-class families have the information they need to make financial decisions. (Applause.) We can't allow financial institutions, including those that take your deposits, to take risks that threaten the whole economy.

Now, the House has already passed financial reform with many of these changes. (Applause.) And the lobbyists are trying to kill it. But we cannot let them win this fight. (Applause.) And if the bill that ends up on my desk does not meet the test of real reform, I will send it back until we get it right. We've got to get it right. (Applause.)

Next, we need to encourage American innovation. Last year, we made the largest investment in basic research funding in history -- (applause) -- an investment that could lead to the world's cheapest solar cells or treatment that kills cancer cells but leaves healthy ones untouched. And no area is more ripe for such innovation than energy.

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You can see the results of last year's investments in clean energy — in the Nor h Carolina company that will create 1,200 jobs nationwide helping to make advanced batteries; or in the California business that will put a housand people to work making solar panels.

But to create more of these clean energy jobs, we need more production, more efficiency, more incentives. And that means building a new generation of safe, clean nuclear power plants in this country. (Applause.) It means making tough decisions about opening new offshore areas for oil and gas development. (Applause.) It means continued investment in advanced biofuels and clean coal technologies. (Applause.) And, yes, it means passing a comprehensive energy and climate bill with incentives hat will finally make clean energy the profitable kind of energy in America. (Applause.)

I am grateful to the House for passing such a bill last year. (Applause.) And this year I'm eager to help advance the bipar isan effort in he Senate. (Applause.)

I know there have been questions about whether we can afford such changes in a tough economy. I know that there are hose who disagree with the overwhelming scientific evidence on climate change. But here's the thing — even if you doubt the evidence, providing incentives for energy-efficiency and clean energy are the right thing to do for our future — because the nation that leads the clean energy economy will be the nation that leads the global economy. And America must be that nation. (Applause.)

Third, we need to export more of our goods. (Applause.) Because the more products we make and sell to other countries, the more jobs we support right here in America. (Applause.) So tonight, we set a new goal: We will double our exports over the next five years, an increase that will support two million jobs in America. (Applause.) To help meet this goal, we're launching a National Export Initiative hat will help farmers and small businesses increase their exports, and reform export controls consistent with national security. (Applause.)

We have to seek new markets aggressively, just as our competitors are. If America sits on the sidelines while other nations sign trade deals, we will lose the chance to create jobs on our shores. (Applause.) But realizing those benefits also means enforcing those agreements so our trading partners play by the rules. (Applause.) And that's why we'll continue to shape a Doha trade agreement that opens global markets, and why we will strengthen our trade relations in Asia and with key partners like South Korea and Panama and Colombia. (Applause.)

Fourth, we need to invest in the skills and education of our people. (Applause.)

Now, this year, we've broken through the stalemate between left and right by launching a national competition to improve our schools. And the idea here is simple: Instead of rewarding failure, we only reward success. Instead of funding the status quo, we only invest in reform -- reform that raises student achievement; inspires students to excel in math and science; and turns around failing schools that steal the future of too many young Americans, from rural communities to the inner city. In the 21st century, the best anti-poverty program around is a world-class education. (Applause.) And in this country, the success of our children cannot depend more on where they live than on their potential.

When we renew the Elementary and Secondary Education Act, we will work with Congress to expand these reforms to all 50 states. Still, in this economy, a high school diploma no longer guarantees a good job. That's why I urge the Senate to follow the House and pass a bill that will revitalize our community colleges, which are a career pathway to the children of so many working families. (Applause.)

To make college more affordable, this bill will finally end the unwarranted taxpayer subsidies that go to banks for student loans. (Applause.) Instead, let's take that money and give families a $10,000 tax credit for four years of college and increase Pell Grants. (Applause.) And let's tell another one million students that when they graduate, they will be required to pay only 10 percent of heir income on student loans, and all of their debt will be forgiven after 20 years — and forgiven after 10 years if they choose a career in public service, because in the United States of America, no one should go broke because they chose to go to college. (Applause.)

And by he way, it's time for colleges and universities to get serious about cutting heir own costs — (applause) — because they, too, have a responsibility to help solve this problem.

Now, the price of college tuition is just one of the burdens facing the middle class. That's why last year I asked Vice President Biden to chair a task force on middle-class families. That's why we're nearly doubling the child care tax credit, and making it easier to save for retirement by giving access to every worker a retirement account and expanding the tax credit for hose who start a nest egg. That's why we're working to lift the value of a family's single largest investment — heir home. The steps we took last year to shore up he housing market have allowed millions of Americans to take out new loans and save an average of $1,500 on mortgage payments.

This year, we will step up refinancing so that homeowners can move into more affordable mortgages. (Applause.) And it is precisely to relieve the burden on middle-class families that we still need health insurance reform. (Applause.) Yes, we do. (Applause.)

Now, let's clear a few hings up. (Laughter.) I didn't choose to tackle this issue to get some legislative victory under my belt. And by now it should be fairly obvious that I didn't take on health care because it was good politics.

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(Laughter.) I look on heal h care because of he stories I've heard from Americans with preexisting conditions whose lives depend on getting coverage; pa ients who've been denied coverage; families — even those with insurance — who are just one illness away from financial ruin.

After nearly a century of trying — Democratic administra ions, Republican administrations — we are closer than ever to bringing more security to he lives of so many Americans. The approach we've taken would protect every American from the worst practices of the insurance industry. It would give small businesses and uninsured Americans a chance to choose an affordable health care plan in a competi ive market. It would require every insurance plan to cover preventive care.

And by he way, I want to acknowledge our First Lady, Michelle Obama, who this year is creating a national movement to tackle the epidemic of childhood obesity and make kids healthier. (Applause.) Thank you. She gets embarrassed. (Laughter.)

Our approach would preserve the right of Americans who have insurance to keep their doctor and their plan. It would reduce costs and premiums for millions of families and businesses. And according to the Congressional Budget Office — he independent organiza ion that both parties have cited as the official scorekeeper for Congress — our approach would bring down the deficit by as much as $1 trillion over the next two decades. (Applause.)

Still, this is a complex issue, and the longer it was debated, he more skeptical people became. I take my share of the blame for not explaining it more clearly to the American people. And I know that with all the lobbying and horse-trading, the process left most Americans wondering, "What's in it for me?"

But I also know his problem is not going away. By the time I'm finished speaking tonight, more Americans will have lost their health insurance. Millions will lose it his year. Our deficit will grow. Premiums will go up. Patients will be denied the care they need. Small business owners will continue to drop coverage altogether. I will not walk away from these Americans, and neither should he people in his chamber. (Applause.)

So, as temperatures cool, I want everyone to take another look at the plan we've proposed. There's a reason why many doctors, nurses, and heal h care experts who know our system best consider his approach a vast improvement over the status quo. But if anyone from either party has a better approach that will bring down premiums, bring down the deficit, cover the uninsured, strengthen Medicare for seniors, and stop insurance company abuses, let me know. (Applause.) Let me know. Let me know. (Applause.) I'm eager to see it.

Here's what I ask Congress, though: Don't walk away from reform. Not now. Not when we are so close. Let us find a way to come together and finish the job for the American people. (Applause.) Let's get it done. Let's get it done. (Applause.)

Now, even as heal h care reform would reduce our deficit, it's not enough to dig us out of a massive fiscal hole in which we find ourselves. It's a challenge that makes all others that much harder to solve, and one hat's been subject to a lot of political posturing. So let me start the discussion of government spending by set ing the record straight.

At the beginning of the last decade, the year 2000, America had a budget surplus of over $200 billion. (Applause.) By the time I took office, we had a one-year deficit of over $1 trillion and projected deficits of $8 trillion over he next decade. Most of this was the result of not paying for two wars, two tax cuts, and an expensive prescription drug program. On top of that, he effects of he recession put a $3 trillion hole in our budget. All this was before I walked in he door. (Laughter and applause.)

Now -- just stating the facts. Now, if we had taken office in ordinary imes, I would have liked nothing more than to start bringing down the deficit. But we took office amid a crisis. And our efforts to prevent a second depression have added another $1 trillion to our national debt. That, too, is a fact.

I'm absolutely convinced that was the right thing to do. But families across the country are tightening their belts and making tough decisions. The federal government should do the same. (Applause.) So tonight, I'm proposing specific steps to pay for he trillion dollars that it took to rescue the economy last year.

Starting in 2011, we are prepared to freeze government spending for three years. (Applause.) Spending related to our national security, Medicare, Medicaid, and Social Security will not be affected. But all other discretionary government programs will. Like any cash-strapped family, we will work within a budget to invest in what we need and sacrifice what we don't. And if I have to enforce this discipline by veto, I will. (Applause.)

We will continue to go through the budget, line by line, page by page, to eliminate programs that we can't afford and don't work. We've already identified $20 billion in savings for next year. To help working families, we'll extend our middle-class tax cuts. But at a time of record deficits, we will not continue tax cuts for oil companies, for investment fund managers, and for those making over $250,000 a year. We just can't afford it. (Applause.)

Now, even after paying for what we spent on my watch, we'll still face the massive deficit we had when I took office. More importantly, the cost of Medicare, Medicaid, and Social Security will continue to skyrocket. That's why I've called for a bipartisan fiscal commission, modeled on a proposal by Republican Judd Gregg and Democrat Kent

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Conrad. (Applause.) This can't be one of those Washington gimmicks that lets us pretend we solved a problem. The commission will have to provide a specific set of solutions by a certain deadline.

Now, yesterday, the Senate blocked a bill that would have created this commission. So I'll issue an executive order that will allow us to go forward, because I refuse to pass this problem on to another generation of Americans. (Applause.) And when the vote comes tomorrow, the Senate should restore the pay-as-you-go law that was a big reason for why we had record surpluses in the 1990s. (Applause.)

Now, I know that some in my own party will argue that we can't address the deficit or freeze government spending when so many are still hurting. And I agree -- which is why this freeze won't take effect until next year -- (laughter) -- when the economy is stronger. That's how budgeting works. (Laughter and applause.) But understand -- understand if we don't take meaningful steps to rein in our debt, it could damage our markets, increase the cost of borrowing, and jeopardize our recovery -- all of which would have an even worse effect on our job growth and family incomes.

From some on the right, I expect we'll hear a different argument -- that if we just make fewer investments in our people, extend tax cuts including those for the wealthiest Americans, eliminate more regulations, maintain the status quo on health care, our deficits will go away. The problem is that's what we did for eight years. (Applause.) That's what helped us into this crisis. It's what helped lead to these deficits. We can't do it again.

Rather than fight the same tired battles that have dominated Washington for decades, it's time to try something new. Let's invest in our people without leaving them a mountain of debt. Let's meet our responsibility to the citizens who sent us here. Let's try common sense. (Laughter.) A novel concept.

To do that, we have to recognize that we face more than a deficit of dollars right now. We face a deficit of trust -- deep and corrosive doubts about how Washington works that have been growing for years. To close that credibility gap we have to take action on both ends of Pennsylvania Avenue -- to end the outsized influence of lobbyists; to do our work openly; to give our people the government they deserve. (Applause.)

That's what I came to Washington to do. That's why -- for the first time in history -- my administration posts on our White House visitors online. That's why we've excluded lobbyists from policymaking jobs, or seats on federal boards and commissions.

But we can't stop there. It's time to require lobbyists to disclose each contact they make on behalf of a client with my administration or with Congress. It's time to put strict limits on the contributions that lobbyists give to candidates for federal office.

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests -- including foreign corporations -- to spend without limit in our elections. (Applause.) I don't think American elections should be bankrolled by America's most powerful interests, or worse, by foreign entities. (Applause.) They should be decided by the American people. And I'd urge Democrats and Republicans to pass a bill that helps to correct some of these problems.

I'm also calling on Congress to continue down the path of earmark reform. Applause.) Democrats and Republicans. (Applause.) Democrats and Republicans. You've trimmed some of this spending, you've embraced some meaningful change. But restoring the public trust demands more. For example, some members of Congress post some earmark requests online. (Applause.) Tonight, I'm calling on Congress to publish all earmark requests on a single Web site before there's a vote, so that the American people can see how their money is being spent. (Applause.)

Of course, none of these reforms will even happen if we don't also reform how we work with one another. Now, I'm not naïve. I never thought that the mere fact of my election would usher in peace and harmony -- (laughter) -- and some post-partisan era. I knew that both parties have fed divisions that are deeply entrenched. And on some issues, there are simply philosophical differences that will always cause us to part ways. These disagreements, about the role of government in our lives, about our national priorities and our national security, they've been taking place for over 200 years. They're the very essence of our democracy.

But what frustrates the American people is a Washington where every day is Election Day. We can't wage a perpetual campaign where the only goal is to see who can get the most embarrassing headlines about the other side -- a belief that if you lose, I win. Neither party should delay or obstruct every single bill just because they can. The confirmation of -- (applause) -- I'm speaking to both parties now. The confirmation of well-qualified public servants shouldn't be held hostage to the pet projects or grudges of a few individual senators. (Applause.)

Washington may think that saying anything about the other side, no matter how false, no matter how malicious, is just part of the game. But it's precisely such politics that has stopped either party from helping the American people. Worse yet, it's sowing further division among our citizens, further distrust in our government.

So, no, I will not give up on trying to change the tone of our politics. I know it's an election year. And after last week, it's clear that campaign fever has come even earlier than usual. But we still need to govern.

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To Democrats, I would remind you that we still have the largest majority in decades, and the people expect us to solve problems, not run for the hills. (Applause.) And if the Republican leadership is going to insist that 60 votes in the Senate are required to do any business at all in this town -- a supermajority -- then the responsibility to govern is now yours as well. (Applause.) Just saying no to everything may be good short-term politics, but it's not leadership. We were sent here to serve our citizens, not our ambitions. (Applause.) So let's show the American people that we can do it together. (Applause.)

This week, I'll be addressing a meeting of the House Republicans. I'd like to begin monthly meetings with both Democratic and Republican leadership. I know you can't wait. (Laughter.)

Throughout our history, no issue has united this country more than our security. Sadly, some of the unity we felt after 9/11 has dissipated. We can argue all we want about who's to blame for this, but I'm not interested in relitigating the past. I know that all of us love this country. All of us are committed to its defense. So let's put aside the schoolyard taunts about who's tough. Let's reject the false choice between protecting our people and upholding our values. Let's leave behind the fear and division, and do what it takes to defend our nation and forge a more hopeful future -- for America and for the world. (Applause.)

That's the work we began last year. Since the day I took office, we've renewed our focus on the terrorists who threaten our nation. We've made substantial investments in our homeland security and disrupted plots that threatened to take American lives. We are filling unacceptable gaps revealed by the failed Christmas attack, with better airline security and swifter action on our intelligence. We've prohibited torture and strengthened partnerships from the Pacific to South Asia to the Arabian Peninsula. And in the last year, hundreds of al Qaeda's fighters and affiliates, including many senior leaders, have been captured or killed -- far more than in 2008.

And in Afghanistan, we're increasing our troops and training Afghan security forces so they can begin to take the lead in July of 2011, and our troops can begin to come home. (Applause.) We will reward good governance, work to reduce corruption, and support the rights of all Afghans -- men and women alike. (Applause.) We're joined by allies and partners who have increased their own commitments, and who will come together tomorrow in London to reaffirm our common purpose. There will be difficult days ahead. But I am absolutely confident we will succeed.

As we take the fight to al Qaeda, we are responsibly leaving Iraq to its people. As a candidate, I promised that I would end this war, and that is what I am doing as President. We will have all of our combat troops out of Iraq by the end of this August. (Applause.) We will support the Iraqi government -- we will support the Iraqi government as they hold elections, and we will continue to partner with the Iraqi people to promote regional peace and prosperity. But make no mistake: This war is ending, and all of our troops are coming home. (Applause.)

Tonight, all of our men and women in uniform -- in Iraq, in Afghanistan, and around the world -- they have to know that we -- that they have our respect, our gratitude, our full support. And just as they must have the resources they need in war, we all have a responsibility to support them when they come home. (Applause.) That's why we made the largest increase in investments for veterans in decades -- last year. (Applause.) That's why we're building a 21st century VA. And that's why Michelle has joined with Jill Biden to forge a national commitment to support military families. (Applause.)

Now, even as we prosecute two wars, we're also confronting perhaps the greatest danger to the American people -- the threat of nuclear weapons. I've embraced the vision of John F. Kennedy and Ronald Reagan through a strategy that reverses the spread of these weapons and seeks a world without them. To reduce our stockpiles and launchers, while ensuring our deterrent, the United States and Russia are completing negotiations on the far-reaching arms control treaty in nearly two decades. (Applause.) And at April's Nuclear Security Summit, we will bring 44 nations together here in Washington, D.C. behind a clear goal: securing all vulnerable nuclear materials around the world in four years, so that they never fall into the hands of terrorists. (Applause.)

Now, these diplomatic efforts have also strengthened our hand in dealing with those nations that insist on violating international agreements in pursuit of nuclear weapons. That's why North Korea now faces increased isolation, and stronger sanctions -- sanctions that are being vigorously enforced. That's why the international community is more united, and the Islamic Republic of Iran is more isolated. And as Iran's leaders continue to ignore their obligations, there should be no doubt: They, too, will face growing consequences. That is a promise. (Applause.)

That's the leadership that we are providing -- engagement that advances the common security and prosperity of all people. We're working through the G20 to sustain a lasting global recovery. We're working with Muslim communities around the world to promote science and education and innovation. We have gone from a bystander to a leader in the fight against climate change. We're helping developing countries to feed themselves, and continuing the fight against HIV/AIDS. And we are launching a new initiative that will give us the capacity to respond faster and more effectively to bioterrorism or an infectious disease -- a plan that will counter threats at home and strengthen public health abroad.

As we have for over 60 years, America takes these actions because our destiny is connected to those beyond our shores. But we also do it because it is right. That's why, as we meet here tonight, over 10,000 Americans are working with many nations to help the people of Haiti recover and rebuild. (Applause.) That's why we stand with the girl who yearns to go to school in Afghanistan, why we support the human rights of the women marching through the streets of Iran; why we advocate for the young man denied a job by corruption in Guinea. For America

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must always stand on the side of freedom and human dignity. (Applause.) Always. (Applause.)

Abroad, America's greatest source of strength has always been our ideals. The same is true at home. We find unity in our incredible diversity, drawing on the promise enshrined in our Constitution: the notion that we're all created equal; that no matter who you are or what you look like, if you abide by the law you should be protected by it; if you adhere to our common values you should be treated no different than anyone else.

We must continually renew this promise. My administration has a Civil Rights Division that is once again prosecuting civil rights violations and employment discrimination. (Applause.) We finally strengthened our laws to protect against crimes driven by hate. (Applause.) This year, I will work with Congress and our military to finally repeal the law that denies gay Americans the right to serve the country they love because of who they are. (Applause.) It's the right thing to do. (Applause.)

We're going to crack down on violations of equal pay laws -- so that women get equal pay for an equal day's work. (Applause.) And we should continue the work of fixing our broken immigration system -- to secure our borders and enforce our laws, and ensure that everyone who plays by the rules can contribute to our economy and enrich our nation. (Applause.)

In the end, it's our ideals, our values that built America -- values that allowed us to forge a nation made up of immigrants from every corner of the globe; values that drive our citizens still. Every day, Americans meet their responsibilities to their families and their employers. Time and again, they lend a hand to their neighbors and give back to their country. They take pride in their labor, and are generous in spirit. These aren't Republican values or Democratic values that they're living by; business values or labor values. They're American values.

Unfortunately, too many of our citizens have lost faith that our biggest institutions -- our corporations, our media, and, yes, our government -- still reflect these same values. Each of these institutions are full of honorable men and women doing important work that helps our country prosper. But each time a CEO rewards himself for failure, or a banker puts the rest of us at risk for his own selfish gain, people's doubts grow. Each time lobbyists game the system or politicians tear each other down instead of lifting this country up, we lose faith. The more that TV pundits reduce serious debates to silly arguments, big issues into sound bites, our citizens turn away.

No wonder there's so much cynicism out there. No wonder there's so much disappointment.

I campaigned on the promise of change -- change we can believe in, the slogan went. And right now, I know there are many Americans who aren't sure if they still believe we can change -- or that I can deliver it.

But remember this -- I never suggested that change would be easy, or that I could do it alone. Democracy in a nation of 300 million people can be noisy and messy and complicated. And when you try to do big things and make big changes, it stirs passions and controversy. That's just how it is.

Those of us in public office can respond to this reality by playing it safe and avoid telling hard truths and pointing fingers. We can do what's necessary to keep our poll numbers high, and get through the next election instead of doing what's best for the next generation.

But I also know this: If people had made that decision 50 years ago, or 100 years ago, or 200 years ago, we wouldn't be here tonight. The only reason we are here is because generations of Americans were unafraid to do what was hard; to do what was needed even when success was uncertain; to do what it took to keep the dream of this nation alive for their children and their grandchildren.

Our administration has had some political setbacks this year, and some of them were deserved. But I wake up every day knowing that they are nothing compared to the setbacks that families all across this country have faced this year. And what keeps me going -- what keeps me fighting -- is that despite all these setbacks, that spirit of determination and optimism, that fundamental decency that has always been at the core of the American people, that lives on.

It lives on in the struggling small business owner who wrote to me of his company, "None of us," he said, "...are willing to consider, even slightly, that we might fail."

It lives on in the woman who said that even though she and her neighbors have felt the pain of recession, "We are strong. We are resilient. We are American."

It lives on in the 8-year-old boy in Louisiana, who just sent me his allowance and asked if I would give it to the people of Haiti.

And it lives on in all the Americans who've dropped everything to go someplace they've never been and pull people they've never known from the rubble, prompting chants of "U.S.A! U.S.A! U.S.A!" when another life was saved.

The spirit that has sustained this nation for more than two centuries lives on in you, its people. We have finished a difficult year. We have come through a difficult decade. But a new year has come. A new decade stretches before us. We don't quit. I don't quit. (Applause.) Let's seize this moment -- to start anew, to carry the dream forward,

and to strengthen our union once more. (Applause.)

Thank you. God bless you. And God bless the United States of America. (Applause.)

END 10:20 P.M. EST

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The White House

Office of the Press Secretary

For Immediate Release May 15, 2013

Statement by the President

East Room

6:21 P.M. EDT

THE PRESIDENT: Good afternoon, everybody. I just finished speaking with Secretary Lew and senior officials at the Treasury Department to discuss the investigation into IRS personnel who improperly screened conservative groups applying for tax-exempt status. And I look forward to taking some questions at tomorrow's press conference, but today, I wanted to make sure to get out to all of you some information about what we're doing about this, and where we go from here.

I've reviewed the Treasury Department watchdog's report, and the misconduct that it uncovered is inexcusable. It's inexcusable, and Americans are right to be angry about it, and I am angry about it. I will not tolerate this kind of behavior in any agency, but especially in the IRS, given the power that it has and the reach that it has into all of our lives. And as I said earlier, it should not matter what political stripe you're from -- the fact of the matter is, is that the IRS has to operate with absolute integrity. The government generally has to conduct itself in a way that is true to the public trust. That's especially true for the IRS.

So here's what we're going to do.

First, we're going to hold the responsible parties accountable. Yesterday, I directed Secretary Lew to follow up on the IG audit to see how this happened and who is responsible, and to make sure that we understand all the facts. Today, Secretary Lew took the first step by requesting and accepting the resignation of the acting commissioner of the IRS, because given the controversy surrounding this audit, it's important to institute new leadership that can help restore confidence going forward.

Second, we're going to put in place new safeguards to make sure this kind of behavior cannot happen again. And I've directed Secretary Lew to ensure the IRS begins implementing the IG's recommendations right away.

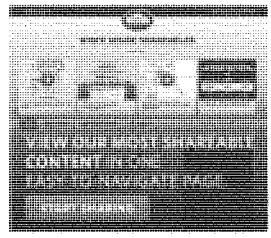
Third, we will work with Congress as it performs its oversight role. And our administration has to make sure that we are working hand in hand with Congress to get this thing fixed. Congress, Democrats and Republicans, owe it to the American people to treat that authority with the responsibility it deserves and in a way that doesn't smack of politics or partisan agendas. Because I think one thing that you've seen is, across the board, everybody believes what happened in -- as reported in the IG report is an outrage. The good news is it's fixable, and it's in everyone's best interest to work together to fix it.

I'll do everything in my power to make sure nothing like this happens again by holding the responsible parties accountable, by putting in place new checks and new safeguards, and going forward, by making sure that the law is applied as it should be -- in a fair and impartial way. And we're going to have to make sure that the laws are clear so that we can have confidence that they are enforced in a fair and impartial way, and that there's not too much ambiguity surrounding these laws.

So that's what I expect. That's what the American people deserve. And that's what we're going to do.

Thank you very much.

END
6:25 P.M. EDT



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For Immediate Release

September 23, 2010

Statement by the President on the DISCLOSE Act Vote in the Senate

"I am deeply disappointed by the unanimous Republican blockade in the Senate of the DISCLOSE Act, a critical piece of legislation that would control the flood of special interest money into our elections. Today's decision by a partisan minority to block this legislation is a victory for special interests and U.S. corporations -- including foreign-controlled ones -- who are now allowed to spend unlimited money to fill our airwaves, mailboxes and phone lines right up until Election Day. And it comes at the expense of the American people, who no longer have the right to know who is financing these ads in an attempt to influence an election for their preferred candidate. Wall Street, the insurance lobby, oil companies and other special interests are now one step closer to taking Congress back and returning to the days when lobbyists wrote the laws. But despite today's setback, I will continue fighting to ensure that our democracy stays where it belongs -- in the hands of the American people."

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For Immediate Release January 21, 2010

Statement from the President on Today's Supreme Court Decision

With its ruling today, the Supreme Court has given a green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans. This ruling gives the special interests and their lobbyists even more power in Washington--while undermining the influence of average Americans who make small contributions to support their preferred candidates. That's why I am instructing my Administration to get to work immediately with Congress on this issue. We are going to talk with bipar isan Congressional leaders to develop a forceful response to his decision. The public interest requires nothing less.

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